LEGAL FRAMEWORK FOR INDUSTRIAL DISPUTES AND COLLECTIVE BARGAINING IN PUBLIC UNIVERSITIES IN NIGERIA

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CERTIFICATION

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DEDICATION

This work is dedicated to the Almighty God, Jehovah El-Shaddai, the All Sufficient One.

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ABSTRACT

Industrial disputes between workers' trade union and employers on issues of conditions of work are a recurrent problem in Nigeria. Of particular interest are disputes between the Federal Government of Nigeria (FGN) and the Academic Staff Union of Universities (ASUU), leading to recurring face-off between both parties. A viable legal framework on collective bargaining is essential in protecting interests of groups that may interact in a relative power context. Previous studies on industrial disputes in public universities have focused more on processes of collective bargaining than on its legal framework. This study was, therefore, designed to examine the legal framework for industrial disputes and collective bargaining between ASUU and FGN, with a view to establishing their employer-employee relations.

The Sociological Jurisprudence and Pluralist theories served as the framework. Doctrinal and qualitative methods were adopted. Primary data included the Constitution of the Federal Republic of Nigeria,1999; Nigeria's Labour Act,1974; Trade Disputes Act, 2004 (TDA); Trade Unions (Amendment) Act, 2005 (TUA); National Industrial Court Act, 2006; Ghana's Labour Act, 2003; United Kingdom's Trade Union and Labour Relations (Consolidation) Act,1992; International Labour Organisation's Conventions and Recommendations on Collective Bargaining; and case law. Secondary data included legal texts, articles and reports. Key informant interviews were conducted with 30 purposively selected stakeholders: University of Ibadan (executive-2, member-4), Olusegun Agagu University of Science and Technology (executive-2, member-3), Nnamdi Azikiwe University (member-5), Ahmadu Bello University (member-2) and University of Abuja (member-2); two National Universities Commission officials, four Principal University Management staff; two Senior officials of Federal Ministry of Labour and Employment and, two Senior officials of Federal Ministry of Education. Data were subjected to jurisprudential and content analyses.

The legal framework makes inadequate provisions for collective bargaining and enforcement of collective agreement in Nigeria. Section 40 of the Constitution recognises the right to form or belong to a trade union to protect workers' interests. Although Nigeria's Labour Act contains provisions on what collective bargaining and agreement entail, nonetheless gives allowance for non-usage, it states no penalty for non-compliance with their processes where utilised. The TDA stipulates processes for disputes settlement, penalty for defaulting is inconsequential and not at par with global industrial realities. Section 16, TDA provides for interpretation of collective agreement, subject to Court's decision and is considered final and conclusive. Inadequate fiscal support and research funds for public universities, imposition of Integrated Payroll and Personnel Information System as the payment platform for public universities' academics were unsuitable for the university system and should be jettisoned. The process of collective bargaining between FGN and ASUU had lost its usefulness due to FGN's constant call for re-negotiation of settled matters.The FGN claimed to have signed past agreements under duress and considered ASUU unrealistic in its demands.

Although a legal framework exists for collective bargaining, their provisions are however inadequate in curbing industrial disputes between the Federal Government of Nigeria and Academic Staff Union of Universities; tilting towards the Government's interest. Extant laws regulating collective bargaining and agreements should be reviewed to make them binding and enforceable.

Keywords: Industrial disputes, Collective bargaining, Academic Staff Union of Universities, Nigeria's public universities

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LIST OF ABBREVIATIONS

ASUU	Academic Staff Union of Universities
AGF	Accountant General of the Federation
ACAS	Advisory Conciliation and Arbitration Service
ACHPR	African Charter on Human and Peoples Rights
ADR	Alternative Dispute Resolution
ASSBIFI	Association of Senior Staff of Banks, Insurance and Financial Institutions
BATNA	Best Alternative to a Negotiated Agreement
CAC	Central Arbitration Committee
CBC	Collective Bargaining Certificate
CDHR	Committee for the Defence of Human Rights
CFRN	Constitution of the Federal Republic of Nigeria
CONUA	Congress of Nigerian University Academics
CONPUAA	Consolidated Peculiar Allowances
CONUASS	Consolidated University Academic Salary Structure
COLA	Cost Of Living Allowance
CPP	Convention People's Party
EAA	Earned Academic Allowances
ETF	Education Trust Fund
EAT	Employment Appeal Tribunal
EUSS	Elongated University Salary Structure
ESC	European Social Charter
EU	European Union
FGN	Federal Government of Nigeria
FIRS	Federal Inland Revenue Services
GIFMIS	Government Integrated Financial Management Information System
IAP	Industrial Arbitration Panel
IJMSR	International Journal of Managerial Studies and Research
ILO	International Labour Organisation

IMF	International Monetary Fund
IPPIS	Integrated Payroll and Personnel Information System
JCCs	Joint Consultative Committees
JICs	Joint Industrial Councils
JNC	Joint Negotiating Committee
LUF	Labour Unity Front
LASU	Lagos State University
LFN	Laws of the Federation of Nigeria
NANS	National Association of Nigerian Students
NAAT	National Association of Academic Technologists
NAMDA	National Association of Medical and Dental Academics
NARD	National Association of Resident Doctors
NEC	National Executive Council
NJIC	National Joint Industrial Council
NICN	National Industrial Court of Nigeria
NICA	National Industrial Court Act
NLC	National Labour Commission
NPN	National Party of Nigeria
NPP	National People's Party
NPSNC	National Public Service Negotiating Council
NUPENG	National Union of Petroleum and Natural Gas Workers
NUC	National Universities Commission
NAUT	Nigerian Association of University Teachers
NCSU	Nigerian Civil Service Union
NEABIAI	Nigerian Employers' Associations of Banks, Insurance and Allied Institutions
NECA	Nigeria Employers' Consultative Association
NICN ACT	National Industrial Court Act
NICN	National Industrial Court of Nigeria
NLC	Nigeria Labour Congress
NMA	Nigerian Medical Association

NUPEMCO	Nigerian Universities Pension Management Company
NUT	Nigeria Union of Teachers
NWC	Nigeria Workers' Council
NASU	Non-Academic Staff Union of Universities
OECD	Organisation for Economic Co-Operation and Development
PRBs	Pay Review Bodies
PFA	Pension Fund Administrator
PENGASSAN	Petroleum and Natural Gas Senior Staff Association of Nigeria
SCN	Supreme Court of Nigeria
SSANU	Senior Staff Association of Nigerian Universities
SSAUTHRIAI	Senior Staff Association of University Teaching Hospitals, Research Institutions and Associated Institutions
SNCSU	Southern Nigerian Civil Service Union
SAP	Structural Adjustment Programmes
TETFund	Tertiary Education Trust Fund
TISS	Tertiary Institutions' Salary Scale
TDA	Trade Disputes Act
TUS	Trade Unions Act
TUC	Trade Union Congress
TULRCA	Trade Union and Labour Relations Act
UK	United Kingdom
UDHR	Universal Declaration of Human Rights
UNILAG	University of Lagos
UJIC	Universities Joint Individual Commission
UJNC	University Joint Negotiation Commission
USS	University Salary Structure
ULC	United Labour Congress of Nigeria
UTAS	University Transparency Accountability Solution

CHAPTER ONE
INTRODUCTION

1.1.Background to the Study

Dispute between trade unions and their employers is a major phenomenon in Nigerian labour relations.[1] Differences in the statuses and idiosyncrasies of major actors in the Nigerian labour market more often than not lead to disputes from time to time due to conflicts of interests regarding, among other things, wages and working conditions.[2] Such distinguishing differences and their rife effects are also not out of place in tertiary educational institutions in Nigeria, as disputes occur both internally and externally. External disputes occur due to divergence in interests of trade unions with those of the government while conflicts between the management/administrators[3] and employees are considered internal. In Public Universities, external disputes seem to be the zenith of crises in Nigeria, occurring at affrighting rates, as a result of the varying interests and natures of the involved parties.[4] For example, since the beginning of the 4th Republic till date, the Academic Staff Union of Universities (ASUU) due to the impasse between it and the Government has embarked on sixteen industrial actions with the resultant outcome of the tertiary education system in Nigeria being adversely affected.

A university, as an institution of higher learning, is established with facilities for teaching and research. Being a congregation of intellectuals[5] it is also authorised to grant academic awards to students who complete their training to the satisfaction of an

[1] Ogbette, A.S, Eke, I.E. and Ori, O.E., 2017. Causes, effects and management of ASUU strikes in Nigeria, 2003-2013.*Journnal of Research and Development* 3.3:14-23.
[2] Ogbette, A.S, Eke, I.E. and Ori, O.E., 2017. *ibid.*
[3] Universities (Miscellaneous Provisions) (Amendment) Act, 2012 is an Act that applies to Universities under the Federal Government. It sets out a procedure which is uniform for appointment of Vice-chancellors including other principal officers.
[4] Abolo, E.V. and Oguntoye, O., 2016. Conflict resolution strategies and staff effectiveness in selected federal universities in Nigeria. *Educational Planning* 23.3:29-39.
[5]Aguba, C.R., 2016. Nature and scope of university administration in Nigeria. *International Journal of Advanced Research(IJAR)* 4.11:2323-2326.

institution.[6] In Nigeria, the goals of tertiary-level education,[7] inclusive of universities,[8] are to make contributions to the development of the nation through high-level pertinent workforce trainings as well as the growth and the inculcation of right values for the continued existence of individuals, the society, and equally to see to the growth of the intellectual skill of people in understanding, in addition to appreciating their immediate and external environments.[9]

To safeguard their interests, which could be at variance with the practises obtainable in the workplace and those of their employers, the teaching and non-teaching universities' employees form and join trade unions. Generally, every worker[10] has a right to be part of a

[6]Merriam-Webster, 2021. *University*. Retrieved July 22, 2021, from https://www.meriam-webster.com/disctionary/university; Shehu, U., 2006. *The Role of the university in the Nigerian society*. Being the text of the 35th Convocation Ceremonies Lecture, University of Nigeria, Nsukka, February 16, 2006. Retrieved July 21, 2021, from https://www.unn.edu.ng/publications/files/Public%20Lecture;%20THE%20ROLE%20OF%20THE%20UNIVERSITY%20IN%20THE%20NIGERIAN%20SOCIETY%20Prof.pdf

[7] As of 2021, September, there was a record of 170 Universities, 48 state-owned, 43 Federal with 79 being Private institutions. Jega, A.M.,2022. Corruption and the Education Sector in Nigeria being the text of a Keynote Address at the ICPC 4th National Summit, Abuja.

[8] In Nigeria, universities are categorised into two, namely Public and Private Universities. The Government has ownership of Public Universities while Private Universities are established by private individuals or institutions with no affiliations to the government. The employees of Public Universities, forming a pivotal focus of this study, are workers of the government (state or federal)- Section 19 of the National Minimum Standards and Establishment of Institutions (Amendment Decree of 1993). Each university has a statute governing its operations. For instance, University of Ibadan Act, Cap.U6, LFN 2004 (updated to 31st December, 2010, Vol.14); Akwa Ibom State University (AKSU) Law, 2009. See, National Universities Commission, *Guidelines for Establishing Institutions of Higher Education in Nigeria.* Retrieved October 19, 2021 from https://nuc.edu.ng/project/scopu/ .

[9]Other goals include, acquiring technical, that is physical, and soft (intellectual) skills. In addition, aids promotion and encourages scholarship as well as community service, thereby forming as well as cementing oneness in the country, including promoting international understanding and interaction. See, Federal Republic of Nigeria, 2013. *National Policy on Education*. 6th Edition. Lagos: NERDC. 26.

[10] For the purpose of this study, the words *worker* and *employee* will be used interchangeably. While section 48 of the TDA provides that a worker is any employee, meaning, a public officer or an individual (excluding a public officer) making a contract or working for an employer, which might be a manual labour contract, clerical work or contrarily, implied or express, written or oral, and if it is a contract of apprenticeship or service. Section 54 of TUA describes a worker as any employee, meaning, anyone whose membership is of the federal or state public service or any other person(excluding someone in any of the public service) working under or has a contractual agreement with an employer, if such contract is for manual labour, clerical work, or otherwise, expressed or implied, oral or in writing, and if it is a contract for the execution of any work or labour or contract for apprenticeship. Section 72, Employees' Compensation Act, 2010 states that an Employee means someone in the employ of an employer under oral or written employment contract which could be on part time, temporary, continuous, casual basis or apprenticeship, including a domestic servant, as well as anyone employed in Local, State and Federal Governments as well as any agency of the government as well as in the informal and formal economic sectors. It can be inferred from the above definitions that an employee and a worker is anyone who works for another and gets paid for it whether in the public or private sectors of the economy, covered by the above legislation's provisions in industrial relations in Nigeria.

trade union. This right is linked to the freedom of association principle,[11] considered a universal basic right in section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) Third Alteration Act, 2010.[12] This right permits workers to come together, connect, as well as, set up trade unions to protect their interests.[13] Recognition of this right is one of the components of collective bargaining, and attached to it is recognition of their collective bargaining rights.[14] When workers join and form trade unions, representing their members' interests as well playing vital roles in regulating conflicts,[15] they should be recognised for collective bargaining purposes by their employer[16] in improving their employment conditions.[17]

In Nigeria, the labour unions in Public Universities are constantly in conflict with their school administration or the government. The associations in the Public Universities include the ASUU, the Senior Staff Association of Nigerian Universities (SSANU), the Non-Academic Staff Union of Universities (NASU), as well as the National Association of Academic Technologists (NAAT).[18] Over the years, ASUU,[19] as a Union of intellectuals, has had a constant face-off with the Federal Government of Nigeria (FGN) on the state of Nigerian tertiary institutions,[20] including the welfare of its members and students.

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[11] Basically, freedom of association is an enabling right as well as the access to exercising a range of other workplace rights. See, Okene, O.V.C., 2008. Collective Bargaining, Strikes and the Quest for Industrial Peace in Nigeria. *Nigerian Journal of Labour Law and Industrial Relations*. 2.3:39-66.

[12] CFRN. See, ILO, 2010, *Trade union pluralism and proliferation in French-speaking Africa*. Geneva: ILO Office.*12*

[13] Swepston, L., 1998. Human Rights and Freedom of Association: Development Through ILO Supervision, *International Labour Review* .137:2.169-194.

[14] Okene, O.V.C., 2008. *op.cit.*

[15] Asamu, F.F., Asaleye, A.J., Ogadimma, A. and Bamidele, R., 2019. Industrial Conflict and Collective Bargaining: Evidence from North Central Region of Nigeria. *International Journal of Mechanical Engineering and Technology*. 10.3:120-128.

[16] For this study, the words *employer* and *management* are interchangeably used. Organisation will be used where the context so permits.

[17] There is an established connection between collective bargaining and freedom of association. This is so because it would be pointless to give employees right to organise if they cannot collectively bargain. Okene, O.C., 2011. Collective bargaining, strikes and the quest for industrial peace in Nigeria, *Uniben law Journal*, 29-66.

[18] Edema G. and Tolu-Kolawole D., 2021. CONUA does not exist in Trade Union Law, says ASUU. PUNCH. June 22. Retrieved July 15, 2021, from https://punchng.com/conua-does-not-exist-in-trade-union-law-saysasuu/?utm_source=auto-read-also&utm_medium=web&amp

[19] ASUU has a membership of academics in 32 Federal Universities and 38 State Universities. See, Appendix 1 of the Study.

[20] Ojo, J., 2020.Timeline: 4 years and still counting…how ASUU strike has affected students since 1999. *The Cable Lifestyle*. November 20. Retrieved July 22, 2021, from https://lifestyle.thecable.ng/timeline-4years-and-still-counting-how-asuu-strike-has-affected-students-since-1999/?_gl=1*svzf8z*-ga*MzgwODM5MTIwLjE2MTA3MjM1NTU

A trade union is statutorily defined in Section 1(1), Trade Unions Act (TUA)[21] as any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members.[22] As an association of workers, it[23] is registered for the protection of workers' interests, rights and privileges including the quest for social justice, freedom alongside peace, using workers' education, workplace harmony by means of the processes of collective bargaining. It employs, as a last resort, the methods of strikes[24] in seeking redress, social justice and, freedom for workers,[25] rooted in the political economy approach, and touches on various themes ancillary to trade unionism such as legality,[26] legitimacy,[27] disputes,[28] collective bargaining,[29] industrial harmony,[30] worker education and, the struggle for freedom.[31]

One of the diverse justifications for collective bargaining is settling industrial disputes.[32] As the key to understanding numerous important issues in industrial relations,[33] it serves as a means of preventing and resolving conflict between trade union(s) and

[21] 1973, Cap T14, Laws of the Federation of Nigeria (LFN), 2004.
[22] This standard is the working definition of trade unionism adopted for this study because it has a legal support and reflects the nature of trade unions in Nigeria. Section 1(1) Labour Act, 1974, Cap T14, LFN. 2004; Uvieghara, E. E., 2001. *Labour Law in Nigeria*, Lagos: Malthouse Press Ltd. 315.
[23] Trade union is also called labour union. Both terms will be used interchangeably in this study.
[24] Economic, industrial and political strikes.
[25] Kolagbodi, M.E., 1995. Trade Unions , Philosophy and Leadership in *Collected Speeches of M.E. Kolagbodi*. Lagos: Nigeria. See further, ASUU,2017. *ASUU Leadership Training Manual.* ASUU: Abuja.3-4.
[26] Legality entails registration of unions/federations and the designation of their statutory responsibilities as provided for by law and enforced through the Registrar of Unions. ASUU, 2017. *ASUU Leadership Training Manual.* ASUU: Abuja. 4.
[27] This is the right of workers and unions to exist and operate independently, beyond the registered responsibilities statutorily approved by the Registrar responsible for Trade Unions.
[28] This deals with due procedures for social dialogue, that is, negotiations and compromise leading to collective agreements. See ASUU, 2017. *op.cit.* 4.
[29] Most disputes have to do with the conditions of service such as improvement of wages, disregard for collective agreements, union affiliation, legal conflicts in organising workers, and so on. ASUU, 2017. *op.cit.* 4.
[30] This is the uneasy partnership between government, employer and workers. ASUU, 2017. *op.cit.*. 4.
[31] Forms the basis for the larger societal struggle for justice, equity, political and social-economic rights. See, ASUU, 2017. *op.cit.* 4.
[32] Otherwise known as industrial conflict
[33]Yiannis, G., 2005. *Collective Bargaining: a Critique of the Oxford School.* Retrieved October 10, 2021, from https://www.researchgate.net/publication/229569085

employer(s).[34] Being basically a process of rule-making, when labour is bought and sold, it sets rules that should be observed, just as a state may regulate jobs through legislation.[35] And as a way employment conditions are resolved through negotiation, thereafter coming up with an agreement between employees' and employers' organisations,[36] it constitutes a crucial means employees seek in satisfying both their social and economic interest; it forms a core factor in the attainment of peace in the workplace[37] as parties to collective bargaining reach conclusion on procedural arrangements regulating their relationships, which include their attitude in disputes resolution.[38] Furthermore, it entails employees working collectively to build leverage for getting the best deal possible from their employer.[39] It entails a consultation and negotiation process about employment conditions between employees and their employers through their representatives.[40] As an instrument for social justice, typical issues on a bargaining agenda cover conditions of employment such as pay, working times, annual leave, equal treatment, occupational health and safety, and training matters.[41]

As a mechanism for resolving industrial disputes with the primary goal of reaching collective agreements, a legal framework for regulating the practice and enforcement of collective agreements is non-negotiable because it determines the industrial atmosphere sought by an organization or country.[42] Nigeria, being a federal state, power is distributed between the FGN and the state governments. The CFRN, 1999 (as amended)[43] sets out three methods of power distribution, which include the Exclusive,[44] Concurrent, and Residual

[34] Elegbede, S.T, Okeke, S.O. and Abiodun, J.S., 2020. Trade Unions' Reactions to Non-implementation of Collective Agreements in the Lagos State Public Sector. *Journal of Contemporary Research in Business, Economics and Finance*. 2.4: 83-94.
[35] Okene, O.V.C.,2008. *op.cit.*
[36] Section 91(1), Labour Act, 1974.
[37] Okene, O.V.C.,2008. *op.cit.*
[38] Okene, O.V.C.,2008. *ibid.*
[39]They resort to collective action through which there can be an effective consolidation of their strength more, than individually. UCU, 2021. *Building Effective Bargaining A Brief Guide for UCU Representatives*. London: UCU. 5; Oslon, M., 1905. *The Logic of Collective Action*. Harvard: Harvard Press. 20.
[40] Okene, O.C., 2011. *op.cit.*
[41] UCU, 2021. *op.cit.* 5.
[42] Fajana, S., 2000. Conflict tactics and strategies of Nigerian trade unions: Convergence, diversity and implications. *Nigerian Journal of Personnel*, 4.1: 23–28.
[43] Second Schedule.
[44] The Exclusive Legislative lists contain items within the purview of the FGN. It has 68 items which only the FGN can enact on. See, Omoregie, E., 2009. FG/ASUU Collective Bargaining Agreement & Federalism in Nigeria: What Conflict? *Vanguard*. August 27. Retrieved June 29, 2021, from

Legislative Lists.[45] Item 34 of the Exclusive list puts labour, industrial disputes; conditions, and safety, the welfare of labour, trade unions; the prescription of the national minimum wage, and other parts related, including industrial arbitrations, within the exclusive legislative ability of the FGN. In line with this provision, there has been an enactment by the FGN of the following, amongst others, regarding the full coverage of the items. These include the Labour Act, TUA, TDA, and NICN Act. These legal instruments and how they regulate collective bargaining in resolving industrial disputes in Public Universities in Nigeria will be analysed in the course of this study.

1.2. Statement of the Problem

Legal provisions that regulate the collective bargaining processes in the workplace and industrial relations in Nigeria abound. However, there are divergent views on the efficacious management and resolution of conflicts between employees and employers, as well as between employees and the government.

Collective Bargaining serves as a process through which trade unions, on behalf of employees, conduct negotiations with employers, essentially on employment conditions, and it also serves as a way of resolving problems in the workplace.[46] As an instrument, effective in settling disputes and advancing the cause of labour, it assists in promoting common understanding with cooperation in employee-employer relations through a framework for addressing on issues bordering on industrial relations with no recourse to industrial action.[47] A collective agreement, being an outcome of collective bargaining, gives a breakdown of parties' obligations in a collective bargaining procedure. Collective bargaining in itself may not contain or regulate conflicts; it needs laws to aid its processes and outcome. Parties not honouring valid agreements reached nor respecting nor upholding

https://www.vanguardngr.com/2009/08/fg-asuu-collective-bargaining-agreement-federalism-in-nigeria-what-conflict/?amp=1

[45]The Concurrent list contains thirty items the Federal and State Goverments can both legislate on. Based on the covering the Field doctrine, when the FGN has an item on the Concurrent list, it supercedes any state law discrepant with the Federal Act on such provision. The powers of enacting on Residuary List are exercised over matters neither included in the Exclusive nor Concurrent Legislative Lists and states alone are empowered to do so. Omoregie, E., 2009. *op.cit.*

[46]AFL-CIO, 2021. *Collective Bargaining.* Retrieved October 10, 2021, from https://aflio.org/what-unions-do/empower-workers/collective-bargaining

[47]Omodu, A.G., 2021. Challenges of Collective Bargaining in Nigeria: Lesson from South Africa. *International Journal of Innovative Legal & Political Studies.* 9.3:12-20.

the legal framework for collective bargaining has become a major concern for the efficacious practice of collective bargaining in the nation. Notwithstanding the opportunities afforded by collective bargaining, therefore, industrial harmony has been shifty because activities of trade unions are, more often than not, confronted with hostility, which ultimately compels employees to resort to strike actions. Retrenchment of workers has also become a common phenomenon, while some employees are not receiving remuneration that is commensurate with their work description.[48] Moreover, achieving industrial harmony in Nigeria has been challenging as the available trade union laws are perceived as not fully giving due recognition to unions as major stakeholders in the nation's development.

What is obtainable in unions in the education sector, especially in Public Universities, is not different from what is obtainable in other workers' associations. ASUU, as a Union for university academics, by no means shares concerns on the level of restiveness in industrial relations in Nigeria on account of agreements reached not being enforced or implemented. So many events in the struggles of ASUU have revolutionised it into a workers' association that unrelentingly seeks its members' welfare and interests of students' by its agitations for better learning and living environment, including ensuring that such issues surrounding the work environment are given attention by the government.[49] The union has gone on strike several times over issues such as a better environment for teaching and learning, members' welfare, funding, and institutional autonomy, among others.

A content analysis of laws on collective bargaining within the framework of Nigerian legislation in comparison with those of some other select jurisdictions and international treaties has revealed some notable inadequacies in the law regulating collective bargaining in Nigeria, particularly in Nigerian Public Universities. A viable legal framework is critical in a collective bargaining process, as some of the issues responsible for protracted disputes between the FGN and ASUU, which have become recurrent, are largely because of the insufficiency of the legal framework for collective bargaining in Nigeria in ensuring the bindingness and enforceability of collective agreement. While many authors, such as Bello,

[48] Ogbechei, R., 2015. An Exploration into the Socio-Economic Effects of Retrenchment: Evidence from Nigeria. *Journal of Economics and Sustainable Development*. 6.18:224-234.
[49] Albert, I.O., 2014. Beyond Moral Panic: Negotiation Theory and University Strikes in Nigeria. *Journal of Global Initiatives.* 9. 2:81-98.

F.B. and Isah, M.K;[50] Chile, D.N. and Ogbu, B.E.,[51] have written on collective bargaining in relation to curbing industrial disputes in Nigerian Public Universities, not many have addressed the legal framework relating to collective bargaining between ASUU and the FGN.

1.3. Research Questions

This study addressed the following salient questions as they relate to industrial disputes and collective bargaining:

i. What is the legal framework for collective bargaining in Nigeria?
ii. What are the international and comparative trends in the collective bargaining process?
iii. What has been the role and influence of the ASUU in the quest for industrial harmony in Nigerian Public Universities?
iv. What are the regulatory and legal issues impeding the attainment of industrial harmony in Nigerian Public Universities?

1.4. Aim and Objectives of the Study

The aim of this study is to examine the legal framework for collective bargaining in Nigeria with a view to exploring available options in industrial harmony in Nigerian Public Universities.

The specific objectives are to:

i. examine relevant legislation on collective bargaining in Nigeria within the context of applicable international instruments;
ii. make a comparative analysis of collective bargaining trends in Nigeria, United Kingdom and Ghana;

[50] Bello, F.B. and Isah, M.K., 2016. Collective Bargaining in Nigeria: ASUU and Federal Government Face-Off in Perspective. *Sahel Analyst: Journal of Management Sciences*. 14.1:65-78.
[51] Chile, D.N. and Ogbu, B.E., 2021. Advancing the Use of Strategic Communication in Collective Bargaining and Labour Relations in Nigeria: A Study of ASUU and the Federal Government of Nigeria. *JJMCS*, 2.4:134-146.

iii. examine the role and influence of the ASUU in the quest for industrial harmony in Nigerian Public Universities ; and
iv. examine the the regulatory and legal issues impeding the attainment of industrial harmony in Nigerian Public Universities.

1.5. Scope of Study

With the spate of industrial disputes in Public Universities in Nigeria, and the resultant effects on stakeholders of these institutions, this study focused on the legal framework for collective bargaining and industrial disputes in Nigerian Public Universities. It involved a study of relevant Nigerian legislation on collective bargaining within the context of applicable international instruments.

Trade unions in Nigerian Universities include the ASUU, SSANU, NASU, and NAAT. At different points in time, these unions have played important roles in getting the FGN to enhance the working state of their institutions as well as the welfare of their respective members. While all these unions represent the interests of staff at different levels and cadres, this study analysed collective bargaining as a mechanism for conducting negotiations in resolving industrial disputes in Nigerian Public Universities, with a specific focus on ASUU, which was established to advance the interests of academics in universities. Furthermore, this study examined the challenges to the realisation of industrial harmony in Public Universities and made some recommendations on how some level of harmony could be attainably sustained.

1.6.Justification for the Study

The notions of collective bargaining and agreements are stipulated in different legislation. However, in Nigeria, it cannot be said that the application of the relevant legislation is according to global best practices.[52] The relevance of this study is confirmed by the need, identified through the incessant struggles of ASUU, to improve the coherence of the mechanisms of collective bargaining and the enforcement and implementation of its outcomes. Furthermore, this study will aid the advancement of

[52] Olulu, R.M and Udeorah, S. A. F., 2018. The Principle of Collective Bargaining in Nigeria and the International Labour Organisation (ILO) Standards. *International Journal of Research and Innovation in Social Science (IJRISS)* II.IV:63-67.

literature by making significant contributions to the current knowledge on industrial relations, in general, and trade unionism as it concerns academics in Nigerian Public Universities, particularly, thereby creating avenues for further research activities in this area of Law.

1.7. Structure of the study

This study is structured into six chapters starting with the introduction in Chapter One, which consists of the background to the study, statement of the problem with research questions, the aim and objectives of the study, justification for the study, and the scope of the study. Chapter Two is a review of the related literature on the study. Chapter Three provided the methodology and the theoretical framework of the study; Chapter Four examined the laws and regulations on collective bargaining in Nigeria, the UK, and Ghana; and Chapter Five examined the bargaining process towards industrial harmony in Nigerian Public Universities. Unresolved legal issues were also discussed. Chapter Six is the summary, conclusion, recommendations, and contributions to knowledge.

CHAPTER TWO
LITERATURE REVIEW

The best interest of employees in their workplace has been considered by so many scholars to be of paramount importance and this interest is usually protected by the trade union organisations they voluntarily choose to be part of. This interest is usually in line with the legal instruments backing up the process for collective bargaining, collective agreement, the rights and privileges of employees, their right to fair, equal, and humane treatment as regards their involvement in industrial labour relations. Given this, review of related literature is undertaken and sectionalised into Conceptual and Empirical Reviews in the following thematic areas of trade unionism, collective bargaining, collective agreement, industrial democracy, industrial harmony, dispute settlement mechanism, and the NICN.

2.1. Conceptual Review

To have a full grasp of this study, it is apt to define some concepts. The following are some salient concepts to this study.

2.1.1. Employee

The Black's Law Dictionary describes an employee to be someone in someone else' service through a contract of hire, impliedly or expressly, in writing or oral, where such right or power of controlling as well as directing the employee on how work is to be performed lies with the employer.[53] According to Daudu,[54] any person an employer hires to carry out a particular job is an employee. In several modern economies, specifically defined relations a person has with a corporation differently from that of a customer-client is used in explaining who an employee is. ILO considers an employee as a worker working under the direction or control of an employer or any individual designated by the employer, in the private or public sector, and who receives emolument resulting from a contract of

[53] Garner, B.A., Ed., 2009. *Black's Law Dictionary*. 9th Edition. Minnesota: Thomas Reuters.
[54] Daudu, B., 2007. Gender Discrimination in Employment: An Appraisal in *NJLIR* 1.2 : 45

employment.[55] The definition given by ILO is, for this study, adopted as a working definition.

2.1.2. Employer

An employer, on the authority of The Black's Law Dictionary, is an individual directing as well as controlling a worker through an implied or express contract to hire and from whom such worker receives salary or wages.[56] Also, anyone who makes an employment contract, employing another person to work for him or another individual, and it includes the manager, agent, or factor of the initially stated individual including the persons representing a dead employer are considered by the Labour Act[57] as an employer. In the opinion of Daudu,[58] an employer is considered as an institution or individual that hires employees or workers. The hirer offers wages or salary to the employees in exchange for such an individual's labour input, dependent on if the employee receives payment hourly or a by a fixed rate at pay period.

2.1.3. Industrial Relations[59]

Industrial relations[60] generally connote a structure of norms, rules, laws, with conventions, institutions, including practices connected with collective bargaining, as well as avoidance including settlements of industrial conflicts.[61] Fajana conceives it as circumscribing all features which influence human personnel management, including

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[55] ILO, 2000. *ABC of Women Worker's Rights and Gender Inequality*, ILO Office:Geneva.

[56]Garner, B.A., Ed., 2009. *op.cit.*

[57] Section 9.

[58] Daudu, B., 2007. *op.cit*..

[59] The terms Industrial relations, employment law, labour law, and labour relations are often used interchangeably. However, to ILO, Industrial relations is the relationship the government has with employers, with workers' organisations or the relations occupational organisations have with one another. This term is used to signify freedom of association with protection of the right to organise, including the right of collective bargaining with agreements, conciliation with arbitration; the instrument for co-operation the authorities and the occupational organisations have at diverse stages of the economy. See, Musili, B., 2018. Challenges in Implementing and Enforcing Collective Bargaining Agreements. *KIPPRA.*1: 208.

[60] Industrial relations and labour relations are interchangeably used. However a slight distinction has been made between both terms. While Industrial relations suggests a collective relationship between the employer and union, tilting towards manufacturing industry, seperate from the service sector. Labour relations, suggests to any dealings between employer and unionised employees, or have about to be unionised. See, Edwards, P., 1999. *Industrial Relations; Theory and Practice in Britain.* U.S.A.: Blackwell Publishers Ltd. 4.

[61] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *Trade Unions and industrial Relations in Ghana.* Ghana: TUC and RLS. 21.

government or its representative agents' activities in the management of such workforce.[62] To Ramaswamy et al., it is the relationship existing among collectives; that is, the government, employers, with employees, or their unions.[63] V. B. Singh[64] considers industrial relations an inherent aspect of social relations that arises from employer with employee relations in contemporary industries under the control of the State at diverse levels, in conjunction with organised social forces which are determined by the institutions in existence.[65] It also means examining the state, its legal system, including employees' with employers' organisations at the institutional level; as well as the forms of industrial organisation (management inclusive), its capital structure and technology, workforce compensation, [66] the review of market forces at the economic level.

2.1.4. Collective Bargaining

The Labour Act,[67] considers collective bargaining to be the procedure for reaching or attempting to reach a collective agreement.[68] The Nigeria Employers' Consultative Association (NECA) defines it as the process of decision-making. Its overriding purpose is the negotiation on agreed set of rules to govern the substantive and procedural terms of employment relationship as well as the relationship between the

[62] Fajana, S., 2006. *Industrial Relations in Nigeria: Theory and features*. 3rd Edition. Lagos: Labofin and Company.
[63] Ramaswamy, E.A. and Uma Ramaswamy, U., 1981. *Industry and Labour: An Introduction*. Delhi: Oxford University Press. 86-94.
[64]Chand, S., *5 Classification of Theories of Trade Union*, Retrieved December 3, 2018 from http://www.yourarticlelibrary.com/trade-unions/5-classification-of-theories-of-tradeunion/3546
[65] Industrial relations deal with the systems including procedures unions and employers adopt in determining the remuneration and other employment conditions, in protecting the employed and employers' interests as well as in regulating how employees are treated by employers. See, Chand, S., *op.cit.*
[66] Labour force has been defined as the totality of the people who work for a purpose and are paid remuneration for the work done while Nnadi posits that in the interest of sustained productive economic activity, effort is made to manage the employer-employee relations to sustain the work. The labour force of any nation is the foundation upon which economic activity rests. See, Uwakwe, M.O., 2014. Factors Affecting Women's Participation in the Labour Force in Nigeria, *Journal of Agriculture and Social Research*. 4 (2) 43-53; Nnadi, K.U. 2002. The Economics of Disruptive Labour Relations in Nigerian Universities. *Journal of Technology and Education in Nigeria*, 7.1 :1-10.
[67] Section 91, Cap L1, LFN. 2004.
[68] Labour Act describes collective agreement as any written agreement as regards the conditions of work conditions including employment terms that (a) workers' organisation or one representing workers or its association; and (b) an organisation which represents employers or its association, have concluded.

bargaining parties themselves.[69] NECA therefore considers and advocates the use of collective bargaining machinery as the best method of reaching agreements in every aspect of the employment relationship between management and worker.[70] Collective bargaining being a continuous institutional relationship exists between a trade union, representing a defined category of workers employed in a unit or organisation, and their employer. It involves the negotiations, administration, interpretation including enforcing agreements covering mutual understanding regarding salaries, wages, work hours as well as other conditions of work.[71] It includes agreements interpretation as well as their execution through supervision. As a negotiation process involving formal or informal discussions, with the intent of arriving at an agreement, [72] it is a joint decision-making process which fosters parties' trust with common respect, it aids the standard of labour relations.[73] It also enables employers gaining insights into the challenges, tacky issues including the aspirations of their employees. The employees, on their part, tend to have a better comprehension of the economic and technical problems of management.[74]

2.1.5. Collective Agreement

According to the National Industrial Court of Nigeria Act (NICN Act) 2006,[75] a written agreement which relates to conditions of work as well as employment terms, which is made between an organisation representing employers' interests (or its association), and an employees' organisation or an organisation representing employees' interests (or its association) is a collective agreement. By Section 48 of the TDA,[76] it is any written agreement for disputes settlement and relates to employment terms and physical work conditions agreed on by an employer or an employers' group or representative workers'

[69] Okpalibekwe, U.N., Onyekwelu, R.U. and Dike, E.E., 2015. Collective bargaining and organisational performance: a study of the Nigeria Union of Local Government Council, Anambra State (2007-2012). *IISTE. Public Policy and Adminstration Research*. 5.4:53-68

[70] Nnauko, A. O., and Okoye, G., 2019. Nigerian Employers Consultative Association (NECA) as a Veritable Instrument for Enhancing Industrialization and Industrial Relations in Nigeria. *International Journal for Innovative Research in Multidisciplinary Field.* 2.9:80-86.

[71] Davey, H.W., 1987. *Contemporary Collective Bargaining.* New Jersey: Prentice Hall Inc.3.

[72] ILO, 2015. *Collective Bargaining, a Policy Guide*, Geneva: ILO Office.16.

[73] ILO, 2015. *ibid.* 16.

[74] Okolie, C.N., 2010. *Trade Unionism, Collective Bargaining and Nation Building: The Nigerian Experience* Retrieved January 20, 2020, from https://www.ajol.info/index.php/og/article/viewFile/57929/46295

[75] Section 54.

[76] 1976, Cap T8, LFN.2004

organisations, or representatives of a team of workers, duly appointed; and a trade union(s) or representative organisations of workers, or appointed representatives of any set of workers.

2.1.6. Trade Union

Onyeonoru[77] considers trade unions as associations of working people formed to pursue the welfare and desirable working conditions of members while Sydney and Beatrice Webb[78] suggest that it is a continuous set of persons earning wages whose purpose is to see to the improvement of their employment conditions.

2.1.7. Industrial Action

Industrial action has been described as a generic term used in representing the entire body of concerted measures employees may adopt in exerting pressure on an employer in urging or compelling the employer in acceding to their claims or demands.[79]

2.1.8. Industrial Dispute

Industrial dispute is any disputation an employer(s) has with their workers or between workers themselves that has connection with the employment or non-employment, or employment terms, as well as the physical work conditions of anybody.[80] It could also be a form of disagreement workers' trade union has with management as regards issues concerning work conditions.[81]

2.1.9. Industrial Democracy

In Korsch's view, industrial democracy deals with both autonomous collective bargaining and workplace codetermination, and ultimately, codetermination of both the economy and the society[82] while, to Abolade, it is about democracy in an organisation

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[77] Onyeonoru, I.P., 2001. *Industrial Sociology*: *An African Perspective*. Ibadan: Samlad.5.
[78] Webb, S.and Webb, B. 1897. *Industrial Democracy*, London: Longman. 1.
[79] Nwazuoke, A.N., 2001. *Introduction to Nigerian Labour Law*, Ago-Iwoye :The Department of Public Law and Jurisprudence, Faculty of Law, Olabisi Onabanjo University. 123.
[80] Section 47, NICN ACT.
[81] Okafor E.E. and Bode-Okunade A.S. 2005. *An Introduction to Industrial and Labour Relations*.Ibadan: Mubak Prints.
[82] Gerlach, E., Ed., 1968. Korsch, K, 1922. *Arbeitsrecht für Betriebsräte (Labor law for work Councils)* Frankfurtam Main; Müller-Jentsch, W., 1995, *op.cit*.

between the management and employees, with both reaching decisions on every matter relating to their organisation, work force, including management relations.[83]

2.1.10. Industrial Harmony

Otobo, Osad with Osas[84] state that Industrial harmony connotes an amicable as well as corporately reached agreement regarding the working relationships employees have with their employers to mutually benefit both parties, whereas Akuh[85] perceives it as a situation in which the management cooperate willingly with employees in pursuing the aim as well as objectives of their work organisation.

2.2. Empirical Review

2.2.1. Trade Unionism

Opara[86] describes a trade union as a workers' organisation set up for protecting interests associated to their employment.[87] As a force of social-economic change in the society, it is an organised group of salary earners with the object to safeguard as well as improve the conditions of remuneration and members' employment in raising their standard of life and social. As an organisation of employees bound to realise common objectives in core areas of hours and work conditions with wages, creating a workforce cartel, a labour union through its leaders, bargains with the management for its members, negotiating work contracts with them. Any agreement that union representatives negotiate with their employer is binding on all its members and the employer. In some instances, such could also be binding on other non-member workers. It forms a sect of the political class of the society with political powers sometimes accruing to union heads due to their constant access to with influence over sizeable number of persons. This study aligns with the view of Opara

[83] Abolade, D.A., 2015. Impacts of Industrial Democracy on Organisational Performance (Case Study of Selected Private and Public Sector Organisations in Lagos State, Nigeria). *Journal of Research in Social* Sciences. 3. 2:11-33.
[84] Otobo, D.O. 2005. *Industrial Relations: Theory and Controversies* , Malthouse Press Ltd; Akuh, E.A., 2016. Industrial Harmony for Academic Excellence: An imperative for a productive educational system in Nigeria, *British Journal of Education*, 4:63-71.
[85] Akuh, E.A., 2016. *op.cit.*
[86] Opara, L.C., 2014. The Legal Framework of Trade Union Activism and the Role of National Industrial Court (NIC) in Handling Trade Disputes, *International Journal of Humanities and Social Science*, 4.3:302-309.
[87] A trade union also includes employers' associations.

that trade unions play some innegligible roles in industrial relations. For instance, they spearhead the struggle for good conditions of service, better living wage and as act as defenders of the interests of workers as well as the society's less privileged. In addition, they facilitate the promotion of job security while ensuring fair treatment on the job. A trade union symbolises the oneness and capability of a country's labour association.

In taking a historical view of trade unionism and its development in Nigeria and comparing it with that of England, Danladi[88] states that there exists a great difference in trade unionism's history and its development in both countries. According to Danladi, before the 19th century, workers jointly fighting for their common interest was not allowed. Hence, the quest for trade unionism was characterised by a bitter struggle. It was between the late 18th to early 19th centuries Industrial Revolution that industrial barons of England started recognising the combination of workers.[89] In comparing the practice of trade unionism in Nigeria with that of England, their policies and laws in Nigeria from the colonial era till date can be said to be coercive and short of international labour standards, while trade union laws in England cannot be categorised as such. This is because, after the industrial revolution, trade unionism gained recognition in England.

Animasahun[90] examines how the different governments of Nigeria violate workers' unions rights and posits that, from the inception of labour movement in Nigeria, trade unions have been prone to abuse. He argues that, while such abuses reached their peak during the military regimes, workers' unions fare better during civilian administration. The most disheartening of the abuse is that such violations are perpetrated in most cases using the Law. According to him, state violence manifests in diverse ways such as dictatorial rule, press censorship as well as physical and psychological intimidation of citizens. While labour unions have suffered their share of state violence, they have employed peaceful protest, demonstrations, legal challenges, sit-down strikes, and work-to-rule to air their grievances. However, these have proved ineffective in resisting state violence, thus making general

[88] Danladi, K.M. 2009. An Appraisal on Evolution and Development of Legal Framework of Industrial Relations in Nigeria. *I.U.L.J.* 8:14-27.

[89] In *Rex and Journeyment Tailors of Cambridge* (1921) 8 M.O.D.10, the court held that, for a combination of working men to raise wages was a common law criminal conspiracy. It was when the Protection of Property Act was passed that the offence of criminal conspiracy in labour-related matters was abolished. Danladi, K.M., 2009. *op.cit*.

[90] Animasahun, O.O., 2007. Resisting State Violence against Trade Unions in Nigeria, *NJLIR* 1.2:139-147.

strikes to be the most potent weapon of trade unions in Nigeria. Another weapon used in suppressing trade unions is violating their fundamental human rights, which includes curtailing their freedom of association, rights to human dignity and to acquire as well as own property with impunity by state functionaries and its agencies to hound, harass and intimidate them. As the state consistently violates the rights of labour unions with the use of naked power, changing laws at will, the threat of dismissal, demotion, blackmail to bring workers' union to toe its line, the author concludes that the state's intervention in industrial relations, in most cases, is basically for the benefit of the ruling class, the government itself and, to some extent, the management-employers, and not for the labour unions. Abuses as these, according to the author, have hounded and brutalised unions over the years. For any government to succeed, it must see the trade union as a partner and deal with it as such. From the above, it can be inferred that trade unions serve as a sanitising factor in industrial relations. They serve as a mirror to expose the ills and unfair labour practices in the workplace. As a consequence of this, the trade unionists are merely tolerated and not fully accepted in society.

Abiala,[91] in his discussion on the legal framework for trade unionism traces its framework to the grundnorm;[92] that is, the Nigerian Constitution. According to him, the provisions on fundamental human rights in Chapter IV of CFRN, 1999 (as amended) form the pillar on which trade unions rest in law and practice. Section 40,[93] in particular, provides for the rights to peaceful association. This constitutional provision gives the frontier of workers right, whether public servants or factory workers to unionise a judicial boost. He, however, points out that this provision, as it applies to trade unions and other associations, is qualified.[94] He suggests that the National Assembly brings trade union laws into conformity with the dictate and intendment of the constitution. He further makes reference

[91] Abiala, E.O., 2011.*Trade Union Laws and Practice in Nigeria: The Travails*. Ibadan: St Paul's Publishing House. 34-35.

[92] In *Abacha v. Fawehinmi* (2001) 51, WRN 29, in pronouncing the supremacy of the 1979 Constitution, CFRN, 1999 (as amended) is similar to this), the SCN ruled that …The Constitution serves as apex law in Nigeria, being the grundnorm, in ordinary circumstances, with its supremacy never in question.

[93] Section 40 makes provisions for the rights to Peaceful Assembly and Association. *INEC & Ors. v. Musa & Ors.* (2003) 3 NWLR (pt. 9) 86 at 92; 2003. SCM.

[94] He makes reference *to Osawe & Ors v. The Registrar of Trade Unions* (1985) JELR 42560 (SC), where according to the SCN, *the right of association in section 37 of the CFRN, 1979 (that resurfaced under Section 40 of the* CFRN 1999 (as amended))*like the other rights in Chapter 4 of the CFRN is not absolute but a qualified right which can be derogated from in accordance with section 41 of the CFRN, 1979 (now Section 45 of CFRN, 1999 (as amended)).*

to the ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, 1948.[95] To him, the effect of the combination of section 40 of CFRN with ILO Convention, No. 87 is that trade union and its practice is a universal phenomenon as it is an essential ingredient of statecraft whether of socialist or capitalist mould. He traces the history of labour statutes in Nigeria from 1877 Master and Servant Ordinance No. 16 of Gold Coast Colony which was amended by ordinance No. of 1895, the Master and Servant Ordinance of the Colony of Lagos to the TUA 1973(as amended)[96] has provisions for trade unionism and industrial relations practice in the nation. The TUA[97] provides for formation and registration, recognition as well as trade unions' operations. Closely connected to the TUA[98] is the TDA[99] and its consequential effect on trade union practice. The TDA[100] removed the High Court's jurisdiction in trade dispute matters. Its section 20 established the NICN as the final appellate court on trade dispute matters and made conciliation and arbitration the first points of recourse. He concludes by stating that, given the wide jurisdictional powers of the court, the judiciary, in a specialised form has come to shape the future of trade union practice, redefine the legal status of collective bargaining and agreement. Also, it may reinforce the institutionalisation of industrial democracy as an antidote to the adversarial practice in Nigeria. It is noteworthy that the view of Abiala is in tandem with one of the principles of this study, which is the institutionalisation of industrial democracy. The judiciary can serve as a vehicle through which industrial agitations can be fully acknowledged by the sovereign in any society where industrial harmony will reign.

Lawani,[101] in giving his perspective on Ghanaian trade unionism, delves into trade unions in the Gold Coast's history. From his account, it goes back to the early days of colonialism. Being a former British colony, that development was marked by revolutionary transformation in the economic, political including social sectors. The citizens' subsequent release from slavery led to an upsurge in the demand for wage labour encouraged by the

[95]To which Nigeria has subscribed. For the legal effect of ratification and ascension to an international treaty.*Chief Gani Fawehinmi v. Gen. Sani Abacha & Ors.* (1996) 9 NWLR (Pt.475) 710, 758-759.
[96] Amended in 1978. The compendium of Trade Unions Acts can be found in the TUA which is regarded as the principal act.
[97] Cap. 437 LFN (1990) currently known as Cap. T14 LFN 2004 (as amended).
[98] Cap T.S. LFN (2004) .
[99] 1976, Cap T8, LFN. 2004.
[100] Section 2
[101] Lawani, S., 2016. Ghanaian Trade Unionism in Perspective. *International Journal of African and Asian Studies*. 26:127-134.

colonial administration who introduced the Master and Servants Ordinance of 1877 to regulate the employers and employees' relations. He further segmented trade unionism in Ghana's development into three phases. According to him, its first phase was marked by the proto unions which represented the periods trade unionism was identified through agitation for better working conditions. The second phase was marked by the inter-war period agitations, while that of third phase occurred after the trade unions ordinance 1941, which gave all the unions institutional, backing and recognition, was enacted. In recounting trade unionism history in Ghana, he concludes that, the labour union has shown deep involvement in politics as three years after its inauguration, the Trades Union Congress (TUC) delved into political matters, got involved in the nationalist struggle by its alliance with the Convention People's Party (CPP). These moves later culminated in the collapse of the TUC as union funds were exhausted, thereby leading to many unions losing support. He identified that, despite the TUC's political involvement from the 1940s, unions have never neglected their prime function of ensuring the welfare and better living standards of employees. Contrary to the perspective of Lawani, labour unions should not get embroiled in politics. This would ensure transparency in their dealings with the government when it comes to securing the interests and welfare of their members. Politics serves as a cloak that prevents trade unions from seeing the excessive acts or policies of the government that might not align with employees' general wishes or interests and this hinders them from acting as watch-dogs in ensuring that the government adheres to terms of any collective agreement entered with members of trade union.

According to Olatunbosun,[102] the union Rules book occupies a dominant position in trade union affairs as it is considered to be the Constitution of the union. It defines the rights and duties of everyone in the union, it forms an important guide that regulates the relationship of the union with the outside world. He goes further to point out the importance of the Rules book by stating that, in England, every trade union is at liberty to register or not to register its union rules with attendant legal consequences. He stated that if unregistered, a union is not a legal entity at all and cannot enter into a contract that would be binding upon all persons who may become members. In Nigeria, the Rules book is also

[102]Olatunbosun, A. 2004.The Place of Trade Unions and their Members under the Law of Contract, *Ife Juris*,1.2:289-300.

mandatory for every trade union as stipulated in section 4(1) of the TUA. On the enforceability of the Rules book, the author critiques the provision of section 20(1) of the TUA which restricts in its application under the provisions of subsection 2 which, in his view, ought to be amended as these statutory restrictions render whatever contractual rights and duties conferred on the members of the union meaningless if it cannot be enforced in court. In essence, the provision of section 20(2) that, notwithstanding what section 20(1) stipulates, no court can entertain any action or legal proceedings instituted directly in the enforcement of any agreement or recovery of damages for the breach of agreement listed therein… purports to oust the court's jurisdiction in entertaining any act of infringement of the Rules book of the union. In the author's view, if this is allowed to stand it will likely make union leaders autocratic and direct the affairs of the union as if it were their personal property.[103] The modern test applicable in Nigeria is that the justice exception now empowers a trade union member to sue in such situation where he would not have had the right to do so in the TUA on the premise that the interest of justice so permits. While the Rules book is mandatory for every trade union, its application is restricted by the TUA. As opined by Olatunbosun, this provision of the Act should be reviewed to permit contractual rights and duties a Rules book confers on the members to be enforceable in court.

2.2.2. Collective Bargaining

According to Paul, Micheal and Chukwurah,[104] collective bargaining and its practice describe negotiation relations an employer has with employees. In Nigeria, it is one of the crucial functions of organised labour and it serves as a mechanism by which labour union representatives hold negotiations with an employer, on such conditions and terms of service which affect their members. They further state that in Nigeria, the formation of labour unions is to promote members' interests, including industrial harmony with employer-employee peaceful co-existence in particular. Collective bargaining was developed over

[103] This is on all fours with *Foss v. Harbottle* (1983) 2 Hare 461 rule. This rule is otherwise known as the majority rule principle .However, the author takes cognisance of the fact that the Nigerian courts have succeeded in evolving a slightly different approach to the common law rule in *Foss v. Harbottle.* According to this rule, "the company is the most appropriate plaintiff for an alleged wrong done to it. Also, where such wrong is a transaction that might become binding on the company by members' simple majority, none of its members is individually permitted to commence an action as regards such matter because, if a mere majority of the organisation's members favours what has been done, *then cadet quasito*."

[104] Paul, S.O., Michael , S. A. and , Chukwurah, D.C., 2013.Trajectory and Dynamics of Collective Bargaining and Labour Unions in Nigerian Public Sector . *Journal of Arts, Science & Commerce.* IV.4:49-57.

time for utilising democratic procedures in employer with employee relationships, serving as a strategy for industrial democracy as well as a means for sustaining it for mutually benefiting both parties involved, that is, the employees and employer. They further posit that there cannot be collective bargaining in absence of an umbrella body or group with which employers and employees' union can negotiate. The authors, in recognising collective bargaining as an important method of communicating premised on participative management, voluntarism, with common respect highlight basic features of collective bargaining which are essential in advancing interests of their members and industrial harmony including peaceful co-existence among the employers and employees.

Okene[105] posits that collective bargaining right forms a component of the right to associate freely. Furthermore, he states that collective bargaining forms a crucial approach employees seek in satisfying their social with economic interests. According to the author, its success is important in attaining industrial peace in Nigeria, therefore, an employer should give recognition to trade unions, which are registered, in his organisation, bargain with them in safeguarding the economic interests in employment in line with provisions of Labour Law which stipulates that trade unions should be automatically recognised for collective bargaining matters. He states further that an employer's duty to give recognition to a union is as closely linked to its negotiation duty and concluding agreements. The employer's refusal to give recognition and bargain with or failing to adhere to any agreement reached with a union could trigger strike actions by the employees. In his opinion, collective bargaining portends as a veritable instrument for workplace peace. Absence of industrial harmony in the country is attributable to the employers' aloofness in negotiating sincerely as well as implementing agreements which, in the author's view, violates the international law standard for collective bargaining, thereby giving unremitting strikes legitimacy. Furthermore, he states that, in attaining industrial harmony in the nation, employers, with the government, need to accord seriousness to collective bargaining procedures with the implementation of its outcome.

[105] Okene, O.V.C., 2008. *op.cit.,* 29-66.

Dalhatu[106] takes a look at the concept of voluntary collective bargaining.[107] He states that in services where there are organised trade unions, the standard terms and improvement in the employment conditions are negotiated between employers' representatives and labour unions. According to him, collective bargaining is a system that can only succeed in an atmosphere of peace and concord. It operates best in the spirit of give-and-take, mutual understanding of the strength and weakness of the other party, with the willingness of both parties to make a concession. Where an organised labour exists, like is obtainable in the civil service, collective bargaining is conducted through the National Negotiations Council established on the recommendation of the Public Service Review Committee. And in spite of its limitations, this negotiating machinery is recognised as an established channel of communication between government agency and public servants. For the private sector, the Wages Board and Industrial Councils Act[108] guide the negotiations made between the trade unions and their employer.

Ebong and Ndum[109] posit that statutory intervention is primarily patterned to reinforce the collective bargaining with industrial relations processes. According to the authors, the most crucial phase in the procedure for collective bargaining, under Nigerian Labour Law, is for the employer or their association to give recognition to a union as a representative for workers in a bargaining unit. Such must link to employment conditions. In examining collective bargaining's legal framework, reference was made to TUA,[110] Labour Act[111] and Wages Board and Industrial Councils Act, 1990. Furthermore, they submit that recognition is given to employees' right in bargaining collectively in safeguarding interests of the workforce under Nigerian Labour law and International law. In examining the collective bargaining framework in Nigeria, both authors did not avert their minds to the Constitution which is the basis of all Nigerian legislation. This lacuna will be addressed during this study.

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[106] Dalhatu,M.B., 2007. Public servants, trade unions and industrial relations in Nigeria, *NJLIR* .1.2 :73-88.
[107]Voluntary Collective Bargaining is a term used for such arrangements by which remuneration with employment conditions are settled through bargaining in an agreement form employers or their associations make with workers' organisations. Handbook of Industrial Relations (H.M.S.O. 1961).18; Dalhatu,M.B. 2007., *op.cit.*.
[108] Wages Boards and Industrial Councils Act, 1973.
[109]Ebong, E.A. and Ndum,V.E., 2020. Collective Bargaining and the Nigerian Industrial Relations System-Conceptual Underpinnings. *IRE Journals.* 3.11:132-139.
[110] Cap. 437.
[111] Cap. 198.

Fashoyin,[112] while examining the principles and approaches to collective bargaining and its practice in both private and public sectors, posits that while collective bargaining aims to, reconcile, accommodate and mostly compromise the opposing interests of those involved, it also serves the purpose of cushioning conflict of interests. In tracing the historical evolution of collective bargaining, he alludes to the fact that industrial relations began in the public sector because of the near-absence of a private sector at beginning of the century. He argues that it developed in the private sector later where over the years, it gained much significance in the sector due to external and internal forces,[113] leading to a phenomenal increase in collective bargaining. As winning wage concessions from the employer through joint action is the main interest of any trade union, it eliminates disparity in wages among employees who perform similar works, thereby banding together to combine their strength far more effectively than as individually.[114] He further states that concluding an agreement is not necessarily a factor for determining collective bargaining, premising his point on the provisions of the Labour Act[115] which describes collective bargaining a procedure of making attempts to or reaching, a collective agreement. The insights given by Fashoyin into the principles of collective bargaining are ever relevant in any study that revolves around collective bargaining in industrial relations. They are, therefore considered appropriate for this study, and will aid the researcher in achieving its aim and objectives.

Uzoh[116] regards collective bargaining as the most appropriate method to determine emolument with other employment conditions of employees. He, nonetheless, notes that it is neither well-established nor set in the Nigerian public service as it is seldom used as a mechanism in determining wages with other work conditions. He believes that the government would rather adopt direct intervention using semi-judicial tribunals, wage commissions, wage-committees or even government proclamations including

[112] Fashoyin, T., 1992. *Industrial Relations in Nigeria Development and Practice*, Second Edition. Lagos: Longman Nigeria Plc.
[113] The internal forces were derived from the tendency of management to foist unilateral decisions on employees and increased amongst them the benefits of collective action for improving their employment conditions while the external forces were derived from public policy which has enhanced the organisational capabilities of both parties.
[114] Olson, M., 1965. *The Logic of Collective Action*. Cambridge: Harvard University Press.
[115] Section 90(1)b.
[116] Uzoh, B.C., 2015. *op.cit.* 2.2:58-63.

pronouncements, instead of collective bargaining, in fixing salaries and other employment conditions for public sector workers. This is with the resultant implication of perpetual emoluments-related industrial unrest in the civil service, majorly manifesting as strike actions. He further states that the Wage Commission's recommendations with pronouncements of the government on remuneration with other employment conditions are occasionally rebuffed by civil servants' widespread agitations as well as protests. He considers the imposition of income guidelines as a form of intrusion of collective bargaining process; hence, he suggests its removal. He states that the restricted usage of collective bargaining in determining remuneration with other work conditions play a role in the incessant emoluments-related industrial actions in the nation's public sector. He opines that, except collective bargaining is firmly rooted and utilised often in determining wage and settling other employment conditions, maintaining industrial harmony in Nigeria would be challenging.

Uranta,[117] in assessing collective bargaining in the public sector, states that, it was not formalised until recently. He notes that what had existed before it became formalised was the machinery of the Whitley Councils which were more consultative in nature than collective bargaining. The Morgan, Adebo with the Udoji Commissions to which the beginning of collective bargaining can be traced to in this sector, consistently recommended the establishment of the National Public Service Negotiating Council (NPSNC) as permanent negotiating machinery comparable to the National Joint Industrial Council (NJIC), which was a negotiating machinery in the private sector. Subsequently, while each state of the federation was to establish its salary structure based on its capacity to pay, the National Wages and Salaries Commission would provide the minimum wage payable to workers. Also, in compliance with the policy of the government in deregulating collective bargaining since 1991, autonomous federal and state agencies are empowered to fix their respective wages based on their ability to pay while bearing in mind the minimum wage policy. He, however, observes that the functions of the Public Service Negotiating Councils in both federal and state Civil Services cannot be said to meet the requirements for effective collective bargaining in Nigeria. While Uranta did not identify the requirements of effective collective bargaining, nonetheless, in line with this study's purpose, he suggests that to

[117] Uranta, C. 2012, *The Nigeria Labour Movement*. Lagos: Daily Labour Publications Limited.

obviate the chaotic and disruptive industrial unrests, each level of government and its agencies should negotiate directly with its employers, basing their agreements on their capability to pay when remuneration and conditions of service are reviewed.

Ibietan[118] examines extinct and extant statutes which regulate industrial relations practice since the colonial era to contemporary times. He deduces that the element of compulsion built in some of these legislation curtail the process for collective bargaining. He considers the transitioning from the principle of voluntarism to interventionism as imperative in projecting the government as not responsible alone but also reactive as well as active to its regulatory function in aiding and promoting an improved atmosphere for practice of industrial relations. He further highlights some lacuna in the implementation of statutes based on the ineffectiveness of these legislation in stalling strike with other industrial action forms, this he attributes to a custom of impunity by the unions as well as employers and considers as a damaging effect of military invasion of governance. In line with this study's aim, Ibietan aptly opines that the Nigerian government, and indeed, all employers must learn to honour and implement legally-binding valid agreements reached with trade unions consensually through the collective bargaining process. Also, they should reverence while upholding statutes regulating collective bargaining. By so doing, labour jurisprudence could offer an approach which is durable in the attainment of harmonious work relations.

In Olulu and Udeorah,[119] ILO standards, in relation to the challenges and limitations of its principles in Nigeria, identify ILO legal framework on collective bargaining as the Collective Bargaining Convention (No. 154); Collective Bargaining Recommendation (No. 163); and the Right to Organise and Collective Bargaining Convention (No. 98). These legislation give details on the types of measures, including their aims, members can use in promoting collective bargaining. According to them, practicing collective bargaining based on ILO standards comprises, parties to collective bargaining; recognising union-worker's organisation; workers provided for; subjects it covers, the principle of good faith, the place of procedures in negotiation facilitation, negotiation levels including the tenet of voluntary

[118] lbietan, J., 2012. The Legal Framework· Of Collective Bargaining in the Nigerian Public Sector- A Process Approach. *International Journal of Administration and Development Studies,* Maiduguri: Department of Public Administration. 3.1:145-156.
[119] Olulu, R.M and Udeorah, S. A. F., 2018. *op.cit.*

and unfettered negotiations. According to their study, collective bargaining involves a bipartite relationship (between two parties) based on ILO standards. ILO conventions regulating collective bargaining are aimed at creating equilibrium between the government's intervention at encouraging collective bargaining by an enabling framework, as well as the parties' freedom in conducting autonomous negotiations. In making reference to the plethora of legislation on collective bargaining in Nigeria which include the Labour Act 1974, TDA, 2004; Trade Dispute (Essential Services) Act, 2005, Industrial Arbitration Act; TUA, they posit that the non- codification of these diverse legislation results in the whittling down effect of the collective bargaining machinery. Following Olulu and Udeorah's position on collective bargaining, apart from codifying laws regulating industrial relations and collective bargaining, with its outcome, collective agreement, should be given better recognition and go beyond being binding in honour.

2.2.3. Collective Agreement

Nwauzi and Soibi,[120] note that collective agreement provides employees with vast advantage and equal power for negotiations in the bargaining process, through their trade unions, with their employers. In contemporary economy and industrial relations, collective bargaining is not only used to provide an agreement for the contract of employment, it is equally used in settling disputes and reaching a common understanding on issues and it is, to a large extent, a contract between those who are directly involved in it. In analysing the binding force of a collective agreement, they opine that there is no definite position on their enforceability in court as there are divergent opinions on it. They observe that collective agreement is an agreement binding in honour and give instances where collective agreement could be enforceable. For instance, under the common law, to have a contractual validity or legal effect, the agreement must be included in the contract of employment either expressly or impliedly. Also, another situation could be where it is incorporated by way of agency on the basis that labour union stands as its members' accredited representatives. The theories which support enforceability of collective agreement serve the ends of justice. The court should, therefore, not hesitate in holding collective agreement as binding once it is satisfied

[120] Nwauzi, L.O. and Soibi,G.I., 2010. Collective Bargaining and Collective Agreement under the Nigerian Labour Law. *African Journal of Professional Research on Human Development (AJPRHD)* 6.2:102-108.

that it follows any of the rules of incorporation and in instances where it will serve the better ends of justice.

Iwunze[121] identifies as a shortfall of labour jurisprudence, the rule that an employee in a trade union with which an employer signed a collective agreement can make no claim under the same. He opines that this stance of law impacts negatively on employee's right in taking advantage of an agreement by a union he belongs. Apart from the difficulty employees could be confronted with, the concern on unenforceability over time has impacted poorly of employer-employee relations and industrial disharmony in Nigeria. He attributes industrial actions, mostly in public sector, to failure of employers in adhering to collective agreements volitionally reached with employees' unions, citing FGN and ASUU constant face-off as an example. As collective agreements permit employees to pursue and collectively access what they cannot individually realise, it is a way employers and employees arrive at a consensus by bargaining thereby ensuring industrial harmony, among other things, in the workplace. The relevance of this study aligns with the observations and suggestion of Iwunze that our nation take a cue from other jurisdictions in the interest of industrial harmony with stability, and make her laws on how collective agreements should be enforced to confirm with global realities.

Nwazuoke[122] raises a concern on whether collective agreements are contracts legally enforceable or binding in honour only. In his opinion, not having a statutory position on how a collective agreement should be enforced, its enforceability then would depend on if the express intent of the parties to be bound can be found by the court or if the majority of opinion dominant at the period the agreement was entered suggests such intent. If the majority of opinion at that moment supports the view that collective agreements were binding, then the agreement would be binding, but if otherwise, it would produce a converse result. Furthermore, he cited three methods of incorporating collective agreement terms into an employment contract. This could be by express incorporation which occurs when a contract of employment contains a provision expressly subjecting it to the conditions of a collective agreement. It could also be by implied incorporation, wherein the non-existence

[121] Iwunze, V., 2013.The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement. *International Journal of Advanced Legal Studies and Governance,* 4.3:1-13.
[122] Nwazuoke, A.N., 2001. *op.cit.*

of express incorporation. It may be suggested in a contract of employment if at a point in time, the employer had applied it. The third method is incorporation by statutes, making collective agreement conditions binding on employees and employers by statutory provisions.[123] Also, in instances where there has been incorporation of a collective agreement term into an employment contract, it becomes independent of the course of agreement from which it was derived. This means that neither the expiration nor the withdrawal of the employer from the agreement will affect the continued validation of the term absorbed in the contract of employment. Enforcement of these terms against the other, unless there is employment contract variation, can be done by either an employee or employer. This study subscribes to the view of Nwazuoke, that, where there is an express intention by parties to be bound by terms of a collective agreement or where a majority of prevailing opinions when an agreement was arrived at suggests such intents into the agreement, the agreement must be binding on both sides involved in the bargaining process and no sharp or unfair practices should be permitted.

Also, Zechariah[124] in a study on the legal enforceability of collective agreements in Nigeria reveals a general non-binding nature of collective agreements, at common law, as it is considered to be a gentleman's agreement; an outcome of a trade unionist's pressure, except it is included in the contract of service. He further states that it was with the enactment of the NICN Act and alteration of some sections of the CFRN, 1999 (as amended), that collective agreements' binding force became apparent in the tradition of international best practices. According to him, an agreement should be written always with the terms completely spelt out, including a timeline for the implementation. His view on the employers and employees strengthening industrial relations by engaging in practices that can uphold industrial harmony, through brokering strategically viable consultation and entrenchment of participatory culture, aligns with one of the objectives of this study and is, thereby, apt for its purpose.

[123] Such collective agreement terms become statutorily implied into employment contracts of employees concerned. Section 18 (1) of the Wages Boards and Industrial Councils Act. Cap 466.
[124] Zechariah, M., 2013. New Frontiers on Legal Enforceability of Collective Agreements in Nigeria. *Current Jos Law Journal.* 6.1:293-318.

Uzoh,[125] in examining the government's preference for dishonouring collective agreements made on wages, posits that this attitude of government undoubtedly accounts for several of the strike actions in the Nigerian public service. According to him, whenever the government opts to negotiate with trade unions and agreements are arrived at, it habitually deems it onerous honouring such agreements while in some instances, it had denied ever entering into any form of agreement with workers. In aligning with Uzoh's view on the causer of most union-organised industrial actions being rooted in the inability of successive governments in Nigeria to honour collective agreements made with workers, this study seeks to consider the aftermath of not honouring collective agreements.

Akpan[126] while examining the challenges to collective agreements in Nigeria and its implementation refers to the Legislative lists as provided for in the Constitution. Under it, matters on industrial relations are on the Exclusive Legislative List, meaning only the National Assembly can pass laws, exclusively, on things related to trade dispute/industrial relations. Consequently, such legislation made on any item on the Exclusive Legislative List should be domesticated and acquiesced by every state in the nation. The Minister of Labour and Employment has the backing of the TDA to assign to such Commissioner responsible for labour related issues in a State such obligation to accept collective agreement employees' unions and their employer have agreed on. Afterwards, a suitable order to enforce such agreement them should be made.[127] He posits that, under both common and statutory laws, the employees in Nigeria are not treated fairly because of the absence of governance structure, the dearth of political will and budgetary provisions for implementing collective agreements on time or at all. According to him, employees' survival lies within them and admonishes them to learn to speak up and engage the government to uphold ILO Convention's intention, including the TDA. He recommends, inter alia, that there could be a rectification of inherent problems of implementation of collective agreements if

[125] Uzoh, B.C., 2016. Governments' Penchant for Dishonouring Collective Agreements Reached on Wages and Wage – Related Industrial Unrest In The Public Service In Nigeria. *International Journal of Current Innovation Research*, 2.2: 297-302.
[126] Akpan, M.J.D., 2017. Nature of Collective Agreements in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges. *Global Journal of Politics and Law Research.* 5.6:19-28.
[127] The state governments are to adopt or domesticate the TDA for regulation, to settle trade disputes or handle collective agreements purposes. Section 40(1) and (3) of the TDA.

government, trade unions of both employees and employers, and the courts adhere to the rule of law principles and due process backed up by employer and employees' interests.

Okenne[128] examines challenges and difficulties affecting collective bargaining practice, most especially in the Nigerian public sector vis-a-vis international labour standards. He posits that how collective bargaining is practiced in Nigeria does not satisfy the terms of international labour standards as the government of Nigeria most times infringes the rights of employees to collective bargaining. This, he argues, does not in any way augur well for the future of the nation as either a liberal democracy or its credibility in the international space. As the right to bargain collectively is recognised and has protection under International Law, employees' right to collective bargaining can also be deduced from statutes on freedom of association, trade union rights, including protection of employees. Pointing out limitations to the practice of collective agreement in Nigeria, he notes that certain restrictions determine the extent of issues that can be negotiated in collective bargaining. For instance, in the public service, Joint National Public Service Negotiating Council (JNPSNC) spells out negotiable issues. Even though the ILO Collective Bargaining Convention has been ratified by Nigeria, many practices as regards collective bargaining do not satisfy ILO standards as the government has not allowed the practice of collective bargaining to flourish. He further opines that to entrench collective bargaining in Nigeria, government intervention must be severely limited to laying broad policy guidelines and parties must be permitted to continue to negotiate freely.

Zechariah[129] examines the recent frontiers in Nigeria bordering on enforceability of collective agreements and observes that a collective agreement generally is not enforceable at common law, except such is incorporated into the contract of service of employees. He, however, states that with the initial statutory interventions which watered down the harsh effects of the position of common law in Nigeria and rendered it otiose and obsolete, the enactment of the NICN Act and the alteration of the CFRN, 1999 (as amended), the binding effect of collective bargaining has become apparent and in line with the tradition of international best practices. He further posits that if it is not in contravention of any extant law in the country and voluntarily entered into, in good faith, it is binding on parties to it.

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[128] Okene, O.V.C., 2009. *International Labour Standards and the Challenges of Collective Bargaining In Nigeria.* Retrieved June 20, 2020, from https://works.bepress.com/ovunda_v_c_okene/25/

[129] Zechariah, M., 2013. *op.cit.*

To him, there should express stating of intention to be bound, the time frame of the agreement by those involved in collective agreement, also an arbitration clause may be included peradventure one of the parties reneges. As identified by Zechariah, the roles of the NICN in ensuring that an agreement becomes binding on parties to it have been well articulated by the NICN Act with the alterations made in the of the CFRN, 1999 (as amended) bring to fore the responsibility of the Industrial Court in ensuring that there is industrial harmony in an organisation between the representatives of the employees and employers. This study will further take a cursory look at the roles of the NICN in the quest for industrial harmony in labour relations.

2.2.4. Industrial Conflict

According to Wokoma,[130] conflicts are aftermaths of disagreements between opposing parties. Conflicts, regarding the industrial society are the outcome of unpleasant, not balanced as well as antagonistic interaction and relationships between parties to industrial relations. Several discussions on workplace conflicts centre on strikes. He goes further to state that industrial conflicts have become endemic as no sector is not bedevilled with industrial disputes and conflicts. As pointed out by Wokoma, industrial conflict is inevitable as there are inherent competing interests of the employer and employees. The main reason for this is the failure of collective bargaining. This major cause of industrial conflict, the study intends to examine.

Njoku[131] attributes the usual tension between labour and management to communication where parties try to misinform or dis-inform each other. To her, a sense of being appreciated and a feeling of belonging may bring about industrial harmony than financial incentives would. She suggests that a basic principle to use as a guide-line in establishing good work-place relations is a belief in the worth of each individual and recognition of his or her dignity and self-respect. For an employee relations programme to be successful, effective communication by all parties is important as communication can be a cure to industrial relations problems. While this study agrees that effective communication between the employees and their employers in the place of work is a sine qua non in

[130] Wokoma, C.U., 2011. The Effects of Industrial Conflicts and Strikes in Nigeria : A Socio-Economic Analysis. *International Journal of Development and Management Review.* 6:32-40.
[131] Njoku, I.A., 2007. State, Industrial Relations and Conflict Management. *NJLIR.*1.2:148-156.

attaining industrial harmony in any establishment, there is more to attaining industrial harmony than this. Some other factors that should be put in place and consideration include honouring collective agreements as well as giving employees and their representatives the right platform to exercise their rights as employees. These other factors will be considered in this study.

Danladi[132] opines that the causes of dispute vary from one establishment to the other. To him, disputes may arise due to internal factors which include problems arising from making new agreements; that is, collective bargaining; it may be due to the conditions and terms of work, termination of employment, and so on. The causes of conflict externally may come about due to government policies on its economy, wealth distribution, including power. He further explains that industrial conflict may arise either out of a conflict of interest or conflict of rights in labour management relationships.[133] He makes a distinction between both forms of conflict. Conflict of interest arises where parties hold different views on what should constitute the conditions including the terms of employment in an agreement while conflict of right is a situation where there is disagreement on interpretation or application of the main terms of an agreed bargain of working practice. He further examines the issue of strike as a strong tool in resolving industrial disputes and posits that strikes embarked upon by workers might be a necessity where other forms of resolving conflicts between them and their employers have failed as it is during strike action that other options of settling disputes in industrial relations will be explored. For this study, the opinion of Danladi is apt, as it lays emphasis on the causes of conflict and the necessity of industrial actions in situations where employees are only being seen and not heard. This study holds the same view that, when disputes arise because of conflict of interest of an employee or employer due to policies which employees find unfavourable, employees can reach a compromise with them on how such policies will be in favour of both parties before the workers resort to strike action.

According to Dada,[134] some methods used by trade unions in achieving their set goals and objectives include negotiation, which involves trade union officials getting involved

[132] Danladi, K.M., 2009.*op.cit.*
[133] Drake, C., 1981. *Labour Law*, London: Sweet and Maxwell. 201.
[134] Dada, T.O., 1998. *General Principles of Law*, Second Revised Edition, Lagos: T.O. Dada and Co. 333-334.

sometimes in long-drawn meetings, in a bid to iron out certain aspects of disagreements between the employees and their employers. In a situation where there is a deadlock, the Industrial Arbitration Panel might have to intervene; lobbying, here, trade unions may constitute themselves into a formidable lobbying group to get a policy through the executive or legislative arms of government. Such policies may be such that concern their entire membership or any matter of overall public interest; strike involves withdrawal of services by employees constitutes one of the most effective weapons in the hands of trade unions;[135] picketing[136] involves holding meetings or spreading information or persuading colleagues to join a strike or to continue working. Another method trade unions adopt includes judicial intervention which is when awards made by the IAP is not acceptable to a disputing party, such matter shifts to the NICN. The judgment of NICN is binding and enforceable on the parties. Other forms of actions the trade unions use in bringing home their demands may be to order their members to embark on an indefinite go-slow; work-to-rule; sit-down strike or totally banning overtime as the case may be.

2.2.5. Industrial Harmony

According to Olatunbosun,[137] it is an indisputable fact that to attain industrial harmony, a good employer-employee relationship is a virtue that both parties must seek at all costs. Industrial harmony gains for the employer higher productivity, cost minimisation, survival of the enterprise and earns for the employee self-survival, job security, and also profit sharing.[138] A strained relationship that often results in strike action does not augur well for any establishment or industry. It is, therefore, unwise for labour management relationships to be hinged on strikes; parties should strive to attain minimum friction and maximum efficiency. He points out that, in all working conditions, the rewards for labour are important

[135] Every worker has the inherent right to withdraw his services if in his view, his employers have deviated from the terms or have refused to comply with certain agreed conditions of his services. In a twist to this method , where some employers feel threatened or reasonably think that a situation might go out of hand and anticipated strikes, they order a lockout of the workers using security forces.

[136] Picketing is a statutory immunity enjoyed by trade unions in furtherance of their cause. Section 43(1) of the TUA provides for peaceful picketing. It also provides in its subsection 2 that such an action would not be an offence under the Criminal Code, section 366 or such enactment in force anywhere in the nation. Dada, T.O., 1998. *op.cit*. 334.

[137]Olatunbosun, A. 2007. The Panacea for Industrial and Economic Development in Nigeria in Jade Mohammed and Adeniyi Olatunbosun, *New Trends in Business Law and Practice, A book of readings in honour of Prof. Akintunde Emiola*, Ibadan: Esteem Books and Publications. 54-67.

[138] Smith, I.T. & Thomas, G.H., 1998. *Smith & Wood's Industrial Law.* Butterworts & Co.; Olatunbosun, A, 2007. *op.cit*. 66.

elements for the livelihood of both parties in it.[139] The employee needs a reward to replenish his lost energy exerted in the production process and to continue living while the employer needs part of the output of the employee for its sustenance.[140] The author opines that the militant attitudes of the government and some management boards, of recent, towards the suppression of industrial actions through a frequent dissolution of trade unions, arrest, and detention of their officials are not viable solutions to labour problems. Despite threats and actual application of the punitive measures of section 42[141] which provide that any employee who embarks on industrial action shall not, for the duration of the industrial action, be entitled to his wages as well as other rights shall be prejudicially affected based on continuity of his employment. Despite this punitive legislation, labour unions in Nigeria have not been deterred from using the right to strike in achieving equilibrium in industrial relations. In his final analysis, he submits that, unless employers imbibe the principle that pet talks and empty promises do not solve human relations problems, the government should be committed to alleviating problems confronting workers from time to time through positive response to issues raised by the workers to achieve industrial peace and harmony; otherwise, workers will embark on strike notwithstanding the dictates of the Law on it and government, no matter how dictatorial and autocratic it may be, can subdue concerted pausing of work. As expounded by Olatunbosun, embarking on strike action is not the best approach to tackle employer-employee differences in the workplace, nor will issuing of threats by employers promote industrial harmony. Employers must understand that pet talks and empty promises do not solve human relations problems. The government should also be committed to alleviating problems confronting workers through positive responses to issues raised by them.

Ugbomhe and Osagie[142] consider collective bargaining as a tool, effective in establishing harmonious work relations. They opine that as a process of labour relations, it performs diverse functions in the workplace. Being a form of industrial jurisprudence as

[139]Wedderburn, K.W., 1962. The Right to Threaten Strikes II. *The Modern Law Review.* 25.5:513-530. Olatunbosun, A., 2007. *op.cit.* 54-67.
[140] Citrine,N.A., 1960. *Trade Union Law*, 2nd Edition. London: Stevens & Son Limited; Olatunbosun, A., 2007. *op.cit.* 54-67.
[141] Now section 43
[142] Ugbomhe, O. U. & Osagie N.G., 2019. Collective Bargaining In Nigeria: Issues, Challenges and Hopes. *Journal of Human Resources Management and Labor Studies.* 7.1:20-32.

well as industrial democracy, they posit that based on common agreement employers of labour have with unions with their members, it fosters industrial harmony at the workplace thereby giving room for understanding which will facilitate communication. According to them, collective bargaining is the major tool that representatives of employees and employers utilise not only in considering employees' demands but equally in resolving conflicts in the attainment of organisational goals and objectives and has the possibility to articulate an equitable representation of employees on matters of interest to them. It covers democratic values with ideas utilised judiciously for organisational effectiveness. While collective bargaining's significance cannot be overemphasised in industrial relations, the state employs forceful power in making collective bargaining ineffective. This suggests that government attempts avoiding commitment to collective bargaining. They suggest that, if handled adequately, collective bargaining would no doubt boost industrial democracy within the industrial system, and as a result, promote nation-building. As pointed out by Ugbomhe and Osagie, the system of collective bargaining in Nigeria is not well structured and weak as, although evolving, does so at a snail speed due to legislation.

Nwokocha,[143] in expounding the challenging responsibilities employers face in augmenting industrial harmony in organisations, identifies some factors undermining productivity and industrial harmony in the private sector. These include ineffective communication, environment for working, leadership behaviour including not recognising a labour union as a party to negotiations, and breach of a collective agreement. He further attributes non-enhancement of productivity and the management practice of exclusionism, dehumanisation of the work place and poor labour-management policies. In reducing conflicts and promoting harmony which will assist in achieving organisational goals, he suggests that management of organisations in Nigeria should come up with a structure of joint committee/expanded collective bargaining, creating a work tradition hinged on collaboration with teamwork as well as initiating participatory management, developing and restructuring communication process which is effective. Having these measures in place, according to him, will assist in closing such loopholes hindering industrial harmony and productivity. In any organisation, the management and labour unions should work in

[143] Nwokocha, I., 2015. Employers and the Enhancement of Industrial Harmony in Private Sector Organisations in Nigeria, *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*.20. 5:28-35.

partnership with common understanding including organised efforts to see to industrial harmony, fostering workplace culture hinged on collaboration and teamwork. As pointed out by Nwokocha, this will engender harmony in the workplace.

Akuh[144] examines and suggests the requirements needed in attaining industrial harmony. According to him, in order to have industrial harmony, the management must have an understanding of its roles including what they are expected to do with the necessary training with authority needed in efficiently discharging their assigned roles and responsibilities; the roles and responsibilities for the trade unions are to be averred with simplicity and clarity in the organisational/institutional structure; employees and their trade unions should have the knowledge of their objectives and enlightened on a regular basis of progress made towards achieving them; maintenance of a system for communicating that will secure exchange of views including information between divergent levels in the workplace as well as ensure employees objectively and factually have information on developments taking place; a link that is effective in top management exchanging views as well as information with work groups should be established; workplace supervisors must be aware of changes and innovation before they take place to aid their explanation of such policies to the work group; the management does what is necessary in ensuring all procedures are observed by the institution with agreements reached; employers cooperating with unions for establishment of effectual processes for negotiating conditions and employment terms as well as in disputes settlement; and that employers also motivate the establishment of effectual procedures among member institutions in resolving grievances with disputes at the establishment level. He further states that industrial harmony centres on policy for employment, collective bargaining, responsibilities, communication, with consultation and enhances labour productivity, creates a conflict-free workplace suitable for dialogue, tolerance, including other measures for settling disputes. These alternative means to strike actions include negotiation, conciliation, mediation, arbitration, and litigation. As rightly pointed out by Akuh, workplace democracy will assist in attaining work-place harmony. In situations where there are disagreements between workers' representatives and

[144]Akuh, E.A., 2016. *op.cit.*

their employers, alternatives to strike actions can be adopted to create a peaceful working environment and augment productivity.

2.2.6. Industrial Democracy

According to Emiola,[145] industrial democracy means different things to people. While some have applied the term with reference to the freedom of the employer and labour to work out their misunderstandings without the intervention of the state, to some other persons, it is the new theory of workers' participation in the running of their industries in collaboration with the management. In stating what industrial democracy is not, the learned author opines that it cannot mean the sharing of the power of control of management between an individual owner of a private business and his workers. To him, if workers want to take part in the control of the business, they can only do so by acquiring shares in the enterprise.

According to Müller-Jentsch,[146] at an early stage, narrow limits were placed on members' getting directly involved in developing unions' consensus as well as decision procedures for joint action in confronting strong opposition. The author also gives a perspective to the history of industrial democracy which was quite different from what was popularly held by Sydney and Beatrice Webb. According to him, notwithstanding that the Webbs laid emphasis on direct democracy at the onset of their historical approach of English unions, the concept of industrial democracy historically, cumulated into an effectual force for workers, primarily as a notion of representative democracy. Also, while the Webbs suggested that an effectual union-management was achievable only by representation, to Müller-Jentsch, participation and codetermination of workers' representatives in being part of negotiations and implementing (procedural with substantial) regulations that govern work relations including employment are crucial. He further opines that codetermination is the main idea of industrial democracy as it is representative and also direct and when it is contrasted to ideas such as communal economy and socialism, codetermination forms part of the not many concepts which have not been invalidated and it is certain to the notion of democracy.

[145] Emiola A., 2008. *Nigerian Labour Law*, Fourth Edition. Ogbomoso: Emiola (Publishers) Limited. 401.
[146] Müller-Jentsch, W., 1995. Industrial Democracy. *International Journal of Political Economy*. 25.3:50-60.

According to Abolade,[147] the major characteristic of industrial democracy is employees' involvement in the process of making decisions in their organisation. She suggests some important ways on how industrial democracy could be practised that would involve employees in joint decisions making with the management. These issues include contraction, expansion, work practices, appointments, promotion, profit sharing, investment, new technologies, changes in products, planning, forecasting, training, wages, succession plan, structure for allocating work, organisation's structure, amongst others. In studying the effect of industrial democracy on organisations' performance in certain public with private sector institutions in Lagos State,[148] she establishes that industrial democracy fosters employee satisfaction and that there was an important relationship between the behaviour of employees and industrial democracy and that industrial democracy in no way weakens the management power but rather fortified it. She further opines that the matter of industrial democracy ought to be founded in Labour Laws as well as collective bargaining for the benefit and welfare of everyone to be considered always. Practicing democracy in the workplace, according to her, would improve the morale of employees, thereby leading to an increase in organisational performance, job contentment, and allegiance of the employees to the organisation. In aligning with her recommendation, employers should aim for as well as embrace industrial democracy with its several constructive contributions to organisations.

Nwinyokpugi[149] opines that the setting of industrial alliance in Nigeria is nowhere near the normal cooperation that labour and management should have. To him, Nigerian work environment is bereft of every form of workplace collaboration such that there are no strong links between employees and employers. Due to the total social disconnect which exists among all key players in the industrial relations, he recommends that it is imperative that employers should make provisions for equal conditions for productive equality between employees involved in production and an employer benefitting from their efforts. He notes that such will expectedly close the business gap as well as decrease the strain beclouding the whole economy. Also, he advocates that trade union density, that seems to be declining

[147] Abolade, D.A., 2015. *op.cit.*
[148] In Nigeria.
[149] Nwinyokpugi, P. N., 2014.Workplace democracy and industrial harmony in Nigeria. *International Journal of Innovative Research and Development.* 3.1: 441-446.

in scope, spreading to every area of work, ought to be fostered and relevant legislation made in ensuring active enforcement of Laws in protecting employees from being constrained to manipulations from their employers. He goes further to state that the spirit of worth with accountability ought to be inculcated by employers in creating cooperation in the workplace, clear of disagreement, grouse, and social disconnect among everyone in the workplace. To him, workplace democracy models workplace harmony. As can be inferred from Nwinyokpugi's study, industrial democracy will only thrive where employers provide a level playing field for productive equity between employees and management.

In a study determining the connection between Industrial Democracy and Organisations Effectiveness in Ministries of Education, Environment and Health in Rivers State, Emmanuel and John Mark[150]show a notable relationship betwixt industrial democracy and organisational effectiveness. To them, the dimensions of industrial relations practice showed a good and important relationship with organisational effectiveness in government institutions in Rivers State which has helped in assessing the progress towards mission fulfilment with goals achievement. In improving organisational effectiveness, they note that management should make efforts to have a better communication system, interaction, leadership, direction, adaptability, with a positive environment. According to them, the stakeholders and the government, trade unions, and other private employers of labour should utilise industrial democracy, as this will improve the effectiveness of employees. It is further noted, that in perceiving its human resource as its most important asset, the management should not politicise complaints coming from employees or their union representative; but rather, they should carry out a thorough fact-finding investigation to be equipped with the right information relating to their complaints. In achieving its set goals and objectives, every organisation, whether private or public sector, must take into cognisance that industrial democracy has a significant positive impact on organisational effectiveness as it is imperative in influencing the efficiency and effectiveness of the organisation as this study intends to project.

[150] Emmanuel, S. & Mark, J., 2018. Industrial Democracy and Organisational Effectiveness of Selected Rivers State Parastatals. *IIARD International Journal of Economics and Business Management* . 4.2: 61-70.

2.2.7. Dispute Settlement Mechanism

Ogunniyi[151] posits that, where disputes or disagreements exist, it without doubts suggests there are parties to it. Disputes could emerge between management and employees or among the employees. According to him, the interposition of another party would be unavoidable where collective bargaining proves not adequate. Based on this, there is government intervention through the provisions of disputes resolution machinery. The Trade Disputes (Arbitration and Inquiry) Act, 1941 vested such power for resolving workplace disputes in the government was initially enacted.[152] Subsequently, two Emergency Decrees of 1968 and 1969 were enacted. The compulsory powers introduced in both decrees are now provided for in the TDA, with two judicial bodies for disputes resolution. These are, the Industrial Arbitration Panel (IAP), and the NICN. He, thereafter, states the procedures involved in settling disputes adopting both institutions. According to him, when a dispute occurs between employers and employees, efforts must be made using the existing negotiating machinery, where it exists, to settle such a dispute at a meeting between both parties. However, where reaching an agreement is unsuccessful, a report on the status should be made to the Minister of Employment, Labour, and Productivity.[153] He afterwards appoints a Conciliator. Where conciliation is unsuccesful, the Minister makes a reference of such dispute[154] to the IAP for settlement. At the hearing, parties can be represented by anyone of their choice.[155] The tribunal's decision is known as an "award".[156] He goes further to state that an appeal is of right from the IAP's decision to the NICN.[157] The extent to which parties can approach the NICN directly, with no reference to the

[151] Ogunniyi, O. 2004. *Nigerian Labour and Employment Law in Perspective*, 2nd Edition. Lagos: Folio Publishers Limited. 437-456.
[152] The Act has few limitation as the government's powers could only be recognised where there is consent for their use by the collective parties.
[153] Now known as Minister of Labour and Employment.
[154] Within 14 days. Section 3(1) (b) of the TDA, Cap. T8, LFN. 2004.
[155] Parties can be represented by either Legal Practitioners or their officials. See, Ogunniyi, O., 2004. *op.cit.* 440.
[156] The award must be written, meaningfully certain, final, it must also be possible and reasonable and must settle all the points referred to by the Tribunal.
[157] The Minister does not have to refer a dispute to the NICN since an appeal now lies as of right at the instance of the dissatisfied party.

Minister, determines the original jurisdiction of the NICN.[158] Referring to section 251 of the CFRN, 1999 (as amended),[159] he criticises that the NICN has to share jurisdiction on labour matters with the Federal and States High Courts. To him, these Courts should not be saddled with the responsibility of deciding cases on wrongful/illegal terminations, retirements, and dismissals, but that such cases should, and ought to, go to specialised courts created specifically for that purpose.[160] He refers to what is obtainable in South Africa where labour courts handle employment litigations and, in the United Kingdom where Employment Tribunals handle the same, with the right of appeal to the Employment Appeal Tribunal. Notably, the constitutional lacuna on NICN's jurisdiction identified by Ogunniyi has been corrected. The NICN by section 254c, of the CFRN has undivided jurisdiction on labour matters which amended sections 251, 257, and 272 of the constitution thereof. This amendment is a step forward and commendable as it now allows NICN to have exclusive jurisdiction in trade dispute matters.

Otohinoyi, Oboromeni and Christopher,[161] in evaluating industrial relations mechanisms for settling trade disputes, assess their effectiveness in disputes settlement in the educational sector. In their opinion, contrary to what is obtainable in Nigeria, the stability relished in developed nations such as Britain and USA educational system is due to adhering to disputes resolution mechanisms. According to them, the spate of industrial conflicts in the educational sector is worrisome and the incessant industrial actions of ASUU have had adverse influence on the standard of students being turned out from universities and have led to the loss of some university lecturers through either the management forcefully disengaging them or voluntary resignation. Notwithstanding the vigorous stakeholders' efforts in proffering a way out, through collective bargaining and ADR to the

[158] Disputants are permitted to approach NICN directly where their issue involves interpretation of IAP award of an award of the NICN itself. Same applies, without the Minister being involved, in matters involving the interpretation of a collective agreement.

[159] This provision is more or less a carryover from Decree 107 of General Abacha's regime. Ogunniyi, O.,2004. *op.cit.* 449.

[160] He also posits that the Employment Tribunals should be manned by judges who are experienced legal practitioners, assisted by assessors with power to handle matters related to wrongful/illegal terminations, retirements and dismissal dependent on a right of Appeal to the NICN.

[161] Otohinoyi, S., Oboromeni, W., and Christopher, S.I., 2017. *Evaluation of industrial relations mechanism in trade dispute settlement in Ahmadu Bello University, Zaria (2003–2015).* Retrieved July 7, 2020, from https://apsdpr.org/index.php/apsdpr/article/view/130/185

incessant conflicts between ASUU and the FGN, by which the dissemination of knowledge in universities have been affected, no significant achievements have been made in fostering unity with the current mechanism put in place. From their study, they infer that: the processes for industrial relations mechanisms advance industrial harmony; collective bargaining is an effectual mechanism used to resolve trade disputes; embarking on strike, that is, self-help approach, although it compels the management in complying with the entire disputes resolution mechanism as provided for in the TDA, does not promote industrial harmony; not honouring or delaying in complying to collective agreement results in trade disputes. In several instances, delays in complying with collective agreement have resulted in strike actions in Nigerian universities. They give recommendations that there should be adherence to the processes for industrial relations mechanisms, provided for in the TDA, as it aids industrial harmony. In addition, any agreement arrived at by parties during collective bargaining processes ought to be adhered to. While this study agrees with the basic opinion of the authors on the need for parties to collective bargaining to honour agreements, strict adherence to the provisions of the TDA, however, if not combined with other legal instruments, will not achieve the aim of attaining industrial harmony in any organisation.

2.2.8. The National Industrial Court of Nigeria (NICN)

Iyam and Ugwu,[162] to analyse the significance of the new NICN Act vis-a-vis the overhauling of the Act, delve into the status of the NICN before the existence of the NICN Act. They posit that the TDA that established the NICN has made it challenging for the court to deliver judgments freely. The bottleneck considered to hinder the smooth operation of the court was that the court was not originally listed in the CFRN, 1999 (as amended). In addition, it was a court where aggrieved litigants were unable to approach the court, on their own, to air their grievances except they were referred by the Minister handling labour matters. While it is only within the Minister's powers to make referral to the NICN under Sections 13 and 16 of the TDA, there is the unending debate on the scope of NICN's jurisdiction, especially within the context of exclusivity. The NICN Act establishes the NICN as a superior court of record possessing jurisdiction on industrial relations and labour matters on it. It further re-establishes the NICN, giving it dominance in resolving labour

[162] Iyam, U.I. and Ugwu, D., 2010. Overhauling The National Industrial Court Act: A Pathway to Effective Labour Dispute Settlement In Nigeria. *Global Journal of Social Sciences*. 9.1:63-66.

disputes. In their view, the enactment of the Act has fixed the defects the court was known for under the TDA, 1976 and the Trade Disputes (Amendment) Act 1992. Undoubtedly, the new NICN Act with its provisions will aid the court in dispensing justice speedily on labour and employment matters as it now confers on the court the same status with the Federal High Courts. As rightly observed by Iyam and Ugwu, the researcher also opines that it is one thing to have the NICN attain its current status, it is another thing to ensure its smooth running. There is, therefore, a need to ensure that the Laws regulating the operations of the NICN must make enough provisions to enhance its operation and efficiency.

Alli[163] examines the jurisdiction of the courts on matters of labour and trade union with reference to some legislation such as the Labour Act,[164] the TUA,[165] the Trade Unions (Amendment) Decree,[166] the TDA,[167] and Trade Disputes Decree.[168] The author also opines that regular courts are divested of jurisdiction as regards civil matters that relate to labour and trade unions. According to him, such jurisdiction is vested mainly on the IAP and the NICN as the court of first instance and appeal respectively. He goes on to state that the Magistrate Court(s) or its equivalent jurisdiction are vested with jurisdiction in matters that involve or connected with criminal aspects of the items provided for by the different Acts dealing with matters connected to labour and trade union. Contrary to the above, section 254C (5), CFRN, 1999 (as amended) now empowers the NICN to exercise jurisdiction in criminal causes with matters which arise from such cause or matter NICN has been given jurisdiction by that section or such other Act of the National Assembly or by any other law.

Fagbemi[169] examines the NICN's jurisdiction and gives the basis for its establishment. According to him, it was established with the mandate of preventing and settling labour disputes and related matters. He notes that, in the quest for solution to diverse teething issues the NICN was confronted with at inception, the Nigerian Government

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[163] Alli, Y.O., SAN. 2007. The Jurisdiction of the Courts in labour and Trade Union Matters in Jade Mohammed and Adeniyi Olatunbosun, *op.cit.*

[164] Cap L1, LFN. 2004; section 80(1)(2).

[165] Cap T14 , LFN, 1990, section 50(1).

[166] No. 4 of 1996 , section 50 (A).

[167] 1976, Cap T8, LFN.2004; sections 19(1), 20(1).

[168] No. 47 of 1992, section 1A(1), section 2. He also makes reference to the case of *Udoh v. OHMB*[168] where the SCN gave construction to section 1A of the Trade Disputes (Amendment) Decree, No. 47 of 1992 and made it clear that regular courts have no jurisdiction in labour related matters.

[169] Fagbemi, S., 2014. Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis. *Journal of Law, Policy and Globalization.* 28:53-59.

enacted the NICN Act, 2006. Some steps taken in NICN Act in resolving the problems associated with the court's jurisdiction include the repealing of Part II of the TDA and the re-establishment of NICN as a court of superior record. Also, by fiat, section 11, NICN Act revoked the Federal and States High Courts' jurisdiction, including that of High Court of Federal Capital Territory, Abuja to entertain industrial or labour dispute or such related matters, with the exception of instances where such matters are part-heard. The author, however, condemns the combined effects of the provisions of the NICN Act and the CFRN, 1999 (as amended) as they prohibit appeals from NICN's decision to the Court of Appeal (CA). He opines that, any Law prohibiting appeal from a court of the first instance is cruel; such should not be allowed. He further notes several discordant tunes in the provisions of the NICN Act including section 254 of the CFRN, 1999 (as amended) on NICN's jurisdiction. He referred to section 7 (6), NICN Act as well as section 254C (2) of the CFRN, 1999 (as amended), he suggests that, for those provisions to be effective, in the interest of justice, there is the need to streamline them. To him, the overzealousness of the lawmakers propelled them to introduce into the jurisdiction of NICN some provisions he considered to be incompatible as well as beyond the status assigned to the court, being one of the first instance. He opines that the issues of the jurisdiction of the NICN is nowhere near being solved and suggests the extant laws be amended in the furtherance of justice as well as aiding NICN's operations to be at par with global best practices. As identified by Fagbemi, the prohibition of appeal on the NICN decisions to the CA vests excessive powers in the NICN, under section 9 of NICN Act which allows basically fundamental rights related issues could be appealed against. This only implies that whatever the NICN decision on what international best practices are, there might be no appeal on it being a question of fact.

Adejumo[170] gives a historical and legal background of the NICN's convoluted albeit beneficial journey from when it was established. In his opinion, so far, NICN has taken notable steps in reshaping how employment, matters which are labour and industrial relations related are to be resolved all through the nation, most especially, with the constitutional amendment which now includes the NICN and enlarges its jurisdiction. To

[170] Adejumo, B.A., 2011. *The National Industrial Court of Nigeria: Past, Present And Future*, being the text of a paper delivered at the Refresher Course Organised For Judicial Officers of 3–5 Years Post Appointment by the National Judicial Institute, Abuja at The Otutu Obaseki Auditorium, National Judicial Institute, Abuja on the 24th March, 2011.

him, the creation of a specialised superior court of record would speedily aid resolutions of employment, labour, and industrial relations disputes; by implication create peaceful industrial relations. This, in turn, herald a new era of reliability, in employment certainty as well as labour matters as before the enactment of the NICN Act different courts gave conflicting judgments on the same matter. In his opinion, inferring from the current status of the NICN, it will be better placed to effectively address issues arising from the trends emerging in industrial relations. Being granted exclusivity in labour and related matters, the Court must handle issues timeously and in line with international best practices.

Ogunkorode,[171] in giving the basis for the enactment of the NICN Act states that, before its enactment, labour relations practice in Nigeria was lethargic, as a result of the confusion on the jurisdiction of diverse courts on labour matters. The NICN Act, Section 53(1) invalidated part II of the TDA, 1976. Whenever there is inconsistency in TDA and NICN Act; resolutions will be made in favour of the NICN Act. As regards appeal, only fundamental rights matters can be appealed against at the CA, while NICN is the only resort on labour disputes and such related matters. In her view, the need for promoting effectual institutional mechanisms in resolving industrial disputes, as instruments for maintaining harmonious relations between employers and employees' importance cannot be overstated. She recommends that Sections 243(a) and 243(b)(2) of the CFRN, 1999 (as amended) should be amended for NICN's decision to be appealable at the CA, this is to prevent miscarriage of justice. She considers it necessary in the administration of justice and also in creating an avenue for correction of decisions of the NICN where there is an error. She further proffers that there should be establishment of Federal Industrial Court with State Industrial Court, as she considers section 254C (1) of the CFRN, 1999 (as amended) not in line with federalism principles which the nation operates. Such that labour, employment, trade dispute, trade union matters, pension payment related matters with such other industrial matters in the private and public sectors are under the NICN's jurisdiction, implying that no State High Court can sit on such matters, even in situations the disputants are state employees with governments or private organisations as employers.

[171]Ogunkorode, O.O., 2018. National Industrial Court: Court with a Difference and the need to Review its Legal Status. *NAUJILJ* 9.1:59-70.

With the number of the existing literature on the pertinent areas, issues, and focus of this study, many of which have dealt with collective bargaining, collective agreement, industrial conflict, industrial harmony, industrial democracy, dispute settlement mechanism, and the NICN, this study observes that despite the plethora of legal instruments relating to collective bargaining in Nigeria, the non-codification of these legislation has in no small measure whittled down its practice and effect in the industrial labour relations. The passed down belief from Britain during the era of colonialism that collective agreement, is just a gentleman's agreement, simply binding in honour notwithstanding the NICN's position that all agreements are enforceable has hampered attaining industrial harmony in the workplace.

2.3. Historical Evolution of Collective Bargaining in Nigeria

Collective bargaining has a lengthy narrative as an institution that governs the workplace and labour markets.[172] Being the centre of the British voluntarism employment relations, it is an effective tool for protecting workers' interests as well as for industrial disputes prevention and settlement.[173]

In Nigeria, collective bargaining's emergence can be traced to the public sector.[174] It evolved through the intervention of the government differently from other nations where it started from the private sector.[175] This was as a result of not havinga private sector until the 19th century.[176] After the promulgation of the Trade Disputes (emergency provisions) Decrees, No. 21 and 83 of 1968 and 1969, the structure of collective bargaining unregulated by Law even though way back to 1938, the Trade Union Ordinance of 1938 gave some legal backing to trade unionism.[177] Although, it has been observed that, as far back as 1941, provisions were made for the conciliation and arbitration processes by the Trade Disputes,

[172] ILO., *op.cit*. 5.
[173] Webb, and Webb R., 1902. *A History of Trade Union*. London: Longman Green ; Olusoji, J. G. Owoyemi, O. & Onakala, U., 2014. Trade Unions & Unionism in Nigeria. A Historical Perspective. *Review of World Economy* 3.2:68–74. Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*
[174] Ibietan, J., 2012. The Legal Framework· Of Collective Bargaining in the Nigerian Public Sector - A Process Approach. *International Journal of Administration and Development Studies*, Maiduguri: Department of Public Administration. 3.1: 145-156.
[175] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[176] Fashoyin, T. 1999. *op.cit.*104.
[177] Egbo, E. O., 1968. Trade Union in Nigeria. *African Strides*, 2.1:35–40.

Arbitration, and Inquiry Ordinance, 1941, it was void of any urge for parties to adopt any specific procedure to the bargaining relations.[178]

The collective bargaining in Nigeria is known for its principle of voluntarism.[179] Further tracing the historical evolution of collective bargaining, the first support for joint negotiation in Nigeria was in 1937. That was a period of the establishment of the Provincial Wage Committees across the country by the colonialists.[180] These committees were set up to undertake wage reviews, periodically, for workers who were daily paid in the public service.[181] However, it was only in 1942 that government employees were represented on the committees.[182] Following the 1945 strike, in addition to the increasing disenchantment of labour unions, the gross inadequacy of Provincial Wage Committees to meet up with the demands of workers was obvious. The government and trade union representatives attempted to negotiate workers' demands. The meeting ended without an agreement.[183]

The Whitley Council system, which was the system adopted in the UK was introduced in Nigeria in 1948[184] through a government policy. Through that policy, machinery for voluntary collective bargaining was put in place in the public and private sectors through the Whitely Council and the Joint Industrial Councils.[185] Unfortunately, the Whitley system was a failure in several government institutions. The failure was because they functioned as consultative bodies instead of bargaining machinery. Issues of representation arose on both sides coupled with indecisiveness, red-tapism, with no help

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[178] Yesufu, T. M. 1982. *The Dynamics of Industrial Relations: The Nigerian Experience*. Ibadan:University Press Ltd. 138.

[179] Voluntarism is a trade union concept which means the workers' freedom to choose which union to belong to. This concept of voluntarism has gained acceptance by all parties in employment relations.See, Uranta, C., 2012. *op.cit.* 158; Uvieghara, E. E., 2001.*op.cit.*388;Okene, O.V.C., 2010. The Challenges of Collective Bargaining in Nigeria: Trade Unionism at the Cross-Roads.
Labour Law Review NJLIR .4.4:61-103; Uvieghara, E.E., 2001.*op.cit.*388.

[180] Since the committees were set up by the daily earners who were representatives of a fraction of workers in the civil service, for the established workers, no particular machinery for bipartite wage determination existed. This led to the introduction of the Whitley Council system, already in use in the UK, in 1948 in the Nigeria.

[181] Abiodun, M.O., 1967. Negotiating a Collective Agreement. *Management in Nigeria*. 3:78. Fashoyin, T. 1999. *op.cit.*104.

[182] The choice of representatives was not conceded to those government employees. Instead, the right was exercised on their behalf by the administrative officers. See, Odumosu, O.I.,1987. *Landmarks in Nigerian Labour Law* being the text of an Inaugural Lecture delivered at the University of Ife (Obafemi Awolowo University) on Tuesday, 13th January, 1987. Inaugural Lecture Series 86. Ile-Ife: Obafemi Awolowo University Press Limited.11.

[183] Ananaba, S.A.B. 1969. *Trade Union Movement in Nigeria*. Benin: Ethiope Publishing .10.
Corporation; Fashoyin, T. 1999. *op.cit.*105; Uranta, C., 2012. *op.cit.*114.

[184] Fashoyin, T., 1992. *op.cit.*105.

[185] Yesufu, T.M., 1982.*op.cit.*138.

from the government. Another reason they failed was that the council system became useless as decisions on remuneration and employment conditions were made by semi-political wage commissions, most especially concerning workers in the public sector.[186]

In 1955, an official policy on collective bargaining, building on that of the United Kingdom, was issued by the government. According to the government of Nigeria, it tailored its voluntary principles, pinning its faith on voluntary methods considered to be an important element in the UK industrial relations…which aims at finding higher possibilities of mutual harmony where the outcomes have been achieved voluntarily through free discussion had by parties[187] involved in collective bargaining.

With the Whitley Council System's failure, the Udoji Commission was set up in 1974. The commission restructured the machinery and gave recommendations that three National Public Service Negotiating Councils be set up. The councils had the duty of dealing with matters on wages, arbitration, including centralisation of the negotiation machinery.[188] They were set up to assess the representations the government made and the Native Authority employees as regards the increment in the Cost Of Living Allowance (COLA), putting into consideration the cost of living which was in use then, afterwards making recommendations on actions that could be taken by the Nigerian government. The report submitted by the commission was adopted by the government to resolve workers' agitation for an improved cost of living in Nigeria.[189] However, the unsettling part of the wage commission approach, aside from undermining the bargaining machinery in government employment, was that it had an incapacitating effect on collective bargaining in the private sector.[190] The awards made were restricted to the private sector. These awards were subsequently enforced in the private sector through the demonstration effect whereby persons working in the private sector ensured that their employers implemented the awards or face industrial action.[191]

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[186] Fashoyin, T.,1992. *op.cit.* 105 ;Yesufu, T.M., 1962. *An Introduction to Industrial Relations in Nigeria*. London: Oxford University Press. 33-38

[187] Okene, O.V.C., 2010.*op.cit.;* ILO. 1955. *ILO Ministerial Conference: Record of Proceedings, 38th session.* Geneva: ILO. 33

[188] Yesufu, T.M., 1962. *op.cit.* 33-38.

[189] The government preferred a formal collective bargaining and having agreements with workers through their trade unions, preferred establishing commissions to study and make recommendations on workers' demands on case by case basis. Uranta, C., 2012. *op.cit.* 115.

[190] Fashoyin, T., 1992. *op.cit.*158.

[191] Fashoyin, T. 1992. *op.cit.*158.

Initially, it was challenging for the Nigerian government to recognise the union of civil servants as well as extend to them the same bargaining rights that were expected by employees in the private sector. It was, however, an intentional policy of the colonial administration, most especially during post-World War II years, to encourage the emergence of trade unions while promoting their welfare in the different British territories.[192] The government, however, had a twin role in making policies and enacting legislation on industrial relations. This platform gave the Nigerian government the chance, not only to regulate industrial relations, but it also allowed influencing the rate of development of the system of collective bargaining. The government equally had to take the lead in promoting good industrial relations. This was done by recognising the right of unions in representing employees' interests in collective bargaining. [193] Likewise, private sector employers got compelled to change their labour policies by giving due recognition to labour unions and also accepting to negotiate with the unions representing their employees. This move also necessitated the formation of the employers' associations. Thus, the principle of collective bargaining also became recognised by these associations.[194]

In the private sector, collective bargaining emerged much later after the public sector had. For instance, the British Bank of West Africa [195]founded in 1894 did not get unionised till 1942. Also, with its wide political as well as commercial interests in the country, the Royal Niger Company,[196] did not become organised until 1946. Around 1947, the Department of Labour gave a report hinting that the government made efforts at establishing in every trade and industry dependable avenue for firm contact between employers and unions. With progress recorded in the consolidation of unions into trades and industrial groups, the department reasoned that the establishment of joint negotiating machinery would hopefully operate in Nigeria. This rationale led to the department encouraging the development of joint machinery in industries. Their efforts yielded results in the earlier part

[192] Odumosu, O.I., 1987. *op.cit*.12.
[193] Odumosu, O.I., 1987. *op.cit.* 12-13.
[194] Odumosu, O.I., 1987. *ibid.* 12-13.
[195] Now known as First Bank of Nigeria Plc.
[196] Currently known as UAC of Nigeria.

of 1950s. Although then, many of the advancement in labour relations occurred in the quasi-government institutions.[197]

The Joint Industrial Councils (JICs) were the equivalent of the Whitley Councils in the private sector. They were union-management panels where matters of working conditions, wages, including other substantive matters about employees were regulated or discussed. Conversely, the Joint Consultative Committees (JCCs) were informal and formal machinery for employees and employers to discuss their common issues and aid collective bargaining.[198] They were sometimes substituted for Collective Bargaining because the parties often made no distinction between the Councils and Committees.[199]

Before the concept of collective bargaining, the organisation–based pattern-negotiation formed the usual way of negotiations between management and unions. The industrial-based bargaining pattern-negotiations between employers' associations and trade unions followed.[200] The emergence of collective bargaining came to be a means of balancing bargaining power which was not equal in industrial relations including employees' protection from some of the unfavourable outcome of competition by putting in place standards for remuneration with working conditions.[201] As an important aspect of industrial relations, it makes provisions for avenues for bargaining or negotiating. This eventually leads to rule-making or parties reaching an agreement, hence generating social order in such relationship. As an approach for seeking redress in disputes, including upholding industrial welfare for social partners,[202] it aids rule setting that govern the workplace, thereby by

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[197] For instance, Joint Industrial Councils were established in the Plateau Minefield in January, 1955 while JICs were established in the Coal Corporation and the Electricity Corporation of Nigeria (cuttently now, Power Holding Company of Nigeria) in 1954. Also in 1955, the UAC established a negotiating machinery, which had earlier been attempted in 1947. Likewise, in 1954, the African Timber and Plywood, Sapele, put in place a joint consultative committee which addressed issues such as, conditions of employment while full negotiations in terms of employment kicked off in 1959. Worthy of note is the fact that there were as many as 212 negotiating and consultative committees in existence in 1957. See, Akpala, A, 1982. *Industrial Relations Model for Developing Countries, The Nigerian System*, Enugu: Fourth Dimension Press. 102.; Wells, F.A. and Warmighton, W.A., 1962. *Studies in Industrilisation,, Nigeria and the Cameroons*, London: Oxford University Press. 56-57; 74-75.; Yesufu, T.M., 1962. *op.cit.* 52.; Fashoyin, T. 1992. *op.cit.*106.

[198] In essence, JCCs functioned as employer-employees relations panels. See, Fashoyin, T. 1992.*op.cit.*106.

[199] Federal Ministry of Labour, 1967. Annual Report 1966/1967. Lagos. 20; Fashoyin, T. 1992. *op.cit.* 106.

[200] Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*

[201] Hayter, S., Ed., 2012. *The role of collective bargaining in the global economy: Negotiating for social justice*. Geneva: ILO. 134.

[202]Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.*; Mkude, O. and Opio, D, 2020. A case for sample Collective Bargaining Agreement. Retrieved March 8, 2020, from http://alrei.org/education/a-case-for-sample-collective-bargaining-agreement-oscsr-mkude-doughlas-opio

implication, considered as a means of industrial jurisprudence, and an economic and political process. In addition, it functions as a fundamental institution for democracy and also forms a tool for increment in remuneration of employees; ensuring improvement in their working conditions, and reducing inequality. The setting up of collective bargaining machinery and procedures constitutes what is called the institutionalisation of conflict.[203] Such institutionalisation provides employees a degree of industrial citizenship while isolating industrial conflict from other types of conflict.[204]

Over time, the function of government in labour-management increased substantially, being an outcome of the government becoming the country's largest single employer of labour.[205] An evaluation of the government's role in industrial relations suggests that it always acted inconsistently with voluntary collective bargaining principle, including practices, as the National Public Service Negotiating Councils, expected to serve collective bargaining purposes; the government mostly used wage commissions.[206] However, over the years, the concept of collective bargaining has gained more importance in the private sector. This has been as a result of many internal with external factors and forces. Internally, it is out of the tendency of employers to impose unilateral decisions on their employees. This has, however, heightened the awareness among employees of the advantages that accrue from collective action in improving their conditions of employment. The external forces originate majorly from a public policy which has improved the organisational capabilities of both the management and their employees to engage in collective bargaining. These forces have led to a phenomenal increase in collective bargaining activities which have been witnessed over the years.[207]

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[203] Stephenson, G. and Brotherton, C., 1979. *Industrial Relations: A Social Psychological Approach*. New York: John Wiley & Sons Ltd. 62.

[204] Dahrendorf, R.., 1959. *Class and Class Conflict in an Industrial Society*. London: Routledge and Kegan Paul. 271-272; Obasi, N. I., 1991. *ASUU-Government Conflict in Nigeria: An Investigation into the Roots, Character and Management of ASUU Strikes*. Being the text of a thesis submitted to the Department of Political Science, University of Nigeria, Nsukka, in partial fulfilment for the award of Doctor of Philosophy (Ph.D).

[205] Ghosi, A.N., 1989. Collective Bargaining in Nigeria, *Indian Journal of Industrial Relations*, 25.2:157-168.

[206] A wage commission is an ad hoc body appointed by the Government for reviewing public sector employees' wages and salaries. There seemed to be no legal or constitutional basis for establishing these wage commissions as opposed to the National Public Service Negotiating Councils. See, Ghosi, A.N., 1989. *op.cit.*

[207] Fashoyin, T., 1982. Emerging Trends in Collective Bargaining in Nigeria, *Perman*. 9.1:26-27. Fashoyin, T., 1992. *op.cit.*106.

There have, however, been concerns over the increasing inequality and heightening instability of labour in the workplace. These concerns have increased the attention on roles of collective bargaining in equalising how wage is distributed; reducing the obstacles some workers encounter at work; enhancing inclusivity, and stabilising labour relations.[208] Some of these concerns will be examined in this study as they pose a threat in the quest for industrial harmony between trade unions and their employer, with ASUU and FGN relationship in focus.

[208] ILO, 2015.*op.cit.* 5.

CHAPTER THREE

METHODOLOGY AND THEORETICAL FRAMEWORK

3.1. Methodology

The Sociological Jurisprudence and Pluralist theories formed the framework, while the doctrinal and qualitative methods were adopted for the study. Primary and secondary data were utilised. Primary data included Constitution of the Federal Republic of Nigeria, 1999 (as amended) Third Alteration Act, 2010; Labour Act, 1974; Trade Disputes Act, 2004; Trade Unions (Amendment) Act, 2005; National Industrial Court Act, 2006 and National Industrial Court of Nigeria (Civil Procedure) Rules, 2017. Being a comparative study, the laws on collective bargaining in Ghana and United Kingdom (UK) were also examined. UK was selected because it is a model state in issues of workers' welfare and Nigeria was once a colony of Britain while Ghana was selected on the premise that it shares a close history of trade unionism with Nigeria. Thus UK laws examined include the United Kingdom's Trade Union and Labour Relations (Consolidation) Act, 1992; Trade Union Recognition (Method of Collective Bargaining) Order 2000, the Employment and Relations Act, 2004 and European Social Charter, 1964; while the Ghanaian laws examined were the Constitution of the Republic of Ghana, 1992 (as amended) with the Labour Act, 2003 (Act 651). Relevant case law in the three jurisdictions was also referenced. Furthermore, relevant international legal instruments such as, Universal Declaration of Human Rights (UDHR) 1948, African Charter on Human and Peoples Rights (ACHPR) 1981, International Labour Organisation (ILO) Constitution as well as ILO Convention on Freedom of Association and Protection of the Right to Organise 1948[209]; Convention on Right of Workers to Organise and Bargain Collectively 1949[210] and the Collective Bargaining Convention 1981[211] were examined in determining the level of Nigeria's compliance with prescribed international standards in this regard.

[209] (No. 87).
[210] (No. 98).
[211] (No. 154).

In addition, Key-Informant Interview (KII) was conducted in ascertaining the degree of applicability of collective bargaining in settling disputes in Public Universities especially between ASUU and FGN. Five (Ibadan, Akure, Owerri, Kano and Abuja) ASUU zones were randomly selected.

From each zone, a branch of ASUU was purposively selected based on their membership participation. They are University of Ibadan (UI); Olusegun Agagu University of Science and Technology (OAUSTECH); Nnamdi Azikiwe University (UniZik), Ahmadu Bello University (ABU) and University of Abuja (UniAbuja).

Key informant interviews were conducted with ASUU executives and members: UI (6), OAUSTECH (5); UniZik (5), ABU (5) and UniAbuja (2). Also, interviews were conducted with two (2) officials of National Universities Commission (NUC), four (4) Principal University Management Staff, three (3) officials of Federal Ministry of Education and two (2) officials of Federal Ministry of Labour and Employment. This form of interview is another qualitative information data tool used to obtain information from respondents who have deep knowlegde about the study's subject matter.

Ethical considerations were observed during interviews. These include seeking the informed consent of respondents, and also assuring and ensuring their confidentiality and anonymity. In essence, participation was voluntary.

Secondary data included legal texts, articles and reports. In analysing the data used for the study, textual and content analyses were done on the thematic areas of disputes resolution mechanisms, collective bargaining, industrial conflicts in public universities in Nigeria, enforcement of collective agreement, the role of NICN in collective bargaining process, ASUU Struggles and the ASUU and FGN relations.

3.2. Theoretical Framework

Two major schools of Jurisprudence were adopted for this study, the Sociological Jurisprudence Approach and the Pluralist theory. The Sociological school of thought appears to have a particular bearing on this study and it is apt for it. The examination of available literature on trade unionism, trade disputes, collective bargaining and related concepts reveal diverse ideologies which influence their evolution including development, dependent on the prevailing political, economic and social conditions in the nation and

different organisations. The adoption of the sociological theory of law focuses on the discussion of social purposes and interest served by law.[212] The Pluralist theory, on the other hand, lays emphasis on employment rules as every organisation has a source of authority which results in conflict when parties pressurise the other in making concessions.[213]

3.2.1. Sociological School of Jurisprudence[214]

As an idealist science of law, sociological jurisprudence is based on a conceptual fusion of the central idea of legal positivism[215] and the need for a continuous advancement of civilisation. As a functional study of law, it is applied to concrete social problems to make law an effective instrument of social control for harmonising conflicting interests of individuals in the society.[216]

The sociological school of thought points law in the direction of social justice with an assumption that law must attain specific ends while emphasising on the task of balancing interests in the society, the functioning and working of the law instead of its abstract content.[217] This school lays emphasis on the social purposes which law sub-serves[218] including a constant study of the means for making laws more effective.[219] It considers law as a social institution which can be consciously made, changed, modified or restrained based on experience.[220]It equally stresses the reform of prevailing conceptions of this study, interpretation including the application of law[221] and the conflict resolution roles of law,

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[212]Singh, M., 2000-2021. *Sociological Jurisprudence.* Retrieved July 30, 2021, from http://www.legalservicesindia.com/article/2190/Sociological-Jurisprudence.html

[213]It is not limited to industrial organisation, it covers extensive political sphere, e.g. the state. See, Knowledge hub. *Pluralist Theory of Trade Unions: Factors and its Criticism*. Retrieved May 10, 2021, from http://www.publishyourarticles.net/knowledge-hub/education/pluralist-theory-of-trade-unions-factors-and-its-criticism/5910/

[214] It emerged in the 19th century as reaction against analytical positivism. Adaramola, F., 2008. *Jurisprudence*. Fourth Edition. Durban: LexisNexis Butterworths.253

[215]That is, seperating law from extra-legal phenomena like morals, history, religion, and so on. Adaramola,F., 2008. *op.cit.* 253.

[216] Singh, M., 2000-2021. *op.cit.*

[217]Dixit, A., 2000. *Sociological School of Jurisprudence.* Retrieved October 13, 2021, from https://www.intolegalworld.com/article?title=sociological-school-of-jurisprudence

[218] Pound, R., 1912. The Scope and Purpose of Sociological Jurisprudence.[Concluded] III. Sociological Jurisprudence. *Harvard Law Review* .25.6:489-516.

[219] Dias, R.W.M., 1994. *Jurisprudence.* 5th Edition, Delhi and U.K.: Aditya Books Private Limited, Butterworths.420-436.

[220] Singh, M., 2000-2021.*op.cit.*

[221] Encyclopedia.com. 2018. *Sociological Jurisprudence.* Retrieved July 29, 2021, from https://www.encyclopedia.com/social-sciences-and-law/sociology-and-social-reform/sociology-general-terms-and-concepts/sociological-jurisprudence

and considers law an instrument of social control as well as social change.[222] It focuses on relations adjustment and how human conduct in group life is ordered.[223] Being a multifaceted approach, it aims at resolving immediate problems the society is faced with, that might be legal or extra-legal with techniques to promote harmony while balancing the society's interests.[224]

The major proponent of this school in the United States was Roscoe Dean Pound.[225] He interpreted it as a movement for pragmatism, a philosophy of law with the aim of facilitating legal reform with social progress.[226] Jurists, such as Auguste Comte and Jeremy Bentham[227] who belong to this school are basically interested in the working of law instead of its abstract content of authoritative precepts.[228] They are interested in this study of law in relation to the society and consider law as a social fact or reality in shaping, moulding as well as changing the society in sub-serving its needs, expectations with goals[229] as law exists for the satisfaction of human wants.[230] Being relativists and development-oriented legal positivists, sociological jurists are consumed with passion for progressive development of law in the society.[231] Their ideals are objectives which law-makers ought to be conscious of and attain through a continuous assessment, continual adjustment and improvement of law hence making it function more effectively in the society.[232] Furthermore, they conduct a comparative study of legal doctrines, systems and institutions as social phenomena, criticising them in relation to social state and progress.[233]

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[222] Singh, M., 2000-2021.*op.cit.*
[223] Singh, M., 2000-2021. *ibid.*
[224] Singh, M., 2000-2021.*ibid.*
[225] This is the name most associated with this type of jurisprudence. Some other legal educators and judges who contributed to the theory and practice of this aspect of jurisprudence include, Jeremy Betham, Eugene Ehrlich, Montesquieu, Auguste Comte, Durkheim, Benjamin N. Cardoso, Herbert Spencer, Leon Duguit, Max Weber , Justice OW Holmes, and Prof. Allen. While Roscoe Dean Pound identified that this approach to jurisprudence attempted identifying itself with positivistism and insisted on a singularly-mechanical interpretive approach, others presented its ideas from an anthropological-ethnological stage which is focuses on ethnological interpretation, thereby, generalising jural materials gathered by a purely descriptive social science. Nalbandian, E., 2011. Sociological Jurisprudence: Roscoe Pound's Discussion on Legal Interests and Jural Postulates. *Mizan Law Review*.5.1:141-149; Pound, R., 1912. *op.cit.;* Adaramola, F., 2008.*op.cit.*253.
[226] Encyclopedia.com., 2018. *op.cit.*
[227]Singh, M., 2000-2021.*op.cit*
[228] Singh, M., 2000-2021.*ibid.*
[229] Singh, M.,2000-2021.*ibid.*
[230] Adaramola,F., 2008.*op.cit*.271.
[231] Adaramola, F., 2008. *ibid*. 253.
[232] Adaramola, F., 2008. *ibid.* 253
[233] Pound, R., 1912.*op.cit.*

The relevance of this school of thought to this study cannot be over-emphasised considering that law is a tool for social change, thus, it should be enforceable, implementable and applied in fostering peace in industrial relations. Furthermore, the adverse effects of trade disputes on productivity in organisations can neither be over-emphasised.

Specifically linked to this theory and in explaining the inevitability of conflicts in labour relations, is the pluralist theory which is discussed next:

3.2.2. Pluralist Theory

Pluralism simply means a multiplicity of interests which could be in conflict.[234] From a wider perspective, pluralism describes an organisation as being made up of different groups with diverse interests, beliefs, aspirations, without any definitive decision by a final authority, except through continuous compromises.[235] This theory which was propounded by Emile Durkheim and Allan Flanders[236] postulates the existence of competing social forces in the workplace, which all stakeholders must agree to and that it is only then chaos can be avoided in the system. Pluralism, in its strict sense, can be in multiple parallel union structures form or Unitarian structure whereby labour unions having diverse tendencies operate, cooperate as well as fix their disagreements internally.[237]

Pluralist theory is antithetical to unrestricted domination by the employer or trade union as it acknowledges that uncontrolled conducts will end in disorder.[238] It equally is of the view that industrial conflict is inevitable, as the interests of workers differ from their employers,' with worker unions having a crucial function to perform in representing such interests through the regulation of market and managerial relations.[239] It equally lays emphasis on the ethical basis of participation.[240] Furthermore, the pluralist theory contends

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[234]Ramaswamy, *What are Trade Unions for? Retrieved* January 27, 2020, *from* http://home.iitk.ac.in/~amman/soc474/Resources/trade_unions.pdf

[235] Akanji, T.A., 2018. *When Labour is the beginning of Insecurity* being the text of an Inaugural Lecture 2017/2018 of University of Ibadan, 30 August, 2018. 17.

[236] Pluralism combines British liberalism with Durkheim's perception of ethics, values with social justice.

[237] ILO, 2010, *op.cit.*12

[238] It suggests the existence of competing social forces system which stops total dominance and thereby helping to keep clear of chaos.

[239]Shodganga. *Evolutions of Trade Unions and Trade Unionism.* Retrieved January 27, 2020, from https://shodhganga.inflibnet.ac.in/bitstream/10603/8118/10/10_chapter%202.pdf

[240] The theory opines that trade unions introduce order in organisations. Labour and management act as each other's watchdog and both construct rules and institutions for regulating conflict.

that conflict is generic to the industrial enterprise[241] and essential for maintaining the system. This manifests through the struggles of trade unions.[242] The union articulates such conflicts and considers the workplace to set the context for union objectives and methods.[243]

Pluralist theory has, however, been criticised for assuming *inter alia* that all parties possess equal powers. This is, however, incorrect as the power of employees is not the same with their employers'. In essence, labour unions' bargaining strength is lower as equality of power of both parties would infer bargaining on same terms. It has also been criticised that it limits union objectives narrowly to the protection and advancement of labour's interest in the work sphere.[244] However, Flanders, one of the proponents of the theory, has argued that, the first and the overriding responsibility of any union is for its members' welfare.[245] Yet another criticism is that the Pluralist theory takes no cognisance of the underlying causes of disputes as they are neither cultural nor social prejudices based, but much deeper. Cultural or Social elements can be surmounted and bridged, however resolving the material basis of conflict could be challenging, especially the opposing interests of employees and employers.

Trade union pluralism is recognised by the ILO Freedom of Association and Protection of the Right to Organise Convention 1948,[246] which although makes it not obligatory requires it to remain possible in ensuring trade union democracy.[247] This has freed employees in several nations from subjugation to the sole national confederation affiliated to the party in power.[248]

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[241]Ramaswamy, E.A., 1976. *Trade Unions for What*. Retrieved January 27, 2020, from http://home.iitk.ac.in/~amman/soc474/Resources/trade_unions.pdf

[242] For instance, benefits workers get, like health facilities, leave with pay, employment protection including post-retirement schemes become achievable due to their combined struggles under their unions' leadership.

[243]Ramaswamy, E.A., 1976. *op.cit.*

[244] Pluralism has in one way or the other focused on this mistaken belief. For instance, assuming a trade union holds grievances against their employer, and the union embarks on industrial action, this could portray the union's potency. If management declines to negotiate, the employees may be in a fix as their sustenance without salary or work is restricted. Likewise, if employees are averse to conduct negotiations with their employers or the state, the industrial action may persist and put to test the staying power of parties in arriving at a resolution.

[245] Flanders, A. 1970. *Management and Unions.* London: Faber. 40. Ramaswamy, E.A., 1976. *op.cit.*

[246]Convention No. 87. While no separate provision exists in the Convention which makes provisions for certain issue of trade union pluralism, many of the convention's articles form the basis of decisions of ILO Committee of Experts on the Application of Conventions and Recommendations. See ILO, 2010, *op.cit.*12.

[247] The right to trade union pluralism inherent in Convention No. 87 "Freedom of association and protection of the right to organise" is provided for in constitutions and labour legislation of several countries in Africa.

[248] Trade union pluralism forms part of the freedom of association principle. ILO, 2010, *op.cit.* v.

CHAPTER FOUR

EXAMINATION OF LAWS AND REGULATIONS ON COLLECTIVE BARGAINING

In achieving collective bargaining's laudable objectives, the industrial relations system in any nation must make provisions for a legal framework to encourage parties to bargain collectively and conclude mutual agreements.[249] This is premised on the context of industrial relations which presupposes that the conflict between capital and labour in production relations should be anchored on a set of rules that regulate the difference in interests in the tripartite relations workers, employers and the government have to achieve industrial harmony.[250]

The government performing the dual roles of an employer as well as an umpire in the employer and workers relations in industrial settings, therefore, makes provisions for the legal framework by setting the rules with regulations influencing parties' conduct in labour relations.[251] In essence, the instrumentality of legislation and the function of government in collective bargaining practice can in no way be overemphasised in an industrial relations system which is efficient as well as effective.[252] Being a key institution in the Nigerian system of industrial relations,[253] law provides a framework for encouraging, promoting including assisting purposeful collective bargaining.[254] Collective bargaining practice in Nigeria is regulated by both domestic and international legislation.[255] These laws are to guide the art of collective bargaining.

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[249] Okene, O.V.C., 2010. *op.cit.*
[250] ASUU, 2017. *op.cit.*6.
[251] The employers also at times function in dual capacity, as employers and collaborators with the government in making rules, thereby making the employees, most of the time, victims of the set rules governing exploitative employment contracts, work conditions and the work environment, majorly based on the prevailing capitalist socio-economic relations. See, CIPM, 2018. *Advanced Employment Relations*. Third Edition. 25; ASUU, 2017.*op.cit.* 6.
[252] Ibietan, J., 2012. *op.cit.* 3.1:145-156.
[253] Okene, O.V.C., 2010. *op.cit.*4.4:61-103.
[254] Uvieghara, E. E., 2001.*op.cit.*389.
[255] Industrial relations in Nigeria have been modelled after British industrial relations practices. CIPM, 2018. o*p.cit.*25.

A workable legal framework is essential in protecting the subsistence of diverse interest groups interacting in a somewhat equalised power context.[256] In achieving the laudable objectives of collective bargaining, the industrial relations system of any country must have a legal framework that encourages parties to bargain collectively and resultantly enter into mutual agreements[257] that will be binding and enforceable. Just as Nigerian employment law is not based on a single legislation, being provided for in diverse laws that altogether provide the framework,[258] there are also a plethora of legislation on collective bargaining.[259]

[256] In a situation where a viable legal framework is not in existence or exists in a modified form, there will be a political action rather than collective bargaining or a modified collective bargaining. See, Hameed, S.M.A., 1970. A Theory of Collective Bargaining, *Industrial Relations Industrielles*, 25.3: 531-551.

[257]Okene, O.V.C., 2009. *op.cit.*

[258] Adebambo, O., Kuti, F.and Iroche, I., 2015. Nigeria in Collins, E.C.,Ed., *The Employment Law Review*. 6th Edition. United Kingdom: Law Business Research Ltd, London. 471-487.

[259] There are however some extinct legislation on collective bargaining. Though these laws are not the focus of this study, as extant laws are more applicable to its purpose, references will be succinctly made to them. Some of these extinct legislation include, The Trade Union Ordinance of 1938 which recognised organisation of employees, while empowering employers in forming associations, representing their interests in industrial relations; The Trade Dispute (Arbitration and Inquiry) Ordinance of 1941 empowered the state with the right of intervention in industrial disputes; The Labour Code Ordinance of 1945 was enacted for the protection of employees against management abuses of management in the employment process; The Wages Board Ordinance of 1957 gave a prescription of machineries for determining work conditions between unions and employers. And in situations where work conditions were inadequate, non-existent or not effective, government could prescribe wages and other employment conditions. That legislation was directed at overcoming the ineptitude of the Labour (Wages Fixing and Regulations) ordinance No. 40 of 1943; The Trade Disputes (Emergency Provisions) Decree 21 of 1968 was reviewed in 1969 with more changes in 1970. Under that legal instrument, written collective agreements must be deposited with the Commissioner, who would issue an order rendering the document legally binding; The Wages Boards and Industrial Council Decree 1 of 1973 was promulgated to mandate negotiations in collective bargaining process, thereby removing loopholes in the previous legislation. Others are, Labour Decree Number 21 of 1974. It commenced on 1st of August, 1974. It provided that employment contracts should be formalised within three months of being employed; Trade Unions Decree Number 31 of 1973 was promulgated to see to unions' structure and functions; their membership and registration; the Wages and Industrial Councils Decree 1 of 1973 made provisions that different sections could commence on different dates. There was also the Trade Disputes Decree number 7 of 1976. This decree was for formulating comprehensive trade dispute legislation and sought to encourage collective bargaining. Also, it made provisions for an Arbitration Panel and NICN; the Trade Disputes (Essential Services) Decree number 23 of 1976 came into operation on 21st May 1976. It provided for banning with penalty for strike actions in essential services of the public sector; The Trade Disputes (Amendment) Decree 54 of 1977 stipulated loss of pay for workers on strike its duration as well as payment to employees by an employer for any lockout. This legislation repealed some related laws which were not at per with them. Davison, R. B., 1977. *Industrial Relations Decrees in Nigeria: Questions and Answer to* explain *the law.* Zaria: ABU Press.49-50; Girigiri, B. K. *2002. Industrial Relations in Nigeria: Issues the Contemporary Public Sector Crisis.* Port Harcourt: Amethyst & Colleagues Publishers.7, Ibietan, J., 2013. Collective Bargaining and Conflict Resolution in Nigeria's Public Sector. *Ife PsychologIA*, 21.2:220-232.

4.1. Legal Framework for Collective Bargaining in Nigeria

Collective bargaining's legal framework in Nigeria consists the diverse legislation made to guide as well as regulate the art of collective bargaining. These pieces of legislation have been enacted as mechanisms for amicable resolution of trade disputes through collective bargaining to aid national growth and discourage chaos in the labour industry.[260]They are fused into the country's public labour policy[261] and designed after comparable statutes in Britain with the doctrine of voluntarism dogmaticallly entrenched into the Nigerian industrial relations system.[262] For the aim of this study, focus will be on the extant laws that govern collective bargaining. These extant legal instruments include, Labour Act, 1974; Wages Boards and Industrial Councils Act, 1974**,** TDA 2004, Trade Dispute (Essential Services) Act, 2005, TUA and the Trade Unions Amendment Act, 2005. Others are the NICN Act, 2006 and the NICN (Civil Procedure) Rules, 2017. In analysing all these legislation, reference will be made to the CFRN, 1999 (as amended) being, the grundnorm and the major legal framework from which all other legislation derive their authority.

4.1.1. The Constitution of the Federal Republic of Nigeria, 1999 (as amended)[263]

The major legal framework for industrial relations in Nigeria originates from the Constitution. Notwithstanding that no express provision on the right to collective bargaining is made in this grundnorm, it stipulates as part of the economic objectives of the government of Nigeria,[264] which serves as a guide for key players in industrial relations, the state directing its policy in ensuring that work conditions are just as well as humane, with facilities adequate for leisure as well as religious, social, including cultural life; the health, welfare as well as safety of everyone in employment are neither endangered nor abused but

[260] The framework for collective bargaining can be gotten from other legislation on freedom of association,protection of workers including trade union rights. Okene, O.V.C., 2010. *op.cit.*4.4:61-103.
[261] Onah, F.O., 2008. *Human Resource Management*. Second Edition.Enugu:John Jacob's Classic Publishers Ltd.382.
[262] It has further been suggested that this aspect of the colonial legacy of the nation ... has proven not congruent in this instance. See, Onah, F.O., 2008. *op.cit.*; Ibietan, J., 2013. *op.cit.* 21.2:220-232.
[263] Third Alteration Act, 2010.
[264] Okene, O.V.C., 2010.*op.cit.* 4.4:61-103

rather safeguarded; pay being equal with work, with no discriminatory acts based on gender, or any other basis at all.[265]

While this provision would suggest the permission of the enactment of collective bargaining legislation to facilitate the achievement of these objectives through collective bargaining,[266] it can also be inferred from the wordings of the above provision, that the CFRN has the intent of safeguarding the interests of employees by stipulating that the expected conditions of work for all employees are made available. Not downplaying the importance of the health, safety including the welfare of all employees, it makes provisoins for safeguarding them. Although this aspect of the CFRN aligns with some of the purposes of bargaining collecting in the workplace,[267] unfortunately, they are unenforceable as Section 6(6) of the CFRN renders them *prima facie* non-justiciable.[268] This provision has ousted the jurisdiction of the Court in regards to issues or questions bordering on any act or omission by any authority or individual or as to whether any law or any judicial decision conforms with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of the CFRN.[269]

Section 40 further makes provisions for right of employees to join any association that support their interests. It guarantees[270] the freedom of anyone to freely assemble as well as associate with others, and in particular, has the perogative of forming, or belonging to a trade union or such other association in protecting his interests.

The right of employees as well as employers to bargaining collectively is concomittant to freedom of association right.[271] This freedom serves as a prerequisite for

[265] Section 17 (3)(b, c and e), CFRN, 1999 (as Amended).
[266] Okene, O.V.C. 2010. *op.cit.* 4.4:61-103
[267] The purpose and importance of collective bargaining is addressed in Chapter 5.
[268] Anifalaje, K., 2017. Implementation of the right to social security in Nigeria. *African Human Rights Law Journal* 17:413-435.
[269] In *Badejo v Federal Minister of Education* (1990) LRC (Const) 735 where the CA concured with the trial court's decision that declined having jurisdiction in an action which challenged the government's university admission policy on the basis that the action sought to establish a right to education. The Court stated that education was not a right but a directive principle, unenforceable under the Constitution. *Archbishop Anthony Olubunmi Okogie & Others v Attorney-General of Lagos State* (1981) 2 NCLR 337; *Uzuokwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708; Anifalaje, K., 2017.*op.cit.*
[270] This guarantee, however, is in no way absolute as it is limited by CFRN restrictions. The TUA prohibits also certain persons from joining or setting up trade unions. Section 11.
[271] Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011. Collective Bargaining and its Metamorphosis in the Workplace in Nigeria. *British Journal of Economics, Finance and Management Sciences.* 2.1: 63-70.

effective bargaining.[272] Therefore, the idea of freedom of association suggests that employees can constitute, join or be a part of a trade union as well as participate in collective bargaining.[273] In essence, collective bargaining forms part of the components of freedom to associate as the CFRN guarantees, in line with the principles of ILO.[274]

The Constitution also empowers the NICN, conferring exclusive jurisdiction on it on matters which are labour relations related in Nigeria. It establishes the NICN[275] and makes provisions for the composition of the Court.[276] The NICN has civil with criminal jurisdictions on labour related matters. A look at Section 254C of CFRN gives the NICN's civil jurisdiction. This provision states the exclusivity of the NICN's jurisdiction in civil cases including matters relating or connected to any labour, employment, trade unions, industrial relations as well as those from the workplace, condition of service, safety, health, welfare of labour, employee, as well as such other matters originating from the Labour Act, TDA, Factories Act, TUA, Employees' Compensation Act or such other legislation on labour, employment, industrial relations, workplace or any other statute replacing the legislation; which relate to or connect with granting such order restraining anyone from partaking in strike, lockout or such industrial action or conduct for contemplating or furthering any industrial action with matters connected to it.[277] This section further gives NICN jurisdiction on civil causes with matters on such disputes bordering on the interpretation as well as application of Chapter IV of the CFRN, 1999 (as amended) relating to such matter on labour, employment, industrial relations, employers' association, trade unionism, or such matters with NICN's jurisdiction.[278] Any matter that relates to or connected to disputes which arise from national minimum wage or any part of it including matters connected to it or which arise from it;[279] matters of industrial relations, unjust labour practices or international best practices in labour and employment;[280] any dispute that arises

[272] Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011. *op.cit.*
[273] Danesi, R.A., 2010. Casualisation and International Labour Standards: The Role of Trade Unions in Nigeria. *US/China Law Review.* 7.2: 33-44.
[274] Omodu, A.G. , 2021. *op.cit.*
[275] Section 254 A (1).
[276] Section 1(2) (a) NICN Act, 2006. Section 254 A(2), section 254E (1) and section 254 F(1) of the CFRN.
[277] Section 254C(1)c.
[278] Section 254C(1)d.
[279] Section 254C(1)e.
[280] Section 254C(1)f.

from sexual harassment or discrimination at the workplace;[281] matters which pertain to international labour standards application or interpretation;[282]causes as well as matters of child abuse and trafficking of persons, child labour or matters connected to it[283] are also within the purview of this court.

The NICN is also empowered by the Constitution in determining questions on interpreting as well as applying collective agreement; arbitral tribunal's award or order on any trade or trade union dispute; the Court's award or judgment; settlement terms of trade disputes including trade union disputes or employment disputes as contained in a memorandum of settlement; constitutions of trade unions, association of employers or such association on employment, labour relations or workplace dispute which relate or connect with any personnel matter on any free trade zone in the nation or any part of it; and disputes on payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and such other entitlement of an employee, public or office holder, judicial officer or any civil or public servant.[284]The NICN equally has the responsibility of dealing with matters on applying international convention, treaty or protocol ratified by Nigeria on labour, employment, workplace, industrial relations and other matters.[285] NICN has such prerogative to set up Alternative Dispute Resolution centre within its premises to handle matters it has jurisdiction on.[286] By empowering the NICN in determining such questions as regards interpretation as well as collective agreement's application, it is inferred that the CFRN gives recognition to the right to bargain collectively, considering that collective agreement forms any bargaining process outcome.[287]

In exercising its jurisdiction, the NICN posesses powers equal to the federal or state High Court powers.[288] Worthy of note is the fact that, any other court, excluding courts sitting on appeal over NICN decisions, that is the CA or the Supreme Court of Nigeria (SCN), is forbidden from sitting on matters the NICN has exclusive jurisdiction of.[289]

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[281] Section 254C(1)g.
[282] Section 254C(1)h.
[283] Section 254C(1)i.
[284] Section 254C (1)(j) and (k)
[285] Section 254C (2).
[286]Section 254C (3).
[287] Emuobo, E. 2020. Towards the Enforceability of Collective Agreements in Nigerian Law. *E-Journal of International and Comparative Labour Studies* . 9.3:53-64.
[288] Section 254 D(1).
[289] Section 11(1).

Consequently, NICN can enforce its judgment, commit for contempt such individual or trade union or employers' organisation representative who commits any omission or act NICN finds contemptuous.[290]

From the above provisions, it can be garnered that, the Constitution has not only repositioned the NICN,[291] it also reposes some level of trust in the Court by vesting on it the power to exclusively adjudicate on labour matters while equally recognising and protecting the rights of the citizenry to freely associate with others. Additionally, the grundnorm, on fundamental human rights, provides legitimacy for trade union activities.[292]

4.1.2. The Labour Act, 1974[293]

This Act makes some salient provisions as regards the concept of collective bargaining. It considers it as the procedure for attempting to or arriving at a collective agreement; while it defines collective agreement as, any collective agreement in writing on working conditions as well as employment terms of an organisation of workers or an organisation representing workers or an association of such organisations concludes with an organisation representing employers or an association of such organisation.[294]

These definitions suggest that collective bargaining is instrumental to conflict management. As a negotiation process through which opportunity is given to employees or their union to meet to discuss with their employers or employers' union or representatives, bargain and negotiate to arrive at an agreement on employment conditions in addition to other matters which relate to the workplace as well as welfare of employees while collective agreement is the outcome of such negotiations.[295]

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[290] Aside from being able to enter judgments, injunctions can be granted, mandamus ordered, prohibition or certiorari, urgent interim reliefs granted, declaratory orders, appointment of a public trustee in managing the affairs and finances of a trade union or employers' organisation involved in any dispute, compensation and damages awarded appropriately, with compliance order of provisions of National Assembly Act on matters with the court's jurisdiction. Sections 10, 16, 17, 18 and 19 of the NICN Act. Nwocha, M. 2017. An Appraisal of the Legal Framework for Adjudication of Industrial Disputes in Nigeria. *Beijing Law Review*. 8: 321-333.
[291]Aderibigbe, O.I., 2014. Labour Dispute Resolution in Nigeria. *Journal of the Commonwealth Lawyers' Association.* 29-39.
[292] ASUU, 2017. *op.cit*.4.
[293] Cap L1, LFN, 2004. It governs matters which are employment related including employee-employer relations.
[294] Section 91(1)b.
[295] Nwauzi, L.O. and Soibi, G.I ., 2010, *op.cit.*; Akinwale, A.A., 2009.*op.cit.*

Section 9(6) of the Act[296] prohibits an employer from contracting with an employee not to join or hold back from joining or give up a trade union's membership or dismiss an employee due to trade union activities. Unequivocally, the intent of this provision is the protection of employee's right to set up, join and not relinquish their trade union membership which supports their collective bargaining engagement in advancing their welfare.[297]

Similarly, the Labour Act, in protecting the interest of employees along the lines of collective bargaining, makes provisions for obligations on employers to provide work for their employees. On matters pertaining to obligations to work of employees, Section 13, stipulates that in any employment contract, there will be a fixture of usual work hours. Such fixture must be mutually agreed on; through collective bargaining in the industry or organisation concerned; or where no machinery for it exists, by an industrial wages board. Still having the welfare of employees in mind, on the issue of employees staying beyond the stipulated time at work, the Act, in relations to collective bargaining, defines the concept of overtime as hours that an employee is obligated to work above the usual hours commonly put in place by agreement, through collective bargaining, or an industrial wages board.[298] However, it is obligatory for the employer, upon the registration of a trade union, to operate the check-off system to cover such employees considered qualified for the membership of a trade union with the exception of persons, who in writing, contract out the system.[299]

Furthermore, in protecting the interest of female employees in line with section 55 of the Act,[300] in situations where they have to work at night, the Act provides that, the Minister responsible for labour matters may, through an order, exempt from night work prohibitions women a collective agreement which is in use covers, and allow women engage in night work. In making any order of such, the Minister must ensure that sufficient provision is put in place to transport as well as protect the women who fall into this category.[301] Essentially, there must be a collective agreement, which is an outcome of a

[296] Section 9(6)(a)(b) (i)(ii).
[297] Eyongndi, D. *op.cit.*
[298] Section 13 (1)(2).
[299] Section 3.
[300] This provision makes allowance for disallowing women to engage in night work.
[301] Section 55(5).

collective bargaining, permitting women to work at night before they can be allowed to work.

4.1.3. Wages Boards and Industrial Councils Act, 1974 (as amended)[302]

This Act provides a collective bargaining mechanism throughout the nation**.** It complements collective bargaining usage to improve the lot of employees, especially those in the private sector. While the Act established Industrial Wages Boards made up of independent members, workers' and employers' representatives, the Minister of Labour can establish a National Wages Board serving the Federation, after consultation with a state governor, to put up an Area Minimum Wages Committee for such state.[303] These bodies regulate the wages of workers where no adequate machinery is in existence for efficaciously regulating wages with other conditions of workers.

The Act makes provisions for three bargaining fora in the nation. These have proper service conditions as their major objectives. Collective bargaining can be effected by Industrial Wages Board, National Wages Board and Area Minimum Wages Committee or by Joint Industrial Councils.[304] Notwithstanding the endorsement of collective bargaining, it seems that the government of Nigeria has not allowed the practice to flourish as there is a continuous breach of the requirements of international practice on collective bargaining.[305]

4.1.4. The National Minimum Wage Act, 2019[306]

This is the main piece of law that establishes the National Minimum Wage for all workers and employees in Nigeria, with certain exceptions.[307] The government has the authority to create "industrial wages boards" for particular industries or regions where it believes wages

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[302] LFN , 2004.
[303] Okene, O.V.C., *op.cit* .4.4:61-103.
[304] Okene, O.V.C., 2010. *op.cit*.
[305] Okene, O.V.C., *op.cit* 4.4:61-103.
[306] This Act sets a national minimum wage and repeals the National Minimum Wage Act of 2004. Part-time employees, commission or piece rate workers, enterprises with less than 25 employees, seasonal employees, individuals working in the aviation or merchant shipping industries, and seasonal workers are exempt from this. It creates a three-person committee to examine the minimum wage and provide recommendations. It outlines the reporting requirements for employers as well as the Act's oversight and enforcement. IL0. 1996-2014. Nigeria-Wages. Retrieved August 19, 2023 from https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=111617&p_classification=12.02
[307] Wage Indicator. 2023.Work and Wages. Retrieved August 9, 2023 from https://wageindicator.org/labour-laws/labour-law-around-the-world/minimum-wages-regulations/minimum-wages-regulations-nigeria

to be "unreasonably low" or where there is insufficient collective bargaining infrastructure to effectively regulate wages or other working conditions for those workers. The tripartite boards may recommend wage rates, and the government may impose them on the relevant firms and employees.[308] Employers are required by Section 9(1) of the Act to pay their employees a wage that is at least the National Minimum Wage, less any required deductions. Employers who are required to pay the National Minimum Wage but fail to do so commit an offense, and upon conviction are subject to the following penalties: (i) a fine not to exceed 5% of the offender's monthly wage; (ii) payment of outstanding arrears of the workers' wages; and (iii) additional penalties at the current Central Bank of Nigeria lending rates on the wages owed for each subsequent month of violation.[309] The Federal Ministry of Labour and Employment, along with the National Salaries, Incomes and Wages Commission, are given the responsibility to oversee how the Act's provisions are being put into practice. They are expected to work together in accordance with the Labour Act and the National Salaries, Incomes and Wages Commission Act.[310]

4.1.5. The Trade Unions (Amended) Act, 2005[311]

This Act[312] made some fundamental and broad changes in the structure as well as legal status of the Nigerian union movement.[313] The changes are the issues of voluntarism, payment of dues to the Federations, representation, automatic check off, conditions for strike, penalty, disputes of right, arbitration and supremacy of the NICN, Legal and Administrative status of the Nigerian Labour Congress[314] and collective bargaining amongst others.[315]

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[308] Wage Indicator. 2023. *op.cit.*
[309] The Law Crest LLP. 2023. *Review of the National Minimum Wage Act, 2019*. Retrieved August 19, 2023 from https://www.thelawcrest.com/2023/06/17/review-of-the-national-minimum-wage-act-2019/#:~:text=2.0%20National%20Minimum%20Wage&text=3%20(1)%20of%20the%20Act,every%20worker%20under%20his%20establishment.
[310] The Law Crest LLP. 2023. *ibid.*
[311] The Trade Unions (Amended) Act, 2005 and the Trade Unions (Amendment) Acts No.4 and No.26 of 1996.
[312] It provides comprehensive legislation on trade unions in Nigeria.
[313] It is an amendment to some sections of the TUA, Cap. 437 LFN 1990 No.4 1996, No. 26 1996, No.1.
[314] NLC.
[315] Uranta, C., 2012, *op.cit.*301.

Section 3 of the principal Trade Unions Act[316] vests on employees such right to apply for the registration of trade unions in advancing their interest through any legitimate industrial platform including collective bargaining.[317] In addition, Section 5(i) of the amended Act retains and strengthens collective bargaining right of employees. For all collective bargaining purposes, every trade union registered working for an employer make up an electoral college. This college is expected to choose those who will stand in for their interests in negotiating with their employer.[318] This provision is to ensure that there is full representation of all employees through their various unions.[319] Though a laudable initiative, this provision has been criticised. There are some views stating that it does not specify whether or not any representation should be elected on permanent or adhoc basis.[320] Also, there is a reservation as regards the exclusion of appointed officers of the unions, as they are not employees of any of the member branch companies. This provision has been considered discriminatory and, hence, breaches the provisions of the TUA[321] which considers a trade union member as, someone involved in industry or trade such trade union stands for, and someone chosen by a union in representing workers' interests

Section 25 of the Trade Unions Principal Act[322] specifies that, for collective bargaining purpose, unions registered in an electoral college should select those who will on their behalf bargain with their employers. On the Federation of Trade Unions' eligibility to bargain for itself as well as its member bodies, this section provides that it is prohibited from engaging in collective bargaining for any trade union or Federation of Trade Unions unless a trade union or Federation being a party to such bargaining requests it to do so. This Act aims at promoting collective bargaining along with industrial harmony as important mechanisms for determining wages including other employment conditions in conformity with ILO requirements in ensuring harmonious workplace relations, encouraging disputants to settle disputes without resorting to industrial action.[323]

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[316] This provision is found in the principal TUA.
[317] Anyim, C. F., Chidi, O. C., & Ogunyomi, O. P., 2012. Trade Disputes and Settlement Mechanisms in Nigeria: A Critical Analysis. *Interdisciplinary Journal of Research in Business,* 2.2: 236.
[318] This provision is a substitute for the Principal Act's section 24, a new section 24 (1)(2).
[319] Uranta, C., 2012, *op.cit.* 303.
[320] It has however been logically suggested that unions should nominate their best brains to ensure a formidable team for the workers in each organisation. Uranta, C., 2012, *op.cit.*303.
[321] 1978, No. 22; 2005, No. 17.
[322] Section 8, Amended Act.
[323] Hale, C., Barrett, G. and Bryce, A., 2012.*op.cit.*

4.1.6. The Trade Disputes Act, 2004.[324]

This is the principal legislation governing trade disputes in Nigeria.[325] It stipulates how trade disputes should be settled, and such matters secondary to it.[326] This Act does not define collective bargaining, it however, makes provisions for collective agreement which forms the end result of collective bargaining. It also gives a rundown of parties' duties in a collective bargaining procedure. It considers collective agreement as an agreement written, aimed at settling disputes on employment terms and physical work conditions which an employer, team of employers or their representative organisations and one or more trade unions or organisations representing workers, or representatives chosen by any set of workers have concluded.[327]

In resolving disputes, Section 3 of the Act[328] places an obligation on an employees' trade union or its equivalent that has engaged in collective bargaining or any form of amicable dispute resolution with an employer to deposit with the Minister who sees to matters on labour welfare, within thirty (30)[329] or fourteen (14) days,[330] at least, three copies of a collective agreement reached between them. Anyone who fails and or neglects to deposit a reached collective agreement within the prescribed period, shall be guilty of an offence under the TDA and upon conviction, is liable to ₦100 (One hundred naira) fine. The import of this section, in essence, is that the TDA recognises the fact that employers and employees ought to, and should collectively, bargain towards arriving at a collective agreement.[331]

Under Section 16 of TDA, the NICN can sit on applications for a collective agreement to be interpreted.[332] Application can be made by the Minister or a party to an agreement to the NICN in instances of any breach.[333] This section further stipulates that either of them can apply to NICN for any term of a collective agreement's interpretation.

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[324] 1976 No. 7, 2006 No.37. Cap T8, LFN , 2004.
[325] 1976, Cap T8, LFN, 2004.
[326] It replaced the Trade Dispute Decree 1976. See, Nwokpoku, E. J., Nwokwu, P. M., M., Nwoba , E.O. and Ezika, G. A., 2018. Nigerian Labor Laws: Issues and Challenges. *World Applied Sciences Journal*. 36.1: 47-54.
[327] Section 48.
[328] 1988 No. 39, 1977 No. 54.
[329] For collective agreements arrived at on or after the date the TDA commenced.
[330] Within 14 days of executing a collective agreement reached on or after the date the TDA commenced.
[331] Eyongndi, D., *op.cit.*
[332] Trade Disputes Act, 1992.
[333] ASUU, 2017. *op.cit* .206.

On such application, the NICN then decides such matter by hearing the Minister or the parties. Any decision of NICN shall be considered final as well as conclusive on the interpretation of the provision of a collective agreement. While the Act recognises the collective bargaining principle, including voluntary settlement of labour disputes, it has been criticised for entrenching mandatory processes that give little allowance for disputants to be part of a free collective bargaining process.[334]

4.1.7. The National Industrial Court of Nigeria Act, 2006[335]

The National Assembly[336] enacted the NICN Act in 2006.[337] Its enactment is in compliance with section 254 of CFRN, 1999 (as amended). It basically gives details on the establishment, including the powers, jurisdiction, as well as constitution of the NICN.

Section 1(1) of the Act[338] makes provisons for a specialised Court, the NICN, to be established with absolute authority for handling disputes which relate to employment while section 7 of the same Act confers NICN jurisdiction, exclusively, to adjudge on civil causes and matters on labour, trade union with industrial relations, including work conditions, environment and health, safety and welfare with other matters incidental therein. Others include matters which relate to granting of any restraining order on anybody from participating in lockout, strike or industrial action, or such conduct that is in cogitation or pursuit of lock out, strike or industrial action; those that relate to the determination of any question on how any collective agreement is interpreted; such award given by an arbitral tribunal relating to an industrial dispute; conditions of settling labour dispute, disputes in an organisation as documented in a memorandum of settlement; constitution of a union; and such judgement or award made by the NICN.

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[334] Agomo, C. 2001. Legal Protection of Workers' Human Rights in Nigeria: Regulatory Changes and Challenges in Fenwick, C. and Tonia Novitz, T.,Eds., *Human Rights at Work: Perspectives on Law and Regulation*. UK: Hart Publishing Ltd. 242-265.

[335] 2006, Act No. 17.

[336] Of the Federation Republic of Nigeria (FRN)

[337] The NICN Act came into operation in 2006, June 14, with the assent of President Umaru Ya'ardua. The NICN was re-established as a superior Court of record, taken off the TDA, with a separate enabling law. See, Adejumo,B.A., 2011. *op.cit*.

[338] This used to be under the repealed Part II, Section 20 of TDA, Cap T8, LFN 2004. See, Kuti, F and Obiokoye, C., 2020. *Nigeria The Employment Law Review.* Retrieved on October 28, 2020, from https://thelawreviews.co.uk/edition/the-employment-law-review-edition-11/1216122/nigeria

As important as this provision is, it has some shortcomings which have been identified in it. For instance, there is a restriction to civil causes and matters such that crime related cases which arise from civil matters fall out of the court's jurisdiction.[339] In addition, the civil causes provided for were not many when compared with those listed in the constitution.[340] Worthy of note is that these provisions became strengthened and extended by the CFRN, 1999 (as amended).[341] Furthermore, the NICN is empowered by Section 20 of the NICN Act in promoting reconciliation in addition to amicable settlement of matters related to industrial relations. This includes issues surrounding collective bargaining processes and collective agreement with any attendant issues related to it that might arise in an organisation.

4.1.8. National Industrial Court of Nigeria (Civil Procedure) Rules, 2017.

The NICN (Civil Procedure) Rules were issued by the NICN President. This was in accordance with the powers granted his office by section 254 (F)(I) of CFRN and section 36 of the NICN Act. These Rules rescinded the 2007 NICN Rules including the 2012 Practice Direction.[342] They regulate the NICN's practice and procedure.[343]

Order 1 Rule 10 of the NICN Rules which makes provisions for meaning of words as contained in Interpretation Act[344] interprets collective bargaining as consisting of negotiations an employer has with a grouping of employees in ascertaining their state of employment. A workers' union or other employee organisation many a time represent employees in collective bargaining.

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[339] Other courts whose jurisdiction cover criminal cases can only sit on such.

[340] Emudainohwo, E., 2017. Towards the Effectiveness of a Labour Court: Nigerian Experience. *Acta Universitatis Danubius. Juridica.* 13.1: 204-220.

[341]Section 254C (1). See, NICN, 2020.*Jurisdiction and Power.* Retrieved June 14, 2020, from https://nicn.gov.ng/jurisdiction-and-power

[342] The 2017 Rules introduced innovations that align with contemporary industrial relations realities not in the 2007 Rules such as, Order 6A: electronic filing of documents; Order 14: prohibiting sexual harassment and discrimination in the workplace; enforcement of international protocol, convention and treaty in Order 14A; non-suiting a party instead of dismissing his claims or suit under Order 46; public trustee's appointment as contained in Order 59 of the court rules. It further creates an opportunity for filling of documents electronically to fast-track administration and resolution of disputes, although specified documents, like, those to be used in chamber or presentation in camera and those restricted by law are expected to be filed in hard copies. See, Order 6A, Rule 2.

[343] Nwocha, M., 2017. *op.cit*.

[344] Cap I.23. LFN.

The NICN has absolute jurisdiction to adjudge industrial disputes on the authority of the Rules of Practice and Procedure issued by the NICN president. These rules are to establish a system for case management of matters that are civil in nature which will be enduring, impartial, just, fair, fast as well as efficient within the NICN's jurisdiction, while promoting its socio-economic significance.[345]

The rules further provide for the adoption of Alternative Dispute Resolution (ADR)[346] mechanisms by making allowance for referral of disputes to the ADR Centre set up within its premises.[347] It also mandates that the resolution of such disputes has to be by mediation or conciliation in no more than twenty-one (21) working days, although there might be a ten (10) working day extension by the court. Where parties consent and sort out their differences, a report of any cordial resolution shall be made to NICN by the ADR Centre and by notice parties will be invited to adopt same after which it will be entered as the court's judgment.[348]

From the foregoing legal framework for collective bargaining, it can be inferred that there is a dearth of codification of the diverse legislation referenced. This lacuna is perceived to have reduced the effect of collective bargaining machinery in industrial relations[349]as in spite of the legal mechanisms available to aid and promote collective bargaining in industrial relations, Nigerian workers suffer some challenges in negotiating with their organisations.

Furthermore, these legislation are believed to be a form of curtailing the processes of collective bargaining due to elements of compulsion in them. [350] A major lapse arising from this is still the legislation's ineffectualness in reducing strikes and other methods of industrial actions which arise from a culture of impunity by trade union and government, as an employer.[351] In spite of the plethora of legislation on collective bargaining in Nigeria,

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[345] Article 4 of The NICN (Civil Procedure) Rules, 2017.
[346] The ADR procedure is considered to be more enduring. It is believed save time and money, less malicious. Considering it results in amicable resolution, disputants would willing implement its terms and perform their own side of the bargain; Candide-Johnson & Sashore, 2012. *Commercial Arbitration Law and International Practice in Nigeria.* Pietermaritzburg: Interpak Books. 7-11; Nwocha, M. 2017. *op.cit.*
[347] This is in line with section 254 C (3) , CFRN,1999 and Article 4 (5) (a)-(e) of the Instrument of the ADR Centre.
[348] Order 24, of the NICN (Civil Procedure) Rules, 2017
[349] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[350] Girigiri, B. K., 2002. *op.cit.*16.
[351] Fashoyin, T., 1999. *Industrial Relations in Nigeria*. Second Edition. Lagos: Longman Nig. Plc.198.

there are huge problems still facing Nigerian workers including their unions in the collective bargaining procedure with employers.[352] Taking into consideration the tremendous rate of developments in the workplace and ever-changing nature of work in contemporary, globalised and technology-driven world,[353] most of these legislation need to be reviewed to match with the current realities in the industrial sphere.

Considering one of the objectives of the study is to analyse collective bargaining as an instrument for negotiation including its importance in resolving industrial disputes in Nigerian Public Universities with special attention given to ASUU, some of ASUU's Constitution provisions that give legal backing to what it stands for and its operations will be looked into at this juncture.

4.1.9. Constitution of the Academic Staff Union of Universities (ASUU), 2018 (as amended)

In recognising alongside supporting collective bargaining' importance in disputes resolution, Appendix I of ASUU's Constitution, states one of the principal aims of its Code of Practice as follows:

> To ensure and encourage at all levels the conduct of industrial relations by means of collective bargaining, consultations and effective communication between employers and their organisation and a strong representative union within a voluntary and legal machinery designed for the settlement of disputes.

It can be deduced from the above provision that while, ensuring and encouraging industrial relations through collective bargaining, consultations as well as effective communication between employers and their organisation, the Union sues for a representative union which is strong within voluntary and legal machinery set for resolving disputes. Furthermore, the means ASUU suggests in resolving disputes in the university system can be deduced to be collective bargaining, consultations and effective communication.

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[352] Okene, O.V.C., *op.cit.*4.4:61-103.

[353] KPMG, 2019. *The Labour Act for Review*. Retrieved March 18, 2021, from https://home.kpmg/ng/en/home/insights/2019/11/the-labour-act-for-review-html

On the purpose for forming the Union, according to the preamble of their constitution, its formation is solely for promoting education, learning and providing a Constitution in advancing the Union's good administration as well as members' welfare. The major objects for the setting up of the Union, as provided by Article 2 of the Constitution[354] include: organisation of universities' lecturers who qualify for the union's membership; to regulate relations between academics and their employers as well as between members; to establish as well as uphold an elevated standard of performance academically, with professional practice; to see to the establishment as well as maintainance of conditions of service considered just as well as proper for union members; to advance the education as well as the training of members; as provided in the Constitution, to another object is to ensure provisions of benefits including rendering members assistance; encouraging members' participation particularly in their varsities and national affairs at large; to protect, advance cultural with socio-economic interests of the country; including any additional objects considered not illegal and aligning with the practice as well as spirit of trade unionism.

These objectives give a clue that asides the professional goals of ASUU as a union of intellectuals, there are some elements of economic with political goals the Union pursues in sustaining industrial harmony. While the economic goals emanate from political considerations, the political goals make way for the actualisation of the economic goals. Both goals work in tandem with the ideological goals of the Union.[355] All these form the basis for the Union's constant clamour for the democritisation of political powers in Nigeria.[356]

The ground-laying labour legislation principle is guaranteeing a party considered weaker in the labour space the protection as well as essential right to be in an equitable stance when salary with working terms are being negotiated.[357] ASUU,[358] being a trade union whose activities are neither unlawful nor incongruous with the practice as well as

[354] ASUU. 2018. *The Constitution of ASUU*, 2018 Amendment.
[355] Ogbette, A.S, Eke, I.E. and Ori, O.E., 2017. *op.cit.*
[356] The Union is of the belief that its objectives are tainted in a democratic political system. Ogbette, A.S, Eke, I.E. and Ori, O.E., 2017. *op.cit.*
[357] See, Aderibigbe, O.I., 2014.*op.cit.*
[358] In line with Article 3 of ASUU Constitution, anyone who is a full-time university Lecturer, Research Fellow or Academic Librarian shall be considered as ASUU member. This provision gives clue as to the category of persons ASUU is primarily responsible to and accountable for. Furthermore, no person shall on the basis of gender, religious persuasion, political beliefs, ethnic origin or grade as an academic staff shall be deprived of membership of the union.

spirit of trade unionism, is guided by the statutes regulating industrial relations and collective bargaining as discussed above.[359] Other laws regulating the operations of the Union aside its Constitution include, its Code of Practice forming Appendix I of its Constitution. Others are, the Kampala Declaration on Intellectual Freedom and Social Responsibility, 1990,[360] the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, 1988,[361] with African Charter on Human and People's Rights Act, 1981.

4.2. Comparative and International Trends in Collective Bargaining

As aforementioned, collective bargaining forms part of the major constituents of industrial relations. As an instrument employees use in participating in industries and forming an appendage of citizens' rights in the economic sector, for conflict resolution in organisations,[362] its legal basis, levels of bargaining, bargaining procedures all differ.[363] Its scope varies from country to country as both domestic and international labour instruments give credence to it as an intrinsic component of labour relations. The practice of collective bargaining in both the UK[364] and Ghana will be comparativeley examined at this juncture.

4.2.1. Collective Bargaining in Industrial Relations in the United Kingdom

Generally, collective bargaining's outcome in Britain[365] is rarely a single agreement. For a place of work it is more of a constantly changing load of written, unwritten agreements

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[359] Pemede, O. 2007. An Appraisal of Contributions of Academic Staff Union of Universities (ASUU) as a Trade Union to Educational Development in Nigeria. *The Social Sciences*. 2.3:357-364.

[360] See, Appendix III of The Constitution of ASUU, 2018.

[361] It forms Appendix IV of The Constitution of ASUU, 2018, issued by the ASUU National Secretariat, June 2019.

[362] Nwadiro, E. C. C., 2011. *Collective bargaining and Conflict Resolution: the Federal Government of Nigeria and the Nigeria Labour Congress Impasse.* Retrieved December 15, 2020, from https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.614.5541&rep=rep1&type=pdf

[363] Wright, M.J., *Collective Bargaining and Safety and Health*. Encyclopaedia of Occupational Health and Safety. Fourth Edition. Geneva: International Labour Office. Retrieved November 11, 2020, from http://www.ilocis.org/doc.uments/chpt21e.htm

[364] It is an island country situated off the north-western coast of mainland Europe. London is its capital and is one of the leading commercial, financial, as well as cultural centres globally. It consists of the entire island of Great Britain made up of England, Wales, and Scotland and also the northern area of the island of Ireland. Kishlansky, M.A., 2020. *United Kingdom*. Retrieved August 21, 2020, from https://www.britannica.com/place/United-Kingdom

[365] Britain is at times used in refering to the UK. It is just a political term. See, Kishlansky ,M.A., 2020. *op.cit.*

with understandings.[366] British industrial relations is recognised for its voluntarist nature as most collective bargaining arrangements are voluntary.[367] This involves the industrial relations key players'[368] preference for voluntary procedural with substantive regulation of employment relationship, including its non-legalistic approach to collective bargaining.[369] Worker representation at the workplace can be through the work council and union or union representatives but it is predominantly through the work council.[370]

Bargaining levels in the United Kingdom are categorised into: establishments, enterprise, industry or branch of economy, including an occupational group or national central level.[371] Collective bargaining however occurs mostly at the company or workplace level.[372] Sectoral as well as national-level bargaining are uncommon.[373] In the private sector, the dominant level for setting the pay as well as the working time, is the plant or company or level, while for public sector,[374] agreements are arrived at at the sector-level. For some public sector segments, Pay Review Bodies (PRBs) determine the pay levels who give recommendations to the government.[375] An establishment's size, age, foreign ownership, affiliation to the public sector as well as being a branch plant have been shown by econometric analyses to be the variables that have a statistical function in explaining collective bargaining structure in the UK.[376] Trade union representation for bargaining purposes for the determination of diverse bargaining levels are by agreement between

[366] Brown, W., Bryson, A., and Forth, J., 2008.Competition and the Retreat from Collective Bargaining. Retrieved August 19, 2020, from https://westminsterresearch.westminster.ac.uk/item/q4929/competition-and-the-retreat-from-collective-bargaining-niesr-discussion-paper-no-318

[367] Trades Union Congress, *Guide to Collective Bargaining*. Retrieved May, 21, 2020, from https://www.tuc.org.uk/workplace-guidance/collective-bargaining

[368] That is, the employers, the trade unions, including the state.

[369] Edwards, P.K., Hall, M., Hyman, R., Marginson, P., Sisson, K., Waddington, J. and Winchester, D. 1992. Great Britain: Still Muddling Through, in Ferner, A. and Hyman, R.,Eds., *Industrial Relations in the New Europe*, Oxford: Blackwell.1-68; Flanders, A. 1974. The Tradition of Voluntarism, *British Journal of Industrial Relations*. 12: 352–370; Gospel, H.F. and Palmer, G. 1993. *British Industrial Relations*. 2nd Edition, London: Routledge.

[370] OECD, 2017. Collective Bargaining in OECD and Accession Countries. Retrieved October 20, 2020, from https://www.oecd.org/employment/emp/collective-bargaining-UnitedKingdom.pdf

[371] ILO. 2002. *op.cit*.

[372] Eurofund, 2020. *op.cit*. .

[373] This is well-established, being the status quo, since the 1980s, on collective bargaining. See, Eurofund, 2020.*op.cit*

[374]This is also applicable in some part of the private sector. See, Eurofund, 2020. *ibid.*

[375] Eurofund, 2020. *ibid.*

[376] Schnabel, C., Zagelmeyer, S., Kohaut, S., 2005. Collective Bargaining Structure and its Determinants An Empirical Analysis with British and German Establishment Data. *IAB Discussion Paper*. 16:2-35.

employers and trade union.[377] This agreement is, however, subject to Central Arbitration Committee (CAC) determination.[378]

Subjects usually focused on in collective agreements concluded with representation bodies for staff include, employment conditions such as remuneration, overtime, work hours, classification of job; terms of employment contract, hiring, fixed contracts term, discipline, probation, employment termination; worker's welfare, health and safety; training for employees; rights of workers in the enterprise, which include, data protection, right of expression, redundancy programmes.[379] Others are, trade union rights and facilities afforded to unions; mode of settling disputes; disclosure of information; an agreement's interpretation and administration; process of denouncing and renewing agreements; procedures to avoid industrial action amongst others.[380]

The means through which collective agreements are achieved are through compulsory or voluntary CAC recognition. Negotiated agreements made between the parties will come after.[381] The UK's system of collective agreements are not enforceable legally. Parties to collective bargaining have to clearly provide legal enforceability of an agreement.[382] In practice this happens seldomly. This suggests that no system exists to regulate collective agreements content. Conversely, under Schedule 1A, Trade Union and Labour Relations Act (TULRCA) 1992, by a determination of the Central Arbitration Committee (CAC), employers may be impelled to give a trade union recognition for some collective bargaining purposes.[383]

In line with voluntarist tradition of the United Kingdom, as voluntary instruments, collective agreements are only binding in honour. Conditions of collective agreements are, however, usually included in individual employment contracts which afterwards become

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[377] The law allows trade unions to make employers who are hostile recognise them. This becomes more feasible where enough employees become unionised and support their union's recognition. This is referred to as statutory recognition.

[378] ILO. 2002. *The Role of Collective Bargaining.* Retrieved August 19, 2020, from https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/--dialogue/documents/meetingdocument/wcms_160119.pdf

[379] ILO. 2002. *ibid*.

[380] ILO. 2002. *ibid*.

[381]ILO. 2002. *op.cit.*

[382] Section 179, TULRCA 1992.

[383]ILO. 2002. *op.cit.*

legally enforceable.[384] If collective agreements are not renegotiated or expire, then there is no effect in practical terms and, by the characteristics of agreements, they are not binding legally. Hence, in practice individual contracts continue with the old agreement's terms.[385]

4.2.2. Laws Regulating Collective Bargaining in the United Kingdom

The pieces of legislation of majority of industrialised nations include a system for regulating collective bargaining.[386] This does not exclude the United Kingdom. The policies and institutions in place determine the effects of collective bargaining systems.[387] While the UK has no written constitution, the Human Rights Act, 1998[388] enshrines freedom of association with the provisions that, freedom of peaceful assembly right alongside freedom of association is for everyone, and no one is excluded from the right of forming or joining trade unions in protecting his interests.[389] Legal framework for UK collective bargaining will be examined at this juncture.

4.2.2.1. Employment and Relations Act, 2004[390]

This Act makes provisions for matters relating to pre-commencement system of collective bargaining, also in workers' interest makes provisions for protection against inducements by the employer to employees to not have the membership of a trade union or to refrain from union participation, such as collective bargaining amongst others.[391]

Notably, Section 20 of the Act makes provisions for the "pay'' with such issues that can be bargained on.[392] It includes matters a post-commencement declaration of recognition

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[384] ICLG, 2020. *UK Employment and Laws Regulation 2020.* Retrieved December 16, 2020, from https://iclg.com/practice-areas/employment-and-labour-laws-and-regulations/united-kingdom
[385] Eurofund, 1998. *op.cit*.
[386] Wright, M.J., *op.cit.*
[387] Denk, O., Garnero, A. , Hijzen, A. and Martin, S., 2021. The Role of Collective Bargaining Systems for Labour Market Performance. Retrieved February 16, 2020, from https://www.oecd-ilibrary.org/sites/068bb29d-en/index.html?itemId=/content/component/068bb29d-en
[388] C. 42. Art. 11. See, ILO, 2015. *op.cit.*
[389] ILO, 2015.*op.cit.*
[390] The Employment Relations Act 2004 (UK0312104F) got Royal Assent in 2004, 16 September. See, Eurofund, 2021.*Employment Relations Act 2004 begins to come into force.* Retrieved February 16, 2021, from https://www.eurofound.europa.eu/publications/article/2004/employment-relations-act-2004-begins-to-come-into-force
[391] Section 2
[392]This is after paragraph 171, Schedule A1, 1992 Act.

or method of collective bargaining related.[393] The Act further provides that certain orders shall through statutory instrument be made; and permits no order to be made except a draft of it has been laid before Parliament and by a resolution of each House of Parliament, approval is gotten.[394]

4.2.2.2. The United Kingdom's Trade Union and Labour Relations (Consolidation) Act, 1992

United Kingdom's Trade Union and Labour Relations Act[395] (TULRCA)[396] defines as well as governs trade unions' roles, alongside matters relating to collective bargaining as well as industrial relations.[397] According to section 178 (1), collective agreement simply denotes such agreement or arrangement made by, or for, a trade union or more and an employer(s) or employers' associations, bordering on, employment or physical work conditions; the engagement or non-engagement, or suspension or termination of employment or employment duties, of a worker or more; work allocation or the employment duties between workers or a their group; discipline related matters; non-membership or membership of workers trade union; trade union officials' facilities; as well as negotiation or consultation mechanism, with other processes, which relate to any of the matters above, including employers or their associations' recognition of a trade union's right in representing workers in negotiation or consultation or in how such procedures are carried out. On the other hand, the Act considers negotiations on more or one of the matters above, as collective bargaining.[398]The matters the Act specifies, as provided above, are suitable for negotiations. Unequivocally, these matters cover almost every aspect of the work culture in an organisation.

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[393] Subparagraph 5. Additionally, Sub-paragraph 6 explains that pre-commencement declaration of recognition referred to dennotes a recognition declaration given by CAC before the coming into force of the order while pre-commencement method of collective bargaining suggests a means of collective bargaining specified by the CAC before the coming into force of the order.

[394] Paragraph 7.

[395] Chapter 52

[396] Closely linked to this statute is Trade Unions Act, 2016. It is an Act that makes provisions for industrial action, trade unions, employers' associations with the Certification Officer's functions. It does not directly regulate collective bargaining. It however is an offshoot of the TULRCA, 1992.

[397]Thompson Reuters Practical Law, 2021. *TULRCA*. Retrieved January 19, 2021, from https://ca.practicallaw.thomsonreuters.com/6-200-3621?transitionType=Default&contextData=(sc.Default)&firstPage=true

[398] Section 178(1) (2).

Furthermore, an obligation is placed on employers of labour to bargain in good faith and also makes provisions for the requirements for bargaining in good faith. Hence, the Act states that, recognition of an independent workers' union by an employer for all collective bargaining matters stages, and as regards workers' descriptions, for which the union is recognised by him, shall on request make a disclosure to the union representatives such information as section 181 of the Act requires.[399] Such information to be disclosed relate to those of Employer's undertaking in his possession, or that of an associated employer, the absence of which the representatives of trade union would to an extent not be able to carry on collective bargaining with him, and it would be in line with appropriate industrial relations practice that disclosure of such should be made for collective bargaining purpose to the union. In addition, a request by representatives of trade union for information shall, if requested by the employer, be written or its confirmation written. Likewise, such informatiom an employer should disclose to representatives of a trade union shall, if requested for, be in writing.[400] To determine what would be of good industrial relations practice, recourse shall be made to any Code of Practice relevant provisions issued by ACAS, without excluding any other evidence of what that practice is.[401]

From the above, it can be garnered that employers as well as employees have an obligation to disclose information to recognised trade unions in line with appropriate industrial relations practice. In addition, while the Act requires that any collective agreement has to be written to become binding on involved parties, it also places an obligation on the parties to point out or state that they would be bound by the agreement. A collective agreement may only be reached with a trade union[402] and not individual employees.

On the representativity requirements for trade unions to negotiate collectively, the TULRCA makes provisions for two sets of representativity depending on the mode the social partners choose to adopt. For voluntary recognition, any trade union may tender a request to bargain with their employer. Being a voluntary process, where the employer may

[399] In sections 181 to 185, trade union "representative" is an official or someone the union authorises to carry on with collective bargaining.
[400] Section 181(5)
[401] Section 181(4)
[402]ILO, 2015. *United Kingdom- 2015.* Retrieved February 16, 2021, from https://www.ilo.org/dyn/irlex/en/f?p=14100:1100:0::NO::P1100_ISO_CODE3,P1100_SUBCODE_CODE,P1100_YEAR:GBR,,2015

recognise one or more trade union as a negotiating agent in the workplace, there are no representativity requirements imposed by law. This is as set out in Schedule A1 of TULRCA. For statutory recognition purposes, the same Schedule A1 lays out a detailed procedure to be followed by unions which seek statutory recognition in conducting collective bargaining with an employer. The implication of the employer failing to give response to the unions' request within the first period or reject the request within that period, or if there is failure by the parties in reaching an agreement before the close of the second period[403] is that the union(s) has the option of applying to the CAC for the determination of proposed bargaining unit's suitability,[404] and if the union(s) are supported by workers' majority who constitute the appropriate bargaining unit.[405]

It must be taken into account that, before the CAC can process an application for recognition, it must be satisfied that a bargaining unit proposed in no way is already covered by a collective agreement giving it recognition as the bargaining representative of any worker who falls in the scope of such bargaining unit, unless the recognised union(s) is the same as the union(s) making the application; the matters for which recognition is given the union(s) in no way includes wages, hours or holidays; if the recognised union is not independent, and the recognised union was in the past recognised for same or to a great extent same bargaining unit, and had had its recognition withdrawn in the three years which end with the date of the existing recognition agreement;[406] also, about 10% of workers of the relevant bargaining unit form part of the applicant union(s):[407]a high percentage of those in the bargaining unit will probably uphold the applicant union's recognition.[408]

Section 145B of the Act forbids an employer from circumventing the collective bargaining process by directly making offers to members of a union that is recognised. Essentially, any employer's attempt at bypassing collective bargaining through direct approach of employees contravenes the Act's provisions. In *Kostal UK Ltd. v Dunkley and Ors*,[409] the Employment Appeal Tribunal (EAT) in its ruling stated that an employer

[403] Paragraph 11(1).
[404] or some other bargaining unit
[405] Paragraph 11(2).
[406] Paragraph 35(4).
[407] Paragraphs 14(4) & 36(1)(a).
[408] Paragraph 36(1)(a). See, Paragraph 35(4)(b) and Paragraph 56(5).
[409] [2019] EWCA Civ 1009, at [41]

contravened by bypassing negotiations with Unite, whom Kostal UK Ltd., recognised for collective bargaining purposes, by directly contacting employees about alterations to the terms and conditions.[410]

The Act further makes provisions for collective agreements binding effect on signatory parties. Section 179, on collective agreements enforceability stipulates that a conclusive presumption of a collective agreement unintended by parties to be a legally enforceable contract will be made, unless such is in writing, and there is a provision stating the intention of parties for the agreement to be legally enforceable. Also, there shall be a conclusive presumption that any collective agreement that satisfies the conditions above has the intention of parties to be a contract which is enforceable legally. In instances a collective agreement is written and states that the parties' intention is that not the whole agreement but one or more aspects of it as specified in such provision, shall be a contract which is legally enforceable, there shall be a conclusive presumption that the part or parts specified have the parties intention to be contracts enforceable legally, while there will be a conclusive presumption that the remaining part of the agreement have no parties' intention to be sof such nature.[411] A distinct feature of section 179 which Nigeria can borrow a leaf from is the broad provision that a collective agreement has to be in writing and expressly state that it is legally enforceable if the parties intend it to be, not limiting it to it being incorporated in workers' employment contracts.

For the applicability of agreements on non-signatory parties in organised workplaces**,** once an employer or the CAC recognises a trade union, in terms of Schedule A1 of the TULRCA, then it becomes the bargaining agent of the entire bargaining unit, thereby representing all workers in negotiations, regardless of their union membership. This is why there are extensive requirements for recognition, such as the need for proof that the highest percentage of employees in a bargaining unit are supportive of their union's recognition.

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[410] Riche N., 2018. *Employers Attempt To Bypass Collective Bargaining Process By Approaching Employees Directly Was A Breach Of TULRCA*. Retrieved January 19, 2021, from https://www.bdbpitmans.com/insights/employers-attempt-bypass-collective-bargaining-process-approaching-employees-directly-breach-tulrca/

[411] A part of an agreement not alegally enforceable by virtue of subsection (3)(b) may be made reference to aid the interpretation of any aspect of a collective agreement in such a contract.

Collective bargaining coverage is not for all employees. The categories of those not covered include, workers in the Police Service, being members of any constabulary by a legislation, or in some capacity where a person has a constable's privileges or powers;[412] Military (defence) forces**,** perons in the military, naval, or the Crown's air forces and Fishermen, including member or master of a fishing vessel crew in which employee's remuneration is either by gross earnings or a share in the vessel's profits. In essence, the Police Force, Military Forces and Fishermen are excluded from trade unionism. The resultant effect is that they cannot be involved in collective bargaining. Conversely, any collective agreement is binding to non-union employees, in as much as the agreement is included in their employment contracts. Incorporation may be express or tacit/ implied or by way of agency.[413]

Arbitration is a mechanism that can be used to ensure that all disclosure obligations during the course of collective bargaining are made. On the binding nature of arbitral awards, it all depends on the institution and context the arbitration takes place. Therefore, where arbitration is prompted by a complaint that an employer did not satisfy its disclosure obligations in the course of collective bargaining, this can lead to a declaration by the Central Arbitration Committee requiring the employer to comply.[414] Also, the Advisory Conciliation and Arbitration Service (ACAS) may offer employers and their associations, workers with their unions alike such advice it deems fit on industrial relations matters or employment policies on workers' organisations or employers for purposes of collective bargaining.[415]

4.2.2.3. The Trade Union Recognition (Method of Collective Bargaining) Order, 2000.[416]

According to the preamble of this order, there is a specified way of conducting collective bargaining in specific, and perhaps uncommon, situations discussed in this legal

[412] Section 280, this provision is in line with the Police Act 1996, C.16 Section 64(1), which does not permit any police force member to join a trade union, or an association with objects of controlling or influencing the remuneration, pensions or service conditions of any police force.
[413] Schedule A1.
[414] Section 183(5).
[415] Such advice may be offered when requested or not, free of charge. Section 212.
[416] No. 1300.

instrument. Conversely, the specified model is in no way made to be utilised as a voluntary procedural agreements pattern employers have with unions. This is due to many voluntary agreements not being binding legally with conclusions reached with cooperation and trust. Therefore, there is no need to be prescriptive like the specified method. This section of the Order stipulates that the CAC must put the specified method into consideration in imposing a collective bargaining method in paragraph 31(3)[417] with 63(2)[418] of Schedule A1 to TULRCA, 1992.[419] The bargaining method CAC imposes has same outcome like a legally-binding contract a union(s) has with an employer. If a party thinks the other fails to respect the method, an application for an order of specific performance may be made to the court, for the other party to comply. Failing to obey such order could be deemed contempt of court.

Once the Committee has introduced a bargaining process, it can be varied by the parties, including being binding legally, by agreement so long it is written. The purpose of the specified method is to state how an employer conducts collective bargaining relating to remuneration, hours including holiday of workers that make up a bargaining unit with a union. Furthermore, no right to negotiate pay, hours of work including holidays to any other union for the workers covered by this method shall be granted by the employer.[420]

This Order also makes provisions for a Joint Negotiating Body (JNB). It makes provisions for the employer as well as the union in establishing a JNB to aid discussions and negotiations on the pay, hours of work with workers who make up the bargaining unit's holiday. It clearly stipulates that no other body or group can undertake these functions except the employer with the union come to such an agreement.[421]

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[417] Paragraph 31(3) of Schedule A1 of TULRCA stipulates an imposition method of collective bargaining by CAC where a an employer has given recognition to a union (s) through a CAC award in Part I of Schedule A1, but the employer with union(s) have not on agreed a bargaining method between themselves, or neglected following the agreed method.

[418] Paragraph 63(2) of Schedule A1 of TULRCA makes provisions for the CAC for imposition of a bargaining method where an employer and a union (s) have reached an agreement for recognition, as defined by paragraph 52 of Part II of Schedule A1, but cannot agree to a method of bargaining, or there is failure in following the agreed method.

[419] In the exercise of those powers the Central Arbitration Committee may not follow method specified to the level as it considers appropriate in individual cases.

[420] The Schedule, Article 2(2) (3), Preamble to The Trade Union Recognition (Method of Collective Bargaining) Order 2000.

[421] *ibid.*

Individual workers' rights under the statute or employment contracts in no way get affected by the method imposed by the CAC.[422] For instance, it neither prevents nor limits the rights of individual workers from holding discussions, negotiations or agreeing with employer on their employment contract terms, which are different from those of any collective agreement an employer with a union may enter due to collective bargaining conducted using this method, neither does the method imposed affect anybody's entitlement statutorily in timing-off for activities of the trade union.[423]

Certain entitlements are conferred on independent trade unions by law. These entitlements are recognised for collective bargaining purposes. For instance, there is a duty of disclosure, on request, on employers for specific information to representatives of unions recognised.[424] The proposals by unions for pay adjustments, hours and holidays are to be dealt with annually, unless there is an agreement on a different bargaining period by both sides.[425]

On the bargaining procedure, negotiations are conducted by JNB for each bargaining round following a six-step staged procedure. The first stage, starting with the union in writing, sending proposals to an employer, that is, a claim for varying their pay, work-hours as well as holidays, being specific on the areas it wants changed. In the union's claim, it is expected to provide reasons for such proposals, and include the main evidence withins its disposal that supports it at the time. Within 10 working days of the Employer receiving letter from the union, a JNB quorate meeting for discussing the claim would take place. It is at that meeting the Union would give explanation on its claim as well as give response to any rational questions asked as best as it could.[426] Within 15 working days after the meeting, the employer has an option of either accepting such claim in full or respond to it through writing to the union. A JNB quorate meeting will be set up under a 15-day period, if such request is made by the Employer side, giving the employer the chance of presenting a response written to the Union. In giving explaination for any response given, an employer

[422] In situations where the Committee makes an imposition of a bargaining method on parties, an employer is separately obliged, in line with Section 70B of TULRCA, to make consultations with union representatives periodically on his policy, actions and plans on training. Section 5 of the Employment Relations Act, 1999.
[423] The Schedule, Article 2.
[424] The Schedule, Article 2.
[425] The Schedule, Article 2(14).
[426] The Schedule, Article 2(15).

in writing gives all necessary information he has with him.[427] In discussing the response of the employer, within 10 work-days of the Union's receipt of the communication in writing of the employer, another JNB quorate meeting shall be set up. It is at this meeting the Employer's representative make an explaination of its response, answering any rational questions arising as best as it could. In instances where an agreement is reached at the meeting,[428] within 10 working days another JNB quorate meeting shall be held.

In determining the final step of a bargaining procedure, if no agreement is reached at any of the meetings set up, under five work-days, the employer with the union separately or jointly shall have consultations with ACAS on the prospects being assisted by ACAS in finding a settlement of their differences through conciliation.[429] As regards collective agreement, the order provides that, agreements on the pay, work-hours as well as workers in the bargaining unit's holidays, that the employer with the union reached after negotiations, will be written by the Chairmen of the Employer Side and Union Side respectively, with both appending their signatures. In the absence of either of the Chairmen, another member of JNB can append their signature.

Furthermore, the Order stipulates that, if the union or employer considers that implementation of the agreement has failed, such party, can in writing request for a JNB meeting for such failure to be discussed. Within five working days of the JNB Secretary receiving such request, there will be a quorate meeting. Any failure in resolving the issue at that meeting, some arrangements of further meeting will be made, and in accordance with the stated procedure above, steps will be taken.[430]

In ensuring that there is full disclosure of information, regard must be had for the ACAS Code of Practice on information disclosure to Trade Unions for purposes of bargaining by employer as well as the union. The employer must further see to it that no unwarranted or unjustified failure to abide by the bargaining arrangements this method

[427] If the response has counter-proposals, in the written communication the rationale for such, with the evidence that backs it up will be set out. The letter in providing information is to estimate the costs with staffing implications of the implementation of the counter proposals elements, except disclosure of such information is not required from the employer for any of the reasons in section 182(1), TULRCA.
[428] Or the final of such meetings when more than one is set up in the procedure at that stage..
[429] Where there is an agreement by parties, inviting ACAS to conciliate, they shall render necessary assistance to ACAS in enabling him handle the conciliation efficiently as well as effectively.
[430] These procedures are provided for in Article 2(15), Preamble to The Trade Union Recognition (Method of Collective Bargaining) Order 2000. See Order 20.

specifies comes up.[431] Also, the employer and union are expected to take all rational moves in ensuring the application of this method of conducting collective bargaining efficiently as well as effectively.[432]

4.2.2.4. European Social Charter, 1964[433]

The European Social Charter (ESC) protects employees' right to collective bargaining. It fosters employees-employer's joint consultation. In addition, it aids machinery set up for employees with employers or their representative organisations voluntary negotiations in regulating the conditions of employment through collective agreements.[434] As a social rights and economic instrument, it is exposed to the possibility of rights attached to groups and individuals.[435]

Apart from promoting the machinery for voluntary negotiations, this charter makes provisions for the right of workers[436] to collectively act in instances of conflict of interests, where collective bargaining is unsuccessful and equally recognises that collective action or the threat of it is a powerful means of protecting the workers' interests.[437]

This charter, considered as the Social Constitution of Europe and serving as a point of reference in European Union Law,[438] makes an encompassing provision for social rights of workers, thereby proctecting their interest and right to collective bargaining.

4.2. 3. Enforceability of Collective Agreements in the United Kingdom

Generally, in Britain, collective agreements are either written or not. When it is not precisely mentioned in individual contract of employees, collective agreements are

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[431] Article 2(27).
[432] Article 2(29).
[433] At the European level, The European Social Charter (European Treaty Series – No. 35) was ratified on 11 July 1962 (and entered into force on 26 February 1965). However, The UK has signed but not ratified the (Revised) European Social Charter (European Treaty Series – No. 163), nor the Collective Complaints Procedure Protocol. See, EPSU/ETUI, 2019. *The right to strike in the public sector United Kingdom.* Retrieved January 19, 2021, from https://www.epsu.org/sites/default/files/article/files/UK%20-%20Right%20to%20strike%20in%20the%20public%20sector%20-%20EPSU%20format%20%2BSC.pdf
[434] Article 6(1) - (3) of the ESC 1964.
[435] Davies, A.C.L., 2004. *Perspectives on Labour Law*. Cambridge : Cambridge University Press. 176.
[436] Article 6(4).
[437] Okene, O.V.C., 2010, *op.cit.*
[438] France, L. 2021. *European Social Charter.* Retrieved October 28, 2021, from https://www.coe.int/en/web/european/social-charter/home/-/asset_publisher/Vugk5b0dLMWq/content/collective-bargaining-developments-in-times-of-crises?_101_INSTANCE_Vugk5b0dLMWq_viewMode=view/

considered not binding legally, therefore, unenforceable at law. In essence, such is considered binding in honour only. This leaves them depending on the sanctions available to the parties for their ultimate enforcement. Each trade union that gets involved in concluding collective agreements should be given recognition by an employer for collective bargaining purposes within a particular unit.[439] Basically, agreements are considered not formal, whose application is on parties' good faith reinforced by work stoppage threats.[440]

In enforcing collective agreements in firm-level agreements, provisions for mediation services are made by ACAS while in sector-level agreements, this is not relevant.[441] Other than the CAC, labour courts in no way get engaged directly in settling disputes based on recognition of a union or union representatives for collective bargaining purposes.[442] No legal right exists on a collective agreement in the UK other than a CAC determination.[443] The CAC-determined rights equally regulate collective bargaining.[444] While agreement can possibly only be concluded with a union,[445] it might be arrived at at any level negotiations are done.[446] It could be concluded at national or local levels by union(s) and employers with employers' representative bodies.[447] Where terms are collectively agreed on, they become enforceable through the individual contracts of employment concluded between an employee and his employer. This will, however, be obtainable where there is an incorporation of such terms, expressly or impliedly, into individual contracts.[448]

Collective agreements are enforceable in the UK when parties to it make provisions for such in an agreement that legally, it would be binding on them.[449] Under the

[439] Schnabel, C., Zagelmeyer, S. and Kohaut, S., 2005. *op.cit.*
[440] Wright, M.J., *op.cit.*
[441]OECD, 2017. *op.cit.*
[442] ILO. 2002. *op.cit.*
[443] ILO. 2002. *ibid*.
[444] ILO. 2002. *ibid.*
[445] ILO, 2015. o*p.cit.*
[446] Schnabel, C., Zagelmeyer, S., Kohaut, S., 2005. *op.cit.*
[447] ILO. 2002.*op.cit.*
[448] ILO. 2002. *op.cit.*
[449] The collective agreement binds employees that are not union members as long as such is incorporated into their employment contracts. Such incorporation may be express, tacit/implied or by way of agency. Schedule A1 of the TULRCA.

TULRCA,[450] it becomes enforceable when written and there is concise provision of the parties intention to make it a contract that is enforceable legally.[451] Hence, doctrine of privity of contract does not weigh collective agreements down in the UK, making them to be enforceable authomatically between parties if written and clearly stated to be binding legally.[452]

Labour courts in the UK, such as, the Employment Tribunals and Employment Appeal Tribunals engage in individual and not collective rights. Hence, they have their limitations on issues relating to collective agreement. For instance, they have no permission for extending or restricting a collective agreement rules. Also, they cannot mediate in a collective dispute and, therefore, cannot impose binding arbitration on disputing parties nor can they ask the parties of collective agreements for their interpretation. Conversely, they can only interpret collective agreements, in relation to other cases, in construing a Collective Bargaining Agreement (CBA) term included in individual employment contracts. [453] In addition, the UK's ACAS offers collective conciliation resolution services for employment disputes of employers, trade unions as well as other representative bodies.[454]

Collective bargaining occurs almost exclusively at company or workplace levels.[455] Essentially, negotiations are made generally at company level than at sectoral level.[456] In the UK, collective bargaining which could be voluntary in nature, implies an informal method for collective bargaining and law coordination exists. Although collective agreements bind only in honour, however,when they are available, there is an incorporation of their terms into individual employment contracts.[457] Good enough in the Uk, the rate of industrial disputes have been declining since the 1970s, stabilising at low historical levels in 2000s.[458]

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[450] Section 179(1) (2) . In theUnited Kingdom, it insufficient to state that a collective agreement shall be binding since this could translate to being binding in honour. There has to be a precise stipulation of the agreement being legally binding. *N. C. B. v. N. U. M* (1984) I. C. R. 192, 195.
[451] Section 179(1) of the TULRCA.
[452] Iwunze, V., 2013.*op.cit.*
[453] ILO. 2002. *op.cit.*
[454]Hale, C., Barrett, G. and Bryce, A., 2012.*op.cit.*
[455]ICLG. 2020. *op.cit.*
[456]EPSU/ETUI, 2019. *op.cit.*
[457] EPSU/ETUI, 2019. *ibid.*
[458] Hale, C., Barrett, G. and Bryce, A., 2012.*op.cit.* 8

At the International Level, the UK is one of ILO member-states. It is bound in international law by ILO Conventions on significant aspects like freedom of association as well as collective bargaining[459] with the ratification of Convention 87 on Freedom of Association including Protection of the Right to Organise (1948) as well as Convention 98 on the Right to Organise and Collective Bargaining (1949).[460]

4.3. Collective Bargaining in Trade Union practice in Ghana[461]

Collective Bargaining was intiated in Ghana after it became independent in 1957. It joined the membership of the ILO. The ratification of Conventions 87 and 98 as well as several other conventions were done same year. There was an incorporation of the conventions ratified in the Industrial Relations Act of 1958[462] thereby laying a legal foundation for the country's collective bargaining. That Act was, subsequently, substituted with the Industrial Relations Act of 1965, that for the first time gave recognition to public service workers' right to bargain collectively.[463] The Labour Act, 2003 currently forms the major industrial relations legal framework in Ghana.

4.3.1. The Legal Framework for Collective Bargaining in Ghana

Ghana's legal framework for collective bargaining is worthy of reference at this juncture. It will assist in proposing a workable framework in Nigeria considering it has a somewhat comparable economy as well as level of development as Nigeria. An examination of the laws applicable to collective bargaining and collective agreement will be made in this section of the study.

4.3.1.1. The Constitution of the Republic of Ghana, 1992 (as amended)[464]

The Constitution has provisions for the right to freedom of association. Section 21 which sets out provisions on general fundamental freedoms provides that freedom of

[459] It was ratified on 27 June 1949. See, EPSU/ETUI, 2019. *op.cit.;* Davies, A.C.L., 2004. *op.cit.* 54.
[460] It was ratified on 30 June 1950. See, EPSU/ETUI, 2019. *op.cit.*.; Davies, A.C.L.,2004. *op.cit.*57.
[461] Ghana is a country in West Africa with a comparable economy to Nigeria's. The country equally shares close history of British colonisation and attained independence almost at the same period, March 6, 1957, while Nigeria gained independence on October 1, 1960. See, Ibekwe, C.S., 2016. Legal Implications of Employment Casualisation in Nigeria: A Cross-National Comparison. *NAUJILJ*. 79-89.
[462] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.* 43.
[463] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *ibid.*43.
[464] As amended in 1996.

forming or joining trade unions or related associations, national and international, in protecting their interest is part of freedom of association.[465] This provision is made in the interest of all citizens[466] and has spurred political with economic spaces, thereby giving avenue for discussing issues of national growth that have largely enhanced trade unions' status in the country.[467]

4.3.1.2. The Labour Act, 2003 (Act 651)

This legislation forms Ghana's major legal framework for collective bargaining.[468] As the primary statute that governs industrial relations in Ghana,[469] it integrates almost all statutes that relate to the nation's industrial relations practice.[470] It aims at protecting interests of both the employees as well as that of employers.[471] Although Act 651 does not define collective bargaining, it has stipulations on the right to organise and bargain collectively.[472]

The Labour Act[473] allows for collective bargaining in all enterprises.[474] Section 79 makes provisions for the workers' rights in forming or joining trade unions they want to aid protecting their interests economically and socially while Section 80 allows two workers or more in selfsame undertaking to establish a union.[475] Section 79(2), however, exempts certain classes of workers from setting up or belonging to a trade union. This category includes those in policy/decision- making as well as management positions or those who

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[465] Section 21(1)(e).
[466] My wage Ghana. 2021. *Trade Unions.* Retrieved July 5, 2021, from https://mywage.org/ghana/labour-law/legal-advice
[467]Ofori-Gyau, K., *Success Factors of Employers and Trade Unions Cooperation in Ghana in InfluencingGovernments' Economic and Social Policies.* Retrieved August 4, 2020, from https://www.ituc-csi.org/IMG/pdf/2nd_tu-dac_forum_ghana_employers_presentation_final.pdf
[468] Prior to the passage of this Act, Ghana had a number of laws dispersed in different legislation governing industrial relations. See, Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009, *Our Bargains: Analysis of Outcomes of Collective Bargaining in Ghana.* Ghana: Labour Research and Policy Institute.10
[469] Hagan, P.K., 2019. *Employment and Labour Law in Ghana.* Retrieved August 4, 2020, from https://www.lexology.com/library/detail.aspx?g=fed577b0-4e8a-4d71-b3b4-74fc89702f46
[470] Gockel A.F. and Vormawor, D., 2005. Trade Union Country Reports: the Case of Ghana a background paper. Ghana: Friedrich Ebert Sterling. 47.
[471] The Act has twenty parts of 179 sections.
[472] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P.,2009. *op.cit.*.10.
[473] Labour Act, 2003, Act 651, was promulgated by the Ghanaian Parliament with Presidential Assent gotten in 2003, October 8 and came into force on May 1st 2004. See, Gockel A.F. and Vormawor, D., *op.cit.*47.
[474] My WageGhana, 2021. *op.cit.*
[475] This must be with 15 or above workers , in forming or joining employers' association of interest.

perform responsibilities considered highly confidential.[476] The implication of this exclusion is that this workforce equally gets deprieved of collective bargaining right. [477]

Sections of the Act which provide for the statutory framework for collective bargaining are found from 96 to 111, Part XII. Section 97 places an obligation on all negotiating parties to conduct negotiations in good faith and attempt rational efforts at reaching an agreement. It further states that either of the negotiating parties shall make obtainable information considered pertinent to the negotiation's subject matter to the other party. In instances, where any disclosure of information made for negotiations is unpublicised, such shall be handled with confidentiality by the receiving party. No disclosure will be made to another party without an advance consent of the party supplying the information in writing. In upholding their duty, none of the negotiating parties should make untrue or fraudulent misrepresentations on matters of relevance to the negotiations.

On the content of any collective agreement, section 98 stipulates the cardinal elements which provisions must be made for in a standard collective agreement. These include, a category of target workers; the conditions of work, work- hours, resting time, meals break, yearly leave, occupational health with safety measures including wages as well as means of remuneration calculations. Others are the time as well as probation conditions; the time of employment termination notice, transfer with discipline procedures including the processes for avoiding as well as resolving disputes as a result of interpretation, application,with administration of agreements. The principles of linking pay with productivity including essential services also form part of the basic elements of CBAs in Ghana.

Furthermore, a union's formation in no way automatically confers on it any right to bargain for the category of workers it stands for. In Ghana, Collective Bargaining Certificate (CBC) is issued by the Chief Labour Officer (CLO), who heads the Labour Department, to unions. Therefore, according to section 99, it is required of trade unions that have been registered to make an appplication to the CLO to be issued CBC for a specific category of

[476]Also, the Securities Act prohibits security agencies such as, the military, police, fire service including immigration service from setting up or being part of a trade union. Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009.*op.cit*.14.

[477] Aside those who statutorily cannot set up or belong to trade unions and hence cannot bargain collectively, so many workers in the informal sector are also excluded in collective bargaining. Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P., 2009. *op.cit*.15-16.

workers. Trade Unions given the CBC can negotiate with their employers for such category of workers listed on the CBC.[478] Agreements, thereafter, arrived at by the employer and the union with the CBC covers the category of workers listed on the CBC if they belong to the union who had negotiations or not.[479] A collective bargaining may as well be varied for more workers to be included in the category of those listed on the CBC. In principle, unions that do not have CBC have no right to bargain with employers. However, in practice, the bargaining team includes other unions representing a sect of category of workers on whose behalf the collective bargaining are conducted.[480]

Section 103 of the Act, on conduction of negotiations, states that it may be handled by an officer or member of the union. Also, it unequivocally stipulates that, with no prejudice to section 101, negotiations may be conducted on any issue that is linked to the non-employment or employment or employment terms of workers belonging to category of those indicated on the CBC by an officer or a member whom the union duly appoints.[481] While anyone conducting negotiations may notify the parties to it, requiring them to to negotiate on matters he/she might be able to deal with, such duty of making reasonable effort to reach a consesus on the subjectmatter of the notice is that of both parties.[482]

Also, such agreement reached by the parties are to be written as well as signed by the person facilitating the negotiation process.[483] On a collective agreement's outcome, its provisions as regards the employment terms as well as its termination, with the personal obligations placed on, and rights given, a worker or employer, such would be considered as conditions of an employment contract an employer has with and individual worker to whom the provisions apply.[484] Furthermore, any provision having effect as conditions of an employment contract will continue as such after such agreement expires. This would be as

[478] Only one certificate is given to a union for the selfsame workers' category at a point in time. In instances there are two or above unions for the same group of workers, the CBC is given to the most representative one while other unions are admonished to cooperate with that union with the CBC for CBA negotiations. See, Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009.*op.cit*.14.

[479]The law also makes allowance for CBC to be move between unions. Where the most representative union with the CBC loses its majority, the certificate is withdrawn and re-issued to the most representative one. Such withdrawal of in no way affects CBA arrived at before such withdrawal. Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009.*op.cit*. 15.

[480] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P., 2009.*op.cit*.15-16.

[481] Section103(1).

[482] Section 103 (2).

[483] Section 103 (3).

[484] Section103(3).

far as they have been no variations by the parties' agreement or in pursuance of the Act. A worker cannot waive rights conferred on him/her by a collective agreement. In instances when terms of an agreement and those of any contract not included in the collective agreement conflict, such an agreement prevails except the worker finds the conditions of contract more favourable. It is inconsequential if the contract was concluded or not before such collective agreement. [485]

While the Act provides that the parties to negotiations should notify the workers concerned on the terms of the collective agreement reached,[486] it also provides a year term for every collective agreement arrived at.[487] Furthermore, notice need not be given by either parties to a collective agreement, requiring a party to negotiate on matters a collective agreement governs except if at the period of serving such notice, the agreement is due by virtue of the notice given or its expiration would be 28 days after serving the notice.[488] In instances where neither of the parties notifies each other, in the space of 30 days following the collective agreement's expiration, such agreement will be regarded as being continually in force until rescinded by the parties.[489]

The aim of any collective bargaining is for protection of parties' interests in an employment relationship. In negotiation processes, their interests play out. [490] In furtherance of this, provision is made for the establishment of institutions who oversee the negotiations and conclusion processes of CBAs. The Standing Negotiating Committee (SNC) or Joint Negotiating Committee (JNC)[491] are established and consist of a trade union stated in the CBC's representatives and an employer of the category of workers which such certificate relates.[492] There is further provision that, as much as the terms of an agreement allow, such agreement as reached by a union through a SNC or a JNC, will apply to all category of workers on the CBC.[493]

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[485] Section103.
[486] Section 106.
[487] Section 107(1).
[488] As stipulated under section 102; Wage indicator, 2020. *Collective Agreements*. Retrieved October 20, 2020, from .https://africapay.org/ghana/labour-law/employment-security/collective-agreements
[489] Section 107.
[490] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009. *ibid*..16.
[491] Otoo, K.N.,Osei-Boateng, C. and Asafu-Adjaye,P. 2009.*op.cit.*16.
[492] Equal Times, 2013.*op.cit.*
[493] Section103(1).

For dispute resolution purposes, each collective agreement's content is the final and conclusive settlement of all differences between those the agreement applies.[494] The outcome of this is that, as soon as collective agreement is arrived at, it becomes enforceable in Ghana. An important part of the Act 651 is the tripartite committee consisting of the government, trade union as well as employers in determining the national minimum wage as premise for employees' collective bargaining.[495] This Act, as the the fundamental labour law in Ghana, further stipulates the bipartite bargaining principle, to make it less cumbersome forming trade unions as well as making provisions for a statutory duty for employers in recognising as well as bargaining effectively with unions that are certified and registered. Hence, bipartite negotiations are given much recognition in Ghana, with the government seldomly interferring in collective bargaining processes between employers and unions.[496]

As noted above, legislation which confer the right to bargain collectively exist in Ghana. Ghana has also ratified ILO conventions guaranteeing proper working conditions and employees' rights. The notable ones include, the Right to Freedom of Association, Convention No.87 which was ratified in 1965 and the Right to Collective Bargaining, Convention No. 98, ratified in 1959.[497] The nation has afterwards passed some legislation aimed at bringing national laws to conform with the ratified ILO Conventions. Noteworthy is the Act 651, earlier discussed, repealing many of the previous labour laws.[498] This Act forms one of the all en-compassing labour legislation globally, as it repealed about 15 legislation, thereby combining in just an Act matters previously provided for by those diverse legislation.[499] Since the country ratified Convention No. 98 in 1959, with a subsequent promulgation of Industrial Relations Act of 1965 and then Labour Act, 2003, those in the economic formal sector have adopted collective bargaining as the major tool in improving conditions of work mostly at the enterprise level.[500] Where employers, their

[494] Section 108.
[495] Ofori-Gyau, K., *op.cit.*
[496] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), *op.cit.*59.
[497] ILO, 1996-2021. *National Labour Law Profile: Ghana.* Retrieved July 3, 2021, from http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158898/lang--en/index/htm .
[498] Gockel A.F. and Vormawor, D., *op.cit.* 21.
[499] Atilola, B., 2014.*op.cit.*
[500] ILO, 1996-2021.*op.cit.*

organisations or workers/groups of workers make any attempt at threatening or intimidatating the other party during negotiations, such an act will be considered an unfair labour practice.[501]

Collective bargaining is the major machinery for unions' engagements with employers in the private as well as public sectors.[502] Its legal framework in Ghana is important in this study as it will assist in proposing a workable framework in Nigeria since it has a comparable economy and parallel growth with it. Worthy of note is that all its various legislation on labour relations were harmonised into a single statute, the Labour Act, No. 651 of 2003 and Nigeria can borrow a leaf from this pattern.

4.3.2. Enforceability of Collective Agreements in Ghana

The law gives recognition to CBA in Ghana. Its content is considered to be agreed employment terms between individual employees and their employer.[503] Parties to CBA are under an obligation to give information to their members on particulars of agreement the moment conclusion is reached.[504] In reaching consensus on CBAs, Ghana adopts a social dialogue[505] strategy which thrives on the already existing tripartite system.[506]

As a collective agreement deals with the conditions of employees' employment, conclusions which may be reached by unions and representative of their employer(s) or employers' organisations. The following may be included by the representatives of the employees in their collective agreement: the categorisation of employees covered by it, work conditions, work hours, rest time, meal breaks, yearly leave, occupational health as

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[501] Section 129.

[502] In a study conducted to ascertain the living standards of Ghanaians, it was garnered that the informal sector of the Ghanaian economy has 82% economy's employment share. This is according to the 2006 Ghana Living Standards. It is estimated that about 98 % of youth not gainfully employed in a formal economy find themselves in the informal economy. Most persons in the informal economy are self-employed workers with traders. Also, about 88.3 % of them are not protected by collective agreements. In instances as such, employment conditions are determined either by the employer alone or by informal bargaining. See, Equal Times, 2013 . *Collective Bargaining.* Retrieved August 4, 2020, from https://www.equaltimes.org/IMG/pdf/collective-bargaining-en-final_web.pdf*;* Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009.*op.cit*. 10.

[503] Hagan, P.K., 2019. *op.cit.*

[504] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009.*op.cit*.16.

[505] Social dialogue consists of all forms of negotiation, consultation as well as information exchange among employers' representatives, employees and governments on matters of mutual interest in social and economic policy. Ofori-Gyau, K., *op.cit.*

[506] This system, otherwise known as Tripartism is a cooperation process wherein government make consultations and involves employers' and employees' representatives.

well as measure taken for safety, the remuneration including the mode of calculating employees' remuneration, the probationary period with its conditions, the period of notice of employment termination, transfer as well as discipline. It can also include the process of avoiding and settling disputes which arise from interpretation, application including how agreement is administered, the principle of equating remuneration to productivity.[507] The content of collective agreement arrived at supercedes the any contract terms except the latter is more in favour of the employee.[508]

The Ghana Trade Union Congress is responsible for coordinating as well as providing guidance to trade unions. The Congress adopts the national with sectorial trends, including their practices, in achieving this.[509] Essentially, parties to CBA have the obligation of negotiating in good faith.[510] They must make disclosure of all information relevant to the subject matter and make every reasonable effort to reach an agreement.[511] The aspects of a collective agreement which influence an employee's employment terms will still be effectual notwithstanding the CBA's termination, as long as there is no variation of such terms by any other agreement or any legislative Act.[512] The Labour department is accountable for overseeing implementations of working conditions reached in collective agreements.[513]

An agreement a trade union negotiates on will relate to all employee members. An agreement reached between the parties[514] is expected to be written and the authorised members of the committee, serving as representatives of each party, must append their signatures. Deposits of copies of such agreements will be left at the National Labour

[507] The issues a typical agreement covers are wages with salaries, allowances with bonus, interest-free loans, conditions of service, social security (pension), free medical care for employees with immediate relatives of theirs (spouse and children), maternity leave with full pay, education bursaries (employees with dependants), free or subsidised housing and transportation including annual leave, bereavement leave, casual leave, sick leave, all forms of leave come with payments. Others are allowance for funeral undertaking, meals allowance, long service award, overtime , as well as severance award. See, Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.*43;My WageGhana, *Collective Agreements.* Retrieved August 4, 2020, from https://mywage.org/ghana/labour-law/employment-security/collective-agreements

[508] It is irrelevant if that contract was arrived at before the CBA. Section 105(4)

[509] Equal Times, 2013. *op.cit.*

[510] Section 153.

[511] Equal Times,2013. *op.cit.*

[512] Hagan, P.K.,2019. *op.cit.*

[513] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009. *op.cit.*10.

[514] Either of the parties represented in the committee may notify the other to negotiate on matters relating to workers' employment or non-employment. Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009. *op.cit.*16.

Commission (NLC) and the CLO.[515] The category of workers specified in the CBC, as well as their employer become bound by any agreement reached through negotiations. In circumstances the employment contract terms are incongruous with CBA's content, the latter prevails excluding situations an employment contracts terms are more favourable. There has to be compliance with the notice for negotiations within 14 days of the notice being served and the NLC shall give directions to the party served notice to proceed into negotiations without delay if it failed in negotiating or take steps in negotiating under 14 days after service.[516] Through compromise as well as trade-offs, collective agreements are reached by parties involved. In situations there is failure by the parties reaching agreement, the Act stipulates the processes of mediation as well as arbitration through the influence of the NLC.[517] There is adherence to provisions in CBAs in the formal sector particularly where labour is unionised. There is however a challenge in the informal sectors[518] where several workers are unassociated with unions or associations of employees.[519]

It is noteworthy that there has been ratification of 50 ILO Conventions by Ghana,[520] some of which include, the key conventions on the right to form or join a union, minimum employment age, collective bargaining, abolition of forced labour, equal treatment in employment,as well as worst forms of child labour elimination. Those related to the current study, including those stated above, include the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);[521] Right to Organise and Collective Bargaining Convention, 1949 (No. 98);[522] Equal Remuneration Convention, 1951 (No. 100);[523] Tripartite Consultation (International Labour Standards) Convention, 1976 (No.

[515] Section 102(3).
[516] Section 104.
[517] Section 154.
[518] Here, conditions of employment get determined alone by the employer or by informal bargaining of employees through.
[519] ILO, *National Labour Law Profile .1996-2021*. Retrieved July 20, 2021, from National Labour Law Profile: Ghana (ilo.org)
[520] Ghana joined the ILO in 1957. See, ILO, 1996-2021.*National Labour Law Profile: Ghana.* Retrieved July 3, 2021, from http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158898/lang--en/index/htm
[521] Ratified on June 2, 1965.
[522] Ratified on July 2, 1959.
[523] Ratified on March 14, 1968.

144).[524] Ghana, as a signatory to ILO Conventions, there is a semblance of the Conventions and Recommendations' provisions in its Labour Act No. 651 of 2003.[525]

4.4. Some International Legal Instruments on Collective Bargaining

Collective bargaining forms a core principle as well as right in organisations, given recognition as well as protection as such by the international community.[526] Inference of rights of employees to collective bargaining can also be drawn from legislation on freedom of association with employees protection including their trade union rights.[527] The legal instruments in focus are outcomes of policies of some selected international organisations. These include the highly prominent international bodies associated with economic alongside employment issues. These organisations deal specifically with employment matters.

Being intergovernmental organisations and specialised agencies, their scope as well as mission define the technical knowledge which informs their analyses as well as actions with such actions suitable to their institutional mission, their workforce's disciplinary knowledge including members' political consensus or conflict on the priorities to be followed in given periods, prone to changes, every now and then, premised on the political agenda.[528] In practice, organisations give consideration to collective bargaining including industrial relations, from a particular perspective, valuing its diverse dimensions, like political participation, legal rights with economic efficiency.[529] Therefore, in this section of the study, the extent of support expressed by some international organisations with their relevant policies on collective bargaining will be considered.

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[524] Ratified on June 06, 2011. By their status, they are all in force.
[525] Ibekwe, C.S., 2016. *op.cit.*
[526] Visser, J., Hayter, S. and Gammarano, R. 2017. *Trends in Collective Bargaining Coverage: Stability, erosion or decline?* Geneva: ILO. 1. Retrieved August 20, 2020, from https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_409422.pdf
[527] Okene, O.V.C., 2009. *op.cit.*
[528] Pedersini, R., 2019. International organisations and the role of collective bargaining, *Transfer*, 25.2:181–203.
[529] Pedersini, R., 2019. *ibid.*

4.4.1. ILO Conventions and Recommendations[530]

Garnering from the significance of collective bargaining in resolving industrial disputes and reaching agreements between employers and employee representatives, the ILO Conventions and Recommendations have been set out to take cognisance of collective bargaining's importance and also strengthen workers' rights, through their unions, to be part of collective bargaining.[531] They also give parameters for the usage of collective bargaining.

Importance of freedom of association in addition to collective bargaining rights as fundamental human and trade union rights is acknowledged by their inclusion in relevant ILO Conventions.[532] The ILO[533] is the leading authority on international labour standards. It makes provisions for primary human rights tools which guarantee and advance the right to collective bargaining[534] as a well-established human right.[535] The organisation represents a vision of worldwide, humane conditions of labour I n attaining social justice with harmony amongst sovereign states.[536] The ILO[537] has always deemed freedom of association inclusive of collective bargaining right as part of the main rights which are significant to its mission. Being a fundamental right, importance of collective bargaining right has been time and again recognised by the ILO Committee on Freedom of Association.[538] Hence, it is

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[530] A convention sets the essential principles ratifying soverign states are to implement. A recommendation that relates to is supplementary to the convention by making provisions for guidelines on its application. Recommendations can also be autonomous, that is, not linked to any convention. ILO, 1996-2020. *Conventions and Recommendations.* Retrieved December 28, 2020, from http://ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations

[531] ASUU, 2017. *op.cit.* 206.

[532] Including the right of workers to strike. See, Njuh Fuo', O. and Ndiva-Mongoh', M., 2010. Compliance with international instruments on the regulation of trade unions: the case of Cameroon. *Cameroon Journal on Democracy and Human Rights (CJDHR)* 4.2:64-80.

[533] In 1919 the ILO was established forming part of the Treaty of Versailles. It served as a response of the international community to the First World War. At the start of the Second World War, there was an affirmation and expansion of the organisation's role, making it to form part of UN's specialized agencies. A unique feature of ILO is being a tripartite body made up of representatives of employers, labour and government. See, Davies, A.C.L., 2004.*op.cit.* 57; CIPM, 2018. *op.cit.* 115; Alli, W.O., 2018. International Labour Organisation (ILO) at 100: ILO, Domestic Labour and Poverty Alleviation in Nigeria. *ASUU Journal of Social Sciences.* 5.1&2:1-29.

[534] Dawodu, A.A., George, O.J., Akaighe, G.O. and Afolabi, B.T, 2017. Collective Bargaining Challenges in Nigeria Public Universities. *Ilorin Journal of Human Resource Management (IJHRM)* 1.1:42-59.

[535] Okene, O.V.C., 2009. *op.cit.*

[536] Alli, W.O., 2018. *op.cit.* 5.1&2:1-29.

[537] ILO is a UN agency whose operation is in a tripartite form. That is, it deals with governments, workers, employers. Its mission includes, Labour protection, freedom of association, collective bargaining right with its main focus on Labour law, industrial relations. Pedersini, R., 2019. *op.cit.*

[538] Okene, O.V.C., 2008. *op.cit.* 29-66.

entrenched in the ILO Constitution and 1998 ILO Declaration on Fundamental Principles and Rights to Work reaffirms it.[539] ILO has established international standards which make provisions for employees' rights to voluntary and free collective bargaining.[540] This right to bargain collectively, member nations are obligated to respect, foster as well as in good faith realise.[541]

ILO, by its standards and technical cooperation activities in several nations, aside from playing a crucial part in the promotion of collective bargaining, has equally fostered the growth ofcertain forms of bargaining procedures, most especially the context of tripartism.[542] Furthermore, through its conventions and recommendations, it has laid a legal blue-print for guiding member-states in enacting domestic laws as well as made provisions for mechanisms for facilitating collective bargaining practices.[543]

This Organisation has several instruments which deal specifically or otherwise with collective bargaining alongside issues related. These instruments include, Collective Agreements Recommendation, 1952, No. 91; Freedom of Association and Protection of the Right to Organise Convention, 1948, No. 87; Labour Relations (Public Service) Convention, 1978, No. 151; Right to Organise and Collective Bargaining Convention, 1949, No.98; Workers' Representatives Convention, 1971, No.135, Collective Bargaining Convention, 1981, No.154; Voluntary Conciliation and Arbitration Recommendation, 1951, No.92; Rural Workers' Organisations Recommendation, 1975, No. 149; Labour Relations (Public Service) Recommendation, 1978, No. 159; and Collective Bargaining Recommendation, 1981, No. 163.[544] Conversely, only a few of the above instruments, for the purpose of this study, will be analysed.

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[539]ILO, 2020. *Collective Bargaining and Labour Relations.* Retrieved August 17, 2020, from https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang--en/index.htm.

[540] ILO provides the main human rights mechanism guaranteeing and advancing collective bargaining right globally. See, Okene, O.V.C., 2010. *op.cit.* .4.4:61-103.

[541] Gernigon, B., Odero, A. and Guido, H., 2000. *Collective Bargaining: ILO standards and the principles of the supervisory bodies. Geneva:* ILO Office. 75.

[542] Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit*. 5.

[543] Okene, O.V.C., 2009.*op.cit.*

[544] Gernigon B., Odero, A. and Guido, H., 2000.*op.cit.*

Since 1919, ILO has utilised its Conventions, Recommendations[545] as legal frameworks in pushing back aggressive advancement of industrial tyranny, injustice socially including abuse of rights.[546]

4.4.1.1. ILO Constitution

The ILO is constitutionally mandated to put in place, as well as handle, international labour standards. It also gets support universally and recognition in ensuring the advancement of fundamental rights in the workplace as an expression of its constitutional tenets.[547] Remarkably, one its main mandates[548] is promoting collective bargaining worldwide[549] and its constitution gives recognition to collective bargaining rights in an organisation. Credence is given to its importance in the Declaration spelling its aims and purposes otherwise regarded as the DECLARATION OF PHILADEPHIA which is a part of the constitution. In recognising collective bargaining as an obligation, Part III of the Declaration affirms the organisation's obligation in furthering, among sovereign states, programmes that will aid the attainment of right to bargain collectively's effectual recognition.[550] Essentially, there has been an effective recognition of collective bargaining by the ILO Constitution.

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[545] At times, recommendations could be standing on its own, not linked to any Convention. See, ILO.1996-2021. Conventions and Recommendations ILO. Retrieved July 5, 2021, from https://www.ilo.org./global/standards/introduction-to-international-labour-standards/conventions-and recommendations/lang--en/index.htm

[546] Wabba A.P and Kaigama, B.B., 2019. *NIGERIA LABOUR CONGRESS & TRADE UNION CONGRESS Another 100 Years of Struggle for Jobs, Dignity and Social Justice in Nigeria*. May Day Address of the President of the Nigeria Labour Congress; Comrade Ayuba P. Wabba, mni And President of Trade Union Congress; Comrade Bobboi Bala Kaigama. Presented at the 2019 May Day Celebration Organised by the Nigeria Labour Congress and Trade Union Congress at the Eagles Square, Abuja. Retrieved January 31, 2020, from https://www.google.com/url?sa=t&source=web&rct=j&url=https://ituc-africa.org/IMG/pgf/final_2019_may_day_address_of_organised_labour_in_nigeria.pdf

[547] ILO. *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.* Retrieved August 17, 2020, from https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm

[548] This mandate was put in place in 1944 in Declaration of the Philadelphia.

[549] ILO, 2013. *Collective Bargaining in the Public Service A way forward.* Geneva: ILO.75.

[550] ILO, 1998. *Constitution of the International Labour Organisation and Standing Orders of the International Labour Conference*.Geneva:ILO.23-24.

4.4.1.2. Convention on Freedom of Association and Protection of the Right to Organise, 1948, No. 87 [551]

Employees often establish and belong to trade unions to utilise their strength in bargaining collectively with an employer for satisfactory work conditions. For employees's right to associate with a union to be effectual, the union must possess the rights it needs in furthering the interests of its members.[552]

This convention was the first all-encompassing international instrument on collective bargaining, it serves as the notable source of workers' right to collectively bargain.[553] Promulgation of this convention has been the theme of extensive discussions on the meaning, purpose as well as collective bargaining's relevance as an effectual instrument for peaceful labour relations.[554] In *Schmidt and Dalstrom v. Sweden,*[555] there was an affirmation of this right. There, the European Court of Human Rights gave backing to the assertion that freedom of association suggests unions' liberty in engaging in undertakings in protecting their members' interests, and which by inference, includes right to bargain collectively. Therefore, freedom of association for an organisation's workforce includes collective bargaining right.[556] This convention equally provides legitimacy for trade union activities.[557] Nigeria featured among the early African nations to ratify ILO[558] Conventions 87 and 98 on Freedom of Association, Rights to Organise and Right to Collective Bargaining. Nigeria ratified Convention 87 on October 17, 1960.[559] Being progressives, its founding fathers featured these conventions in the nation's grundnorm.[560]

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[551] This was ratified by Nigeria on 17 October 1960. See, Okene, O.V.C., 2010. *op.cit.*4.4:61-103.
[552] Davies, A.C.L., 2004. *op.cit.*176.
[553] Okene,O. V.C., 2008.*op.cit.*
[554] Makinde, O.H., 2013. Securing a harmonious working environment through effective industrial relations at workplace: The Nigerian perspective. *Business Management Dynamics*.3.2:46-59.
[555] (1980) 1 EHRR 63.
[556] Okene, O.V.C., 2010, *op.cit.*
[557] ASUU, 2017. *op.cit.* 4.
[558] The ILO's commitment, as the singularly tripartite United Nations' agency, over time has been to its core mandate of standard setting for industrial relations, technical cooperation in assisting developing nations as well as systematic pursuit of research, education, including manpower advancement. See,Wabba A.P. and Kaigama, B.B., 2019. *op.cit.*
[559] Lasisi, R. and Lolo, A.,2018. *op.cit*.
[560] Wabba A.P and Kaigama, B.B., 2019.*ibid.*

4.4.1.3. Convention on Right of Workers to Organise and Collective Bargaining, 1949, No. 98[561]

Collective bargaining is premised on the regard for the right to organise as well as give recognition to the right to bargain collectively.[562] This right forms one of ILO's eight fundamental Conventions, guaranteeing collective bargaining as a voluntary process between independent and self-governing parties.[563] This convention supplements certain aspects of Convention on Freedom of Association, No. 87.[564]

This Convention[565]forms the primary source of employees' right to collective bargaining.[566] It pertains to how the right to organise as well as bargain collectively principles are applied**.**[567] Although it does not define collective bargaining, it, however, outlines its fundamental parts through its provision that negotiation occurs for employment conditions to be regulated through collective agreements. It encourages as well as promotes the complete advancement including the utilisation of negotiation machinery which is voluntary between employers and workers' associations for such purpose.[568] It also makes provisions for workers to enjoy protection adequately from anti-union discrimination acts as regards their work.[569]

From the tone of Article 4 of this convention, it can be inferred that ILO has endorsed the voluntariness of collective bargaining between employees and their employers, serving as a medium through which issues of employment conditions are resolved.[570] Aside having freedom to partake in collective bargaining, parties if they prefer must also be, with no interference by the public authorities, allowed to arrive at agreement on terms of theirs.[571]

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[561] It was adopted in 1949 and ratified in Nigeria on October, 17, 1960. Okene, O.V.C., 2009. *op.cit.*
[562] Visser, J., Hayter, S. and Gammarano, R. 2017. *op.cit.*
[563] Visser, J., Hayter, S. and Gammarano, R. 2017. *ibid.*
[564] Emuobo, E. 2020. *op.cit.*
[565] This treaty on July 18, 1951, came into force, although its adoption had been at the Organisation's General Conference, held at Geneva by ILO Governing Body at its thirty-second session on June 8, 1949.
[566] Okene, O.V.C., *op.cit.*
[567] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[568] Gernigon, B., Odero, A. and Guido, H. 2000. *op.cit.* 10.
[569] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[570] Okene, O.V.C., 2009. *op.cit.* Denying employers alongside employees the right to engage in collective bargaining if they wish to do so is not at per with Article 4.See, Creighton, B., 1998. *Rights of Association and Representation*. Encyclopedia of Occupational Health and Safety. Fourth Edition. International Labour Office. Retrieved November 11, 2020, from http://www.ilocis.org/doc.uments/chpt21e.htm
[571] This is however based on particular qualifications for "compelling reasons of national economic interest". See, Creighton, B.,1998. *op.cit.*

When workers choose to establish and be part of trade unions, they should be give recognition for purposes of bargaining collectively with employers. This is for improvvement of their employment terms with conditions.[572]

In spite of the above provisions, Article 6 of this treaty explicitly leaves out public servants involved in state administration from its scope, hence, not entitling them to be part of a collective bargaining process.[573] There equally is a limit to the degree the guarantees provided for applies to the armed forces as well as the police, the determination of which will be by national laws or regulations.[574]This treaty as well focuses on content of collective bargaining, work as well as employment conditions. Excluding specific issues on employment conditions from collective bargaining and measures unilaterally taken by authorities thereby restricting the scope issues negotiable are not compatible with this treaty.[575] This convention also provides legitimacy for trade union activities.[576] Convention No. 98 has been ratified by 164 countries[577] including Nigeria.[578]

4.4.1.4. Workers' Representatives Convention, 1971, No. 135[579]

The scope of this instrument as well as that of the Workers' Representatives Recommendation, 1971, No. 143[580] appears limited to workers' representatives[581] in an undertaking, including their protection and facilities for them to perform their functions. Public employees are however exempted.[582] This convention's subjects include, freedom to associate, collective bargaining as well as industrial relations. Article 1 makes allowance

Dawodu, A.A., George, O.J., Akaighe, G.O. and Afolabi, B.T, 2017.*op.cit.*
[573] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[574] Article 5.
[575] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[576] ASUU, 2017. *op.cit.* 4.
[577] Visser,J., Hayter, S. and Gammarano, R. 2017. *op.cit.*
[578] Atilola, B., 2014. Federal Ministry of Labour Guidelines on Contract Staffing and Outsourcing in The Oil and Gas Sector. *Labour Law Review NJLIR* 8.4:1-21.
[579] It was adopted in 1971 but came into force on June 30, 1973.
[580] This is the recommendation following the Workers' Representative Convention, 1971. Aside from having close contents with the convention, this recommendation as regards its provision that effect might be given to the recommendation through regulations/ national laws / collective agreements, or by other means in line with national practice.
[581] Representatives of workers according to Article 3 of this convention are persons given recognition under national law or practice, either as representatives of trade union such as those elected or designated by unions; or representatives elected as those elected freely by workers of an undertaking in line with national laws or regulations or of collective agreements and functions.
[582] ILO, 2013. *op.cit.* 11.

for protection against prejudicial acts.[583] This includes dismissal depending on their status or activities as representatives of workers or their union membership or participation, so much they conform with extant laws or collective agreements or such arrangements mutually consented to. Through a member nation's legislation or collective agreements, or such other method that aligns with their practice, effect may be given to this convention.[584] Furthermore, this convention is expected to bind ILO members alone, whose ratifications have been registered with ILO Director-General.[585]

4.4.1.4. Collective Bargaining Convention, 1981, No. 154[586]

This Convention with its accompanying Recommendations No. 163's adoption was in 1981, complementary to Convention No. 98.[587] This treaty sets out the measures member-states can utilise in promoting collective bargaining.[588] For promotion of free as well as voluntary collective bargaining, Article 2 of this treaty considers collective bargaining to extend to every negotiation an employer, or employers' organisation(s) has with workers' organisation(s) in the determination of the working conditions with employment terms; and/or regulating workers-employers relations; and/or regulating employers or their organisations relations with a workers' organisation.[589] Article 3 of the Convention, expanding on what the term collective bargaining connotes states that it includes also negotiations with workers' representatives. Conversely, it must be suitable in ensuring these representatives existence is not utilised in undermining the organisation of workers concerned's stance.[590]

Part III of this treaty provides measures to be adapted to national conditions in promoting collective bargaining. The purposes of these measures, as Article 5 provides

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[583] Article 4 states that category of workers' representatives who will be entitled to the above-stated protection as well as facilities made provisions for in this treaty, as collective agreements, National laws or regulations, arbitration awards or court decisions may determine.
[584] Article 6.
[585] Article 8(1).
[586] Entry into force was on August, 11 1983 while it was adopted in Geneva at the 67th ILC Session on June, 3 1981. ILO, 2013. *op.cit.* 218.
[587] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[588] Olulu, R.M. & Udeorah, S. A. F., 2018. *ibid.*
[589]Food and Agriculture Organisation of the United Nations. 2017. *Collective Bargaining in the Banana Industry.* Retrieved August 4, 2020, from http://www.fao.org/3/a-i7153e.pdf
[590] Zarko, N. 2012. *Legal Framework and Existing Practices of Collective Bargaining in Ukraine.*Ukraine:ILO. 12.

include, making collective bargaining a possibility for every employer including their groups in the areas of activities the Convention covers; there should be a progressive extension of collective bargaining to all matters covered by Article 2 of this treaty; encouraging establishment of rules of procedure agreed to by workers' and employers' organisations; the absence of rules or their inadequacy or inappropriateness that govern the procedure to be used for collective bargaining should not hamper it; bodies with procedures for settling disputes should be conceived such that they contribute to the promotion of collective bargaining.[591]It must be noted that these measures,[592] in promoting collective bargaining, will in no way be neither conceived nor applied to hinder collective bargaining freedom.

Furthermore, the convention makes clarifications that its provisions in no way preclude the industrial relations operations where bargaining occurs in the machinery or institutions' framework of conciliation and/or arbitration, where parties participate voluntarily.[593] In the private sector as well as public service, this convention fosters collective bargaining.[594]

Premised on ILO standards with the principles advanced by its supervisory mechanisms, majorly it has advanced the universal consolidation of the framework for having collective bargaining for its viability, its effectiveness as well as preserve its adaptability always, including periods of social, political with economic changes and at the same time guarantee a balance between parties with chance for social progress. This framework is principally anchored on party autonomy principle as well as free and voluntary nature of negotiations they get involved in [595] and as ILO instruments, collective bargaining serves as the process which leads to determination of a collective agreement.[596]

Regardless of Article 6 of the Right to Organise and Collective Bargaining Convention (No. 98) providing an exclusion clause on public servants involved in state

[591] This makes provisons for the most detailed international statement of the responsibilities of the state as regards collective bargaining. See, Davies, A.C.L., 2004. *op.cit.* 177.
[592] Article 8.
[593] Article 6; Olayinka, C., 2016. Collective bargaining as tool for industrial harmony. *TheGuardian.* Retrieved on November 11, 2020, from https://guardian.ng/appointments/collective-bargaining-as-tool-for-industrial-harmony/
[594] Okene , O.V.C., 2010., *op.cit.*
[595] Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit* .5.
[596] Gernigon, B., Odero, A. and Guido, H., 2000. *ibid.* 9.

administration not being able to engage in collective bargaining. Collective Bargaining Convention (No. 154), in 1981, made considerable progress by the public service's inclusion[597] in the collective bargaining process.[598] In essence, this convention also aids collective bargaining for public employees, including other techniques permitting their representatives in participating in how their employment conditions get determined. Importantly, it stipulates the method of settling disputes.[599] In complementing Convention (No. 98), this treaty, alongside its Recommendation No. 163 sets out measures member-states could adopt in promoting collective bargaining.[600]

Summarily, this ILO instrument focuses on the content of collective bargaining, terms for determining work conditions with employment terms, employers have with workers organisations excluding employers and workers regulations.[601] It is noteworthy that Nigeria has ratified the Collective Bargaining Convention, 1981 with its Recommendations.[602]

4.4.1.5.1. Recommendation No. 163[603]

This recommendation is the accompanying Recommendation of Convention (No. 154). It borders on collective bargaining promotion. As regards bargaining level in an organisation, this recommendation stipulates that, if necessary, measures which are adapted to national conditions should be embarked on, to make collective bargaining possible at any level, with branch activity, establishment, the undertaking, the industry, the regional or national levels.[604] In essence, decisions on the stage that collective bargaining between an employer and employees or those representing them would be effected is to be made by the parties.[605]

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[597] Excluding the armed forces and the police.
[598] However, there is a condition where special modalities of application can, through national laws or regulations or practice, be fixed.
[599]Olayinka, C., 2016. *op.cit.*
[600] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[601] Olulu, R.M. & Udeorah, S. A. F., 2018. *ibid.*
[602] Lasisi, R. and Lolo, A., 2018. *op.cit.*
[603] Its adoption was in 1981 with the Collective Bargaining Convention (No. 154) in complementing ILO Convention (No. 98). See, Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[604] ILO: Collective Bargaining Recommendation, 1981.
[605] Okene, O.V.C., 2010, *op.cit.*

4.4.1.5.2. The Collective Agreements Recommendation, 1951 (No. 91)

Recommendation 1951, No. 91 pertains to issues concerning collective agreements. This recommendation puts into consideration, where suitable, with consideration for national practice, the existence of measures in extending the application of all or specific stipulations of a collective agreement to every employer with employees, contained in an agreement's industrial and territorial scope.[606]

This recommendation further states, in relation to disputes bordering on how collective agreement should be interpreted, submission of disputes which arise from collective agreement being interpreted should be made through an appropriate settlement procedure set up either by the parties' consensus or legislation under appropriate national conditions. On the bindingness of a collective agreement, Article 3(1) of this Recommendation provides that they should be binding on signatories to it as well as those whose interest the agreement is reached. In addition, there should be no inclusion of stipulations contrary to the collective agreement's content in contracts of employment by workers and employers bound by a collective bargaining.

These treaties, together, inform policies adoption which foster collective bargaining thereby supporting employees' inclusive coverage through collective agreement.[607] They all give legal backing to collective bargaining.[608]

ILO's mission is fostering social justice as well as universally recognised labour and human rights.[609] It engages some tools to achieve this. In achieving its purpose, it works with governments, employers and representatives of employees. It has its primary technical knowledge entrenched in labour law with social protection, including industrial relations. Strengthening tripartism and social dialogue forms one of its objectives used in achieving its mission goals. Recently, there was a reassertion of this organisation's perspective in the report, Work for a Brighter Future prepared by the Global Commission on the Future of Work.[610] According to the report, all employees and employers must have the liberty to

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[606] Visser, J., Hayter, S. and Gammarano, R. 2017. *op.cit.*
[607] Visser, J., Hayter, S. and Gammarano, R. 2017. *op.cit.*
[608] ASUU. 2017. *op.cit.*206.
[609] ILO. 2019. *Mission and impact of the ILO.* Retrieved January 16, 2020, from https://www.ilo.org/global/about-the-ilo/missionand-objectives/lang–en/index.htm .
[610] This is a political document that the Commission put up for the celebration of 100 years of ILO establishment drafted. Involved in these were, academics,political leaders, trade unionists, employers, NGO representatives including international organisation officers. The document is for investing in institutions of

associate, the right to bargain collectively, with the state guaranteeing those rights.[611] It further states that, social dialogue with collective bargaining perform a major role in building resilience as well as adaptation.[612] It suggests that collective bargaining as a fundamental right is as well a powerful instrument for economic success with social equity, aiding transformational change.[613] Considering that ILO regards accessing collective bargaining as an essential labour right, it reckons it as a contributory factor to several positive results, including growth, equality democratisation as well as workplace participation, productivity growth, diminishing the gap in gender pay amongst others.[614]

The ILO supports governments in fulfiling their international obligations.[615] These obligations include, respecting, promoting, as well as realising an effectual recognition of the right to bargain collectively. It equally supports them in taking measures at encouraging the complete development of voluntary negotiations machinery. This assistance, made up of a supervisory system, assists in ensuring the application of conventions already ratified by member soverign states.[616]

As aforementioned, ILO, over time has, consistently deemed freedom of association with the right to collective bargaining as part of its core rights of its mission. It forms a most significant part of the Decent Work Agenda (DWA) of ILO.[617] Furthermore, the Organisation's Committee on Freedom of Association, has acknowleged the import of the right to bargain collectively and once made a declaration that, the right to freely bargain with employees as regards work conditions forms an indispensable component in freedom of association, and trade unions should possess the right, through collective bargaining or other lawful medium, in seeking to improve the living as well as work conditions of persons trade unions represent. in addition, there should be no interference from public authorities restricting this right or causing hinderance to its lawful exercise.[618]

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work, including seeing to workers and employers collective representation through social dialogue as a public good, promoted through public policies. Pedersini, R., 2019. *op.cit.*

[611] Global Commission for the Future of Work, 2019. *Work for a Brighter Future*. Geneva: ILO. 12.

[612]Global Commission for the Future of Work, 2019. *ibid*. 33.

[613] Global Commission for the Future of Work, 2019. *ibid*. 42.

[614] Pedersini, R., 2019. *op.cit.*

[615] The recognition as well as promotion of parts workers' representation play and collective bargaining are in all position papers and documents of ILO. These documents contain detailed analyses focusing on collective bargaining. Pedersini, R.. 2019. *op.cit.*

[616]ILO, 2015. *op.cit.*29.

[617] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P. 2009. *op.cit.*10.

[618] ILO Report, 1960. No. 44, Case No . 202, paragraph 137. Okene, O.V.C., 2009. *op.cit.*

The Declaration on Fundamental Principles and Rights at Work was adopted by ILO in 1998. Item 2(a) considers as a necessary workers' right the freedom of association alongside the right to collective bargaining effectively recognised.[619] It is required of all its members to see to the promotion, respect, and realisation in good faith, in line with their Constitution these principles notwithstanding if they have done a ratification of the convention or not. This is conditioned on their membership. The principles that were made reference to include, the freedom of association with effectively giving recognition to collective bargaining right, effectively abolishing child labour, elimination of forced and compulsory labour, with equal remuneration including eliminating discrimination in occupation and employment.[620]

Nigeria, being an ILO member nation,[621] is subject to its diverse international labour standards and obliged, under international laws, to obey.[622] Notwithstanding that there has been some ratification of some of its conventions and recommendations on collective bargaining in Nigeria and largely labour laws and practice in Nigeria have been influenced by them,[623] it is obvious from the incessant strike actions the nation is confronted with that collective bargaining has neither been properly nor proactively harnessed.[624]

4.4.4. African Charter on Human and People's Rights Act, 1981[625]

This Charter neither specifically provides for right to collective bargaining nor for trade union rights. Nevertheless, a combined assessment of its Articles 10 and 15 makes provisions for the support, including the basis for collective bargaining.[626] In its Article 10, it stipulates that, everyone has the right to free association so long he obeys the law. Article 15, on its part, makes provisions for the right to work under conditions which are equitable and satisfactory as well as every individual's right to receive for equal work, equal pay.

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[619] Moore, E. 2011. *Midlands Voices : Collective Bargaining is a Human Right*. Retrieved July 6, 2021, from https://www.unomaha.edu/college-of-public-affairs-affairs-and-community-service/william-brennan-institute-for-labour-studies/engagement/comment-2011-collective-bargaining.php
[620] Okene, O.V.C., 2009. *op.cit.*
[621] It is in response to some of these ILO standard that the ill-fated Labour Reform Bill was envisaged. Sadly, this Bill, like many other Executive Bills, never saw the light of the day. ASUU, 2017. *op.cit*. 40.
[622] ASUU, 2017. *ibid*. 39.
[623] Uranta, C., 2012. *op.cit.* 147.
[624] Lasisi, R. and Lolo, A., 2018. *op.cit*.
[625] Ratified by Nigeria. See, African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004; Okene, O.V.C., 2010. *op.cit.*4.4:61-103.
[626] Okene, O.V.C., 2009. *op.cit.*

Reading both Articles conjunctively suggests that an employee possesses the right to associate with a trade union without fear, intimidation or victimisation by his or her employer as the charter recognises the right to freedom of association empowering employees to organise.[627] These provisions, by inference, suggest trade union rights inclusion in the Charter's freedom of association. This will, in turn, guarantee right to form, belong to trade unions, allow unions perform their legitimate activities which include representing their members in collective bargaining.[628] A further reference could be made to Article 15, combination with Article 5[629] of this Charter. They both seem to give an assuring respect for dignity, non-exploitation, and equitable and satisfactory work conditions for employees.

The ACHPR guarantees the freedom of association for workers.[630] This charter has been ratified in Nigeria and has been domesticated in line with Section 12(1) of the CFRN stipulating that, except to the level of the enactment into law of any treaty by the National Assembly, no treaty the Federation has with any other nation will have the force of law. *Gani Fawehimi vs. Abacha*[631] gives affirmation to the Charter's binding effect bearing in mind that there has been its incorporation into Nigerian law based on section 12(1), CFRN hence becoming part of Nigerian corpus jurist**.** In that case, the SCN stated, that the ACHPR's provision has a component of Nigerian law as the National Assembly has re-enacted same.[632]

Although, no precise provision is made on trade union rights, the Guidelines for Submission of State Reports, where states have an obligation to make provisions of

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[627] One of the aims of organising as employees is to have a common forum to pursue their collective interests and improve the terms and conditions of employment.
[628] Okene, O.V.C., 2009. *p.cit.*
[629] It states that, all individuals have right to respect of dignity inherent in all persons as well as his legal status' recognition. Exploitation and degradation of man in any form, most especially cruelty, torture, slavery, slave trade, inhuman or degrading punishment or treatment are prohibited.
[630] Ngele, N.E.O., 2016. *Appraisal of Collective Bargaining Process as a Means of Settlement of Labour Disputes in Nigeria: Challenges and Prospects* being the text of an unpublished Dissertation, Department of Public Law, ABU, Zaria.
[631] (2000) 6NWLR (Pt.660) 228 Sc.
[632] In *MHWUN vs. Minister of Labour and Productivity & Ors* ((2005)17 NWLR (Pt.953) , the CA held that there can be no invocation or application of an international labour convention's provision by a Court in Nigeria until a National Assembly Act has re-enacted same. See, Onuegbu, H.C., 2014. *ILO Conventions and the Nigerian Labour Laws.* Being the text of a paper presented at the Chevron Branch of PENGASSAN Workshop on Industrial Relations & Career Management. Limeridge Hotel, Chevron Drive, Lekki, Lagos,November 13, 2014.

information on laws, regulations including the court designated's decisions in promoting, regulating or safeguarding trade union rights, this Charter makes provisions for detailed guidance on rights of trade union. These include, trade unions' right to freely function, employees's right to strike including collective bargaining.[633] The charter also serves as an instrument to enhance the existence, promotion and defence of independent and virile unionism.[634] This Charter one of the legal instruments guiding the operations of ASUU.

4.4.5. The Universal Declaration of Human Rights, 1948

There is protection for workers's right to freedom of association under this Declaration.[635] Article 20 of the UDHR gives recognition to employers and employees' right to peaceful assembly, to join trade unions with accompanying rights of collective bargaining and agreement.[636]As part of the principal ways workers can give protection to their social with economic interests through collective bargaining, UDHR guarantees workers' right to joining as well as forming trade unions,[637] while identifying to be a fundamental human right their ability to organise trade unions.[638]

From above, it can be garnered that the right to collectively bargain is given recognition by international human rights treaties.[639] Notably, some advanced democratic nations honour employees' collective bargaining rights. A clear example is, all member-nations of the European Union allow workers in the public sector to bargain collectively.[640] The basis for consideration of collective bargaining as a human right is premised on the fact that, employees's right to bargain collectively fosters liberty, human dignity, as well as

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[633] Promotion, Protection and Restoration of Human Rights (Guidelines for National Periodic Reports) ACHPR DOC. AFRICOM/HRP5 (IV) (Oct. 1988), section I I (1) - (6), reprinted in African Commission on Human and Peoples Rights, Documentation No. I: Activity Reports 1988-1990), 45; Okene, O.V.C, 2009. *op.cit. ;* Nmehielle, V.O., 2001.*The African Human Rights System: Its Laws, Practice, and Institutions* .New York: Marrinus Nijoff Publishers. 125 ; Murray, R. and Evans, M., 2001. *Documents of the African Commission on Human and Peoples' Rights*. Oxford-Portland Oregon: Hart Publishing. 127- 204.

[634] ASUU, 2017. *op.cit.* 4.

[635] Other International instruments protecting workers' right to freedom of association include, International Covenant on Civil and Political Rights, 1966 (Article 22); International Covenant of Economic, Social and Cultural Rights, 1966 (Article 98) and European Convention for the Protection of Human Rights and Fundamental Freedom, 1950 (Article 11). The Human Rights Committee of the United Nations has made attempts at driving home the point severally that International Covenant on Civil and Political Rights is inclusive of collective bargaining. See, Okene, O.V.C., 2010. *op.cit.;* Moore, E. 2011. *op.cit.*

[636] Okene , O.V.C., 2010. *op.cit.*

[637] Article 23; Okene, O.V.C., 2010. *ibid.*

[638] Moore, E. 2011. *op.cit.*

[639] Moore, E. 2011. *ibid.*

[640] Moore, E. 2011. *ibid.*

workers' autonomy by granting them the chance in influencing the putting in place of workplace rules, hence gaining a level of control over their work which forms a major aspect of their lives.[641]

Labour practices in Nigeria are largely influenced by international best practices.[642]The aforementioned international organisations, with their legal framework have played notable roles in upholding the concept of collective bargaining and defending interests of workers. Conversely, it is apposite for member-countries, especially Nigeria, being the primary focus of the study, to take cognisance of the fact that collective bargaining is central to industrial relations. Considering that the Constitution has conferred on the NICN the power and jurisdictional competence to apply international best practices and laws in Nigeria,[643] the government should be seen to practice the art and not relegate it to the background. Adherence to international standards and policies while reviewing the national obsolete laws, will in no small measure foster workplace harmony.

[641] *Health Services and Support-Facilities Subsector Bargaining Association v. British Columbia,* (2007) 2 S.C.R. 391; Judy F, 2008. The Supreme Court of Canada and the Right to Bargain Collectively: The Implications of the Health Services and Support case in Canada and Beyond. *Industrial Law Journal*. 37.1; Moore, E., 2011. *op.cit.*

[642] Oyebode, A., 2003. *International Law and Politics.* Lagos: Bombay Publications .45-47; CIPM, 2018. *Nigerian Labour Law.* Lagos :CIPM.22

[643] CIPM, 2018. *ibid.* 22

CHAPTER FIVE

BARGAINING PROCESS TOWARDS INDUSTRIAL HARMONY IN NIGERIAN PUBLIC UNIVERSITIES AND UNRESOLVED LEGAL ISSUES

Much of conventional industrial relations practice centre on collective bargaining described as industrial relations best mechanism.[644] This description ascribed to it is probably due to the perception of its real worth as an industrial conflict management tool, its importance in being a mechanism for grievances resolution in labour-management relations as well as worker participation in an organisation.[645]

5.1. Conceptualising Collective Bargaining

The degree organisations as well as employees are protected by collective bargaining, its evolution with scope have increasingly been the point of attention of labour relations practitioners, policy makers including researchers.[646] Since its scope is a reflection of the level at which management as well as employees have their employment conditions stipulated by collective agreements, it indicates the practical significance of collective self-regulation of parties in labour market.[647]

The expression, collective bargaining, originated from Webb Sydney James,[648] with his wife, Beatrice[649] who were both English Economists and Sociologists.[650] The Webbs describe this concept to be an economic institution having trade unionism functioning as a labour cartel influencing access into trade relations.[651] To them, in any unorganised trades

[644] The Donovan Commission described it as the institutional centrepiece and focal point of British Industrial relations. Onyeonoru, I.P., 2001.*op.cit.*50.
[645] Onyeonoru, I.P., 2001. *ibid*. 50.
[646] Schnabel, C., Zagelmeyer, S., Kohaut, S., 2005. *op.cit.*
[647] It must be noted that, to a certain extent, this indicator is a reflection of employers' associations' power and trade unions including their capacity to determine how employers' relationship with employees and the labour market are regulated. See, Schnabel, C., Zagelmeyer, S., Kohaut, S., 2005. *op.cit*.
[648]1858-1947. Anon., Conceptual Framework of Collective Bargaining. Retrieved March 16, 2020, from https://shodhganga.inflibnet.ac.in/bitstream/10603/114066/9/09_chapter%202.pdf.
[649] 1858-1943.
[650] It was referenced as an antonym to individual bargaining in their 1897 text titled, *Industrial Democracy*.
[651] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit*.40.

the individual workman or employee receives or declines conditions employers offer without communications with workplace counterparts for his industrial input as he makes an individual bargain with his employer. On the other hand, if some workmen agree and delegate representatives to bargain for the entire employee body, there will be an immediate change of position. Rather than the employer making different contracts with individual employee, he meets and settles in a sole agreement the guiding principles all workers would be engaged.[652]

Aside from the Webbs' description of collective bargaining as an economic institution, it has also been conceptualised to be basically a political process with the thought that a union's value to its members is in its economic achievements instead of its capacity in protecting their worth.[653] The Marxists, on the other hand, are of the idea that collective bargaining is for social control in an industry and institutionalised expression of class struggle owners of capital have with labour offerers in capitalist societies.[654]

Notwithstanding the above views on this concept, the term collective bargaining, comprising of the words, "collective" meaning, a team action through representation and "bargaining" interpreted as "negotiating" suggests non-rigid attitude, with mutual "give-and-take" attitude as well as compromise.[655] This concept involves proposal and counter-offers[656] and it is a process that consists essentially of, advancing proposals, discussion of proposals, receiving counter-proposals as well as resolving differences.[657] And as earlier stated, collective bargaining forms a core element of industrial relations.[658] It is forms part

[652] Sur, M., 1965. *Collective Bargaining: a comparative study of developments in India and other countries*. New Delhi: Asia Publishing House.2.; Anon., Conceptual Framework of Collective Bargaining. Retrieved March 16, 2020, from https://shodhganga.inflibnet.ac.in/bitstream/10603/114066/9/09_chapter%202.pdf
[653] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012.*op.cit*.40.
[654] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012.*op.cit*.40
[655] It does not give room for rigidity or take-it-or-leave it attitude of the negotiating parties.
[656] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[657] Lasisi, R. and Lolo, A., 2018. *op.cit.*
[658] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.* 39.

of industrial relations three pillars[659] and it is its centre.[660] On employees' part, collective bargaining suggests a trade union with its leaders while, on the management's side, the employers' representatives or management.[661]This explains collective bargaining as having a dynamic procedure in resolving issues arising from conditions of employment through negotiation. There is also an extension to all negotiations an employer, a group or one or more employers' organisations, and one or more workers' organisations have, in the determination of working conditions and employment terms; and/or regulation of employers and workers relations; as well as regulation of employers or their organisations and a workers' organisation(s) relations.[662] It is representative in nature as those participating in the bargaining process act for parties bargaining, that is, employees and their employers.[663] This is premised on the fact that it is majorly concerned with the work relationship between trade unions being a middleman between employees and employers making it an necessary part of an effective industrial relations system.[664]

Collective bargaining has three dimensions to it, that is, employee organisations known as trade unions, recognised as bargaining agent plus employer or employer associations', agreement negotiations processes, in good faith and socio-economic as well as legal sanctions such as permissive strikes or lockouts.[665] As such, it is only not a process for employment conditions regulation, it is also a multifaceted institution functioning in numerous roles with diverse purposes.[666] As a process of negotiation,[667] it requires certain environmental pre-conditions such as capitalism or a socialistic method of production, with

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[659] Industrial relations can be viewed from four different perspectives. Simply put, it can be viewed from the perspective of employees, their employers, the society including the government. Employees get mainly concerned about good pay, workplace safety, training including job security while their employers are interested in productivity, workforce flexibility, employment laws including conflict management. The society, on its part, is more after living wage, individual's rights, equality of opportunity and work-life balance while government is more interested in unemployment, inflation including the nation's economic growth. See, Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012.*op.cit*. 21.

[660] Conflict prevention with conflict resolution are the remaining pillars. See, Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P., 2009. *op.cit*.10.

[661]Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*

[662] Article 2, Collective Bargaining Convention, 1981, No. 154.

[663]Anon. Conceptual Framework of Collective Bargaining. Retrieved March 16, 2020, from https://shodhganga.inflibnet.ac.in/bitstream/10603/114066/9/09_chapter%202.pdf

[664]Ibietan, J., 2013. *op.cit.*

[665] Hameed, S.M.A., 1970. *op.cit.*.

[666]Conceptual Framework of Collective Bargaining, *op.cit.*

[667] Negotiation entails having formal or informal discussions with the intention of arriving at an agreement. ILO, 2015. *op.cit.* 16.

an advanced growth potential level with economic freedom principles. Also, it requires a democratic political system permitting pressure groups' existence, lobbying activities with pluralistic method of making decisions.[668] It is considered as been not only peaceful and inherently voluntary in nature, it is seen as a means of diffusing tense situations and promoting an orderly resolution of industrial conflicts through discussion between parties in dispute.[669]

Reliance on the principle of "voluntarism" is typical of the Nigerian collective bargaining system. As a voluntary approach wherein an employer and employees can resolve disputes peacefully, it helps in diffusing any form of tension.[670] This concept of voluntary collective bargaining has been accepted from all sides in industrial relations.[671] Whereas trade unions not only serve as representative organisations on which workers are based, they surpass the collectivism of workplaces and localities,[672] and their basic role is overcoming the weakness of individual worker by a substitution of collective bargaining for separate individual bargaining.[673]

An effective collective bargaining requires not only the existence of a capable representative trade union, such that believes in constitutional method of resolving disputes, it also requires using a fact-finding approach with willingness to adopt pristine methods and instruments in resolving industrial disputes. All negotiations should be premised on facts and figures and constructive approach should be adopted by both the parties.[674] Also, a strong yet enlightened management that can integrate the employees, owners, consumers and society or government must exist. The employer must have an agreement with employees based on the organisation's core objectives with provisions on common rights including liabilities. For proper functioning of collective bargaining, there must be no unfair labour practices by the parties. A proper record of issues arising must be kept.

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[668]Hameed, S.M.A., 1970. *op.cit*. 25.3: 531-551.
[669] Prasad, V., 1969, Industrial Relations in Britain, a Review of the Report of the Royal Commission on Trade Unions and Employers Association, *Indian Journal of Industrial Relations*, 4.4:528.
[670] Prasad, V., 1969, *op.cit*. 4.4:528.
[671] Uvieghara, E.E., 2001. *op.cit*. 388.
[672] Elger, A.J., 1989.'The Sociology of Trade Union Organisation and Democracy'.Warwick University as cited in Aris, R. 1998. *Trade Unions and the Management of Industrial Conflict. London*: Macmillan Press Limited. 14.
[673] Dobb, M. 1959. *Wages.* Cambridge University Press. 160.
[674]Vaibhav,V., *Collective Bargaining: Definition, Types, Features and Importance*. Retrieved January 4, 2020, from http://www.economicsdiscussion.net/collective-bargaining/collective-bargaining-definition-types-features-and-importance/31375

On how it should be conducted, collective bargaining is best had at plant-level.[675] This implies that, if more than one plant of the firm exists, there should be a proper delegation of authority by the management to conduct negotiations with a trade union. As the process of bargaining is give-and-take including contract making, its aftermath known as collective agreement regulates relations of the parties involved.[676] No party should have a non-flexible attitude. Each party should negotiate to arrive at an agreement.[677] Such agreements must be written, with all contract terms incorporated therein.[678] For collective bargaining's effectiveness, negotiations must be done in good faith.[679]

5.1.1. Features of Collective Bargaining

While collective bargaining has some characteristic features in itself, there is a principle that underlies this mechanism. The principle of good faith is indispensable in bargaining, implying recognition of unions representing their members, making efforts at arriving at an agreement, getting engaged in real and productive negotiations, keeping clear of unnecesasary delays in negotiations as well as respecting their commitments while putting into consideration the outcome of negotiations in good faith.[680] These features form the core of its operation.

Based on its notable characterisic features, collective bargaining connotes a group action, not an individual or unilateral action, parties involved are represented by their groups;[681] it is also a two-way process whereby those representing the management with those of employees participate.[682] Both parties are afforded the important pre-requisite for a successful collective bargaining of flexibility in attitude of the management as well as the trade union. Rigidity of attitude and unwillingness to accommodate the viewpoint of opposition by either the employees' representatives or employers' cannot be reconciled with

[675] The different levels of collective bargaining will be succinctly discussed in the course of the study.
[676] Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011.*op.cit.*
[677] The employers with employees must understand that differences can be settled amicably without a third party.
[678]Vaibhav,V., *op.cit.*
[679] ILO, 2015. *op.cit*. 16.
[680] Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit.*76.
[681] As a pressure group activity, it regulates rather than replaces individual bargaining. See, Onyeonoru, I.P., 2005.*op.cit*.55; Vaibhav,V., *op.cit.*
[682] As a mutual, give-and-take process, parties involved make proposals and counter proposals in place of a take-it-or leave-it mechanism for disputes settlement. Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.* 39.

collective bargaining.[683] It is equally very vital, dynamic, growing, expanding as well as changing in its style, levels, scope and coverage. As a process and being dynamic in nature, it moves in ideas and is adopted as a technique for resolving conflicts.[684] Its process is also complex as the diverse procedures with techniques adopted, preparation, time for negotiations, bargaining structure, agenda, process for selecting negotiators, ratification, implementation and interpretation of agreement all involved in the collective bargaining process could all be composite.[685] In addition, it strengthens industrial jurisprudence, being a means of industrial jurisprudence,[686] considering the fact that written agreements serve as a guide governing employers', employees' including trade union leaders' attitudes. Such contracts between them form a means of introducing civil rights into the organisation, with requirements that management be conducted by rules in place of arbitrarily taken decisions.[687] At times it can be depicted as a continuing process. This is because it involves grievances settlement in accordance with the agreed procedure in an existing contract.[688] And being a continuous process, it neither begins nor ends with agreement signing; rather it serves as a procedure for discussions, cooperation as well as collaboration, not a transcient solution for conditions which are crisis-prone. It makes provisions for continuous with organised management and trade union relations[689] through the establishment of stable relationships between them.[690] In addition to the above features, collective bargaining is complementary rather than competitive in nature. Every participant has something to offer

[683] Rather, it is fluid, mobile as well as flexible, not in any way static. During the process of negotiation, both parties shift positions, as the situation warrants. This is to avoid deadlock while negotiating. Hence, parties need to be flexible when negotiating. See,Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.* 39.

[684] In place of distributive bargaining, there is productive bargaining adopted. It is more scientific, factual as well as systematic and has moved from plant level to industry including national levels, almost encompassing the gamut of industrial life. See, Vaibhav,V., *op.cit*.; Ibietan, J., 2012. *op.cit*. 3. 1:145-156.

[685] It is a long , complex process due to its ever increasing scope and dynamic nature. Parties also need to be patient as it is could be long ,tortuous with the results unpredictable. Vaibhav,V., *op.cit*.; Okolie, C.N., 2010. *op.cit.*

[686]Anyim C. F., Elegbede T. and Gbajumo-Sheriff, M.A., 2011. Collective Bargaining Dynamics in the Nigerian Public and Private Sectors. *Australian Journal of Business and Management Research*. 1.5:63- 70.

[687] This makes, inevitably, collective bargaining become a means of building an industrial jurisprudence system. Slichter, S. H., 1941. *Union Policies and Industrial Management*, Washington: The Booking Institution.1.

[688] Hameed, S.M.A., 1970. *op.cit.*

[689] Vaibhav,V., *op.cit.*

[690] The most essential aspect of collective bargaining is that it goes on by rules established by a labour agreement. Gardin,er, G. 1945.*When Foreman and steward Bargain*.Newyork:MCGraw-Hill Book Company, Inc.,15-16; Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit*. 39.

that is needed by the other party. While the management has ability to pay higher wages with benefits, workers on their part make greater efforts at production.[691] Also, it is an art, not a science and notwithstanding that it possesses scientific attributes, it is founded on standard practices and procedures and, more appropriately termed an art. This is because its attributes evolve due to changing circumstances.

Any collective bargaining's outcome is dependent on negotiation skill, tactful and intelligent way of data presentation, oratory and handling skilfully emotionally tense situations, hence, making way for atmosphere of trust as well as confidence.[692] As a tool for resolving disputes, it creates an ideal mechanism for resolving several forms of disputes that come up in employee-management relationship.[693] Lastly, it is democratic in nature. Therefore, aside from being a form of industrial jurisprudence is also a form of industrial democracy.[694] And as an institution that gives allowance to freedom of association and discussion for employers and organised workers,[695] it functions as a decision-making and rule making process for governance of industrial life.[696]

5.1.2. Forms of Collective Bargaining

Different models of bargaining relationships have been advanced by various scholars. Walton and Robert McKersie[697] opine that there are four models of bargaining relationships which include, distributive bargaining, intra-organisational bargaining, integrative bargaining and attitudinal structuring. Atimo[698] advanced that there are only

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[691] Vaibhav,V., *op.cit.*

[692] Consultations happen during preparations for parties' demands, negotiation process as well as when ratifying collective agreements.

[693]Its ability to resolve problems is premised on thefact that negotiations imply a balance of forces with continuous contacts suitable in resolving settlements. It must however be noted that at times it can be a main reason for dispute if no agreement arrived at. Vaibhav,V., *op.cit.*

[694] Anyim, C.F., Elegbede, T. and Gbajumo-Sheriff, M.A., 2011.*op.cit.*

[695] It is a form of participation in the workplace.

[696] Being a form of self-government, it upholds democratic virtues of independence and responsibility, coming to stay as industrial democracy's major plank. Where it occurs primarily at the enterprise or plant level, it entails a form of worker participation in decision-making. It has to do with employees' commitment to organisational goals. The ILO's Vienna symposium on collective bargaining in industrialised countries and the commission of the European communities have stated that it is consisdered as a form of participation. See, Ugbomhe O. U. & Osagie N.G., 2019,*op.cit.*; Anon. Conceptual Framework of Collective Bargaining. Retrieved March 16, 2020, from https://shodhganga.inflibnet.ac.in/bitstream/10603/114066/9/09_chapter%202.pdf

[697] Walton, R.E and Mckersie, R.B.,1965. *A Behavioral theory of Labour Negotiations*.New York:Mcgraw-Hill.41-46.

[698] Atimo, A.C., 2000. Practical Human Resources Management as cited in Uranta, C., 2012. *op.cit.* 119.

three distinct models of collective bargaining. According to him, they are Multi-Employer bargaining,[699] Joint Consultative Committees and National Public Negotiating Council (NPSNC).[700] Although there are several types of bargaining, only some of these typologies are commonly used. They include, Integrative bargaining, Distributive bargaining, Concessionary bargaining, Continuous bargaining, Fractional bargaining, Individual bargaining and Conjunctive and Cooperative bargaining.[701] Noteworthy is that each of these models is distinct by its own functions for the parties involved in negotiations and has its own identifiable set of instrumental acts.[702]

For this study, six models will be adopted. This is because of their broader and more encompassing scopes.

i. Integrative bargaining[703]

This model of bargaining entails the negotiation of more than one matter in an atmosphere of give-and-take, where both parties benefit.[704] Simply put, it involves negotiations of any issue on which an employer as well as trade union may gain or, at least, neither of them loses.[705] Both parties offer solutions that could resolve their differences.[706] For instance, employer and employees' representatives may negotiate for an improved training programme, safety matters which aid protecting the health and security of employees simultaneousy assisting the management in diverse ways[707] or offer a better job evaluation method.[708] The conducts of both parties, however, differ because of mutual recognition of common issues.[709]

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[699] This involves the organised private sector.
[700] This is for public sector employees and governments at the federal and state levels.
[701] These forms of bargaining are at times referred to as models of bargaining or negotiation process. Otobo, D., 2005. *op.cit.*
[702] Walton, R. E. and Mckersie, R.B., 1965. *op.cit*.41-46.
[703] This is otherwise known as cooperative bargaining. See, Course Hero, *op.cit.*
[704] The other side of integrative bargaining is the practice by companies, when the reverse of the above is the case and high dividends are declared, the management might still oppose passing on some of the profits on to their employees. See,Onyeonoru, I.P., 2001. *op.cit*.74; Uranta , C., 2012. *op.cit*. 120.
705 Course Hero, 2020. Key Concepts- Dimensions of Bargaining Structure. Retrieved March 23, 2020, from https://www.coursehero.com/file/pp1skdkdj/6-forms-of-collective-bargaining-process-generally/
[706] Fashoyin, T., 1992. *op.cit*.138.
[707] Fashoyin, T., 1992. *op.cit.* 138.
[708] This model of bargaining has further being described as the Variable-sum game. See, Walton, R. E. and Mckersie, R.B., *op.cit.*
[709]Such issues could arise under adverse economic conditions or when there is stiff competition from foreign companies and some trade union officials would, to ensure the survival of the company or achieve greater

ii. Distributive bargaining

This form of bargaining represents a negotiating situation where a party only gains at the expense of the other. It is a model of bargaining described as the *fixed-sum game.*[710] Parties are usually in conflict over a resource issue.[711] Most substantive issues are categorised here in real-life negotiations.[712] It is often adversarial, involving disagreement about fixed amount of resources.[713]Some of the divisive economic issues under it involve, daily wage rates, salaries, piecework rates, holidays, overtime pay, fringe benefits.[714]

iii. Conjunctive and cooperative bargaining

Conjunctive bargaining is a result of the requirement that certain agreements, any agreement, may be arrived at for the purposes for which the management and the union depend may continue.[715] The terms of relationship between the parties involved, dealing with divergent issues, is that each party's interest is secured to the degree of its relative bargaining power.[716] Furthermore, this form of collective bargaining culminates in a situation where both parties share the rewards and costs.[717] Cooperative bargaining, on the other hand, denotes where there is recognition that there is cooperation between both parties. There ia an effective attainment of objectives by each party when the support of the other is

competiveness, make agreements on productivity, redundancies, layoffs, cut-back on payments made on overtime done and including other hours of work. Uranta, C., 2012. *op.cit*.119-120.

[710] Walton, R. E. and Mckersie, R.B., 1965. *op.cit*. 41-46.

[711] Onyeonoru, I.P., 2001.*op.cit*. 74.

[712] Fashoyin, T. 1992. *op.cit.* 139.

[713] Onyeonoru, I.P., 2001. *op.cit*. 74.

[714] These issues divide parties involved in the bargaining process and someone's gain is the other's loss.Uranta, C., 2012. *op.cit*. 119.

[715] This then leads to a working relationship where parties agree to make provisions for requisite services in recognition of specific seats of authority, and in accepting each other's responsibilities. See, Chamberlain, N. W. & Kuhn, J. W. 1965. *Collective Bargaining, New York*: McGraw Hill Book Company. See, Uranta, C., 2012. *op.cit*.120.

[716] Also, whatever coercive powers are at the disposal of the parties involved in the bargaining process, each party wrests the maximum advantage possible, which having regards for the effect of such actions on the other party. See, Uranta, C., 2012. *op.cit*. 120.

[717] Another perspective to this form of collective bargaining is that, it puts up a an industrial jurisprudence system where management with employees sort out their differences rationally and peacefully. It also ensures getting the minimum level of corporation required. This is because any failure by the organisation translates into a complete incapacity to satisfy the objectives of both the employer and the employees. Chamberlain, N. W. & Kuhn, J. W. 1965. op.cit. as cited in Uranta, C., 2012. *op.cit*. 120.

won.[718] Closely linked to conjunctive form of bargaining, both forms lay more emphasis on common interests of both parties.[719]

iv. Individual bargaining

Individual bargaining involves an employee seeking a level of improvement in his conditions of employment.[720]

v. Attitudinal restructuring

This form of bargaining is centered on the quality and type of relationship the trade union and management have. At the negotiation table, it is subject to the direct and indirect attempts of each side in influencing the behaviour of the other party.[721] It involves the process of shaping and reshaping some attitudes between trade union and management while developing a good bargaining environment and createing trust and corporation among the involved parties.[722] In essence, the attitudes of negotiators can influence the behaviour of their opponents.[723] In Nigeria, in several employer-employee relationships, it has been observed that the insistence of the management that trade unions should approach the bargaining table with facts and documents, instead of table banging and sentiments, has imposed the consciousness on trade unions to back-up their demands with data and statistics.[724]

vi. Fractional bargaining

This bargaining form is otherwise identified as Intra-Organisational Bargaining.[725] It implies the sectional activities of some work groups who as s result of being strategically located in the workflow, or the special skills they possess, pursue supplementary agreement

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[718] Chamberlain, N. W. & Kuhn, J. W. 1965. *op.cit.* ;Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*

[719] This mode of bargaining is premised on the fact that both parties depend on themselves with set objectives achieved more effectively if they support themselves. Chamberlain, N. W. & Kuhn, J. W. 1965.*op.cit*. as cited in Uranta, C., 2012. *op.cit*. 121.

[720] Uranta, C., 2012. *op.cit*. 123.

[721] Fashoyin, T. 1992. *op.cit*.140.

[722]In situations where there are backlogs of bitterness between parties on attitudes like trust and distrust, friendliness or hostility between labour and management, attitudinal restructuring will be required to maintain smooth and harmonious relations. Course Hero, *op.cit.*

[723] Attitudinal restructuring is mostly influenced by factors such as the technical and economic status of an organisation, its social values and the personalities of negotiators. See, Walton, R. E. and Mckersie, R.B., 1965.*op.cit*. 41-46.

[724] Fashoyin, T. 1992. *op.cit*.140.

[725] Walton, R. E. and Mckersie, R.B., 1965.*op.cit.*

in behalf of their group alone.[726] It focuses on the internal negotiations which take place within each side of the relationship between management and trade union, since neither side represents a homogenous entity.[727] On the part of the trade union, the often conflicting interests of individuals and groups need to be reconciled amicably before approaching the negotiation table.[728] The management, on its part, must reconcile the conflict of interests of individuals and groups.[729]

5.1.3. Functions, Aims and Objectives of Collective Bargaining

In an ideal situation, where there is reasonable success of operation, collective bargaining is expected to majorly perform three functions. Firstly, it must provide a partial way of resolving economic interests of both the management and the employees which conflict. Secondly, it should enhance the rights, worth including the dignity of employees as industrial citizens. Thirdly, it should make provisons for one of the most crucial bulwarks for the private-enterprise system preservation.[730]

The four main objectives of collective bargaining include workplace democracy, power redistribution, promotion of efficiency including settlement of trade disputes.[731]

i. Industrial democracy: The democratic nature of collective bargaining are brought out by some of its attributes. First of all, aside subjecting employers to the rule of law, collective bargaining has a civilising impact on the environment and work life of employees.[732] Secondly, employees are availed the ability of airing their views, with their concerns while giving them a platform to participate in the self-government in the workplace.[733]

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[726] Such groups are found usually cohesive, having their own informal authority structure.See,Uranta, C., 2012 *op.cit.* 122.
[727]Chamberlain, N. W. & Kuhn, J. W. 1965. *op.cit*. as cited in Uranta, C., 2012.*op.cit.* 123.
[728] This is more pronounced in trade unions of heterogeneous structure. See, Fashoyin, T. 1992. *op.cit.*140.
[729] In employers' associations, a source of claim that seems to be a source of reoccurring strain on cooperation and consensus is the claim that the decisions of these associations are always a reflection of the personal policies of the bigger member-companies, mostly to the detriment of smaller employers. See, Fashoyin, T. 1992 *op.cit*.140.
[730] Harbison, F.,1954. Collective Bargaining and American Capitalism in Kornhauser, A., Et.al. Eds. Industrial Conflict, New York: McGraw-Hill Book Company Inc. 274; Onyeonoru, I.P.,*op.cit*.58.
[731]Okene, O.V.C. 2010. *op.cit.*
[732]Collective bargaining sees to it that employers are not dictatorial but subject to the rule of law thereby democratic.Klare, K. 2000. Countervailing workers Power as a Regulatory Strategy in Collins, H., Et.al. Eds., *Legal Regulation of the Employment Relation*. London: Kluwer .63-70; Okene, O.V.C., 2010.*op.cit.*
[733] Okene, O.V.C., 2010.*ibid.*

ii. Redistribution of power: this is founded on the basis that bargaining power of employers is more often higher to that of individual employees. Due to such in imbalance in power the resulting conditions of employment are unjust. Therefore, collective bargaining is considered as a beneficial mechanism for inequality reduction by redistributing power and resources.[734]

iii. Promotion of efficiency: another role of collective bargaining is aiding the promotion of economic efficiency. This it does by limiting industrial dispute in the workplace.[735] It also boosts flow of information between employees and between employees and management. It heightens morale and increases investments which are firm-specific as collective bargaining gives job security which motivates employees and management to cooperate to increase productivity.[736]

iv. Trade disputes settlemement: this is one of the collective bargaining diverse functions. Being basically a process of rule-making, it sets the rules to be reckoned with when labour is sold and bought.[737]

The major aims of collective bargaining include, accommodating, reconciling and often times reach a compromise on parties' conflicting interests involved in negotiations.[738] Being an essentially rule-making process and a system that connotes a power relationship between organisations, setting the workplace rules just like, by legislation , jobs are regulated by the state. Hence, it is in itself a means of regulating jobs with the employees and employers representatives dividing the task for rules content and their observance.[739] It also serves as a means of correcting some anomalies in industrial relations which have been accepted as norms in the workplace.

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[734] Okene, O.V.C., 2010. *op.cit.*

[735]Okene, O.V.C., 2010.*ibid.*

[736] Some other efficiency attributes of collective bargaining include, the improvement of administration with enforcement of the rights of employees, facilitaing investment for workers'training as well as restricting the employer from discriminating among employees or making opportunistic decisions like sacking some employees before their eligibility for pension rights. See, Okene, O.V.C., 2010.*op.cit*.

[737] Parties make procedural arrangements regulating their relationship including their attitude in dispute settlement. See, Okene, O.V.C., 2010.*op.cit.*

[738] Fashoyin, T., 1992. *op.cit*.103

[739] Adeogun, A.A., 1987. The Legal Framework of Collective Bargaining in Nigeria in Orobo, D. and Omole, M., Eds., *Readings in Industrial Relations in Nigeria*. Lagos and Oxford: Malthouse Press Ltd. 90-91.

5.1.4. The Purpose and Importance of Collective Bargaining

Collective bargaining forms a significant means through which employees seek in satisfying their social and economic interests. Regulating work conditions and employment and the relationship of parties involved is its main purpose.[740] Every arrangement where employees do not hold negotiations with employers individually but collectively through their representatives are covered by it.[741] The employment conditions collective bargaining provides for could include issues around work hours, wages, annual bonus, occupational safety and health, annual leave, maternity leave, discriminatory practices amongst others. Issues bordering on parties relations could be on such matters as facilities for union representatives; procedures for disputes resolution; consultation, cooperation with information sharing, among others.[742] Succinctly put, any matter capable of causing employer-employee industrial disputes is negotiable.[743]

The purpose of collective bargaining has been categorised into three folds. First of all, it is aimed at distributing the yields of the business enterprise in an equitable manner among the employees through their union.[744] Another purpose is to establish a mechanism that gives employees the greatest feasible operating participation when determining production and administrative policies. Also, it provides employees and management the peaceful means to settle amicably their mutual problem and handle changing relationships.[745] The primary reason employees engage in collective bargaining is that, by bargaining collectively with management, a trade union aims at giving effect to its expectations that wages with other work conditions should guarantee an adequate and stable existence and must align with moral dignity as well as physical integrity of everyone, and also secure jobs reasonably.[746] Also, it reduces wage-inequality, bridges the gender pay gap without negatively impacting on employment or economic efficiency of an organisation[747]

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[740] Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit*.75.
[741] Nkiinebari, N. P., 2014. Workplace democracy and industrial harmony in Nigeria. *International Journal of Innovative Research and Development*. 3.1:441-446.
[742] ILO, 2015. *op.cit*. 16.
[743] Nkiinebari, N. P., 2014. *op.cit*.
[744] This would be in form of increased and better working conditions, increased wages, a reduction of the work hours, quality and worthwhile reward to investors and quality products to consumers and customers. See, Ruttenberg, H.J. 1941. Fatigue of Workers. New York: Reinbold Publishing Organisation as cited in Njoku, I.A. 2007, *op.cit.*
[745] Ruttenberg, H.J., 1941. *op.cit*.
[746] Davies, P. and Freedland, M., 1983.*Kahn-Freund's Labour and the Law*. London: Sweet and Maxwell.69.
[747] Equal Times, 2013 .*op.cit.*

while developing a sense of responsibility and self-respect among employees; it heightens their strength, morale and productivity.[748] This aptly summarises the primary aim of employees' involvement in collective bargaining.

Collective bargaining's significance is further emphasised by its conceptualisation by the ILO, as a way of determining conditions of employment an employer, their group or one or more of their organisations, have with one or more representatives of employees' organisation , with the intent of arriving at an agreement.[749] As it marks the end of individual and the starting point for group relations between workers and management,[750] it stands for a fair as well as democratic attempt at settling industrial disputes. Wherever it becomes an accepted way of resolving outstanding issues, industrial unrest with its unpleasant consequences will be minimised.[751] It makes certain that employers and employees possess even voice in negotiations, with the result of fair and equitable bargain.[752]

A successful collective bargaining is a necessity in attaining industrial harmony in Nigeria. Since labour law makes provisions for automatically recognising trade unions for collective bargaining purposes, it can be inferred that an employer must give recognition, in organisation, to registered trade unions and in safeguarding their economic interests, also bargain with them. Closely linked to the duty of conducting negotiations and concluding agreements with a trade union is the duty to give them recognition.[753] Collective bargaining with a trade union given recognition affords for employees to receive decent wages as well as conditions of employment.[754]

5.1.5. Machinery for Collective Bargaining

As earlier noted, the core purport of collective bargaining is to reach an agreement on the conditions of service through a negotiation process employershave with the representatives of employees.[755] Since it is premised on vonluntarism principle, where

[748] Course Hero, *op.cit.*
[749] Onyeonoru, I.P., 2001. *op.cit*.73
[750] Njoku, I.A. 2007. *op.cit*.
[751]Vaibhav,V., *op.cit.*
[752] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit*.
[753] Okene, O.V.C., *op.cit.,* 29-66.
[754] Trades Union Congress, *Guide to Collective Bargaining.* Retrieved May, 21, 2020, from https://www.tuc.org.uk/workplace-guidance/collective-bargaining
[755] Okafor E.E. and Bode-Okunade A.S. 2005. *op.cit.*70.

parties involved decide meeting without a third party inteferring or compelling them to meet, there are machineries in place to ensure a flow in the negotiation process where agreements or disagreements are reached.[756]

In this study, the machinery of collective bargaining will be examined under three phases. These include:

i. Preparation of the demands

Trade unions must conduct some background work to get basic information, facts and figures to buttress their demands. The preparation stage will take into cognisance the current employees' conditions of service, fair as well as unfair labour practices, the state of their standard of living. The comparative treatment of employees in other sectors, the existing state of affairs of the employers[757] and the level to which conditions of service previously agreed on have been implemented by the management will also be taken into consideration. The employers, on their part, may equally have to monitor the preparations made by the trade unions so as to enable them prepare adequately to tackle some of the demand to be made by the trade union.[758]

ii. Presentation of the demands

The need for a good presentation by parties to collective bargaining is important. This is because it could make or mar any demands tabled on the negotiation desk. Those that will represent the trade union must be such who know their onions and are worth their salt such that, in their presentation and delivery, they will command respect by the employers.[759]there should be logic in any presentation, made, must be scientific[760] and methodological in convincing the management and in order to win issues presented.[761]

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[756] In practice, the points over which disagreements are recorded are usually renegotiated until agreements are finally reached. Okafor, E.E. and Bode-Okunade, A.S., 2005. *op.cit.*70.

[757] This will give a basic idea of how well or otherwise they are faring, whether or not they are making profits proportionate to their input and output or not. See, Okafor, E.E. and Bode-Okunade, A.S.,2005 *op.cit.*70.

[758]Okafor, E.E. and Bode-Okunade, A.S., 2005, *ibid.* 71.

[759] Since such representatives will have the mandate of the trade union they seek to represent, they must be mindful of the language of presentation. Any words used must not suggest rascality or be insulting.

[760] This will be based on the level of background work they have done in getting the facts with figures to back up the demands being made.

[761] Okafor, E.E. and Bode-Okunade, A.S.,2005 *op.cit.*71.

iii. Preparation for negotiation.

In preparing for negotiations that will be considered effective, the issues of When, Where, Who, What and How must be put into consideration. The "Where" consideration in this instance, refers to the environment where negotiations will take place. Such an environment to be used must be such that is conducive for the union and employer for a meaningful dialogue. The "When" factor deals with the timing of the presentation.[762] The prevailing economic, political and social conditions must be taken into cognisance. Both parties must be served with enough notice ahead of negotiations.[763] Those to represent the trade union in negotiations should be duly recognised members of the union.[764]This aptly deals with the "Who" aspect of preparation for negotiation. As regards the "What" of preparation for negotiation, the items to be bargained for must be listed in the demands the trade union makes.[765] On "How' the collective bargaining should be perceived, it should not be considered a judicial venue, it should instead be a round-table conference, face-to-face. All issues discussed should be founded on facts and figures. [766]

5.1.6. Collective Bargaining as a Negotiating Process

Being a process whereby employers and representatives of workers conduct negotiations in determining employment coditions between the parties while offering employees labour protection, legitimacy of rules including employers stability, collective bargaining also makes provisions, determined by the social partners, for public authorities, suiting stakeholders' circumstances while relatedly reinforcing minimum standards compliance.[767]

As collective bargaining implies negotiation with agreement, at least two socially distinct groups are needed to make concerted efforts at resolving any differences by consenting to negotiate their terms.[768]

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[762] Negotiations can take place during the office hours of the organisation, preferably in the early hours when no one is stressed. See, Okafor, E.E. and Bode-Okunade, A.S.,2005 *op.cit.*72.
[763] This is often referred to as Bargaining by the Budget. Negotiations are best done best done around the close of an organisation's financial year. This timing is suggested so that demands tabled can reflect in the budget of the following year . Okafor, E.E. and Bode-Okunade, A.S., 2005 *op.cit.*72.
[764] There could be legal advisers and observers from both parties.
[765] The listed items must be in consonance with the labour laws regulating both parties relationship.
[766] Okafor, E.E. and Bode-Okunade, A.S., 2005.*op.cit.* 72.
[767]ILO, 2017. Retrieved August 20, 2020, from https://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_409422.pdf
[768] Makinde, O.H., 2013.*op.cit.*

5.1.6.1. Negotiating Skills and Strategies in Collective Bargaining

Negotiation is an integral part of collective bargaining.[769] In industrial relations, it entails an interactive session by which representatives of management and trade unions contend to reach a consensus on issues of joint concern.[770] It is a conflict-management tool employed by parties for the resolution of conflict. Being a procedure of discussion in reaching an agreement, while negotiating, parties modify their demands with the purpose of achieving a compromise that is mutually acceptable.[771] Three basic elements have been identified in the negotiation process. The first is that, negotiation involves social relations between individuals and groups which are party to collective bargaining. The second entails the representative and communicative functions of negotiation while the third is the existence of differences in power of employer and employees .[772]

5.1.6.2. The Negotiation Process

As a process of conducting negotiations, collective bargaining involves all forms of discussions, informal or formal, having the intent of arriving at an agreement by the parties involved. It is a procedure of jointly making decision which fosters trust with common respect between parties while enhancing the worth of labour relations.[773] It entails the process of meeting, demands presentations, including its discussion, presentation of counter proposals, and at times, threatening and bullying, with the intent of having an agreement.[774] For this study, a ten-step framework will be considered as part of a negotiation process. These include:

1. **The preparation stage/ planning stage**

An essential step in all negotiations is adequate preparation.[775] Being the first step, going into any negotiation without adequate preparation or planning is tantamount to courting failure. Planning entails identifying the objectives negotiators wish to attain. With the intent

[769]Collective bargaining is negotiation but not negotiation is not necessarily collective bargaining. It is ,in other words, is a form of negotiation associated with industrial relations. Onyeonoru, I.P., 2001.*op.cit*.73.
[770] Farnham D.and Pimlott, J., 1995. *Understanding industrial relations*. Eastbourne:Cassell PLC.
[771] Onyeonoru, I.P., 2001. *op.cit*. 73.
[772]Farnham D.and Pimlott, J., 1995. *op.cit.* 412.
[773] ILO, 2015. *op.cit.* 2.
[774]Asamu, F.F., Asaleye, A.J., Ogadimma, A. and Bamidele, R., 2019.*op.cit.*
[775] Onyeonoru, I.P., 2001.*op.cit*.76.

of reaching an agreement as close as possible to the ideal, objectives should be set and priorities listed.[776] For trade union officials, the following steps could be adopted as part of the preparations for negotiation:

a.) State the issues on which negotiations will take place;

b.) Predict and itemise the points the representatives of the management would most likely raise in the context of the issue at hand; and

c.) For each point itemised, assess the most likely settlement of each side.[777]

There are certain questions that must guide a negotiator.[778] These are: What is the nature of the conflict? What is the history of the issue leading to negotiation? Who are those involved and what are their perceptions of the conflict? What are the expectations from the negotiation? What are the goals to be reached? All these will assist in putting the goals in writing and developing a range of outcomes to keep the negotiator focused.[779] The importance of preparing an assessment of the other party's goals and expectations in a negotiation process cannot be overemphasised.[780] Once a negotiator is able to presume the position of the other party, he will be prepared to counter the latter's arguement, supporting his position intelligenty.[781] Another important aspect of preparation is gathering information. This will enable the negotiator gain some lead on the thinking of their counterpart. The information gathered may be used in developing a framework to determine the negotiator's Best Alternative To a Negotiated Agreement (BATNA) and that of the opposition.[782] Any offer received that is lower than his BATNA is better than a deadlock.[783]

2. Definition of ground rules

After making plans and coming up with a strategy, the next step to take is to start, with the other party, defining ground rules and procedures that will influence the negotiation.

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[776] Onyeonoru, I.P., 2001. *op.cit.*76.

[777] Aderogba, K.A., 1987. Union Leader as a Negotiator, in Otobo D. and Omole, M., Eds., *Readings in Industrial Relations in Nigeria.* Lagos: Malthouse Press. 140-141.

[778] These questions are succinctly addressed in this study.

[779] Onyeonoru , I.P., 2001.*op.cit.* 77.

[780] There must be preparations on, What are their likely requests? How entrenched are they likely to be in their positions? What might the opposition be willing to settle on? See, Onyeonoru , I.P., 2001. *op.cit.* 77.

[781] Onyeonoru, I.P., 2001. *ibid*. 77.

[782] The BATNA of a negotiator goes a long way in determining the lowest value acceptable to him for a negotiated agreement.Onyeonoru , I.P., *op.cit.* 2001.77.

[783] The bottom line is this, going into negotiation, armed with the idea of what the other party's BATNA is, if a negotiator is meet the other party's, he might be able to get them to change it. See,Whetten, D.A. and Cameron, K.S., 1995. *Developing Management Skills*. 3rd Edition. New York: Harper Collins. 428.

There must be rules on who will conduct the negotiations, where it will take place, foreseeable time constraints, the issues the negotiation will be limited to, specific procedures to be followed in situations of deadlock. At this stage, the parties are also expected to exchange their initial proposals or their demand.[784]

3. Exchange of information Stage

Each party involved in the negotiation process presents its position on critical issues at this stage.[785] This stage may also involve the exchange of information which should conventionally be two-way with indications of objectives, commitment and intentions. Participants may identify what the other party wishes to attain and the nature of concession it may be willing to make.[786]

4. The Persuasion/Argument stage

This stage is mostly considered as the most-important stage in any negotiation process. It is necessary for parties to use open-ended questions, rather than closed ones, as the negotiation progresses. This is to avoid prejudices as well as to draw out negotiators from the other side. The success of this stage depends on the parties understanding of each other's position, their being able to identify their similarities as well as differences in creating new options including the willingness to come up with a solution which permits all parties to have the impression that their objectives have been achieved.[787] For effective persuasion, it is most important for parties to establish superordinate goals which entails a focus by the parties on what they share in common; there must be a separation of people from the problem at hand;[788] interests and not positions must be focused on;[789] mutual options for

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[784] Onyeonoru, I.P., 2001. *op.cit*. 77.
[785] The position may however be modified in the course of negotiation. See, Onyeonoru , I.P., 2001. *op.cit.* 77.
[786] Onyeonoru , I.P., 2001. *op.cit*. 77.
[787] Hodgetts, R.M. and Luthans, F. 1997. *International Management*. 3rd Edition. New York: McGraw Hill International.
[788] Negotiations will more likely result in mutual satisfaction, if the parties depersonalize their discussion. Onyeonoru, I.P., 2001.*op.cit.* 79.
[789] Positions are the demands made by the negotiator while interests constitute the reason behind the demands. Onyeonoru , I.P., 2001. *op.cit.*79.

mutual gains must be invented;[790] objective criteria must be adopted;[791] and success must be defined in terms of gains and not losses.[792]

5. Signalling Stage

This occurs during the arguing stage as parties weigh-up on each other in search of an acceptable proposal or solutions. Signals are used by parties to indicate to the other that it is willing to move an item to arrive at an agreement. Such movements indicate shifts towards concessions.[793] Signals must, however, not be taken to mean indication of final agreement.[794]

6. The Proposal Stage

Proposing a remedy to a grievance serves as a pointer to the solution as proposals are essential aspects of all negotiations.[795] Rigid proposals stall movements and reduce the chances of reaching agreement among negotiating parties. This, therefore, necessitates the need for proposals to be flexible, tentative to allow for concession.[796]

7. The Packaging Stage

This stage brings together the various positions emerging from the discussions so far in a bid to move negotiations towards viable agreement.[797]

8. The Bargaining Stage

This phase involves gaining something for the loss of another, often known as zero-sum bargaining.[798]

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[790]When parties focus on brain storming alternative, solutions commonly agreed on, dynamics of negotiation shift naturally to collaborative from competitive. Onyeonoru , I.P., *op.cit*. 2001. 79.

[791] Both parties must examine how fairness should be judged rather than seizing opportunities for testing wills. See, Onyeonoru, I.P., *op.cit.* 2001.79.

[792] Onyeonoru, I.P., 2001. *ibid.* 79.

[793] Excellent listening skills are needed to receive signals whenever they are given by the other side during negotiations. Onyeonoru, I.P., 2001. *op.cit*. 80.

[794] Onyeonoru, I.P., 2001. *ibid.* 80.

[795] Initial proposals are often modified during argument while conditional proposals are used in trading concessions.

[796] Onyeonoru, I.P., 2001. *op.cit.* 80. .

[797] Onyeonoru, I.P., 2001. *ibid*.80.

[798] Onyeonoru, I.P., 2001.*op.cit*.80.

9. Closing

A close is necessary where each party has reached the peak of its concession.[799] Closing tactics are very essential in negotiation as it relates to reaching agreements. This stage aims at embracing the need of the other part towards a final resolution.[800]

10. Agreement

This forms the ultimate stage of any negotiation process. It involves granting concessions and leasing out a final agreement. As issues are resolved, they are removed from the bargaining table and attention is focused on the next.[801] It is essential that negotiations are followed up with the intent of implementation by trade union officials or through an implementation committee.[802]

Notably is that there are three levels of negotiation which must be given priority during any negotiation process. These are: what parties, Like to achieve, Intend to achieve and Must achieve.[803] To attain his goals, during the course of a negotiation, a negotiator would not mind letting go of the 'Like' objectives. The 'Intend' objectives are classified as issues expected to be achieved during negotiation while the 'Must' objectives are the minimum expectations from the negotiation, below which the negotiator cannot go.[804]

In any negotiation process, there are specific roles members of a negotiating team must take into cognisance and be decided in advance. These include the roles of a leader who will conduct the negotiation; a summariser who will be posing the questions as well as summarise the progress of the negotiation till date.[805] Negotiating skills are the outcome of ingrained qualities, training and experience.[806] It must be borne in mind at all times that, for an effective collective bargaining, it is pertinent that negotiations are made in good faith.[807]

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[799] Green, G.D., 1994. *Industrial Relations: Text and Case Studies.* 4th Edition. London: Pitman Publishing. 97.
[800] Onyeonoru , I.P., 2001.*op.cit.* 81.
[801] Issues in any agreement should be written down with some explanations and definitions to avoid any misunderstanding or misinterpretation of the agreement. See, Onyeonoru , I.P., 2001. *op.cit.* 81.
[802] Onyeonoru , I.P., 2001. *ibid*. 81.
[803] One could use the code, LIM to represent them .Onyeonoru , I.P., 2001. *op.cit.* 77.
[804] Green, G.D., 1994. *op.cit.* 77.
[805] Of equal importance is the need to have an observer who will not speak but only observes the proceedings. See, Onyeonoru , I.P., 2001. *op.cit.* 77.
[806] Onyeonoru , I.P., 2001. *op.cit.* 81.
[807] ILO., 2015. *op.cit*. 2.

5.1.7. Principles and Conditions Favourable for Collective Bargaining

There are certain principles necessary for effective negotiation in a bargaining process.[808] These include:

1.) Understanding Trade Union principles;

2.) Bargaining awareness;

3.) A knowledge of the realities of industrial power; and

4.) An awareness of bargaining procedures and relationships.

Patience is required by the bargaining parties as the process is normally long, tortuous and its with unpredictable results. Decisions arrived at by unanimity, are reached after discussions with parties usually reaching a consensus that, while negotiations are on going, there should be no industrial action.[809]

Apart from the above-stated principles guiding collective bargaining, in any organisation, there exist certain conditions that favour the process with growth of collective bargaining.These conditions which serve as prerequisite, while carrying out negotiation activities between participating parties, include:

1.) Favourable political and social Climate

For an effective collective bargaining, a political and social climate which is favourable is a necessity.[810] There is a continuous need for the government to foster collective bargaining being a very good means of regulating employment conditions.[811] Additionally, there should be no clamping down on trade union activities.[812]

2.) Freedom of Association

For any collective bargaining, this is essential. In its absence, no collective bargaining can exist as it suggests that workers including their employers possess the right to forming an organisation of theirs in protecting their interests.[813] Parties to any collective

[808] Farnham, D. and Pimlott, J. 1995. *op.cit.*
[809] Nkiinebari, N. P., 2014. *op.cit.*
[810]Smirti C., 5 *Necessary Conditions for Effective Collective Bargaining*. Retrieved March 19, 2020, from http://www.yourarticlelibrary.com/hrm/5-necessary-conditions-for-effective-collective-bargaining/35469
[811] Where the governments restrict trade union activities, there can be no collective bargaining. It has however made headways in resolving workplace disputes in nations where it has gained support of the government and favoured by the public. Smirti C., *op.cit.*
[812] Smirti C., *ibid*.
[813] Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*

bargaining process must possess sufficient level of freedom to aid associating and organising employers into independent unions.[814]

3.) Stability of Workers' Organisation

There must be an attainment of a sufficient degree of organisation by parties to collective bargaining. If the trade union representing employees is weak, employers might see that as an excuse[815] and refuse negotiations with it. Except employees come up with a strong and stable unions, a successful collective bargaining will be a mirage.The strength of a union determines the level of collectve bargaining's effectiveness.[816]

4.) Recognition of Trade Union

Trade unions must be recognised by employers and freedom to associate must exist for collective bargaining to take place.[817] The refusal of employers to recognise an employee representatives greatly complicates the process of collective bargaining.[818] When a union is recognised for collective bargaining, there should be an automatic incorporation of improvements such as increase in pay negotiated by a union to terms of contract, into employees' contract of employment.[819]Dispute negotiation is between labour unions and management. Only on a voluntary basis is third party intervention permitted with the consensus of the parties involved.[820] The possibility of any constructive consultation between the trade union and the management happens only when parties' bargaining power is relatively uniform and exercised responsibly.[821]

5.) What to be bargained on must have a subject matter

Whatever must be collectively bargained must have a subject matter. There must be a purpose for wanting to negotiate. Basically, collective bargaining's focal point is on work conditions, employee's employment terms, with the regulation of relationship employers or their organisations and one or more unions have. Also, during negotiations, a problem

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[814] Smirti C., *op.cit.*

[815] If the representatives of workers are weak, the management might use that as an excuse that such a trade union in no way represents the interest employees.

[816] Smirti C., *op.cit.*

[817] Ebong, E.A. and Ndum, V.E., 2020. *op.cit.*

818 Course Hero. *op.cit.*

[819] Trades Union Congress, *Guide to Collective Bargaining.* Retrieved May, 21, 2020, from https://www.tuc.org.uk/workplace-guidance/collective-bargaining

[820] Niland, J. 1979. *Collective Bargaining and Compulsory Arbitration in Australia,* Australia: Committee for Economic Development of Australia; Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*

[821]Kazitz, *Collective Bargaining.* Retrieved March 19, 2020, from http://www.kazitz.com/kazitz/mod/book/view.php?id=147&chapterid=106

solving approach can be adopted by the parties, with compromise in arriving at an agreement.[822] Neither of the parties should be rigid or adamant to avoid stalemate in the bargaining process which may occur due to a negotiator's overconfidence, or egocentric assessments of fairness.[823] A give-and-take approach should be adopted. Management need not wait for issues to be raised by labour unions before addressing them, rather reasonable efforts must be made in preventing issues from arising and deal with them promptly when they arise.[824]

6.) Continuous Dialogue:

At times, there may be deadlock in negotiations as parties may not arrive at an agreement. In situation such happens, dialogue must continue with an approach of solving the problem. In narrowing down disagreement, issues which are controversial may be kept aside some time while dialogue continues. With the continuation of the agreement, likelihood of reaching an agreement may increase;[825] hence, parties must possess necessary skills with knowledge in managing the intricacies associated with the bargaining process.[826]

5.1.8. Structure of Collective Bargaining

As a way of fixing earning and employment conditions, with the process of wages, and replacement of competition between employers and individual workers in the labour market,[827] either wholly or partly, through rule fixing,[828] the concept of bargaining structure

[822]The attitudes of the parties should be positive. They should be willing to give away something in gaining something else. While it is expected that issues to be bargained on need to have a subject matter, there must be necessary data. Data with information are inputs for making decisions. Having the needed data forms a pre-requisite for successful collective bargaining. If an information is incomplete or there is uncertainty about the other party, rational strategies may produce a deadlock even the parties have a positive contract zone between them. ILO, 2015. *op.cit*.3; Kazitz, *op.cit*.; Smirti C., *op.cit.;* Crampton, P. 1984. Bargaining with Incomplete Information: An Infinite-Horizon Model with Two-sided Uncertainty. *Review of Economic Studies*.51:579-593; Rubenstein, A. 1982. Perfect Equilibrium in a Bargaining Model. *Econometrica* .50:97-109. Babcock, L.C. and Olson, C.A., 1992. The Causes of Impasses in Labour Disputes. *Industrial Relations*. 31.2:348-360.

[823] Babcock, L.C. and Olson, C.A., 1992. *op.cit.*

[824] Kazitz, *op.cit.*

[825] Smirti C., *op.cit.*

[826] Ugbomhe O. U. & Osagie N.G., 2019. *op.cit.*

[827] Scott, J. and Marshall, G.,2005. *Oxford dictionary of sociology*. Oxford: Oxford University Press.84.

[828] These rules can be procedural (processes and procedures for resolving conflicts), regulating institutions as well as forms for conducting collective negotiations, and, substantive form (compensation and benefits), regulating the actual content of particular agreements. Opara, O. U, 2013. Governance, Collective Bargaining and Peace Culture in Labour Relations in Nigeria. *International Journal of Development and Management Review (INJODEMAR)*. 8.1:83-92.; Otoo, K.N.,Osei-Boateng, C.and Asafu-Adjaye, P. 2009. *op.cit*.10.

connotes the permanent or stable features distinguishing the bargaining process in any system or organisation.[829] The formation of bargaining structures is generally influenced by factors such as the economic and organisational environment as well as public policies. The bargaining framework in which negotiations between trade unions and their employers relate involves four distinct but closely knitted features. These include: bargaining levels, bargaining units, bargaining forms including bargaining scope.[830]

A. Bargaining Levels

Bargaining levels describes the levels of conducting collective bargaining within an institution or organisation.[831] It is the zone at which negotiation takes place.[832] Using the Nigerian example,[833] collective bargaining takes place in the public and private sectors through multi-employer negotiations at national or industry level[834] between employers' association or other representatives, and federations of trade unions.[835] It also takes place at employer or industry[836] level and could also be at enterprise level[837]and the plant or individual level.[838] These bargaining levels[839] are overlapping alternatives that are

[829] Farnham, D. and Pimlott, J. 1995. *op.cit.*149.
[830] Onyeonoru, I.P., 2001.*op.cit*. 57.
[831] Onyeonoru, I.P., 2001. *op.cit*. 57.
[832] Fashoyin, T., 1992. *op.cit*.119.
[833] This method is also adopted in Great Britain. Onyeonoru, I.P., 2001. *op.cit.* 57.
[834] This is usually between an industrial union and an industrial employers' association, from which the multi-employer agreement emerges. It is a common collective bargaining type in Nigeria. It involves many employers and can be termed to be an industrial/multi-employer bargaining. Any agreement reached often has a nationwide application and implication with a given industry making it a national collective bargaining. Agreements like this are usually adopted by enterprises as 'staff handbook' to serve as a guide for employees. Also, the outcome of such bargaining is sometimes extended to the private sector through the Minimum Wage Act. Aturu, B., 2005. Nigerian Labour Laws (Principles, Cases, Commentaries and Materials). Lagos: Friedrich Ebert Sterling. 226-227.
[835] This arrangement could also be in the form of single employer bargaining.
[836] At this level, bargaining is between the industrial union and individual employers. This is the practice in the oil industry. Here, a multi-employer arrangement is not in use. Fashoyin, T., 1992. *op.cit.* 119.
[837] At the enterprise or branch level, bargaining is between the branch of the industrial union and the management of the company.This type is not common in Nigeria and therefore does not meet the definition of collective agreement under the Labour Act. Onyeonoru, I.P., 2001.*op.cit.* 57; Fashoyin, T.,1992.*op.cit.*119;Aturu, B., 2005.*op.cit*.226-227.
[838] The plant level is between the plant unit of a branch union and the plant management.Fashoyin,T.,1992.*op.cit.* 119
[839] These bargaining levels are at times referred to as types of collective Bargaining.Aturu, B.,2005.*op.cit.*226-227.

conceivable.[840] The levels of bargaining could be high, intermediate or low.[841] At the enterprise level, it involves both employer and a trade union which sees to employees' interests. At the industry level, it is usually between an industry-based employers' association and an individual union.[842] The parties at the plant level, whch is the lowest level bargaining might take place, is the organisation of local employees and the management.[843]

While it is possible in theory for bargaining to occur at some other levels, such as between the central labour union, for instance, Nigerian Labour Congress (NLC) and confederation of employers, for example, NECA, such an arrangement is uncommon. However, where bargaining takes place at such level, matters bordering on principles are the main subjects of discussion.[844]

Theoretically, in Nigeria, parties bargaining can do so at any level they consider suitable. An inference of this can be drawn from the provisions of section 24 of TUA stipulating that, an employer must give recognition to a union of workers employed by him for collective bargaining purposes.[845] Conversely, in practice, the prevalent stance seems to be that, in a majority of cases, collective bargaining occurs mostly at the industry-wide level.[846] What was more prevalent in the past, in Nigeria, was the individual plant or industry level bargaining, however, there has been a change radically for the industry-wide bargaining since the onset of the Fourth Republic when Nigeria returned to full democratic governance in 1999.[847] In the case of FGN/ASUU negotiations, bargaining is conducted with the government at the national level for all the union branches.

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[840] Fashoyin, T., 1992. *op.cit.* 119.

[841] It is notable that in some industries, there may be various levels which may or may not be connected with one another. Onyeonoru, I.P., 2001. *op.cit*. 57.

[842] Examples of countries where this type of bargaining seems to be prevalent include, England and Germany. Bamber, G. and Lansbury, R.D., 1998. *International and Comparative Employment Relations*. London: Sage; Okene, O.V.C., 2009. *op.cit.*

[843] Plant level bargaining usually happens where industry-wide bargaining is predominant and the collective agreements make no provisions for local issues. Okene, O.V.C., 2009, *op.cit.*

[844] Fashoyin, T., 1992. *op.cit.*119; Bamber, G., 1998. Collective Bargaining, in Blanpain, R., Ed., *Comparative Labour Law and Industrial Relations in Industrialized Market Economies.* The Hague: Kluwer. 414.

[845] In essence, bargaining takes place at the plant, enterprise or industry-wide level.

[846] Okene, O.V.C., 2009. *op.cit.*

[847] Agomo, C.K., 2000. *Nigeria, International Encyclopaedia of Comparative Labour Law and Industrial Relations.* The Netherlands: KJuwer Law International. 10: 249-254.

B. Bargaining Units

Bargaining unit implies specific categories or groups of employees who a specific agreement or sets of agreements cover.[848] It means any configuration, including employers and employees to a collective agreement.[849] These units are closely related to the concept of bargaining levels, although bargaining levels lay much emphasis on the managerial side of the negotiating table while the representative function of the trade unions is the bargaining unit's major concern.[850] The process by which the terms sought by trade unions to get through bargaining are negotiated with enforcement of an agreement majorly dependent on the bargaining unit's size as well as strength.[851]

In Nigeria, both national and industrial structure of unions is a decisive factor in determining the bargaining unit. Since unions get their membership from all companies within a particular industrial jurisdiction, the collective agreement that emerges automatically covers all employees in the national or industrial union.[852] The structure of the employers, on the other hand, constitutes another decisive factor. Employers' associations naturally widen the bargaining unit.[853] This becomes necessary as firms in a competitive market seek to remove wages from the competition.[854]

C. Bargaining Forms

This refers to the ways a bargaining agreement is recorded. This will ascertain whether an agreement is in writing or formally signed, as practised in Nigeria, or it is not in writing and informal.[855] While formal Bargaining connotes official negotiation between employees' and employers' representatives where there is recording and implementation of agreement arrived at by the parties, informal Bargaining on the other hand entails bargaining sessions that is held before the formal bargaining by the parties. The significance of this

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[848] Onyeonoru, I.P., 2001. *op.cit.* 57.
[849] This involvement or coverage may be at the industry, firm or plant levels.Fashoyin, T., 1992. *op.cit*.118.
[850] Onyeonoru, I.P., 2001. *op.cit.* 57-58.
[851] Webb, S. and Webb, B., 1919. *Industrial Democracy.* London: Longman S. GRee and Company. 52.
[852] The distinction between national and industrial unions is to differentiate between industrial unions which cover an entire industry, such as banking and financial institutions and the national unions that operate in single organisations, such as the Nigerian Ports Authority.Fashoyin, T., 1992. *op.cit.*118.
[853] This is done through industry-wide or multi-employer bargaining arrangements.
[854] For instance, this consideration was the major reason for the formation of the employers' association in the bank sector in 1963. The association was formed to discourage the practice of a union coming to an agreement with one of the employers and afterwards 'whipsawing' it to other organisations or leapfrogging tactics by the union. Fashoyin, T., 1992. *op.cit.* 64,118.
[855] Onyeonoru, I.P., 2001. *op.cit.* 58.

form of bargaining the narrowing areas of disagreement(s) by the parties during the time of proper bargaining. This could be by lobbying, pre-negotiation contracts including candid discussions which afterwards could be formalised by formal bargaining.[856] Formal bargaining is the approach adopted in FGN/ASUU negotiations.

D. Bargaining Scope

Bargaining scope is utilised in indicating the subjects dealth with within a certain bargaining unit by collective agreements.[857] It refers to the range or proportion of workers with employers that are a collective agreement effectively covers.[858]

5.1.9. Parties to Collective Bargaining

Collective bargaining parties consist of employers or their association, together with workers' organisations, that is, trade union, representing employees' interests.[859] This is because collective bargaining tilt towards bipartite relations, involving two independent Parties[860] or tripartite, as in when the government is involved. As observed in *Holland v. London Society of Competitors*,[861] when concluding a collective agreement, the trade union acts as a principal, in its own name and not as the agent of its members.[862] Any other view

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[856] CIPM, 2018. *op.cit.*175.

[857] Onyeonoru, I.P., 2001.*op.cit.* 58.

[858] At times, not all employers and employees are party to collective agreements. Fashoyin, T., 1992. *op.cit.* 119.

[859]According to ILO Recommendation, it is only when no workers' organisation exists that workers engage with their representatives in collective bargaining. This is provided for in the Collective Agreements Recommendation No.91, Paragraph 2(1). The Workers' Representatives Convention, 1971, No. 135, Article 5 confirms this, stating that, elected representatives' existence is not for undermining trade unions or their representatives' position. Article 3, paragraph 2, of the Collective Bargaining Convention, 1981 No. 154, equally makes provisions that having workers' representatives is not for undermining workers' organisations position. The preparatory work of Collective Agreements Recommendation, 1951,No. 91, suggests that the possibility for employees' representatives in concluding collective agreements in the absence of any representative workers' organisations is envisaged in the Recommendation as it takes into cognisance the position of countries where trade union organisations have not yet reached a sufficient development stage, in enabling the principles laid down in the ILO Recommendation to be implemented in such countries. Nwazuoke, A.N. 2001. *op.cit.*114; Gernigon, B., Odero, A. and Guido, H. 2000. *op.cit*.13.

[860]In making reference to bargaining parties, ILO treaties refer to one or above workers' organisation. However, several pieces of legislation use the phrase trade unions or labour unions while some others interchangeably use trade union membership, union activities including workers' organisations for same concept. This study uses these terms interchangeably. Collective Bargaining Convention, 1981, No. 154; Convention on Right of Workers to Organise and Bargain Collectively, 1949, No. 98; ILO, 2015. *op.cit.*16.

[861] (1924) 40 T.L.R.440

[862] In line with the ILO treaties, trade unions should possess such right to bargain collectively. This is because a trade union and employer, in concluding a collective agreement, do so with the intention that its terms and conditions will be applicable to the present and also the future union members and employees. However, if trade unions while going into collective agreements with employers act as agents, the terms of such agreements will not be capable of being incorporated into the terms of contract of future members of the union since an

will result in insurmountable difficulties[863] most especially when it relates to incorporation of collective agreements conditions into the individual employment contracts.[864]

As two sides are atimes involved in collective bargaining, that of the management which represents the organisation employing and the labour union representing employees' interests.[865] For FGN and ASUU relations, the FGN representatives include but not limited to representatives from Ministry of Labour and Employment, Ministry of Education, National Universities Commission(NUC) in negotiations with ASUU, while ASUU through its national leadership, for its members (rank and file), bargains with the government, negotiating for better conditions of service for them. In a collective bargaining process, therefore, rather than individual shareholders negotiating with their employees, collectively they have their interests protected through representatives of management and sometimes by employers' associations.[866]

5.2. Collective Bargaining and Industrial Disputes[867]

Its emergence as an industrial relations institution is premised on workplace disputes.[868] Grievances and disputes are inevitable parts of any employment relationship[869] as the management-employees relations is frequently one of conflict.[870] Conflicts arise from inherent opposing interests of employers and their employees.[871] Their interaction is not

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agent can only act for principals who can be identified at the time of the agreement. Furthermore, in an instance where the relationship a union has with its members is seen from the perspective of having an agency relationship, consequently, non-unionists, within the bargaining unit, will not be beneficiaries of any collective agreement reached and opting out of the terms of an agreement will be impossible for a unionist, if before its conclusion, he notifies his union of his intention not to be bound. *Edwards v. Skyways Ltd.* (1964) 1 W.L.R. 349; Nwazuoke, A.N. 2001. *op.cit.*114.

Gernigon, B., Odero, A. and Guido, H. 2000. *op.cit.*15; Nwazuoke, A.N. 2001. *op.cit.*114.

[863] Freund, O.K., 1972. *Labour and the Law, Hamlyn Lectures Series*, London: Stevens and sons. 112.;Nwazuoke, A.N. 2001.*op.cit.*114.

[864] Elias, Napier and Wellington, 1980. *Labour Law, Cases and Materials,* Butterworths. 406-408.

[865] DeNisi, A.S. and Griffin, R.W., 2005. *Human Resource Management.* Second Edition Houghton Miffin Company, Boston: New York. 454.

[866]This occurs when there is multi-employer bargaining. ASUU, 2017.*op.cit*. 206.

[867] The words disputes and conflicts will be used interchangeably in this study.

[868] Onyeonoru, I.P., 2001. *op.cit.* 50.

[869] ILO, *Labour dispute Prevention and Resolution,* Retrieved April 15, 2020, from https://www.ilo.org/ifpdial/areas-of-work/labour-dispute/lang--en/index.htm

[870] Eurofund, 1998. *New Resolution Procedure discussed for labour disputes.* Retrieved April 16, 2020, from https://www.eurofound.europa.eu/publications/article/1998/new-conflict-resolution-procedures-discussed-for-labour-disputes

[871] Fashoyin, T. 1992. *op.cit*.176.

devoid of conflict.[872] As a social invention which has institutionalised industrial conflict, collective bargaining is utilised in amicably resolving contending labour issues employers have with their employees.[873]

Industrial conflict, on the other hand, connotes an all employment dispute that relates to the relationship between an employer and employees whether in their relations as individual employees or collectively.[874] It is considered as a particular disagreement as regards a matter of fact, law or policy where a party's claim or assertion or counter-claim is refused, denied or counter-claimed by another.[875] In labour relations, it is any employee or team of employees dissatisfaction over the refusal of a recognised right of interest they feel entitled to.[876] Hence, a dispute arises in instances where the managements, unions or individual employees are involved disagreements over their working relations.[877]

In Nigeria, the principal legislation which governs trade disputes is the TDA. Its section 48 describes it as, such dispute workers and employers; workers and workers have, that is linked with the non-employment or employment or employment terms including anyone's physical work conditions.[878] Section 54(1) of NICN Act explains trade dispute as disputes employees and employers have, which includes disputes between their organisations and federations respectively and is linked with employment or non-employment, employment terms with an individual's work physical conditions, a collective agreement's variation or nonclusion, and an alleged dispute. It denotes a skirmish of interests and resultant disputes which vary in intensity, between individuals, groups and organisations in industrial relations system and may focus on distinctions in objectives as

[872] Akume, A.T. and Abdullahi, Y.M., 2013.Challenges and Prospects of Effective Industrial Conflict Resolution in Nigeria, *J Soc Sci*, 36.2: 199-208.
[873] Akume, A.T. and Abdullahi, Y.M., 2013. *ibid.*
[874] Chandi, 2012. *op.cit.*
[875] Merrils, J., 1996. *International Dispute Settlement.* 2nd Edition. Cambridge: Cambridge University Press.
[876] Akanji, T.A. and Samuel, O.S., 2013. Social Dialogue and Consensus Building in Nigeria's Industrial Relations. *ASUU Journal of Social Sciences.* 2.1:1-20.
[877] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.*50.
[878] What constitutes trade dispute under the TDA is too narrow in scope as the emphasis of modern day industrial relations is on labour disputes which, in some instances, may arise from wider socio-economic issues. The Trade Unions (Amendment) Act, however, recognises that the term trade dispute is not in tune within the context of modern-day industrial relations, it thereby adopts the term labour dispute which however is only defined with the context of disputes of rights only thereby excluding disputes of interest. There is a need for an all-encompassing definition of labour disputes with the contemporary industrial relations context.

well as values, and relationships in terms of status, power and distribution among key players in industrial relations.[879]

For disputes to be considered a trade dispute, its predominant purpose must centre on promoting trade union(s) interests. In essence, the purpose of an industrial dispute have to be:

a.) Legitimate;

b.) In advancement of employees lawful interest and;

c.) It must not be an anticipated or contemplated dispute but be a present one,.[880]

Trade disputes may be classified into two. It could relate to disputes of individual concern and disputes which affect a trade union.[881] In certain instances, disputes that start off as an individual disputes can evolve into collective disputes that would involve the trade union. An individual dispute may be an outcome of an individual employee feeling that the management is straying from the prescribed rules and procedures that governs the workplace and his job description, thereby depriving him of his right. On the other hand, collective dispute borders mainly on economic related issues such as salary, wages, benefits of workers, except in instances where the industrial dispute is borne out of individual dispute.[882]

The NICN (Civil Procedure) Rules, 2017 gives another dimension to disputes in the workplace and this it termed collective dispute which is otherwise known as dispute of interest.[883] Order 1 Rule 10 interprets collective dispute as one a team of trade unions who represent workers has with a group of organisations standing in for employers.

When dispute is of interest, it is concerned with the conflict of interest in collective bargaining which arise from making a new agreement on work conditions, or renewing

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[879] The of industrial conflict manifest diverse through absenteeism, sabotage, go-slows, work-to-rule, non-cooperation, output restriction, including industrial action such as strikes, lockouts, boycotts. Eurofund, 1998. *op.cit*.

[880] Bankole, B., 2003. *Employment Law*. Lagos: Libri Service Ltd. 20;Obi-Ochiabutor, C.C., 2002-2010. Trade Disputes Resolution under Nigerian Labour Law. *The Nigerian Juridical Review*. 9:71-87.

[881] It must be noted, at this juncture, that purely inter or intra-union disagreement, that is not related to the employment or un-employment including physical conditions of workers, is not within the purview of trade disputes. Obi-Ochiabutor, C.C., 2002-2010. *op.cit.*

[882] Ubeku, A.K.1983. *Industrial Relations in Developing Countries: The Case of Nigeria.* London: Macmillan Press. 59.

[883]Worthy of note is the fact that, a trade dispute could be of interest or right.

those, that have expired.[884] On the flip side, disputes as of right are disputes involving claims of violations of established rights in employment contracts or agreements. These are considered legal rights as such claims are founded on parties contractual relationships.[885]

It must be reiterated that not all disputes labour related qualify as trade disputes or source of industrial conflict. There are certain components a dispute must have for it to pass off as a trade dispute. This was clarified in *NURTW v. Ogbodo*[886] where the following were specified by the Court as the components of a trade dispute. These include, the existence of a dispute, employers have with workers, or workers with workers must involve a trade; and such dispute must have link with employment termsor non-employment or anyone's physical work condition.

In any organisation, grievances that culminate into industrial strife are considered normal.[887] This is premised on the fact that modern employment is carried on under very dynamic conditions as expectations of the employees and management and the demands made on each other constantly change and, very often, are in a state of flux.[888] Fundamental disagreements also come up on matters that pertain to conditions of service between an employer and the union of employees.[889] For instance, employer's refusal in recognising as well as bargaining with a trade union or adhering to a collective agreement reached could result in industrial conflict[890] by the workers in bringing home their point of the needed

[884] As aforementioned, dispute of interest is otherwise known as collective dispute. It is mostly about of disputes on economic matters resulting from non-implementation of collective agreement. Gatugel, A.S. and Eze, K.U., 2015. The Adjudication of Trade Disputes Concerning Strikes, LockOuts, Termination and Reinstatement of Employment by the National Industrial Court in Nigeria. *Journal of Law, Policy and Globalization*. 40:110-117.

[885] Gatugel, A.S. and Eze, K.U., 2015. *op.cit.*

[886] 1998. 2 N.W.L.R (Pt. 537) at 189.

[887] Njoku, I.A. 2007. *op.cit.*

[888] Oni, S.S., 2007. *op.cit.*115.

[889]Odumosu, O.I. 1987. *op.cit.*44.

[890] In this study, industrial disputes/conflicts, trade disputes, labour disputes will be used interchangeably. It is for the confusion surrounding the certain terms that at the review of the labour laws in Nigeria under the DECLARATION PROJECT–NIGERIA, an agreement arrived at that "trade dispute" be substituted with "labour dispute" and "inter and intra-union dispute" with "organisational dispute" so that each term would stand for a separate category of disputes. This is reflected in the NICN Act 2006, though section 54(1) of the Act retains and gives an extended connotation to the terms "trade dispute", "inter-union dispute" and "intra-union dispute". The DECLARATION PROJECT- NIGERIA, was for promoting democracy through fundamental principles, rights at work including tripartism (NIDEC – NIR/00/M50/USA) embarked on under aegis of ILO. Kanyip, B.B., 2016.Overview of the TDA and its application to trade disputes settlement in Nigeria in Otobo, D., Ed., *Reforms and Nigeria Labour and Employment Relations perspectives, issues and challenges,* Lagos: Malthouse.415-430.

improvements in their working conditions.[891] In essence, the goals as well as objectives of the employer and employees in an organisation always differ while the employees go for improved welfare, on the other hand, the management's desire may be for a higher turn-over with improved productivity. Conflicts taking place in the workplace is also considered as a feature of capitalism believed to be caused by the incessant zeal of the bourgeoisie to maximise economic profit, a fact which is the major determinant of class relations in capitalist societies generally.[892] Therefore, a continuous desire of both the employees and employers in achieving collective or individual objectives may result in industrial dispute.[893]

Collective bargaining being a continuous process used for resolving workplace disputes regulates the entire gamut of industrial life. It achieves this by compromising and holding mutual discussions to foster cooperation with good will in upholding harmonious industrial relations.[894] As a system that clearly succeeds only in an atmosphere of peace and concord, it operates better when there is mutual understanding between parties concerned and the willingness of both sides to make concessions.[895]

5.2.1. Forms of Industrial Action

Industrial action is a situation in which the management or the employees engage in collective action thereby pressurising the opposition in achieving its goals.[896] Labour disputes if not properly handled, or the management's refusal to negotiate, may lead to conflicts leading to industrial action.[897] Forms of industrial actions which include lockouts by employers, strikes by employees, boycotts, picketing will be discussed succinctly.

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[891] Okene, O.V.C., *op.cit*., 29-66.
[892] Iwuji E. C., 1987. Settlement of Trade Disputes in D. Otobo & M. Omole (eds), *Readings in Industrial Relations in Nigeria.* Lagos: Malthouse Publishing Ltd.
[893] Orifowomo O., 2008. An Appraisal of the Right to Strike Under Nigerian Labour Laws. *Journal of Contemporary Legal and Allied Issues*, 1.2:97-119.
[894]Anon. Conceptual Framework of Collective Bargaining. Retrieved March 16, 2020, from https://shodhganga.inflibnet.ac.i n/bitstream/10603/114066/9/09_chapter%202.pdf
[895] Dalhatu , M.B., 2007. *op.cit.*
[896] It is often used synonymously with labour dispute.
[897] ASUU, 2017. *op.cit.* 51.

5.2.1.1. Strikes[898]

The right to strike forms a basic part of collective bargaining.[899] It is a situation where a team of trade union members stop work or opt to reduce the normal performance of their work for some period of time in achieving their negotiation goals with their employer(s).[900] While it shows a breakdown of a cordial trade union/management relationship, it is mostly adopted in exerting pressure on the employer to take necessary action on matters affecting employees.[901] It is a tool used by employees to force their employer(s) as well as the state acceding to their demands or bargain with them.[902] Section 48 of the TDA[903] describes a strike to be, work cessation by a body of employed persons who in combination or concerted refusal act under a common understanding of any member or persons employed to work continuously for an employer in consequence of a dispute done to compel an employer or anyone or body of persons in accepting or not accepting the physical work conditions of work with employment terms.[904] The same section goes on to clarify what work cessation including refusal to continue to work entail. While work cessation entails working at a reduced speed or with reduced efficiency deliberately, a refusal to continue to work, is a refusal to work at expected speed or efficiency.

The factors which compel trade unions to embark on strikes, could range from an employer's refusal to give recognition to a trade union as a collective bargaining party to rejection of unions demands by employer(s),[905] unfair working conditions including unfavourable terms of employment and so on.[906] Strikes could also involve efforts by the

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[898] There is an international recognition of strikes as being inalieanable workers' right, sacred by ILO Conventions 87 and 151. Ahiuma-Young, V., 2022. No-Work, No-Pay: You've forfeited Right to Salaries, Labour Leaders NECA, others tell ASUU. *Vanguard*. August 25. Retrieved November 7, 2022, from https://www.vanguardngr.com/2022/08/no-work-no-pay-youve-forfeited-right-to-salaries-labour-leaders-neca-others-tell-asuu/

[899] Uvieghara, E.E., 2001. *op.cit.*445.

[900]New Zealand Medical Association, Industrial Action. Retrieved May 1, 2020, from http://global-uploads.webflow.com/5e332a62c703f653182f47/5e332a62c703f600712fdbb3Beginners-guide-to-industrial-action.pdf

[901] Fashoyin, T., 1992. *op.cit.* 176.

[902]Imhonopi, D. and Urim, U.M., 2011. The Development of Labour Movements and State interference: The Nigerian Experience. *Journal of Sustainable Development in Africa*. 13.2:236-253.

[903] 1976, Cap T8, LFN, 2004.

[904] It has also being described as, a concerted stoppage of work. Freund, O.K., 1972. *op.cit.* 226.

[905] Onah, R.C, Ayogu, G.I. and Paul, S.O., 2016. Nigeria Labour Congress (NLC) and Strike Action in Labour Conflict Management in Nigeria (1999-2011). *IIARD International Journal of Political and Administrative Studies.* 2.2.:64-78.

[906] Agbakwuru, K.N., 2021. Solution to Incessant Strikes and Non-implementation of Collective Bargaining Agreements: A Nigerian Perspective. *International Journal of Advanced Academic Research*. 7.5:64-71.

management or a trade union in changing either party's bargaining position.[907] An organisation's harmony may become truncated by incessant strike actions as a result of the workplace compensation system, remuneration of employees, conditions of service, autonomy, and could also be due to matters relating to leadership or supremacy.[908] At some stage, it might become obvious that the only available method in establishing the right to negotiate, or in bringing in a conciliation officer in ensuring a discussion on grievances between the management and trade union is strike action.[909] Hence, recourse to industrial action could, at times, be justified to compel employers to have a roundtable with workers and settle their grievances.[910]

As the most obvious manifestation of conflict,[911] strike can come as a general strike. This form of strike is one in which all or a large percentage of employees in a country embark together on strike, notwithstanding trade union affiliation and it is with the intent of creating pressure on the incumbent government, instead of a single employer.[912] It can also be in form of a sympathetic strike. Sympathetic strike entails work cessation by employees seeking no concessions from their employer, but they embark on strike to support counterpacts in another business who after getting concessions from their own employer.[913] Furthermore, a strike action can be either partial or full strike. It is a full strike where employees choose to walk-off work completely, whereas, a partial strike is where employees refuse to do some parts of their work.[914] This could include work-to-rule[915] or go-slow.[916]

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[907] Fashoyin, T., 1992.*op.cit*.176.
[908] Ukonu, I.O., and Emerole, G.A., 2016. The Role of National Industrial Court in Sustaining Harmony in Nigerian Health Sector:A Case of University of Abuja Teaching Hospital. *Journal of Management and Sustainability*. 6.1:171-181.
[909] Roper, J.I., 1958. *Labour Problems in West Africa*, England: Penguin Books. 71.
[910] Okene, O.C., *op.cit*., 29-66.
[911] Yiannis, G., 2005.*op.cit.*
[912] Grabianowski, E., *How Strikes Work*. Retrieved May 1, 2020, from https://money.howstuffworks.com/strike2.htm
[913] Sanders, P.H., *Types of Labour Disputes and Approaches to their Settlement.* Retrieved April 16, 2020, from https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2300&context=lcp
[914] New Zealand Medical Association, *op.cit.*
[915]This is a formal industrial action. Happens when employees decide carry out their duties slavishly in line with their employment contract. They resolve to intentionally not use of their initiative and act rigidly. Smith, D. 2017. *Types of Industrial Conflicts*. Retrieved April 15, 2020, from https://bizfluent.com/info-8582293-negative-effects-micromanagement.html
[916]While go-slow entails employees dragging production by performing at a rate slower than usual. It is a mobilising instrument to mount pressure on an employer. Labour Research Services, 2018. *A Guide to Winning Strikes.* Retrieved May 1, 2020, from http://lrs.org.za/articles/A-Guide-to-Winning-Strikes

While the instrument of strike may often be the only tool employees use in compelling an intransigent, unyielding employer in complying with collective agreement terms, it can also be used to make an employer agree to bargain with employees' representatives.[917] It appears to be a veritable tool in the hands of associations like ASUU, Nigerian Medical Association (NMA), and so on.[918] The threat of strike or its actuality by trade union is a representation of social and economic power which often causes a company or organisation to change its stance on certain matters to an extent acceptable to the union.[919] In 2020, additional to all universities in Nigeria being shut down over the COVID-19 pandemic, ASUU embarked on industrial action in the month of March, 2020.[920] Apart from ASUU and NMA's incessant strike actions, all sectors of Nigerian economy have, at one point of the other, got involved in industrial actions which have propelled workers' unions to embark on industrial strike and disrupt the nation's productive economic activities.[921] It, however, appears that strike action takes its highest toll on the educational sector in Nigeria.[922]

As strike is the right of employees collectively to withdraw their labour,[923] it is a significant element in the collective bargaining principle.[924] For such a right to be protected, there must be a recognition that the set limits to lockout and the right to strike are one measure of strength[925] that each disputing party can bargain on in the final resort.[926] There is, however, an on going concern that both collective bargaining alongside the right to embark on strike have been weakened[927] as any employee who engages in strike action has no entitlement to wages or any remuneration for such length time it holds and time will not

[917] Nwazuoke, A.N. 2001. *op.cit*.142.
[918] Bamgbose, G., 2014, *Critical Appraisal of the Various Types of Industrial Actions in Nigeria*, an unpublished seminar presentation in partial fulfilment of requirements for LL.M., Faculty of Law, University Of Ibadan.
[919] Beach, D.S., Personnel, The Management of People at work, 3rd Edition, referenced in Nwazuoke, A.N. 2001. *op.cit.*142.
[920]ASUU intially declared a two-week warning strike but when it dis not get the desired response from their employer,after the warning strike elapsed, there was a declaration of an indefinite industrial action by the Union. Ojo, J., 2020..*op.cit.*
[921] Nkiinebari, N. P., 2014. *op.cit.*
[922] Agbakwuru, K.N., 2021. *op.cit.*
[923] Uvieghara, E.E.,2001. *op.cit*.445.
[924] *Crofter Hand Woven Harris Tweed v. Veitch* [1942] AC 435, 436, per Lord Wright.
[925] Uvieghara, E.E., 2001.*op.cit.*445
[926] Wedderburn, K.W., 1962.*op.cit.*
[927] Uvieghara, E.E., 2001.*op.cit*.445.

count for the aim of reckoning the continuous employment period and such rights that depend on its continuity are accordingly prejudicially affected.[928]

It has been posited that, where a harmonious relationship exists in organisations, both the management and trade union will raise opposition to strike action unless as a final resort. For instance, in Nigeria, it is opined that, with the culture of strike, the government and the NLC in no way adopt dispute-settling mechanisms on issues related to industrial conflict as they rather rush and opt for strike, to later return to negotiate.[929]

5.2.1.2. Lockout

It is the opposite of a strike. Lockout is an employer's right to lock employees out of the premises of his enterprise in compelling the acceptance of his conditions of employment.[930] It is usually adopted with some intent in coercing or forcing employees to accept the wish of the management.[931]Where an employer locks out his employees, such workers are entitled to be paid wages with any other remuneration applicable, for the duration of the lockout.[932]

Section 18(1) of the TDA[933] prohibits a strike or lockout if any of the six factual instances listed in paragraphs (a-f) have not been complied with. Besides the conditions listed in 42(1) of the TDA, it becomes apparent that a strike or lockout is a legitimate

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[928] Section 43 (1)(a) of the TDA.

[929] Onah, R.C, Ayogu, G.I. and Paul, S.O., 2016. *op.cit.*

[930] Section 48(1) The TDA. Nwazuoke, A.N. 2001. *op.cit.*150; *Oshiomohole v. Federal Government of Nigeria* (2005), N.W.L.R. (Pt 09 07) 414.

[931]Kazitz.com, Industrial Conflicts . Retrieved April 15, 2020, from http://www.kazitz.com/kazitz/mod/book/view.php?id=143&chapterid=82

[932] It is a labour law principle that an employee who properly gives notice is entitled to withdraw his service. Section 31(6) (a-e) of the TUA stipulates instances when a strike or lockout may take place. It can be inferred from paragraph (c) of this section that trade union members may embark on strike actions while an employer may adopt a lockout in respect of a trade dispute from a collective and fundamental employment contract breach or collective agreement by an employee, trade union or employer. This provision should be read alongside with section 18(1) of the TDA, as the former provision seems subject to the latter provision. Any rights based on the employment period of employees must not be prejudicially affected by the period of the lockout. In a situation where any question arises as to whether, there has been a lockout, it must, on employees or their representatives' application to the Minister, determined by him and his decision is final. Emiola, A., 2008. *op.cit.* 506-507; Section 43 (1)(b) of the TDA; Section 43(2) of the TDA.

[933] An employer should neither declare nor engage in a lock-out; also an employee is not expected to be part of any strike relating to a trade dispute where , the procedure in the TDA, section 4 or 6 has not been complied with s regards a dispute; or a Conciliator has been appointed under section 8 for handling a dispute settlement; or there has been referral of dispute to the IAP under section 9 to be settled; or an Arbitration Tribunal's award has become binding under section 13 (3); or subsequently there has been a referral of dispute to the NICN under section 14 (1) or 17; or there has been an issuance of award on the reference by the NICN..

weapon in industrial conflict. This becomes so, provided the stated TUA's provisions in section 31(6)(a-e)[934] and section 42(3)[935] of TDA are complied with. These statutory provisions prescribe conditions under which strike may be used as a legitimate weapon in industrial conflict.[936]

5.2.1.3. Boycott

It denotes refusal to deal so as to force concessions. In industrial disputes, it is a concerted refusal to deal with persons who have dealings with management involved in a primary labour dispute.[937]

5.2.1.4. Picketing

It is the physical way adopted by workers in intensifying economic pressure mounted on an employer or in ascertaining the simultaneous stoppage of workplace activities by employees is in no way undermined by an employer.[938] It is a feature of industrial action entailing placing a picket at or close to a place of work by employees in passing across their message on their action's subject matter. This act may involve an individual or more persons.[939] The right to picketing is considered to be founded on some

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[934] 2005, No.17. It stipulates that no one, trade union or employer should neither participate in a strike or lockout nor be engaged in conducts contemplating or furthering of a strike or lockout except such person, trade union or employer is unengaged in essential services provision; the strike or lockout borders on a labour dispute constituting a dispute of right; the strike or lockout relates to a dispute from a collective and fundamental employment contract or collective agreement breach by an employee, trade union or employer; the provisions for arbitration in the TDA, Cap. T8, LFN, 2004 have first been copies with; and in a situation of an employee or a trade union, a ballot has been conducted in line with the trade union's Rules and Constitution where a simple majority of every registered member voted to go on strike.

[935] Section 42(3) - a worker who stops performing his duty in instances such that in doing so he does not contravene subsection (1), shall not by reason only of his so ceasing become guilty of an offence under section 196 of the Penal Code of Northern Nigeria. Section 42 generally provides that works give a pre-notice of 15 days preceding work cessation in situations involving danger to persons or property. Subsection (1) referred to in subsection (3) states that :without prejudice to section 18 , if- a worker stops, alone or in combination with others, performing his assigned duties with no at least notice of fifteen days of his intention to an employer; and at the moment he stops performing his assigned job or he knows or has reasonable cause in believing that the probable repercussion of his or their doing so will be in endangering human life; or for seriously endangering public health or health of a hospital or similar institution inmates; or in causing serious bodily injury to any person(s); or in exposing any property of value, either real or personal, to destruction or serious injury, he shall be guilty of an offence and on conviction be liable to ₦100 fine or imprisonment for six months, or both. To understand the purport of subsection (3), it must be read conjunctively with subsection (1) of section 42.

[936] Emiola, A., 2008. *op.cit*. 507.

[937] Sanders, P.H., *op.cit.*

[938] Elias, Napiers and Wellington, 1979. *op.cit.* 272; Nwazuoke, A.N. 2001. *op.cit.*146.

[939] Uvieghara, E.E., 2001.*op.cit*.445.

constitutional rights of freedom of assembly[940] including expression,[941] right to privacy,[942] individuals rights to the high way as enshrined in chapter 4 of the CFRN, 1999 (as amended) including the government's duty in maintaining law and order in the state.[943] Picketing is also provided for, and regulated under Section 43 of TUA. It is a right qualified by the obligations of pickets under the law, hence, section 43 of the TUA does not authorise disorderly but peaceful picketing.[944] This is in a bid to prevent a breach of peace.[945] Also, the section solely permits picketing when a trade dispute is being furthered or contemplated.[946]

There are costs including benefits attached directly or indirectly to parties engaging in industrial actions. To a certain extent, there is great bearing on the economic development with law and order maintenance in the society. Consequences of industrial actions can include, capacity underutilisation; production or output loss; essential services disruption; scarcity with price hike of necessary items. Others could be unemployment with workforce contraction.[947] A nation predisposed to strike, foreign investors will most likely not be attracted to. Hence, management and trade unions must always consider negotiation/consultation better than strike, lockout or some other industrial action forms. Collective bargaining should be adequately explored before resort is made to industrial action.

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[940] Section 40, CFRN, 1999 (as amended).
[941] Section 39.
[942] Section 37.
[943] Nwazuoke, A.N. 2001. *op.cit.*146.
[944] The ILO Committee on Freedom of Association opines that, participating firmly in picketing while peacefully inciting other employees in staying off their place of work cannot be unlawful. The situation is however different when it is done violently or with coercion of non-strikers in interfering with their freedom to work; such actions amount to criminal offences in several nations. The committee further clarifies that the requirement that picketing can only be near an organisation in no way infringes on freedom of association principle. Paragraphs 586 & 587; Gernigon, B., Odero, A. and Guido, H., 2000.*op.cit.*
[945] Nwazuoke, A.N., 2001. *op.cit.*149.
[946] As in *Tynan v.Balmer* (1966) 2 All E.R. 133, where some 40 picketers, in the course of a strike at a factory, walked round and round in a circle in a service road which was part of the highway near the main entrance of the factory. The purpose of the circling manoeuvre was to seal off the area occupied by the pickets and, thereby, bring vehicles approaching the factory to a standstill. The appellant, who spear headed the action, was convicted of obstructing a police officer on duty, when he refused to tell the picketers to desist, in compliance with the request of the police. The conviction of the appellant was upheld on appeal. By obstructing the highway, the acts of the picketers amounted at common law to nuisance. It was not protected by section 2 of the English Trade Disputes Act, 1906 since it was not for the purpose authorised under the Act but for the purpose of bringing traffic to a standstill.
[947] Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011. *op.cit.*

Instances of conflicts between employees and management in universities abound including between university unions and the FGN. While conflict between management and employees is internal, external conflict is such as what is obtainable between ASUU and FGN. For this study, ASUU as a union of intellectuals, will be in focus.

5.3. The Emergence and Struggles of the Academic Staff Union of Universities (ASUU)

> Our struggle is perpetual and anybody who thinks we should do it once and for all has misconceived the terrain of the struggle.[948]

To understand ASUU and its numerous struggles, the logic behind its struggles, its engagements, its service to its members; its defence of the Nigerian university system in reversing its decadence; the defence of the right as well as welfare of the Nigerian nation from diverse forms of injustice, inequity, oppression, suppression, empowerment, vilification, exploitation and underdevelopment and its current stance on issues, it is of utmost importance to delve into its historical essence.[949]

ASUU emerged from the Nigerian Association of University Teachers (NAUT) in 1978.[950] NAUT, in no way was a radical organisation, its orientation was mainly to improve the condition of service, the political as well as socio-economic state of the nation and hardly held any notable stance on national issues, being more of a middle-class fraternity having perspectives not so different from what was obtainable in the post-colonial state.[951] All these attributes thereby portrayed NAUT as not suitable for the university system's advancement, considering the university system's development was a function of the country's economic and socio-political direction. It neither made demands on funding, national development nor protested injustice to workers nor students nor take position on topical issues that were of

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[948] Comrade Liman as cited in Sani, I., 2021. *Why ASUU Never Goes to Bed.* Unpublished.

[949] Odukoya, A.O., 2019.*ASUU: Principles And Praxis In The Service Of The People in Committee for the Defence of Human Rights (CDHR). Chronicling the Struggle, Identifying the Way Forward*. CDHR: Lagos. 87.

[950] The NAUT came into existence in 1965 and covered academic staff in the University of Ibadan, University of Nigeria, Nsukka, ABU, Zaria, University of Ife and University of Lagos. ASUU, History and Struggles of ASUU. Retrieved April 15, 2021,from https://asuunigeria.org/index.php/about-us/43-history/44-history-and-struggles-of-asuu

[951] On certain instances that the Association released public statements, it appeared conservative as well as sympathetic to the regime. Jega, A. 1995. Nigerian Universities and Academic Under Military Rule. *Review of African Political Economy.* 22.64:251-256.

concern in the society.[952] Collective relations were localised at each university as there was no national or central negotiating machinery. There were such issues as restricted staff welfare, fringe benefits and so.[953] In essence, under NAUT, collective bargaining's scope seemed restricted to local issues within jurisdiction of each governing council in the universities.[954] Members of the association began to develop an awareness of wider issues which was as a consequence of being unsatisfied with their material conditions.[955] ASUU[956] was, therefore, established with the aim of protecting its members interests and permitting them to react to critical challenges tertiary education in Nigeria was faced with.[957] It emerged as a reasonable reaction to mismanaging the economy nation between 1960s and 1970s which led to the economy's breakdown in 1970s in addition to the nation subscribing to the World Bank's SAP including the International Monetary Fund (IMF) in 1980s.[958] ASUU's basic objective was the advancement and protection of the nation's cultural and social economic interests and encouragement its members participation in the university system and nation's affairs.[959]

5.3.1. Trade Disputes between ASUU and the FGN

The initial period of assault on academic freedom formed the premise for the Union's resistance all through the 1980s, thereby making the orientation of the Union radical and more interested in national issues while firmly maintaining its stance against undemocratic, oppressive policies in the nation.[960] The Union, thereby, assumed role as opposition to the waste including theft of the nation's resources by her rulers.[961] The

[952] ASUU. 2017. *op.cit*. 79.
[953] Adopting the unified public service system, salaries and wages were fixed by the government . Also, the condition of service of workers were unilaterally determined by each university government council. Pemede, O. 2007. *op.cit.*
[954] Pemede, O. 2007. *op.cit.*
[955]Igwe-Onu, D.P., 1986. *The Functioning of Collective Bargaining in the Nigeria Universities System*. 4th Annual Conference of the Department of Industrial Relations and Personnel Management , University of Lagos; Pemede, O. 2007. *op.cit*.
[956]National Secretariat is situated at Comrade Festus Iyayi Complex, University of Abuja, Giri, Abuja.
[957] ASUU has had diverse names resulting from its ban by the FGN at different times, most especially during the military leadership. These include, Academic Staff Union of Nigerian Universities (ASUNU), Academic Staff of Nigerian Universities (ASNU) incluging, Association of University Teachers (AUT). Onyeonoru, I., 2004. Industrial Conflict in Nigerian Universities: The Presence of the Past and the thrust of the Future in *The National Scholar.* 4.5:2-12.
[958] Albert, I.O., 2014. *op.cit.*
[959] ASUU, 2017. *op.cit*.80.
[960] ASUU, 2012. *op.cit.*
[961] ASUU, 2017. *op.cit*.80.

objectives of ASUU proclaim its main concern to be in the national interest. As the Union approaches issues from diverse perspectives, its liberal, and atimes, radical position brings them into conflict with the government.[962] And while the historical mission of the Union is in generating new values with knowledge production for liberating the society from the systematic domination they have been conditioned to from the colonial era, the Union sees the need for a self-directed struggles arising from the necessity in building a nation where the citizenry shall be free, catered for educated, and healthy.[963] It is important at this juncture to understand the disputes including the timeline of those events which shapened the emergence and struggles of the union and the FGN/ASUU disputes till date.

5.3.1.1. 1980 ASUU Declaration of trade dispute

With negotiation as a notable mechanism for dialogue and interaction[964] between FGN and ASUU, there have been numerous meanderings in the relationship ASUU has with the government since its inception. The immediate stimulus for the formation and radicalisation of ASUU was the inability of successive military regimes to use the nation's vast oil wealth in developing the country. Rather, there was a rise in corruption, decay in the educational and social welfare system and the erosion of fundamental human rights and freedom. [965]

There was another industrial action in 1980 resisting six academics of University of Lagos (UNILAG)'s appointment from being terminated due to the Report of Justice Belonwu Visitation Panel which was connected to university autonomy alongside academic freedom. ASUU lent a voice to this unfair act by protesting and pressing that they be reinstated and, in 1986, judgment was given by the SCN, for the UNILAG teachers, that vindicated ASUU's position.[966] Also, between 1980 and 1981, the Union was in dissonance with the Shehu Shagari government on issues of salaries, university funding, autonomy, academic freedom including brain drain, in adddition to the university system's survival. The Union then embarked on strike actions, their demands based on all these. The strike,

[962] Pemede, O., 2007. *op.cit*.
[963] ASUU, *op.cit.*
[964] Opute, J. and Koch, K., 2020. Labour Involvement as a Participatory Mechanism in Developing Economies: Contrasting The European Model. *E-Journal of International and Comparative LABOUR STUDIES.* 9.1; 52-75.
[965] ASUU, 2017. *op.cit.* 208.
[966] ASUU, *op.cit.*

however, was unsuccessful and it led to demoralisation, migration of lecturers and mistrust between the Union and government.[967] The 1981 FGN-ASUU Agreement established the Collective Bargaining principle[968] as well as made provisions for a platform for important issues of university funding, University Staff special salaries with Conditions of Service, roles of NUC,Vice-Chancellors and Pro-Chancellors to be resolved. A special salaryy scale known as University Salary Structure (USS) for university staff was the Agreement's key outcome.[969] In 1983, the Elongated University Salary Structure (EUSS) was negotiated on, but in 1988, it became the subject of dispute and premised on the non-implementation of the previous agreement, the Union engaged in yet another strike in 1984, opposing deregulation of the economy as well as resisting military dictatorship.[970]

5.3.1.2. Union Struggles between 1985 and 1986

The Buhari-Idiagbon regime overthrew Shehu Shagari's government in 1983.[971] The principled opposition to military dictatorship which the regime of Buhari-Idiagbon represented was the basis for the struggles of the Union at that period. ASUU observed then that the government's disengagement process from the economy had begun in 1984. It made a prediction that such would result in crises in all sectors of the nation. In its reaction to this development, the union rejected privatisation, and proferred solutions on Debt Servicing, Economic Development and Planning, Industrialisation, Agriculture, Labour, Taxation and so on.[972] In 1985, the same regime embarked on a programme of retrenching workers as well as freezing wages. It clamped down on the the National Association of Resident Doctors (NARD) as well as Nigerian Medical Association (NMA) when they went on strike protesting the degenerating state of the health sector and services in the country. ASUU's support for NARD and NMA led to the sacking spree of the health practitioners by the

[967] ASUU, 2017.*op.cit*.209.
[968] This was premised on 1981 Report of Cookey's Commission, 1974 Report of Udoji Commission,ILO Conventions 49(1948), 91(1950), 154(1988), 153 (1981) including Recommendations 153 (1981) TDA (1976) including Wages Board and industrial Council' Decree, 1973 No.1. ASUU, 2022. *Press Release Why ASUU Rejects Government's Award of Salary*. August 18, 2022.
[969] ASUU, 2022. *ibid.*
[970] ASUU, *op.cit.*
[971] ASUU, 2017.*op.cit.*209.
[972] This was included in ASUU's publication on, 'How to Save Nigeria'. This was the outcome of the Union's 1984 Conference on the State of the Economy. In that publication, the Union gave a diagnosis of the ills of the nation's economy with suggestions on how the economy could be improved. ASUU, 2012. *op.cit.*

government, arresting as well as detaining their unions' leaders, not leaving out ASUU leaders in the witch-hunt.[973] Other struggles during that regime were the resistance against subsidy withdrawal on accommodation in the universities including resistance to the termination of the cafeteria system.[974]

In 1985, there was yet another strike action resisting the regime of the military with its authoritarian Decree No.16 of 1985 which permitted the NUC to be performing the duties of the Senate in determining, regulating alongside monitoring academic programmes.[975] Moving forward on its objectives, in 1986, the Union maintained a principled stance against the introduction and imposition of SAP by Ibrahim Babangida's regime[976] and the inhumane conditionalities of the International Monetary Fund IMF(loan).[977] It was at that same period that the Union was against the termination of the lives of some ABU, Zaria students by Mobile Police.[978] The Union supported National Association of Nigerian Students (NANS) and NLC in protest,[979] which led to the FGN making allegations that ASUU was attempting to topple the Babangida regime.[980]

5.3.1.3. The Demands of the Union and Strike of 1988

In 1987, there was another strike action demanding that the EUSS be implemented. Another request was made for a Joint Negotiation Committee (JNC) between ASUU and FGN to be established. It was also at that period that Prof. Jibril Aminu, the Minister of Education, had Dr. Festus Iyayi, who was the Union's President, alongside Dr. B. Agbonifoh, an executive Union member's appointments terminated[981] for opposing the imposition of Professor Grace Alele-Williams as the University Benin's Vice-

[973] ASUU, 2012.*op.cit.*
[974] ASUU, 2012. *ibid.*
[975] ASUU, 2012. *ibid.*
[976] Subsequently, another strike happened in 2008 which opposed the effects of the SAP that was imposed.
[977] Measures leading to crises in the education, economy, health and other sectors were introduced. The led to the Union taking a principled stance against socio-political including economic policies of the regime. ASUU, 2012. *op.cit.*
[978] Otherwise known as Kill-and-Go. The aftermath of this was the recommendation of the Abisoye Panel that some ABU lecturers who taught what they were not meant to teach should be flushed out. This sack, however, did not happen as the Mustapha Akanbi Panel, which was put in place in investigating the role of the involved in promoting the crisis never saw the light of the day. ASUU, 2012. *op.cit.*; ASUU.2017.op.cit. 209.
[979] ASUU, 2012. *op.cit.*
[980] ASUU, 2012.*ibid.*
[981]Their offence was, registering a company and doing private practice. ASUU, 2017. *op.cit*. 83.

Chancellor.[982] ASUU NEC considered the sack of Iyayi and Agbonifoh as illegal and tagged it an act of political vendetta.[983] General I.B. Babangida endorsed the sacking of Drs. Iyayi and Agbonifoh. ASUU responded by calling for the removal of Professor Aminu as the Minister of Education and further embarked on a strike action. Conversely, ASUU did not achieve its goal of getting Iyayi and Agbonifoh reinstated through the strike action.[984]

In 1988, with the continued impoverishment of the nation which was sequel to the SAP by the government, the refusal and FGN's failure to implement the Elongated University Salary Scale (EUSS), the worsening brain drain and funding of universities, the Union's NEC resolved to embark on strike.[985] It had the following demands: the EUSS implementation, setting up of a JNC between FGN and ASUU plus university autonomy. Notwithstanding the threats by Professor Jubril Aminu, the strike began on July 1, 1988.[986] This act led to the Union's proscription[987] on 7th of August, 1988. The Minister of Education announced the proscription of the union, banned its activities, seized all its properties and ordered the ASUU National secretariat and branch offices locked up. Furthermore, he ordered that all universities to immediately implement the EUSS and ordered all university workers on strike to go back or face being sacked.[988] The government of Babangida disaffiliated the Union from NLC to debilitate it.[989] The period following the 1988 proscription was demoralising for the academic staff.[990] Following the proscription of the

[982] Grace Alele-Williams, a Unilag Professor, was appointed Vice-Chancellor, University of Benin. That was after the government had arbitrarily cancelled the internal selection exercise. The UNIBEN branch of the Union resisted her imposition. ASUU, 2017. *op.cit.* 83

[983] This was in the light of the alliance between the Minister of Education, Prof. J. Aminu and Prof. Grace Alele-Williams both of whom considered Iyayi a extremist. ASUU, 2017. *op.cit.* 83.

[984] ASUU, 2017. *op.cit.* 83.

[985]ASUU, 2017. *op.cit.* 83.

[986] The FGN referred the matter to the IAP who ordered that the strike be suspended. The Senior Staff Association of University Teaching Hospital, Research Institutes and Allied Institutions (SSAUTHRIAI) called off a strike which it jointly started with ASUU, and obeyed the Minister of Education's directive to return to work, ASUU did not bugde. That action of SSAUTHRIAI became the major source of mistrust, suspicion and disunity amongst the university staff unions. ASUU, 2017. *op.cit.* 84; 210.

[987] Dr. F. Iyayi later lost his life in a controversial ghastly motor accident while going for negotiation with FGN during the 2013 ASUU protracted strike. Bello, F.B. and Isah, M.K., 2016.*op.cit.*

[988] ASUU, 2017. *op.cit.* 84.

[989] Under Professor Jibril Aminu as the Minister of Education, the Union was banned by FGN, its properties were seized and with the directions that all varsities, with immediate effect, pay the EUSS. ASUU, 2017. *op.cit.*

[990] The likes of Dr. Attahiru Jega,President, Dr. F. Iyayi, the immediate past President, Dr. Frank Dimowo and Dr. Emmanuel Amade (UNIBEN) got victimised, arrested, detained and tortured under the obnoxious Decree 2. They were later released in August that year. All ASUU officials also had their passports impounded, including branch chairpersons and secretaries. ASUU, 2017. *op.cit.* 84.

Union, rather than call off the strike, ASUU formed the University Lecturers' Association (ULA) and continued the strike on that platform.[991] While still under ban, in 1990, the union refused to give up and continued with its struggle for the education system and against the SAP.[992] SAP, they believed, resulted in a gradual degeneration of the universities' teaching as well as learning environment due to the FGN's withdrawal of subsidies to the education segment.[993] The ULA regrouped, mobilised and continued the struggle for the sanitisation of the university system, holding meetings and drawing plans to release its set goals. The Babangida regime after realising the futility of the ban later de-proscribed the union on August 27, 1990. That step began another phase in ASUU's struggle for the university system.[994]

5.3.1.4. Negotiations, Strikes and Agreements between 1991 and 1992

With the full-blown dictatorship arising from the wounded ego after a botched coup d'etat in 1990, academic freedom, basic human rights and university became further suppressed, the conditions of service worsened and the problem of brain drain and decay deepened. So many academics who were demoralised left the system for private ventures for more lucrative jobs within the country with better remuneration and working conditions such as oil companies while some others went in search of greener pastures in foreign countries.[995] In 1991, following the Delegates Conference at Lagos State University (LASU) held in Badagry,[996] ASUU requested for negotiations from the Babangida government on issues of funding, conditions of service as well as university autonomy.[997] The negotiation process was in two rounds. Firstly, under Mr. Senas Ukpanah's chairmanship, there was a breakdown, after an argument on the offer of the government on salary made the chairman to, on his own, suspend negotiations on 30th of May, 1991. Following that decision was the announcement of a unilateral award by the government.

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[991] ASUU, 2017. *op.cit.*84.
[992] For instance, in 1989, alongside some civil society organisations, ASUU ably represented from various campuses, gathered at Obafemi Awolowo University (OAU) for a conference on, World Bank Loan, the Universities and the Future of Nigeria. ASUU, 2017. *op.cit.* 84.
[993] Albert, I.O., 2014. *op.cit.*
[994] ASUU, 2017. *op.cit.* 85.
[995] ASUU, 2017. *ibid.* 211.
[996] The union also made a submission to the Minister of Education, Professor A.B. Fafunwa on the problems of under-funding, poor conditions of service, poor students' living conditions, violation of academic freedom and university autonomy. ASUU, 2017. *op.cit*. 85.
[997] ASUU. 2017.*op.cit*.85.

This one-sided award was unacceptable to the union, and the mobilisation for a serious industrial dispute began.[998]

In May 1992, the Union embarked on yet another strike because of the impasse on negotiations between it and FGN based on the working conditions in the country's varsities as the state of academics on campuses of universities was barely tolerable. There was a heightened drive of leaving the varsities for the private sector and foreign countries had become, for several, the way out of the deterioration in the varsities and the demoralisation of university lecturers. The strike was, however, suspended after a week when the IAP intervened and ordered the resumption of negotiations and suspension of the strike. Academics went back to work while the FGN and ASUU resumed negotiations. When the negotiations broke down, in July 1992, ASUU resumed strike. On August 23, 1992, the Union was banned for refusing the order of the IAP in suspending industrial action and returning to the negotiation table.[999] The Union which was formidable and had full public support, responded by forming the Academic Staff of Nigeria Universities (ASNU) while the strike dragged on.[1000]

When all the schemes adopted in breaking the strike was unsuccessful, the government had to come up with a means of negotiating with a banned union. The resumption of negotiations resulted in the agreement of 3rd of September, 1992 which covered vital areas such as funding the university system, conditions of service for academics. It also resulted in the emergence of University Academic Salary Scale (UASS), [1001] university autonomy and academic freedom. The agreement also made provisions for review after three years.[1002]

Unfortunately, the government's failure to implement the agreement, which they validly entered into, manifested when it began to select provisions of the agreement it wanted to implement and those it was not interested in. An example was an imposition of the Harmonised Tertiary Institution's Salary Scale (HATISS) which came with serious

[998] ASUU. 2017.*op.cit*. 211.
[999] ASUU got support from the public, the organisations of Professionals, NANS, and so on. ASUU, 2012. *op.cit*
[1000] ASUU, 2017. *op.cit.* 211.
[1001] ASUU, 2017. *op.cit.* 85.
[1002] ASUU, 2017.*ibid.* 211.

disadvantages to academics and the growth of the university system.[1003] Rather than address the problem of parity raised by ASUU and SSAUTHRIAI as the government had anticipated, it created more confusion in the system.[1004]

5.3.1.5. The 1994 Union's Demand and Strike

In 1993, the Minister of Education, Professor Ben Nwabueze, in support of the government, offered a theory of imperfect obligation with the argument that the FGN-ASUU Agreement of 1992 was not fully binding. ASUU's response to this was to resume its suspended strike which continued until Babangida stepped aside from the Presidency. In 1994, the successor of Babangida, General Sani Abacha unleashed propaganda against ASUU and evicted lecturers from their residential apartments on campuses.[1005] ASUU thereafter under the leadership of Dr. H.A., Asobie with Dr. M.T., Liman as Minister of Education,[1006] declared an indefinite strike demanding that agreements reached in 1992 be renegotiated, and that the over eighty lecturers who Professor Isa Mohammed, UniAbuja Vice-Chancellor, terminated their appointments be reinstated, including resisting the 1993, June 12 presidential election annulment which M.K.O. Abiola was believed to had won.[1007] The strike, however, did not succeed due to the political demand of the de-annulment of the 1993, June 12 elections, which caused disagreement within the Union. A faction of members considered the June 12 situation as widely democratic, others considered it as an issue taken over by ethnic interests.[1008] Therefore, political issue was dropped while the struggle continued with only the agreement re-negotiation as well as the reinstatement of victimised UniAbuja Union members.[1009] On a general note, the regime of Abacha was a challenging

[1003] This was rather against the recommendation of the Kalu Anya Committee that UASS be maintained. ASUU, 2017. *op.cit.* 211.
[1004] ASUU, 2017. *ibid.* 211.
[1005] ASUU, 2017. *op.cit.* 85.
[1006] ASUU, 2017. *ibid.* 211.
[1007] Throughout the military regimes, the struggles of the Union were founded on the issues of the university system and its survival hinged on the conditions of service (non-salary and salary), the defence of the right to education, funding with university autonomy/academic freedom including wide national issues amongst which were the anti- military rule struggles, the anti-privatization struggle, and against the SAP. It was also against the attempt by the World Bank to take over the universities and [1007] there was another struggle against debt peonage and re-colonisation of Nigeria. In addition, there were the issues of World Bank loan of 120 million dollars (US) during Babangida's regime and under Obasanjo's administration, the Nigerian Universities Innovation Project (NUSIP). ASUU, 2012. *op.cit.*
[1008] ASUU. 2017. *op.cit.* 212.
[1009] ASUU. 2017. *ibid.* 212

period for ASUU as the Union chose the path of struggle and principle.[1010] The union considered the contention for the agreement as a defence for national development, workplace democracy, and the fulfiment of right to education.[1011]

5.3.1.6. The 1996 Strike for Re-negotiation of Agreement and Re-instatement of Sacked Union members at University of Abuja

The strike action under the Abacha regime lasted for about six months. The tactics the government unleashed to break the striking workers included ethno-regional sentiments, propaganda, bribes and manipulation of the Vice-Chancellors.[1012] The government set up a negotiating team the Cookey Commission recommended. However, when ASUU rejected government's directive to suspend the strike while the dialogue continued on the condition that ASUU accepted the introduction of fees, the government unilaterally terminated negotiations.[1013]

Between April and October 1996, the union was yet again proscribed, salaries were withheld and some academics were dismissed from their jobs.[1014] The FGN, after announcing the dissolution of the ASUU NEC, asked branches to operate as separate bargaining entities, with their respective governing councils. This offer which was rejected by ASUU branches nationwide, angered the FGN which afterwards instructed the Executive Secretary of NUC, Prof. Munzali Jibril direct Vice-Chancellors to sack the Union leaders.[1015] In response to the general public and students' appeal, ASUU was pressured to put the strike on suspension. While campuses remained unstable without full activity in spite of the suspension of the strike, the event of that period demoralised members of the union[1016]

[1010] Although the National Executive Council of the Union in ending military rule, joined a movement which was democratic, anti-military in objectves while struggles for the university system by defending the 1992 Agreement was abandoned. ASUU, 2017. *op.cit.* 86.
[1011] ASUU, 2017. *ibid.* 86.
[1012] The struggle which was protracted was on for six months with the government unleashing diverse tactics with some targeted at causing division on ethno-regional lines on ASUU to stop the strike action. While withholding pay of Union members, the Vice-Chancellorss, to organise false classes received between 5 and 8 million naira, in convincing members of ASUU with the public that the strike had been broken. In response to wide appeal of students and the public, the strike had to be put on suspension. ASUU. 2017. *op.cit*. 212
[1013] ASUU. 2017. *ibid*. 212.
[1014] ASUU. 2017. *ibid.* 86.
[1015] Some of the union leaders affected by that order were the ASUU President, Dr. Asobie, Assisi; the Dr. Amadi, George-led Excos at University of Nigeria Nsukka (UNN).
[1016] ASUU. 2017.*op.cit*. 212.

5.3.1.7. The 1998-1999 Negotiation and Agreement

Transitioning from the military junta to democratic rule in 1999 was expected to signal a new dawn across all sectors in Nigeria, however, this was not to be in the education sector,[1017] particularly in government-owned institutions as further strikes started at the turn of the Fourth Republic. In 1999 and 2000, ASUU strike was premised on salary issues, and that of inadequate governmental support for the education sector.[1018] While the Union remained banned till when General Abubakar Abdulsalam became the acting head of state in 1998, it was during that interim regime which succeeded that of General Sani Abacha that the Minister of Education, Chief Ola-Iya Oni, made overtures to the Union, in an attempt to win legitimacy for the Abdulsalam regime by re-instating the Union's members the Abacha government dismissed for parts played in 1996 ASUU strike and others who by Decree 17 of 1984 were dismissed.[1019]A major legal victory the Union had was the Enugu High Court's judgement that the Union was not banned by the 1996 Decree that dissolved ASUU NEC.[1020] ASUU by law did not lose its recognition as the Court ruled that the 1996 Decree only prohibited meetings of the NEC of the Union.[1021] On May 25, 1999, an Agreement was signed with ASUU by same government. It was intended that the Agreement was a temporary palliative measure in enhancing university teachers' income, without prejudice to an all-encompassing negotiation at a latter time. However, it only adjusted allowances and did not make provisions for basic salaries, autonomy and funding.[1022] Basically, the 1999 Agreement signed covered academic allowances, rent subsidy, housing loan and car refurbishing loan. It acceded that negotiation on university funding, university autonomy, basic salaries [1023] would commence under four weeks.[1024] However, it was on July 31, 2000 that the FGN set up the Professor Ayo Banjo' Committee which eventually commenced negotiations on August 28, 2000.[1025] Unfortunately, the Abdulsalami regime never brought the desired betterment of conditions in the opinion of

[1017] Ojo, J., 2020.*op.cit.*
[1018] ASUU. 2017. *op.cit.* 86.
[1019] Bello, F.B. and Isah, M.K., 2016. *op.cit.*
[1020] ASUU. 2017. *op.cit.* 86.
[1021] ASUU. 2017. *ibid*. 212-213.
[1022] ASUU, 2012. *op.cit.*
[1023] The Federal Government equated autonomy with decentralization. ASUU. 2017. *op.cit.* 86.
[1024] This was as stipulated in the October 26, 1999 Agreement. ASUU. 2017. *op.cit.* 86.
[1025] ASUU, 2017. *ibid*. 213.

the Union, as that government adopted a neo-liberal posture did not consider education as a responsibilty of the government rather it saw it as a private responsibility.[1026]

5.3.1.8. ASUU Negotiations and Agreements, 2000-2001

Olusegun Obasanjo's administration had started by the period negotiations commenced in 2000. This administration, which ushered in democracy in 1999, during its eight-year span had a another agenda for the educational sector.[1027] Therefore, during the period of negotiations in 2000, there was a consesus that from 2001 there would be an allocation of at least 26% of annual budgets at the federal as well as state levels for education and with a review, upward, from 2003 with about 50% of the allocation targeted at higher education.[1028] The Union rather considered it disheartening when the budget for 2001 was announced and there was no materialisation of the stated fund. This inaction led to breakdown in negotiations and, in 2001, the Union proceeded on strike.[1029] Due to pressure[1030] negotiations between ASUU and the FGN startted on August 28, 2000 was chaired by Professor Ayo Banjo.[1031] The reached agreement focused on university autonomy with academic freedom, basic salary including funding. There was also the allocation of 20% of FGN's annual budget to education with effect from 2001, subject to an upward review, FGN's subvention to state universities, including provision for Education Tax Fund (ETF), composition of Councils, and so on. However, the signing of the agreement which was to be after 16 months of negotiation never materialised as Dr. Babalola Borishade who was the replacement for Professor Tunde Adeniran as Minister of Education, on behalf of the FGN, disowned the Agreement, using propaganda in destroying it. Then a committee on university autonomy was set up by Borishade and asked ASUU engage in discussions with the committee on the implementation of the yet-to-be-signed

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[1026] Bello, F.B. and Isah, M.K., 2016. *op.cit.*

[1027] 1999-2007.

[1028] Okaka, E. O. and Eriaguna E., 2011. Government Agents in Nigeria's Industrial Relations System. *Journal of Research in National Development* . 9.1:187-192.

[1029] In June 2003, the strike was suspended on the order of IAP. ASUU ;Bello, F.B. and Isah, M.K., 2016. *op.cit.*

[1030] The FGN failed to fully honour the May 1999 Agreement and also failed to negotiate with ASUU within the four weeks it earlier gave to the union. ASUU. 2017. *op.cit.*213.

[1031] Based on the Cookley Commission's recommendations, the FGN's team, which consisted the representatives of Pro-Chancellors of federal including state universities, Vice-Chancellors, relevant ministers including government advisers and National Universities Commission (NUC), was properly set up. The ASUU team, on the other hand, was led by its President, Dr. Dipo Fasina. ASUU. 2017. *op.cit.* 213.

agreement. This request ASUU declined and resumed its suspended strike in 2001. This later resulted in negotiations and agreement signning in June, 2001.[1032]

Worthy of mention, at the state level, was the major highlight of 2001 crisis at Ambrose Alli University(AAU), Ekpoma which has come to be known as 'The 2001 Crisis' in the history of ASUU AAU began on October 7, 2000. The Lucky Igbinedion administration in Edo State closed down AAU on grounds of the unruly behaviour of students. The perceived desperation of the Governing Council in carrying out the state government's intention to reduce the students population and disengage some staff led to the introduction of the ignorable concepts of redundancy and revalidation.[1033] Their idea of redundancy qualified academic staff who were yet to acquire a doctorate degree as redundant, while revalidation required all academic staff to appear before a panel for renewal or revalidation of their appointments. The union resisted and their resistance led to the sack of eleven (11) academic staff of the varsity.[1034] The sacked academics, known as the G11, approached the court to seek redress while the union branch declared a strike action in solidarity with their sacked counterparts. Consequently, the university was closed in March, 2001. That struggle was sustained from March through July, 2001. It prompted the eventual out-of-court settlement of the issue on the ground of no-victor-no-vanquished. The sacked lecturers, eventually, got all their entitlements for the period of the crisis.[1035]

5.3.1.9. The 2002-2003 ASUU Strike for Implementation of the 2001 Agreement

The non-implementation of June 30, 2001 Agreement led to another strike which commenced on December 29, 2002. The agreement on salaries, autonomy, funding,

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[1032] Also, in 2001, there was an industrial action declared by ASUU based on universities' funding related matters, while also seeking that the 49 lecturers at the UNILORIN laid off for being part of the 2001 strike action be unconditionally reinstated. Other events that marked that year were the issuance of circulars to the Vice-Chancellors by the government to stop ASUU members' salaries, check-off deductions and sack ASUU members on strike; ASUU also demanded the implementation of the June 2001 agreement. There was also the restoration of check-off dues at all the universities, and commencement of implementation of agreed conditions of service including the University Academic Staff Salary (UASS); Funding and University Autonomy. ASUU, 2017.*op.cit.*87; 213-214.

[1033] ASUU. 2017. *op.cit.* 86.

[1034] There were 3 EXCO members of the Branch union affected by that decision.The eleven staff were, Mr. M.E. Omohan (branch Chairman);Mallam U.A.C. Aliu (the Secretary);Mr. L.I. Izuagie (P.R.O.) and eight members of the Expanded EXCO-Miss A.N.I. Oyenuchie; Mr. R.O. Aluede; Dr. A.U.Omoregie; Mr. B.U. Chizea; Dr. O.O. Aluede; Professor Sam Ukala; Professor Emma Okoegwuale and Prof. Mike Isokun. ASUU. 2017. *op.cit.* 86.

[1035] ASUU. 2017. *op.cit.* 86-87.

including the non-victimisation clause had been breached by the FGN. Thereafter, the government proposed an informal agreement with ASUU for the strike to be stopped until the completion of more formal negotiations. For a while, the Union participated in the negotiations but pulled out after a week, and resumed its strike. This action resulted in the 30th June 2001, agreement, with an offer of salary increase of 22% for university staff with a further assurance of varsties' autonomy. Not too long after the agreement, 49 ASUU members from University of Ilorin in Kwara State were sacked over their refusal to break their strike before the June 2001 agreement.[1036] Forty-four (44) academic staff of UNILORIN were sacked for refusing to sign the appropriate register and resuming at work by Tuesday, May 22, 2001, alongside five (5) union officials, including the Chairperson, Dr Taiwo Oloruntoba, who led the strike. This action was arbitrarily taken under pressure from the government. There was also an attempt at removing the Union's right to collective bargaining for $68 million from a loan targeted at the improvement of education standard from the World Bank.[1037] The FGN, however, reneged on the provisions on salaries, autonomy including funding, leading to not implementing the agreement as expected. This, in 2003, resulted in another strike. Therefore, the series of strike actions led by the union between 2002 and 2003 were occasioned by, amongst other issues, central bargaining cancellation, fees introduction, 49 UNILORIN lecturers' removal, including the $68 Million of the World Bank under its contentious Project commonly referred to as NUSIP8.[1038]

5.3.1.10. ASUU Demands, 2005- 2009

Typical in the series of university conflicts, the Union had to make its demands known with yet another strike in 2005. It embarked on a warning strike on 23rd February on government's failure to review the 2001 Agreement which had been due since June 2004. ASUU yet again went on strike for three months in 2007 which came to an end with 2001

[1036] In August, 2005, the High Court sitting in Ilorin, Kwara State, gave a ruling which favoured the UNILORIN 49 and gave an order that they be reinstated. Instead of encouraging that the order be complied with, the council was summoned by the Obasanjo administration to Abuja and took sides with those who, without the approval of the council, had made an against the judgment. ASUU, 2017. *op.cit.*

[1037] Bello, F.B. and Isah, M.K., 2016. *op.cit.*

[1038] Odiagbe, S. A., 2011. *Industrial Conflict in Nigerian Universities: A case study of the disputes between the Academic Staff Union of Universities (ASUU) and the Federal Government of Nigeria (FGN),* being the text of a thesis submitted to the School of Social and Political Sciences, College of Social Sciences, University of Glasgow.

agreements being renegotiated.[1039] Also in May 2008, the Union went on a-week warning strike, executed twice. These actions were targeted at pressing some demands amongst which were, an improvement on the salary scheme and press for the reinstatement of UNILORIN 49.[1040] In June 2009, the Union made an order for its members to proceed on strike indefinitely over not agreeing with the FGN on an agreement they concluded almost three years earlier.[1041] ASUU's indefinite strike on the 1992, 2001 Agreement not being implemented resulted in 2009 FGN-ASUU Agreement.[1042]

5.3.1.10.1. The FGN/ASUU 2009 Agreement

Negotiations commenced on Tuesday, January 23, 2007, although the Negotiation teams had been inaugurated on Thursday, December 14, 2006.[1043] The Agreement was signed three years after, on October 21, 2009. The agreement covered four major areas of conditions of service, funding, autonomy with academic freedom. It was after about two-and-a-half years that the FGN implemented only the salary aspect of the agreement and left out substantial issues of non-salary conditions of service including Earned Academic Allowances (EAA), funding retirement and pension matters unattended to. This failure to fully implement the agreement led ASUU to carry out a number of times, industrial actions, including warning and indefinite strikes with the intent of geeting the attention of the FGN drawn to the breaches.[1044]

The series of strike actions between 2003 and 2011 were due to the way the FGN defined the Union's struggles by not honouring agreements previously made while attempting to alter the process of collective bargaining. ASUU was expected to negotiate

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[1039] The FGN team was led by Gamaliel Onosode while the Union President, Dr Abdullahi Sule Kano led ASUU's team. The major aim was renegotiating the 2001 agreement with focus on reversing the decaying university system to aid its repositioning for higher responsibilities in national development; brain drain reversal,their disengagement from the encumbrances of a unified civil service wage structure and enhancement of the remuneration of academics; including universities being restored, through immediate, massive as well as sustained intervention financially while ensuring sincere university autonomy with academic freedom. Albert, I.O., 2014. *op.cit.*

[1040] That same year, the government sponsored an association of Nigerian professors to undermine ASUU. ASUU. 2017. *op.cit.*88.

[1041] Ajayi, J.O., 2014. ASUU Strikes and Academic Performance of students in Ekiti State University Ado-Ekiti. *International Journal of Management Business Research*. 4.1:19-34.

[1042] October 2009 marked the final outcome of the negotiation between the FGN and ASUU. ASUU . 2017.*op.cit.*88.

[1043] While the ASUU team was led by Dr. A. Sule-Kano and later his successor, Prof. Ukachukwu Awuzie, the FGN team was led by Mr. Gamaliel Onosode. ASUU. 2017. *op.cit.*214.

[1044] ASUU, 2017. *op.cit.* 215.

with the Governing Councils of their institutions due to outcome of the autonomy's approval in 2003 in the University Miscelleanous Provisions (Amendment) Act, 2003.[1045] This led to the FGN appointing representatives to conduct negotiations on its stead with no mandate to sign the agreement made in the previous 2009 negotiations.[1046]

5.3.1.10.2. The 2012 FGN/ASUU Negotiation and signing of a Memorandum of Understanding (MoU)

Yet another indefinite strike action was embarked on in 2011 to compel the FGN in implementing the October 2009 Agreement, especially the provision on adequate funding for the revitalisation of Nigerian universities continued.[1047] Prior to the time the union aired its grievances, its National Executive Council (NEC) met[1048] to review the extent to which the 2009 ASUU/FGN agreement had been implemented; the level of compliancy with the 2011 ASUU/FGN MoU on the agreement implementation; dissolution of Universities' Governing Councils unilaterally by the FGN; institutional accreditation with the state of the nation, in addition to issue of alleged fuel subsidy removal among others.[1049] That strike was called off on February 1, 2012. Conversely, with the issues earlier raised not well addressed, on 30th August 2012, the Union proceeded on a warning strike.[1050]

Another instance of ASUU showing its grievances was in 2013 when the academics of Nigerian public universities went on a six-month strike over the FGN not adhering to and implementing the 2009 FGN/ASUU agreement.[1051] The Union insisted on full implementation of that agreement signed by the FGN to revamp the Nigerian university system.[1052] The action cumulating from this displeasure escalated into a wider struggle with ASUU declaring a total and indefinite strike on the 1st of July, 2013 because of the FGN's

[1045] Bello, M. F. and Isah, M.K., 2016.*op.cit.* ; Okuwa, O.B. and Campbell, O.A., 2011. The Influence of Strike on the Choice of Higher Education Demand in Oyo State, Nigeria298. J*ournal of Emerging Trends in Economics and Management Services.* 2.4:298.
[1046] Okuwa, O.B. and Campbell, O.A., 2011. *op.cit.*
[1047] ASUU, 2017. *op.cit.*88.
[1048] They met between November 29 and December 1, 2011 at the University of Port Harcourt.
[1049] Unfortunately, lack of understanding by both parties resulted in an indefinite strike for fifty-nine days. ASUU, 2017. *op.cit.*88
[1050] Ajayi, J.O., 2014.*op.cit.*
[1051] Bello, M.F. and Isah, M.K., 2016.*op.cit.*
[1052] Albert, I.O., 2014.*op.cit.*

refusal in implementing the agreement made with ASUU in 2009.[1053] The FGN released the first installment of money which was agreed upon for university funding, with the promise to pay the balance over a five-year period. The issue of earned allowances was equally considered to the satisfaction of ASUU members before the strike was called off in December 2013.[1054] The events from 2013 till date have been marked by the FGN and state governments pending implementation of the 2009 Agreement.[1055]

5.3.1.11. ASUU Strikes of 2017-2018

When Muhammadu Buhari became the President in 2015, premised on his antecedents of being straight-forward regarding issues of national importance, the Union forwarded its long-standing grievances with claims focused on funding as well as revitalisation of public universities including the arrears of earned allowance to the tune of 92 billion naira.[1056] However, it seemed the administration was unfriendly to the Union's quest for an educational system that will compete internationally as well as get a space in global best practices. It, thereafter, went on strike in 2016 but called off due to the government's promises. The union embarked on another strike in 2017. It was an indefinite one to demand that the 2009 agreement[1057] and MoU of 2103[1058] be implemented. Since the MoU was dishonoured, the consensus arrived at was changed to a Memorandum of Action with attached implementable timelines.[1059]The government immediately showed

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[1053] Other reasons given by the NEC of ASUU for embarking on strike action were based on the unending crisis at the Rivers State University of Science and Technology (RSUST), the national economy's parlous state, the unending violation of the re-engaged UNILORIN 49' rights, including the non-release of the White Paper on Special Visitation to UniAbuja. Ogbette, A.S, Eke, I.E. and Ori, O.E., 2017. *op.cit.*

[1054]Bello, F.B. and Isah, M.K., 2016.*ibid.*

[1055] Below are the dates and duration of ASUU strike actions between 1993 and 2020.
1993- Three Months; 1994- Six Months, 1995- Four Months; 1996- Seven Months; 1999- Five Months; 2001- Three Months; 2002- Two Weeks; 2003/2004- Six Months; 2005- Three Days; 2006- One Week; 2007- Three Months; 2008- One Week; 2009- Four Months; 2010- Five Months and One Week; 2011- Three Months (nosedived into 2012); 2013 – Three Months, Two Weeks; 2016- Seven Days; 2017- 35 Days; 2018- 96 Days; 2020 –Nine Months. Nigeria School, *ASUU Strike: A History of ASUU Strikes Dates from 1999 to 2013*. Retrieved April 15, 2021, from https://www.nigeriaschool.com.ng/asuu-strike-a-history-of-asuu-strikes-dates-from-1999-to-2013/ ; Ojo, J., 2020.*op.cit.;* Akinwale, A.A, 2009. *op.cit.*

[1056] Adonu, C., 2018. ASUU Mulls Strike Over Federal Government's Failure to Implement 2009 Agreement. *Vanguard*. October 4. Retrieved June 17, 2021, fromhttps://www.vanguardngr.com/2018/10/asuu-mulls-strike-over fgsfailure-to implement 2009agreement/

[1057] Anon. 2017. UNN, University of Abuja join ASUU strike. August 16. Retrieved July 2, 2021, from https://www.premiunmtimesng.com/news/more-news/240475-unn-uniabuja-join-asuu-strike.html

[1058]Tade, O., 2017. Inside ASUU-FG's Memorandum of Action. *PUNCH*. September 20. Retrieved July 2, 2021,from https://www.google.com/amp/s/punchng.com/inside-asuu-fgs-memorandum-of-action/%3famp

[1059] Tade, O., 2017. *ibid.*

commitment with some promises that led to the strike being conditionally suspended after five weeks.[1060] On March 16, 2017 at the start of the renegotiation of the FGN/ASUU 2009 Agreement, the teams of both parties arrived at an agreement to be guided by the principles of decay reversal in the Nigerian University System in repositioning it for its responsibilities in national development; ensuring genuine and academic freedom and university autonomy; brain drain reversal, not by only the enhancement of the remuneration of academics, but also by their disengagement from a unified civil service wage structure's encumbrances; including restoration of Nigerian Universities, through immediate, massive as well as sustained financial intervention as their terms of reference.[1061] There was yet another strike in 2018 and it was suspended on February 8, 2019. In 2018, ASUU approached the FGN to implement the MoA of 2017 in developing the nation's education sector.[1062] The strike embarked on in 2018 probably suggests possible breaches as well as inconsistencies in the 2016, 2017 and the 2018 presidential responses and pseudo promises.[1063]

5.3.1.12. The 2020 ASUU Strike and Demands

Strike, industrial dispute's most covert expression, has become a frequent occurence in Nigeria. ASUU faces several challenges that threaten its survival and, in protecting its interest, it uses the instrument of strike. In 2020, ASUU embarked on a prolonged strike action making five demands: revitilisation fund for public universities, renegotiation of the 2009 agreement ASUU had with FGN, proliferation of universities and governance issues, payment of outstanding EAA including constitution of Federal Universities Visitation Panels.[1064] The Union was also against IPPIS forceful imposition on universities with the FGN's failure in paying February 2020 salaries. Part of the reasons for the strike was, therefore, a call on the FGN in accepting the Union's alternative to IPPIS, that is, the

[1060] Tade,O., 2017. *op.cit.*
[1061] ASUU, 2022. *op.cit.*
[1062] Wakili, I.., 2018. ASUU urges FG to implement 2017 MOA. *Daily Trust Newspaper*. Sep. 25. Retrieved june 8, 2021 from http://dailytrust.com/asuu-urges-fg-to-implement-2017-moa/#google_vignette
[1063] Shehu, A., Dahiru, J.M. and Bello, F.N., *Psychometric Content Analysis of Presidential Responses to Academic Staff Union of Universities' Strikes of 2017-2018 in Nigeria*. Retrieved June 8, 2021, from https://www.researchgate.net/publication/335105092_Psychometric_Content_Analysis_of_Presidential_Responses_to_Academic_Staff_Union_of_Universities'_Strikes_of_2017-2018_in_Nigeria
[1064] As at the time of this write up study mid 2021, only the issues of the inauguration of the visitation panels has been addressed fully.

Universities Transparency and Accountability Solution (UTAS).[1065] Some other reasons for the Union's agitation were that the FGN should make a five-year State of Emergency declaration on the nation's education sector, and during this period, at least the country's 20% budget with same percentage of states' budgets would be earmarked for education.[1066] The government in June 2020, invoked the 'no-work-no-pay' clause on the striking union members in relations to strikes and industrial disputes as provided for by Section 43 of the TDA.[1067]

The over nine months strike of the union was suspended on Wednesday, 23rd of December 2020. The union on compassionate grounds suspended its strike "conditionally", bringing to a halt a protracted display of grievances which commenced in March 2020. That decision of the Union was the end result of the consensus reached with the FGN and a meeting with its NEC. It must be noted that that decision also came a month after the FGN offered a cumulative ₦65 billion to the academics, in addressing the EAA and revitalisation of universities.[1068] The union, however, warned that it would, without notice, embark on strike if the FGN failed in fulfulling its side of thse agreement signed with the academics' union.[1069] ASUU struggles seem not to have a landing point yet, it has no deadline and is far from being over in view of the current realities facing the union.

5.3.1.13. The 2022 ASUU Strike

The Union on February 14, 2022, after over a year of exploring all options available to it in compelling the FGN to honour the terms of the MOA it signed with ASUU in December 2020 resulting in the suspension of the 2020 strike, had no alternative than to have a four-week roll-over strike declared. At the end of that initial declaration when the Union inferred from the FGN's action that more time was needed in attending to the principal outstanding matters of UTAS deployment as against IPPIS which has resulted in

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[1065] All the above issues had been agreed on by the parties via memoranda in 2013, 2017 and 2019. Odunsi, W. 2020. ASUU lists Six Reasons for agitations, recurring strikes. *Daily Post*. Retrieved June 21, 2021, from https://dailypost.ng/2020/03/12/asuu-lists-6-reasons-for-agitations-recurring-strike/

[1066] Odunsi, W, 2020. *ibid.*.

[1067] Metro News, 2020. 'No-Work-No-Pay' withheld ASUU Members' Salaries To Be Subjected to Special Waiver. Unini, C., November 23, 2020. Retrieved August 1, 2021, from https://thenigerialawyer.com/no-work-no-pay-withheld-asuu-members-salaries-to-be-subjected-to-special-waiver/

[1068] Egobiambu, E., 2020. ASUU Suspends Nine-Month-Old Strike. *ChannelsTv*. Retrieved July 5, 2021, from https://www.channelstv.com/2020/12/23/breaking-asuu-calls-off-nine-month-old-strike/

[1069] Egobiambu, E., 2020. *ibid.*

inconsistencies in salary payments, poor universities, funding implementation of the 2009 FGN/ASUU agreement in line with Collective Bargaining Principles of ILO, which stoodstill at the stages of proposals and uncertain assurances, the Union extended the strike by eight weeks to avail the FGN enough time to sort out the its demands thoroughly.[1070]

The Union further registered its displeasure at the FGN owing its members EAA for twelve years as well as having an Old Salary structure while political appointees were beneficaries of periodic review of salaries with allowances, hence the demand for an upward review of their salery scale.[1071] Furthermore, it made demands for Revitilisation funds for Public Universities, release of the whitepaper on Visitation Panels' report to Federal Universities 2021, including action on the Committee on State Universities' recommendations,[1072] in addition to 2009 Agreement renegotiation.[1073]

During the course of the strike, on the request for increase in salaries alongside allowances, the Minister of Labour and Employment stated any increase not in tantem with National Salaries, Incomes and Wages Commission (NSIWC) would not be acceptable while advising ASUU to go with what synced with NSIWC alongside the Presidential Steering Committee(PSC) on Salaries and Wages.[1074] The FGN paid ₦34 Billion arrears of minimum wage to academics and senior staff in Colleges of Education, Polytechnics as well as Universities.[1075]

The FGN put up a Professor Nimi Briggs led committee on March 7, 2022[1076] to renegotiate the 2009 FGN/ASUU agreement as an avenue to have the impasse between the

[1070] Emenyonu A., Olaitan, K., and Ezigbo, O., 2022. 57-Day-Old Strike: ASUU Urges Nigerians to Rescue Dying University System *THIS DAY*. April 12. Retrieved June 14, 2022, from https://www.thisdaylive.com/index.php/2022/04/12/57-day-old-strike-asuu-urges-nigerians-to-rescue-dying-university-system/

[1071] Emenyonu A., Olaitan, K., and Ezigbo, O., 2022. *op.cit.*

[1072] Tolu-Kolawole, D, 2021. *op.cit.*.

[1073] ASUU, 2022. ASUU Suspends its Strike Action. *Press Release* October 13; Anon. 2022. ASUU Suspends 8-Month-Old Strike,Says Issues Not Satisfactorily Addressed. *ChannelsTv*. October 14. Retrieved October 14, 2022, from https://www.channelstv.com/2022/10/14/breaking-asuu-suspends-8-month-old-strike-conditionally/

[1074] Tolu-Kolawole, D., 2022. Why its difficult to increase Varsity Lecturers' Salaries-FG. *PUNCH*. February 26. Retrieved June 15, 2022, from https://punchng.com/why-its-difficult-to-increase-varsity-lecturers-salaries-fg/?utm_medium=Social&utm_source=Facebook#Echobox=1645837372

[1075] This payment should have been made three years earlier. Olayinka, C., Egbejule,M., Agboluaje, R. and Alabi, A.,2022. *op.cit*.

[1076] With a three-month mandate.

FGN and ASUU resolved[1077] as well as other university based unions. The Renegotiation Committee made a recommendation, subject to the FGN's government's acceptance, of ₦2 Million as Nigerian Public Universities Professors' monthly salary from the currently earned average of ₦462,000. Various annual allowances such as, responsibility and hazard, teaching practice/industrial supervision, postgraduate supervision, examination/timekeeper as well as field trip, amongst others formed part of the other recommendations of the Committee as in the draft proposal of the renegotiated 2009 Agreement submitted to the Presidential Committee on Salaries and Wages.[1078] Rejecting the recommendations, with 180% increase on salaries of Academics and 10% for non-teaching staff, the FGN considered the proposals as non-inclusive, one-sided as well as impracticable figures beyond its capacity.[1079]

In making reference to the Renegotiation Committees of Professor Jubril Muzaliu alongside Nimi Briggs' whose reports were dumped by the FGN who resorted to arbitrarily impose salary award on ASUU in violation of Collective Bargaining Agreement between them as established since 1981, the Union claims that the interests of students as well as parents have been the hallmark of its struggles since its inception rather considers it worrisome that FGN would squander public funds on putting up committees to conduct negotiations with the Union only to have such recommendations rejected.[1080]

A 14-man Committee was constituted by the FGN in September, 2022 to look into Nimi Briggs' Renegotiation Committee's recommendations on getting the lingering strike of ASUU resolved.[1081] According to ASUU, the FGN being deceptive had put up about

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[1077]Adesegun, A., 2022. ASUU Issue not as Simple as it seeems-Lai Mohammed. *InformationNigeria*. June 16. Retrieved June 16, 2022, from https://www.informationng.com/2022/06/asuu-issue-not-as-simple-as-it-seems-lai-mohammed.html

[1078] Ogwo,C., 2022. Briggs C'mtee Recommends ₦2m Monthly pay for Professors. *Business Day*. July 18. Retrieved July 19, 2022, from https://businessday.ng/news/article/briggs-cmtee-recommends-n2m-monthly-pay-for-professors/

[1079] Agbakwuru, J., 2022. Varsity Strike: Why Fg rejected Briggs Committee Report- Presidency Source. *Vanguard.* July 14, Retrieved September 14, 2022, from https://www.google.com/amp/s/www.vanguardngr.com/2022/07/varsity-strike-why-fg-rejects-report-of-briggs-committee-presidency-source/amp/

[1080] Erunke, J., 2022. *op.cit.*

[1081] It was made up of Pro-chancellors, Vice-chancellors alongside other stakeholders, to be headed by Adamu Adamu, the Minister of Education. 2022. Tolu-Kolawole, D., FG Constitutes Team to Review Nimi-Briggs Committee Report. *PUNCH.* September 6. Retrieved September 14, 2022, from https://google.com/amp/s/punchng.com/breaking-fg-constitutes-team-to-review-nimi-briggs-committee-report/%3famp

forty committees in renogotiating its demands since 2017, with the same administration putting up yet another committee in 2022.[1082] A core issue which came up was the FGN insisting on invoking the no-work-no-pay on ASUU, making it clear that there would be no concession to the Union's demand to pay Academics for the period of no academic activities.[1083]

In showing their displeasure at the state of the University System, NANS, with National Association of University Students engaged in demonstrations, obstructing the flow of traffic in major highways, over the FGN/ ASUU impasse.[1084] NANS further urged the FGN to reverse the fascist policy of no-work-no-pay on ASUU, which they termed condemnable as well as unacceptable, with payments of their outstanding salaries in addition to arrears made considering that the Academics suffer similar hardships as well as mal-developments as students do. While passing a vote of No Confidence on Ministers of Education alongside Labour and Employment, the Association called for a proper funding of education, which it deems underfunded, with the imcumbent government failing in its promises of revamping the education sector, leaving tertiary institutions in Nigeria out of the world-class universities league.[1085]

On August 29, 2022 there was a declaration of indefinite strike by the Union.To ASUU, nothing sugests the disinterestedness of the FGN in matters of quality education than discounting all efforts of the Union in placing universities on the same level with her counterparts in other nations.[1086] The FGN rising to the occasion of meeting the demands of Universities Unions will improve the conditions of teaching alongside learning as well

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[1082] Emenyonu A., Olaitan, K., and Ezigbo, O., 2022. *op.cit.*

[1083] Olabisi Deji-Folutile, 2022. Away out of ASUU/FG imbrogilo. *Newspot Nigeria.* September 2. Retrieved September 5, 2022, from https://newspotng.com/a-way-out-of-asuu-fg-imbroglio-by-olabisi-deji-folutile/

[1084] Ajayi, A., 2022. ASUU Strike: NANS to take over Nigeria's International Airports. *PeoplesGazette.* May 19. Retrieved June 15, 2022, from https://gazettengr.com/asuu-strike-nans-to-take-over-nigerias-international-airports/

[1085]Tolu-Kolawole, D., 2022. Strike: Reverse no-work-no-play policy, NANS urges Buhari. *PUNCH.* September 13. Retrieved September 14, 2022, from https://punchng.com/strike-reverse-no-work-no-play-policy-nans-urges-buhari/

[1086] Tolu-Kolawole, D, 2021. Looming Strike: Tell Govt to Honour our Demands- ASUU to Stakeholders.. *PUNCH.* December 9. Retrieved June 15, 2022, from https://punchng.com/looming-strike-tell-govt-to-honour-our-demands-asuu-to-stakeholders/ . In the face of what it perceived as FGN's insincerity, the Union has had to make appeal to Nigerians to combine efforts with it to rescue the dying university system to be repositioned in being globally competitive as well as aid the production of competent man-power for the re-emergence of a economic and technological power, for the sweat, labour including the health academics had sacrificed to not be in vain. Emenyonu A., Olaitan, K., and Ezigbo, O., 2022. *op.cit.*

as guarantee industrial harmony in universities rather than proliferating or promoting private varsities to public varsities' peril.[1087]

The FGN which considered the FGN/ASUU tussle as complex, instituted an action at the NICN against ASUU in September, 2022, for the court's intervention over the Union's prolonged strike, while inquiring into its the legality or otherwise even after apprehension as well as the interpretation of section 18, TDA as it applies to strike after a dispute has been apprehended by the Minister and conciliation is ongoing. In addition it sought for TDA's section 43 interpretation on wages payment during strikes and lockouts alongside the determination if ASUU members have an entitlement to strike pay during the course of the strike in addition to the determination of if ASUU had such right to go on strike over disputes such as compelling the FGN to adopt its UTAS[1088] for salary payment in place of IPPIS used for all FG public service workers of which ASUU is inclusive. Futher, FGN sought for determination of the degree of fulfilling the Union's demands since the 2020 MoA signed by both parties, including the court's order for the resumption to duty of ASUU members.[1089]

Almost eights months after ASUU went on indefinite strike on what it considered as the government's failure to meet its lingering demands, the FGN registered CONUA as well as National Association of Medical and Dental Academics (NAMDA) on October 4 2022, with the aim of ending ASUU's monopoly as the sole Trade Union for University Academics.[1090] NLC considered the registrations as a violation of labour laws set in ILO standards, Conventions 87 and 98 domesticated in the CFRN, sections 40 and 41(2) which guarantee freedom of association as well as public decorum including order. Further, it in line with sections 3(2), 5(2), (3) including 5(4), NLC found no basis for the CONUA NAMDA registrations as they both failed in satisfying the precedent conditions in TUA for

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[1087] Erunke, J., 2022. *op.cit.*

[1088] This it considers as a robust ystem of Human Resources Management and Compensation. Tolu-Kolawole, D, 2021. *op.cit.*

[1089]Nwagwu, J., 2022. Why we Dragged ASUU to Court over Strike-FG. *PMNEWS.* September 12. Retrieved September 19, 2022, from https://www.google.com/amp/s/pmnewsnigeria.com/2022/09/12/why-we-dragged-asuu-to-court-over-strike-fg/%3famp=1

[1090] CONUA in assessing the state of things claimed that the agreements FGN previously entered with ASUU were under duress. Anon., 2022. Striking University Lecturers, ASUU Made Nigerian Government sign Agreements Under Duress-Parallel Academic Union, CONUA. *Sahara Reporters.* Retrieved October 7, 2022. from https://saharareporters.com/2022/10/06/striking-university-lecturers-asuu-made-nigerian-government-sign-agreements-under-duress

trade unions registration. The legitimacy of their registrations were queried with reference to *Erasmus Osawe v. Registrar of Trade Unions;*[1091] *Nigeria Nurses Association v. AGF*[1092] where it was determied that in the existence of a trade union to cater for a workforce's category, the registration of another union would be a proliferation as well as an offence against the CFRN including the TUA.

There was a stoppage of salaries' payment of the Union members in March 2022 on the policy of No work No pay as enforced by the FGN.[1093] In coming to terms with the Union's request, it however made an offer of a 23.5% pay increase for all employees at federal varsities excluding those at the professorial cadre who were offered 35%; an assurance of ₦150 Billion to be provided for in the 2023 Budget for revatalisation of federal varsities as well as provision for the outstanding EAA allowance for disbursement in 2023. These offers, the Union rejected and described as inadequate in meeting the demands of tackling the challenges the university is confronted with.[1094]

Due to failed negotiations, the FGN[1095] instituted an action against the Union[1096] at NICN for sections 4, 5, 6, 7 & 18(1), TDA to be interpreted whether the Union's prolonged strike, after the statutory apprehension by the Minsiter, was was legal and further sought for an interlocutory order against the strike's continuation. The Union was ordered to resume pending the substantive suit's determination. Within its right to appeal, the Union approached the Court of Appeal over the ruling, who in acknowledging the grounds of the Union's appeal validity upheld the lower court's ruling, giving ASUU seven days to comply with it, being the sole condition that would give effect to it's appeal being heard.[1097] On October 14, 2022 the Union conditionally suspended its action after the intervention of Femi Gbajabiamila, the House of Representatives Speaker led committee as well as appeals from well meaning citizenry inspite of the issues leading to the dispute were yet to be treated satisfactorily.[1098] This was with an assurance of a "Political Solution" which permitting a

[1091] 1985.*op.cit.*
[1092] Unreported Suit No. S.C. 69/1980 delivered 1981, November 6.
[1093] In line with section 43,TDA
[1094] Anon. 2022. ASUU Holds NEC Meeting Tomorrow to Call Off Strike Friday. *Nigerian Scholars*. Retrieved October 13, 2022, from https://nigeriancholars.com/school-news/asuu-strike/
[1095] Through the Minister of Labour and Employment
[1096]The FGN hinged this on section 17, TDA
[1097] Nigerian Scholars. 2022.*op.cit.*
[1098] ChannelsTv. 2022.*op.cit.*

more flexible as well as competitive payroll system capturing allowances while accomodating host institutions payment for academics on sabbatical leave as welll a payment of salaries withheld two tranches.[1099] Further, an agreement of copting ASUU UTAS's peculiarities into IPPIS under three months was reached by the Union with the OAGF, with ASUU accepting as an interim measure, the IPPIS.[1100]

Upon the Union's resumption of activities in good faith, amidst their demands being unsatisfactorily met, following Gbajabiamila's intervention, Academics got a prorated payment in October, 2023, for the days they worked counting from the date they suspended the strike on the premise that the FGN could not make payments for work undone. That development, ASUU termed disheartening as well as insensitive, and considered it an attempt for the Union to be polarised as well as disahormised by the Minister.[1101] In the view of Academics, while no one was contending against the policy of no-work-no-pay, the academic environment's peculiarity is against such and they deserved the payment of their salary in full .[1102]

While noting the collapse of an effective collective bargaining machinery in the tertiary education sub-sector, the protracted industrial dispute in public varsities, culminating into litigation, violations of human with trade union rights, armtwisting of concilliatory attempts, with bulkanization of unions including threats of proscribing trade unions, the NLC wadded into the ASUU/FGN situation by calling on the FGN to pay the salaries of Academics it had withheld as well as honour collective bargaining agreements had with unions mostly on issues of wages, conditions of service in addition to increasing education sector's budgetary allocation. Likewise, while resolving to defend the independence of trade unions, NLC implored the Minister to accord regard to the provisions

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[1099] Ishiekwene, A. 2022. A Professor's Pay-slip and lessons from ASUU strike. *Premium Times*, October 20 . Retrieved October 23, 2022, from https://www.premiumtimesng.com/opinion/560667-a-professors-pay-slip-and-lessons-from-asuu-strike-by-azu-ishiekwene.html

[1100] Egbodo, J. , 2022. FG, ASUU enter Fresh Agreement. Blueprint. *October 24.* Retrieved October 25, 2022, from https://www.blueprint.ng/fg-asuu-enter-fresh-agreement/

[1101] Oloja, M., 2022. ASUU Strike: Buhari's inconclusive intervention. *TheGuardian.* November, 6. Retrieved November 6, 2022, from https://guardian.ng/opinion/asuu/strike-buharis-inconclusive-intervention/

[1102] Ogundare, T., 2022. FG Can't be Rigid about 'No Work, No Pay' Policy for Universities- Committee of VCs. *Tribune*. November 6. Retrieved November 7, 2022.
from https://opr.news/sec95b03200310en_ng?link=1&client=news

of the CFRN as well as ILO Conventions 87 and 98 on respecting trade union independence, social dialogue including promoting tripartism.[1103]

While strike actions are undesirable, as a symptom of the decay in the education system, it has become the Union's mode of agitation, with the Union observing that in the past two decades, no administration has released funds willingly, without ASUU strikes, for the Univeristy system. It is ASUU's belief that the country's future would be jeopardised if it neglects fighting for a better university system[1104]which forms a fulcrum for national development.[1105]

5.4. Remote Causes of the Government-ASUU Disputes

In trade unions' interrations with management, disputes over one issue or the other seem unavoidable.[1106] Conflicts in the workplace, both formal and informal sectors, often occur from the contradictions between the rights of individuals, their interests and the realities of the workplace.[1107] The Pluralist theory forming part of the study's theoretical framework, sees management and employees inability to agree on issues as rational and inevitable. This is premised on the perception that shared interests and reciprocal dependence are considered to be requisites for the survival of the whole of which they form a part.[1108] For decades, industrial disputes have formed an inherent part of organisational challenges and development.[1109]And as in every other countries, industrial disputes have been deemed inevitable in private and public settings in Nigeria.[1110]

Generally, there are multitudes of reasons why industrial disputes occur, and though ascertaining the specific cause(s) for the issues involved is not an easy task; observations

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[1103] Tolu-Kolawole, D., 2022. ASUU: Release Withheld Salaries, NLC urge FG. *PUNCH.* October 25. Retrieved October 26, 2022, from https://punchng.com/asuu-release-withheld-salaries=nlc-urges-fg/

[1104] Olayinka, C., Egbejule,M., Agboluaje, R. and Alabi, A.,2022. Nigeria's Future Bleak Without Sound Varsity Sysytem, ASUU insists. *TheGuardian*. May 27. Retrieved June 14, 2022, from https://guardian.ng/news/nigerias-future-bleak-without-sound-varsity-system-asuu-insists/

[1105] Ekiotonye, N. and Barnabas, S.S., 2021. Collective Bargaining and Crisis Resolution in Nigerian Universities. *International Journal of Social Sciences and Management Review.* 4.3:25-38.

[1106] Oni, S.S., 2007. *Understanding Industrial Sociology. Ibadan*: Aseda Publishing.115.

[1107] Akanji, T.A. and Samuel, O.S., 2013. *op.cit*.

[1108] Adefolaju, T. , 2013. Trade Unions in Nigeria and the Challenge of Internal Democracy, *Mediterranean Journal of Social Sciences.* 4.6: 97-104.

[1109] Akpan, M.J.D., 2017. *op.cit*.

[1110] Akinbode, J.O., 2019. *Industrial Disputes in Nigeria*, being the text of a delivered lecture at the Award of Fellowship and Induction of New Members of Chartered Institute of Labour and Industrial Relations on the January 19, 2019.

by scholars of industrial relations is that they are the same in all capitalistic economies.[1111] In higher institutions of learning in Nigeria, dispute is inescapable as its existence is at all levels of the academic world.[1112] For decades, Nigerian universities have been faced with several crises which range from disagreements between academics and their school administrators, students and academics, students and school authorities as well as ASUU and Government. For ASUU, some specific reasons responsible for the incessant strike actions by the union. Its main points of struggles over the years include, improvements on what it considers as dehumanising working conditions of members,[1113] adequate funding, improved salary package, academic freedom and autonomy aimed at curbing brain drain and ensuring a continued existence of public university system.[1114] Those issues that have positioned ASUU against the FGN, almost year in year out, are considered fundamental to the purpose why the union was set up and the welfare of its members. The Union has, since the Olusegun Obasanjo regime and Shehu Shagari's administration, through other successive regimes,[1115] taken up the duty of intellectuals, in promoting the growth of Nigerian education. [1116]The requirement for such obligation is the establishment of

[1111] Generally, industrial disputes can brew up in the workplace due to the following reasons:
(1) Economic Causes: considered the most common. The reasons for this could include; (a) Wages, Salaries and Allowances, (b) Working Condition and Working Hours, (c) Modernisation and Automation of Plant and Machinery[1111] and (d) Demand for Other Facilities..
(2) Managerial Causes of Industrial Disputes: this could be as a result of autocratic managerial attitude as well as inadequate labour policies, etc. (a) Not recognising trade unions as a collective bargaining party,[1111] (b) Defective Recruitment Policies (c) Irregular Lay-Off, Redundancy and Retrenchment, d.) Unfair/ Anti-labour practices, e) Refusal to accede to Trade Unions Demand, (f) Defiance of Agreements and Codes, (g) Defective Leadershipands (h) Gap in effective communication. Oni, S.S., 2007.*op.cit*.118; Sanders, P.H., *op.cit.*; Makinde, O.H., 2013. *op.cit.;* Chidi, O.C., 2014. Collective bargaining and dispute settlement in the food, beverage and tobacco industry in Lagos State, Nigeria. *European Journal of Business and Management*, 6.2:187-198; Chidi, O.C., 2014. *op.cit.*

[1112] Holton, S.A., 2008. Academic mortar to mend the cracks: The Holton Model for Conflict Management, in Holton, S.A., Ed., *Mending the cracks in the Ivory Tower: Strategies for Conflict Management in Higher Education.* Bolton, MA: Anker Publishing, Inc.; Adenyi, T. O., Onyia, M. C. and Nnamchi, K. C., 2019. Industrial Courts and the Management of Industrial Dispute between Government and ASUU, 2009-2017. *The International Journal of Science & Technoledge.* 7.3:1-10.

[1113] Ardo, T., Ubandawaki , U. and Ardo, G. 2020. Academic Staff Union of Universities (ASUU) Industrial Action Impact on Student's Academic Performance in Usmanu Danfodiyo University, 2013/2014 Academic Session. *ISJASSR.* 3. 2:172-181.

[1114] Nnamdi Azikwe *University, 1991-2021. Academic Staff Union of Universities (ASUU),Nnamdi Azikwe.* Retrieved April 29, 2021, from https://unizik.edu.ng/unions/academic-staff-union-of-universities-asuu-nnamdi-azikwe-university/

[1115] General Muhamadu Buhari, General Ibrahim B. Babangida, General Sani Abacha and General Abubakar Abdulsalami. Uzoh, B.C. , 2017. An Assessment of the Impact of Academic Staff Union of Universities (ASUU) on Human Resource Development in Nigerian Universities. *International Journal of Academic Research in Business and Social Sciences.* 7.44:740-747.

[1116] ASUU, 2013. *op.cit.*

educational institutions which are first-rate, most specially universities; a system that is adequately funded with teaching with research facilities that are advanced, with remuneration package competitive internationally to retain academics in Nigeria as well as attractive to academics from other nations of the world.[1117]

The major cause of recurring trade disputes between the FGN and ASUU is that of not getting agreements, signed by the two parties, implemented by the FGN.[1118] In addition, some of the specific causes of conflicts between the Union and the FGN are discussed below:

5.4.1. Funding

> "Central to decay and desecration is funding and it does not need a gift of prophetic wisdom to surmise that unless this is addressed positively and aggressively there can be no turnaround in the status of Nigerian Universities."[1119]

Education globally is a mechanism used in shaping the society. The rootedness of most of the first generation of academics and students in peasantry and the abject poverty that defined life of a large number of Nigerians to whom academics are connected gave room for tension between the hegemonic design of the university by the colonialists and the realities faced by the Nigerian academics.[1120]

Internationally, while adequate funding is categorised as part of the obligations of state, it is also an indispensable condition for research institutions and others of higher learning to meet their academic objectives.[1121] Article 17[1122] of the Kampala Declaration on Intellectual Freedom and Social Responsibility brings it to bear by providing that, such funding to research institutions as well as higher level of education institutions is to be continuously provided by the state, in consultation with the concerned institution elected for that purpose.

In Nigeria, ASUU keeps having face-off, from time to time, with the FGN on non-funding of federal universities by the FGN. There has been recurring issues in the education

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[1117] ASUU, 2013. *op.cit.*
[1118] This will be discussed in Chapter Six of the study.
[1119] Akinkugbe,O.O., 2001.The Piper , The Tune and University Autonomy. *The Nigerian Social Scientist*.4.1:11-15.
[1120] ASUU, 2017. *op.cit.* 160.
[1121] The Kampala Declaration on Intellectual Freedom and Social Responsibility in Appendix III of The Constitution of ASUU, 2018, issued by the ASUU National Secretariat, June 2019.
[1122] This is under Chapter II of the Declaration, on Obligations of State.

sector of the country as academic activities are put on hold, at times indefinitely and research is hindered anytime ASUU embarks on strike action. This academic union tenaciously continues to pressure the FGN for better funding, grants for research, appropriate remuneration, upliftment of the education sector including the academia's welfare generally.[1123]

Almost all ASUU's demands are hinged on funding.The union requires funding for research and teaching facilities to aid impacting students adequately with knowledge. Every Agreement ASUU has with the FGN has always contained increased funding to universities. Specifically, the 2009 Agreement provided for funding requirements for revitilisation of the Nigerian University System. Section 4(21)(d) of the Agreement makes provisions that the FGN would endeavour to increase, progressively, the budgetary allocation to the education sector.[1124] And it can be garnered from that Agreement, which is to be fully implemented, that at least 26% of the government' budget, at the federal and state levels, is to be earmarked for education, with its 50% allocated to the universities.[1125] The reality, however, is that while the FGN slashes the allocation of funds for education[1126] and thereby not achieving full funding of federal universities, the state universities on their own part, in most cases, do not receive budgetary allocation from their state governments even after signing the collective agreement.[1127] This has resulted in difficulties in implementing several components of collective agreements, including wages, EAA[1128] and responsibility in many state universities. These universities neither implement the agreement in respect of funding research nor teaching facilities.[1129]

A major means through which public universities get funded is the Tertiary Education Trust Fund (TETFund),[1130] an initiative of ASUU, which the government keyed

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[1123] Okolie, C.N., 2010. *op.cit.*
[1124] ASUU, 2017. *op.cit.* 218.
[1125] ASUU, 2017. *op.cit.* 216.
[1126] The allocation for education in the 2022 budget was its lowest in the past 10 years, pegged at 5.39% . This was a 50% reduction from that of 10.79% of 2015. Eromosele F., 2022. ASUU Strike: FG's Budgetary Allocation to Education Lowest in 2022-Report.. *Vanguard* . August 9. Retrieved October 27, 2022, from https://www.vangauardngr.com/2022/08/asuu-strike-fgs-budgetary-allocation-to-education-lowest-in-2022-repoert/
[1127] ASUU, 2017.*op.cit*. 218.
[1128] Earned Academic Allowance.
[1129] ASUU, 2017. *op.cit.* 218.
[1130] TETFund was initially set-up as Education Trust Fund (ETF) by Act No. 7 of 1993, amended by Act No 40 of 1998, subsequently repealed, Tertiary Education Trust Fund Act 2011 became its replacement.

into with the notion of promoting tertiary education.[1131] As an intervention agency founded to give support to government owned tertiary institutions of all levels, it has the aim of funding, together with project management for the consolidation, rehabilitation including restoration of Nigeria's higher education.[1132] With the influence and impact of TETFund,[1133] 90% of tertiary institutions in Nigeria have a means of survival.[1134] The NEEDS Assessment Funds is another intervention source of funding for conference attendance, infrastructure, staff training, amongst others.[1135] The need for the government to invest in public universities can never be over-emphasised.[1136]A government that is interested in the long-term welfare of its citizenry and its national growth places a high premium on national education as higher education has the likelihood in reproducing and, at times, accelerating socio-economic with political development. For a university to play its roles of learning, teaching and research, it must be adequately funded.[1137] Unfortunately, the budgetary allocation which is a principal source of income for tertiary education in

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TETFund, 2021. *TETFund History*. Retrieved July 13, 2021, from https://tetfundserver.com/index.php/history/

[1131] This intervention funds' disbursement is for total improvement of education in both federal with states tertiary institutions particulary for providing, maintaining physical infrastructure that are important for teaching as well as learning; research with publications, institutional material with equipment including training for and development such other need found essential and critical in the Board of Trustees' opinion for improving and maintaining standards in the higher education institutions. TETFund, 2021. *op.cit.*

[1132]TETFund, 2021. *ibid.*

[1133] The 2% education tax paid , assessed from registered companies's profit forms the major means of fund available to the Initiative. The assessment and collection of the tax is done by the Federal Inland Revenue Services (FIRS) for TETFund. TETFund , 2021.*op.cit.*

[1134] Damaturu, N.M., 2021. ASUU begins warning strike in Yobe June 8,Don says varsity autonomy will end ASUU/FG Conflict. *TheGuardian* Retrieved July 13, 2021, from https://m.guardian.ng/news/asuu-begins-warning-strike-in-yobe-june-8-don-says-varsity-autonomy-will-end-asuu-fg-conflict/

[1135] Comparatively with Ghana, which functions with an economy almost as Nigeria's with a comparable sized on a per capita basis budget, Ghana's principal means of funding higher learning include direct government budgetary allocations with grants, the Ghana Education Trust Fund (GETFund), revenue generated internally from its institutions with private sector contributions. GETfund is aided with 2.5% of VAT revenues amassed in the country. Ghanaian universities, as well enjoy a major income stream, annually, from several foreign students whose fees per annum is more than $5,000. This serves as a revenue booster and likewise enables the pprovisions of education to students of Ghanaian origin at a rate which is greatly subsidised. Nairametrics, 2021.*op.cit.*

[1136] Some of the sources of funding higher education globally are, budgetary allocation which comprises block recurrent and capital grants, tax expenditure or tax exemption; research earnings composed of block grants from government sponsored research, research contract with intervention research fund from agencies such as TEF and PTDF in the case of Nigeria; Students aids comprise of loans, scholarships, grants and work study; subsidising students' tuition , accommodation and feeding; commercial activities such as sales and services , consultancies and contacts contribute to internally generated revenue; funds for international students forms on of the ways . The different combinations of these sources are used by different countries of the world in allocating resources to their higher institutions. ASUU. 2017. *op.cit.* 185.

[1137] ASUU. 2017. *op.cit.* 183-184.

several nations of the world, Nigeria spends minimal amount of her GDP on education.[1138] The gross under-funding, most especially, in some state-owned universities, is a violation of the funding provision of the 2009 Agreement.[1139] The government cannot keep charging universities to conduct innovative research when it has failed to fund it.[1140]

The aftermath of continuous underfunding of tertiary education includes overcrowding of students in lecture halls and students' hostels, poor infrastructures, a degeneration of physical facilities and medical laboratories, rot and decay in the system, less support for research, occupational stress among academics as a result of excess workload,[1141] a reduction in the standard of teaching, learning with researching as well as restive staff and students.[1142] Inadequate fund to run public institutions optimally due to paucity of funds is seriously undermining their capacities to meet their objectives.[1143]Therefore, adequate funding, financial stability is important for universities to maintain their autonomy and institute proper structures needed to fulfil their various assignments of teaching, researching, learning including production of high-level workforce.[1144]

Furthermore, with the COVID-19 pandemic, there is a need for the government to insert in the budget funds for migrating from the conventional on-site to online teaching.[1145] Notwithstanding that the issue of non-funding is an ever-recurring matter, springing up from time to time, not relenting on its oars in ensuring an all-time welfare of its members, ASUU as a union for university academics continues to pressure the government for adequate funding, better remuneration, grants for research, and uplift of the education sector.[1146]

[1138] As at 2017, according to ASUU, Nigeria spends less than 0.5% on education. ASUU. 2017.*op.cit.* 186.
[1139] ASUU, 2017. *op.cit.* 218.
[1140] Tade, O., 2017., *op.cit.*
[1141] Akinwotu, S.A., 2019.*The Role of Discursive Constructions in Nigeria's ASUU-FGN Labour Conflict of 2003.* Retrieved July 19, 2021, from http://www.scielo.org.za/scielo.php?script=sci_arttext&pid=S2077-72132019000100006
[1142] ASUU, 2017. *op.cit.* 185.
[1143] Adenyi, T. O., Onyia, M. C. and Nnamchi, K. C., 2019. *op.cit.* 7.3:1-10.
[1144] ASUU, 2017. *op.cit.* 183.
[1145] Tade, O., 2021. *Government's early breach of Agreements with ASUU*. *Vanguard*. January 9. Retrieved July 13, 2021, from https://www.vanguardngr.com/2021/01/governments-early-breach-of-agreements-with-asuu/amp/
[1146] Okolie, C.N., 2010. *op.cit.*

5.4.2. Conditions of Service

ASUU and the FGN are constantly in conflict over matters bordering on better working conditions, amongst other ASUU demands. As a Union of intellectuals, in their employment letters, no resumption or closing time is contained, contrary to conventional employment practices making them carry out their pre-occupation of community service, teaching as well as research all round the clock.[1147] The issue of salaries with conditions of service is traceable to after independence. From a comparison of payments in the civil service with university workers at that period, in October 1960, the Prime Minister's salary was £800[1148] higher than what the Principal[1149] of the University College, Ibadan received.[1150] By 1966, there was a growing disparity, with the military intruding into politics thereby bringing about a change in the reward system of the nation's diverse occupational groups. During that period, an assistant lecturer received £950 as salary, while those in federal civil service with comparable academic qualifications's offer was £720.[1151] Aside from earning higher than their civil s ervice counterparts, university lecturers got other benefits of housing allowances, social status, with mouth-watering working conditions including proper funding of their institutions, attending once in three years conferences abroad, thereby making academics an enviable occupation for civil servants.[1152] The Union[1153] was at that period considered the workers' union which was most passive in Nigeria,[1154]seldomly demonstrating any trait of militancy considering the fact that they were part of the Nigerian middle-class, who were highly paid, with no delay in salary. The Union's interest centred more on quality education.[1155] This enviable status of the Union

[1147] Erunke, J., 2022. Strike: Avoid Prescription Capable of Worsening Deadlock, ASUU Warns FG. *Vanguard*. September 6. Retrieved September 6, 2022, from https://www.vangaurdngr.com/2022/09/strike-avoid-prescription-capable-of-worsening-deadlock-asuu-warns-fg/

[1148] Historically, university staff had a relatively high position in comparison to their State Civil Service counterparts. However, while the personal emolument of the Prime Minister was £4,500, that of the University College, Ibadan's Principal was £3,750. Bello, F.B. and Isah, M.K., 2016.*op.cit.*

[1149] Now termed, The Vice-Chancellor.

[1150] Onyeonoru . I., 2006. Human Capital in Nigerian Universities: The presence of the past and the thrust of the future' in "The Idea of an African University: The Nigerian Experience Cultural Heritage and Contemporary Change Series II.

[1151] Onyeonoru, 2001, *op.cit.*9.

[1152] Bello, F.B. and Isah, M.K., 2016.*op.cit.*

[1153]It was at that period known as the National Association of University Teachers (NAUT).

[1154] Bello, F.B. and Isah, M.K., 2016.*op.cit.*

[1155] Jega, A., 1994.*Nigerian Academics under Military Rule*. Stockholm: Department of Political Science, University of Stockholm .Report No. 1994:7.

became, however, got challenged by excess inflation affected all workers' purchasing power, first in 1970s. This, thereafter in 1973, led to the NAUT embarking on its first strike action with the purpose of negotiating wage increase. Unfortunately, the profile of the Union at that period was evidently that of an elitist and compliant organisation and a simple threat from General Yakubu Gowon's administration halted the strike making ASUU's leadership call it off immediately. It was through this cowardly action of that directly led to the establishment of ASUU in 1978.[1156] Unfortunately, the synchronisation of the civil service into the unified public service that followed due to the Jerome Udoji Advisory Committeeof 1975, recommending such devaluated further academic work in universities. Based on that recommended scheme, a professor's pay got pegged at £11,568 placing it equally with that of a Permanent Secretary at the state level,of similar grade, but lesser than those at the federal level.[1157]

The overturn became more obvious in 1975 [1158] as the downturn in the work conditions of university staff became the first steps in implementing in the society the Nigerian military class ascendancy project.[1159] This led to the 1988 ASUU industrial strike and, after, the class survival struggle started. The return of a 20% difference in the University Salary Structure (USS), the university staff previously enjoyed in comparison to those on the same level with them in the larger economy, but removed by the aftermaths of SAP, initiated by I.B. Babangida regime, was one of the demands of the Union in 1988. ASUU contended that the huge difference resulting from the 1970s unified salary structure was a causal factor for the loss of academics including the erosion of their status with

[1156] Bello, F.B. and Isah, M.K., 2016.*op.cit.*

[1157] When the ruling military class' remuneration was compared with the university employees before as well as after the Udoji Recommendation , there was a clear difference in 1960,at independence, when an Assistant Lecturer got above a Sub-Lieutenant and Lieutenant; a Lecturer II earned above a Lieutenant Colonel, a Reader/Associate Professor earned higher than a Colonel and Brigadier. A Major General's salary positioned him steps above a University Professor. Adekanye, *op.cit.*1993:18.

[1158] There was a clear distinction in salaries paid because an Army Captain got higher pay than a university Lecturer I, a Lieutenant Colonel earned above a Senior Lecturer, a Colonel earned higher than a Reader/Associate Professor; an army Brigadier, whose salary in 1966 was not as much as a Reader/Associate Professor's began earning higher than a Professor while the salaries of a Lieutenant General as well as a full General was much more than that of a Vice-Chancellor. Bello, F.B. and Isah, M.K., 2016.*op.cit.*

[1159] Onyeonoru, I.P., 2006, *op.cit.*

income.[1160] The FGN, however, initiated the EUSS[1161] under SAP.[1162] This step resulted in a situation where the wages of private sector workers was more attractive in comparison with the public sector due to the privatisation idea which was contrary to the whole idea of the USS.

ASUU from time to time proposes for increment in Academic Staff Minimum–Salary Pay Scale, comparable to what is obtainable in other countries in Africa, but with no satisfactory response from the government which opts not to accede to such requests. Many lecturers now engage in teaching outside their primary place of assignment and in private engagements several of which are not within their training and scope, for supplementing their income. Getting involved in unrelated private practices, no doubt, distracts them from their primary duties of teaching and researching.[1163]

Since 1992, ASUU has made attempt in engaging the FGN in negotiations on wages in addition to other welfare packages for members of the Union. At some point during negotiations, ASUU insisted on a 109% pay increase to raise salaries to what it referred to as the 'African average'. However, it hardly yielded 52% in the agreements of 2009 as the FGN attributed this to fiscal challenges.

Over time, wage-related disputes have remained an essential factor as ASUU seeks for a better rating for its members not to be treated as hungry, needing only little appeasement.[1164] Severally, it has been through the use of strike actions that the Union reminds the government of agreements previously made, of which wages is an inherent part of.[1165] According to the Union, the last time the university scale salary was reviewed was in 2009. For the scale salary review to be implemented in 2011, ASUU needed to proceed on a strike action. University lecturers are considered to be the least-paid among teachers of

[1160] Bello, F.B. and Isah, M.K., 2016.*op.cit*.
[1161] There was no implementation of the EUSS, although its implementation would have in no way addressed the brain drain issue. ASUU, 2012. *op.cit.*
[1162] The aftermath of SAP conditioned the Union's struggles. This led to the impoverishment of academics.ASUU, 2012. *op.cit.*
[1163] Bello, F.B. and Isah, M.K., 2016.*op.cit*.
[1164] Odiagbe, S.A.,2011, *op.cit.*
[1165] Olawale, L., 2011. *NLC Calls for State of Emergency in Education: Blames Greedy Ruling Class for Insensitivity*. The Port Harcourt Telegraph News, December 6-13.3-5

tertiary institutions[1166] in Nigeria. Salary demands of ASUU are implicitly tied to the weakened status of academics, economically, through the years.[1167]

ASUU struggles are rooted in transformative ideology. What ASUU advocates is a better public university education as well as change in the decaying educational infrastructures and facilities.[1168] It wants to be seen not as a group of mercenaries whose interest is merely in salaries and who would leap upon seeing figures.[1169] According to ASUU, the state of the universities affecting staff and students, form a major concern of the Union.[1170] Poor conditions of service no doubt leave a bad taste in the mouths of the academics.

5.4.3. University Autonomy and Academic Freedom

University autonomy connotes universities being free from external influences, economically, politically, socially or culturally.[1171] It signifies the institutions of higher learning's independence from the state and other societal forces, in making decisions regarding its finance governance, administration, including establishing its educational policies of research, learning, extension work with related activities.[1172] Having its precepts entrenched in the laws establishing universities in Nigeria and premised on the rule of law, university autonomy is essential to a system of university governance.[1173] The four key elements of autonomy important for universities to carry out their mission include, organisational, financial, staffing and academics.[1174] ASUU has, over the years, made a demand for the inviolability of university autonomy with academic freedom.[1175] ASUU is particularly sensitive on this issue. The Union does not desist in drawing the government's attention and that of the public to any breach when it occurs.[1176]

[1166] These include Colleges of Education, Polytechnics, and Universities.
[1167] Bello, F.B. and Isah, M.K., 2016.*op.cit.*
[1168]Transcribed by the researcher from a video clip released into public domain by ASUU, UNILAG Branch, May 23, 2020.
[1169] ASUU, 2010. *op.cit.*1.
[1170] ASUU, 2010. *op.cit.* 1.
[1171] ASUU, 2017. *op.cit.* 189.
[1172]The Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education, 1988, Appendix IV of The Constitution of ASUU, 2018, issued by the ASUU National Secretariat, June 2019.
[1173] Pemede, O. 2007. *op.cit*.357-364
[1174] ASUU, 2017. *ibid.* 189.
[1175] Onyeonoru, I., 2004. *op.cit.*
[1176] Pemede, O. 2007. *op.cit*.357-364.

The crisis of autonomy derives from the fact that the government is the one that establishes the universities and at the same time, draws up the laws governing these institutions, and also funds them. Consequently, the government that establishes and funds them would invariably undermine their autonomy and academic freedom.[1177] The main reason for continuous demand for autonomy, is that in specific situations the FGN, most especially during the military regime, places limits which are unnecessary on the nature and scope of knowlege acquisition, which is detrimental to scholarship.[1178] Modern universities, aside from being established for teaching with learning in diverse areas and subjects and doing research also collaborate in research, and development with different organisations outside the university, therefore, they need to be autonomous to carry out their obligations to the society at large.[1179] The responsibility of the state in the funding of universities need not translate into undue inteference by the FGN and meddling in the affairs of university.[1180]

The perceived violation of university freedom is summed up to be, the procedures for appointing Vice-Chancellors violation; authority of the university statutorily being eroded and; the erosion of the senate as the supreme powers in issues related to academics.[1181] Institutional autonomy, with the government acting as an unbiased umpire, is key in enabling universities perform the responsibilities of teaching, research including innovation.[1182]

On the other hand, academic freedom is the liberty teachers with students have to aid teaching, studying including pursuing knowledge and researching without being unreasonably restricted by law, institutional regulations or public pressure.[1183] It is an indispensable pre-condition for research, education, service and administrative roles with which institutions of higher learning are entrusted.[1184] Its elements, primarily, include the teachers or lecturers' freedom to make inquiry into such subjects evoking their intellectual

[1177] Nwala, T .U. ,1980. Changing Moral Values and Social Development in Nigeria; in Amucheazi, E.C., Ed., *Readings in Social Sciences: Issues in National Development*. Enugu: Fourth Dimension Publishers.10-13.
[1178] Onyeonoru, I., 2004. *op.cit.* 4.5:2-12.
[1179] Arikewuyo, M.O. and Ilusanya, G. 2010. The Search for University Autonomy in Nigeria. *The Humanities Journal.* 1.1:123-139.
[1180] Onyeonoru, I.P., 2004. *op.cit.* 4.5:2-12.
[1181] Onyeonoru, I.P., 2004. *op.cit.* 4.5:2-12.
[1182] ASUU, 2017. *op.cit.* 189.
[1183] Britannica, T., 2020. *Academic Freedom*. Retrieved June 14, 2021, from https://www.britannica.com/topic/2591/academic-freedom
[1184] The Lima Declaration, 1988. *op.cit.*

concern, presentation of their findings to students, their associates and other persons, publication of data including conclusions with no form of restrain, as well as pass on knowledge in the most professional manner. For students, the essentials of academic freedom entail the freedom to offer courses of interest or concern and draw inferences themselves and as well have their opinions expressed.[1185] The benefits of academic freedom to the society include, their interests which extend over a relatively lengthy time, which are best served when the educational process results in knowledge advancement.[1186]All members in the academic community have, and should be able to perform their rights in fulfiling their roles with no form of discrimination or fear of interference or being repressed by anyone, including the statee.[1187] Academic freedom with university autonomy violations have often led to fractions and acrimonious encounters in the perennial conflicts between ASUU and the government.[1188]

The Preamble to The Lima Declaration gives a solid backing and further insight to the importance of institutional autonomy and academic freedom. It states that, it is only in an atmosphere of academic freedom with autonomy of institutions of higher learning that the right to education can be enjoyed fully.

5.4.4. The imposition of Integrated Payroll and Personnel Information System (IPPIS)

IPPIS is recent in the several issues that ASUU has been battling with the FGN. IPPIS is the initiative of the FGN to ensure that pay cheques go to only those who are biometrically confirmed to be on the payroll, provide an integrated computerised financial package aimed at enhancing public resource management's effectiveness as well as transparency by the computerisation of the the payroll management and accounting system for the FGN.[1189] This system is also intended to keep ghost workers off payrolls, ensure accountability and for anti-corruption purposes. Hence, the Federal Government ordered all

[1185] Britannica, T., 2020. *op.cit.*
[1186] ASUU, 2017. *op.cit.* 189.
[1187] The Lima Declaration, 1988.*op.cit.*
[1188] ASUU, 2017. *ibid.* 209.
[1189] Abdulsalam Nasiru, Kaoje, A.N., Nabila, K. , Idris, S., Abdu, J., Gambarawa, J.A. and Ubandawaki, L.I., 2020. Integrated Payroll and Personnel Information System (IPPIS) and Transparency in Government Payroll. Administration in Nigerian Civil Service: A Unique Approach. *Asian Journal of Economics, Business and Accounting*. 19.3: 1-8

workers on its payroll, including lecturers of federal universities, to be enrolled in this scheme. University teachers, however, objected to this development. According to them, it would amount to being treated like other civil servants. They claimed it violates the autonomy of Nigerian universities[1190] and universal best practices.[1191] ASUU also pointed out that there are nuances in their service conditions which may not be readily captured in the IPPIS scheme.[1192] The insistence of the government on ASUU members' registration on the IPPIS was the reason negotiations ended in a stalemate.[1193]

Notwithstanding these reservations by ASUU, the government insisted the teachers must enrol or there would be no pay. This challenge led to the public universities academics embarking on a prolonged strike action in 2020. Even with the COVID-19 pandemic, the government did not to go back on its decision. It used the scheme in paying the outstanding salaries of lecturers, yet there was still no resolution of the underlying issues as ASUU still faulted the approach referring to it as a colossal failure deployed in processing the salaries of academic staff and they found rather unacceptable the desperate moves made by some persons they referred to as to IPPIS zealots in justifying the distortions deliberately made to its members'salaries.[1194] To find a common ground in tackling corruption, the Union proposed another option to the controversial IPPIS.[1195] ASUU's vaunted alternative emoluments payment platform to the IPPIS solution is the UTAS.[1196] The universities teachers' union promised to do a demonstration of the efficacy of the system and its superior merits compared to IPPIS.[1197] Therefore, the Union implored the FGN to continue to pay

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[1190] Olisah, C., 2020. *IPPIS: FG considers adopting ASUU's proposed payment platform.* Retrieved October 15, 2020, from https://nairametrics.com/2020/10/14/ippis-fg-considers-adopting-asuus-proposed-payment-platform/

[1191] Statement made by a one-time ASUU President, Professor Biodun Ogunyemi at the Second Quadrennial delegates Conference of SSANU in Abuja on November 9, 2020. Ezigbo, O., 2020. *ASUU, NLC, SSANU blame FG for lingering Universities' Strike.* Retrieved June 29, 2020, from https://www.google.com/amp/s/www.thisdaylive.com/index.php/2020/11/10/asuu-nlc-ssanu-blame-fg-for-lingering-universities-strike/amp

[1192] The SUN, 2020. *op.cit.*

[1193] Ezigbo, O., 2020.*op.cit.*.

[1194] ASUU, 2020. Strike Bulletin. No. 8.

[1195] Premium Times, 2021. Strike: Nigerian Govt, ASUU continue Negotiations. November 20, 2020. Retrieved July 15, 2021, from https://www.premiumtimesng.com/new/top-news/427067-strike-nigerian-govt-asuu-continue-negotiations.html

[1196] IPPIS is an initiative of a foreign agency with annual charges of $12 on each enrolee. The Union cautious on the peril of having a foreign organisation have access to Nigeria's data, advanced a multimillion naira UTAS utilising contributions of her members, making no demands to be repaid from the FGN. Tade, O. 2020. *op.cit.*

[1197] The SUN, 2020. *op.cit.*

them using the Government Integrated Financial Management Information System (GIFMIS) till UTAS is fully set up.[1198]

The 2020 strike formed one of the numerous industrial actions the Union has embarked on since the commencement of the 4th Republic. Although the Union has been known for strike actions and fraught with the issues of shutdown of academic activities, it stands for much more than these. ASUU stands for the fight in university system in Nigeria. Some of these reasons ascribed for these never-ending-struggles of the union are attributed to the difference in the salary structure of teachers in higher institutions of learning.[1199] Other causes of conflicts between the FGN and ASUU could be attributed to disregard for legislation, with poor application of collective bargaining[1200] including the FGN's incapacity to negotiate altruistically with the Union.[1201] Poor students' living conditions has also always been a huge concern to ASUU.[1202]

The disenchantment of the Union with government over matters of poor funding of schools and non-conducive environment for teaching, learning and conducting research, autonomy, poor conditions of service had been the subject of unprodutive negotiations with successive governments and their representatives. The end result of such negotiations was usually disrupted educational system and paralysed academic work for some period of time, at times indefinite. For universities to play their roles maximally, aside being autonomous, they must be strong, well-funded and financially stable. Workers' organisations in achieving their aim of furthering alongside defending interests of their members[1203] using collective bargaining, they must neither be dependent nor under an employer or employers' organisations control.[1204] The Union have their activities organised, with no interference

[1198] Premium Times, 2021. *op.cit.*
[1199] Transcribed by the researcher from a video clip released into public domain by ASUU, University of Lagos(UNILAG) Branch, May 23, 2020.
[1200] Adavbiele, J.A., 2015. Implications of Incessant Strike Actions on the Implementation of Technical Education Programme in Nigeria. *Journal of Education and Practice*. 6.8:134.
[1201] Albert, I.O., 2014. *op.cit.*
[1202] It can be recalled that in 1999, following a Delegates' Conference held in LASU, Badagry, that the union made a submission to the Minister of Education, Professor A.B. Fafunwa, amongst some other issues, on the problems of under-funding poor students' living conditions. ASUU, 2017. *op.cit*. 183.
[1203] Article 10, ILO Convention No. 87.
[1204] Article 2, ILO Convention No. 98.

from public authorities should, thereby not having their rights restricted or its lawful exercise impeded.[1205]

5.5. Nature and Dimensions of Industrial Disputes

While industrial actions can be appraised in three dimensions, that is, the sum of strikes and lockouts, the frequency of industrial action, the sum of workers affected to know the degree of industrial action including total of lost working days, that is, length of industrial action,[1206] its nature in the workplace can be in form of:

a.) Individual Industrial disputes: this mostly comes up over denial of individual rights of employees. It could be based on what an individual thinks he is entitled to as a worker in an organisation. Hence, individual disputes could arise from what an employee deems as denial or breach of his or her right(s).[1207] Its damaging effect is that an individual dispute can evolve into collective dispute notwithstanding there exits a union or not as an injustice to one is considered an injustice to all.[1208]

b.) Collective industrial disputes: it involves deprival of rights which affect a team of employees in an organisation. There are always some common issues employees contend with collectively in an organisation whether there is a trade union or not. Such issues mostly centre on wages and salary, allowances, non-remittance of pension deduction, other working conditions.[1209]

c.) Interest-based industrial disputes: an industrial dispute could also be interest-based. This revolves around issues of determination and is common with some individual professionals who possess a strong bargaining power based on their expertise.[1210]

d.) Rights-based industrial disputes: this could be as a result of individual or collective disputes. It is mostly borne out of interpretation and application of thorny

[1205]Article 3, ILO Convention No. 87; The Labour Relations (Public Service) Convention, states that public employees' organisations are absolutely independent from public authorities. The Collective Agreements Recommendation states that nothing in the current collective Agreements definition should be construed as implying the recognition of a workers' association established, dominated or financed by employers or their representatives. Paragraph 1, Article 5, 1978 (No.151); Collective Agreements Recommendation 1951, No. 91; Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit.*15.

[1206] Eurofund, 1998.*op.cit*.

[1207] For instance, a denial of appointment confirmation or promotion after satisfactory performance, could lead to individual dispute.

[1208] Akinbode, J.O., 2019. *op.cit.*

[1209] Akinbode, J.O., 2019. *ibid.*

[1210] Akinbode, J.O., 2019. *ibid.*

employment with non-employment issues as stated in either offer letters or collective agreement.[1211]

5.6. Settlement of Industrial Disputes

When conflict is said to arise in labour relations, it refers to conflicts workers, represented by their trade unions, have with the management which represents the employers.[1212] Disputes between the management and employees dynamic relations is inevitable, as their dissenting voices is a hallmark of industrial democracy.[1213] In nature, it can both be constructive and destructive.[1214] Its innevitability in the workplace is not only due to the fact that conflict is inherent in human nature but also because it is considered necessary in some instances facilitate the good of all the parties involved in the work settings[1215] as what the employer and employees legitimately expect are unavoidably in conflict, it will in practice translate to a power game between them.[1216] In line with the inevitability of industrial dispute, the perspective of the Marxist school of thought is that industrial dispute is necessary in fostering workers' welfare development, and necessary to attain equilibrium in industrial relationship.[1217]

Dispute settlement is as an effort, either formal or informal, initiated by an individual or a group to resolve conflicts/ misunderstanding between parties. It is almost a unique feature of the humans, because, no other known creation thas initiated a system of dispute settlement as that of human beings.[1218] There is a need to combat industrial conflict as, over the years, industrial disputes in Nigeria have, in no little measure, hampered performance and productivity in fast-tracking the nation's expected socio-economic

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[1211] Akinbode, J.O., 2019. *op.cit.*
[1212] Onyeonoru, I.P., 2001.*op.cit*. 51.
[1213]Olowu, E.O., 1997. *Dispute Settlement Law and Practice in Industrial/Labour Practice*, being the title of a paper presented at a workshop on Industrial Relations and the Law organised by the Nigerian Institute of Advanced Legal Studies (NIALS), Lagos State between April 8 and 10, 1997.
[1214] Gordon, L., 2007. Managing Conflict in Today Organisation Management and Training and Development. *Labour Law Journal.* 1.1:29; *Beatham v. Trinidad Cement Ltd* (1960) A.C. 132 at 142, per Lord Denning; Obi-Ochiabutor, C.C., 2002-2010. *op.cit.*
[1215] Orifowomo O., 2008. *op.cit.*
[1216]Yagba, T.A.T., *Labour Law and Industrial Relations in a Liberalised Economy*, being the title of a paper presented at a workshop on Industrial Relations and the Law organised by NIALS, Lagos between April 8 and 10, 1997.
[1217] Marx. K. & Engels F., 1932. *op.cit.*
[1218] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. Dispute Resolution Mechanisms and the Challenges of Harmonious Industrial Relations in Nigeria. *Osun Sociological Review*, 3.1:187-198

development.[1219] Notwithstanding the inevitability or necessity of industrial disputes, there is a need for settling any dispute that arises in the workplace as disputes may end up in situations whereby work attitudes which are counter-productive would be developed by employees in response and reaction to the state of things. Such attitudes could manifest in form of low job moral, absenteeism, lower work morale, incessant labour turnover which could lead to an organisation not achieving its set goals and objectives if not properly managed.[1220]

The aftermath of unresolved conflicts between an employer and employees will, without doubts, be industrial disputes. Industrial relations operate within certain institutions, constituted as Arbitration, Conciliation, Negotiating and Collective Bargaining machineries, which attempt to regulate the relationship in the unequal tripartite alliance of the government, employers and employees.[1221] Inferring from above, settlement of industrial disputes is an important function of collective bargaining.[1222]

Therefore, collective bargaining plays out as a process and a method in resolving workplace disputes.[1223] It makes provisions for the mechanism for settling disputes by negotiation of terms and employment conditions.[1224] As a process, it thrives in dynamism, moves in ideas, can be adopted as a dispute resolution tool while, as a method, it is a technique utilised by unions and employers in establishing and maintaining cordial work relations.[1225]

There are issues that would make industrial dispute valid. These include, the dispute involving employer and employee or employee and employee; employment terms and unemployment; breach of collective agreement, labour law violation labour practices considered unfair; and with such declared by either of the parties in dispute. Immediately

[1219] Chidi, O.C., 2014. *op.cit.*
[1220] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. *op.cit.*
[1221] ASUU, 2017. *op.cit.* 6.
[1222]Okene, O.V.C., 2010. *op.cit.*
[1223] For any negotiations to be meaningful and just to all parties involved, the mechanisms for settling disputes in the workplace as provided for under the TDA, must be fully explored before a trade dispute is declared. Unfortunately, one sees trade organisations which lead their men on strike before declaring a trade dispute. Ekechukwu, T.O., 1983. Collective Bargaining and Processes of Settling Industrial Disputes in Nigeria. *Indian Journal of Industrial Relations*, 18.4 :607-612.
[1224] Okene, O.V.C., 2010., *op.cit.*
[1225] Ngu, S. M., 1994. Personnel Management in Nigeria: Principles and Practice. Zaria: Gaskiya Corporation Limited.124; Ibietan, J., 2013. *op.cit.* 21.2:220-232.

this happens, Ministry of Labour and Employment[1226] would step in by invoking the statutory provisions of settling disputes machinery.[1227] As part of the labour policy, section 2 of the TDA[1228] makes provisions that where collective agreement is in existence for settling trade disputes, a deposit of not less than its three copies should with the Minister of Labour be deposited.[1229]

5.6.1. Disputes Settlement Procedures

With industrial conflict being unavoidable, there are machineries put in place by law in ensuring its accommodation, resolution through internal resolution mechanisms, and its apprehension unilaterally by the government or by joint resolution, with disputing parties utilising the instrument of collective bargaining.[1230] Dispute settlement machinery advances meaningful approach to the accommodation of conflict employers have with employees.[1231]

In an organisation, an individual grievance can lead to a collective grievance. In *Chemical and Non-Metallic Products Senior Staff Association v. BCC,*[1232] NICN made a distinction between the individual/collective disputes. A dispute is individual when a single employee is involved, or a formation of employees as individuals or their individual contracts of employment application.[1233] In *CCB (Nig.) Plc. v. Rose,*[1234] and *Ossa v. Julius Berger Plc.,*[1235] to the CA, in a servant with master relationship, notwithstanding that ten or a hundred people are offered employment concurrently with simliar service conditions, the employment contract, is to each of the offeree considered personal or domestic. And in instances it is breached,such individuals have no collective right to institute an action or

[1226] Known as the Ministry of Labour, Employment and Productivity in the TUA.
[1227] Akinbode, J.O., 2019. *op.cit.*
[1228] 1976, Cap T8, LFN, 2004.
[1229] Now known as the Minister of Labour and Employment. See, Onyeonoru, I.P., 2001.*op.cit.*61.
[1230] Anyim,F.C., 2009. *A critique of Trade Disputes settlement Mechanism in Nigeria: 1968 to 2004*, an unpublished Ph.D thesis submitted to UniLag, Lagos State. Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011, *op.cit.*
[1231] Fashoyin, 2002. *op.cit.*
[1232] [2005] 2 NLLR (Pt. 6) 446.
[1233] Kanyip, B.B., 2016., *op.cit*.
[1234] [1998] 4 NWLR (Pt. 544) 37.
[1235] [2005] 15 NWLR (Pt. 948) 409 at 430 CA.

have represenation in a suit.[1236] A dispute involving several employees collectively is considered a collective dispute.[1237]

Garnering from the Pluralist theory, conflict between unions and the government, as an employer of labour, is unavoidable. The differences in labour-management relationship may lead to disputes. To minimise disputes and attendant conflicts, the law, aside from the adversarial system of dispute resolution, has introduced series of dispute settlement mechanisms to aid the attainment of harmonious industrial relations.[1238] These are as incorporated in the TDA, Trade Disputes (Essential Services) Act, NICN Act, including the CFRN, 1999 (as amended).[1239]

The methods, both internal and external machineries, through which disputes can be resolved include,

a.) By the parties themselves-
    i.) Collective bargaining
    ii.) Mediation
b.) Conciliation
c.) Arbitration
d.) Adjudication through the NICN
e.) Board of Inquiry by the Minister[1240]

These internal and external machineries serve as the legal requirements for ensuring industrial harmony. When collective bargaining cannot settle a dispute, The TDA requires the parties to follow the statutory procedures in solving problems.[1241] Therefore, in resolving workplace disputes, section 4 of the TDA,[1242] provides that where any dispute arises and the organisation has in existence, agreed means of settling such disputes, parties involved shall initially make an attempt at settling such by adopting the internal machinery. The TDA, in Section 4(1),[1243] permits internal settlement mechanisms to be utilised in

[1236] Kanyip, B.B., 2016.*op.cit.*
[1237] It must be noted that, a dispute having the form of being collective due to several employees being involved may be only be a number of individual disputes. Kanyip, B.B., 2016.*op.cit.*
[1238] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. *op.cit.*
[1239] ASUU, 2017. *op.cit.* 49.
[1240] ASUU, 2017.*op.cit.* 49.
[1241] Akanji, T.A. and Samuel, O.S., 2013. *op.cit.*
[1242] 1976, Cap T8, LFN, 2004.
[1243] 1976, Cap T8, LFN, 2004.

resolving trade disputes. This machinery for settling disputes, sees to it that by bilateral negotiations, grievances are resolved between parties in dispute. It is required, by the Act, that the disputing parties attempt to initially resolve their disputes through means in existence. Such existing means could include any collective agreement made between employers representatives and those of employees or such other agreement. It should, however, be noted that, notwithstanding the internal dispute resolution procedure, put in place through collective agreements, instances exist where, unilaterally, some employers stipulate a binding procedure for dispute resolution in their establishment.[1244]

There are four stages suggested as machinery for internal grievance resolution in an organisation. These stages involve,

i. Stage one

At this stage, an aggrieved employee reports his grievance to his immediate boss or sectional head for investigation and possible resolution.

ii. Stage two

If the issue is unresolved at stage one, the grievance is to be reported in writing to the sectional manager within specified days.[1245]

iii. Stage three

If no solution exists at the second stage, the grievance processing proceeds further and is reported to the trade union representative who accompanies the aggrieved employee to present the matter before the head of department.

iv. Stage four

If no resolution is reached at the third level, a referral of such matter may thereafter be made to the Managing Director through the Personnel Manager. This fourth stage is the final stage of the internal dispute resolution procedure. [1246]

In instances where the internal machinery of an organisation is unable to resolve disputes between the management and employees, parties may resort to the following

[1244] Advocaat, 2015. *An Appraisal of Trade Dispute Resolution Mechanisms in Nigeria.* Retrieved April 4, 2020, from http://www.advocaat-law.com/assets/resources/c6068a396a29b5cd5f694c003e7f61e0.pdf

[1245] An aggrieved employee might only need to approach the Human Resources Manager of his organisation, in a situation where the organisation has one. The Human Resources personnel, on his own part, conducts an investigation into the allegations made and brings an erring employee to book.

[1246] Fashoyin, 1980. *op.cit.*; Onyeonoru, I.P.,2001. *op.cit.* 61.

official processes and formal statutory institutions for resolution of such disputes.[1247] The external machinery for trade dispute settlement, as provided for, by the TDA is founded on the hierarchy of procedures. These include Mediation, Conciliation, Arbitration and applications can be made the NICN.

These mechanisms involve third-party intervention.[1248]

5.6.1.1. Mediation

This alternative dispute resolution mechanism arises where there is a third party interference in disputes between some other disputing parties with the goal of ensuring a settlement peacefully or that there is an improvement of cooperation between them, mutually.[1249] It is a non-coercive process of intervention and eventual settlement is aimed at reducing or bringing conflicts to peaceful settlement. [1250] Although mediation process is not very formal, it is one of the mechanisms used as it is duly recognised and recommended by the TDA as a mechanism for resolving industrial disputes.

Section 4 of the TDA[1251] stipulates a basic requirement that parties to a dispute should meet in the scope of seven (7) days of dispute commencement. Where the efforts to resolve grievances through the internal procedures prove abortive, or if no internally-agreed way for resolving disputes exists, parties seek an amicable settlement in the range of seven (7) days of such failure, or in a situation no internal mechanism exists, under seven (7) days of the dispute's occurence. The disputing parties are required to meet together by themselves or their representatives to settle it with the guidance of a Mediator. The choice of a mediator must be mutually-agreed upon. If this should fail, the Minister in charge of labour welfare should be notified within seven (7) days.[1252] The Act in section 6(1) further states that, if in the scope of seven (7) days of the Mediator being appointed, and no resolution is in existence, a report of such dispute shall be made by, or for, the parties in dispute to the

[1247] Uranta, C. 2012. *op.cit.* 319.
[1248] Worthy of note is, while an individual grievance may result in a collective dispute and may arise on its own. In both cases, it is expected of disputtants to first proceed with resolving their disputes by adopting the internal machinery, failure of which, they could adopt the third-party intervention mechanisms. Onyeonoru, I.P., 2001.*op.cit.* 61.
[1249] Olaoba, O. B., 2011.The Traditional Approaches to Conflict Resolution in the South-West Zone of Nigeria. *Nigerian Army Quarterly Journal*, 1.1: 22-37.
[1250] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. *op.cit.*
[1251] 1976, Cap T8, LFN 2004.
[1252] Section 4(2), TDA, 1976

Minister under three days ending the initial seven (7) days. It should be written, stating all the issues of parties disagreement and further give a description of the actions taken by them in reaching an agreement.[1253] If after fourteen (14) days, there is resolution, section the TDA[1254] provides that, the Minister may take further steps based on his assessment of how exhaustive the steps taken by the parties are. The Minister may proceed to appointing a Conciliator,[1255] he may make referral of the dispute to arbitration,[1256] refer it directly to the NICN.[1257] He possess the power in appointing a board of inquiry which will made inquiries and report back to the Minister.[1258]

In many instances, especially on issues that relate to labour disputes occurring in Nigeria, between the government and trade unions, mediation system is made recourse to, and this is most often used to settle several of such disputes. [1259]

5.6.1.2. Conciliation

Conciliation is also an alternative dispute resolution process for amicable disputes settlement in industrial relations. It targets bringing about expeditious disputesresolution with no recourse to lockouts or strikes. It also hastens the cessation of work stoppages when such has ensued.[1260] In a situation where there is inability for resolution to be made by parties over their differences after adopting the mediation procedure, the Minister appoints a person he considers fit to perform the duties of a conciliator[1261] purposes of settling disputes, and would be required to make inquiry of the causes and circumstances of such dispute. Through negotiations, he would attempt to secure the terms of settlement. If the disputes are resolved under seven (7) days of appointing a Conciliator, it is is required of him to forward a memorandum of settlement terms to the Minister. Agents of disputing parties would have appended thair signature on the terms this then becomes binding on both parties. If no settlement of disputes is, however, not arrived at under seven (7) days of

[1253] Section 6(2), TDA.
[1254] Section 7 (2).
[1255] Section 8.
[1256] Section 9.
[1257] Section 17.
[1258] Section 33.
[1259] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. *op.cit.*
[1260] Otobo, D., 2005. *op.cit.*
[1261] The conciliator is usually an official who is versed in Industrial Relations. Onyeonoru, I.P., 2001.*op.cit.* 62.

appointing the Conciliator, or he is convinced that he would not succeed in aiding the resolution of such disputes, the Conciliator is expected to make a referral of such dispute to the Industrial Arbitration Panel (1AP) for it to be settled. This must be done under fourteen days of the report being received.

5.6.1.3. Arbitration

Where conciliation fails to resolve the disputes at hand, arbitration is the next mechanism to resort to. It is a disputes settlement procedure where disputing parties concur that the decision, otherwise referred to as an award, of an Arbritrator will be binding. It is final as well as binding, legally, on parties involved.[1262] It is a very formal mechanism of settling disputes in any formal work organisation as it is semi-judicial in procedure.[1263]

After reporting to the Minister, within seven (7) days of deadlock in a conciliatory process, the Minister can make referral of such dispute to the IAP.[1264] Parties are at liberty to select their Arbitrator, although non selection by them does not affect the arbitration process or the award. In *Mix and Bake Flour Mill Industries Ltd v. NUFBTE*,[1265] counsel wanted a setting aside of an IAP award on the premise that no chance was given to disputing parties in the nomination of the arbitrators who sat on the matter. The NICN, however, stated that although in arbitration, generally, parties have the freewill to select arbitrator(s). Premised on the TDA, section 9(4), the application of this principle is where there are more than one Arbitartors. Although not complying with the provisions of section 9(4) as regards disputing parties nominating Arbitrators is in no way fatal to the IAP exercising its jurisdiction, as section 12(4) of the TDA is serves as a cure to defect that arising as a result of non-observance of section 9(4).[1266] It is required of the Industrial Arbitration Tribunal (IAT) to have its award made under twenty one (21) days except the Minister makes a period extension. The award is to be sent to the Minister to confirm. After receiving it, the Minister

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[1262] Orojo, J. O. & Ajomo, M. O., 1999. *The Law and Practice of Arbitration and Conciliation in Nigeria*, Lagos: Mbeyi and Associates (Nig) Ltd.
[1263] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. *op.cit.*
[1264] The IAP performs the statutory function of facilitating arbitration processes in industrial relations in Nigeria; established by the TDA and adjudicates on disputes employers have with employees, inter and intra trade union disputes after the Minister's referral. The IAP constitutes an IAT, whose members are appointed by the Minister, from the IAP. Section 14 of the TDA; Section 5 Trade Disputes (Essential Act), 1976 ; Advocaat, 2015. *op.cit.*
[1265] [2004] 1 NLLR (Pt. 2) 247.
[1266]Kanyip, B.B., 2016. *op.cit*.

may choose to make a referral of it to the IAT for reconsideration, where there is a need, or have a notice made to the parties, including the award with information on their right to object to it under seven (7) days. Where there is no objection, there shall be a confirmation of the award by the Minister making it binding on the disputants. Conversely, if the Minister receives a valid notice objecting to the award, he must make a referral of such dispute to the NICN, whose decision will be final as well as binding on parties involved.[1267]

5.6.1.4. The National Industrial Court of Nigeria (NICN)

In an instance where parties to a dispute objects to an IAP award, a referral of such dispute will be made by the Minister to the NICN.[1268] The TDA[1269] established the NICN as the apex court for handling industrial matters in Nigeria.[1270] The NICN's decision is expected to be given within thirty (30) days. Such decisions are binding on involved parties.[1271] However, the court in *National Union of Hotels and Personal Services Workers*[1272] stressed importance of disputants exhausting processes of the first-course grievance remedial contained in the TDA,[1273] before the NICN's appellate jurisdiction can be invoked.[1274]

[1267] In case anyone raises an objection to the IAP award, by section 14, TDA the Minister refers such dispute to the NICN, whose decision becomes binding except, on questions of fundamental rights in Chapter IV of the CFRN where appeals lie as of right to the CA as stipulated in section 9 of the NICN Act., Kanyip, B.B., 2016. *op.cit.*

[1268] It is the appellate Court of the IAP. Uranta, C.,2012,*op.cit.* 320.

[1269] Section 17. Section 254c, CFRN, 1999 confers, on the NICN, jurisdiction exclusively on civil and criminal matters labour related. These include trade unions with industrial relations; environment with work conditions; health, safety with workforce welfare including matters on industrial relations. Also, NICN exercises similar jurisdiction in matters related to grant of any order restraining a person or body from participating in strike, lockout or industrial action; or any question on collective agreement interpretation, or award of an arbitral tribunal on a labour or organisational disputes.

[1270] With the enactment of the NICN Act, part II (Sections 20 to 32) of the TDA was repealed. The NICN got re-established by the NICN Act, Section 1. The Act gives NICN powers to grant: injunctive reliefs, orders of mandamus, prohibition or certiorari; appoint a public trustee in managing the affairs with finances of a trade union or employers' organisation; including award of compensation or damages.

[1271] Where a dispute involves essential services or in circumstances where the Minister apprehends any trade dispute, he may at any stage, decide on any of the above mechanisms to adopt in resolving the dispute. Uranta, C., 2012.*op.cit*.320.

[1272] Unreported Suit No. NICN/ABJ/207/2018, judgment delivered on 4 July 2019, *per* Kanyip J (as he then was, now President, NICN).

[1273] Part I

[1274] Kuti, F. and Obiokoye, C., 2020. *op.cit.*

5.6.1.5. Board of Inquiry

Another means for industrial disputes resolution is provided for in sections 33 and 34 of the TDA. By this provision the Minister is empowered to set up this Board.[1275] It is statutorily expected of the Board to only make inquiry into what caused the dispute, including the circumstances surrounding it, and a report is made to the Minister.[1276] The board, being a quasi-judicial body, unless the dispute exceeds conciliation and arbitration, it will not be impanelled.[1277] Usually, the parties in dispute are allowed to be represented by counsels before as the proceedings of the board are as formal as that of arbitration. In its proceedings, just as in a tribunal, the board is under no obligation to observe rules of evidence.[1278]

By making recourse to all these mechanisms for resolving trade disputes, it suggests that there is an inherent desire for attaining industrial harmony among the key players in industrial relations, hence, the importance of having these dispute settlement mechanisms honoured beyond letters. This is because, as earlier noted, not managing an industrial dispute effectively could have negative effects on an organisation. The adverse effects of such disputes could be classified into manifest and latent effects. Manifest effects, as the name suggests, can be seen while the latent effects are psychological in nature and hidden. Examples of such latent effects of conflicts which are on both the employees and management include, lateness to work, pilfering, absenteeism, sabotage, putting in unacceptable work quality, abuse of sick leave, loitering about during work hours, office trading, rumour peddling, leaving workplace before close of work, inciting workers against organisational policies, ban over-time, insubordination by employees, which if the situation is not managed by the employer, any reaction by the employer could be tagged as victimisation.[1279]

[1275] There is a rare use of this mechanism, most likey due to the implicit limitation in its constitution.
[1276] The Act however does not give a clue as is to if the Minister can, based on the board's findings, make an award that will be binding . If the report made is filed away, it will be considered lawful with no question of its validity. Advocaat, 2015. *op.cit* ; Kanyip, B.B., 2016. *op.cit.*
[1277] Akinola, A. 2008. *op.cit.*479.
[1278] Akinola, A. 2008. *op.cit*. 479.
[1279] Olatunji, A.G., Issah M. & Lawal, E.E., 2015. *op.cit.*

Protracted industrial disputes have constituted threats to workers, organisations including the nation.[1280]Indubitably, industrial disputes, if not properly addressed, nipped in the bud in good time, come at a cost. These costs cum implications are often negative on the parties involved. Costs in this wise, can be indirect or direct,[1281] external or internal, economic[1282] or non-economic costs. These costs in whatever form they come have effects on employees, employers/organisation and the nation as a whole. They could have overwhelming effects on a nation's economy and social sectors which could lead to low productivity, unemployment, wastage of human resources and several other ancillary challenges.[1283] These costs negatively affect the growth of national productivity,[1284] resulting in huge revenue loss and dampen the nation's economic growth.[1285]

5.7. Collective Bargaining as a Negotiation Tool and its Importance in Resolving Disputes in The Nigerian Public Universities with Special Attention paid to ASUU

The diverse perspectives on collective bargaining principle can be summed up to mean a process that brings together both employees and employers to resolve matters related to labour relations through negotiations between an employer and employees' representatives.[1286] It is however instructive to note that such negotiations are not a moral experiment, rather, they are mainly processes for decision-making where disputing parties aim at protecting their different interests by the handling, with use of diverse means of pressure tactics, with each party's interests being identified and using suitable strategies in

[1280] Uma, K. E., Eboh, F. E., Obidike, P. C. & Ogbonna, B. M., 2013. The dialectics of industrial disputes and productivity in Nigeria's economic development. *Economics World*, 1.1:29-38.
[1281] For instance, when ASUU embarks on strike actions, students become victims indirectly as they have their stay in school prolonged beyond the period envisaged as at the time of admission or the start of a new academic year. A student that gets admitted for a 4-year course might have his study period extended to 5 years or more due to ASUU strike.
[1282] Economic costs are calculated and expressed in terms of money. However, they necessarily result in no financial outlays. Non-economic costs, on the other hand, are such that objectively cannot be quantified nor captured in monetary value. An instance of an economic cost of industrial dispute was that of MTN, a telecommunication company in Nigeria, claiming to have lost ₦12bn in July 2018 in four days of picketing is an economic cost of industrial dispute. Akinbode, J.O., 2019. *op.cit.*
[1283]NICN, 2020. *op.cit.*
[1284] Awe, A. A. & Ayeni, R. K., 2013. Empirical Investigation into Industrial Relations and National Productivity in Nigeria. *European Journal of Business and Management*, 5.8: 45-54.
[1285] Uma, K. E., Eboh, F. E., Obidike, P. C. & Ogbonna, B. M., 2013. *op.cit.*
[1286] ASUU. 2017.*op.cit.*205.

their defense.[1287] Among other things, collective bargaining prevents employers from making unilateral offers; enables employees to make the needed input into the negotiation of their wages including the terms and conditions of their service; it serves as a check on divide and rule tactics and the payment of differences in wages; it also compels the employer(s) to implement the agreement being mutually agreed upon.[1288]

Over the years in Nigeria, there has been an acknowledgement of the importance of collective bargaining as a central principle of labour relations by successive governments. Collective bargaining as an integral form of social dialogue,[1289]serves in any organisation as a cornerstone institution for democracy. It is a pointer to the ability of a nation's engagement in national level tripartism[1290] as well as a means for raising workers' income, improvement on working conditions while there is a reduction of inequality. It is a mechanism for making sure a just work relations as well as a source of innovation in the workplace.[1291] Collective bargaining applies in public and private sectors,[1292] therefore, an adequate knowledge of it in the university system in Nigeria can be best appreciated in the context of collective bargaining in labour relations in Nigeria.

ASUU's emergence as an intellectual force was in challenging the Nigerian government and offering a credible option for the nation.[1293] As a union for intellectuals that seeks, only not the interest of members socio-politically, within a framework of seeing to the promotion of varsity education, but the good of the nation and its citizenry inclusive,[1294] it serves as a platform through which its members can discuss, channelling to the school management including the government their demands and displeasure.[1295] More often than not, when the expectations of the members of the union are unmet by either their

[1287] Albert, I.O., 2014.*op.cit*.
[1288] ASUU. 2017. *op.cit.* 206.
[1289] Akanji, T.A. and Samuel, O.S., 2013. *op.cit.*
[1290] Akanji, T.A. and Samuel, O.S., 2013. *ibid*.
[1291] Hayter,S. , Fashoyin, T. and Kochan, T.A., 2015 ,Review of Essay: Collective Bargaining for the 21st Century. *Journal of Industrial Relations*. 53.2: 225-247.
[1292] However, the degrees of usage as well as honouring agreements differ. Ilesanmi , A., 2017. Dynamics of Collective Bargaining in Resolving Conflict in Employment Relations. *Indian Journal of Industrial Relations*.52.3:372-385..
[1293] Umaegbalasi, E., 2013.Social Economic Consequences of Industrial Dispute and High Cost of Running government in Nigeria. 1& 2 as cited in Nwajiuba, C.A.and Oni, A., 2017. Street Hawking as Correlates of Adolescents' Social Adjustment and Academic Perfomance. *SMCC Higher Education Research Journal*.3:108-
[1294] Nnamdi Azikwe University, 1991-2021. *op.cit.*
[1295] Ardo, T., Ubandawaki , U. and Ardo, G. 2020. *op.cit*.

direct university authority or the state or federal government,they have recourse to industrial action and the diverse ripple outcome which could be negative on students, parents including the society, leaving their action not much to be desired.[1296] As regards its membership, all public universities in Nigeria, both state and federal are expected to be members of ASUU although there are few of them that are partially involved or not involved at all.[1297] ASUU adopts the instruments of meetings, discussions with consultations, lobbying, in ensuring the meeting of their demands. Collective bargaining is another means the Union uses for disputes settlement. It is a vital tool for dispute resolutions between government and labour.[1298]

In the Nigerian labour relations system, the government directly intervenes in the process for collective bargaining. Its pilot pieces of evidence are the joint negotiation and consultation. Historically, as in time past as 1937, the administration of the British Colonnialists gave a recommendation on having four councils established in different areas in the country.[1299] Those councils were to carry out the collective bargaining machinery functions.[1300] Post-independence, the Wages Board and Industrial Council Act No. 1 of 1973 made provisions for a Joint Industrial Councils for negotiating wages including other employment conditions. The Udoji Commission Report, in 1974, made a recommendation for the revitalisation of the Public Service Negotiation Council.[1301] In 1981, the Cookey Commission[1302] defended the virtues of collective bargaining notwithstanding there was no codification in law of mechanisms and procedures for collective bargaining in Nigeria.[1303]

The principle of Collective Bargaining was established through the 1981 FGN-ASUU Agreement based on the Wages Boards and Industrial Council's Decree No.1 of 1973, the Trade Dispute Act, 1976, ILO Conventions 49, 1948; 91,1950; 154,1988 and Recommendation 153, 1981, the Udoji Commission Report of 1974 alongside Cookey

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[1296] Ardo, T., Ubandawaki , U. and Ardo, G. 2020. *op.cit.*
[1297] For instance, Kwara State University, though a state university, does not encourage ASUU practices among its teaching staff.
[1298] John, O.A., 2015. Labour Unions and Conflict Management in Nigeria: A Case Study of Academic Staff Union of Nigerian Universities (ASUU). *World Journal of Management and Behavioral Studies*. 3 .1: 30-35.
[1299] Cohen,R., 1974. *Labour and Politics in Nigeria, London*: Heinemann. 182-833.
[1300] Ghosi, A.N., 1989. *op.cit.*
[1301] ASUU, 2017.*op.cit.*207.
[1302] The report of this commission served as the template for all ASUU/FGN Agreements preceding the 2007 administration. Omoregie, E., 2009. *op.cit.*
[1303] ASUU,2017. *op.cit.*207.

Commission Report of 1981, under Shehu Shagari's administration.[1304] The Cookey Commission, in particular, set the tone for collective bargaining and agreement in the university system. In its 1981 report, the commission gave a recommendation for some machineries for collective bargaining in the university system. They included the following:

-University Joint Negotiation Commission (UJNC) and Universities Joint Individual Commission (UJIC)

a. Governing Councils are to be represented by the Association of the Universities Governing Council to be made up of the Pro-Chancellors and advisers.The selected persons are to be known as the Committee of University Governing Councils.
b. The UJNC will negotiate with each central university union separately.
c. Agreements reached will be signed by the representatives of each party and afterwards ratified by the UJIC.
d. In case of disagreement, after failure by the UJNC to resolve such disagreement, every party will be free to declare a trade dispute using the laws.[1305]

The Kalu Anya Committee of 1993 further consolidated these important components of collective bargaining and agreement processes. The Committee endorsed the Cookey Commission's recommendation, particularly to the effect that employers and their employees should at all times accept that collective bargaining is essential and worthwhile. Noteworthy is that the Anya and Cookey Committees in the university system provided the impetus for both Nigerian government and ASUU in 1992 to negotiate the following:

a. Conditions of service
b. Universities Funding by the government
c. University autonomy
d. Academic freedom

An aftermath of somewhat successfully negotiating on above issues included the Collective Agreement of September, 1992 which contained provisions on capital and recurrent expenditure including stabilisation fund, budgetary and non-budgetary sources of

[1304] ASUU, *op.cit.*
[1305] ASUU. 2017. *op.cit.*207.

funding.[1306] The agreement also made provisions on Governing Councils' composition, Vice-Chancellors' appointment with their mode of removal, composition and powers of University Governing Councils, National Universities Commission, and so on. The agreement further made provisions for a separate salary scale for academic staff. It provided for the University Academic Salary Scale (UASS). UASS removed academics from the Elongated Universities' Salary Scale (EUSS) which was the recommendation of the Longe Commission of 1981.[1307] The UASS was also reaffirmed by the Kalu Anya Panel of 1994. The recommendation of the panel was the extension of the EUSS to the non-academic as well as academic staff of Polytechnics, not leaving the Colleges of Education in the form of Tertiary Institutions' Salary Scale (TISS), however, the FGN imposed the Harmonised Tertiary Institutions' Salary Scale. This did not, however, stop the agitation for another salary scale for academics in universities. The Etsu Nupe Panel reaffirmed a separate salary scale for university academics in 1997. The agreement reached in 1999 reaffirmed the acceptance of the UASS by the FGN.[1308]

There was yet another collective bargaining which led to an agreement between the FGN and each of the university-based unions in 2001.[1309] The agreement became due for re-negotiation in 2004, however, negotiations between the FGN and ASUU only resumed in 2006 and was concluded in December, 2008. After what was considered a successful process of collective bargaining with agreement reached, the FGN exhibited an intense reluctance to sign the agreement, which it had willingly entered into. It was after a protracted strike action that the FGN signed the 2009 Agreement. The Agreement which was to serve as a benchmark was aimed at making certain that only one viable university system exists, with just one, rather than having several standards for academics in Nigeria, while ensuring that Nigerian universities measure up to international standards, possessing the ability to compete favourably with any other university. Premised on four cardinal issues which have an effect particularly on universities and education generally, the agreement focused on service conditions; funding; university autonomy with academic freedom; and other issues.

[1306] The agreement also included a clause that there would be a review on three years basis.ASUU. 2017. *op.cit.* 207.
[1307] ASUU. 2017. *ibid.*207.
[1308] ASUU, 2017. *op.cit.*207.
[1309] There were provisions for the implementation and monitoring machinery. ASUU. 2017. *op.cit.* 208.

Furthermore, FGN and ASUU agreed on the need to review the agreement in 2012, anticipating that by that year, all provisions of the Agreement would have been satisfactorily implemented. Unfortunately, till date, the 2009 agreement is yet to be fully implemented.[1310]

In compelling the government in meeting public universities teachers' needs, mostly as regards wages, allowances including infrastructures in tertiary institutions, non-imposition of policies like the IPPIS, the Union has had to proceed on several several industrial actions. A lay man may consider the Union's activities, especially the strike actions as deliberately aimed at frustrating students' academic endeavours, prolonging their days unnecessarily in school. Being a union whose struggles are borne out of the need to build a nation where the citizenry shall enjoy freedom, education, fed well and healthy itself,[1311] some of the industrial actions ASUU engages in are mostly targetted at improving the public universities' welfare, its union members, students and society at large.[1312] Rather sadly, in the union's bid to drive home its demands, during the period of industrial actions, varsities become shut-down for days, weeks and, at times extending to months thereby leaving academic activities paralysed, with students and parents frustrated and confused on the fate of their children as regards their academic pursuits.

The major gains of the Union's struggles have been categorised into tangible and intangible benefits. While the intangible gains relate to deepening as well as sustaining democracy by resisting impunity, civil society mobilisation against dictatorship during the military era thereby demystifying regimes including violations of autonomy and academic freedom.[1313] ASUU has, over the years, guided by its constitution, raised oppositions to tuition while ensuring the emergence of a society that is furnished with sufficient knowledge as well as integrated.[1314] For the numerous benefits that are tangible, ASUU has over-time substantially minimised impunity, interference including academic freedom subversion as well as autonomy most especially in Federal varsities. Education Tax Fund, otherwise known as Tertiary Education Trust Fund (TETFund) and Needs Assessment Intervention Fund are tangible gains. Others are, reversal of the councils of federal universities that were

[1310] ASUU, 2017. *op.cit.*208.
[1311] ASUU, 2012 . *op.cit.*
[1312] Ardo, T., Ubandawaki, U. and Ardo, G. 2020. *op.cit.*
[1313] Nnamdi Azikwe University, 1991-2021. *op.cit*.
[1314] Nnamdi Azikwe University, 1991-2021. *ibid.*

dissolved, borne out of the Union's insisting that Councils have to be permitted to complete their terms rather than the subsisting practice where their terms are determined based on the visitor to the university's pleasure. Also, from the 2009 FGN/ASUU agreement, a new autonomy bill has been set in motion.[1315]

At the heart of the disagreements between the Union and FGN are principles of collective bargaining during a dispute. While the government mostly wants the union to suspend action during negotiations, the union on the other hand is of the view that negotiations can be concluded with the strike continuing.[1316] Also in negotiations, ASUU functions centrally on behalf of all its branch members while the FGN opines otherwise. The implication of this, if ASUU accepts the FGN's interpretation of collective bargaining, is that it will weaken the union and create three parallel trade unions - for federal, state and private universities of which ASUU may gradually lose its cohesion.[1317]

As a union, ASUU seeks to deepen the university culture of pluralism of ideas, restore voice to the academic and that of their non-academic counterparts, and improve the ethical standard and ideals of the university-members.[1318] ASUU's struggles, over the years, have been about the sanctity of collective bargaining which is a vital instrument in addressing labour issues. While ASUU has not been having it easy with the FGN, the Union makes efforts to ensure that government strictly complies with the collective bargaining principle in labour-related matters between the government and its employees. Negotiations of the union with the FGN entails long period of bargaining and dialogue, running into months,[1319] at times years to resolve. Undoubtably, for the university system to efficiently and efficaciously function as it should, stakeholders should work harmoniously, collaborate with the universities teachers' union, to a consderable degree with a clear sense of focus.[1320]

5.8. The Collective Bargaining Process and Collective Agreement

As collective bargaining applies to arrangements where wages and other employment conditions are determined by a bargain which comes as an agreement reached

[1315] Nnamdi Azikwe University, 1991-2021. *op.cit.*
[1316] University World News, 2009. *Nigeria: Disagreements prolong Strike.* Fatunde, T. August 30, 2009. Retrieved August 1, 2021, from https://www.universityworldnews.com/post.php?story=200908281059488
[1317] University World News, 2009. *op.cit.*
[1318] Nnamdi Azikwe University, 1991-2021. *op.cit*.
[1319] John, O.A., 2015. *op.cit.*
[1320] Uzoh, B.C. 2017. *op.cit.*

between employers or their associations with workers' organisation,[1321] its major aim is for its outcome to be a collective agreement.[1322] Parties in industrial relations collectively bargain aim to have this. It is on its basis that the union and employer can regulate jobs.[1323] Collective agreement, on its part, stands for rules to be binding on parties, [1324] and being the result of a successful collective bargaining,[1325] it must be enforced by negotiating parties as endless negotiations without arriving at agreements in no way suggests that a bargain has been reached.[1326]

The industrial relations existence is dependent on collective bargaining process as this process often entails time, monetary costs. To have all these thrrown overboard based on doctrine of common law that the end result of a collective bargaining is binding only in honour, or when included in a contarct of employment, with the growing awareness and restiveness that pervades labour relations in Nigeria, this portends a significant threat to industrial peace and harmony in organisations.[1327]

Collective agreements should be binding on all parties involved.[1328] In a similar manner, preferencial bais should not be offered to contracts made with individuals above collective agreements, unless in situations where provisions which are favourable are included in individual contracts.[1329] It is also essential that they apply to every employee of the categories in the undertakings covered except in instances where the agreement makes specific provisions contrarywise; taking priority over individual contracts, while recognising provisions in individual contracts which favour employees more.[1330]

The voluntary as well as free nature of collective bargaining suggests that, its outcome is not imposed on the parties to it but generated by them.[1331] Also, to represent the interest of those whom they represent well, trade unions must neither be dependent nor

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[1321] Uvieghara, E.E., 2001.*op.cit*.388.
[1322] ILO, 2015. *op.cit.* 17.
[1323] Uzoh, B.C., 2016. *op.cit.*
[1324] Onyeonoru, I.P., 2001. *op.cit.*
[1325] Iwunze, V., 2013. *op.cit.*
[1326] Fajana, S., 2000. *op.cit.*
[1327] Kanyip, B.B., 2016. *op.cit.*
[1328] Collective agreements' binding nature can be established through legislative procedure or collective agreement. This will be based on the method each country follows. ILO, 1951. *Record of Proceedings. International Labour Conference, 34th Session, 1951*. Geneva: ILO Office. 603.
[1329]Gernigon, B., Odero, A. and Guido, H. 2000, *op.cit.*76.
[1330] ILO, 2015. *op.cit*.17.
[1331] ILO, 2015. *ibid*.

under employers' unions control, and should have the capacity in organising their activities with no unnessary interference by public authorities, thereby restricting their rights or impeding its exercise lawfully.[1332]

Nigerian case law and statutes recognise some circumstances where the court could enforce collective agreements. They include, when collective agreement is incorporated in the employment contracts of individual employees; where under the TDA[1333] the Minister gives an order that a collective agreement or any aspect of it should be enforceable between parties to it; and also where there is reliance on an agreement and there has been a claim to a righ it by a party to it.[1334]

As stated earlier, collective agreements are regarded as unenforceable by the regular courts. They are rather regarded as only binding in honour as the parties, by executing them, had no intention of entering into legal relations.[1335] Conversely, incorporating collective agreement ters in individual employment contracts, makes them enforceable. The basis for this is the doctrine of privity of contract. An employee solely, will not be permitted to enforce an agreement, not being a party to it, notwithstanding that such was written for his benefit.[1336] Notwithstanding this practice, it is remarkable that the NICN has been enforcing the provisions of collective agreements in its interpretative jurisdiction under section 15 of the TDA.[1337] The illustration of this position was make in, *Union Bank of Nigeria v. Edet*[1338] where the the termination of the employment of the respondent was terminated with a notice of one month. His contention was that, based on a collective agreement his union had with the appellant, three written warnings should have been given him before the termination of employment and that the appellant did not act on that requirement. To dismiss his contention, the CA stated 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 individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their

[1332] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1333] Section 3(3)
[1334] Iwunze, V., 2013. *op.cit.*
[1335] *Abalogu v. SS.P.D.C. Ltd*. (2003) 13 NWLR (PT.837) 308.
[1336] Iwunze, V., 2013. *op.cit*.
[1337] Aturu, B., 2005. *op.cit.* 227-228.
[1338] (1993) 4 NWLR (pt. 287) 288.

> interest nor are they meant to supplant or even supplement their contract of service.

Further discussions on collective agreement and its enforceability will be considered below.

5.9. UNRESOLVED LEGAL ISSUES IN THE CURRENT LEGAL DISPENSATION

5.9.1. Implementation of the legal framework on Collective Bargaining

This concept forms a continuing institutional relationship employees' representatives have with their employer(s). As right of employers, their organisations and employees ,[1339] it has within its scope, the administration, negotiation, interpretation and also how written agreements' enforcement consisting joint understanding relating to remuneration or payment rates, work hours and sundry employment conditions.[1340] Being a facet of labour relations, it makes provisions for discussions on bargaining or negotiations which ultimately results in rule-making or agreement, hence generating some form of relationship stability between the involved parties.[1341]

The patterns through which the key players in industrial relations interract are categorised into two. These include the tripartite and bipartite patterns. Three parties are involved in the tripartite pattern, that is, the government, an employer including the employees represented by their trade union. The government in its interractions may do so as a state authority or an employer.[1342] In interracting tripartitely, the government makes negotiations with the employer as well as those representing employees on matters of importance that relate to industrial relations including sundry macroeconomic policies relating to underlying matters of development. Bipartite pattern in its own case involves two parties.[1343] This form of interaction comes up between government and employers, unions and government or unions with their employer. When government conducts negotiations with a union, it is in its employer capacity.[1344] It must be noted that tripartism interaction

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[1339] Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit*.75.
[1340] Davey, H.W., 1972. *Contemporary Collective Bargaining*. 3rd Edition. New Jersey; Englewood Cliff.
[1341] Erugo S. I., 1998. *Introduction to Nigerian Labour Law*. Lagos: Mikky Communications.
Nkiinebari, N. P., 2014. *op.cit.*
[1342] Aiyede, E.R., 2002. Decentralizing Public Sector Collective Bargaining and the Contradictions of Federal Practice in Nigeria, *African Study Monographs*, 23.1: 11-29.
[1343] The main matters discussed and negotiated are mostly on salaries, including conditions of work of employees. See, Aiyede, E.R., 2002. *op.cit.*
[1344] Adesina, J., 1995. State, industrial relations and accumulation regime in Nigeria: Reflections on issues of governance. *Ibadan Journal of Social Science.* 1.1: 1- 26.

occurs at the national level, state and local governments' levels while bipartism comes into play at the following levels of plant, firm, parastatal, industrial including national. Depending on the stage bipartism operates, collective bargaining is considered centralised or decentralised.[1345] While decentralisation aims at shifting the collective agreements' coverage to the level of the diverse employers, governments from that of national, departments of government, with parastatals in the public sector, bargaining at the industry level moves to that of enterprise and/or the plant level in the private sector.[1346] Parties involved in collective bargaining prepare procedural agreements that guide the determination of what issues, at the central level, to negotiate on through the National Joint Industrial Council or Joint Negotiation Council including those to be handled at the company level. The following could be listed as issues to be negotiated on: salaries, allowances, work hours, principles of loan, terms of leave, equity participation, disciplinary measures and procedures, principles of redundancy, inconveniences, transportation, housing, acting, relief – duty, utility, medical schemes, sickness benefit, lunch subsidy, entertainment expenses, belonging to social clubs, burial expenditure, conversion of staff, including year end payment.[1347] These procedural agreements also include checks and balances which aid the safeguarding of the interests of both parties. [1348]

The issue with the laws regulating collective bargaining as applicable in Nigeria is majorly the ineffectiveness of these legislation in stemming incidences of industrial actions, particularly strike, being the outcome of a culture of impunity by parties concerned.[1349] An efficacious practice of collective bargaining and sanctity of the legal instruments regulating it and its processes could be an enduring attempt in achieving harmonious work relations between employers and the trade union in the public sector.[1350]

[1345] Aiyede, E.R., 2002. *op.cit.*
[1346] Aiyede, E.R.,2002. *ibid.*
[1347] Good example of this was when the Main Collective Agreement between the Nigerian Employers' Associations of Banks, Insurance and Allied Institutions (NEABIAI) and the Association of Senior Staff of Banks, Insurance And Financial Institutions (ASSBIFI) had in 1990 listed the above as issues for negotiation. See, Anyim,. F. C., Elegbede T. and Gbajumo-Sheriff, M.A.,2011. *op.cit*.
[1348] Imoisili, I. C., 1986. Collective Bargaining in the Private Sector in Damachi, U.G. & Fashoyin, T. (eds). *Contemporary Problems in Nigeria Industrial Relations*. Lagos: Development Press.
[1349] Ibietan, J., 2013. *op.cit.*
[1350] Ibietan, J., 2013.*ibid.*

5.10. Recipe for Industrial Harmony

At sundry periods, the harmony in the workplace gets shortened by conflicts, the spate of constant strike actions being the outcome of the compensation system, autonomy, remuneration, service conditions, and so on. This is because, in all organisations, there exist diverse interests with the management, motivated by the pursuits for gains and control while on their part of employees, are propelled by the desire to have their wages increased, benefits, inclusion and expression and this disparity in interests generally results in conflicts.[1351] Conflicts, in any form prevent industrial harmony thereby reflecting the condition of organisational instability.[1352] Being crucial to industrial growth and sustenance, the importance of harmony in labour relations cannot be overemphasised.[1353]

Industrial harmony in an organisation simply suggests a working relationship which is wholesome and cooperative between employers and their workers. This concept deals with four main aspects of cooperation. These are: responsibilities, policy of employment, collective bargaining, including communication.[1354] For any organisation to attain a state of industrial harmony there are some requirements to be met. First of all, the management must gain an understanding of their responsibilities. They must be involved in trainings and possess authority needed in discharging their duties with responsibilities with utmost efficiency.[1355] Similarly, employees must have the knowlgde of their objectives and on regular basis have information on the progress made to acheive them.[1356] Equally, an operative connection in information exchange must exist between superior management, employees and their unions.[1357] Importantly, there must be cooperation between the management and trade unions to establish effectively methods for negotiating employment

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[1351] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*

[1352] Sayles, L. and Straus G., 1981. Managing Human Resources. New Jersey: Prentice Hall Inc.; Onyeizugbe,C.U., Aghara V., Olohi, E.S.,Chidiogo, A.P., 2018. Industrial Harmony and Employee Performance in Food and Beverage Firms in Anambra State of Nigeria. *International Journal of Managerial Studies and Research (IJMSR)*. 6.6 :22-35.

[1353] Ukonu,I.O. and Emerole, G.A., 2016.*op.cit*.

[1354] Ladan, M.T., 2012. *The Imperative of Industrial Harmony and Academic Excellence in a Productive Education Re-Orientation*. Being the text of a Paper Presented at the Flag-off of the "Do the Right Thing: Campus Focus" Students Re-Orientation Programme, Organised by the National Orientation Agency, Held at the University of Calabar, Cross River State, Nigeria, 13th November, 2012.

[1355] Also, the duties with responsibilities for all classes of workers should be clearly made.

[1356] Akpoyovwaire, S.M. 2013. Improving Industrial Harmony and Staff Performance in a School Organisation through Effective Communication. *International Journal of Scientific Research in Education*, 6.3: 263-270.

[1357] Supervisors, on the other hand, should be abreast with innovation and changes ahead of their occurence in order to be able to relay employer's policies including its intentions to workers. Nwokocha, I., 2015.*op.cit.*

conditions and for disputes resolution.[1358] All satisfactory actions must be taken to ensure that their organisation observes agreements and procedures agreed on as an effective collective bargaining with right communication aids in promoting peaceful coexistence and industrial harmony.[1359]

Collective bargaining is an important mechanism in attaining a cordial relations and industrial harmony between employees and employers as it makes provisions for an effectual forum for settling of employment related matters.[1360] However, the non-enforceability of the outcome of collective bargaining which involves the resources of time, money and human resources to conclude, is inimical to public policy and industrial harmony.[1361]

5.10.1. The Role and Influence of Trade Union Organisations in the quest for Industrial Harmony

In its ordinary meaning, a trade union is a workers' association, aimed at promoting as well as protecting welfare, interests including rights of those in its membership, principally through collective bargaining whilst its specialist or academic meaning implies that it is workers' primary institution in modern capitalist societies.[1362] Trade unions, in Nigeria, otherwise known as labour movements, have over the years transformed into a strong, vibrant, at times militant, national liberation movement, having to deal with successive military regimes and civilian administrations. They have been involved in several economic, industrial and national issues such as, minimum wage, the SAP, political party matters, electoral reforms, education-related matters, fuel price hike, external debt, negotiated workers' service conditions, living cost, corruption, globalisation, amongst others.[1363] Notwithstanding their differences and such reservations that spring up from time to time towards issues in the workplace, both employers, employees' unions, past the pursuit

[1358] Akpoyovwaire, S.M., 2013. *op.cit.* Nwokocha, I., 2015.*op.cit.*
[1359] Nkiinebari, N. P., 2014. *op.cit.*
[1360] Okene, O.V.C., 2010. *op.cit.*4.4:61-103.
[1361] Nwoke, F.C., 2000. Rethinking the Enforceability of Collective Agreements in Nigeria. *Modern Practice Journal of Finance and Investment Law.*4.4: 353-374.
[1362] Okogwu, G.C., 1990. *Trade unionism: Its development in Nigeria and its roles in a democratic government.* Being the text of a Lecture presented at National Seminar on Conflict Prevention in Industrial Relations held in Abuja, 1st April, 1990.
[1363] Anyanwu, C., 1992. President Babangida's Structural Adjustment Programme and Inflation in Nigeria. *Journal of Social Development in Africa.* 7.1: 5-24; Imhonopi, D. and Urim, U.M., 2011.*op.cit.*

for, and receiving fundamental rights including freedom, have changed method of engagement with the intent of settling their different issues of interest by voluntary negotiations. [1364]

Bargaining has changed to standard workplace concept, from the individual employee-employer relations. This is in tandem with fundamental freedoms emergence and trade unionisation. The recognition of a union's right to be a part of a bargaining process as well as conduct negotiations on behalf its members is essential in the bargaining procedure,[1365] meaning that an employer or must accord recognition to a trade union as an employees' agent in the bargaining process before it can advance.[1366] As one of the core crucial functions of organised labour,[1367] bargaining collectively is a useful panacea for industrial disputes.[1368]

In Nigeria, workers' unions are affiliated to one of the major union federations. That is, the Nigeria Labour Congress (NLC)[1369] and Trade Union Congress of Nigeria (TUC). Based on Ministry of Labour and Employment's statistics, entire union membership is approximately 7 (seven) million, with a larger membership in public sector.[1370] An example of workers' association in the public sector is ASUU, the union for universities teachers. ASUU is affiliated to NLC.[1371] This is because, ideologically, ASUU tilts towards the masses than the welfare of its members. Its foundation is based on public good and common good. The union believes that it is when you associate with the junior cadre employees, and not just

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[1364] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1365] Olulu, R.M. & Udeorah, S. A. F., 2018. *ibid.*
[1366] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1367] Paul, S. O., Agba,M.S. and Chukwurah, D.C., 2013. Trajectory and Dynamics of Collective Bargaining and Labour Unions in Nigerian Public Sector. *Journal of Arts, Science & Commerce*. l– IV. 4:49-57.
[1368] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1369] There was at some point The United Labour Congress of Nigeria (ULC) represented unions who detached in 2015 from NLC. This was due to the disputed 2015 Delegates' Conference . On 18th December, 2016, the faction of NLC led by Ajaero made an announcement on the formation of United Labour Congress with more than 25 affiliates in addition to some disgruntled affiliates of TUC. The rift between both unions however came to an end in July 2020 thereby merging. See, U.S. DEPARTMENT of STATE. 2020. *2020 Investment Climate Statements: Nigeria.* Retrieved October 16, 2020, from https://www.state.gov/reports/2020-investment-climate-statements/nigeria/ ; Young, V. 2020. United Labour Movement coming as NLC, ULC leaders meet. *Vanguard.* July 16. Retrieved from https://www.vanguardngr.com/2020/07/united-labour-movement-coming-as-nlc-ulc-leaders-meet/?amp=1 on July 7, 2021; Adedigba, A., 2020. Updated: NLC, ULC resolve rift, merge. *Premium Times.* July 16. Retrieved July 7, 2021, from https://www.premiumtimesng.com/news/headlines/403292-jusi-in-nlc-tuc-resolve-rift-merge.html
[1370] Exceeding those existing in the private sector. U.S. DEPARTMENT of STATE. 2020. *op.cit.*
[1371] In practice, NLC covers both junior and senior staff.

acting up and above them that you can achieve this.[1372] Before the fourth (4th) Republic[1373] it was expected of all workers' unions to have affiliations with NLC, however, with some senior staff skilled/professionals like ASUU exempted, and which only until recently was re-affiliated to NLC, was a separate union agitating for the its members' welfare as well as for national development including nation-building.[1374] The influence of the Congress on ASUU was, and is still, of a persuasive nature[1375] as ASUU, independently, continues to advocate for improved funding, research grants, remuneration, uplift of the education sector including its members' welfare.[1376] The specificity of each union targets under NLC is still intact. Thereby, it functions as a collating house for all unions under it, and instead of the government meeting with individual unions on matters that affect all employees in Nigeria, NLC officials would be liaised with. However, it appears that the government finds it challenging to be true to the idea of collective bargaining in their relations with the unions under NLC.

As labour unions perform multi-dimensional responsibilities, principally to their members through the creation of economic and social systems with the purpose of improving their lives as well as work conditions,[1377] the impact of organised labour in an economy could be remarkable due to these roles. These roles or functions, as the case may be, could in nature be economic, welfare, social, political, psychological as well as managerial.[1378] For workers' trade union to adequately stand for their members' interests, they should neither be dependent nor be controlled by their employers' organisations.[1379] Employees should stop being made to append their signatures on yellow-dog contracts.

[1372] NLC cannot stand in and negotiate for ASUU because the operations of both unions are different.
[1373] 4th Republic started from 1999.
[1374] Okolie, C.N., 2010. *op.cit.*
[1375] There was a ploy by the government to polarise ASUU. This attempt resulted in about 49 UNILORIN lecturers who insisted on not ending the strike based on the non-implementation of the agreement of December 2001 being disengaged. This decision instead of disintegrating the Union, strengthened it.. Okolie, C.N., 2010. *op.cit.*
[1376] The fact that ASUU is an affiliate of NLC does not remove the fact that the union has the right and privileges to operate its discipline and push across issues that affect the welfare of its members. See, Okolie, C.N., 2010. *op.cit.*
[1377] Imhonopi, D & Urim, U.M., 2011. *op.cit.*
[1378] Fajana, S., 2006. *op.cit.*; Imhonopi, D & Urim, U.M., 2011. *op.cit.*
[1379] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*

Being compelled to sign only makes them lone individuals and not individuals with a collective status with trade unions.[1380]

As earlier noted, the primary objective of trade unions is to bargain effectively. Their other functions of organising, negotiating, striking, politics, legislation and governance are all harnessed in the service of this objective.[1381] Premised on this, a trade union must always ensure that negotiations are conducted within the collective bargaining framework with the intent of arriving at an agreement. As it makes provisions by which trade unions and employers can accommodate one another's perspective through persuasion and compromise, this attribute of it provides, among other things, the underlying basis for industrial harmony.[1382] Summarily, there is trade union formation to advance members interests and industrial harmony and peaceful co-existence among the employers and employees in particular.[1383]

5.10.2. The Role of ASUU in Sustaining Industrial Harmony

Industrial harmony depicts the non-existence of industrial action by trade unions in an organisation.[1384] In its best form, it implies relative stability where there is cordiliality and productivity in relationships of individuals and or groups in the work place.[1385] With the inevitability of disparities among groups in an organisation, conflict as well as differing objectives pervade modern organisations. Conflicts, in essence, hinder the presence of industrial harmony, reflecting status of organisational instability.[1386]

The socio-economic with the political environment of Nigeria defines the nature and character of ASUU's struggle.[1387] And as a trade union of intellectual workers,[1388] intellectuals in a neo-colonial dependent and developing nation, they believe they must practice committed scholarship by taking the side of the oppressed.[1389] Therefore, the Union

[1380] Nkiinebari, N. P., 2014. *op.cit.*
[1381] Okogwu, G.C., 1990. *op.cit.*
[1382] Okene, O.V.C., 2008. *op.cit.*66; Davidov, G., 2004. Collective Bargaining Laws: Purpose and Scope. *The International Journal of Comparative Labour Law and Industrial Relations.* 20.1:81-106.
[1383] Paul, S. O., Agba,M.S. and Chukwurah, D.C., 2013.*op.cit.*
[1384] Hanson, J. 1972. Economics. Macdonald and Evans Limited. *London International Journal of Multidisciplinary Educational Research*. 1.1: 146 – 151.
[1385] Sayles, L. and Straus, G. 1981. *op.cit.*
[1386] Sayles, L. and Straus, G. 1981. *ibid.*
[1387] ASUU. 2017. *op.cit*. 173.
[1388] Iyayi, F. 2002. *The Principles of ASUU.* Bukuru: EIWA Ventures Ltd. 9.
[1389] Iyayi, F. 2002. *ibid*. 10.

has continued to arrest popular imagination and remains in national consciousness since its emergence from NAUT as a radical, ideological and anti-status quo Union of intellectuals. It has waged various historic battles, most of which have been highly successful and translated to its members improvement as well as empowerment of helpless Nigerians.[1390] It's principles and its felicity to these principles in its actions and struggles mark it out from other unions and continue to earn it respect.[1391] These principles, aside from the legal instruments regulating the activities of ASUU, guide its operations in achieving its objectives.

5.10.2.1. The Principles of ASUU as a Guide in Sustaining Industrial Harmony

Principles express fundamental beliefs or ideals individuals use in action. These aid individuals in making decisions on what is right or wrong, including making decisions involving right versus wrong. In some other parlance, principles are termed values and they assist in arranging beliefs in a hierarchy of importance.[1392] The most successful of organisations or institutions, world over, show that their practices are based on a number of explicit principles which all members understand and share.[1393]Therefore, in an increasingly-dynamic world characterised by all sorts of challenges, trade union organisations such as ASUU, for their survival as a union, both in the short and long run, may well depend upon the degree to which they develop, communicate and share such principles.[1394] The principles of ASUU, as a union, assists it to find it necessary to review the reasons for the wellbeing of its members, where they are coming from, where they are going and what approach to adopt to get there.[1395] The Union's efforts in promoting these principles that have defined the content of its struggles.[1396]

[1390] Odukoya, A.O., 2019. *op.cit*.93.
[1391] Odukoya, A.O., 2019. *ibid*. 93.
[1392] Iyayi, F. 2014. The Principles of the Academic Staff Union of Universities in *Festus Iyayi on ASUU & The Nigerian University System*. ASUU-UNILAG: Lagos. 7.
[1393] Iyayi, F. 2014. *ibid*. 10.
[1394] Iyayi, F. 2014. *ibid.* 7.
[1395] Iyayi, F. 2014. *ibid.* 7.
[1396] ASUU, 2017. *op.cit*.174.

While the motto of the Union is "Knowledge, Truth and Service", its 10 principles[1397] as contained in the Port Harcourt Declaration[1398] include, the principle of integrity, transparency and accountability; principle of courage, sacrifice and total commitment; the principle of professionalism, objectivity and hard work; the principle of internal democracy, team work and group solidarity: the principle of patriotism, anti-imperialism and working class solidarity. [1399] These principles used in unison, and not in isolated form, are central to the operations of the union and must guide thoroughly the thoughts, decisions, actions and practices of its members while assisting it in navigating its course.[1400] They are key issues in educational development and administration.[1401]

Other principles, not in the Port Harcourt Declaration but considered indispensable in the Union's operations, include patriotism, anti-imperialism alongside working class solidarity as well as internal democracy, team-work and group solidarity.[1402] In addition to its core principles, the union is also committed to the ideal of progressive, egalitarian, democratic, transparent and accountable governance with a high regard for human rights including the rule of law.[1403] Without ASUU's committment to these ideals, most of its laudable objectives cannot be realised. Little wonder the struggles of the union also include a principled opposition to military dictatorship and a commitment to the democratic and anti-imperialist struggle.[1404] For the Union, no matter the pain, it considers it unthinkable taking sabbatical on its principles.[1405]

[1397] The principles of the union are too many for this ten-point declaration to capture all. See, Odukoya, A.O., 2019. *op.cit*. 93.

[1398] The Port Harcourt Declaration of 8th June, 2013 adopted at ASUU NEC's emergency meeting held at University of Port Harcourt.

[1399] Iyayi, F. 2014.o*p.cit.* 16-32

[1400] ASUU's principles are aided by its ideological commitment. The Union embraces its ideology as an indispensable science of idea without which reality will be normless, meaningless, shapeless, unfocused, directionless, confusing and undeveloped. See, Odukoya, A.O., 2019. *op.cit*. 94; ASUU, 2017. *op.cit*.166.

[1401] ASUU, 2017. *ibid*.174.

[1402] Two of the Union's powerful principles falling under internal democracy include: unending debates and deference to superior logic and the second is the supremacy of the Congress. This Congress' supremacy prominently manifests in the conduct of the Union's struggles and the challenge of calling it off which continues to confuse the government each time it has to deal with ASUU as its leadership pleads their helplessness in calling off any action without its principal's authority; the congresses in its many branches. Odukoya, A.O., 2019. *op.cit*. 92-93.

[1403] ASUU.2017. *op.cit.* 173.

[1404] ASUU.2017. *ibid.* 173.

[1405] Odukoya, A.O., 2019. *ibid*. 93.

The attitude of the government to the union and its principles characterise the nature of the political struggle between the government and the union over the fate of the university sector of the tertiary institution and the entire national educational system.[1406] Over time, the Nigerian government have accused ASUU of challenging the government and dabbling into governance. Every struggle, both alone or in collaboration with other labour and civil society allies to which ASUU commits itself are critically analysed as well as weighed objectively in line with its principles. Once satisfied on its struggles rightness and its conformity to its extant principles, for the Union, it is no retreat, no surrender.[1407] These principles are ideal goals which guide the union.[1408] The objectives of the union, whether economic or political, as provided for in Rule 2 of its Constitution cannot be achieved without the support of all its members and the guidance of its basic principles as discussed above.[1409]

The acceptance and total commitment to the actualisation of these principles by members of the union would significantly minimise the areas of conflict and friction between the government and the union.[1410] While collective bargaining seems to be gaining prominence and attention as an effectual approach for managing conflict and attaining industrial harmony, not in books alone, also in practice,[1411] the continuous weakening of collective bargaining in putting a check on industrial conflicts seems to act as a major incentive for extreme industrial actions, like strikes in Nigeria.[1412] In *Crofter Harris Tweed Co. Ltd v. Veitch*,[1413] according to Lord Wright, workmen's right to strike is a vital constituent in collective bargaining principle. It forms an indispensable part not only for the union's bargaining ability; it is equally a requisite sanction for enforcement of rules agreed upon.[1414]

[1406] ASUU,2017. *op.cit* .173.
[1407] Odukoya, A.O., 2019. *op.cit*. 93.
[1408] Pamede,O., 2007.*op.cit*.357-364.
[1409]ASUU.2017. *op.cit.* 173.
[1410] ASUU,2017. *op.cit*.174.
[1411] Adewole, O.A., and Adebola, O.G., 2010. Collective bargaining as a strategy for industrial management in Nigeria, *Journal of Research in National Development*, 8.1:75-90. Onah, R.C, Ayogu, G.I. & Paul, S.O., 2016. *op.cit.*
[1412] Lasisi, R. and Lolo, A., 2018. *op.cit.*
[1413] (1942) 1 All E.R. 142 at 157.
[1414] Gatugel, A.S. and Eze, K.U., 2015.*op.cit.*

Moreover, ASUU as a union of intellectuals has, over the years, cultivated the habit of lending a voice to national issues and the consideration of their suggestions are thereafter left in the court of the government. Instances of such include the union's perspective on The Trade Union (Amendments) Bill. The National Executive Council (NEC) of ASUU after deliberating thoroughly on the Trade Union (Amendments) Act observed that the 2005 Act retains several provisions of the 1978 Act considered to be undemocratic; the Act introduces some provisions considered to be more undemocratic that the Decree (1973) promulgated by the Military; there are violations of some Constitutional provisions by various provisions of the 2005 Act, especially, Freedom of Association enshrined in section 40, the ILO Conventions on Freedom of Association, Collective Bargaining with right to strike. Some of the content of the Act are considered as recipes intended to generally destabilise workers' organisations and above all the NLC.[1415] Also, resolutions of ASUU have, substantially contributed to the uncovering of the re-colonisation forces who direct the policies of the state as well as the decolonization implications on the Nigerian.[1416]

The importance of collective bargaining is dependent not only on trade unions existence, but also on the vigour and independence of such unions, [1417] considering it is by collective bargaining employees, through their unions, have a democratic participation in decisions which affect their work.[1418] The absence of a derf platform of collective bargaining, including joint consultation between unions in the university and the government there is bound to be disputes which are in no way beneficial to the University system.[1419]

The level of progress as well as development of a nation is a reflection of the attention successive governments, voluntary or non-governmental organisations, including the society, has paid to the crucial roles universities play in empowering people.[1420]

[1415] ASUU. 2017.*op.cit.* 114.
[1416]ASUU, 2012. *op.cit.*
[1417] Uvieghara, E.E., 2001. *op.cit.* 314.
[1418] Otoo, K.N., Osei-Boateng, C. and Asafu-Adjaye, P.,2009. *op.cit.* 9.
[1419] Ogbette, A.S, Eke, I.E. and Ori, O.E., 2017. *op.cit.*
[1420] Ajayi, S.A. and Okedara, C.K. (eds), 2012., *J.T..Okedara : The Making of Bowen University An Overview*. Ibadan: Baptist Press (Nig.) Ltd. x.

5.10.3. The Role and Influence of the National Industrial Court of Nigeria (NICN) in attaining Industrial Harmony.

When conflicts arise, there is a need to put in place means of resolving them before they escalate and deteriorate into unpalatable consequences. The NICN[1421] was established to settle expeditiously all matters arising from industrial relations including labour market breakdown. While the Court makes a combination of the rule of law pertinent in conventional courts alongside affordability, flexibility, expediency including reliability that specialised courts are associated with,[1422] its major role is aiding promotion and sustainability of industrial harmony while in the process regulating the employers - employees relationships, the trade unions with employer organisations, as well as resolving disputes that originating from these relations. It also mediates on the boundaries of obligations including rights of employers as well as employees in line with substantive merits of disputes, good conscience as well as equity. Its main objective is the attainment of social justice through fair work practices being upheld.[1423]

Being a superior court of record, NICN determines trade disputes, labour practices, matters bordering on TDA, Factories Act, TUA, Employees Compensation Act, including appeals from the IAP.[1424] Section 7 of the NICN Act[1425] confers the adjudicattion jurisdiction on civil causes with matters as regards labour, trade union as well as industrial relations, environment, work conditions, health with safety including welfare of labour with such other associated matters amongst others[1426]exclusively on the NICN while section 254C (1), CFRN stipulates the exclusivity of the court's jurisdiction to it, and with no

[1421] The estbalishment of the NICN in 1976 was by the provisions of Section 19 (1), Trade Disputes Decree No. 7, 1976, now TDA, Chapter T8, Volume 15, LFN, 2004.

[1422]Agboola, B. G. and Ogundola, P., 2020. Towards Employees' Job Protection and Security: Roles of National Industrial Court (NIC) in Ensuring Peace in Nigeria Workspace. *Journal of Education and Practice*. 11.5:89-93.

[1423]Ukonu, I.O., and Emerole, G.A., 2016.*op.cit.*

[1424] The NICN now on the same edestal as a High Court, for justice sake, make a departure from the Evidence Act and adopt the rules of equity, allowing such to be used instead of the rules of common law where conflict of interest exists. See, NICN, 2020.*op.cit.;* Primera Africa Legal, 2020. *Quiet Revolution in Labour/ Employment Law in Nigeria: Staying informed.* Retrieved January 26, 2021, from http://primeral.com/news/labour-employment-law-in-nigeria/

[1425] In this study, it will be alternatively referenced as NICN Act.

[1426] In furthering its course, the Court is empowered to establish alternative dispute resolution centres in the courts. Also, no appeal lies from the CA's decision or any other court unless the NICN Act or a National Assembly Act prescribe, except only as of rights on questions of fundamental rights, making the court's decisions to be final. See, ASUU. 2017. *op.cit.* 51.

concurrent exercising or sharing jurisdiction among other High Courts of similar rank of power.[1427]Based on the foregoing, the decisions of the SCN previously placing a limitation on the NICN's jurisdiction and putting it on equal level with the jurisdictions of Federal, State High Courts with that of Federal Capital Territory (FCT), Abuja as found in *AG Oyo State v. National Labour Congress*[1428] and *National Union of Electricity Employer & Other v. Bureau of Public Enterprises*[1429] have stopped to be valid. [1430] .

Collective agreement is interpreted by the NICN.[1431] Being a specialised labour court, the NICN decides on industrial issues applying equitable and legal principles.[1432] Also, in tackling disputes between an employer and employees, there are statutes that make provisions on how they should be resolved.[1433] The TDA makes provisions for trade dispute resolution mechanisms.[1434] It provides for mechanisms of resolving disputes internally, and also through mediation, conciliation including arbitration before the referral of such matters to the NICN for adjudication.[1435] The role of NICN in industrial harmony in labour disputes

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[1427] The NICN has coordinate jurisdiction as other superior courts of record such as the Federal and States High Courts, including the High Court of FCT, Abuja. NICN, 2020.*op.cit.*

[1428] (2003) 8 NWLR (Pt. 821) 35.

[1429] (2010) 7 NWLR (Pt. 194) 538.

[1430] The cumulative impact of the confusion on the scope of the NICN jurisdiction before its new status was that several courts possessed concurrent jurisdiction on matters the NICN should possess jurisdiction exclusively. The outcomes of this were decisions that conflicted, non-clarity alongside non-uniformity in the diverse courts decisions on almost the same matters relating to labour law. For instance, at the High Courts, collective agreements became binding if incorporated into the employees' conditions of service as it was under the common law, while at the NICN, they were legally binding. For instance, in *National Union of Civil Engineering Construction, Furniture and Wood Workers v. Beten Bau Nigeria Ltd and Anor*, (Unreported Suit No. NIC/8/2002) the NICN held that the decisions the Respondent made reference to, justifying that collective agreements are only binding in honour when uncorporated into the condition of service were common law decisions and therefore distinguishable from the matter at hand based on the TDA's statutory provisions, a legislation the NICN is bound to give effect to. See, *Attorney-General Oyo State v. Nigeria Labour Congress, Oyo State Chapter &* Ors (2003) 8 NWLR 1 at 33 -34; *Nwanjagu v. Baico* (2000) 14 NWLR (Pt. 687) 356; *Afribank (Nig.) PLC v. Kunle Osisanya* (2000) 1 NWLR (Pt. 642) 598 and *Federal Government of Nigeria v. Adams Oshiomhole* (2004) 1 NLLR (Pt.2) 339 at 355; Adejumo,B.A., 2011. *op.cit.*

[1431]Mywage.ng, 2020. *Trade Unions*. Retrieved August 17, 2020, from https://mywage.ng/labour-law/trade-unions

[1432] Adejumo, B.A., 2007. *op.cit.*

[1433] *AG Oyo State v. Nigeria Labour Congress,Oyo State Chapter* (2003)8 N.W.L.R.(Pt. 821) 1

[1434] Chapter five of the Study makes reference to the Mechanisms for Resolving industrial disputes as stipulated by the TDA.

[1435] Adejumo, B.A., 2007. *The Role of The Judiciary in Industrial Harmony* , being the text of a Commentary Delivered at 2007 All Nigeria Judges' Conference Organised by The National Judicial Institute at Ladi Kwali Hall of The Abuja Sheraton Hotel And Towers, Abuja, FCT on 5th - 9th November, 2007. Retrieved on June 14, 2020, from http://nicn.gov.ng/nicnAdminPublic/public/presidentHood/PRESIDENT%20SPEECH%202.pdf

resolution becomes an extreme alternative in instances disgruntled parties aiming at making the workplace a battlefield.[1436]

For a dispute to be a subject of adjudication by the NICN, it has to be a dispute of right and not mere interest.[1437] The NICN summarised this position in the following words: industrial relations is an outcome of conflicting interests that may continue as just interests or crystallise into rights based on issues agrement can be arrived at through a collective bargaining process. Till an interest crystallises into a right, the proper place of resort is not the NICN.[1438] In addition, the jurisdiction of the NICN, being subject-based, now confers on it advisory and adjudicatory roles in labour matters. It also interprets awards, status, rulings, and judgments.[1439]In playing its advisory roles when disputes are brought to it, whether arising from frictions in employees and employers or inter-professional relationships, disputing parties are advised, by the court, to settle such matter. When such differences are settled, the grounds for resolution are afterwards filed and the court adopts same as judgment for them.[1440]

In instances disputing parties are unable to settle based on the court's advice, they will proceed to trial;[1441] hence, the adjudicatory role of the court comes to play at that point. While the Court also has the responsibility of dealing with such matters having connections with or that pertain to, how any international convention, treaty or protocol ratified by Nigeria bordering on labour, workplace, employment, industrial relations alongside other related matters is applied,[1442] it also interprets awards and rulings and judgments. NICN is equally involved in matters which bother on determining such question on collective agreement interpretation as well as application; an arbitral tribunal's order or award as

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[1436] Ukonu,I.O. and Emerole, G.A., 2016.*op.cit.*

[1437] Disputes of interest have to do with conflict of interest in collective bargaining as a result of making new agreements on terms alongside work conditions, or the renewal of those, which have lapsed while disputes of rights imply alleged rights violations established in employment contracts or agreements. In essence, conflicts of interest border on bargaining, collective agreement issues including work conditions, while conflict of rights relate to alleged isolation of rights in existence in a collective agreement or employment contract. See, Gatugel, A.S. and Eze, K.U., 2015. *op.cit.;* Onyeche, C. and Nse-Abasi, E. E., 2017. *op.cit.*

[1438] *Senior Staff Association of University Teaching Hospitals, Research Institutions and Associated Institutions (SSAUTHRIAI) and 3 Ors v. Federal Ministry of Health and Anor* (1978 – 2006) D.J.N.I.C. 542 at 543.

[1439] Ukonu, I.O., and Emerole, G.A., 2016. *op.cit.*

[1440] Ukonu, I.O., and Emerole, G.A., 2016. *op.cit.*

[1441] Ukonu, I.O., and Emerole, G.A., 2016. *ibid.*

[1442] Section 254C (2) of the CFRN, 1999 (as amended).

regards a trade or labour union dispute; the court's award of judgement; settlement terms of a trade dispute including trade union or employment dispute as may be stated in a memorandum of settlement.[1443]

The NICN Act, section 7(c)(i), in expanding the court's jurisdiction relates to determination of any issue on collective agreement interpretation. By section 7(6) of NICN Act, NICN, to reach decisions on matters before it, has the prerogative to take into cognisance international best practices in industrial and labour relations. The Constitution also gives the NICN mandate to take into recognition international best labour as well as industrial practices[1444] to make decisions; this invariably includes decisions as regards collective agreements.[1445] Equally important is that, in some cases, the Court has given recognition to international labour practices including international best practices to reach its decisions.[1446] A worthy instance was the court's verdict in *Adigwe v. FBN Mortgages Limited*[1447] where it reiterated the unfettered right to resign of an employee, nothwithstanding the contrary express stipulations in the handbook of an employer. This decision was made in line with international best labour practices including ILO Conventions considered applicable.[1448] As the Court is mandated to consider international best practices while giving verdicts on matters before it, the various ILO Conventions to be applied by member states come in useful here. This implies that the Court will have to constantly be conscious of this.[1449]The NICN Act, having a constitutional backing, also portends the likelihood that parties to a collective bargaining will be more committed when they enter into collective agreements. This is because the legal implications of their agreement will be judged by international standards and principles.[1450]

[1443] Others include those pertaining to, trade union constitution including that of employers' association or any association on employment, dispute on or connected with trade disputes on payment or non-payment of salaries, wages, gratuities, pensions, benefits, allowances with such other entitlement of an employee, political or public office holder, judicial officer or a civil or public servant in any part of Nigeria and related matters.Section 254C (1) (j) and (k), CFRN, 1999 (as amended); Ukonu, I.O., and Emerole, G.A., 2016. *op.cit.*
[1444] What amounts to international best practices in a specific situation is a question of fact anyone urging the Court must prove. See, Adejumo, B.A., 2011. *op.cit.*
[1445] Section 254 C – (1) (f), CFRN.
[1446] Kuti, F and Obiokoye, C., 2020. *op.cit.*
[1447] Unreported Suit No. NICN/LA/526/2016, judgment delivered on 9 July 2019, *per* Kanyip J (as he then was, now President, NICN).
[1448] Exceptions would include when a practice as such is construed to be forced labour. Kuti, F and Obiokoye, C., 2020. *op.cit.*
[1449] Adejumo,B.A., 2011.*op.cit.*
[1450] Zechariah, M., 2013.*op.cit.*

In its quest to instil principles that could bring about industrial harmony, the NICN is not infallible. A party dissatisfied by Court's decision can seek redress through appeal. Garnering from section 243(2) of the CFRN, the NICN' s decisions, whether in its original or appellate jurisdictions, were in the past construed to be limited to only questions of fundamental rights. This section, in *Lagos Sheraton Hotel and Towers v. Hotels and Personal Services Senior Staff*[1451] got a judicial interpretation. According to the CA, section 243 (2)(3), CFRN recognises right to criminal appeals on fundamental human rights only while other rights of appeal are subject to applicable Act of National Assembly. It was further held that, since there is no existence of such Act, NICN's verdict is final on the issue.[1452] However, the apex Court has stated that all judgements of the NICN can be appealed to the CA. The SCN in *Skye Bank Plc. v. Victor Anaemem Iwu*[1453] ruled to this effect.[1454] Premised on this decision, the law's position currently is that there is no scope or limit to the right of appeal against NICN decisions, civil or criminal as an appeal can be instituted against all NICN decisions.[1455]

Empowering the NICN to function exclusively in the promotion and sustenance of harmony in labour matters is commendable. Its role in resolving labour disputes remains, a superlative option when disputing parties choose not to resolve their disputes amicably.[1456] The subsisting legal regime on Nigerian industrial relations has abandoned the rigid following of common law principles and recognised international labour standards.[1457] The NICN as the Court saddled with responsibility of determining trade disputes and matters related ought not be dependent or biased in intervening in the affairs between the FGN/

[1451] (2014) LPELR 23340 (CA).
[1452] However, this decision, in essence means that anyone who has the intention of appealing on matters other than those of criminal appeals with appeals on questions of fundamental human rights, posssesses no constitutional right of appeal. This limits the right of appeal from NICN decisions which is opposed to the fair hearing principle. Advocaat, 2015.*op.cit.*
[1453] SC. 885/2014.
[1454] That ruling was made in 2017. See, Atilola, B. 2017. *Recent Developments in Nigerian Labour and Employment Law.* Hybrid Consult. 7.
[1455] Atilola, B. 2017. *op.cit*
[1456] Ukonu, I.O., and Emerole, G.A., 2016. *op.cit.*
[1457] Primera Africa Legal, 2020.*op.cit.*

ASUU.[1458] It should also see to it that the issues of disputes managment are dealth with, while disputants observe the rule of lawas well as give allowance to good sense.

5.10.4. Some notable Legal Actions instituted by ASUU in protecting its members' interests.

ASUU is usually reluctant in instituting actions against the Government in Court to implement agreements signed or on any matter of interest to the Union where it considers that the FGN is being unfair to it.[1459] The reason disclosed for this that if an action is instituted against the FGN, the government will see to it that such matter is dragged for as long as possible, with it being adjourned for years and probably still be in court after the change of power in government.[1460] In addition to this, the Union claims that the has a record of violating the orders of the court hence taking such action would be an exercise in futility.[1461] However there are instances where the Union has had to institute actions on behalf of its branches or members.

In *ASUU v. Omoiya & Ors*.[1462]the Union, in a 2011 suit filed against the defendants sought for declarations from the NIC that by its constitution, no branch of its could conduct any valid election without the authetication and supervision of its NEC; that all elections to the Executive offices of ASUU, UNILORIN Chapter, conducted with no authorisation of its NEC are illegal, unconstitutional, null as well as void; that the UNILORIN branch led executive of Dr Oloruntoba Oju was the last recognised as well as substantive executive of the branch. In addition it prayed that the court make orders compelling the 2nd Defendant to make payments to the Union such check-off dues, in arrears, from 2002 till date to the Union's secretariat; an order of restraint on the 1st Defendants alongside the unrecognised executive members of the Chapter, including an order of restraint on the authorities of

[1458] Owoseni, J.S. and Ibikunle, M.A. 2014. ASUU's Perception of the National Industrial Court (NIC) in Handling of Disputes between ASUU and the Federal Government of Nigeria. *International Journal of Innovation and Applied Studies.* 8. 2:871-882.
[1459] KII/Male/ ASUU UniZik/ Resp. 7/ 2022
[1460] Newswirengr. 2022. Strike: Why we'll not sue FG over withheld salaries-ASUU. Jide Taiwo. July 13. Retrieved September 1, 2022, from https://newswirengr.com/2022/07/13/strike-why-well-not-suefg-over-withheld-salaries-asuu/
[1461] Ajimotokan,O., Olaitan, K., and Emenyonu, A., 2019. ASUU: Why We Won't Sue FG Over IPPIS. *THIS DAY.* November 11. Retrieved September 1, 2022, from https://www.thisdaylive.com/index.php/2019/11/11/asuu-why-we-wont-sue-fg-over-ippis/amp/
[1462] NICN/LA/63/2011

UNILORIN the defendants or any other person(s) who has no written recognition by ASUU NEC as its representative in UNILORIN.

While the 2022 strike was on, ASUU had to institute an action against Godwin Obaseki, the Governor of Edo State alongside the State Government as well as the AG and Commissioner for Justice of the State at the NICN over the suspension of union[1463] activities in state's tertiary institutions, particularly at AAU, Ekpoma, with instructions of the implementation of a no-work-no-pay policy, while declaring vacant and placing advert on positions of any worker who refused to work. This action the Union considered unsconstitutional as well as ultravires the defendants' powers.[1464]

114 ASUU members instituted an action against Kogi State University (KSU) at NIC for the determination of the alleged unjust lecturers' layoff legality or otherwise. KSU had terminated the said lecturers' appointment on the grounds of the institution's reorganisation. In challenging their being unlawfully sacked, the Union prayed that the NIC declared the termination of their appointments illegal, null as well as void for violating Chapter 6, paragraph 6.4.6. of the KSU Novemeber 2008 Conditions and Schemes of Service for Senior Staff; as well as an order to set aside the purported termination and for all allowances as well as salary areas be paid, in addition to, an order of perpetual injunction restraining KSU alongside its agents from having lecturers ejected from their residential apartments as well as offices,amongst others.[1465]

5.11. Industrial Democracy as a tool for attaining Industrial Harmony

One of the core justifications for collective bargaining is inherent in its democratic attributes[1466] as it avails workers the opportunity to have a form of industrial democracy

[1463] The suspended unions were, ASUU, SSANU, NASU, Academic Staff Union of Polytechnics(ASUP), including Non-Academic Staff Union of Polytechnics alongside allied unions.

[1464] The Union sought for the determination of the construction with interpretation of section 40 of CFRN alongside Section 35(3) of the TUA in determining the powers of the Defendants as well as declaration that the Defendants possses no power to meddle with exercise of the claimants' rights in engaging trade union activities, while they equally sought for order of perpetual injunction to restrain the Defendants form meddling in the Claimants' fundamental right of being involved in trade union activities. See, InformationNigeria. ASUU Drags Obaseki to Court Over Suspension of Unions' Activities. Lawal, S., June 15, 2022. Retrieved June 16, 2022, from https://www/informationng.com/2022/06/asuu-drags-obaseki-to-court-over-suspension-of-unions-activities.html

[1465] Fadehan, O., 2022. ASUU battles Kogi University over alleged unlawful sack of 114 lecturers, as Court admits 345 exhibits. *Daily Post*. July 17. Retrieved September 9,2022, fromhttps://dailypost.ng/2022/07/17/asuu-battles-kogi-university-over-alleged-unlawful-sack-of-114-lecturers-as-court-admits-345-exhibits/

[1466] Okene, O.V.C, 2010, *op.cit.*

while ensuring the rule of law in organisations.[1467] It provides the best possible window for social inclusion and harmony in any system including the industrial setting as a form of industrial democracy.[1468] This is because it has a way it limits unilateral decisions and actions by employers as well as the government.[1469] Furthermore, it permits employees through their union to influence the remuneration and employment conditions[1470] and assists in realising the principle of interest and associational representation.[1471] It is the basic as well as common universal form of work democracy whose crucial significance can never be ignored.[1472] As an extension of the basic principles and practices of democracy into industry,[1473] it is a good means of collective participation.[1474]

Industrial democracy[1475] has different connotations. Its definitions are characterised by equality, decision-making, including participation.[1476] It could imply employees' influence over industry, together with employee ownership of the means of production.[1477] It could be a situation in an organisation where the participation of employees, to a large extent, is well sought to make decisions which will be used in the determination of their conditions of work.[1478] It involves combined participation in the decision making process between core participants in industrial relations.[1479] It, however, goes beyond participation,

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[1467] Simply put, collective bargaining process forms industrial democracy's foundation. See, Moore, E. 2011, *op.cit.*; Onah, F.O., 2008. *op.cit.*; Ibietan, J., 2013. *op.cit*.21.2:220-232.
[1468] Makinde, O.H., 2013. *op.cit.*
[1469] Ebong, E.A. and Ndum, V.E., 2020. *op.cit.*
[1470] As a process of industrial relations, it serves diverse functions. Aside from being a means of industrial jurisprudence it is a tool for promotion of industrial peace, consequently, collective bargaining favours industrial democracy. Furthermore, collective bargaining, being a decision-making process, its major purpose is for negotiating agreed set of rules in governing employment relationship the bargaining parties have. See, Anyim,. F. C., Elegbede T. and Gbajumo-Sheriff, M.A.,2011 *op.cit.* ; Ogunkorode, O., 1983.*op.cit.;* Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011. *op.cit.;* Ugbomhe, O. U. & Osagie N.G., 2019. *op.cit.*
[1471] Pedersini, R., 2019. *op.cit.*
[1472] Spinard, W. 1984. Work Democracy: an overview in Industrial Democracy, Participation labour relations and motivation. *International Social Science Journal*. XXXVI.2:195-216.
[1473] Ebhoman, S.O., 2015. *A Critical Examination of Collective Bargaining and its Role in Labour Relations in Nigeria.* Being an unpublished Work Presented in the Faculty of Law, ABU in Partial Fulfilment of the Award of Master of Arts in Law (M.A.) Department of Public Law, ABU, Zaria.
[1474] It advanced to introducing democratic principles in employer – employee relationship. See, Liukkunen, U., 2019. *The Role of Collective Bragaining in Labour Law Regimes : A Global Approach.* Retrieved June 18, 2021, from https://www.springerprofessional.de/collective-bargaining-in-labour-law-regimes/17228016
[1475] Industrial democracy was what workplace democracy was initially known as. Both terms can be interchangeably used. See, Nwinyokpugi, P. N., 2014. *op.cit.*
[1476] Nkiinebari, N. P., 2014.*op.cit.*
[1477] This is as exemplified by producer cooperatives.
[1478] Onyeizugbe, C.U., Aghara, V., Enaini, S. O., and Abaniwu, P.A., 2018.*op.cit.* 6.6 :22-35.
[1479] For instance, appointing employees or their trade-union representatives to company boards or governing bodies. Onyeizugbe, C.U., Aghara, V.,Enaini, S. O., and Abaniwu, P.A., 2018. *op.cit.* 6.6 :22-35.

involving realisation of standards for a democratic society in the workplace.[1480] It could also take the form of worker participation where labour unions function as oppositions to employers.[1481] In this form of industrial democracy, employers propose, while employees with their unions react and raise opposition, if necessary, with negotiations which afterwards result collective agreements.[1482] Another approach which reduces the challenge of power-sharing, and focuses on consultation and communication is a situation where managers are responsible for making decisions but arrange to consult representatives of employee before they introduce or make changes in their organisation.[1483] Industrial democracy also suggests workers' participation in management,[1484] and involves encouraging employees to contribute positively and participate in the process of making organisational decisions[1485] in a bid to achieve the goals that the total organisation values.[1486]

Industrial democracy moves from employees' means of control where every employee is regarded as a partner in relation to ownership as well as management of the organisation effectively utilising its human resources.[1487] The principle of industrial democracy further suggests unilateral regulations being replaced with bilateral regulations with attributes such as succession in leadership, process for making decisions and checks

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[1480] Holtzhausen, D.R., 2002. The effects of workplace democracy on employee communication behaviour: Implications for competitive advantage. *Communication Research*. 12.2:30-48.

[1481] Encyclopedia.com, 2020. *Industrial Democracy*, Retrieved June 14, 2020, from https://www.encyclopedia.com/social-sciences-and-law/sociology-and-social-reform/sociology-general-terms-and-concepts-71

[1482] Encyclopedia.com, 2020. *ibid.*

[1483] This approach to industrial democracy involving representative structures on employees' side is as an example of indirect democracy, whereas, a situation individual employees represent themselves with no intermediaries, direct democracy exists. A good instance of a direct democracy is when an autonomous work group in an organisation, responsible for decision making, makes its plans independently of higher management, and is yet small for all members to play a personal direct part in influencing the group's decisions. See, Encyclopedia.com, 2020. *op.cit.*

[1484] Being same as employee involvement and employee participation, industrial democracy deals with every act of an organisation involving consulting employees , putting them in the know on how the organisation is run. Gennard, J. & and Judge, G.,1999. *Employee Relations*. 2nd edition. London: Institute of Personnel and Development. 179-207.

[1485]Edeh, F.O.,Ugwu., J.N., Ikpor,I.M.,Udeze, C.G.,Ogwu,V.O.,2019.Workplace Democracy and Employee Resilience in Nigerian Hospitality Industry, *American Journal of Economics and Business Management*.2.4:147-162.

[1486] CIPM Nigeria, 2018. *Advanced Human Resource Management II.* Lagos: CIPM. 7.

[1487] Fashoyin T., 1984. *Democracy in Industry: A Desirable Management Practice*. Being the text of a Paper Presented at a Meeting of the Rotary Club of Festac Town, Lagos, November, 1984.

and balances.[1488] This implies participation with codetermination by representatives of employees in conducting negotiations with the management as well as implementing the substantial with procedural regulations that govern work and employment relations.[1489] As an entire range from workplace participation through bargaining to codetermination in regional as well as national economy, in its advanced forms, disclosing with disseminating information on an organisation's finances could be part of it, including joint determination of specific areas of the organisation, employment, training, investments, as well as manufactory activities.[1490]

The three principal functions of the process for collective bargaining form the basis for industrial democracy. These include, making provisions for an orderly means of settling disputes bound to happen in the workplace, the establishment of a set of rules guiding parties' relations while a collective agreement exists and being a method wages rates with other employees'employment conditions are determined.[1491] However, industrial relations gives it a broad interpretation as concentrating on the capitalism and democracy relations, therefore extensively covering propositions from reforming to overthrowing capitalism.[1492]It further implies employees' involvement in the economic, cultural, social including the political processes affecting their lives.[1493] It should however not be inferred that the employer with their employees have same bargaining power, however, under a regime of collective bargaining power, a huge reduction in power imbalance can be expected.[1494] A negative assumption of the workings of industrial democracy through their representative union could be so that employees might want to utilise issues of their participation including democracy as a control mechanism, seeking for reasons to have aggressive confrontation with their employer, mostly in situations employees possess no deep understanding of what they are to do in matters of labour relations due to inadequate labour education with questionable leadership.[1495] Such perception would be contrary to the

[1488] Marshall, J., 1997. Globalization from Below: The Trade Union Connections in Walters, S., Ed., *Globalization, Adult Education and Training: Impacts and Issues.* London: Zed Books. 51-68.
[1489] Müller-Jentsch, W., 1995.*op.cit.*
[1490] Iornem, D., 2016. *op.cit.*
[1491] Fashoyin, T. 1992. *op.cit.* 103-104.
[1492] Frege, C., 2015. The Discourse of Industrial Democracy: Germany and the US Revisited. *Economic and Industrial Democracy*. 26.1: 151–175.
[1493] UNDP, 1993. *Human Development Report 1993*. New York: UNDP.
[1494] Klare, K., 2000. *p.cit.* Okene, O.V.C., 2010, *op.cit.*
[1495] Abolade, D.A., 2015. *op.cit.*

ideals of industrial democracy with democracy within trade unions.[1496] It was perceived as equivalent to involvement, participation, or co-determination in an organisation.[1497] Historically, this concept, within workers' movement, became known as an idea of representative democracy.[1498] This was in relation to the opinion of its proponents, that, effectively managaing a union was achieveable through representation.[1499] The notion that employees possess democratic rights with privileges in their workplaces came into being through the 19th century workplace exploitation through laws including court rulings which limited such rights to leave jobs, vagrancy laws with forceful use of the military and police, in strict with punitive reliefs, in an urban real estate market which turned several employees into helpless tenants in slum neighbourhoods, including a national political system which mobilised working-class voters with no regard for the needs of workers.[1500]

Two important factors to always consider in industrial democracy are participation and representation. In organisations, recognising these factors is important in creating industrial democracy.[1501] Employees want be part of power sharing, get involved in making and implementing decisions with management.[1502] Employee involvement in an organisation is part of a transformation a workplace needs which is a departure from conventional hierarchical functions to an idealised industrial democracy where workers with employers are beneficiaries of the new work structure.[1503] Situations where grievances leading to strife in the workplace are construed as innevitable differences and capable of being resolved, such can be considered healthy manifestation of industrial democracy.[1504]

Some matters over which industrial democracy could be practised, necessitating employees' involvement in joint decision making with their employers in an organisation could comprise the expansion, contraction, investment, work practices, work allocation

[1496] Webb, S. and Webb, B., 1897. *op.cit.* 50-53. Müller-Jentsch, W., 1995.*op.cit.*
[1497] Blumberg, P. 1968. *Industrial Democracy. The Sociology of Participation.* UK*:* Constable; Müller-Jentsch, W., 1995.*op.cit.*
[1498] Müller-Jentsch, W., 1995.*op.cit.*
[1499] The Webbs posited that efficient union management is achievable only through representation. See, Müller-Jentsch, W., 1995. *op.cit.*
[1500] Montgomery, D., 1993. *Citizen worker: The experience of workers in the United States with democracy and the free market during the nineteenth century*. Cambridge: Cambridge University Press. 114.
[1501] NOUN, 2008. *Industrial Relations*. Lagos:School of Management- NOUN. 337.
[1502]Akintayo M.O., 1985. Industrial Democracy and Labour-Management Relations in Nigeria. *The Nigerian Journal of Industrial Education and LabourRelations.*2.1.
[1503] Abolade, D.A., 2015. *op.cit.*
[1504] Njoku, I.A., 2007. *op.cit.*

structure, succession plan, planning, promotion, appointments, forecasting, changes in products, new technologies, training the organisation structure, profit sharing, wages, and so on.[1505] Being primarily concerned with the institutional mechanisms and structure providing employees or their representatives with decision making power in the workplace,[1506] it aids organisational effectiveness.[1507] At times the management assumes that those in the managerial cadre are all-knowing. This is rather fallacious and flies in the face of grave realities. Many employees are more knowledgeable about the nitty-gritty of the workplace than their bosses.[1508]

On a comparative level, apart from industrial democracy being differently practised in different economies of the world, participants, like trade union or employers, scholars including the general public often have perspectives that are strikingly-different on what industrial democracy entails.[1509] Whereas the United States and Britain adopt the terms industrial democracy or workplace democracy,[1510] the German literature makes reference to it in such words as, codetermination,[1511] economic democracy, participation including partnership.[1512] As a process where employees individually or by their union or other organisations have a share in arriving at management decisions, it can be realised by collective bargaining, joint consultation, autonomous workgroup, employees' appointment in serving on an enterprise's board, and so on.[1513] Consequently, it has been subsumed into six categories.[1514] These include: Workers' self-management; Works councils; Codetermination; Producer cooperatives; Trade union action (collective bargaining)

[1505] In taking decisions, it must be favorable to everyone, that is, the shareholders with stakeholders. See, Abolade, D.A., 2015. *op.cit.*

[1506] Poole, M., 1986. *Towards a New Industrial Democracy*. London: Routledge.

[1507] Stanley, E. and John, M., 2018. Industrial Democracy and Organisational Effectiveness of Selected Rivers State Parastatals, *IIARD International Jo urnal of Economics and Business Management*, 4.2:61-70.

[1508] Iornem, D., 2016. *Archive: Industrial Democracy: The Prospects for a Boardroom Revolution in Nigeria.* Retrieved August 5, 2020, from https://thenewtimespress.com/archives/5379

[1509] Frege, C., 2015. *op.cit.*

[1510] In this study, the words, industrial democracy and workplace participation will be used interchangeably. In the same vein, the word codetermination, will be made reference to.

[1511] Also known as, Mitbestimmung. Codetermination, focuses on an industry as well as firm level while economic democracy considers the influence of employees on a state's economic policy-making. See, Frege, C., 2015. *op.cit.*

[1512] Frege, C., 2015. *op.cit.*

[1513] Fajana, S., 2006. *op.cit.*

[1514]Szell, G., Ed., 1992. Industrial Democracy. *Concise Encyclopaedia of Participation and Co-Management.* Berlin. 429-439; Müller-Jentsch, W., 1995.*op.cit.*

including Shop floor programs, which entails, worker involvement, direct participation.[1515] In a capitalist-based market economy, the last four forms can be primarily observed in diverse combinations. These forms rest in part on legal foundations as well as on collectively bargained agreements.[1516] In addition to the above forms of industrial democracy, two other forms have been identified. These include overarching economic codetermination. This involves economic and social councils set up for particular industries and corporative representation through union participation in bodies that govern work management, professional as well as trade associations, social insurance plans, and so on.[1517]

In Nigeria, the study of the nation as a labour locality shows that elements of workers' participation exist in management *scilicet*-joint consultation and collective bargaining[1518] that developed as an intentional official policy sometime during the administration of the British colonialists.[1519] However, industrial synergy seems wide apart from the usual cooperation a trade unions has with management. The business social relation that exists is embedded in master-servant relations to such a degree that employees have no knitted ties with their employers or representatives.[1520] Orders are, at times, given in such manner that no one employee is aware of the rationale for decisions affecting duties they are assigned. Capitalists see and portray themselves as different from others. The standard postulations of Karl Marx's fixation for capitalistic manipulation reflect in all areas of an organisation.[1521] Employees who labour and perform complex activities of production and

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[1515]Micheal Poole, the proponent of the categorisation, however, excludes employees' financial involvement in an organisation from this classification. He puts it under concept of economic democracy. Economic democracy is a term which conjures up overarching codetermination on the level of an industry or an entire economy. It equally sees to business, workplace institutions including the processes of involvement as well as participation, even if they are subordinated. See, Naphtali, F., 1928. *Wirschaftsdemokratie. Ihr Wesen, Weg und Ziel.* Frankfurt am Main; Müller-Jentsch, W., 1995,*op.cit.*

[1516] Müller-Jentsch, W., 1995. *ibid.*

[1517] Müller-Jentsch, W., 1995. *ibid.*

[1518] Damachi, U.G. , 1989. *Industrial Relations: A Development Dilemma in Africa*. Lagos: Development Press. 56.

[1519] Anya, K.A. *Industrial Democracy and its Prospects in Nigeria: a comparative assessment*. Retrieved July 11, 2021, from https://www.google.com/url?sa=t&source=web&rct=j&url=https://www.nigerianlawguru.com/articles/labour%2520law/INDUSTRIAL%2520DEMOCRACY%2520AND%2520ITS%2520PROSPECTS%2520IN%2520COMPARATIVE%2520ASSESSMENT.pdf&ved=2ahUKEwiEqYyW5NvxAhXOVsAKHazoBIQQFnoEcbgQAQ&usg=AOvVaw0JvBtL99jAcS2-FV2_baLD

[1520] Nwinyokpugi, P. N.,2014. *op.cit*

[1521] Nwinyokpugi, P. N.,2014. *ibid.*

services are portrayed as mere tools for the advantage and interest of capital as the practice of non-consultation with employees in making decisions seems not to be an issue in several organisations across the nation.[1522]

This untoward practice has led to a debate on how to take a shift from, and reform, capitalism for it to be more democratic. It is assumed that capitalist property rights do not possess higher democratic worth than employees' interests as well as control on their work lives.[1523] It has, however, been argued that the impact of specific types of industrial democracy on managerial decision-making should be focused on instead of focusing on wondering if workers have access to more direct participation.[1524] In supporting this argument, German works council was cited as it offers employees extensive institutional participation to shape will-formation and decision-making procedures in an organisation. However, there is no direct participation opportunities for workers individually.[1525] In assessing what industrial democracy really is, it can be stated that actions, structures, or processes which proliferate a larger group of people's power in influencing decisions including an organisation's activities can be deemed a workplace attempt towards democracy.[1526]

Industrial democracy must make provisions for machinery for the protection of rights and to safeguard industrial employees' interests.[1527]Without participation, worker alienation will persist.[1528] Participation could be by ownership where employees own shares in an organisation they work for; or could be in government where there is representation of employees on a parastatal or agency's governing board.[1529] Participation could also be in a form that involves employees taking decisions jointly with the management in the matters directly pertaining to their work on personal or departmental levels.[1530] Employees will experience job satisfaction if they have a sense of feeling that individual capacities, experience including values of theirs would be utilised in the

[1522] Nwinyokpugi, P. N.,2014. *op.cit.*
[1523] Frege, C., 2015. *op.cit.*
[1524] Frege, C., 2015. *ibid.*
[1525] Frege, C. , 2015. *ibid.*
[1526] Harrison, J.S., and Freeman, R.E., 2004. Democracy in and around organisations: Is organisational democracy worth the effort? *Academy of Management Executive.* 18.3:49-53.
[1527] Clegg, H. A. 1960. *A New Approach to Industrial Democracy*. Oxford: Blackwell.83.
[1528] Encyclopedia.com, 2020. *op.cit.*
[1529] Iornem, D., 2016. *op.cit*.
[1530] Iornem, D., 2016. *ibid.*

workplace and they are offered opportunities and rewards in the work environment.[1531] A win-win situation which industrial democracy brings in its wake is considered as ethically higher as it offers employees stable, satisfying jobs and better productivity for an organisation.[1532] A positive employment relationship will only exist where the employer and employees recognise and acknowledge the indispensability of each other as work partners, thereby extending their mutual concerns past issues of wages, work hours alongside other conditions, and are interdependent and discuss as well as dispose issues as they come up with no recourse to a third party, and work out a procedure for settling their differences amicably.[1533]

The extent to which collective bargaining serves its functions is dependent on the degree of industrial democracy in a country.[1534]

5.12. The Importance and Relevance of Industrial Democracy to Industrial Relations

Historically, domination and exploitation was typical of the world-of-work. To correct these anomaly, the practice of collective bargaining was introduced.[1535] Therefore, as the backbone of industrial democracy,[1536] collective bargaining is closely linked to democracy as well as the rights of workers to organise associations with a legislative framework encouraging parties' participation.[1537] Being a symbolic representation of democratic processes and by-product of industrial democracy, it promotes and encourages democratic values of a union and management to reach an allowable and advantageous agreement, relating to their everyday working conditions. It does not lead to a warpath, but aids in reaching a goal, in an organisation. As a process of improving an organisation's standards of living, and having national economic interests, it does not embrace individual goals neither does it support political goals of a specific faction in the nation. It speaks for

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[1531] Wright, B. E., & Kim, S., 2004. Participation's Influence on Job Satisfaction: The Importance of Job Characteristics. *Review of Public Personnel Administration*. 24(1):18-40.
[1532] Abolade, D.A., 2015. *op.cit.*
[1533] CIPM, 2018. *op.cit.* 20.
[1534] Akinwale, A.A., 2000. *op.cit.*24.
[1535]Arthurs, H. 1985, Understanding Labour Law: The Debate on Industrial Pluralism. *Current Legal* . 1:84; Okene, O.V.C., 2009. *op.cit.*
[1536] Ebong, E.A. and Ndum, V.E., 2020. *op.cit.*
[1537] Opute, J. and Koch, K., 2010. The Emergence of Collective Bargaining Structures in a Transformation Economy: The Example of Nigeria. Retrieved January 29, 2021, from http://www.researchgate.net/publication/289670920_The_emergence_of_collective_bargaining_structures_in_a_transformational_economy_The_example_of_Nigeria

everyone and everyone is for it. Basically, it is symbolic of democratic culture that encourages disputants to resolve issues through mutual consent.[1538]

In a democratic system of governance, decision-making is grounded on stakeholders opinions and not on the opinions of an individual. Consultations are made with stakeholders to ensure that the policies and decisions agreed on benefit all members of the group.[1539] As industrial democracy entails democratic practices carried out in the workplace, it affords employees the allowance of a participatory decision-making system. It gives them the feeling of ownership.[1540] A rise in employees' decision-making power may be beneficial for overall quality of reaching decisions in an organisation.[1541] Industrial democracy engages employees. A positive side of any employee engagement is that it leads to earnings-per-share growth in an organisation. Likewise, more employees involvement lead to better customer engagement, increased productivity, greater retention, reduced accidents, and a higher profitability.[1542] Hence, trade union, representing employees, provide the avenue for dialogue, discussions and negotiations between employees and employers that lead to beneficial deals for all stakeholders. Trade unions, through the instrument of democracy, serve as an important medium through which employees can lobby for appropriate corporate governance and a good working environment to ensure optimum employee-performance at the workplace.[1543] Strong, stable, democratically-run trade unions widen collective bargaining's scope, hence strengthening workplace democracy.[1544]

From human resources management point of view, participatory employees are happier workers. From this perspective, a connection exists between industrial democracy, job satisfaction with possibly improved productivity.[1545] Also, when employees are availed the chance of participating in decision-making process within an enterprise, it permits a juxtaposition of their impact on the preparation, making including follow-up of decisions

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[1538] Opute, J. and Koch, K., 2010. *op.cit.*
[1539] Bakokor, S. A. and Antwi, D. E., 2020.The Effect of Trade Union Activities on Employee performance; The Case of Ghana's Food and Drugs Authority. *Global Scientific Journals*. 8.4:278-291.
[1540]Regan, R., 2019. *Workplace Democracy: What it is and How can you create it*? Retrieved May, 13, 2020, from https://connecteam.com/workplace-democracy/
[1541] Frege, C., 2015. *op.cit.*
[1542] Regan, R., 2019. *op.cit.*
[1543] Bakokor, S. A. and Antwi, D. E., 2020. *op.cit.*
[1544] Ebong, E.A. and Ndum, V.E., 2020.*op.cit.*
[1545] Witte, J., 1980. *Democracy, Authority and Alienation at Work: Workers' Participation in an American Corporation*. Chicago: University of Chicago Press; Zwerdling, D., 1978. *Workplace Democracy.* New York: Harper-Colophon; Frege, C., 2015. *op.cit.*

arrived at the enterprise level.[1546] Good enough is the fact that, due to indigenisation, some organisations now make provisions for employees to have shares in organisations they work. Although companies are still sceptical about bringing workers' representatives onto its board as enterprise owners, who take risks, taking decisions as well as in charge of things affecting it.[1547]

Notwithstanding the above-stated scepticism, industrial democracy is considered to significantly positively impact on organisational effectiveness as it influences the efficiency and effectiveness of the organisation,[1548] improves productivity and better employment relations,[1549] increases creativity, interest including commitment to organisation's objectives. It equally lowers stress thereby increasing wellbeing of all while improving personal fulfilment and self-esteem.[1550] Another advantage of workplace democracy is better decision process which will result in improved quality decision and minimal industrial disputes as management willhave better communication with employees.[1551]

As beneficial as industrial democracy seems to be, with the positive impacts it should have on industrial relations,it is however not utilised optimally in the workplace[1552]as democracy in industrial relations has been thrown overboard and collective bargaining has not been as effective as it should be. This is because the Government continuously evolves labour policies that weaken labour unions and labour dynamism which has dwindled some labour practices.[1553] It must, however, always be borne in mind that the entire historical development of trade union movement has been mirrored in the history of the extension of employee participation, denoting a power share by the majority of employees in decisions that affect them and which previously was regarded as the management's prerogative.[1554] While an employer might also not be fully committed to democracy in the workplace, thinking that the power and authority of the management may be undermined and thereby losing control of the workplace, he should bear it in mind that autocracy is no longer the

[1546] Adefolaju, T., 2013. *op.cit.*
[1547] Iornem, D.,2016. *op.cit.*
[1548] Emmanuel, S. & Mark, J., 2018. *op.cit.*
[1549] Abolade, D.A., 2015. *op.cit.*
[1550] Abolade, D.A., 2015.*ibid.*
[1551] Abolade, D.A., 2015. *ibid.*
[1552] Abolade, D.A., 2015.*ibid.*
[1553] Nwokpoku, E.J., Nwokwu, P. M., M., Nwoba , E.O. and Ezika, G. A., 2018. *op.cit.*
[1554] Iornem, D., 2016. *op.cit.*

order of the day if an organisation will achieve its goals.[1555] Also, the government, being a third party as well as the regulator in labour matters may also not view the concept as important in the running affairs of the workplace.[1556]

The Nigerian government should, beyond being an actor in industrial relations, uphold the practice and principles of tripartism which guarantees fail participation, with unequal weight paid to every representative's opinion. In the interest of the key players in industrial relations, there should be a tripartite consultation, a cooperation process where representatives of employers with those of employees are consulted as well as involved by the government. This will promote equality in partnership where any of the main actors can set up a meeting of the national tripartite committee to look into issues of concern.[1557] There will most likely be a reduction in occurrence of workplace disputes and work stoppage in organisations industrial democracy is permitted.[1558]

5.13. Challenges to the Realisation of Industrial Harmony in Nigerian Public Universities

The interraction of labour with management impacts industrial growth and productivity[1559] and fosters unity in the workplace. Conversely, ASUU, today, is synonymous with struggles[1560] due to its employer not satisfactorily living up to expectations. As an instrument for promoting industrial peace, collective bargaining guarantees that there is faiplay for employers as well as employees in negotiations, the reslt of which are just and impartial bargain.[1561] Consequently, it favours industrial democracy.[1562] Democracy in the workplace is one of the four broad functions or objectives of collective bargaining.[1563]Industrial harmony is an outcome of industrial democracy[1564] as

[1555] Abolade, D.A., 2015. *op.cit.*
[1556] Abolade, D.A., 2015.*ibid.*
[1557] Ofori-Gyau, K., *op.cit.*
[1558] Abolade, D.A., 2015. *op.cit.*
[1559] Akpoyovwaire, S.M. 2013. *op.cit.*
[1560] Nnamdi Azikwe University, 1991-2021. *Academic Staff Union of Universities (ASUU),Nnamdi Azikwe.* Retrieved April 29, 2021, from https://unizik.edu.ng/unions/academic-staff-union-of-universities-asuu-nnamdi-azikwe-university/
[1561] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1562] Ogunkorode, O. ,1983.The Bargaining Process: Issues Involved, Information Required and Sources in Lanre Omole, Ed., *Contemporary Issues in Collective Bargaining*,. Alafas Nig. Coy. as cited in Anyim, F.C., Ikemefuna, C. O. and Ogunyomi, P.O., 2011. *op.cit.*
[1563] Others include redistribution of power, settlement of trade disputes, and the maintenance of efficiency.See, Okene, O.V.C., 2010, *op.cit.*
[1564] Onyeizugbe, C.U., Aghara, V.,Enaini, S. O., and Abaniwu, P.A., 2018. *op.cit.* 6.6 :22-35.

it plays important parts in stability maintenance, flexibility including sustainability in the workplace.[1565] Collective bargaining is commonly requested by trade unions, instead of the management. Several employers resist it as it entails consenting to share the power to determine employment conditions with employees.[1566]

In industrial relations, in every organisation, private or public sector, employees or the workforce is key to organisational effectiveness. The satisfaction of employees is imperative and, ignoring this, industrial relations can be strained, resulting in industrial dispute.[1567] Diverse factors undermine industrial harmony in organisations in Nigeria. These factors are examined below:

5.13.1. Leadership Behaviour/ Pattern of Employers

Leadership, forming essentially a process where an individual or a team of persons influence the efforts of others in achieving goals in certain circumstances[1568] assists in stimulating, motivating, encouraging, as well as recognising their followers to accomplish key performance results.[1569] Hence, the behaviour of a leader is an effective instrument in the management of employee-employer workplace relations.[1570] An autocratic leader or supervisor's leadership will always breed an atmosphere for conflict.[1571] Also in any organisation where employees cannot trust their leaders, such working environment will be fraught with conflict which will lead to undermining workplace harmony and the negative effect on organisational productivity and development.[1572] The FGN relations with trade unions is based on absolute authority, striving to enforce the doctrine of sovereignty on all. Thus, notwithstanding threats of strikes by unions like ASUU, during bargaining, the FGN holds and wields the power in accepting, selecting or modifying agreements between its

[1565] Edeh, F.O., Ugwu., J.N., Ikpor, I.M., Udeze, C.G., Ogwu, V.O., 2019. *op.cit.*
[1566] Davies, B., J.and Davies, B. 2004. The Nature of Strategic Leadership. *School Leadership and Management*, 4.1:29-38.
[1567] Bankole, A.R., 2000. *Principles of Personnel Management*. Lagos: Fadec Publishers. Nwokocha, I., 2015.*op.cit*.
[1568] Cole, G.A., 2005. *Organisational Behaviour*. Nottingham : T.J. International.
[1569] Gill, A.R., Flascher, A.B. and Shacha, M., 2006. Mitigating Stress and Burnout by Implementing Transformational Leadership.*International Journal of Contemporary Hospital Management*, 18.6:469-481.
[1570] Ushie, E.M., 2002. *Human Relations and Human Resources Management: Concepts , Theories and Applications.* Calabar: Unique Link Ventures.
[1571] Bankole, A.R., 2000. *op.cit.*
[1572] Nwokocha, I., 2015.*op.cit*.

representatives and that of the union.[1573] Also, another cause of concern to the university system is the autocratic leadership approach of some university administrators who double as government agent, who work to save their positions, thereby sabotaging and colluding with government[1574]to weaken ASUU and frustrate its struggles, thereby further contributing to FGN/ASUU disputes.

5.13.2. Defective Communication

Collective bargaining is recognised as an official means of communication grounded in voluntarism, participative management with common respect.[1575] Communication is necessary in any social system. This is because it builds an atmosphere of trust, harmony with proficiency.[1576] Conflicts between the management and employees can be a clear indication of lack, or inadequate effectual communication with positive interaction. Proper communication, when properly utilised, could enhance prompt detection of internal strain, and could also serve as a preventive factor in conflict situations, and the resultant effect would be an increase in workers' productivity.[1577] Frequent and quality communications must be maintained by union leaders and employers, union leaders and other employees.[1578] It must be reiterated again that job performance, employee effectiveness, organisational goals is unattainable in a place harmonious co-existence is absent among employers and employees.[1579] Therefore, it is imperative employers realise and constantly adopt the potential for communicating results of agreements in improving workplace harmony and employees' performance.[1580] Collective bargaining and consultations, employees having effective communication with their organisation, alongside a strong representative union,

[1573] See, Owoseni, J.S. and Ibikunle, M.A. 2014. *op.cit*.8. 2:871-882.
[1574] Adenyi, T. O., Onyia, M. C. and Nnamchi, K. C., 2019. *op.cit.* 7.3:1-10.
[1575] Paul, S. O., Agba,M.S. and Chukwurah, D.C., 2013.*op.cit.*
[1576]Nwokocha, I., 2015. *op.cit.*
[1577] Odiagbe, S.A., 2011.*op.cit.*
[1578] The mechanisms for encouraging quality communications which are premised on trust, empathy, honesty, good faith, transparency, including regular meetings between employees, trade union representatives and representatives of the management; provision of venues meeting, transport with staff leave enabling management participation; unhindered access for trade union officials; training , capacity building on communication with negotiation skills; focusing on consensus building, using external facilitators; investment in human resources in unions and organisations in ensuring effective follow-up on dialogue and outcomes implemented in building positive change. Dialogue assists in ensuring that CBAs negotiations are a routine process to agree on issues as well aspolicies already in regular discussions. See, Food and Agriculture Organisation of the United Nations. 2017. *op.cit.*
[1579] Paul, S. O., Agba,M.S. and Chukwurah, D.C., 2013.*op.cit.*
[1580] Odiagbe, S.A., 2011. *op.cit.*

within a voluntary and legal machinery put in place for settling disputes, is one of the principal aims of ASUU.[1581]

5.13.3. Non-satisfactory Work Environment

Without doubts, a work environment that is physically and psychologically conducive for all fosters workplace harmony.[1582] If employees are unsatisfied with the status of their job conditions physically or psychologically, most especially when their security and safety is threatened, they could be disgruntled and that could end in conflict, particularly if they are unionised.[1583] The quest for favourable conditions of service has, over the years, been one of the remote causes of disputes between the FGN and ASUU.

5.13.4. Labour-Management Policies

When an organisation has policies that neither encourages social partnership nor augments consensus building as well as employees' democratic involvement, there will be absence of industrial harmony. This is because industrial harmony can be realised only by social dialogue which involves stakeholders' interests in advancing an organisation and employees''s long-term prospects. In essence, any organisation defective of a suitable machinery for balancing dissimilar interests, there is probability of impending dispute, capable of hindering such an organisation's stability.[1584]

5.13.5. Non – Recognition of Trade Union as a Bargaining Party

Recognising trade unions' role is pertinent to the entire collective bargaining process.[1585] When workers' representatives are deprived of the freedom and unrecognised for collective bargaining purposes by their employer which chooses to ignore it as a way of gaining a harmonious relationship between itself and and employees, the aftermath of such is industrial action that will lead to abstraction of workplace harmony.[1586]

[1581] ASUU. 2018. *The Constitution of the Academic Staff Union of Universities*, 2018 Amendment.
[1582] Nwokocha, I., 2015. *op.cit.*
[1583] Jinyemiema, 2008.
[1584] Albert, T. and Yahaya, M.A., 2013. Challenges and Prospects of Effective Industrial Resolution in Nigeria. *J Soc Sci* 36.2:199-208.
[1585] Okene, O.V.C., 2008. *op.cit.*
[1586] Nwokocha, I., 2015. *op.cit*.

5.13.6. The Practice of Exclusionism by the Government

In any organisation where the management opts to practise autocratic form of leadership, industrial disharmony is imminent. When employees are deprived of having a voice or participating in decision-making process in their workplace, oftentimes this threatens the industrial peace of the organisation. If this continues to be a recurring issue, it will impinge on the corporate survival of the institution.[1587] The government's intervention in universities' internal management are part of the causes of disharmony between ASUU, their universities and the FGN.

5.13.7. Breach of Collective Agreement

The delay in, and the ineptitude of employers giving response to, as well as respecting agreements arrived at with trade unions is a major cause of trade dispute.[1588] At times, a trade union and their employers have duly reached an agreement, after bargaining, employees may be left with no choice but recourse to industrial action due to the employer reneging on the agreement terms. In essence, any habitual nonchalant attitude of management in negotiating and implementing agreements with sincerity leads to industrial disharmony in organisations.[1589] Experiences in Nigeria have shown how employers and governments betray by not implementing collective agreements reached with many trade unions.[1590] In recent times, given the glaring and deliberate failure of governemnt to honour agreemnts it willingly signed with ASUU, the concept of industrial harmony is gradually being eroded in the university system.[1591]

5.13.8. Inequality in Bargaining Power

The challenge of inequality in bargaining power between the FGN and ASUU is another major challenge to collective bargaining confronting the union. The team with a stronger bargaining power negotiates from a position of strength and in, the case of FGN and ASUU, the FGN's restrictive laws, and unfair practices enables it have more bargaining

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[1587] Nwokocha, I., 2015. *op.cit.*
[1588] Albert, T. and Yahaya, M.A., 2013. *op.cit.*
[1589] Nwokocha, I., 2015.*op.cit.*
[1590] ASUU, 2017. *op.cit.* 4
[1591] Agwam, B., C., 2021. ASUU Issues Warning Of Indefinite Strike Over FG's Refusal To Honour Agreement. *Vanguard*. July 25. Retrieved July 26, 2021, from https://www.vanguardngr.com/2021/07/asuu-issues-warning-of-indefinite-strike-over-fgs-refusal-to-honour-agreement/

power than the union. In addition, unity is crucial in any collective bargaining process. If representatives of employees lack unity amongst themselves, there will be limited success of collective bargaining. Representatives of ASUU at the central and branch levels must be undivided in order to tackle a common cause to a reasonable conclusion.

Being a form of participation and a non-negligible instrument in promoting industrial democracy, collective bargaining should be encouraged by an enabling legislative framework as its importance must never be underplayed. This is because rule making power is shared by employers and unions leading to erosion of matters[1592] that were, in the past, considered management's prerogatives.[1593] Employees must not be deprived of fundamental rights the citizenry is entitled to and the management should adopt dialogues in creating harmony that will invariably result in labour productivity and everyone's welfare.[1594] In private with public sectors, there should be modalities ensuring that all employees across can freely participate in collective bargaining. When workplace democracy stemming from management's initiatives and trade union influence is through collective bargaining it will likely result in better employee commitment that will advance the productivity of labour, improve productivity of the organisation[1595] which, subsequently, will aid socio-economic development of the nation. [1596] The more industrial grievances are managed through collective bargaining, the more there would be industrial harmony.[1597]

ASUU, in all these equations, cannot be said to be without its shortcomings and atimes, its acts could be considered contributory factor to the state of disharmony between the Union and the FGN resulting in a constant threat to the educational system of the nation. The recurring strike actions are being perceived to have some elements of candor, and may sometimes be embarked on for self and political considerations and clandestine interests, with ASUU, the Ministry of Education and Politicians, most especially in the 2022

[1592] Areas such as, transfer, promotion, redundancy, discipline, modernisation, and production norms.
[1593] Uzoh, B.C., 2015. *op.cit.*
[1594] Chapeyama, M.,2012.Organisational democracy in the agriculture sector in Zimbabwe: Scope, practicality and benefits. Business & Econ omics GRIN Verlag; Abolade, D.A., 2015. *op.cit.*
[1595] Abolade, D.A., 2015. *op.cit.*
[1596] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1597] Lasisi, R. and Lolo, A., 2018. *op.cit.*

industrial action notwithstanding preparations for the 2023 general elections, are allegedly complicit one way or the other.[1598]

In addition, the concept of indefinite, comprehensive or total strike as an industial action instrument usually wielded by the Union suggests that an average person, that no form of activity that has to do with teaching, reasearch and community service should be undertaken. The Union should therefore stop laying claims to being partially engaged in other activities after declaring a total strike action. Additionally, the Union should in all its struggles for better work conditions put into consideration the same set of students and the society it atimes claims to fight for; students are always at the receiving ends, with disruptions in academic calendar adversely affecting their academic journey. While the issue of academics not sending their children and wards to publc universities is based on morality, especially when such qualifies to be admitted, it leaves room for doubt on the sincerity of the Union in agitating for the welfare of its members, students and the nation's education sector. Notwithstanding these concerns identified, going forward, while strikes do not address the problems of the Union but rather compound the challenges tertiary education[1599] is confronted with, the Union should not make its strike actions a sit-at-home one, it can the organise activities like public rallies, mass meetings as well as demonstrations in and outside of campuses to enlighten that the members of the public on its predicaments.

One of the demands of the Union is the EAA. Excess workload on its members is not what the Union should encourage as this has the propensity of undermining work productivity. ASUU should seek for appropriate intervention in the recruitment of more academics into the University system.[1600] This, the Union members, atimes, combine with adjunct and part-time assignments in institutions outside their primary places of assignment. Aside from the reality that there is a limited threshold the body can sustain, physically, it calls to question their efficaciousness in their places of assignment.

[1598] Iremeka, C. 2022. ASUU vs FG: The sstrike, the agreement and matters arising. *TheGuardian.* December 24, 2022. Retrieved August 20, 2023 from https://guardian.ng/saturday-magazine/asuu-vs-fg-the-strike-the-agreement-and-matters-arising/

[1599] Aruwa, S.A.S. 2022. ASUU and FGN statement: the way forward. *Vanguard.* March 10, 2022.Retrieved August 20, 2023. https://www.vanguardngr.com/2022/03/asuu-and-fgn-statement-the-way-forward/

[1600] Aruwa, S.A.S. 2022. *op.cit.*

5.14. Legal Status of Collective Agreements

Collective bargaining, as a voluntary negotiation process an employer(s) or their organisations has with workers' organisations, is for regulation of employment conditions and has a collective agreement as its outcome.[1601] Collective agreement came forth in the Nigerian industrial relations due to the Colonialists' exploitative tendencies which manifested in long work hours and unfair remunerations. [1602]

Section 3 of the TDA provides that a deposit of not less than three copies of a collective agreement by parties to it with the Minister of Labour and Employment under thirty (30) days of executing such. After such deposit is made, the Minister may by order indicate that such agreement's content, or any aspect of it as may be indicated in such order, shall bind employers as well as workers they relate to. In essence, whenever, an agreement is deposited with the Minister of Labour, he may declare that the agreement or part binds the parties and can be enforced in court. From the above provisions, it can be construed that provisions of collective agreements are *sine qua non* in resolving a legal dispute in the workplace.

Section 4(1) of TDA further stipulates that, if an agreed means for settling disputes aside the Act exists, either by the content of an agreement organisations representing employers interests and a workers' organisation have or any other agreement, the disputants will make an initial attempt to have it settled by such means. These provisions, by inference, give any collective agreement reached as an aftermath of collective bargaining a legal backing.

In examining the importance of collective agreement in the quest for industrial democracy, at this juncture, the forms of collective agreement, enforceability of collective agreements both at common law and in Nigeria will be considered.

5.14.1. Forms of Collective Agreement

Collective agreements include diverse subjects constituting issues that define rights and obligations of negotiating parties which could be procedural or substantive in nature.

[1601] Article 4, ILO Convention 98, Right to Organise Collective Bargaining Convention, 1949.
[1602] Ekechukwu, T.O., 1983. *op.cit.*

i. Procedural agreement

This form of agreement is about rules on the procedures for regulating jobs. It constitutes formal written procedures which are voluntary codes of conduct for employers and employees' representatives.[1603] These could be issues as regards composition of the negotiating council, union recognition,[1604] meeting, and quorum to be formed, duration of agreements, disciplinary measures, and internal procedures for the settlement of grievances.[1605] It equally regulates the procedure disputants choose to adopt in resolving their disputes or other areas of their collective relationship.[1606]

ii. Substantive agreement

Substantive agreement deals with items like wages and salaries, staffing needs, bonuses, allowances, hours of work,[1607] pension arrangements, holiday benefits, productivity improvements starting from work practices changes, sick pay entitlements arrangement[1608] and other benefits. Basically, it deals with employment terms as well as conditions.[1609]

Whatever form or nature a collective agreement might take, they in detail put out all aspects of labour-management relations at diverse levels including grievance as well as disagreement procedure.[1610]

5.15. Enforceability of Collective Agreement

Arriving at a collective agreement between disputing parties on disputes settlement is the goal of collective bargaining. It is executed by trade unions acting for, and on behalf of, employees whom they represent on one part, and the relevant employer(s) on the other part.[1611]

In line with the Labour Act, Section 91, a collective agreement is any agreement in writing on the conditions of work and employment terms arrived at by an organisation of

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[1603] Ugbomhe, O. U. & Osagie N.G., 2019. *op.cit.*
[1604] Uzoh, B.C., 2016. *op.cit.* 1.2:297-302.
[1605] Onyeonoru, I.P., 2001. *op.cit.*57.
[1606] Ugbomhe, O. U. & Osagie N.G., 2019. *op.cit.*
[1607] Onyeonoru, I.P., 2001.*op.cit.*57
[1608] Ugbomhe, O. U. & Osagie N.G., 2019. *op.cit.*
[1609] Uzoh, B.C., 2016. *op.cit.* 1.2:297-302.
[1610] Kester, K.O., 2006. *A Perspective on Wage Determination and Bargaining in Nigeria*, Ibadan: John Archers Publishers.
[1611]Owoade, A.O., 2019. *Much Ado about Collective Bargaining Agreement in Nigeria*. Retrieved September 7, 2020, from https://lawaxis360degree.com/2019/06/22/much-ado-about-collective-bargaining-agreement-in-nigeria-adeyemi-o-owoade-esq/

workers or their representative organisation (or an association of such organisations) and an organisation of employers or their representative organisation (or an association of such organisations). The definition of the NIC Act is almost on all fours with this.[1612] The TDA,[1613]considers a collective agreement as any agreement written for settling disputes relating to employment terms and physical work conditions an employer, a group of employers or one or more employers' representative organisations concludes with one or more trade unions or workers' organisations representative, or duly appointed representatives of any group of workers.

This definition of the TDA was adopted by the SCN in *Osoh & Ors v. Unity Bank Plc*.[1614] In reiterating the essential requirements of a collective agreement as provided by the TDA , the Court held that:

> "The provisions of section 47(1)(supra) however require collective agreements to be in writing so as to formalise the agreements, what has further emerged from the definition with respect to many cases of 'collective agreements' is that where they have created legal relations giving rise to contractual obligations between the parties they are enforceable by the immediate collective parties (i.e. between an employer or an employer's organisation and a trade union or trade unions) but as between the employers and the workers as the respondent and appellants here it is only so where they have been incorporated into the contracts of employment of the employees so as to be actionable for any breaches arising there from at he suit of either party to the contractual relationship. Otherwise they are no more than mere vague inspirational terms which are bound to present practical problems of enforcement and the best method being to use political or trade union pressure to bring about their enforcement. The other notable, crucial feature of collective agreements arising from their being the products of the joint negotiating bodies of workers representatives and in that regard being in writing is raising the presumption of being legally enforceable provided the agreements have created contractual obligations arising out of legal relations between the parties."

[1612]Section 54(1) Cap N 155, LFN, 2004.
[1613]Section 48.
[1614] (2013) 1 SCM 149.

Concomittantly, the NICN (Civil Procedure) Rules also interprets it as any agreement in writing for settling disputes, relates to employment as well as physical work conditions an employer, a group of employers or one or more organisations, employers' representatives concludes with one or more trade unions or organisations representing workers, or the duly-appointed representative of any body of workers.[1615]

Collective Agreements Recommendation, 1951, No. 91,[1616] likewise, considers it 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."[1617]

While it seems that Nigerian legislation draw their definitions from the above provision, it can be inferred from the plethora of definitions that collective agreements majorly aim at defining the contractual employment relations a trade union(s) has with an employer(s), they should be in writing so as to formalise the agreements. It involves the representatives for both employees and employers participation. Collective agreements are of two forms. They could be to replace several agreements reached at a company level without previous agreements being adversely affected; or for the purpose of establishing a minimal level of conditions which must be considered in all the company's negotiations, for unionised employees and for those who are not.[1618] Trade unions, through collective agreement, create employment security for their members.[1619]They see to the maintainance and where plausible increase wage-levels of members through collective bargaining with employers and atimes the governement. They also play an important role in controlling workers'conditions, provide their members with legal assistance as well as concerned with

[1615] Order 1 Rule 10. In interpreting this concept, the NICN Rules seems to make a distinction between what collective agreements is and what CBA entails. According to the Rules, CBA is interpreted as follows: *"CBA" means an agreement in writing or writings between an employer and a trade union setting forth the terms and conditions of employment or containing provisions in regard to rates of pay, hours of work or other working conditions of employees.* These two concepts, however, have been lumped together to be same in meaning and have same functions.

[1616] Also referred to as Recommendation No. 91

[1617] Paragraph 2

[1618] Food and Agriculture Organisation of the United Nations. 2017. *op.cit.*

[1619]Ekechukwu, T.O., 1983. *op.cit.*

educational, political training activities and propaganda. [1620] The stronger a trade union is, the greater their bargaining strength. [1621]

It must be noted that the term collective agreement or collective labour agreement has different meanings based on a particular country. It, however, has comparable features both in statutory and common laws' definitions.[1622] While in some jurisdictions, it is regulated by common law, statutory law governs it in others. Some other jurisdictions adopt both practices of statutory with common laws in regulating theirs.[1623]

In analysing the status of collective agreement in Nigeria, recourse will first be made to the position of the common law.

5.15.1. The Status of Collective Agreement at Common Law

Common law, simply put, is judge-made law deduced from customs as well as statutes interpretation.[1624] Historically, the attitude prevalent with industrial practices in the workplace in the past was an influence on judge-made laws. This affected adversely how employees were perceived in employers' interest in the guise of hiring as well as firing employees as they wanted.[1625] The resultant effect of this general attitude towards employees led to the common law principle of collective agreements not being enforceable at law between parties involved.[1626] This is because parties are presumed not to intend that it is binding on them, as it is regarded as a gentleman's agreement, that binds merely in honour.[1627] This presumption is based on the principle that no contract is enforceable legally except there is inherently such intention in creating legal relations.[1628]

The necessity of such intention to have legal relations for a contract's enforceability was emphasised in *Dalrymble v. Dalrymble*,[1629] per Lord Stowell, stating that enforceable contracts must not be... mere matters of pleasantry and badinage, with no intention by parties to have any significant effect.[1630] In essence, collective agreements at common law, are

[1620] Yusuf, T. M., 1965. Industrial Relations in Nigeria. London: Oxford University Press.
[1621] Ekechukwu, T.O., 1983. *op.cit.*
[1622] Akpan, M.J.D., 2017. *op.cit.*
[1623] Akpan, M.J.D., 2017. *ibid.*
[1624] Garner, B.A., Ed.,2009. *op.cit.*
[1625] Akpan, M.J.D., 2017. *op.cit.*
[1626] Akpan, M.J.D., 2017. *op.cit*
[1627] Zechariah, M., 2013.*op.cit.*
[1628] Iwunze, V., 2013. *op.cit*.
[1629] (1811) 2 Hag. Con. 5 at 105.
[1630] Iwunze, V., 2013. *op.cit.*

deemed not enforceable or non-justiciable unlike other agreements.[1631] Notwithstanding that these agreements are the result of deliberations painstakingly made by employers with employees, they are not justiciable at common law[1632] unless and until incorporated into a contract of service, either impliedly or expressly.[1633]

It has been suggested that the court's hostility towards collective agreement originates from its 19th century forechoice for individualism rather than collectivism which manifests in the long battle before the recognition of joint stock and limited liability companies by parliament midway through that century.[1634] The English case of *Ford Motor Company v. Amalgamated Union of Engineering and Foundary Workers*[1635] is well suited to common law's stance and the court's reservation on the unenforceability of collective agreements. There, Mr. Justice Goeffrey Lane held, that the collective agreement reached between the parties could not be enforced as a contract as no contractual intention by them when they chose to bargain was found by the court. In that matter, in 1995 the plaintiff agreed with 19 trade unions with provisions that, at every stage of the procedure in the agreement, all attempts at resolving raised issues would be made and until the carrying through of such procedure, there would neither be work stoppage nor other unconstitutional action. However, there was an application for injunction for two prominent industrial unions to be restrained from declaring an official strike despite the collective agreement of 1995.[1636]

The missingness of privity of contract between an employee and an employer or its association is another cause of collective agreements' unenforceabilty at common law. This is because a collective agreement exists between employers or their associations and workers' union. Be that as it may, an employee being no part of an agreement is stopped at common law from individually enforcing agreements. Lord Haldane's decision in *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge Ltd.*[1637] gives an insight into this doctrine. It was stated by the court that in England specific principles are fundamental. Firstly, a party to a contract

[1631] Akinola, A. 2008. *op.cit.* 494.
[1632] Iwunze, V., 2013. *op.cit.*
[1633] Zechariah, M., 2013. *op.cit*
[1634] Parry, D. H., 1931. Economic Theories in English Case Law. *Law Quarterly Review,* 47:183.
[1635] (1969) 1 WLR 339.
[1636] The core issue of contention in the application was if the parties had an intent of the agreement being legally binding.
[1637] (1915) A. C. 847.

can institute an action on it as the law knows nothing of a *jus quaesitium tertio*[1638] in a contract. There may be confernment of such right through property, for instance, under a trust, however, such cannot be conferred on a stranger to a contract as a right in personam to have a contract enforced.[1639]

Notwithstanding that exceptions to the privity of contract doctrine exist at common law,[1640] an employee's right to individually enforce a collective agreement reached by a trade union he belongs to and his employer for his benefit is excluded. For instance, in *New Nigeria Bank v. Egun*,[1641] it was stated that where no privity of contract exists between the respondent employee and appellant employer, the employee could in no way claim under a collective agreement his union has with the employer.

5.15.2. The Legal Status of Collective Agreement in the Nigerian Context

The status of agreements at common law has been modified by the Wages and Industrial Council Act[1642] and section 3(3) of the TDA in Nigeria.[1643] The TDA makes it obligatory for collective agreements to be submitted to Minister in charge of Labour and Employment.[1644] Any failure in depositing them within the period given by the Act comes with a penalty of ₦100 fine upon conviction. After collection, the Minister is expected to make an order that a part or all of an agreement shall bind an employer with employees in question.[1645] From these provisions, it can be deduced that the Minister plays a essential role on the enforcement of an agreement as the TDA places a duty on all parties who have engaged in collective bargain which resulted in collective agreement to deposit it with the Minister. After depositing copies of an agreement, the Minister has the *vires* to determine the extent to which it will be binding on concerned parties.

[1638] A rule that a contract can in no way confer rights on a third party.
[1639] *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge Ltd* (supra) 853.
[1640] The doctrine's exceptions are, agency, novation, contracts of insurance, contractual obligations assignment, contracts running with the land, charter parties and trust. Treitel, G.H., 1995. *Law of Contract* . 9th Edition London: Sweet & Maxwell. 576-587; Sagay, I., 1993. *Nigerian Law of Contract.* Ibadan: Spectrum Books. 489; Iwunze, V., 2013. *op.cit*.
[1641] (2011) 7 NWLR (Pt. 711)1.
[1642] Wages Boards and Industrial Council Act. Cap. W1. LFN. 2004.
[1643] Fogam, P.K., 1997. *Law of Contract Simplified*. Lagos: Malthouse Press Ltd. 49.
[1644] Section 3(1)(a-b).
[1645] Section 3(3).

The provisions of section 3 of the TDA, pertaining the bindingness of collective agreements, are unambiguous.[1646] In Nigeria, the position at common law is replaced and statutorily ruled out of order. The perceived intention of the Act suggests that once the Minister[1647] makes an order on an agreement's status, at law, between parties it becomes enforceable.[1648] Notwithstanding that the issue of enforceability is statutorily backed up, such agreements' implementation has overtime been a revolving challenge in Nigeria. This has led to an administrative question on the bindingness of the order of the Minister vis-à-vis the *pacta sunt servanda*[1649] doctrine. In recent times, the NICN has ruled section 43(2), TDA as unconstitutional, null and void for falling foul of section 6 of the CFRN, 1999, which vests judicial powers in the Judiciary and not in the Executive arm of government which is what the Minister represents.[1650] In essence, instead of such wide powers being vested on the Minister as an appointee of the FGN, there should be an independent body doing the review of Collective Agreements.

The prerequisites for there to be bindingness of a collective agreement were listed out in *African Continental Bank v. Nwodika.*[1651] Ubeazonu, JCA stated them to include: the incorporation of an agreement in the contract of service,[1652] state of pleadings, evidence before the court and parties' conduct.

5.15.3. The Enforceability Status of Collective Agreement in Nigeria

Section 23 of the TUA takes into cognisance that collective agreement is a benefit which accrues to a union as a result of getting registered.[1653] By virtue of being a common law state, the well-known fact on collective agreements' legal enforceability in Nigeria, for long, was derived from the rule that they are non-justiciable and, hence, without sanctions legally.[1654] The rationale for such position is that, under law and in practice, most times,

[1646] Discussed in Chapter Four of the study.
[1647] Or commissioner of a state responsible for labour and employment matters, as the case may be.
[1648] Akpan, M.J.D., 2017. *op.cit.*
[1649] Meaning, all agreements must be kept.. However, it must be stated at this juncture that this principle admits only as exception-vitiating factors. These factors in no way include dearth of political will for the implementation of agreements executed and deposited with the proper authority. Akpan, M.J.D., 2017. *op.cit*
[1650] NICN, 2023. You cannot impose IPPIS on Asuu- Industrial Court tells FG. Retrieved August 8, 2033 from https://www.nicnadr.gov.ng.news/1597/you-cannot-impose-ippis-on-asuu-industrial-court-tells-fg
[1651] (1996) 4 NWLR (pt. 443) 470, 473-474.
[1652] If one exists
[1653] Omoregie, E., 2009. *op.cit.*
[1654] Okolie, C.N., 2010. *op.cit.*

parties have no intention to have legal relations which forms part of the cardinal requirements for the enforcement of contracts. Therefore, over the years, Nigerian Courts refused to enforce collective agreements.[1655] In *Nigerian Arab Bank v. Shuaibu,*[1656] per Ndoma-Egba, JCA, a collective agreement was described to be, a gentleman's agreement at best, an extra-legal document totally without sanctions, an outcome of trade unionists' pressure." Nigeria aligned with the common law principle based on the exception of the doctrine of privity,[1657] that collective agreements cannot be enforced by the court.[1658] This invariably suggests that a privity of contract does not exist between an employer and an employee individually; in situations an agreement term is breached or ignored by an employer, recourse could only be made between the trade union and employer, if any exists, to negotiation, and alternatively the union could go on strike, should the need come up.[1659] Courts have, in line with this, in plethora of cases declined to enforce any collective agreement when relied on by an individual employee.[1660] This rule was buttressed in cases like, *UBN Ltd v. Edet,*[1661] *NAB Ltd v. Shuaibu,*[1662] *Nwajagu v. BAI Co. (Nig.) Ltd,*[1663] *NNB Plc. v. Osoh,*[1664] *Makwe v. Nwukor,*[1665] *NNB Plc. v. Egun,*[1666] *Rector, Kwara Poly v. Adefila*[1667] that collective agreements binding in honour only are with no intention of giving nor capable of bestowing on employees individually such right of litigation over an alleged breaching of terms they may conceive to have affected their interest at work; neither are they supposed to supplement nor supplant employees' service contract. Failing to strictly comply with a collective agreement is in no way justiciable.[1668]Similarly, in *Texaco (Nig.)*

[1655] Owoade, A.O., 2019. *op.cit.*
[1656] (1999) 4 NWLR (pt.186) 450, 469.
[1657] According to the doctrine of the privity of contract,proper parties to institute any action in enforcing breach of contacts are signatories or parties to it. See, Dansu, O. 2020. *The Shift in the position of the National Industrial Court on the Enforceability of Collective Agreements*. Retrieved July 7, 2020, from THE SHIFT IN THE POSITION OF THE NATIONAL INDUSTRIAL COURT ON THE ENFORCEABILITY OF COLLECTIVE AGREEMENTS (linkedin.com)
[1658] Iwunze, V., 2013. *op.cit*.
[1659] Kanyip, B.B., 2016. *op.cit.*
[1660] Iwunze, V., 2013. *op.cit.*
[1661] [1993] 4 NWLR (Pt. 287) 288.
[1662] [1991] 4 NWLR (Pt. 186) 450.
[1663] [2000] 14 NWLR (Pt. 687) 356.
[1664] [2001] 13 NWLR (Pt. 729) 232.
[1665] [2001] 14 NWLR (Pt. 733) 356.
[1666] [2001] 7 NWLR (Pt. 711) 1.
[1667] [2007] 15 NWLR (Pt. 1056) 42.
[1668] Kanyip, B.B., 2016. *op.cit. See, UBN Ltd v. Edet (supra).*

Plc. v. Kehinde,[1669] it was held that a collective agreement becomes binding only when there is its incorporation into an employee's conditions of service. All the cases cited in this instance were decided before enactment of NICN Act, 2006 including 2010 Third Alteration to the CFRN, 1999 (as amended).[1670]

With the NICN Act including the 2010 Alteration Act to the CFRN, 1999 (as amended), enactment Sections 7(1)(c)(i), NICN Act and 254C, CFRN grant the NICN the power to interpret collective agreements. NICN Act,[1671] section 7 provides that the NICN possesses exclusive jurisdiction in civil causes as well as labour matters, relating to determination of questions on collective agreement interpretation.[1672] Likewise, Section 254C the CFRN vests on NICN exclusive jurisdiction, more extensively, than what the NICN Act provides.[1673]The law gives recognition to employee's right to have an action instituted for enforceability of collective agreements in instances such has been incorporated, expressly or impliedly in an employment contract or conditions of service or where an employer adopted it as part of the conditions of service.[1674] The NICN, in determining if there has been incorporation of collective agreement into an employment contract will put into consideration factors like its incorporation in a contract of service in instances where there is one, the state of pleadings as well as evidence before the court including parties' conduct. These factors, as held in *ACB v. Nwodika,*[1675] determine the bindingness or not of a collective agreement on an employee and employer. In also determining collective agreement enforceability, it was held in *Rector Kwara State Polytechnic v. Adefila*[1676] that, if parties follow a specific course of action simply due to a collective agreement, like wages payment at new rates, such agreement's provision will be deemed as incorporated in the employment contract.

[1669] (2001)6 NWLR (Pt. 708) 224.
[1670] The above cited cases would most likely not have the same *ratio decidendi*, if the NICN Act 2006 and the CFRN are taken into account. See, Kanyip, B.B., 2016.*op.cit.*
[1671] Discussed fully in Chapter four of this study.
[1672] Section 7 (1) (c)(i).
[1673] See Chapter Four of this study.
[1674] A factor that will determine that a collective agreement not expressly incorporated in an employment contract has been adopted by management is when wages have been paid in line with the salary structure in a collective agreement. See, Dansu, O. 2020. *op.cit.*
[1675] (1996) 4 NWLR (PT 443)470.
[1676] (2007) 15 NWLR (PT 1056) 42.

Also in *PENGASSAN v. MRS Oil Plc & 4 Ors*,[1677] the NICN while responding to the invitation by the defendant that the court should hold that a collective agreement was only a gentleman's and, thus unenforceable, held that, while there was no vitiating elements inhibiting the agreements, it was inclined with the position of law brought about by section 254C of CFRN's intervention, collective agreements are now enforceable. The court went on to reiterate its point by stating that, if collective agreements are not to be enforceable the power conferred on NICN by the Constitution would have no meaning. In a similar manner, in *Valentine Ikechukwu Chiazor v Union Bank of Nigeria*,[1678] the NICN held that the old position which created collective agreements as being binding only in honour is a common law principle which the court is empowered to relax by section 13 and 15 of the NICN Act's provisions, where the principle seems to conflict with the rules of equity. From the foregoing, it can be garnered that the NICN is fully empowered to apply a collective agreement and it is immaterial such is not incorporated into an employment contract.[1679]

While NICN has given and maintained a stance on the collective agreements' enforceability, and is not disposed to accept arguments that tend to bring back common law doctrine of collective agreements not incorporated into employment contracts unenforceability, this same common law principle resurfaced in *BPE v Dangote Cement Plc*,[1680] where the SCN held that collective agreements are not enforceable unless in instances such have been incorporated by the parties.[1681] This position of the SCN only suggests that, just as it is under the common law, collective agreement might still be considered as a gentleman's agreement.[1682] However, it must be pointed out that this case emanated before the Third Alteration Act, 2010 of the CFRN came into force, making it only reasonable to infer that the decision of the SCN to the extent that a collective agreement must be incorporated by parties before it can become enforceable belongs to the old state of law, therefore, it should not be binding under the current labour dispensation.[1683]

[1677] NICN/LA/595/2012, delivered on May 27, 2020.50.
[1678] NICN/LA/122/2014, delivered on July 12, 2016.
[1679] Chukwuma, V.O., 2021. *B.PE. v. Dangote Cement Plc* (2020) 5 NWLR (Pt.1717)322 : The Enforceability of Unincorporated Collective Agreements in Nigeria. *Unilag Law Review*. 4.2:254-267.Retrieved July 7, 2021, from https://unilaglawreview.org/wp-content/uploads/2021/02/Article-13-1pdf
[1680] (2020) 5NWLR (Pt. 1717)322
[1681] Chukwuma, V.O., 2021. *op.cit.*
[1682] Chukwuma, V.O., 2021. *ibid.*
[1683] Chukwuma, V.O., 2021. *ibid.*

Several posers have been raised as to why the law would go to the length of making such provisions in Section 7 of NICN Act including section 254C CFRN,[1684] thereby empowering the NICN if there is no desire of collective agreements being binding as well as enforceable, or what essence is NICN's power of interpretation or application or make enquiries into matters bordering on collective agreements conclusion and variation if the expected outcome is not that such should be binding?[1685] The reform proposed under the DECLARATION PROJECT–NIGERIA[1686] makes an attempt to answer some of these questions as it contains some certain provisions that collective agreements will become binding as well as enforceable like any other contract.[1687]

It is apt at this juncture to point out that since collective bargaining is very germane in industrial relations, parties to any agreement, out of integrity, should honour it.[1688] It is pertinent that signatories to a collective agreement and those on whose behalf it is reached should be bound by it. It should ideally apply to every employee of the categories concerned in the undertakings they cover, except such agreement categorically provides on the contrary; and takes precedence over individual employment contracts, while recognising provisions in individual contracts which are more favourable to employees.[1689]

Instead of insisting on a collective agreement being expressly incorporated into an individual's employment, the court could put into consideration how its provisions were handled by the parties in practice after its execution. Where evidence exists that the employer acted on such agreement, the court should infer management's intention considering the agreement binding.[1690] The necessity of ensuring the enforceability of collective agreements aligns with international best practices and principles, hence, the CFRN empowers NICN to apply international labour standards and labour relations international best practices.[1691] Some of the best practices in labour relations are set in ILO conventions on the rights of employees to collective bargaining, including enforceability of

[1684] 1999 (as amended)
[1685] Kanyip, B.B., 2016. *op.cit.*
[1686] The DECLARATION PROJECT- NIGERIA, was a project aimed at promoting democracy through fundamental principles alongside rights at work as well as tripartism (NIDEC – NIR/00/M50/USA) done under the ILO. See, Kanyip, B.B., 2016. *op.cit.*
[1687] Kanyip, B.B., 2016. *ibid.*
[1688] Okolie, C.N., 2010. *op.cit.*
[1689] ILO, 2015. *op.cit.* 3.
[1690]Chianu, E., 2004. *Employment Law*. Akure: Bemicov Publications. 89.
[1691] Section 12

collective agreement.[1692] As stipulated by the ILO Recommendation on collective agreement, it should bind their signatories and those on whose behalf such agreement is concluded. Provisions in employment contracts are regarded as void and automatically replaced by the collective agreement's content.[1693]

While the FGN, being an employer of the largest labour in the nation, also negotiates with its employees through collective bargaining, thereafter it reaches a collective agreement with them, it is rather saddening that not honouring these collective agreements reached with employees has been a main feature of the employee-employer relationship between the government and employees in the civil service. Notwithstanding the replete of legislation on collective bargaining, successive governments in Nigeria are only reminded of agreements made with employees through the instrumentality of strike.[1694]

Notwithstanding the above discourse on the enforceability or otherwise of collective agreement, it is should be noted that the agreement scope is limited by law. It is sacrosanct that whatever the law prohibits, collective agreement cannot accomplish such by contract.[1695] For instance, a workers' union and an employer cannot wield the instrument of collective bargaining to deprive employees of rights accruing to them under the law.[1696]

5.15.4. Enforceability and Implementation of Collective Agreements:The ASUU Experience

MY BOSS has no SHAME
HE DOES NOT
Honour
AGREEMENTS

ASUU[1697]

The elements of the implementation and enforcement of agreements reached after negotiations are key to collective bargaining.[1698] The beginning of the challenge of not

[1692] See Chapter Four of this study
[1693] Recommendation 1951, No. 91; De Givry, J., 1958. Comparative Observations on Legal Effects of Collective Agreement. *Modern Law Review.* 21: 501.
[1694] Uzoh, B.C., 2016. *op.cit.*
[1695] Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*
[1696] *Alexander v. Gardener-Denver Co.* 415U.S. 36,94 S. Ct. 1011, 39L.Ed.2d 147[1974] is instructive in this regard.
[1697] ASUU Sticker found at the ASUU Secretariat, University of Ibadan branch.
[1698] Collective bargaining not only incorporates the negotiation agreement but also their implementation and enforcement. See, ASUU. 2017. *op.cit.205,*217.

respecting its principles and collective agreement started with the military regime and continued with the civilian administrations that followed.[1699] From the accounts on the emergence and struggles of ASUU, the union has been caught in this web with the government. The experience of ASUU over the years shows that long period of strike actions have always preceded each of the agreements signed with the FGN. There has been a common trend of this to get the government to the negotiation table to sign an Agreement.[1700] Moreover, in recent times, the incessant embarkment on industrial action by the ASUU lasting for months are due to the FGN's refusal to honour the agreement it arrived at with the Union in 2009; on a similar note, the agreement on new national minimum Wage, trend of haggling over amount to be paid and non-implementation by some states, including stalling to pay by the Federal Government, are few of cases in the public service which have engendered industrial actions in the country.

Hinged on the remote reasons for industrial conflicts between the government and ASUU,[1701] the major cause of ASUU-Government conflicts and protracted strike actions in varsities has always been the refusal of government to honour and implement valid agreements that it entered into with the union.[1702] Unfortunately, this has been a perennial problem in the education sector. This breach of collective agreement results in incessant and protracted strike actions in government-owned universities in Nigeria, serving as an underlying catalyst for labour squabbles that seem to have become a second nature to these institutions. This long-running dispute between the FGN and ASUU has lingered on for about 11 years.[1703]

The basic contents of FGN/ASUU agreement signed between the FGN and ASUU on October 22, 2009 after a protracted negotiation[1704] include: Consolidated Peculiar Allowances (CONPUAA) for university academics derived from allowances not reflected

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[1699] ASUU. 2017. *op.cit.*208.

[1700] For instance, in 1996, ASUU had to go on a 6-month strike which produced an aborted negotiation. Also in 2013, under a civilian administration, ASUU had to proceed on another strike to implement an agreement. See, ASUU. 2017. *op.cit.* 217.

[1701] Discussed in Chapter Four of this study.

[1702] ASUU. 2017. *op.cit.* 217; Awuzie, U., 2011.Text of ASUU Press Conference at the close of NEC meeting held at ABU, Zaria . *The National Scholar*. *op.cit.*8.1:12-16; Zechariah, M., 2013. *op.cit.*

[1703] The SUN, 2020. Resolving FG-ASUU face-off, 21st August 2020. Retrieved from https://www.sunnewsonline.com/resolving-fg-asuu-face-off/ on October 15, 2020.

[1704] ASUU, 2011. Agreement between the Federal Government of Nigeria (FGN) and the Academic Staff Union of Universities (ASUU) January, 2009. *The National Scholar*. *op.cit.*8.1.:12-16.

adequately or not consolidated in the Consolidated University Academic Salary Structure (CONUASS); progressive increment in yearly budgetary allocation for education between 2009 and 2020 up to 26%; putting up research as well as developing units and teaching with research apparatus by companies conducting business in Nigeria; payment of EAA; FGN's assistance to State Universities; establishments of Pension Fund Administrator (PFA) including the need to establish Nigerian Universities Pension Management Company (NUPEMCO); inauguration of university governing councils; transfer of FGN landed properties to universities; as well as amending pension/ retirement age of Academics on the professorial cadre to 70 from 65 years.

From the above listed requests of ASUU to FGN, the ones that have fully been implemented, as at 2021, include the CONPUAA and the pension/retirement age of Academics. The amendment of Academics' pension/retirement on the professorial cadre was actualised by legislation in 2012 when the former President of the country, Dr. Goodluck Jonathan signed it into law.[1705] In the areas of university autonomy alongside academic freedom, there is also a challenge of enforcement of collective agreement. The principle of university autonomy entails that the procedure to be adopted in Vice-Chancellors' selection must follow due process.[1706] However, the violation of these provisions of the Agreement is common and it is of core concern to ASUU. Although there have been complaints of abuse of the due process all over the university system, it is more rampant in state universities wherein Visitors to their universities deliberately resort to arbitrariness in the appointment of Vice-Chancellors thereby frustrating attempts to domesticate this provision of the agreement as part of the laws of their universities.[1707]

Another core issue in the 2009 Agreement was that of the revitalisation of universities. There had been agitations that a university that aims at producing topnotch graduates in different endeavours must be able to provide its students and faculties with reasonable facilities to aid proper teaching and learning. In 2012, in conducting the NEEDS

[1705] Premium Times, 2012, *President Jonathan Signs Law Raising Retirement Ages of Poly, University Dons,* May 14, 2012. Retrieved from https://www.premiumtimesng.com/news/5099 jonathan_signs_law_raising_dons_retirement.html on October 15, 2010.

[1706] According to the ASUU/FGN Agreement, the tenure of Vice-Chancellors is a single term of five years and it is not subject to renewal. ASUU. 2017.*op.cit.*218.

[1707] Examples of state institutions caught up in the web of this abuse include the Lagos State University (LASU), The Rivers State University of Science and Technology (RSUST) and Gombe State Univeristy.See, ASUU, 2017.*op.cit.*218-219.

assessment on public universities, the adminstration of President Goodluck Jonathan made a discovery that ₦1.3 Trillion would be spread over six years in revitalising them. The fund for revitalisation was proposed by the FGN in 2013. Out of the evaluated amount, only ₦200 billion which was released in 2014[1708] at the end of a six-month strike the Union went on.[1709] Since then, nothing substantial has been received by public universities.[1710] In the current civilian administration in Nigeria, there have been no changes in that direction.[1711]

ASUU embarked on another strike action, on March 23, 2020,[1712] to protest the failure of the FGN in addressing its outstanding demands. The struggle started with the aim of getting the government to address issues of revitalisation fund for public varsities, payment of arrears on EAA from 2012 to 2020,[1713] constitute visitation panels to universities, proliferation of state universities including issues of their governance, and conclusion of the renegotiation of the 2009 FGN-ASUU Agreement which were outstanding in the February 7, 2019 Memorandum of Action.[1714] In addition, that industrial action also erupted from the disagreement between the union and FGN on the imposition of IPPIS.

[1708] Tade, O., 2021. *Government's early breach of Agreements with ASUU*. Retrieved July 13, 2021. from https://www.vanguardngr.com/2021/01/governments-early-breach-of-agreements-with-asuu/amp/

[1709] Igoni, D., 2022. Strike: FG, not ASUU, Proposed Revitilisation Fund- Union. *PUNCH*. September 6. Retrieved September 5, 2022, from https://punchng.com/strike-fg-not-asuu-proposed-revitilisation-fund-union/

[1710] Since the assumption to office in 2015, the Muhammadu Buhari Administration has consistently reduced the budgetary allocation for education while doing nothing with the agreement until the 2019 strike when it paid ₦20 billion, as against ₦220 billion for 2015, for public varsities revitilisation as a show of commitment to the agreement. While this same administration gave assurance of paying ₦55billion each quarter but did not do so until ASUU went on strike in 2020. See, Tade, O., 2021. *op.cit.*

[1711] Tade, O., 2020. ASUU's UTAS and FG's Slippery Offer. *Tribune.* Nov. 3. Retrieved November 3, 2020, from https://tribuneonlineng.com/asuus-utas-and-fgs-slippery-offer/

[1712] The strike action was however suspended conditionally on December 24, 2020. The condition was hinged on the government fulfilling its own part of the agreement.

[1713]There was failure in mainstreaming payment of EAA into the 2019 budget as earlier assured by the FGN. This omission further led to the FGN promising that it had secured the National Assembly's commitment in including the said amount in the 2021 budget provided it was sent "in quickly as possible by the Ministry of Education". See, Tade, O., 2020. *op.cit.*

[1714]The MoA which contained timelines for implementation signed with the Union in February 2019, FGN gave an assurance of releasing ₦25 billion by April/May 2019 "as a sign of good faith". However, the FGN acted otherwise by not resuming the MoU full implementation on sustainable funding of education. The FGN also promised to release ₦25billion EAA as the first tranche before February 28, 2019. It failed to meet this timeline and then promised to pay the balance (₦80 billion) in four equal instalments in 36 months (November, 2019; August, 2020; May 2021 and February 2022). Upon the failure to pay the ₦40 billion owed Academics, due as at August 2020, ASUU team asked the FGN to pay this debt to move forward. Rather, FGN brought forward an offer to release ₦30 billion by November 6, 2020 while the balance of ₦10 billion would be made in two tranches (₦5 billion in May 2021 and ₦5 billion in 2022). Note that, in the MoA of 2019, FGN ought to pay ₦20 billion by May 2021 with ₦20 billion paid by February, 2022. This made the Union doubt the FGN's sincerity in implementing the aforementioned. See, ASUU, 2020. *op.cit.*

Over the years, the FGN and the representatives of ASUU have signed several Memoranda of Agreement and MoU [1715]in suspending their industrial actions.[1716] In 2019, a MoA was signed by both negotiating parties. Before this agreement, there were previous ones between them. These were the 2009 and 2017 Memoranda of Agreement with the 2013 MoU.[1717] The 2009 MoA led to the NEEDS Assessment being conducted[1718]in public universities, revealing the bad state of infrastructure and staffing in these institution.[1719]Non-implementation of some of the issues raised in previous agreements led to successive strike actions, challenging government towards implementing them.

During the course of the 2022 industrial action of the Union, on the status of negotiations between both parties, the Minister for Labour and Employment categorically stated that the FGN had not reached a CBA with ASUU or any other university union on the renegotiation of allowances and salaries. According to him, what only existed was a proposal.[1720] In addition, the FGN stated that it would sign no agreement it would not be able to fulfill as in the case with the 2009 agreement.[1721]

[1715]MoU is a written statement that gives details on parties' preliminary understanding planning to go into a contract or agreement; it is a non-committal writing preceding a contract. On the bindingness and enforceability of a MoU, by nature and usage, it is non-binding. However, in instances it contains elements of a valid contract, such MoU will be within the exceptional circumstance the Court will find that the parties had a form of commitment, not minding its general nature , therefore, it will be considered binding and enforceable in that regard. See, *Alfotrin v. AG Federation & Ors* (1996) 9 NWLR (Pt. 475) 634 at 656; Black's Law Dictionary, Ninth Edition; Oladunjoye, O. and Oguejiofor, B., 2018. Nigeria: *Memorandum of Understanding (MOU) – The One Size Fits All Document?* Retrieved July 2, 2021, from http://www.mondaq.com/nigeria/contracts-and-commercial-law/757492/memorandum-of-understanding-mou---the-one-size-fits-all-document

[1716] Amoo, A. 2019. *Highlights of the 2019 Memorandum of Agreement between the Federal Government and ASUU.* Retrieved October 15, 2020, from https://educeleb.com/2019-memorandum-of-agreement-asuu-fg/

[1717] Amoo, A. 2019. *ibid.*

[1718] NEEDS Assessment Intervention Fund is for the development of projects in universities across the country. In 2012, the FGN inaugurated the NEEDs Assessment committee for the assessment of degree of decay in its public universities and give an outcome on what would be needed in repositioning, in attaining world standards. That assessment was conducted in 74 public funded federal and state universities. The committee set up for that purpose gave a recommendation that ₦1.3 trillion would be needed in making Nigerian universities close to global standards. The FGN agreed that ₦200 billion in 2014 and ₦220 billion in years 2015-2018. It was only the administration of Dr. Goodluck Jonathan , in 2014, that gave the first tranche of ₦200 billion. See, Blueprint, 2017. *ASUU to monitor application of NEEDS Assessment funds.* Retrieved February 17, 2020, from www.blueprint.ng/asuu-to-monitor-application-of-needs-assessment -funds/ ; Tade, O., 2021.*op.cit.*

[1719] Amoo, A., 2019. *op.cit.*

[1720] ChannelsTV. 2022. There is no Collective Bargaining Agreement Between FG, ASUU-Ngige. Retrieved August 20, 2023 from https://www.channelstv.com/2022/07/14/there-is-no-collective-bargaining-agreement-between-fg-asuu-ngige/amp

[1721]Iremeka, C. 2022. *op.cit.*

The ASUU experience, so far, was summed up by the ASUU past National President, Professor Biodun Ogunyemi[1722] in the following words:

> Our experience, as a trade union, shows that successive governments in Nigeria always entered into negotiated agreements only to placate those pleading the cause- be it in education, health, transportation, employment or any other issue of meaningful living. [1723]

The experiences of state-owned universities on the level of compliance with enforcement of collective agreements by their respective Visitors or state governments or proprietors of state universities is clearly different even when such collective agreements ought to be binding on all public varsities, as ASUU members in state universities have always had to engage in other tortuous struggles after a cessation of every national or general struggle of the union, as they are constrained to mount pressure on their Visitors or state governments, directing their attention at the implementation of every collective agreement. Such experience of frequent isolated struggles by branches of the union in state universities is more tortuous than what their counterparts in federal universities have to go through. The union's NEC on several occasions has had to decisively intervene, compelling Visitors and State governments of such varsities to recognise such collective agreements.[1724]

Furthermore, unequivocaly, the unfettered power of the Minister as provided for in section 3 of TDA raises certain fundamental issues. By section 147, CFRN, 1999, the Minister is a Federal Executive Council (FEC) member and, by the dictates of section 148 of the same constitution, being a government appointee, he performs the function/duties as assigned by the President. Hence, if there is a conflict to which the government is a party, he will be embroiled in a tug of conflict of interest in his determination of the bindingness of a collective agreement. Where the government is party to any collective agreement, there is possibility it could reassess such agreement through the Minister discharging his function. This question brings in the requirement of fair play and natural justice.

While it is saddening that the bulk of agreements reached on behalf of the FGN, are not always honoured, and there is a trend of different administrations of Government

[1722] He has been succeeded by Professor Emmanuel Osodeke of Micheal Okpara University of Agriculture, Umudike.
[1723] Amoo, A., 2019 .*op.cit.*
[1724] ASUU, 2017.*op.cit*.217-218.

sticking to the notoriety of flouting agreements entered willingly with ASUU,[1725] it is notable that the aftermath of dishonouring agreements creates doubt in the sincerity and genuineness of the frequent calls by the FGN for negotiations whenever there is industrial dispute with trade unions. There have been series of strike actions premised on non-implementation of previous agreements. The FGN has defined ASUU disputes politically, by not honouring previous agreements by making attempts to change collective bargaining's process or framework. The fact that there is always an imputation of the non-strike clause in collective agreements appears to be a mockery on the stance of the government on labour matters as it is contradictory that they are unwilling to carry out the agreed terms in an agreement made in the first instance to avoid strike situations. Unfortunately, this insensitivity on the part of the government has spiralled into increase in incessant industrial conflicts in Nigeria.[1726] Constant strike actions which appear to have no end, for now, is a peculiar problem, considering the demand for labour is a derived demand and labour supply is nil when lecturers decide to embark on industrial action. Aside from the government having to pay salary for periods of inactivity in the universities due to strike actions, this leads to brain drain which ultimately affects the education sector of the country. Therefore, a major factor for industrial disharmony is related the persister character of government in reneging on the implementation of signed agreements with trade unions.[1727]

The following general factors have been adduced, in Nigeria, for challenges in the implementation of agreements by employers. Amongst these are, dearth of political will and timely budgetary provision including absence of governance structure.[1728] Specifically, the non- implementation of FGN/ASUU agreements are perceived to be due to funds deficit, unending blame game between successive governments, bureaucracy/administrative bottlenecks and increase in government expenditure amongst others. The FGN has, over time, given responses such as, it negotiated with ASUU under duress, thereby leading to insincerity in implementation; additionally, the government often alleges being misled by the Union.[1729] On an occasion, the FGN's claim was that it was constrained by state

[1725] Tade, O., 2021. *op.cit.*
[1726] Okolie, C.N., 2010. *op.cit.*
[1727] Akume, A.T. and Abdullahi, Y.M., 2013.*op.cit.*
[1728] Akpan, M.J.D., 2017. *op.cit.*
[1729] Ilesanmi , A., 2017. *op.cit.*

governments' opposition, over the insistence of the latter being in the position to have academic staff in their universities salaries' fixed and therefore, based on the principles of collective bargaining, it would not want to reach agreements states would consider was imposed on them.[1730] Other reasons adduced for successive governments reneging on implementing agreements they did not reached with ASUU apart from financial implications is that there is a common trend of successive administrations rarely implementing an inherited matter that requires funding whereas government should be a continuum.[1731] The government, at times, contends that the conditions and context of signing agreement has changed overtime, or when an administration under a political party different from the one in power when an agreement was signed might want to dodge and fulfil the terms of an agreement. In addition, another instance, as reported, was in 2013. The FGN was relunctant in making committments for the implementation of the 2009 agreement because it believed that the Union capitalised on the FGN representatives' ignorance and only permitted the agreement to go on although it was apparent that it would be a difficult to implement.[1732] The FGN's reaction in time past had also been along the claim the Union's demands were unjustifiable and unrealistic in comparison with those of other sectors and contemporary unions, thereby terming ASUU not considerate, rapacious, portraying itself as government's political watchdog, monitoring what it does and does not do while forsaking its basic duty of researching and teaching.[1733]

To ASUU, the main reasons for not implementing agreements by the FGN are, FGN's insincerity, lack of political will, corruption, at all levels, in the government, including the government's ignorance of the running cost of the university system.[1734] ASUU's stance on the inconsistent attitude of the FGN is that the FGN been unserious in honouring most of the CBAs entered with the Union.[1735] Additionally, it believes that the sole language its employer understands is that of strike action and the union wields this instrument when it deems fit to show its discontentment and disapproval of the prevalent

[1730] Omoregie, E., 2009. *op.cit.*
[1731] Adenyi, T. O., Onyia, M. C. and Nnamchi, K. C., 2019. *op.cit.* 7.3:1-10
[1732] Albert, O.I., 2014.*op.cit.;* The Nation, 2013. ASUU 'demands N1.5tr' to end strike. Jiabor, O. and Onogu,S. November 7.
[1733] Bello, F.B. and Isah, M.K., 2016. *op.cit.*
[1734] Ojo, S.S., 2020. Collective Bargaining Process and Implementation of Agreements : An Appraisal of FG/ASUU Industrial Disputes. *Niger Delta Journal of Sociology and anthropology (NDJSA).* 1.1.:68-75.
[1735] Ilesanmi, A., 2017. *op.cit.*

deteriorating state of higher education in the country.[1736] ASUU NEC has, in times past, hinted the public to the position of ILO, to back up its action, stating thus:

> Organisations responsible for defending workers' socio-economic and occupational interests should in principle , be able to use strike action to support their position in the search for solutions posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection, and standard of living.[1737]

The effects of these recurring industrial actions on the academics and the society at large are diverse. While there are positive effects to strike actions, which amongst others could be, funds released for infrastructure would be used to meet the immediate needs of the university;[1738] also opinions abound that, in the absence of strikes, universities' conditions would have been worse today[1739] as strikes over time have led to higher transparency including accountability in the university system. This, however, comes at a high physical, psychological with material price to ASUU leaders including activists, several of whom are harassed and detained, dismissed, and sometimes, victimised by school administrators including national security outfits.[1740] On the other hand, academics get demonised successfully by the government which has control of the media.[1741] Therefore, the negative effects in the eyes of an average Nigerian seem to outweigh the positive sides. Members of the public, including the media, respond with moral panic[1742] as a result of the duration it takes to end the strikes.[1743] Furthermore, these strike actions equally have an undeniable abasing effect on the quality of graduates, considering that the period that should have been utilised in teaching as well as learning is lost to strikes, thereby leading to

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[1736] Ekiotonye, N. and Barnabas, S.S., 2021. *op.cit.*.
[1737] ILO, 1994. *Freedom of Association and Collective Bargaining*. Geneva:ILO.165.
[1738] Ogbette, A.S., Eke, I.E. and Ori, O. E., 2017. *op.cit.*
[1739] Beckman, B. and Jega, A.M., 1997.Scholars and democratic politics in Nigeria. *Review of African Political Economy*. 65 ; Jega, A.M., 2009. Unions and University Governance in Nigeria in Isaac Olawale Albert, Ed., *Praxis of Political concepts and Clichés in Nigeria's Fourth Republic.* Ibadan: Bookcraft.231-244; Albert, I.O., 2014. *op.cit.*
[1740] Jega, A.M., 2009.*op.cit.*
[1741] Jega, A.M., 2009.*ibid.*
[1742] Moral Panic reflects the general public's reactions, the media, as well as social control agents to certain improper societal happenings. In reality, it is a mere spur of the moment sentimental reaction and fizzles out once there seems to be a temporary solution to the problem. Cohen, S.,1972. *Folk Devils and Moral Panics: The Creation of the Mods and Rockers.* Oxford: Basils.9.; Albert, I.O., 2014.*op.cit.*
[1743] Albert, I.O., 2014.*op.cit.*

half-baked university products pervading today's labour market.[1744] Though according to the Union, during the pendency of a strike action, while teaching is on hold, research countinues unimpeded as quality teaching is unpossible without a topnotch research.[1745] Notwithstanding this distinction made, brain drain which leads to loss of intellectuals in the university system, loss of patriotism and financial incapability of the academics towards their social responsibilities are repercussions of prolonged strikes. The pains and damaging effect of strike actions which seem to be part and parcel of the education system in public universities will linger unless the government changes its attitude of not honouring industrial agreements.[1746] Incessant strike actions also have a significant impact university academics' effectiveness. Teachers in public universities constantly battle with getting engaged in their duties as well as being idle due to recurring conflicts.[1747] Their commitment to their duties of teaching and conducting researches decline such periods with the tendency of weakening staff satisfaction and morale they have their needs not met. In the long run the goals with objectives these academic institutions will not be achieved due to breaks in the academic calendar.[1748]

Another consequence is the picture of inefficiency projected to the populace about government universities as the public considers the frequency of strikes as a selfish instrument wielded by ASUU to the detriment of varsity students who are left unproductive during the course of the strike action. Moreover, a major negative effect is the unstable university calendar due to frequent strikes with ASUU being synonymously associated with strike actions. This wrong image deprives graduates of international esteem globally even when their worth is yet to be proven through employment[1749] while highly ranked universities will, for purposes of exchange programes, will rather go into partnership with varsities that run a stable academic schedule in other African nations or those who graduate from private universities with uninterrupted academic calendar. In addition to the above, strike actions could have negative impact on the economy. Strike actions lead to loss of

[1744] Bello, F.B. and Isah, M.K., 2016. *op.cit.*
[1745] Eromosele, F., 2022.*op.cit.*
[1746] Bello, F.B. and Isah, M.K., 2016. *op.cit.*
[1747] Albert, I. O., 2005. *Conflict Management and Resolution in Research Supervision,* being the text of a paper presented at the workshop on students supervision organised by the Postgraduate School, University of Ibadan, Ibadan.
[1748] Abolo, E.V. and Oguntoye, O., 2016. *op.cit.*
[1749] Bello, F.B. and Isah, M.K., 2016.*op.cit.*

revenue as a teeming number of those seeking for admissions in universities would rather attend schools in neighbouring African nations such as Ghana or private universities in Nigeria, not due to a supposed superiority of academic programmes offered there, but as a result of the instability of academic schedules due to strikes.[1750] The rise in the penchant for studying overseas is also escalating as students know exactly when their academic programme would be completed. Yet more, another likely effect of an academic calendar disruption is the impact on the mental health of students. Staying at home and not being productively engaged has psychological downsides which could spiral into such idle students engaging in social vices and getting lured into joining groups of questionable objectives as well as engaging in online fraudulent acts while some female undergraduates might get involved in unanticipated pregnancy.

In Nigeria, strike actions have not been able to achieve a sustainable industrial harmony in industrial relations; rather, this phenomenon heats up the polity whenever it occurs. The gains from the strike are way below its costs to disputing parties.[1751] However, when implemented in moderation, it indicates the government's positive human rights posture and allowance is given for labour law, as a democracy, empowering employees in expressing their grievances through it.[1752]

While no university system with no strike history exists globally, in Nigeria, it is at its extreme, with strikes turning indefinite rather than for a brief period, like a day. Undoubtedly government's attitude of reneging on agreements arrived at by collective bargaining with trade unions is majorly responsible for incessant industrial actions witnessed in public universities in the country.[1753] Therefore, the government must understand that agreements should not be signed for the sake of mere signing; they should rather be signed to be implemented.[1754] To ASUU, for it to get the government to obey laws regulating collective bargaining and implementing collective agreement, its members must

[1750] Bello, F.B. and Isah, M.K., 2016. *op.cit.*
[1751] Onah, R.C, Ayogu, G.I. and Paul, S.O., 2016. *op.cit.*
[1752] Bello, F.B. and Isah, M.K., 2016.*op.cit.*
[1753] Ezigbo, O., 2020.*op.cit.*
[1754] Statement made by President of the NLC , Comrade Ayuba Wabba at the Second Quadrennial delegates Conference of SSANU in Abuja on November 9, 2020. See, Ezigbo, O., 2020.*op.cit.*

be prepared to engage in very serious struggles.[1755] While the struggles may be more challenging in state-owned universities due to their peculiarities, there must be a formidable union paying attention to the problems of the implementation of collective agreements in state universities.

In the same way ASUU represents the interests of academics in universities in Nigeria, so do the University Teachers Association of Ghana (UTAG) in Ghana and University and College Union (UCU) in the United Kingdom.[1756] The UCU forms the biggest trade union as well as professional association for researchers, academics, trainers, including academic-related staff working in further and higher education in the United Kingdom.[1757] Branch Officers of UCU engage in collective bargaining, negotiations with their employers daily. The Union adopts this approach in protecting its members and promoting their interests at work.[1758] The UCU negotiates on behalf of its members and works in partnership with management seeing to it that the academic staff's interests are put into consideration. UCU lobbies the government for more funding for colleges and universities, stands up for the rights of members and protects work-life balance. In addition, the Union makes provisions for access to assist members with career development and give a platform for sharing ideas as regards broader issues in higher education.[1759] While it is not unknown for agreements to be signed only for challenges in implementation to be encountered by the Union, the Union considers it a rule of thumb that its branches ensure they do not stand down until the agreement is implemented.[1760]

Just as it is in Nigerian Public Universities, academics in the UK also embark on industrial actions to show their displeasure at the state of things as they affect them.

[1755] While the struggles may be more challenging in state owned universities due to their peculiarities, the union must therefore give attention to the issues of Collective Agreements implementation in State universities. See, ASUU. 2107.*op.cit*.219.

[1756] The origin of collective bargaining in higher education in the UK is found in the Post-Second World War political consensus when the government and employers had a legitimate role for employee representative organisations in the management of industry. Fairfoul, H., Hopkins, L. and White Geoff, 2012. Collective Bargaining in United Kingdom Higher Education. *Journal of Collective Bargaining in the Academy.* 3.7:1-8.

[1757] UCU, 2007. *Bargaining for Staff Development A practical Guide for UCU Learning Reps*. London:UCU. 1-38.

[1758] UCU, 2021. *Activist and Branch Resources.* Retrieved October 22, 2021, from https://ucu.org.uk/resources .

[1759]Sheffield Hallam University, 2021. *Trade Unions*. Retrieved October 24, 2021, from https://www.shu.ac.uk/jobs/your-benefits/trade-unions-same

[1760] UCU, 2021. *op.cit*.8.

Recently, in October 2021, staff in six English Colleges embarked on a strike in a wave of industrial action over pay. The Union's demand was for an increase in pay greater than 5% in order to bridge the school-college gap. The strike entered the second week due to the refusal of the college heads to negotiate pay with the Union.[1761] Further, in Febrary 2022, UCU proceeded on a 10-day strike due to varsity system concerns on pension scheme including pay injustice. The Union considered flawed pension scheme used for academics, Universities Superannuation Scheme (USS).[1762] Over poor remuneration on 26th September, 2022, UCU embarked on another strike.[1763] The refusal for their pay to be increased left them with no choice than to picket outside their institutions during the course of the action.[1764]

UTAG, on the other hand, is a professional Association of Academics drawing its membership from all the public universities in Ghana. The Association aims at promoting academic, professional including members' economic welfare as well as that of the whole academic community. It aims to safeguard as well as promote the ideals with values of academic integrity and freedom.[1765]

The Association has, at some point, accused the government of bad faith in its negotiations for improved service conditions after achieving nothing tangible during rounds of negotiations with the government.[1766] This has led to the Association embarking on industrial actions whenever they reached a stalemate in their negotiations with the government. For instance, the Association embarked on a strike action in August 2021 to

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[1761]UCU, 2021. *Second Week of College Strikes Begins Today*. Retrieved October 24, 2021, from https://www.ucu.org.uk/article/1176/Second-week-of-college-strikes-begins-today

[1762] OperaNews. 2022. UK Lecturers embark on Strike over Poor Renumeration. Retrieved October 5, 2021. from https://www.operanewsapp.com/ng/en/share/detail?news_id=a64f1b651f0bb3d3039bc37079f467&news_entry_id=ed4746f220930en_ng&open_type=transcoded&from=news&request_id=share_request

[1763] The Cable. 2022. Like ASUU, UK Lecturers Begin Strike over 'pay injustice'. Ojo, J. February, 14. Retrieved October 5, 2021, from http://lifestyle.thecable.ng/like-asuu-uk-lecturer-begin-strike-over-pay-injustice/

[1764] The Cable. 2022.*ibid.*

[1765] UTAG, initially referred to as the Ghana Association of University Teachers (GAUT) kick started during the 1964/65 academic year as team of expatriate senior staff. Some Ghanaian senior members, in 1973 embarked on some reorganisation to enhance the image and perception of the Association, thereby changing Association's name to UTAG. University of Ghana, 2019. *UTAG-UG holds Election and Handing Over Ceremony for New Executives.* Retrieved October 26, 2021, from https://www.ug.edu.gh/news/utag-ug-holds-election-and-handing-over-ceremony-new-executives

[1766] Myjoyonline, 2021. *Government actining in bad faith; we'll resume strike if our concerns are not addressed immediately-UTAG*. Retrieved October 26, 2021, from https://www.myjoyonline.com/government-acting-in-bad-faith-well-resume-strike-if-our-concerns-are-not-addressed-immediately-utag/

air their grievances on the state of things in their universities. UTAG declared a national withdrawal of teaching including related activities amongst its members due to unsavoury status of service with the government's failure in resolving long-standing grievances.[1767] UTAG made a demand for restoration of a 2012 Single Spine Salary Structure agreement.[1768] According to the Association's National President Charles Marfo, UTAG had to use students as its bargaining chip in the row between itself and the government, otherwise, their strike would have been meaningless.[1769] The tactic adopted was to allay the misconception that all seemed rosy with academics, hence, it considered it important for the nation to know about the low salary levels they had been enduring over the years and ensure that the government appropriately responded to the demands they had presented for a while.[1770] While the government was confident that the Association's concerns would be resolved by meeting with leaders of the striking Unions in order to find common ground, the Association maintained the opinion that the government had shown no commitment to addressing their issues.[1771] The aftermath of this was that there was a breakdown in negotiations when both parties showed no commitment to back down on their demands.[1772] The Association, however, suspended its 17-day old strike after NLC withdrew a legal suit against it. Thereafter, UTAG signed, with the government, a Memorandum of Agreement (MoA) to call off its strike and resume negotiations, but was conditioned that all legal suits initiated by the government against the Association were withdrawn.[1773] According to a Respondent in Key-Informant Interview, the peculiarity of UTAG in embarking on industrial action is that they must not go on strike for 21 straight days; otherwise the entire session would be cancelled.

[1767] Modern Ghana, 2021. *UTAG Strike: University teachers don't eat meetings, negotiations- Gyampo to Gov't, NLC.* Retrieved October 25, 2021, from https://www.modernghana.com/news/1097553/utag-strike-university-teachers-dont-eat-meeting.html

[1768] Implementation of that agreement would made entry-level academics earn $2,084 monthly in cedis. UCU, 2021, *op.cit.*.

[1769] Affre, C.K., 2021. *UTAG Strike: Students are the only bargaining chips we have – UTAG President.* Retrieved October 25, 2021, from https://www.myjoyonline.com/utag-strike-students-are-the-only-bargaining-chips-we-have-utag-president/?paramm=

[1770] Affre, C.K., 2021, *ibid.*

[1771] The Labour Commission however considered the action of the Association irregular as there were ongoing negotiations between the leadership of the Association and the government about the Association's demands. NLC got a 10-day interlocutory injunction on the Association's strike action. Notwithstanding the injunction, the 13-membership universities of the UTAG unanimously agreed to continue with their strike. UCU, 2021 .*op.cit.*

[1772] Affre, C.K., 2021, *op.cit.*

[1773]Myjoyonline, 2021. *UTAG to embark on strike action from Oct 8*. Retrieved October 25, 2021, from https://www.myjoyonline.com/utag-to-embark-on-strike-action-from-oct-8/?param=

In October 2021, the Association reached a decision to embark on another strike following discussions it had with the government over its wages and welfare packages. Due to lack of agreement between both parties, the Association opted to resume its suspended strike.[1774] The Association however called off its intended strike after having a meeting with the government and reaching a consensus thereby making the Association rescind its decision while urging the government to fulfill its part of of the bargain in restoring the conditions of service agreed upon in 2012 to ensure industrial harmony.[1775]

5.16. Legal Framework on Collective Bargaining in resolving Trade Disputes in Public Universities in Nigeria

The Nigerian legal framework for collective bargaining has binding effect on all employees and their representative unions. The TUA serves as the statutory basis for ASUU's existence. ASUU is listed in Part C, Item 4 under the Senior Staff and Employers' Associations. The Third Schedule of TUA recognises only ASUU as the trade union for Nigerian universities' academic staff.[1776]

Besides the limitations collective bargaining's legal framework stated in the study, resulting in non-implementation and non-effectiveness of our laws, a major concern is that most of our laws are not implementable and they do not work. Some reasons these laws do not work could be hinged on the reality that some of them were enacted during the military era and, mostly, do not reflect the current realities of the changes the fourth republic has brought in its wake. Additional to this obvious reason which is a lacuna in industrial relations, the laws enacted since the onset of this democratic dispensation do not seem to cover the interests of the workers. Therefore, in Nigeria, there is a need to review laws regulating industrial relations generally and, more specifically, on collective bargaining. The review should reflect provisions which would correct the unequal nature of the workplace culture including the unequal nature of employment contract, remuneration being disproportionate to work definition and other work related issues that impinge on the rights and affect the interest of employees. The government, as a referee in the industrial relations

[1774] Myjoyonline, 2021. *op.cit.*
[1775]Graphic Online, 2021. *UTAG calls off intended Strike*. Retrieved October 26, 2021, from https://www.graphic.com.gh/news/general-news/ghana-news-utag-calls-off-intended-strike.html
[1776] Omoregie, E., 2009. *op.cit.*.

system, should make laws that will guarantee harmony of conflicting social forces with their interests to ensure industrial stability[1777] and overcome the challenges currently attributed to collective bargaining practice alongside implementation of collective agreement in line with minimum standards prescribed by ILO.

In addition, some of the extant laws on industrial relations discussed in Chapter Four of this study are considered incongruent with the dictates of the current realities in the industrial world. For instance, ASUU considers the TUA, 2005 to be a violent violation of the ILO's Conventions for restricting the right to strike to 'disputes of rights' on employment contracts and collective bargaining. In this connection, ASUU at the point TDA was enacted urged all workers' organisations to launch a campaign to expunge all anti-labour Acts from Nigeria's laws.[1778]

To survive the international market competitiveness, promote workplace efficiency, Nigeria must make significant amendments to these laws; these laws must be reviewed to conform not only to the present realities the in country but must also transcend to the industrial world. It is also imperative for the Nigerian government to realise that collective bargaining remains the much appropriate way of determining employees' pay with diverse employment conditions in the civil service.[1779] Hence, the government needs to take suitable measures in adopting policies on as well as promoting collective bargaining. Reinforcing foundations for inclusive collective bargaining is needful, that is, strong representative trade unions including employers' organisations.[1780] In 2020 there was a report on the plans of the government of Nigeria to commence a comprehensive review of labour laws.[1781] The government,[1782] alongside its social partners,[1783] began a review of

[1777] Fajana, 2000, *op.cit.;* CIPM , 2018. *op.cit.* 25
[1778] ASUU, 2017 .*op.cit.* 114.
[1779] Uzoh, B.C., 2016. *op.cit.* 2.2: 297-302.
[1780] Visser,J., Hayter, S. and Gammarano, R. 2017. *op.cit.*
[1781] According to Dr. Chris Ngige, the project's major focus were in two folds. Foremostly, for funding the nation's extant labour laws review; second, for strengthening local capacity in adopting a tripartite approach in resolving labour issues by social dialogue. See, Soji- Eze, F., 2020, Nigeria begins comprehensive review of labour laws. *Tribune.* March 10. Retrieved July, 15, 2020, from https://tribuneonlineng.com/nigeria-begins-comprehensive-review -of labour-laws/
[1782] Whom the Minister of Labour and Employment represented, Dr. Chris Ngige, declared the retreat open, and Mr. Festus Keyamo, SAN, the Minister of State, Labour and Management, who chaired the technical session.
[1783] These were the two national labour centres, Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC) including NECA, being the Nigerian Employers' umbrella body.

these laws comprehensively to conform to international best practices of industrial relations.[1784] At the end of the retreat held for that purpose, the communiqué issued stated that five national labour bills were considered. Chiefly amongst these were the Collective Labour Relations Bill and the Labour Standards Bill. Others were the Labour Institutions Bill, Occupational Safety and Health Bill including the Nigeria Social Trust Fund (Amendment) Act.[1785] It is hoped that they get passed into law and the government's plans become a reality in no distant time. This will be in tandem with the perspective of sociological jurisprudence which regards law as a social institution that could be worked on and improved by ingenious human effort.[1786]

5.17. Challenges and Limitations of Collective Bargaining and its Legal Framework in Nigeria

In Nigeria, though provisions exist on collective bargaining as well as agreements in diverse legislation, the application of same is considered not in tandem with the ILO standards and principles**.** The trend of attacks by management against collective bargaining have been attributed to some economic issues such as such open economies, tax competition,deregulation of financial market, the state's erosion as well as growth of the service sector.[1787] A major shortcoming of collective bargaining as an ILO principle is the respective member-states' national legislation tending to limit the application of these international laws. In Nigeria, notwithstanding the statutory provisions on collective bargaining and agreements, it cannot be said that their application is in line with ILO principles; for instance, the restriction placed on the right to strike by the government. After the observation that the NLC, on behalf of labour, was successful in several of its struggles against the implementation of the neo-liberal policies, the Trade Union (Amendment) Act 2005 was promulgated thereby limiting NLC's power and influence. A major highlight of the Act includes a no-strike clause in collective agreements.[1788]

[1784] Soji- Eze F., 2020, *op.cit.*
[1785] Soji- Eze F., 2020.*ibid*
[1786] Pound, R., 1912. *op.cit.*
[1787] Equal Times, 2013 . *op.cit*.
[1788] Adenugba, A.A. and Omolawal, S.A, 2014. Dislocated Tripartite Relationship in Nigeria's Industrial Relations, *Mediterranean Journal of Social Sciences.* 5.10:704-709; Olulu, R.M. & Udeorah, S. A. F., 2018. *op.cit.*

Aside from some identified limitations of collective bargaining's legal framework stated above resulting in non-implementation as well as non-effectiveness of our laws, a major concern is that most of our laws are not implementable and they do not work. Some reasons why these laws do not work could be hinged on the reality that some of them were enacted during the military era and mostly do not reflect the current realities of the changes the Fourth Republic has brought in its wake. Additional to this obvious reason which is a lacuna in industrial relations, the laws enacted since the onset of this democratic dispensation do not seem to cover the interests of the workers. In line with the sociological school of thought, that while there should be an acceptance of positive laws as a means of social control, there must be an awareness that they shall be improved constantly as a system as well as catalyst of progress with positive change in the society,[1789] laws regulating industrial relations and, by extension, collective bargaining should be progressive and be in tune with societal realities. Therefore, there is a need to review laws regulating industrial relations generally in Nigeria and, more specifically, on collective bargaining. The review should reflect provisions which would correct the unequal nature of the workplace culture including the unequal nature of employment contract, remuneration being disproportionate to work definition and other work-related issues that impinge on the rights and affect the interest of employees. The government, as a referee in the industrial relations system, should make laws that will see to harmony of conflicting social forces including interests in the system for industrial stability[1790] and overcome the challenges currently attributed to practicing collective bargaining and implementation of agreements in line with minimum standards prescribed by ILO. This is in line with sociological jurisprudence which emphasises the working of the law in place of its abstract content.[1791]

Employers with employees at times have minimal confidence in dispute settlement machinery provided for by the TDA as it could only resolve very negligible number of disputes. Disputing parties are most times prefer litigation. Moreover, the settlement machinery is considered not adequate because it focuses on whether labour laws are

[1789] Adaramola, F., 2008. *op.cit* .253.
[1790] Fajana, 2000, *op.cit.*; CIPM , 2018. o*p.cit.*. 25.
[1791] Pound, R., 1912. *op.cit*.

properly implemented or not.[1792]Also, the explosion of unsteady, insecure work, increased cross-border labour mobility with declining trade union density have led to weakening employees' bargaining strength.[1793] Therefore, being a fundamental mechanism for improving employment terms with conditions, including protecting employees' interests while facilitating stable addition to productive employment relations for employers,[1794] the legal framework for collective bargaining should be such that would strengthen and promote collective bargaining and enforcement of its outcome within the spirit of fairness, esteem for organisational rights as well as facilitate effective recognition of labour unions with employers and employers' organisations for collective bargaining purposes.[1795]

Without collective bargaining, no collective agreement exist. Both concepts have a common purpose which is to attain industrial harmony through interactive exchange.[1796] They aim at accommodating, reconciling and often times compromising parties' conflicting interests. They further cushion conflict of interests and, while conflict is not totally eradicated, it sees to its accommodation in enabling parties work harmoniously.[1797]Trade union action has collective bargaining as its primary essential component.[1798] Therefore, attacks on right to bargain collectively can result in a decrease in the workers a collective agreement covers which will prevent the strengthening of collective bargaining institutions.[1799] The weakening of collective bargaining framework is not limited to Nigeria; in Europe also, international financial institutions have forced reforms in labour market by the conditions provided for giving loan, thereby resulting in collective bargaining structures being weakened.[1800]

[1792] Sunita, C., Causes of Industrial Disputes, Labour, Production, Economics. Retrieved March 23, 2020, from http://www.economicsdiscussion.net/industrial-disputes-2/causes-of-industrial-disputes-labour-production-economics/29325

[1793] Equal Times, 2013 . *op.cit*.

[1794] Equal Times, 2013. *op.cit.*

[1795] Visser, J. , Hayter, S. and Gammarano, R. 2017. *op.cit.*

[1796] Bamidele, O.E., 2004. *The right to strike and its legal effect*, LL.M Dissertation, Faculty of Law, University of Ibadan, Ibadan. 46.

[1797] Fashoyin, T. 1992. *op.cit*. 103.

[1798] Poole, M., 1992. Industrial Democracy in Szell, G.,Ed., *op.cit*. Fejoh, J., 2015. Industrial Democracy as Determinant of Job Satisfaction among Workers of Public Health Institutions in Ogun State, Nigeria. *International Journal of Humanities and Social Science.* 5.10:106-113.

[1799] Equal Times, 2013. *op.cit.*

[1800] Equal Times, 2013. *op.cit.*

As the efficacious recognition of the right to bargain collectively subsists as a challenge in law as well as practice, the Nigerian government has an active function to play in collective bargaining promotion, with its voluntary attribute taken into cognisance, leaving parties to determine their own bargaining arrangement. Therefore, industrial harmony, entailing employees and employer cooperating under no compulsion for the corporate objectives of their organisation,[1801] a state of an organisation's relative peace, involving no strike or distrust among union members, peaceful relationship between trade unions and employer including employee's positive perception of contribution as a participant, not as a subject in an organisation,[1802] its cause should be advanced in industrial relations.

Diverse reasons have been posited as to why the relations employees have with their employer is most times conflict-ridden. In Nigeria, one of the major causes of disharmony in organisations is non-enforcement of collective agreements. Collective agreements include diverse matters constituting issues defining negotiating parties rights with obligations. Explicitly, they set out, all aspects of employee – employer relations at diverse levels including grievance with disagreement procedure.[1803] At times when an agreement has been arrived at by workers and employers after bargaining, there might be a constraint on employees from embarking on industrial actions due to their employer's failure in adhering to terms of agreement.[1804] Considering that an agreement as a viable mechanism for workplace harmony breeds discord when ignored,[1805] a harmonious organisation which guarantees workers' satisfaction and employers' aspirations is necessary for enhanced organisational productivity in addition to growth. It is widely perceived that in the educational institutions, unions have always had a committment to a diligent collective bargaining process while the issue has always been from the government.[1806] The items in the collective agreements of 2009 that are yet to be implemented, through years of struggles

[1801] Adejumo, B. A., 2011. *op.cit.*
[1802] Bassey, A. O., Ojua, T. A., Archibong, E. P., and Bassey, U. A., 2012. The Impact of Inter-Union Conflicts on Industrial Harmony: The Case of Tertiary Institution in Cross River State. *Nigeria, Malayasian Journal of Society and Space, 8*.4:33-39.
[1803] Kester, K. O., 2006. *op.cit.*
[1804]Okene, O.V.C., 2008. *op.cit.*
[1805] Okene, O.V.C., 2008.*ibid*.
[1806] Statement made by the President of the NLC , Comrade Ayuba Wabba at the Second Quadrennial delegates Conference of SSANU in Abuja on November 9, 2020. See, Ezigbo, O., 2020.*op.cit.*

despite antagonism by successive administrations since the time the agreement was reached, should now be represented and re-evaluated in terms of their current relevance, applicability and immediacy. A renegotiation of those agreements as they concern ASUU members should also be put into consideration.

5.18. The Relevance of Collective Bargaining in attaining Industrial Harmony

When employers of labour and unions of employees come together to discuss about conditions of service, that discussion that will give the workplace industrial harmony is what is known as collective bargaining. As an industrial relations instrument for conflicts resolution as well as settling disagreements, it promotes industrial harmony and confidence and mutual peace in the relationship government has with employer and trade union.[1807] It provides a convenient environment for the resolution of disputes.[1808] While industrial harmony is not the absence of disagreement, it is when understanding exists between employers with employees, permitting the system in achieving an organisation's objectives as well as goals.[1809] It suggests absence of strike by trade unions in an organisation. The resultant effect of this is an effective and efficient organisation.[1810] On the other hand, collective bargaining contributes to employment opportunities, improved workers' occupational safety as well as health, increased productivity with workplace adaptability, improved and better wages with a more equitable wealth distribution in an organisation.[1811] It can also be a flexible complementary instrument for work conditions improvement as well as to counter power imbalances in relationships between organisations and workers[1812] as it provides an avenue for workers' participation in management through their representatives.[1813]

Industrial harmony in enhancing labour productivity thereby improving performance in organisations, aids growth attainment economically, thereby enhancing the living standards including employees and employers' quality of life. In creating peaceful work

[1807] Olotuah, D. E. & Olotuah, A. O., 2016. Collective Bargaining and Negotiation for Congenial Industrial Relations in Nigeria. *International Journal of Current Research*. 8.9:39512-39514.
[1808] Uranta, C., 2012. *op.cit.* 319.
[1809] Akpoyovwaire , S.M., 2013. *op.cit.*
[1810] Hanson, J. 1972. *op.cit.*
[1811] Food and Agriculture Organisation of the United Nations. 2017. *op.cit.*
[1812] OECD, 2017. *op.cit.*
[1813] Uranta, C., 2012. *op.cit.* 318.

environment conducive to tolerance, dialogue including alternative modes of resolving disputes,[1814] it gives employees a high level of satisfaction.[1815] More specifically, it serves as a forum for negotiation of wages alongside other conditions of services within the general level permissible under legal framework as provided in the incomes policy guidelines and other legal instruments.[1816]

In a conclusive analysis, in attaining industrial harmony, trade unions should, alongside with employers' organisations, play their roles in the development of their primary organisation and the society at large. While educational institutions in Nigeria over time experience disharmony, instability with other industrial conflicts forms, resulting in low productivity amongst under things, harmony can be achieved by facilitating accessibility of better services for staff, ascertaining a voice for employees directly impacted by government policies, with no party reneging on any outcome of collective bargaining.[1817] With the FGN, over the years, tagged as being insincere to the agreement reached with ASUU, a compromising stance between the FGN and ASUU to bring the incessant strikes to an end should be reached to ensure harmony.

5.19. Criticisms of Collective Bargaining in Nigeria

Notwithstanding its well-lauded functions, purposes and relevance,[1818] some shortcomings of collective bargaining have been pointed out on some grounds. For instance, Critical labour law theorists consider it to be an instrument the bourgeoisies continue to dominate the proletariat; indeed, to them it seems to be a machinery of control by the capitalist against labour.[1819] It is believed to represent an ideology which aims at legitimising as well as justifying unnecessary as well as destructive workplace hierarchy and domination.[1820] Yet another criticism against it is that it does not involve direct employee participation, neither does it make a major impact on managerial control.[1821] This

[1814] That is negotiation, mediation, arbitration, conciliation including adjudication.
[1815] Onyeizugbe, C.U., Aghara, V., Enaini, S. O., and Abaniwu, P.A., 2018. *op.cit.* 6.6 :22-35.
[1816] Uranta, C., 2012. *op.cit.* 318.
[1817] Food and Agriculture Organisation of the United Nations. 2017. *op.cit.*
[1818] Succinctly discussed in of the study.
[1819] Okene, O.V.C., 2009. *op.cit.*
[1820]Klare, K.E., 1981. Labour Law as Ideology: Toward a New Historiography of Collective Bargaining Law. *Industrial Relations Law Journal.* 4:450.
[1821] Frege, C., 2015. *op.cit.*

is premised on the perception that it yields weak democracy considering management is granted the ability with right in making all necessary management decisions with no employees' influence. Bargaining becomes restricted to negotiating on specific aspect of employment contract and, more often than not, does not interfere with managerial decisions.[1822] Although collective bargaining aims at cushioning the effect of conflict of interests between the representatives of employees and the management, it in no way gets conflict eradicated; rather it facilitates its accommodation thereby enabling parties work harmoniously.[1823] As a consolidated and powerful mechanism which brings some equilibrium to unbalanced economic situations, it provides a measure to check the employer's concentrated power thereby ensuring equilibrium of forces in worker management relations for the avoidance of employee exploitation.[1824] Regardless of all these criticisms, collective bargaining seems to be the most appropriate machinery for harmony attainment in the relations employers have with employees, most especially in a clime like Nigeria as it is considered an effective means for adjustments as well as agreement on employment conditions.[1825]

With collective bargaining practice in Nigeria not meeting the international labour standardsrequirements, a continuous infringement on the rights of employees to collective bargaining apart from denting the credibility of the nation with regard to industrial relations internationally, Nigeria being a liberal democracy, it does not augur well for its future.[1826] Therefore, it is essential for the right to bargain collectively to be fully recognised through all sectors.[1827] In addition, there is need to continuously ensure that collective agreements are not mere lists of demands but a social pact towards mutual goals. In promoting industrial

[1822] This is in light of comparing Industrial Democracy with German codetermination, which gives employees institutionalised access to management decision-making, making it to have a higher impact on control than collective bargaining. See, Mason, R.M., 1982. *Participatory and Workplace Democracy: A Theoretical Development in Critique of Liberalism*. Carbondale: Southern Illinois University Press.154.
[1823] Fashoyin, T., 1992. *op.cit.* 103
[1824]Hopple, B.A., 2002. *Social and Labour Rights in a Global Context: International and Comparative Perspectives.* Oxford: Oxford University Press. 285.
[1825] Okene, O.V.C., 2009. *op.cit.*
[1826] Okene, O.V.C., 2009. *ibid.*
[1827] Premised on ILO Convention on Right of Workers to Organise and Bargain Collectively, 1949, No. 98, it is the armed forces, the police including public servants involved in state administration who may be exempted from the exercise.

harmony in any organisation, a mutual employee-management obligations including benefits should form the centre of dialogues and collective bargaining.[1828]

Noteworthy is that industrial relations being a discipline focusing on laws, conventions including institutions regulating a workplace shapes employees' working life,[1829] society and national economy is generally believed is capable of helping to reduce the spate of industrial unrest thereby resulting in workplace peace with harmony. This will, by implication, result in non-disruption of goods production with services, employees' increased morale, including improved efficiency in using scarce resources in industries.[1830] Obtaining and sustaining Industrial peace, therefore, lies in the hands of industrial relations' key players, that is, the government, employers including employees. Therefore, these major stakeholders, particularly the government, should consider collective bargaining as a major method of attaining workplace harmony. Aside from collective bargaining increasing the productivity acumen of employees, it also ensures the settlement of grievances using dialogue and consensus instead of resorting to conflict or confrontation.[1831]

The German pattern of codetermination appears to show that workers' participation is one of the methods of achieving some measure of democracy in any industry.[1832] Since an employer has nothing to lose but would rather accrue some gains by giving workers or their unions' access to participating in the control or enterprise management either on request or by periodical exchanges, industrial democracy should be encouraged and practised to at least diminish if not totally eliminate the root causes of industrial mistrust and disputes.[1833] Notwithstanding the perceived shortcomings of collective bargaining as a conflict-resolution mechanism, it is a process which continuously transforms disagreements to agreements in a systematic manner.[1834]

[1828] Food and Agriculture Organisation of the United Nations. 2017. *op.cit.*
[1829] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.*21.
[1830] Ghana Trades Union Congress (TUC) and Rosa Luxemburg Stiftung (RLS), 2012. *op.cit.*21.
[1831] Uzoh, B.C., 2016. *op.cit.* 2. 2:58-63.
[1832] Emiola, A. 2008. *op.cit.* 576.
[1833] Emiola, A., 2008.*op.cit*. 575-577.
[1834] It aids the reduction of strike activities in organisations. The development of procedural norms for regulating industrial relations is associated with strike activities reduction. See, Flanders, A., 1973. Measured Daywork and Collective Bargaining. *British Journal of Industrial Relations*. 11.3:369; Ingham, G.,1974. *Strikes and Industrial Conflict (British & Scandinavia)*, London: The Macmillan Press.35.

5.20. The Regulatory and Legal issues impeding the attainment of Industrial Harmony in Nigerian Public Universities

The literature on collective bargaining and industrial harmony is premised on the notion that Collective bargaining creates the necessary conditions that enable industrial peace. As a process, collective bargaining is very dynamic as it provides pathways to conflict resolution and harmony in the workplace.[1835] It is the foundation for peace in any organisation.[1836]

Be that as it may, industrial harmony centres on four major aspects of cooperation in an organisation. These include responsibilities, employment policy, collective bargaining as well as communication and consultation.[1837] It, therefore, entails that all management personnel having a good understanding of their responsibilities and what is required of them, undergoing trainings necessary in discharging such duties and responsibilities efficicaciously with employees' duties and responsibilities clearly spelt out in organisation's structure.[1838] Industrial harmony emerges when the relations an employer has with employees is premised on principle of respect for employment terms with conditions as well as the wellbeing of all in the workplace.[1839]

One cannot overemphasise the place of trade union in industrial democracy and any organisation which intends to provide its employees with democratic rights, including protection in the workplace should make provisions for such rights including protection internally.[1840] However, the non-institution of internal democracy in Nigerian trade unions,

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[1835] Lasisi, R. and Lolo, A., 2018. *op.cit.*

[1836] Onah, F. O., 2008. *op.cit.*

[1837] Odia, L.O. and Omofonmwan, S.I., 2007. Educational system in Nigeria: Problems and prospects, *Journal of Social Sciences*. 14.1: 81-86.

[1838]Industrial employees should know their objectives as well be abreast with information regarding progress made in attaining them. In addition, an effective link should be available in information and views interchange between top management and employees; supervisors are briefed on innovation including changes before they happen to help them explain management's policies with intentions to employees; employers cooperate with labour unions to establish effective procedures for employment terms and conditions negotiations with disputes settlement; employers support the setting up of effective procedures among member organisations in settling grievances including disputes at the level of the establishment; employers engage every step they consider reasonable and necessary in ensuring the organisation observes agreements and procedures; the organisation maintains a communication system that will secure an interchange of information and views amongst different levels in the organisation and see to employees' systematic appraisal from time to time. See, Akpoyovwaire, S.M., 2013. *op.cit.*

[1839] Puttapalli, A.K. and Vuram, I.R. 2012. Discipline: The tool for Industrial Harmony. *International Journal of Multidisciplinary Educational Research*, 1.1:146-15.

[1840] Godard, J., 2003. *Industrial Relations, the Economy, and Society.* Ontario, Canada;Adefolaju, T., 2013. *op.cit.*

as a result of union leaders' unwillingness in acknowledging essential constitutional requirements like respecting individual rights including being accountable to union members, poses a great challenge.[1841] Curtailing the internal democracy of trade unions will only impede industrial harmony. Also, the practice of industrial democracy can be limited due to the centralisation of process for making decisions in several organisations; limited perception by employee of the scope of participation as a result of management's ignorance or unwillingness in sharing roles for making decisions; fear of integration into management; and government policies which atimes impede participation; when multi-national corporations are influenced from their home bases.[1842]

Inadequate funding is a major issue in the education sector, with minimal improvement over the years. For instance, the FGN's 2021 budgetary provision for education tagged as the worst in the past 10 years as the FGN apportioned only 5.6 % to education out of ₦13.6 trillion budgetary provisions. While the UNESCO's Education for All, EFA, 2000-2015: achievement and challenges' and World Education Forum 2015 final report gives 15 to 20% as the international benchmark in funding education, having a budgetary allocation of just 5.6% indicates that the nation is heavily under-investing in education.[1843] The 2022 allocation of 5.39% translating to ₦923.79 billion of the nation's total budget of ₦17.13 trillion indicates a further reduction in the sector's allocation.[1844] Nigeria is confronted with an ideological challenge in funding tertiary education and this forms the basis for industrial disputes between ASUU and FGN. Therefore, it is therefore essential for sustainability purposes to have a balanced model for funding.[1845]

Aside from the issues discussed above that can limit industrial harmony, the imposition of IPPIS[1846] became a major bone of contention between the FGN and ASUU.[1847] The Union considered IPPIS considered an imposition of what is wrong and unflexible

[1841] Fashoyin T., 1984. *op.cit.*
[1842] Fashoyin, T., 1984. *ibid;* Adefolaju, T., 2013. *op.cit.*
[1843] Nairametrics, 2021.*op.cit*.
[1844] Eromosele, F., 2022. ASUU Strike : FG's Budgetary Allocation to Education Lowest in 2022-Report. *Vanguard.* August 9. Retrieved January 30,2023, from https://www.vanguardngr.com/2022/08/asuu-strike-fgs-budgetary-allocation-to-education-lowest-in-2022-report/
[1845] Nairametrics, 2021. *op.cit.*
[1846] Partly discussed in Chapter Four of this Study.
[1847] Congress of Nigerian University Academics (CONUA) is a faction attempting to break away from ASUU. According to ASUU, it is an illegal union which does not exist in the TUA. Edema, G. and Tolu-Kolawole, D. 2021. *op.cit.*

enough in meeting the demands of the peculiarities of academics. The IPPIS department came into existence in 2007 in the Office of the Accountant General of the Federation (OAGF). IPPIS was introduced the the aim of providing accurately reliable data on Civil Service employees. Being a means of identity management, it is targeted at making provisions for a centralised database to aid personal planning, making decisions and storing automatedly personnel records to facilitate the enrolment including monitoring of staff.[1848] In 2016, the FGN reeled out plans in automating the payroll as well as the human resource database for the Federal Civil Service.[1849] In 2019, the FGN gave an order that only civil servants on automated system should be paid salaries, therefore, in October 2019, that order to implement IPPIS across board took effect.[1850] While some government agencies find this initiative of the FGN not to be an issue, considering that salary payment structures differ from one institution to another, ASUU holds a different view on its workings.[1851] It considers it as a business venture of some interest groups whose profit margin increases by the increasing number of university staff that gets captured.[1852] It, therefore, opposed this move by the government and considered the enforcement of IPPIS aside from its introduction not being backed by law, an infringement on universities' right to autonomy. The Union maintained the position that in existence are extant legal provisions as well as negotiated agreements arising from the peculiarities including nature of Nigerian universities thereby making the payroll system unnecessary as well as inapplicable to the varsities.[1853] Aside from these, the software is not sufficient to cater for some peculiarities in the university system as it excludes provisions for staff on sabbatical leave, adjunct lecturers, contract staff incuding other academic allowances for lecturers who have assignements beyond an institution.[1854]

[1848] Shuaib, A.S., 2020. IPPIS:Understanding the position of ASUU, AGF Idris. *Tribune*. November 24. Retrieved July 31, 2021, from https://www.google.com/amp/s/tribuneonlineng.com/ippis-understanding-the-position-ofasuu-agf-idris/amp

[1849] Kolawole, O., 2020. Why ASUU, Nigeria's union of university academic staff is against government automated payment system. Retrieved July 31, 2021, from https://techpoint.africa/2020/11/24/asuu-rejects-ippis-suggests-utas/

[1850] Based on a presidential directive, staff of Federal Ministries, Departments and Agencies (MDAs) of government not on the system by October 2019 would not receive salaries. Soji- Eze, F., 2020 *op.cit.*

[1851] Kolawole, O.,2020. *op.cit.*

[1852] Ajayi, O., 2020. IPPIS: ASUU set to present alternative to FG. *Vanguard.* August 11. Retrieved August 1, 2021, from https://www.vanguardngr.com/2020/08/ippis-asuu-set-to-present-alternative-to-fg/amp/

[1853] Kolawole, O., 2020.*op.cit.*

[1854] Kolawole, O., 2020.*op.cit.*

Based on the above claims by ASUU, through the OAGF, the FGN reacted, accusing the Union of resisting IPPIS in order to evade tax, dismissing the Union's claim that the deductions from their salaries had resulted in their income having as much as 50% reduction. Furthermore, in defence of the FGN, the OAGF stated that Pay As You Earn (PAYE) Tax is statutorily paid by every worker. Therefore, in compliance with the provision of Section 34, 6th Schedule of the Personal Income Tax (Amendment) Act, 2011, IPPIS applied the appropriate rate of compliance. Prior to the IPPIS, there was underpayment of tax as the rate of tax tertiary institutions applied was incorrect. It therefore considered the request by unions of tertiary institutions as untenable as well as unpatriotic, violating extant laws on tax. Another deduction backed by law was the National Housing Fund (NHF) of 2.5 percent from of basic salary. The claims by ASUU that it should be exempted from or be made optional were considered a breach of an Act of Parliament, outside the scope of IPPIS or the OAGF. In addition, it considered the assertion by ASUU that the Employees' Pension Contribution of 7.5% should not be based on consolidated salary but on basic salary, a penny wise argument as the consolidated salary is applicable in determining all Federal employees' contributions as Salaries Income and Wages Commission(SIWC) consolidated salary without the composition.[1855]

While the union dissuaded its members from not wavering in their resolve to reject IPPIS,[1856] the government attempted to allay their concerns by assuring that, the entire human resources management involved is within the purview of individual universities and the centralised payroll would be prepared by these universities, however, they would be coordinated through the IPPIS. The government further gave assurance that the payment platform would give room for all financial peculiarities of the universities staff including those of visitations, honoraria, sabbatical leave with other earned allowance while the deductions for the National Health Insurance Scheme (NHIS), NHF[1857] check-off including appropriate remittance of subsidiary dues from staff. However, ASUU could not help but raise concerns that, if IPPIS was implemented, it would get university autonomy eroded

[1855] Ujah, E. and Agbakwuru, J., 2020. IPPIS:ASUU wants to evade tax-OAGF. *Vanguard*. May 19. Retrieved November 7, 2021, from https://www.vanguardngr.com/2020/05/ippis-asuuwants-to-evade-oagf/
[1856] *Ajayi, O*., 2020. *op.cit.*
[1857] National Housing Fund

including university councils' powers.[1858] The union also faulted the platform apart from not being designed for the peculiarities of the university system as not taking into cognisance the negotiated agreements that were not academic in nature but had been reached including those related to journals, amongst others.[1859] With the introduction of the IPPIS, since 2020, February, payments of academics have reflected deductions they did not consent to, thereby reducing their take-home pay drastically. Furthermore, it was noted that IPPIS is a one-line salary scale where there are tax deductions from allowances. With lecturers been given a one-line salary scale with deduction of taxes from allowances, unlike what is practised in the public service with academics losing as much as 50% – 70% of their salaries.[1860] These deductions the Union considers malicious.[1861] Closely related to this is the perception by the Union that FGN is withholding their members' salaries to force them to enrol for IPPIS while deliberately frustrating UTAS's implemetation[1862] and despite, the intervention directive given by President Buhari to pay the salaries of all lecturers, the OAGF has refused to pay their salaries ranging from 4-13 months respectively, insisting that Academics must go to Abuja for IPPIS registration.[1863]

On the difference on the structure of payment, academics are paid with the Consolidated University Academic Salary Structure (CONUASS) while the other university-based unions fall under the Consolidated Tertiary Institutions Salary Structure (CONTISS). The Government Integrated Financial Management Information System (GIFMIS) is used under this arrangement. However, the FGN decided that the GIFMIS platform needed improvement or outright change with complaints of being fraught with several irregulaties and leakages, including the system's inability to capture and eliminate ghost workers, illegal and double payments to some academics who teach in more than two

[1858] Soji- Eze, F., 2020.*op.cit.*
[1859] Soji- Eze, F., 2020.*op.cit.*
[1860] Nairametrics, 2021. Big Read, ASUU Funding & Social Mobility : What Needs to be done. Ukpe, W. February 9,2021. Retrieved August 1, 2021, from https://nairametrics.com/2021/02/09/big-read-asuu-funding-social-mobility-what-needs-to-be-done/
[1861] NASU and SSANU that initially keyed into IPPIS are found experiencing similar inconveniences. Kolawole, O., 2020.*op.cit.*
[1862] . Lawal, I., 2021. ASUU, SSANU threaten fresh strike over unpaid salaries, directives on staff school workers. *The Guardian*. July 1. Retrieved August 2, 2021, from https://guardian.ng/features/education/asuu-ssanu-threaten-fresh-strike-over-unpaid-salaries-directives-on-staff-school-workers/
[1863] Adeyemi, K. Jos and Ikpefan, F., 2021.ASUU threatens fresh strike over unpaid salaries, dues. *The Nation.* June 20.Retrieved August 2, 2021, from https://thenationonlineng.net/asuu-threatens-fresh-strike-over-unpaid-salaries-dues/

institutions, the inability to accurately capture tax deductions due to subnational governments, amongst others.[1864] In checkmating the observed shortcomings, the FGN came up wih the idea of IPPIS for payment of salaries of government workers.[1865] While IPPIS does not take into cognisance the automatic deduction of cooperative dues of union members, transfer of union dues including the payment of approved allowances, GIFMIS on its part takes into account all these. In view of these discrepancies the Union spelt out, the government assured it that academics would be exempted provided they came up with another software in its stead. Therefore, in dispelling the speculations that ASUU is against IPPIS so that its members could engage in corrupt practices, the Union recommended the adoption of the UTAS[1866] and took up the challenge and set up a team that would work with government to fashion out this homegrown software,[1867] to capture the university system's peculiarities in addressing, amongst others, the personnel system including payment and that the government would be able to track and be in the know on the earnings of lecturers, and detect whenever they embark on leave, in essence, the software would monitor the personnel and the payroll.[1868]

While ASUU has its principle of engagement with the government, it considers the government insincere and perceives that it uses different ploys to get unions to suspend their strike and after resumption makes limited efforts to fulfil its own part of the agreement,[1869] breaching agreements reached by both parties[1870] while subtly killing the university system.[1871]The struggles of the Union, in its opinion, have lived up to its conventional requirement that it should defend its members' interests, establish as well as maintain just with proper service conditions for them, including the protection with the advancement of

[1864] Nebo, C., Kenneth, I. and Udunze, U., 2020. Integrated Payroll and Personnel Information System (IPPIS) and the Autonomy of Public Universities in Nigeria: which way Forward. *International Journal of Academic Management Science Research (IJAMSR)* 4.9:92-103.
[1865] Nebo, C., Kenneth, I. and Udunze, U., 2020. *ibid.*
[1866] The Union sent the UTAS platform to the National information Technology Development Agency (NITDA) for integrity tests and for verification of its usability with efficacy as well as ascertain that the outcome would scale through the essential technical checks. In the meantime, FGN gave in to a hybrid payment platform, which is not 100% IPPIS in salaries payment including EAA, pending the outcome and conclusion of the tests on UTAS by NITDA. Nairametrics, 2021.*op.cit*.; Soji- Eze, F., 2020 *op.cit.*
[1867] Kolawole, O., 2020.*op.cit.*
[1868] Soji- Eze, F., 2020 .*op.cit.*
[1869] There are more of promise notes with less demands met. Tade, O., 2021. *op.cit.*
[1870] Lawal, I. , 2021.*op.cit.*
[1871] Lawal, I. , 2021.*ibid.*

the nation's socio-economic interest, its special publications on issues that touch on the nation's survival.[1872] Their struggles usually call for sacrifice; therefore, abandoning them is no option for persons worthy of being denoted as intellectuals.[1873]

[1872]ASUU, 2012. *op.cit.*
[1873] ASUU,2012. *ibid.*

CHAPTER SIX

SUMMARY, CONCLUSION AND RECOMMENDATIONS

6.1. Summary

A legal framework to regulate the practice of collective bargaining is non-negotiable as it determines the type of industrial atmosphere a nation or an organisation would have. A major highlight of collective bargaining in Nigeria is its transition from the voluntarism principle to interventionism. This shift underscores government's regulatory function in industrial relations. While collective bargaining is recognised in diverse industrial settings as the most civilised means of settling industrial disputes as well as disagreements, it functions as both a process as well as a method. Being a process, it can be dynamic, then used as a technique for disputes resolution while, as a method, it is considered an instrument employed by trade unions including employers in establishing and maintaining cordial relationships in industrial relations. The quest to know the application of collective bargaining's legal framework in resolving trade disputes in Public Universities in Nigeria with special attention paid to ASUU prompted this study, calling for the review of extant laws on application of collective bargaining, including collective agreements' implementation.

In an attempt to clarify some details from literature consulted, this Researcher interacted with some members of ASUU on their knowledge and perception of the subject matter under discussion. Respondents in the Key-Informant Interview were officials and members of ASUU. Five (Ibadan, Akure, Owerri, Kano and Abuja) ASUU zones were selected randomly. From each zone, a branch of ASUU was purposively selected based on their membership participation. They are UI, OAUSTECH, UniZik, ABU and UniAbuja. In addition, interviews were conducted with principal officers of NUC, university management staff, officials of Federal Ministry of Education as well as Federal Ministry of Labour and Employment. The interviews which focused on objectives three and four were conducted in one-on-one sessions and through the aid of social media. These interviews give a clue to, not only the weaknesses in the enforcement and implementation of the laws on Collective

bargaining in Nigeria, they also bring to the fore the need for better working conditions for academics while specifically unveiling the struggles of the Union which, when unresolved, culminates in trade disputes in universities.

OBJECTIVE ONE: Examine the relevant Legislation on Collective Bargaining in Nigeria within the context of applicable International Instruments.

The 1st and 2nd research questions arise from objective One of this study. The answers to them are stated in Chapter Four of this study. In achieving laudable objectives of collective bargaining, the industrial relations system of any country must have a legal framework that encourages parties to bargain collectively and ultimately enter into mutual agreements.[1874] This is premised on the context of industrial relations which presupposes that the conflict between capital and labour in production relations should be hinged on a set of rules that regulate the difference in interests in the tripartite relationship the government, employers including workers have in achieving industrial harmony.[1875] The Nigerian legal framework for collective bargaining is made up of various legislation intended to guide as well as regulate collective bargaining. These laws have been enacted as mechanisms for amicable resolution of trade disputes through collective bargaining to aid national growth and discourage chaos in labour industry.[1876]

The extant legal instruments regulating collective bargaining in Nigeria considered in this study include: the Labour Act, 1974; Wages Boards and Industrial Councils Act, 1974; the TDA, 2004; TUA and the Trade Unions Amendment Act, 2005; Others are NICN Act, 2006 and NICN (Civil Procedure) Rules, 2017. In analysing all these legislation, reference was made to the CFRN, 1999 (as amended), being the grundnorm and the major legal framework from which all other legislation derive their authority.

Labour practices in Nigeria are largely influenced by international best practices.[1877] Although the CFRN does not expressly make provisions on collective bargaining or right to it, from the provisions of section 17 on social objectives and it thus appears to permit the

[1874]Okene, O.V.C., 2009.*op.cit.*
[1875] ASUU, 2017. *op.cit.*6
[1876] Collective bargaining's legal framework can also be inferred from diverse legislation on freedom of association including protection of workers and trade union rights. See, Okene, O.V.C., 2010. *op.cit.*
[1877] Oyebode, A., 2003. *op.cit.* .45-47; CIPM, 2018. o*p.cit.*.22

enactment of legislation on collective bargaining.[1878] Furthermore, collective bargaining is a component of freedom of association guaranteed in section 40, CFRN, in conformity with ILO principles. The right to collective bargaining is fundamental, has the ILO member-states endorsement. This right, member-nations must obligatorily respect, promote as well as realise, in good faith.

As regards the international laws on collective bargaining examined, the Researcher could infer that the importance of right to collective bargaining as fundamental human right is acknowledged by its inclusion in relevant ILO Conventions and Recommendations and relevant UN legal instruments. ILO has shown support for collective bargaining as a medium by which protection of social with economic interests of employees can be realised.[1879] These international legislation impose obligations on nations that have ratified them to use the rights in advancing human dignity, social justice within those countries.[1880]

Based on British industrial relations model system of voluntarism doctrine adopted in Nigeria's industrial relations, non-interventionism alongside voluntary collective bargaining prevailed to a large degree as a major way industrial relations in Nigeria can be regulated.[1881] Collective bargaining's voluntary nature is provided for in Article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).[1882] In practice, notwithstanding the above provisions on its nature, rather than adopt collective bargaining in the public sector, successive Nigerian governments have utilised adhoc commissions in determining workers' wages including their conditions of service. Therefore, contrary to the standard of ILO which stipulates that parties should be free in determining bargaining levels, unilaterally, the government of Nigeria makes decisions for workers with the Joint National Public Service Negotiating Council (JNPSNC) spelling out matters negotiable.[1883]

Nigerian government has ratified various provisions of the ILO[1884] and notwithstanding her endorsement of collective bargaining; it seems that the government of Nigeria has not allowed the practice to flourish as it continues to breach the requirements

[1878] Okene, O.V.C., 2010. *op.cit.*
[1879] Okene, O.V.C., 2008. *op.cit.*
[1880] Njuh Fuo, O. and Ndiva-Mongoh, M., 2010. *op.cit.*.
[1881] Okene, O.V.C., 2008.*op.cit.*
[1882] Omodu, A.G., 2021. *op.cit.*
[1883] Okene, O.V.C., 2008. *op.cit.*
[1884] Okafor, E.E. and Akinwale, A.A., 2012. Globalization and Collective Bargaining in Nigeria. *European Journal of Business and Management.* 4.11:88-93.

of international practice on collective bargaining.[1885] Adherence to international standards and policies while reviewing the national obsolete laws will in no small measure foster, workplace harmony. Also, the importance of ensuring the enforceability of collective agreements aligns with international best practices and principles, hence, the CFRN empowers NICN to apply international labour standards with international best practices in industrial relations. Some of the best practices in labour relations are set in ILO conventions on the rights of employees to collective bargaining with enforceability agreements.[1886] The ILO Recommendation No.91 on Collective Agreement stipulates that they should be binding on signatories and other for who the agreement is concluded.[1887] The bindingness of a collective agreement is still subject to debate in Nigeria.

Other international legal instruments, including, the ACHPR, 1981, have become a part of the corpus of Nigerian law as the National Assembly has had it re-enacted. The UDHR, 1948 is yet another legislation giving recognition to the right to collective bargaining. These legal frameworks have played notable roles in upholding collective bargaining and defending interests of workers. However, it is important for member-countries, especially Nigeria, being the primary focus of the study, to take cognisance that collective bargaining is fundamental to industrial relations. Considering that the CFRN has conferred on the NICN the power and jurisdictional competence to apply international best practices and laws in Nigeria,[1888] the government should be seen to practice the art, and not relegate it to the background. Adherence to international standards and policies while reviewing the national obsolete laws, foster workplace harmony.

OBJECTIVE TWO: Make a Comparative Analysis of the Laws guiding Collective Bargaining in Nigeria, United Kingdom and Ghana.

The second research question gives insights into the two selected jurisdictions analysed in the study. The comparison of the laws regulating collective bargaining in the UK as well as Ghana are contained in Chapter Four of the study. United Kingdom was selected because it is a model state in issues of workers' welfare and Nigeria adopted most

[1885] Okene, O.V.C., 2010. *op.cit.*4.4:61-103.
[1886] See Chapter Four of the study.
[1887] Recommendation 1951, No. 91. De Givry, J., 1958,*op.cit.*
[1888] CIPM, 2018. *op.cit.* 22.

of its legislation in drafting hers while the choice of Ghana, although not as industrialised as Nigeria, is premised on the fact that it shares a close history of trade unionism with Nigeria.

In comparing the extant Nigerian legislation on collective bargaining with those of Ghana and the UK, this Researcher drew the following similarities and differences in the jurisdictions studied. The laws regulating collective bargaining as examined in this study, in Nigeria included: the CFRN 1999 (as amended); TDA, 2004; TUA and Trade Unions Amendment Act, 2005, NICN Act, 2006 and NICN (Civil Procedure) Rules, 2017, including Labour Act, 1974; Wages Boards and Industrial Councils Act, 1974**.** For Ghana, the laws were the Constitution of the Republic of Ghana, 1992 (as amended) with Labour Act, 2003 (Act 651), while for the United Kingdom, European Social Charter, 1964; United Kingdom's Trade Union and Labour Relations (Consolidation) Act, 1992; and the Employment and Relations Act, 2004.

The CFRN, 1999, does not expressly or directly make provisions for collective bargaining or agreement, however, it is widely posited that collective agreement or bargaining can be inferred from Section 17(3)(a) and (c) of the CFRN. In addition, the amendment to the TUA in 2005 has laid emphasis on significance of freedom of association of employees including continuous relevance of collective bargaining.[1889]It can be inferred from these provisions that the grundnorm permits the enactment of collective bargaining legislation and allows for achievement of a just and humane, safe and healthy workplace conditions for employees. Similarly, Section 40 makes provisions for workers' right in forming or joining a trade union in protecting their interests. An inference on collective agreement's legality, as it relates to ASUU's industrial actions, can be drawn from this section.[1890] On its part, section 21 of the Ghanaian Constitution guarantees freedom of association. It stipulates that freedom of association includes freedom in forming or joining trade unions or other associations, national and international; on the other hand, the UK Constitution is unwritten. However, its Human Rights Act, 1998 enshrines this freedom. In line with this Act, the right to freedom of peaceful assembly with freedom of association,

[1889]Opute, J. and Koch, K., 2020. *op.cit.*
[1890] Olulu, R.M., 2018. *op.cit.*

not excluding such rights for forming as well as joining trade unions in protecting personal interests is for all persons.[1891]

Section 48 of the TDA stipulates that agreements are to be written in settling disputes on employment terms including physical work conditions an employer has reached with a trade union.[1892] Similarly, in the UK, under the TULRCA, 1992,[1893] a collective agreement becomes enforceable when written, with express provisions of the parties' intention for the agreement to be a legally-enforceable contract. This principle is also applicable in Ghana as Act 651 stipulates that any agreement which has been made by parties has to be written with signatures appended by a duly-authorised representative of each party.

For representation purposes, section 24 of the TDA provides that all registered trade unions employed by an employer make up an electoral college for election of those who will negotiate on their behalf with their employer.[1894] Likewise, in Ghana, Labour Act makes provisions for setting up institutions in supporting as well as facilitating collective bargaining, namely the Joint Negotiating Committee (JNC), a bipartite body.[1895] For negotiations and concluding CBAs, it is required that a Standing Negotiating Committee (SNC) or Joint Negotiating Committee (JNC) be set up.[1896]

Under Nigerian Labour Law, the step that can be considered most crucial in the collective bargaining process is when an employer or his association gives recognition to a union as a bargaining representative of employees in a bargaining unit, on employment conditions and terms.[1897] In line with this, section 25 of the TUA considers recognition of trade unions obligatory. The TULRA provides for two forms or recognition for trade union representativity in the UK. The first form is the voluntary recognition where a trade union submits a request to bargain with the employer.[1898] The other form which is the statutory

[1891] ILO, 2015. *op.cit.*
[1892] Olulu, R.M., 2018. *op.cit.*
[1893] Section 179 (1)(2). In the UK, it is insufficient stating that a collective agreement shall be binding since this could be interpreted as,being binding in honour. It must be clearly stipulated that parties shall be legally bound by an agreement. See *N. C. B. v. N. U. M* (1984) I. C. R. 192, 195.
[1894] Okene, O.V.C., 2008.*op.cit.*
[1895] JNC is made up of representatives of two or more trade unions and one or more trade unions including employer's representatives set up for collective bargaining purposes. It authorised by or on behalf of trade unions and employers' representatives to enter into collective agreements for them.
[1896] It consists of trade union representatives whose name appeaes on the CBC and an employer of the set of workers such CBC relates. Otoo, K.N.,Osei-Boateng, C. and Asafu-Adjaye,P. 2009.*op.cit.* 16.
[1897] Okene, O.V.C., 2008.*op.cit.*
[1898] Such a request is considered invalid except it is received by the employer.

recognition becomes an option when the employer rejects the request to bargain by the trade union. Upon such rejection, a trade union may apply for statutory recognition from the Central Arbitration Committee (CAC). On the other hand, in Ghana, there is a provision for a Union Recognition Clause that specifically recognises a trade union as accredited representatives of the category of workers an agreement covers. The formation or registration of a trade union in Ghana, however, in no way automatically accords such rights of bargaining for the set of workers it stands for. A CBC has to be issued by the CLO.[1899]

The key players in industrial relations have two patterns of interaction. These include the tripartite as well as bipartite patterns. The tripartite pattern involves three parties, that is, the government, employer with employees represented by their trade union. The government interacts as a state authority or an employer.[1900] In Nigeria, only the tripartite pattern was indicated to in the TUA. In Ghana, a significant feature of the Labour Act is the provision for a tripartite committee consisting of the Government, Labour Union with Employers in determining the national minimum wage as the premise for collective bargaining.[1901] The Act, being the fundamental labour law in Ghana, further guarantees bipartite bargaining, making it easier for trade unions to be formed as well as providing for employers' statutory duty in recognising as well as bargaining effectively with registered and certified unions. Hence, bipartite negotiations are duly given recognition in Ghana with scarcely any interference by the government in employers with unions' collective bargaining process. The UK on its part thrives on tripartite social dialogue.

To encourage industrial peace, the government of Nigeria gets involved in labour matters and, by extension trade, union matters, through legislation to permit negotiations

[1899] All trade unions that have registered are expected to make an application to the CLO to be issued CBC for particular category of workers. Trade unions with a CBC have the rights to negotiate with employers for the class of workers on the CBC. Such agreements reached between the employer and the union with the CBC covers the class of workers named in the CBC, whether they belong or not to the union that negotiated. In principle, unions without CBCs have no right to enter into collective bargaining with their employers; however, in practice, the collective bargaining team includes other trade unions representing a section of those workers for whom the negotiations are done.[1899] A typical CBA in Ghana has a provision specifying the effective date for the agreement's commencement including its lifespan, with an average lifespan of TWO years. The short lifespan of most CBAs can be explained by uncertainties developing economies and societies such as Ghana's are characterised with. This reflects in the large fluctuations in inflation and exchange rates often observed in the country.

[1900] Aiyede, E.R., 2002. *op.cit.*

[1901]Ofori-Gyau, K., *Success Factors of Employers and Trade Unions Cooperation in Ghana in InfluencingGovernments' Economic and Social Policies.* Retrieved August 4, 2020, from https://www.ituc-csi.org/IMG/pdf/2nd_tu-dac_forum_ghana_employers_presentation_final.pdf

through collective bargaining process; putting up Arbitration Panels as well as making provisions for the NICN for resolving industrial disputes in the CFRN.[1902] In Comparison, the National Labour Commission (NLC), set up by the Labour Act for primarily for industrial disputes resolution, is a significant institution in Ghana's collective bargaining institutional system. The Commission receives complaints from worker(s), trade union(s) including employer(s) or employers' association. Parties to industrial disputes are obligated under the law to comply with the Commission's directives.

On enforceability of collective agreements, by reason of being a common law state, the legal enforceability of collective agreements in Nigeria, was derived from a common rule that they are non-justifiable, hence, completely without legal sanctions. This is because under the law and in practice, most times, no intention to have legal relations by parties, which forms part of the cardinal requirements for the enforcement of contract, exists. Therefore, over the years, Nigerian Courts refused to enforce collective agreements. Nigeria also aligned with the common law principle based on the exception of the doctrine of privity. This invariably suggests that no privity of contract comes up between individual employees with an employer; and in instances an employer chooses to ignore or breach agreement term, a trade union may negotiate with an employer, or alternatively a union embarking on strike action, if the need arises and in appropriate circumstances. Nigerian courts, accordingly, in a plethora of cases declined enforcing any collective agreement when relied on by an individual employee.

With NICN Act's enactment in 2006 as well the 2010 Alteration Act to the CFRN, 1999 (as amended), Sections 7(1) (c) (i), NICN Act and 254C CFRN grant the NICN jurisdiction for interpreting collective agreements.[1903] The law gives recognition to the right of employee to institute an action for collective agreement to be enforceable in instances there has been an express or implied incorporation in an employment contract or conditions of service or where it an employer subsequently adopts it as part of the conditions of service.[1904] To determine whether there has been an incorporation of a collective agreement into an employment contract, the NICN considers such factors as, their incorporation into a

[1902] Opute, J. and Koch, K., 2020. *op.cit.*
[1903] Section 7 (1) (c) (i) NICN ; similarly, Section 254C the CFRN vests on the NICN exclusive jurisdiction, more extensively, than what the NICN Act provides.
[1904] Dansu, O., 2020. *op.cit.*

contract of service, in instances where there is one, the pleadings and evidence before it including the parties' conduct. The Court has had to reiterate its point on this by stating that, if collective agreements are to be unenforceable, the power conferred on NICN by the Constitution would have no meaning.

In line with Article 3(1) of ILO Recommendation No.91, the NICN has given and maintained a stance on collective agreement's enforceability and is not disposed to accepting arguments that tend to bring back common law doctrine on the unenforceability of an agreement not incorporated into an employment contract, however, this same common law principle resurfaced in the recent case of *BPE v. Dangote Cement Plc.*,[1905] where the SCN held that collective agreements are unenforceable unless in instances the parties incorporated them.[1906] This position of the SCN only suggests that, just as it is under the common law, collective agreement might still be considered as a gentleman's agreement.[1907] However, it must be pointed out that this case emanated after the Third Alteration Act, 2010 of the CFRN, 1999 (as amended) came into force, making it only reasonable to infer that the decision of the SCN, to the extent that a collective agreement must be incorporated by parties before it, can become enforceable belongs to the old state of law; therefore, it should not be binding under the current labour dispensation.[1908]

On the other hand, in Ghana, any agreement reached by negotiations is binding on an employer including every worker in the class indicated on the CBC. In circumstances where employment contract terms conflict with the CBA, the latter prevails unless in instances employment contracts terms are more favourable.[1909] This implies that, once collective agreement is reached, it becomes enforceable in Ghana. The UK does not operate a system of legally enforceable collective agreements. Parties to collective bargaining must expressly specify that an agreement is legally enforceable.[1910] In enforcing collective agreements in firm-level agreements, the ACAS provides mediation services while in sector-level agreements, this is not relevant.[1911] Other than the CAC, Labour Courts are not

[1905] (2020) 5NWLR (Pt. 1717) 322.
[1906] Chukwuma, V.O., 2021. *op.cit.*
[1907] Chukwuma, V.O., 2021. *ibid*
[1908] Chukwuma, V.O., 2021.*ibid*
[1909] Section 108.
[1910] Section 179, TULRCA 1992.
[1911]OECD, 2017. *op.cit.*

directly involved in settling disputes on union recognition or union representatives for purposes of collective bargaining.[1912] There is no legal right to an agreement in the UK other than a CAC determination[1913] while an agreement may only be concluded with a trade union;[1914] it may be concluded at any level negotiations happen.[1915] Conclusions may be reached at the national or local levels, between trade union(s) and employers or employer representative bodies.

Unlike the legislation on industrial relations provided for in a single statute in Ghana, that is the Labour Act, in Nigeria and the UK, there is non-codification of the diverse legislation regulating collective bargaining. The adverse effect of not having all provisions in labour law codified is the whittling down of the machinery for collective bargaining.[1916]

At the International Level, on legislation regulating collective bargaining, Nigeria has ratified Convention on Freedom of Association and Protection of the Right to Organise, No. 87, Convention on Right of Workers to Organise and Collective Bargaining, No. 98, Collective Bargaining Convention, 1981, No. 154; while Ghana on its part has ratified the Right to Freedom of Association, Convention No.87 and the Right to Collective Bargaining, Convention No. 98. The nation has afterwards passed some legislation to bring national laws to conform to the ILO Conventions ratified. Conversely, the UK, being a member-state, has ratified Convention 87 on Freedom of Association and Protection of the Right to Organise (1948) as well as Convention 98 on the Right to Organise and Collective Bargaining (1949).

This study observed that, in spite of the plethora of legal instruments regulating collective bargaining in Nigeria, the non-codification of these legislation has considerably whittled down its practice and effect in industrial labour relations. The passed down belief from Britain during the era of colonialism that collective agreement is simply a gentleman's agreement and binding only in honour, notwithstanding the position of the NICN that all agreements are enforceable, has hampered on attaining industrial harmony in the workplace.

[1912] ILO. 2002. *op.cit.*
[1913] ILO. 2002. *op.cit.*.
[1914] ILO, 2015. o*p.cit.*
[1915] Schnabel, C., Zagelmeyer, S., Kohaut, S., 2005. *op.cit.*
[1916] Olulu, R.M. and Udeorah, S.A.F., 2018. *op.cit.*

The nation's political transformation, unfortunately, has attracted finite advancement generally in labour laws and particularly in trade unionism management.

Furthermore, the result of this second objective of the study indicates that the extant laws on collective bargaining in Nigeria are not and have not been able to resolve the incessant impasse between the FGN and ASUU. A major concern is that most of our laws appear not to be implementable and, by extension, do not work. Some reasons why these laws do not work could be hinged on the reality that some of them were enacted during the military era and, mostly, do not reflect the current realities of the changes the Fourth Republic has brought in its wake. Aside this obvious reason which is a lacuna in industrial relations, the laws enacted since the onset of this democratic dispensation do not seem to cover the interests of workers.

In practice, ASUU embarks on warning strikes for a specific duration of time or indefinitely. UTAG's peculiarity is that it must not strike for 21 straight days; otherwise, the entire session would be cancelled. In the UK, UCU embarks on 10 days' strike which will spread across a period of time, like three weeks.

OBJECTIVE THREE: Analyse the concept of Collective Bargaining as a negotiation tool and its importance in resolving trade disputes in the Nigerian Public Universities with special attention paid to ASUU.

Research questions three and four were targeted at examining this third objective of the study. Collective bargaining is negotiation process employees through their representatives engage in with their employer, with the intent of arriving at an agreement. Its main purpose is to regulate work terms with employment conditions including the relations between the parties involved.[1917] It deals with every arrangement where employees do not individually negotiate with employers but through their representatives collectively do so.[1918] The matters collective bargaining covers are usually extensive and they include the working conditions of employees. These employment conditions with terms could include issues like their wages, work hours, yearly bonus, occupational safety and health, annual leave, maternity leave and discriminatory practices amongst other issues. Matters on

[1917] Gernigon, B., Odero, A. and Guido, H., 2000. *op.cit*.75.
[1918] Nkiinebari, N. P., 2014. op.cit.

relations between parties could also comprise matters like, facilities for representatives of trade union; disputes resolution procedures; consultation, cooperation including information sharing, amongst others.[1919] Simply put, any matter capable of resulting in industrial dispute is negotiable between employees and management.[1920]

Between 1978 when ASUU replaced the NAUT and 1980, ASUU manifested a seemingly sophisticated approach to industrial relations throughout the nation. In reaction, the university councils which had earlier thought there was a limited need for collective employers' actions were rather motivated to modify their point of view and show better attitude towards unionisation. On May 20, 1980, the first national collective bargaining machinery in the universities was constituted between the Pro-Chancellors and representatives of ASUU with the aim of considering the demands of the union. That meeting setoff the beginning of real bargaining in Nigerian higher institutions.[1921] The transformation of ASUU from NAUT was also conditioned by the economic situation of the nation.[1922] The period of the formation of the union was the starting point of the oil boom decline when the country was confronted with the dire repercussions of its leaders' failure in using the oil wealth in generating a system for social welfare and production and academic freedom with university autonomy were military dictatorship casualities.[1923]

A Respondent to the Key-Informant Interview conducted, on the concept of collective bargaining, opined that:

> It is a classical idea; it is an ideal that even developed nations of the world have not been able to achieve. When employers of labour and unions of employees come together to discuss about conditions of service, that discussion that will make the workplace have industrial harmony is known as collective bargaining. Its product must be a collective agreement. The product is not binding because employers of labour will contend that the condition and context of signing that agreement overtime has changed, some will say that it was not their administration that signed the agreement. This attitude is

[1919] ILO, 2015. *op.cit.* 16.
[1920] Nkiinebari, N. P., 2014. *op.cit.* .
[1921] Pemede, O., 2007. *op.cit*.357-364.
[1922] ASUU, 2017. *op.cit.*80.
[1923] During this period, Military dictatorship had gradually corroded, albeit deeply, the basic freedoms in the Nigerian society. The funding of education, including universities became grossly inadequate. ASUU,2012. *op.cit.*

> common with the FGN forgetting that the government is a continuum. The APC administration in dodging the terms of the 2009 Agreement tried contending with ASUU that it was not its administration that signed it. Not being a contractual agreement, it is not binding which means no action can be instituted against a party who reneges on such an agreement. It will always be the employees that will be at the receiving end although there are papers available to show that an agreement was really signed. While the FGN is the employer, ASUU members, Academics are the employees.[1924]

Another ASUU member Respondent stated that:

> Collective bargaining as a process of ASUU negotiating with the FGN for better working conditions for its members and the whole university system entails FGN and ASUU discussing with open mind with the intention of sustaining industrial harmony between both parties.[1925]

In expounding on this concept, an ASUU Respondent was of the view that:

> As a concept, Collective Bargaining means a global labour, instrument of negotiating the conditions of service of workers, including wages, by both the employer and the workers who are presenting through their labour union. To ASUU the concept is the best of practices as it gave birth to the MoU between the FGN and the Union. The document is what is now known as **ASUU-Federal Government 2009 Agreement**. The same Agreement of 2009 is what has been the source of most disputes between ASUU and the FGN since then; it is either Government is not abiding by the Agreement in one way or the other or it is avoiding the revision of it which is a clause contained in the document. The document contains conditions of service of all academic staff, salaries, earned allowances, non-salary conditions of service such as fringe benefits, pensions for university staff and compulsory retirement age, formation of the university pension fund administrator, funding, funding sources, revitalisation, university autonomy and academic freedom, modalities for academic programmes, membership of the Governing

[1924] KII/Male/ASUU Ibadan EXCO/ Respondent 1/ 2021. Hereafter, Respondent will be referenced as Resp.
[1925] KII/Male/ ASUU UniZik/ Resp. 7/ 2022.

> Council, issues that require legislation to implement, among others.[1926]

Another Respondent's perspective was that:

> Collective bargaining, to ASUU, means a situation where when industrial disputes arise between an employer and employee, the two side agree to meet and discuss the matter through direct meeting between Government officials and Union officials OR through Committees from both sides that have mandate to discuss, negotiate and make concessions and agreements through consultations of their principals from time to time. At the end resolutions that translate into agreements are reached through give and take. Each side usually comes with a stand based on the agenda of the meeting, but gradually through discussions and understanding, both parties will shift ground based on realities on ground. The final draft agreement is at the end signed with consent of both principals and implementation Mechanism is arranged. When through implementation, problem arises on what was agreed on, both parties must meet again to amend or abolish certain aspects of the problematic aspects of the signed agreement. One party cannot arbitrarily amend or abolish any part of the agreement without the consent of the other party. This in summary is what Collective bargaining is to ASUU.[1927]

The purpose of collective bargaining is in three folds. Firstly, it is aimed at distributing the yields of the business enterprise in an equitable manner among the employees through their union.[1928] Secondly, it seeks to establish a mechanism that gives employees the greatest feasible operating participation when determining production and administrative policies. Thirdly, it provides the employees and management avenue for a peaceful means to settle amicably their mutual problem and handle changing relation.[1929] Collective bargaining marks the end of individual and the starting point for group relations between workers and management.[1930] Representing a democratic and fair attempt in

[1926] KII/Male/ ASUU UniAbuja/ Resp. 18/ 2022.
[1927] KII/Male/ ASUU ABU/ Resp. 6/ 2022.
[1928] This would be in form of increased and better working conditions, increased wages, a reduction of the work hours, quality and worthwhile reward to investors and quality products to consumers and customers. See, Ruttenberg, H.J., 1941, *op.cit.*; Njoku, I.A. 2007. *op.cit.*
[1929] Ruttenberg, H.J., 1941. *op.cit.*
[1930] Njoku, I.A., 2007. *op.cit.*

settling industrial disputes,[1931] it makes sure that employers with employees possess equal voice in negotiations, with the result of a fair and equitable bargain.[1932] As a form of roundtable discussion,[1933] it seeks to harmonise the opinions of stakeholders to attain industrial harmony and avoid disputes.[1934] The significance of collective bargaining for industrial relations is further emphasised by the ILO as a method of determining working terms and employment conditions an employer, a group of employers or their organisation(s) and representatives of employees' organisation(s), have with the intent of arriving at an agreement.[1935] It sets trade unions apart from other organisations like think tank and pressure groups empowering Union members to act collectively.[1936]

Based on the Pluralist theory, disputes between unions and the government as an employer of labour are unavoidable. The methods, both internal and external machineries, through which disputes can be resolved include, by the parties themselves and that is through collective bargaining and mediation. The external mechanisms are conciliation, arbitration, adjudication through the NICN, and Board of Inquiry by the Minister.[1937]These internal and external machineries serve as the legal requirements for ensuring industrial harmony. When collective bargaining cannot settle a dispute, the TDA requires the parties to follow the statutory procedures in solving it.[1938]

As collective bargaining involves two sides, that of the management being representatives of an employer and the labour union representing employees,[1939] as with the case of FGN and ASUU, the Minister of Labour and Employment acts as Conciliator-in-Chief in negotiations with ASUU while ASUU, by its national leadership bargains with the government for its rank-and-file members, negotiating for better conditions of service for them.

The basic objective for forming ASUU was for protecting, advancing socio-economic as well as the nation's cultural interests and encouragement of its members'

[1931]Vaibhav,V., *op.cit.*
[1932] Olulu, R.M. and Udeorah, S. A. F., 2018. *op.cit.*
[1933] KII/Male/ ASUU OAUSTECH/ Resp. 14/ 2022.
[1934] KII/Male/ ASUU OAUSTECH/ Resp. 13/ 2022.
[1935] Onyeonoru, I.P., 2001. *op.cit.*73.
[1936] UCU, 2021. *op.cit.* 2.
[1937] ASUU, 2017. *op.cit* 49.
[1938] Akanji, T.A. and Samuel, O.S., 2013. *op.cit.*
[1939] DeNisi, A.S. and Griffin, R.W., 2005. *op.cit.* 454.

participation in the nations' affairs and university system.[1940] However, there have been numerous twists and turns in the relationship between ASUU, since its inception, and government. For decades, Nigerian universities have been faced with a considerable number of crises, ranging conflicts academics have with university administrators, students and lecturers, students with school authorities, and ASUU and the government. For ASUU, there are some reasons identified to be responsible for the incessant strike actions by the Union. Its main points of struggles over the years include, working conditions of members they consider dehumanizing,[1941] inadequate funding, unimproved salary package,[1942] autonomy alongside academic freedom aimed at curbing brain drain and ensuring the University system's survival.[1943] However, the major cause of perennial dispute between the FGN and ASUU is the non-implementation of agreements, parties appended their signatures on, by the FGN.[1944] These issues that have positioned ASUU to be at loggerheads with the FGN, almost year in year out, are matters considered fundamental to the purpose the Union was set up and the welfare of its members. The imposition of IPPIS is the most recent of the several issues that ASUU has been battling with the FGN.

Respondents expounded further on this, stating that,

> Other areas of disputes and key to the current industrial action of 2022 include Conditions of Service, meaning new salary package that is 13 years old; Non settlement of Outstanding arrears of Academic Allowances owed ASUU members; Nonpayment of Salaries of many ASUU members due to the inefficient system of the IPPIS; Proliferation and creation of new Universities without sufficiently funding the existing ones; and issues affecting the smooth running of State Universities in their Laws.[1945]

This was buttressed by another Respondent. According to him,

> All the points of dispute are traceable to the breaching of the 2009 Agreement, including the imposition of the IPPIS. The IPPIS was not designed to accommodate the payment pattern of the salaries of the academic staff in the various universities. Since it was imposed, academics have

[1940] ASUU, 2017. *op.cit.* 80.
[1941] Ardo, T., Ubandawaki , U. and Ardo, G., 2020. *op.cit.*
[1942] KII/Male/ ASUU OAUSTECH/ Resp. 16/ 2022.
[1943] Nnamdi Azikwe University, 1991-2021. *Academic Staff Union of Universities (ASUU),Nnamdi Azikwe.* Retrieved April 29, 2021, from https://unizik.edu.ng/unions/academic-staff-union-of-universities-asuu-nnamdi-azikwe-university/
[1944] This was discussed in Chapter Five of the study.
[1945] KII/Male/ ASUU ABU/ Resp. 6/ 2022.

> suffered salary mutilations; for example, a professor has been losing an average of #40,000 monthly. This was a violation of the principle of collective bargaining because it was imposed. When the dispute over it erupted, the FGN agreed to ASUU'S request to design an appropriate alternative to the IPPIS, ASUU has designed UTAS, it has been made to go through the integrity process designed by the ICT agency of the FGN, the FGN has agreed that it was a perfect programme to use but it is reluctant to implement it. Such other points of dispute as the EAA and revitalisation are already contained in the Agreement of 2009. So it can be said that there is only one dispute- the violation of the Agreement of 2009 by the FGN, a principal signatory to the Agreement of 2009.[1946]

ASUU adopts the instruments of meetings, dialogue, consultations, including lobbying; in ensuring the meeting of its demands. Collective bargaining is another method the Union uses in settling disputes. And it is a vital tool for dispute resolutions between government and labour.[1947]

This was buttressed by a Respondent who stated that:

> There is really no realistic and scientific mechanism to resolving industrial disputes better than Collective Bargaining. Other ways of resolving disputes could be threats, protests, demonstrations and riots. And all may have to come down to meetings to resolve the issues through Collective bargaining.[1948]

The aftermath of a somewhat successful negotiation on the above issues was the Collective Agreement of September, 1992 which contained provisions on capital and recurrent expenditure including stabilisation fund, budgetary and non-budgetary sources of funding.[1949] There was yet another collective Bargaining which led to an agreement between the FGN and each of the university-based unions in 2001.[1950] The agreement became due for re-negotiation in 2004; however, negotiations between the FGN and ASUU only resumed in 2006 and were concluded in December, 2008. After what was considered a

[1946] KII/Male/ASUU UniAbuja/ Resp. 18/ 2022
[1947] John, O.A., 2015. *op.cit.*
[1948] KII/Male/ASUU ABU/ Resp. 6/ 2022.
[1949] The agreement also had a clause that there would be a review once in three years. See, ASUU. 2017. *op.cit.*207
[1950] There were provisions for the implementation and monitoring machinery. See, ASUU. 2017. *op.cit. 208.*

successful process of collective bargaining with Agreement reached, the FGN exhibited intense reluctance to sign the agreement, which it had willingly entered into. It was after a protracted strike action that the FGN signed the 2009 Agreement. The FGN and ASUU agreed on the need to review the Agreement in 2012, anticipating that, by that year, all provisions of the agreement would have been satisfactorily implemented. Unfortunately, till date, the 2009 Agreement is yet to be fully implemented.[1951]

More often than not, when the expectations of the members of the Union are unmet by either their direct university authority or the state or federal government resorts to industrial action and the multiple ripple effects which could be negative on students, parents including the larger society, leaves their action much undesirable.[1952] The reality nowadays, putting into consideration the epileptic nature of Nigerian education with the resultant frustrations of having disruption in their plans, students have started seeking for means of making money, more than even civil servants earn, through monetisation of acquired digital skills. Education, while considered as the key to transformation in the society as well as key to the nation's developmental pace is bereft of the necessary attention deserved in Nigeria, so many students who decide to accomplish their dream of obtaining a degree have misgivings on what would be their lot after graduation, with little or no hope of a guaranteed means of livelihood through employment.[1953] The existing status of Nigerian education will make public universities unattractive to international scholars as well as students.

Garnering from its objectives, ASUU seeks to deepen the university culture of pluralism of ideas, restore voice to the academic and their non-academic counterparts, and improve the ethical standard and ideals of the university-members.[1954] Negotiations of the Union with the FGN entails long period of bargaining and dialogue, running into months,[1955] at times years to resolve. Undoubtedly, for university system to efficiently and efficaciously

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[1951] ASUU. 2017. *op.cit.* 208.
[1952] Ardo, T., Ubandawaki , U. and Ardo, G. 2020. *op.cit.*. 3. 2:172-181.
[1953] Oluwaseun Ojo, O., 2022. Dear ASUU, Education Now a Side Hustle. *PUNCH.* September 2. Retrieved September 2, 2022, from https://www.facebook.com/206270189411151/posts/pfbid02coCaytFj5mfvJE3v4412uKZuixLZ2HLb3GFAQAeucwRnix3gwJpfctNieqdJmTJl/?sfnsn=scwspwa
[1954] Nnamdi Azikwe University, 1991-2021. *op.cit.*
[1955] John, O.A., 2015. *op.cit.* 3.1: 30-35.

function as it should, stakeholders must work harmoniously, in collaboration with ASUU, to a large extent with a clear sense of focus.[1956]

While a section of the respondents interviewed opined that collective bargaining in Nigeria has not worked as regards ASUU and FGN relations, a majority of them believe that it is the best alternative in resolving issues between both parties as any step taken wither ward to collective bargaining principles is tantamount to anarchy.

Expounding on its indispensability in FGN/ASUU relations, an ASUU Respondent stated that:

> I have not read of a better alternative to collective bargaining. We must be mindful of the fact that the concept itself is one of the prescriptions of ILO. It was the joint effort of the United States and Great Britain to assert it as a labour policy after it was developed by Samuel Gompers, the leader of the American Federation of Labour. By 1935 an Act had made it a compulsory instrument for the use of the private sector in the United States. It is also included in the international human rights conventions. It is universally accepted and any deviation from it is sure to lead to chaos or industrial disharmony. Before the emergence of this prescription the global labour experience was marked by a lot of upheaval because history has shown that employers naturally prefer to enslave workers and will never afford them a living wage that can afford workers food, shelter and other necessities for them and their children.[1957]

Giving a dissenting view on the existence of alternatives to collective bargaining in resolving FGN/ASUU disputes, a Respondent stated that:

> Yes, there are other alternatives to collective bargaining in the Industrial Relations System and these are: Mediation, Conciliation, Arbitration and Litigation/Court Action.[1958] …finally, litigation or court action is when all efforts listed above have failed and either of the parties to the dispute is left with no option than to refer the matter for adjudication.

[1956] Uzoh, B.C. 2017. *op.cit.*
[1957] KII/Male/ASUU UniAbuja/ Resp. 18/ 2022
[1958] These alternatives are succintly discussed in chapter five

> In Nigeria, one such court is the National Industrial Court (NIC).[1959]

While the Union has explored the use of litigation to some extent, though not at the national level, there are no records of it adopting other ADR mechanisms aside it and negotiations. On the approach adopted in collective bargaining processes by both parties, where bargaining is centralised, an ASUU Official-Respondent opined that:

> Bargaining should start at the units and not the national level. You should take an aggregate of what you have down at the unit to the central level. However, what happens in the case of FGN ASUU is that matters get table at the central, it is not a bottom-up approach as expected rather it is up-bottom. This is a major issue ASUU contends with.[1960]

Notwithstanding the approach to negotiations that parties choose to adopt, it is essential to have it in mind that a successful collective bargaining is a necessity in having industrial harmony in Nigeria. The duty of giving trade union recognition is closely linked to the duty to conduct negotiations with it and reach agreements.[1961] Therefore, bargaining with a trade union given recognition is an ideal way for employees to receive decent wages, employment terms and conditions.[1962] When it is well conducted, it serves as the most effective way of workers having representation rights in decision-making on matters that affect their work lives, considered as the prerogative of all workers in a democratic society. Employees' right to collectively bargain with their employer heightens their human dignity, liberty including autonomy. It helps them in achieving a form of workplace democracy while ensuring rule of law in their workplace. In essence, it gives workers a voice in influencing having rules which controls a significant part of their lives.[1963] This further alludes to the opinion of one of the respondents interviewed:

> Industrial democracy means participation. It is an essential part of collective bargaining. It is everything you do in the

[1959] KII/Male/ASUU UniZik/ Resp. 21/ 2022
[1960] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021
[1961] Okene, O.V.C., 2008. *op.cit*., 29-66.
[1962] Trades Union Congress, *Guide to Collective Bargaining*. Retrieved May, 21, 2020, from https://www.tuc.org.uk/workplace-guidance/collective-bargaining
[1963]Ogunlari-Smith, A., 2015. *Collective Bargaining and Industrial Relations.* Retrieved July 22, 2021, from https://www.linkedin.com/pulse/collective-bargaining-industrial-relations-adesegun

> workplace that makes the worker have a sense of belonging, have a say in decision making.[1964]

From this objective, the Researcher deduced that, a successful collective bargaining is necessary in attaining industrial harmony in Nigeria.[1965] Employees' dignity, liberty with autonomy gets improved when they possess the right to bargain, collectively, with their employer. It encourages employees in achieving workplace democracy while upholding rule of law in their organisations.[1966]

OBJECTIVE FOUR: Examine the challenges to the realisation of industrial harmony in Nigerian Public Universities.

The fifth research question gives insight into this fourth objective of this study. The results of conflicts are never predetermined, therefore, collective bargaining not only incorporates the negotiation of agreements, it also provides for their implementation and enforcement.[1967] Nigeria's present democratic dispensation has witnessed more industrial unrests than ever before.[1968] This is not unconnected to the issue that, when a collective bargaining process fails, employees could be under pressure to embark on industrial actions such as strikes to drive home their demands.[1969]

Industrial conflicts may be intense and lead to non-productive results affecting parties involved adversely directly or indirectly. The principle of conflict management is that all conflicts cannot necessarily be settled, however, managing them can decrease the odds of unproductive escalation. Consequently, managing conflict is *sine qua non* to sustaining industrial harmony.[1970] All the key players in industrial relations, that is, the employers, employees and the Government, for maintainance of industrial peace must continuously make attempts at redressing any grievance before it escalates into a dispute. The Nigerian governments as well as the private sector's disposition to resolving issues using collective bargaining is yet to be fully formed in comparison to countries like, United

[1964] KII/Male/ASUU Ibadan EXCO/ Resp. 3/ 2021
[1965] Okene, O.V.C., *op.cit*., 29-66.
[1966]Ogunlari-Smith, A., 2015. *op.cit.*
[1967] Chile, D.N. and Ogbu, B.E., 2021. *op.cit.*
[1968] Akume, A.T. and Abdullahi, Y.M., 2013. *op.cit.*
[1969] Agboola, B. G. and Ogundola, P., 2020. *op.cit.*
[1970] John, O.A., 2015. Labour Unions and Conflict Management in Nigeria: A Case Study of Academic Staff Union of Nigerian Universities (ASUU). *World Journal of Management and Behavioral Studies*. 3 .1: 30-35.

Kingdom and South Africa.[1971] Some aspects of the FGN/ASUU 2009 Agreement are yet to be satisfactorily implemented in federal universities. Some of which are those related to funding, university autonomy and academic freedom.[1972]A university can serve the society's needs well when its system is allowed to operate according to its intellectual dictates.[1973]

For collective bargaining to efficaciously function, it should be done in good faith by involved parties. There is a link between failure in honouring collective agreements with unions by the government and incessant industrial unrest in Nigerian Public Universities. Being a veritable tool for industrial harmony, collective bargaining ensures that employees' interests have protection through the bargaining process. The present conflicting stance of Nigerian case law on enforceability of its outcome has in diverse ways, however, hampered the benefits of collective bargaining to employees,[1974] especially in the public sector. The enforceability of collective agreements is as important as collective bargaining itself.[1975]

Some studies on industrial conflicts in Nigeria have led to the discovery that collective bargaining processes are undermined. This leads to failure of the framework as a way of managing grievances between management and employees.[1976] The reality is that collective bargaining procedure has not been sufficiently followed in handling employee grievances in several organisations. While collective bargaining process is necessary, following it to the letter is pertinent in attaining industrial harmony in any given organisation.[1977] Aligning his view to this position, a Respondent stated that,

> Collective bargaining is an idea of how the workplace should run. In a saner climate, the government does not even wait for agitations, they meet annually or biannually, they come together and start to process those thoughts and ideas. Strike is the final resort employed by ASUU to make the government see and pay attention to their plight about ordinarily what should not have caused any conflict…letters written by the union are either not acknowledged or responded to, it is when the union is

[1971] Ilesanmi, A. 2017. *op.cit.*
[1972] ASUU. 2017.*op.cit*. 217.
[1973] Arikewuyo,M.O. and Ilusanya, G. 2010. *op.cit.*
[1974] Iwunze, V., 2013.*op.cit*.
[1975] ASUU. 2017.*op.cit*.205
[1976]Aidelunuoghene, O. S., 2014. ASUU Industrial Actions: between ASUU and the Government, is it an issue of rightness? *Journal of Education and Practice*. 5.6:7-17.
[1977] Lasisi, R. and Lolo, A., 2018. *op.cit.*

> pushed to the wall that they respond by speaking the only language they think the government understands …NLC has about 28 unions and it appears that the government has not been true to the concept of collective bargaining pertaining to their relations with these unions.[1978]

Challenges to the realisation of industrial harmony in Nigerian Public Universities include leadership behaviour/ pattern of employers,[1979] defective communication,[1980] non-satisfactory work environment/infrastructure,[1981] labour-management policies,[1982] trade union un-recognition as a bargaining party, [1983]practice of exclusionism by the government,[1984] inadequate funding for research, ill-equipped laboratory, inadequate provisions for staff training,[1985] breach of collective agreement,[1986] as well as inequality in bargaining power.[1987] Breaching of agreements continues to be the bane of collective bargaining administration in Nigerian Public Universities. Several studies have revealed that, failure to follow collective agreements accounts for the incessant strikes in the country. Governments' inclination to dishonour collective agreements reached with employees on issues of wages including settlement of other work conditions mostly accounts for several strike incidents in the Nigerian Public Service.

ASUU's struggles in recent times have been centred on what the Unions considers to be unchanging marginalisation of the education sector by the FGN's policy formulation and yearly budgetary allocation with the FGN, with impunity, repudiating and not

[1978] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021

[1979] A leader who enjoys autocratic leadership will breed an atmosphere for conflict. Also in any organisation where employees cannot trust their leaders, such working environment will be fraught with conflict. The repercussion of which will lead to undermining industrial harmony with a resultant outcome on organisational productivity alongside growth.

[1980] Conflicts between the management and employees can be a clear indication of lack of or inadequate effective communication and positive interaction.

[1981] If employees are unsatisfied with the psychological or physical status of a workplace, most especially when their security and safety get threatened, they could be disgruntled, thereby leading to conflict, especially in a unionised workplace.

[1982] Any organisation without a suitable machinery for balancing diverse interests, likelihood of dispute is imminent, with such capable of inhibiting stability of such an organisation.

[1983] An employer depriving workers' representatives of freedom and recognition for collective bargaining purposes, by choosing to ignore it as a way of attaining employer-employees harmonious relationship, its afthermath is industrial action leading to industrial.

[1984] When employees are deprived of having a voice or participating in decision-making process in their workplace, often times this threatens industrial peace of the organisation.

[1985] KII/Male/ ASUU OAUSTECH/ Resp. 17/ 2022.

[1986] When an agreement has been made by a trade union and an employer, after bargaining, employees may be left with no choice but to resort to industrial actions due to their employer reneging on agreement terms.

[1987] The team with a stronger bargaining power negotiates from a position of strength.

implementing agreements signed with the Union amid protracted and strenuous negotiation processes. ASUU's industrial actions, in recent times, can be considered a legitimate pursuit of the enforcement of a valid binding agreement between ASUU as a trade union and its employer- the FGN. The agreement between both parties qualifies as a collective agreement in the public sector. The legality of such an agreement, in line with section 48 of the TDA, leaves no room for doubt.[1988]

It is pertinent that collective agreements is binding on parties to it including those for whom they are reached. The elements of the implementation and enforcement of agreements reached after negotiations are central to collective bargaining.[1989] Hinged on the remote reasons for industrial conflicts between the government and ASUU,[1990] the major cause of ASUU-Government conflicts and protracted strike actions in varsities has always been the refusal of government to honour and implement valid agreements that it had entered into with the Union.[1991] Unfortunately, this has been a recurring decimal in the education sector.

Below are the dates and duration of ASUU strike actions between 1993 and 2020: 1993- Three Months; 1994- Six Months, 1995- Four Months; 1996- Seven Months; 1999- Five Months; 2001- Three Months ; 2002- Two Weeks ; 2003/2004- Six Months; 2005- Three Days; 2006- One Week; 2007- Three Months; 2008- One Week; 2009- Four Months; 2010- Five Months and One Week; 2011- Three Months (nosedived into 2012); 2013 – Three Months, Two Weeks; 2016- Seven Days; 2017- 35 Days; 2018- 96 Days; 2020 – Nine Months.[1992]

Notwithstanding the replete of legislation on collective bargaining, successive governments in Nigeria are only reminded of agreements made with employees through the

[1988] Olulu,R.M., 2018. ASUU Strikes and The Legality of Collective Agreement in Nigeria. *FUO Quarterly Journal of Contemporary Research.* 6. 3:28-39.
[1989] Collective bargaining not only incorporates the negotiation agreement but also their implementation and enforcement. See, ASUU. 2017. *op.cit.205*,217.
[1990] Discussed in Chapter Fve of this study.
[1991] ASUU. 2017. *op.cit.*217; Awuzie, U., 2011.*op.cit.*; Zechariah, M., 2013. *op.cit.*
[1992] Anon. ASUU Strike: A History of ASUU Strikes Dates from 1999 to 2013. *Nigeria School*. Retrieved April 15, 2021from https://www.nigeriaschool.com.ng/asuu-strike-a-history-of-asuu-strikes-dates-from-1999-to-2013/; Ojo, J., 2020.*op.cit.;* Akinwale, A.A, 2009. *op.cit.*

instrumentality of strike.[1993] Incessant strike actions are not good for a struggling economy like Nigeria's because it has devastating effects.[1994]

The study further reveals some common themes that ASUU strikes often revolve around as gathered from the respondents to the Key-Informant Interview. They are as enumerated below:

i. Funding

The constant ASUU struggle and trade disputes between the Union and FGN are linked to funding for tertiary education in Nigeria. Majority of the equipment used by academics to train their students, especially laboratory equipment, are from the money they personally get from grants and from their salary, including the goodwill of colleagues when they travel abroad as there is underfunding of Public Universities by the government. The timeous funding for recurrent and capital expenditure should not be compromised and should be reviewed constantly to align with such economic realities obtainable per time. A consistent subvention from government will increase the input and productivity level of its workforce. In essence, Public Universities must be fiscally sufficient.

A Respondent to the KII showed his displeasure at the current state of things thus,

> … the recent development of holding virtual classes, lecturers have to individually foot the bills for internet data to lecture students. Public universities lecturers are doing more of missionary jobs.[1995]

ii. Research

The job of Academics is three pronged, that is, teaching, research including community service which entails research-based knowledge application in and out of the university.[1996]The research reputation of some Nigerian Public Varsities is not impressible in comparison to other universities globally, based on the influence of globalization in this 21st century. There is therefore a need to improve research infrastructure and human capacity in Public Universities. A fund scheme for quality interdisciplinary and inter-institutional research should be a topmost priority. Research grant allocations should also not be compromised so as to improve the quality of research in Public Universities therefore,

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[1993] Uzoh, B.C., 2016. *op.cit.*
[1994] Ananaba, S.A.B., 1969. *op.cit.* 44
[1995] KII/Male/ASUU Ibadan EXCO/ Resp. 3/ 2021
[1996] Erunke, J., 2022. *op.cit.*

viable research activities, innovations should be encouraged and duly funded. A Respondent buttressed neccesity of the viability of research when he stated that,

> A nation cannot be talking about developing while not developing its research institutes and universities. Such gestures will be a mirage.[1997]

iii. Provision of adequate Facilities and Infrastructures Renovation

Several years of non-maintenance and non-upgrade of infrastructural facilities has led to a rundown of these facilities. Capital grants for Public Universities to rehabilitate and upgrade their facilities should be provided and used for same purpose.[1998] The policy on rehabilitation should be duly adopted. The intervention of TETFund and institutions with similar objectives while they are commendable might not be able to cover all the needs universities.

iv. Imposition of IPPIS

The imposition of IPPIS has been a major cause of friction between the Government and ASUU. It is considered to be an imposition of what is wrong. The government of former President, Goodluck Jonathan started with Treasury Single Account (TSA) which was initiated to monitor its funds, which the Union did not oppose in its entirety, but requested that third party funds should be exempted. For instance, Research Grants that individual academics out of their own initiatives bid for, apply for and get to further their research does not belong to the government. It is the money sourced by individual academia and an initiative that the university system, government and society will ultimately benefit from. The Union had to embark on strikes before the government grasped that the fund for research got from donor agencies is not its money. While the Union has no issue with government monitoring its money the Union had to maintain a stance that what is not the government should not be muddled up with theirs. Research grant and third party funds were eventually exempted after the strike action. Afterwards, IPPIS was initiated so that the government would know how her money is being spent. IPPIS is not homegrown software, it is a software imposed on the government by institutions, where government sources for loans. The lender wants to be monitoring the funds in the civil service, they believe that

[1997] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021
[1998] KII/Male/ ASUU OAUSTECH/ Resp.15/ 2022.

there is a whole lot of wastage there, therefore IPPIS was imposed. However the Union opines that Research institutions do not operate as the civil service does. For instance, there is daily repetition of job duties in the civil service but it is not so in the academia as academics have their own peculiarities. The activities a lecturer does today will be different from what he did yesterday and most likely what he will do tomorrow will take another dimension as the challenges they encounter on a daily basis differ. Additionally, while the Union considers IPPIS as negating the diverse laws establishing universities which vest governing councils such authority of remuneration as well as promotion of staff in the university system,[1999] the operation of the IPPIS by private companies on behalf of the government does not augur well with the Union on the basis that there are bursaries with experts in the disciplines of Accounting, Economics saddled with responsibilities of this.[2000] However, due to the pecuniary interests the government had, it went ahead to implement the IPPIS software with civil service workers. In 2013, the government assured the Union that academics would be exempted provided they came up with another software in its stead. The Union took up the challenge and set up a team that would work with government to fashion out a software, UTAS,[2001] for capturing the University System's peculiarities so that the government would be able to track and be in the know on the earnings of lecturers.[2002] It will also help them detect whenever academics embark on leave, in essence the software would monitor the Personnel and the Payroll. ASUU volunteered using its personal resources to which Government agreed to fund the software. In showing how determined the Union was, in 2014, it wrote to the government twice reminding them that the technical committee they set up for that purpose was ready so that their own team and the government's team could combine efforts and have a home grown software but there was

[1999] Ajimotokan,O., Olaitan, K., and Emenyonu, A., 2019. *op.cit.*

[2000] Having private companies paying the salaries of government workers considered an aberration by the Union.

[2001] SSANU and NASU made a proposal for the University Peculiar Personnel and Payroll System (U3PS) as against the FGN's IPPIS. NNN. 2022. Breaking: SSANU, NASU suspend strike effective Wednesday. *NNN.* August 20. Retrieved September 14, 2022, from https://nnn.ng/tag/u3ps/

[2002]Since 2020, UTAS has been subjected to diverse tests. In February 2022, at the FGN/ASUU Conciliation Meeting, there was a consensus that Techincal Teams of ASUU and NITDA should re-asses the UTAS with observers from Federal ministries of Labour, Education, Finance, alongside National Salary and Wages Commisssion in attendance. The System was reassessed in March 2022, subjected to 698 cases. The outcome showed UTAS passing before and after remediation with 97.4% and 99.3%. Othman,M.K. 2022. UTAS vs IPPIS: Intergrity test and deception in salary payment. *Blueprint.* March 29. Retrieved June 17, 2022, from https://blueprint.ng/utas-vs-ippis-integrity-test-and-deception-salary-payment/

never got any response, the government seemingly went to sleep for 5 years. The Union considers IPPIS to be an anathema to the university system considering the peculiarity of the system. The structure of of the university system is not rigid as found in the civil service as there are Academics who get paid for their expertise as well as those who get involved in external examinations including research forming part of the norms to share and garner ideas from other institutions as consultants or sabbatical staff.[2003] For instance, a Federal University of Technology that runs courses on applied sciences and requires as part of its curriculum to compulsorily have its Engineering students study an aspect of law, like law of contract, as a compulsory course, however, due to its academic structure, it does not run a Faculty of Law. Such a school will inevitably have to outsource the teaching of that course, on part time basis, to a lecturer employed in a university that runs law courses. For such services rendered, such a lecturer must be paid. However, no provision is made for such an option of associateship on the IPPIS platform. Such payment is an instance of the excess money the government alleges being wasted by universities.[2004] Other arguments on which ASUU's stance against the IPPIS is hinged on include, non-enrolment/payment of members on training outside the country; impediment of a university to quickly recruit new staff; no provision for services universities outsource, such as security and cleaning services; the ability of each university to discipline its staff may be hampered; their payroll adjustments will be done centrally and this would require expensive staff trips to Abuja; difficulty in making third parties deductions, such as cooperative dues, from source; erosion of the autonomy of universities, could serve as an impediment to university's ability to staff new programs; it would affect non-permanent staff appointments such as sabbatical leave, contarcts, visiting/part-time lecturers) including payment of arrears for professorial promotions.[2005] In the view of the union, considering all the perceived lapses observed in

[2003] Ajimotokan,O., Olaitan, K., and Emenyonu, A., 2019. *op.cit.*

[2004] By virtue of the nature of the job of academics, every six years, each lecturer is entitled to leave the place of work and interact with other colleagues out of the primary university on sabbatical so that what will be taught students will not be the same thing year in year out. Lecturers are entitled to be paid for proceeding on such leave to cross fertilise ideas.

[2005]In response to all the above observations and concerns of the union, the FGN organised a sensitisation workshop on IPPIS where it assured the Union that, it had taken such steps as, it directed that the personnel documents of all university staff on overseas training would be scanned and certified by the university authorities and kept till they returned from their training after which they would go for capturing; accepted to work with universities on staffing new programs; recognise and carry out all third parties deductions considered legitimate on the IPPIS platform; allow the power to discipline staff to still be within the limits of each institution including the power to update and undertake variations in payroll data to remain with each

the system, the IPPIS template is a ploy by the Government to enslave intellectuals as it would adversely affect the smooth running of universities.[2006] Notwithstanding the Union's insistence on not adopting the IPPIS, it is still being used in paying their salary and the implication of which is, no employee will be able to project the next amount he would receive as salary on a monthly basis, their pay keeps oscillating, never stable due to deductions by the government.[2007]

In addition, the collective agreement the Union had with the government in 2009 which should have been renegotiated in 2012, until 2020 the negotiation was never completed. By 2018 when it was obvious that all the excuses of the government would no longer hold water, they had no option than to renegotiate, then they gave a condition that if they must renegotiate, ASUU must re-enrol its members on the IPPIS platform, this was like bringing back a matter the union considered a forgone conclusion, a matter the Union had discharged with the government five years back. The Union insisted that since they are not slaves in their country and being citizens, agreement is an agreement which must be respected; a party to a collective bargaining's yes must be yes and not tainted with deceit.

A Respondent pointed out that:

> The attitude of government is reneging on agreements it willingly signed. The poser given by the Union is, will it be reasonable for the Union to succumb to IPPIS? The Union is of the opinion that it wouldn't. In any case, the Union spends its own money, that is, members' fund to develop the UTAS[2008] which was willingly given to the government. After the strike action of 2020 which was suspended in December, government was expected to

institution's payroll team; opt to implement the directives of the government directives when under or outside IPPIS. However, the FGN remained evasive on what it would do as regards salaries when universities workers embark on strikes. It also rejected taking any responsibility or offer plans for services outsourced by the Universities. Dokumen, 2014. Federal Universities Sensitisation Workshop March 2014 on Integrated Payroll and Personnel Information System. Retrieved October 18, 2021, from https://dokumen.tips/documents/federal-universities-sensitisation-workshop-march-2014-integrated-payroll-and.html

[2006] Nebo, C., Kenneth, I. and Udunze, U., 2020. *op.cit.*

[2007] NASU who initially put up a mild resistance but afterwards enrolled into the IPPIS scheme subsequently aired their observations. Its members had issues with the payment of their monthly salaries and allowances due to non-deduction of check-off dues, the government's failure to pay approved allowances as agreed on and contained in their 2009 MOU, non-deduction of cooperative dues, amongst others. SSANU and NAAT also complained about the negative effects IPPIS had on their remuneration.See, Nebo, C., Kenneth, I. and Udunze, U., 2020. *op.cit.*

> evaluate the software. The Minister of Labour and Employment had given assurance of following up on the testing process while ensuring the deployment of UTAS for paying salaries of universities staff. For six months, there was no record of the government visiting the website until June, 2021 after a reminder was sent by the Union. On what basis would the Union now chicken in and accept IPPIS? The World Bank audited the operation IPPIS in 2015 and it was discovered over ₦2 Billion fraud. The government was not able to explain the fraud. The Auditor General of the Federation audited the account of that operation. The report is in the public domain. It was the same software that has been audited by the agencies of government and a lot of faults were discovered, a government claiming it wants to stop corruption wants to continue to use, the same software that is perceived to be bedeviled with fraud. It is a software that does not permit all third parties payment, arrears are not paid. Most of the money claimed the government was able to save were funds due to workers left unpaid.[2009]

Another respondent stated that:

> A condition that was given ASUU for the purpose of having UTAS as its option is to register a company for that purpose because a trade union cannot engage in business of any form. Being a pressure group ASUU cannot do business until it is registered like Nigerian University Pension Management (NUPEMCO) which is a Pension Administration of the Union. UTAS can only be registered like NUPEMCO. …notwithstanding the fact that the union insists they cannot adopt the IPPIS, IPPIS is still being used in paying salary… no one seems to be able to project the next amount he would receive as salary on a monthly basis…[2010]

As at the time the interviews were conducted, mid-2021, according to some of the respondents, over sixty of the members of ASUU, University of Ibadan branch, were yet to be paid salaries since February, 2020, notwithstanding that the strike action of the Union had been suspended since December, 2020.

[2009] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021
[2010] KII/Male/ASUU Ibadan EXCO/ Resp. 3/ 2021

v. University Autonomy and Academic Freedom

Academic freedom is the soul of a good university. There should be no restrictions on academic freedom as academic freedom as well as institutional autonomy are positive correlates to the success of any varsity, however universities could at times find overbearing the influence of government in their affairs.[2011] On this issue, a Respondent stated that,

> Academic freedom has always been an agreed thing. Academics are supposed to be free. By the Laws of the Universities, there is devolution of power to various organs of the university that act on behalf of government. So it is the government that meddles in the affairs of the university leading to confusion and sometimes causes chaos in some campuses. By and large, government has always being the one that would renege on agreement based on maybe arrogance of power maybe because they are the ones in power, they are the ones basically funding the universities they believe they can do whatever they like at any point in time, in spite of reaching an agreement with ASUU collectively.[2012]

The belief of the Union is that inadequate autonomy and academic freedom limit the worth of scholarship, teaching, research, including innovation in their institutions.

vi. Better Working Conditions/Remuneration

MY BOSS IS A COMEDIAN
The wages he pays are
a joke

ASUU[2013]

Another source of concern for the Union has been on their salary as the same salary scale been used since 2009 is what is still obtainable in 2021, unfortunately the economic indices then and now are not the same. Inferring from above, it seems that the government has been unfair to the academia in this wise but unfortunately the government keeps banking on the benevolence and love academics have for their students and passion for their jobs, sadly, their take home pay is not commensurate with their input. While the government has neglected the welfare of members, Academics will always want their students to excel using resources at their disposal. Non favourable work conditions have led to brain drain of

[2011] Albert, I.O., 2014.*op.cit.*
[2012] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021
[2013] ASUU Sticker found at the ASUU Secretariat, University of Ibadan branch.

lecturers in Public Universities. So many academics over the years, have sought for better opportunities in private universities, schools abroad while some others have ported to jobs not related to academics because of the remuneration that they consider to not be proportionate to their input. In this wise, there should be innovative strategies put in place to harness the huge human resources in academics in Public Universities in Nigeria. There should also be improved welfare scheme for academics in the Public University system.

According to a Respondent:

> …on the conditions of service, the salary of ASUU does not comply with the inflationary trend in Nigeria. Purchasing power has dropped, what lecturers used to earn before is no longer what they earn, and that has not been reviewed and more burden is placed on them. This is a major challenge members of the union contend with.[2014]

Inadequate remuneration has compounded the challenge of brain drain in universities, with the consequential outcome of the system not attracting foreign academics.

vii. Negotiations over Litigation

It was gathered from a Respondent that:

> The Union has never instituted an action against the FGN in Court; it rather institutes actions in the NICN against individual universities when their members are relieved of their positions unjustly to seek redress on behalf of those affected. Once the Union is convinced that such members are acting and operating within the ambit of the principles and the practices of ASUU, it becomes the burden of its national body because the branches of the Union do not operate in isolation of the central body. Negotiations are not done at branch levels. The national body possesses the Charter of the Union and it conducts negotiations on its behalf.[2015]

This perspective was buttressed by another ASUU Respondent who stated that:

> I cannot remember one instance of ASUU taking the FGN to the National Industrial Court or any other court, as the Union does not believe it can get the answer to its demands by going to court because the FGN is not known for obeying court orders. But in a twist of irony the FGN has

[2014] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021
[2015] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021

> been resorting to the same NICN to get interlocutory orders to stop unions from embarking on industrial actions. The substantive cases are never heard in the end. In August 2021, the FGN took Resident Doctors to the NICN seeking orders to stop the strike action. The court could not halt the strike action even by its order. In May 2020, the FGN as well threatened to drag ASUU to the NAP and the NICN because it could not stop the industrial action that ASUU had resorted to. ASUU had insisted on a physical meeting after an invitation, instead of the virtual meeting called by the Minister for Labour under the guise of the COVID-19 protocol.[2016]

Furthermore, another Respondent clarified instances ASUU has had to wield the weapon of Litigation in disputes resolution:

> ASUU is a Trade Union and is clearly aware, as intellectuals, of all the provisions of the TDA. There is a Legal Officer who is one of ASUU's Principal Officers. So ASUU has and will always follow all the provisions as stated and allowed by law in resolving disputes. ASUU has used the Industrial Court, the Arbitration Panel in finding solutions to trade disputes. It has at several times utilised unconventional ways of lobbying and making appeals and contacts with all that matter in the society to intervene before embarking on strikes when every non-strike option fails. However, it seems the only language that government listens to is STRIKE.[2017]

He posited opined further that,

> I am aware that ASUU at some time in the past has taken government to court on issues relating to the dismissal of members in its branches. One case is that of the 49 ASUU members in UNILORIN. ASUU won the case in Supreme Court. There are many others. There are other issues that made ASUU to go to conventional and industrial courts. Government had also in the past taken the Union to Industrial Court for declaration of strike without notice.[2018]

In citing instances that ASUU has had to institute actions in Court, another Respondent stated that:

> In a suit numbered NICN/AK/21/2019 and filed before the court by his lawyer; Funmi Falana of Falana & Falana's Chambers, one Dr. Omonijo Akinyemi Gabriel, Chairman of the ASUU, Federal University, Oye-Ekiti, Ekiti State,

[2016] KII/Male/ ASUU UniAbuja/ Resp. 18/ 2022.
[2017] KII/Male/ ASUU ABU/ Resp. 6/ 2022.
[2018] KII/Male/ ASUU ABU/ Resp. 6/ 2022.

> contended that his suspension from the institution did not follow due process as stipulated in the act establishing the institution. The take home in the above case is that since the principal character in the case is a prominent figure in ASUU, the Union is solidly involved or behind the case.[2019] In another development, ASUU had once dragged the Godwin Obaseki-led government of Edo State to court over the State's Special Powers Intervention Law.[2020]This shows ASUU's avowed belief in the settlement of some its matters in court.[2021]

viii. Non-implementation of Collective Agreement

MY BOSS has no SHAME
HE DOES NOT
Honour
AGREEMENTS

ASUU[2022]

The major point of dispute between ASUU and FGN is government reneging on agreements signed with the Union. That has always been a recurring decimal. More often than not, the government reneges on that by not implementing it or not following the time frame agreed upon for implementation. In all the negotiations the Union has had with the government over time, there is none that ASUU can say the government fully implemented. Collective bargaining has to its own regulations, its method, and its processes. Despite its processes and procedures, the government usually does not follow the agreement, reneging on it. Collective agreement is not a legal document hence its non-implementation cannot form the basis for instituting an action again the government in court.

One of the respondents of the Key-Informant Interview summed up the negotiation process between the Union and FGN as follows:

> …as it were, collective bargaining is not operational between FGN and ASUU because at the end of the day, FGN says ASUU forced it to sign an Agreement, the union

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[2019] Sahara Reporters, (2020) ASUU Chairman Drags FUOYE Management To Court Over Suspension. Retrieved March 1, 2022, from http://saharareporters.com/2020/02/04/asuu-chairman-drags-fuoye-management-court-over-suspension

[2020] Ibileke, J. (2021), ASUU drags Obaseki to court over Special Intervention Powers Law. Retrieved March 1, 2022, from https://pmnewsnigeria.com/2021/12/29/asuu-drags-obaseki-to-court-over-special-intervention-powers-law

[2021] KII/Male/ ASUU UniZik/ Resp. 20/ 2022.

[2022] ASUU Sticker found at the ASUU Secretariat, University of Ibadan branch.

> holding them at the jugular to ensure they sign the agreement… unfortunately, even after signing the agreement that they claim they were forced to sign, a huge part of it they never accomplish. 2009 was the last time the conditions of service of Academics were reviewed and the union is still on that issue till date. The union embarked on strike to be blunt…[2023]

ix. Review of Extant Laws on Industrial Relations

On the extant laws on industrial relations in Nigeria being adequate to serve as a means of containing recurring disputes between ASUU and Government, while a cross section of those interviewed are of the opinion that Nigeria is not bereft of laws, not being short of good laws, but it is their implementation that poses a challenge to workers. To this category, while the laws are good and have captured all the various facets of human endeavours, it is the implementation that is faulty and not the laws in themselves. Another opinion is that generally, labour laws in Nigeria are obsolete and unequivocally inefficient.

x. Ancillary Perspectives.

Depending on the year or strikes under consideration the issues that the Union thrashes with the FGN differ but most of the issues, which the Union considers important, at any point in time leading to agitations will be unresolved matters based on the last agreement reached. The specifics are what are dictated by the circumstances surrounding a particular agitation or a particular strike. Also, other issues that have surfaced in recent times are due to the COVID-19 Pandemic. To teach effectively, lectures cannot be given in congested classrooms with the outset of new variants of COVID-19.

On what the Union has achieved from the strike actions it has embarked on in recent times, a Respondent succinctly spelt out that:

> ASUU has achieved increased funding in all the Federal and States Universities through the 30 billion released as International Fund; Part of the outstanding Academic Allowances were paid to ASUU members; and some outstanding salaries of ASUU members were paid; the setting up of Renegotiation Team to review the Conditions of Service of the academic staff as in 2009 Agreement.[2024]

[2023] KII/Male/ASUU Ibadan EXCO/ Resp. 1/ 2021
[2024] KII/Male/ ASUU ABU/ Resp. 6/ 2022.

On the reason the Union embarked on industrial action in 2022, he stated that:

> What led to the current strike in 2022 is the lack of the implementation of the 2020 Memorandum of Action on the implementation and review of ASUU/FGN 2009 Agreement. Thus, we are where we are today. Negotiations are currently going on through collective bargaining between ASUU and the Federal Government.[2025]

The recurring strike actions by ASUU and the disposition of the FGN call into question the place of Nigerian university education as on the order of priority of competing needs of the nation, public university education seems not to have a place yet.[2026]

During Collective Bargaining processes between ASUU and FGN, there are some other key participants who play major roles for both parties to reach a consensus.

The NUC has a significant role to play in the sustenance of industrial harmony in public universities. While expositing on the Commission's roles in curbing the menace of industrial disputes in Nigerian Public Universities, a Respondent stated that:

> It safeguards the interest of labour and management by securing the highest level of mutual understanding and good-will amongst university-based trade unions; promotes the development of industrial democracy based on labour partnership in terms of participatory managerial decisions; liaises with relevant Federal Ministries, Agencies and interested Stakeholders to develop workable policies that will be helpful in improving the welfare and conditions of service of University workers; strives to eliminate or minimize the number of strikes and lockouts through recommending workable strategies that promote cordial employer-employee relationships; provides secretarial services to the FGN/University-Based Unions Renegotiation Committees; participates in reconciliatory meetings between the Federal Government and the University-based unions to resolve the industrial crisis in the University System; presides over the distribution format of the released allowances for the deserving university employees as well as leads annual budget

[2025] KII/Male/ASUU ABU/ Resp. 6/ 2022.

[2026] Oladapo, O., 2022. Why Nigeria no longer needs Public Universities.. *The Guardian*. September 13. Retrieved September 13, 2022, from https://guardian.ng/opinion/why-nigeria-no-longer-needs-public-universities/

> presentation of the federal universities at the National Assembly.[2027]

These show the pivotal roles of the Commission in ensuring that there is industrial harmony in Nigerian Universities. In line with its roles, one of the functions of the Commission is channelling support to the Nigerian universities, it achieves this by:

> Facilitating both overseas and home trainings for university managers, academics and non-academics such as train-the-trainer; distributing instructional facilities as computer sets, both hard and e-books to the universities and linking universities together through Nigerian University and Research Network (NgREN).[2028]

Being a core agency of the government in matters relating to university education in Nigeria, the Commission is not oblivious to the recurring cul-de-sac in FGN/ASUU relations. An NUC Respondent gives the causes of industrial disputes between both parties to be based on:

> Poor Conditions of Service; delay in reaching and signing an agreement to become legal binding document; non-implementation of Agreement by FGN; alleged violation of university autonomy by the FGN through its various circulars from different ministries and agencies; delay of payment of salary/allowance arrears; **i**ntroduction of draconian public policies; and alleged victimisation of union members.[2029]

The above reasons are not different from the causes of the Union's agitations. In there interest of all stakeholders, it is paramount that these issues are addressed to a reasonable conclusion between the FGN/ASUU. On the contribution of NUC to the development of Nigerian Public Universities in recent times, the following were some of the contributions adduced:

> Develop policies and guidelines that would ensure adequate provision of student support facilities and welfare services on university campuses; encourage universities to provide career support services that would help students develop critical lifelong skills and intelligent decisions

[2027] KII/Male/NUC / Resp. 21/ 2022.
[2028] KII/Male/NUC / Resp. 21/ 2022.
[2029] KII/Male/NUC / Resp. 21/ 2022.
[2029] KII/Male/NUC / Resp. 21/ 2022.

> about their future; encourage university authorities to ensure safe university environment for effective teaching and learning, among others.[2030]

The Federal Ministry of Labour and Employment plays a major role in FGN/ASUU relations as a Conciliator. In descriping its roles generally, a Respondent explained that:

> The vision of the Ministry is to create an enabling environment for both employees and employers to operate. It not only focuses on the educational sector, which is however one of the key sectors in the nation, we focus on both employers and employees. The Ministry sees to the implementation of home-grown labour laws in line with ILO Conventions Nigeria has subscribed to.[2031]

On its specific roles, he further stated,

> The ministry could be a Mediator as well as a Conciliator. It has been the main stakeholder, facilitating the meetings between both disputing parties. So, its major role has been a facilitator in areas of conciliation and mediation in the FGN/ASUU trade disputes.
>
> The major tools it has being using in that wise are the laws governing labour relations, like TDA, TUA, as well as ILO Conventions, including the CFRN, the laws regulating the points of disputes, alongside NICN judgements. These serve as references for the ministry in playing its advisory roles in disputes resolution. NICN is the only court of competent jurisdiction that declares a verdict.[2032]

On the recurring disputes between the Union and their employer, a Respondent opined that,

> It is when the employee is well acquainted with what the law says, and also the employer believes in the rule of law, the power of negotiation and consensus agreement, that is when the issue of ASUU strikes will come to an end.[2033]…Strike might not really be the way out for ASUU/FGN impasse, the FGN should honour agreements with ASUU before it rotates out of administration. If

[2030] KII/Male/NUC/ Resp. 21/2022.
[2031] KII/Male/MLE/Resp. 22/2022.
[2032] KII/Male/MLE/Resp. 22/2022.
[2033] KII/Male/MLE/Resp. 23/2022.

> agreements cannot be fulfilled, it is better not to sign such rather than do so and renege.
>
> Strike is the last option for any union, that is the only option ASUU seems to have in calling the FGN to order. In reality, there seems to be no other option for them to use in getting the government in meeting their demands.[2034]

On ASUU rejecting the FGN's IPPIS idea, the Respondent retorted,

> have you ever seen a place where an employee dictates for an employer on how to be paid? It is either you align with the regulations of an employer or you resign, hence the insistence of the FGN initially on IPPIS that only those who are on the platform would get paid. The IPPIS is for them to be on a payroll that can be monitored considering that they divert their attention to other institutions, where they get extra pay. They said they want university autonomy which includes funding themselves but is it possible for their institutions to generate funds to sustain their varsities with the tokens students pay in public varsities? For a lecturer working in more than an institution, public service rules, will be applicable, which permits no federal government worker to have multiple employment other than farming.[2035]

Likewise, the Federal Ministry of Education is a major participant in FGN/ ASUU negotiations. In assessing the roles of the Ministry in tertiary education in Nigeria, a Respondent explicitly stated that:

> Education is pivotal to the development of any nation and its people. That is the reason for the establishment of the Federal Ministry of Education (FME) in 1988 with the Mission statement "use of education as a tool to foster development of all Nigerian citizens to their full potential in the promotion of a strong democratic, egalitarian, prosperous, indivisible and indissoluble sovereign nation under God." The roles of the FME in tertiary education include: Curricula and syllabus development for all schools; Controlling the quality of education in Nigeria; Collating the required data for funds allocation to education; Harmonizing educational procedures across the

[2034] KII/Male/MLE/Resp. 23/2022.
[2035] KII/Male/MLE/Resp. 22/2022.

> country; Revenue generation for the federal government; Formulating educational policies geared at strengthening tertiary education in Nigeria; Tackling the illiteracy level in the country; Granting scholarships to indigent students; Coordinate the development of universities in Nigeria as well as allocation and disbursement of federal grants and external aids to universities including research and advice executive on issues on higher education development in Nigeria.[2036]

The Respondent in further expounding on the roles of the Ministry in curbing the menace of industrial disputes in Nigerian Public Universities stated that:

> The Federal Ministry of Education has been working assiduously to curb the menace of industrial disputes in the country through: Setting up conciliatory committees in conjunction with Federal Ministry of Labour and Employment to dialogue with the unions; Renegotiating with the unions on previous agreements with the view to coming to terms with the agitations of the staff unions; Setting up stakeholders retreats to discuss on issues of in the universities; Developing and implementing policies that will ensure industrial harmony in the universities.[2037]

It was also identified that,

> The major cause of industrial disputes in universities is mainly due to the failure of government to honour agreements earlier made with the unions. A major sticking point with the current situation is the failure of the government to implement fully the 2009 agreement with ASUU and the insistent of government to implement the IPPIS in the payment of salaries, which the union has vehemently rejected.[2038]

On how best to resolve the unending impasse between ASUU and FGN, it was suggested that:

> The best way to end the impasse is for both parties to show mutual respect for each other's positions, viz: Government to honour all agreements entered into with the unions and for the unions to understand the economic challenge facing the nation at large.[2039]

[2036] KII/Male/FME / Resp. 19/ 2022.
[2037] KII/Male/FME / Resp. 19/ 2022.
[2038] KII/Male/FME / Resp. 19/ 2022.
[2039] KII/Male/FME / Resp. 19/ 2022

In contrast to the above information elicited at KII, the Ministry during the 2022 ASUU, strike in reacting to the state of issues on ground, through Ben Goong, was credited to have made a statement on behalf of FGN that, no agreements would be entered with the Union under duress, it hence admonished the Union to call off its strike to avert gunpoint negotiations and promises that would be left unfilled.[2040]

The managements of Public Universities are not left out of the equation as their universities get affected in any FGN/ASUU impasse. Giving their perspectives on this recurring issue during KII, Respondents on the perceived reasons for this stated that,

> The remote causes of the FGN/ASUU disputes are numerous. Some of which are, poor funding of the education section. Successive governments have refused to aduquately fund the education sector. The less than 10% allocation given to education in the national budgets over the years is grossly inadequate and contradicts the 26% recommended by UNESCO.Lack of respect by the FGN in honouring agreements reached with ASUU on universities' funding, the government's gradual withdrawal from funding universities alongside other tertiary instititutions, including proliferation of private universities, some of which are owned by top government officials alongside Politicians.[2041]

Other Respondents buttressed this further, stating that,

> Poor state of facilities in the University, non-provision of funds for equipment that would promote cutting edge research alongside conducive environment; poor remuneration of ASUU members as well as corruption of Politicians and Public Officers, in addition to the government's inconsistent policies and its insensitivity to agreements signed with ASUU are reasons for ASUU strike actions.[2042]

[2040] InformationNigeria. March 14, 2022. We Wo't Make Gunpoint Negotiations With ASUU,Says FG.Olayemi Oladotun. Retrieved June 16, 2022, from https://www.informationng.com/2022/03/we-wont-make-gunpoint-negotiations-with-asuu-says-fg.html
[2041] KII/MALE/ Principal University Officer/ Resp.10/2022.
[2042] KII/MALE/ Principal University Officers/ Resp.11 & 12/2022.

The impacts of the Union's strike actions on the university educational system are considered to be positive at the same time negative, the negative however outweigh the positive impacts. According to these set of Respondents:

> ASUU's incesant strike actions have mixed impacts on the Nigerian Educational System. Its positiveside is that it has ensured that tertiary education is not taken out of the reach of indigent students. The negative side includes, disruption of academic calendar to the extent that a course of a specific duration becomes almost indefinite, thereby, elongating the number of years students spend studying; it disrupts the yearly financial budgets of departments, faculties , alongside other university units, final-students atimes get delayed for post-graduation mandatory programmes such as the National Youth Service Corps, Law School as well as medical school practical trainings. It also results in generation of backlogs of admissions associated problems sucha s setting high cut-off marks and availabilityof freshman that overstretch available university facilities. While all these and many more affect the quality of graduates, it also gives the nation a bad global image.[2043]

In their response to how the menance of strike actions can be curbed in Nigeran Universities, some common suggestions of these Respondents include,

> This can be curbed by government's political commitment to the education sector particularly in universities; the government should be transparent, accountable as well as responsive in effecting all agreements made with ASUU on staff welfare and revitilisation of universities; proliferation of private univeristies mostly owned by politicians should be halted by the FGN; ASUU leadership should be sincere in all they do; structures should be put in place to reward academic competence and not just certificates, and funding of univeristies should be based on needs and not other extraneous considerations.[2044]

Considering that the Univeristy Management also has some roles to play in ensuring harmony in the universities, the management Respondents opine that,

[2043] KII/MALE/ Principal University Officers/ Resp.10, 11& 12/2022.
[2044] KII/MALE/ Principal University Officers/ Resp.10,11& 12/2022.

> In ameliorating the menace of FGN/ASUU disputes, there is a need for the university adminitsration to play frontline and not backstage roles in implementing all policy decisions reached between both parties;[2045] they must ensure the accuracy of data presented from the universities to the government, this will help to know the proper state of things in their universities; they should ensure that there is healthy politicking in the university system.[2046] In addition, they must see to justice and equity in action alongside strenghtening their Industrial Relations Unit as well as promote uninterrupted communication with the leadership of university unions.[2047]

When ASUU embarks on a strike, in whatever form it takes, in suspending or calling such action off, conditionally or otherwise, there are procedures followed from the NEC to the branches. At each branch of the Union a resolution by members whose outcomes will be sent to NEC who deliberates on such. The final outcome of the deliberation will afterwards be made public by NEC.

The Union regards as key issues in guaranteeing industrial harmony in public varsities principally as, implementation of the 2009 Agreement which was renegotiated, payment of outstanding EAA, UTAS' deployment, Revitilisation funds to public Varsities,[2048] university autonomy, amongst others. ILO Conventions[2049] on trade union independence, social dialogue alongside promotion of tripartism must be respected.[2050]

By being on concurrent list, the CFRN places premium on the importance of education at all levels. Howbeit, the state of education in Nigeria, at any given time, is a reflection of how it is valued. The level of a nation's growth and development is largely the function of its state of education.

[2045] KII/MALE/ Principal University Officer/ Resp.11/2022.
[2046] KII/MALE/ Principal University Officer/ Resp.10/2022.
[2047] KII/MALE/ Principal University Officers/ Resp. 12/2022.
[2048] Edema, G. and Tolu-Kolawole D., 2021.*op.cit.*
[2049] Conventions 87 and 98
[2050] Edema, G.and Tolu-Kolawole D., 2021.*op.cit.*

6.2. Conclusion

The purpose of this study was to examine the legal framework for collective bargaining and industrial disputes in Public Universities in Nigeria. It adopted the sociological school of jurisprudence approach with the pluralist theory grafted into it. In examining collective bargaining's legal framework as a measure of containing disputes in Nigerian Public Universities, it focused on the interface between ASUU and FGN, using it as a case study in analysing the external source of industrial disputes varsities in Nigeria are confronted with from time to time as well as the laws regulating collective bargaining, otherwise recognised as a dispute resolution strategy through which disputants interact to reach amicable resolution.[2051]

The rise in trade disputes is responsible for the incessant industrial actions by trade unions with the end result impeding on workplace activities thereby resulting in unproductiveness in affected organisations. In Public Universities, it takes the form of strikes with the affected trade union staying off the workplace for a period of time. A major reason ASUU resorts to strike is, amongst others, mainly due to the pattern of reneging on agreements the FGN enters with the Union. With the spate of breaching agreements, the Union has made it its responsibility to make government accountable as well as responsible for agreements signed by the government.

Most of the extant labour laws in Nigeria, and by extension on collective bargaining, are obsolete as well as cumbersome, hindering their effectiveness as several of these legislation and their jurisdiction are overstretched while some are multiple tinkering of Military decrees thereby not in line with prevailing labour realities. Therefore, a major concern with the laws regulating collective bargaining as applicable in Nigeria is majorly the ineffectiveness of these legislation in reducing strike actions and other forms of industrial actions springing from a culture of impunity by parties concerned.[2052] The reality is that sanctity and respect for the legal framework on collective bargaining and its processes could offer a durable approach to achieving harmonious industrial relations and, ultimately, foster industrial harmony in Nigeria as it could be deduced from the study that laws serve as a neutral instrument[2053] in the bargaining process and they matter. In addition, collective

[2051] Ekiotonye, N. and Barnabas, S.S., 2021. *op.cit.*
[2052] Ibietan, J., 2013. *op.cit.*
[2053] Yiannis, G., 2005.*op.cit.*

bargaining flourishes when a legal environment is favourable, but becomes stunted in a legal climate considered hostile.

Tracing ASUU's struggles since the 1980s, it only appears the concept of collective bargaining as a social process is being threatened. Consequences of these manifest in incessant ASUU strikes, mostly borne out of the FGN's indecision on issues of concern between itself and the Union.[2054] As a device through which conflict is controlled,[2055] collective bargaining's role as an effective mechanism for industrial democracy, social justice, and panacea for industrial disputes in Nigerian Public Universities is yet to be fully recognised. Notwithstanding the perceived shortcomings in the practice of collective bargaining in Nigeria, it still remains a key labour market institution, the most desirable mechanism for regulating contracts of employment universally also a veritable mechanism for disputes management in the workplace.

At this juncture, it can only be inferred that the laws regulating collective bargaining, including industrial relations generally, are incapable of totally stopping disputes in the workplace and neither can they, in their present form and practices, be a panacea for trade disputes in Public Universities in Nigeria. If sustainable industrial harmony must be achieved in Nigerian Public Universities, collective bargaining, the consultation process including negotiation of terms, enforceability and implementation of agreements reached, must be judiciously handled in line with collective bargaining principles of ILO.

6.3. Recommendations

After an exploratory study of the Legal Framework for Collective Bargaining and Industrial Disputes in Public Universities in Nigeria, the following recommendations are proposed and sectionalised for all industrial relations stakeholders:

On the part of the Government:

i. The Government should make education a priority; it should be given a pride of place in the scheme of things in the nation.

[2054] Ojeifo, S. A., 2014. ASUU Industrial Actions: Between ASUU and Government Is It an Issue of Rightness? *Journal of Education and Practice.* 5.6:7-17.
[2055] Yiannis, G., 2005. *op.cit.*

ii. The FGN should desist from creation of more universities that it cannot sufficiently fund, proliferation of universities without funding the ones in existence should be stopped.

iii. Wages of Academics should be commensurate with top-rated universities in the continent.

iv. Collective bargaining should be given a better statutory recognition; there should be a codification of Labour Laws on industrial relations for harmony in the legislation as well as for ease of reference unlike what is currently obtainable where the concept is found in different statutes. Nigeria can borrow a leaf from Ghana;

v. A reform of the current legislation on collective bargaining is imperative. There is need to review laws regulating industrial relations generally in Nigeria, and more specifically, on collective bargaining. Such laws should ensure enforceability of all collective agreements, making them binding as well as actionable. In addition, applicable ILO Conventions on collective bargaining and agreement should be domesticated and be in tune with international labour standards. This will ensure the implementation and enforceability of every collective agreement without workers being forced to go on any form of industrial action or litigation before it is enforced. The review should also reflect provisions which would correct the unequal nature of the workplace culture including the unequal nature of employment contract, remuneration being disproportionate to work definition and other work related issues that impinge on the rights and affect the interest of employees.

vi. The character of reneging or not implementing signed agreements with trade unions should be stopped by employers. It is a necessity for the ethos of collective bargaining and industrial democracy to be fully imbibed as well as demonstrated practically. In the interest of public university system, the government should honour valid agreements reached with ASUU as well as respect and uphold its own laws. The government should act in good faith as well as acknowledge that it is inappropriate to just sign an agreement and fold arms till such is due for implementation before it raises issues. It is unpalatable and unhealthy for the university system when the FGN and ASUU lock horns over unimplemented agreements. Not all parents can afford sending their children to private universities

or schools abroad which seem to be alternatives, hence the need to preserve these public universities and their heritage.

vii. To ensure the smooth running of trade unions, government must ensure that the union is truly autonomous. Hence, there should be minimal government interference in their in house activities.

viii. The government should let trade unions as well as the public be in the know on its policy formulations and implementation and should desist from conducting governance in secrecy and be accountable to the citizenry. There is a need for a more responsive government.

ix. Considering the prevailing global situation on the reality of the COVID-19 pandemic, e-learning protocols need to be deliberately adopted in universities to enhance flexible teaching and learning. This should be fully funded by the government without academics resorting to their take-home-pay in facilitating this initiative. Being technology-smart should be non-negotiable.

FGN/ASUU and other Stakeholders:

x. For rancour in Public Universities to be minimised and for them to effectively serve as engines of social renewal and economic development, there is a need for a paradigm shift on the part on the government, academic and non-academic staff with their representative bodies, including the civil society, to overhaul the education system, to be in good service for all members of the society.[2056] More specifically, to ameliorate the current state of Public Universities, it is most important for the university system to shake off its garb of obsolescence and prepare to compete favourably with its counterparts globally by the standard of research conducted, globally-competitive graduates produced and, most importantly, ensuring that its workforce is sufficiently empowered and motivated from time to time.[2057]

xi. The key players in industrial relations should take some time and efforts to understand the nuances of collective bargaining, including effects non-enforcement of agreements have on their employees. In addition, considering that the recognition

[2056] Obayan, A., Awonuga, C. and Ekeanyanwu, N., Eds., 2012. *op.cit.* 121
[2057] Obayan, A., Awonuga, C. and Ekeanyanwu, N., Eds., 2012. *op.cit.*133.

of the right to collective bargaining is still a challenge both in law as well as practice, the FGN needs to have a better and more active part in promoting collective bargaining, with cognisance taken of its voluntary nature. While the government has its part to play, Public Universities should also apply self-cleansing mechanism to build its reputation and credibility while boosting their service delivery to both their immediate beneficiaries, that is their workforce and students, and extend same to the society.

xii. Due to the effects of trade disputes, employees and employers alike, to give room for quick resolution, it is of utmost importance for employers and trade union to have in their collective agreement modes for settling dispute which may come up in the workplace.

xiii. It is also imperative for the Nigerian government to realise that collective bargaining still stands as the best mode for wage determination of employees including other employment conditions in the civil service. Hence, the government needs to take suitable measures as well as adopt policies to support, alongside promote collective bargaining in line with ILO's Collective Bargaining Principles. There is a need to reinforce the foundations for inclusive collective bargaining, by encouraging strong and representative trade unions as well as employers' organisations. In addition, the FGN and ASUU, can through the practice of effective collective bargaining, arrive at an amicable resolution to curtail the recurring face-off with ASUU and its effects such that Public Nigerian Universities can attain remarkable position in global ranking.

NICN, in playing its role effectively should take note that,

xiv. To have industrial harmony, industrial disputes resolution mechanisms, statutorily provided, must in their application guarantee certainty, reliability and consistency. The NICN should deliver justice in tandem with these attributes always.

ASUU

xv. ASUU should press for the review of the 2009 agreement with a resultant effect that there will be an upward review of the basic salary of its members.

xvi. The unenforceability of MOU keeps frustrating the efforts of the Union, the Union should aside signing a MOA, press for a legal framework that will make the outcome of their negotiations binding and actionable when there is any attempt at reneging on any signed agreements by either of the parties.

xvii. The Union should engage and educate students' bodies and the general public from time to time, sensitising them, giving them ideological consciousness on the state of things, what their demands are about.

xviii. The Union should re-strategize, rather than proceed on indefinite industrial actions should adopt an intermittent approach to strike, whereby no strike action will be prolonged beyond 21 days in the interest of all stakeholders.

xix. It should proffer workable solutions, just like it did with TETfund, while balancing its demands with reality in tandem with the nation's economic realities.

xx. The union should also put into consideration the economy of the nation, as frequent strike actions will close economic activities, it disrupts the economy.

6.4. Contributions to Knowledge

While extant literature on the study' subject matter are noteworthy and commendable, this study provided additional information on collective bargaining's legal framework in Nigeria in line with international best practices by analysing and comparing the legislation on the subject matter in jurisdictions such as the United Kingdom and Ghana. It delved into the lapses in collective bargaining practice, enforcement and collective agreement implementation in Nigeria, and gave further exposure on the importance of collective bargaining in resolving workplace social differences. Consequently, this study will furnish the key players in industrial relations with a more understanding of the utmost significance of laws and the enforcement thereof. This study will also aid other researchers in further studies on the subject matter of the study.

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APPENDIX I

LIST OF ASUU BRANCHES AS AT DECEMBER 2018[2058]

FEDERAL UNIVERSITIES

S/N	NAME	YEAR FOUNDED
1.	Abubakar Tafawa Balewa University, Bauchi	1988
2..	Ahmadu Bello University, Zaria	1962
3.	Bayero University, Kano	1975
4.	Federal University, Dutse	2011
5.	Federal University, Dutsin-Ma	2011
6.	Federal University, Kashere	2010
7.	Federal University, Lafia	2011
8.	Federal University, Lokoja	2011
9.	Federal University, Ndufe Alike-Ikwo	2011
10.	Federal University, Otuoke	2011
11.	Federal University, OyeEkiti (FUOYE)	2011
12.	Federal University of Technology, Akure	1981
13.	Federal University of Technology, Minna	1982
14.	Federal University of Technology, Owerri	1980
15.	Michael Okpara University of Agriculture, Umudike	1992
16.	Modibbodama University of Technology, Yola	1998
17.	Nnamdi Azikwe University, Awka	1992
18.	Obafemi Awolowo University, Ile-Ife	1962
19.	University of Abuja, Gwagwalada	1988
20.	University of Agriculture, Abeokuta	1988

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21.	University of Agriculture, Makurdi	1988
22.	University of Benin, Benin	1970
23.	University of Calabar, Calabar	1975
24.	University of Ibadan, Ibadan	1948
25.	University of Ilorin, Ilorin	1975
26.	University of Jos, Jos	1975
27.	University of Lagos, Lagos	1962
28.	University of Maiduguri, Maiduguri	1975
29.	University of Port-Harcourt, Port-Harcourt	1975
30.	University of Nigeria, Nsukka	1960
31.	University of Uyo, Uyo	1991
32.	Usmanu Danfodiyo University, Sokoto	1975

STATE UNIVERSITIES

S/N	NAME	YEAR FOUNDED
33.	Abia State University , Uturu	1980
34	Adamawa State University, Mubi	2002
34.	Adekunle Ajasin University, Akungba	1999
36.	Ambrose Alli University, Ekpoma	1980
37.	Akwa Ibom State University	2000
38.	Benue State University, Makurdi	1992
39.	Bauchi State University, Gadau	2011
40.	Bukar Abba Ibrahim University, Damaturu	2006
41.	Chukwuemeka Odumegwu Ojukwu, University	2000

42.	Cross River State University of Science & Technology, Calabar	2004
43.	Delta State University, Abraka	1992
44.	Ebonyi State University, Abakaliki	2000
45.	Ekiti State University, Ado-Ekiti	1981
46.	Enugu State University of Science and Technology, Enugu	1981
47.	Gombe State University, Gombe	2004
48.	Ibrahim Badamasi Babangida University, Lapai	2005
49.	Ignatius Ajuru University of Education, Rumuoumeni, Port Harcourt	2010
50.	Imo State University, Owerri	1992
51.	Kaduna State University, Kaduna	2004
52.	Kano University of Science and Technology, Wudil	2000
53.	Kebbi State University, Kebbi	2006
54.	Kogi State University, Ayingba	1999
55.	Kwara State University, Malete	2009
56.	Ladoke Akintola University of Technology, Ogbomoso	1990
57.	Lagos State University Ojo, Lagos	2006
58.	Nasarawa State University, Keffi	2002
59.	Niger Delta University, Yenagoa	2000
60.	North-West University Kano (NUK)	2012
61.	Olabisi Onabanjo Universit y, Ago-Iwoye	1982
62.	Osun State University, Osogbo	2000
63.	Ondo State University of Science and Technology, Okitipupa	2010
64.	Plateau State University (PLASU), Bokkos	2005

65.	Rivers State University of Science & Technology, Port-Harcourt	1979
66.	Sokoto State University, Sokoto	2009
67.	Sule Lamido University, Kano	2013
68.	Tai Solarin University of Education, Ijebu- Ode	2005
69.	Taraba State University, Jalingo	2008
70.	Umaru Musa Yar'Adua University, Kastina	2006

APPENDIX II

ASUU ZONES IN NIGERIA

YOLA ZONE

Adamawa State University (ADSU) Mubi, Federal University Gashua (FUGA), Modibbo Adama University of Technology (MAUTECH) Yola, Taraba State University (TSU) Jalingo, University of Maiduguri (UNIMAID), and Yobe State University (YSU) Damaturu.[2059]

IBADAN ZONE

University of Ibadan (UNIBADAN), University of Ilorin (UNILORIN), Ladoke Akintola University of Technology (LAUTECH), Osun State University (UNIOSUN) and Kwara State University (KWASU).[2060]

OWERRI ZONE

Nnamdi Azikwe University (UNIZIK), Chukwuemeka Odumegwu Ojukwu Univeristy (COOU), Micheal Okpara University of Agriculture, Umudike (MOUAU), Imo State University (IMSU), Owerri and Federal University of Technology, Owerri (FUTO).[2061]

BENIN ZONE

University of Benin, Benin City, Adekunle Ajasin University, Akungba Akoko, Ambrose Alli University, Ekpoma, Delta State University, Abraka, Olusegun Agagu University of Science and Technology, Okitipupa(OAUSTECH); Federal University of Petroleum Resources, Effurun (FUPRE).[2062]

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LAGOS ZONE

Lagos State University (LASU), Tai Solarin University of Education (TASUED), University of Lagos (UNILAG), Olabisi Onabanjo University(OOU) and Federal University of Agriculture, Abeokuta (FUNAAB).[2063]

ABUJA ZONE

University of Abuja, Federal University Lafia, Nasarawa State University, Federal University of Technology, Minna, Keffi, and Ibrahim Badamasi Babangida University, Lapai,.[2064]

BAUCHI ZONE

Bauchi State University Gadau (BASUG), Federal University Kashere (FUK), Plateau State University, Bokkos, Gombe State University, University of Jos (UNIJOS) and Abubakar Tafawa Balewa University (ATBU), Bauchi.[2065]

KANO ZONE

Bayero University Kano, Ahmadu Bello University, Zaria, Kano University of Science and Technology Wudil, Kaduna State University, Sule Lamido University Kafin-Hausa, Kano, Maitama Sule University and Federal University Dutsinma, Kastina State.[2066]

NSUKKA ZONE

Benue State University (BSU), University of Nigeria Nsukka (UNN), Enugu State University, Federal University of Agriculture, Markurdi, Federal University Lokoja, Federal University Wukari and Kogi State University, Anyigba.[2067]

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SOKOTO ZONE

Kebbi State University of Science and Technology, Aliero (KSUSTA), Sokoto State University, Sokoto (SSU), Umaru Musa Y'ardua University Kastina (UMYU), Federal University Dutsinma (FUDMA).[2068]

AKURE ZONE

Obafemi Awolowo University, Ile-Ife (OAU); Federal University of Technology, Akure (FUTA); Federal University Oye Ekiti (FUOYE) and Ekiti State University (EKSU).[2069]

CALABAR ZONE

Alex Ekwueme Federal University, Ndufu-Alike, Cross River State University of Technology, Calabar, Ebonyi State University, University of Calabar, University of Uyo, Akwa Ibom, Abia State University, Akwa-Ibom State University, Ikot Akpaden.[2070]

PORT HARCOURT ZONE

University of Port Harcourt (UNIPORT); Niger Delta University (NDU); Federal University, Otuoke (FUO); University of Africa, Toru-Orua; Rivers State University (RSU); Ignatius Ajuru University of Education (IAUE)[2071]

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