

Aye, Baba

**Working Paper**

## NUPENGASSAN and the struggle against precarious work in the Nigerian oil and gas industry

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**GLU**

# “NUPENGASSAN”: Combatting precarious work in the Nigerian oil industry

Baba Aye

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# “NUPENGASSAN” AND THE STRUGGLE AGAINST PRECARIOUS WORK IN THE NIGERIAN OIL AND GAS INDUSTRY

**Baba Aye**

This case study is part of the Global Labour University research project on the role of trade unions in curbing precarious informal employment. The project was implemented in 2014 and included 10 case studies from nine countries. The project's integrative report "From 'precarious informal employment' to 'protected employment': The 'positive transitioning effect' of trade unions", which is co-authored by Melisa R. Serrano and Edlira Xhafa, can be found at: [http://www.global-labour-university.org/fileadmin/GLU\\_Working\\_Papers/GLU\\_WP\\_No.42.pdf](http://www.global-labour-university.org/fileadmin/GLU_Working_Papers/GLU_WP_No.42.pdf)

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## ABSTRACT

The literature on informality is largely focused on the “informal sector” as a marginal or peripheral sphere of national economic life, beyond the pale of the leading formal industrial sectors, particularly in developing countries. This paper interrogates informalisation of labour and employment relations *within the formal sector* as its point of departure. The contemporary prevalence of precarious work which this foster is identified as a key element of the neoliberal agenda for keeping wages low and for maintaining social control. A mix of strategies rooted in unions’ organising power and which attains some level of institutionalisation of social dialogue, such as the expansion of collective bargaining structures and mechanisms to represent “casual workers” is seen as fundamental for a transition to the formalisation of their status, and the curtailing of employers’ unilateralist power in the world of work. The experiences of oil and gas workers’ unions (collectively known as NUPENGASSAN) in Nigeria is utilised to illustrate this argument. The paper situates NUPENGASSAN’s organising and representation of contract staffers within the context of how labour and employment relations are informalised from above in the sector. The creative multi-faceted organising strategies the unions utilised for building workers’ power and pushing through social dialogue in upstream, midstream and downstream work situations are examined. The *Guidelines on Labour Administration* issued by the Federal Government in 2011 is a milestone marking the success of this approach. The paper however also notes the at times surreptitious and at times more brazen means of perpetuating precarity and undermining bi-partite social dialogue utilised by employers, including the use of landmines in labour law. NUPENGASSAN’s consolidation of creative organising of union structure, mass mobilisation of members, and aggressive advocacy could help shape public opinion against such hollowing out of the spirit of the *Guidelines* by government and private sector employers. The unions will also benefit from greater collaboration with the radical civil society movement, and civic organisations in the communities their members work in. Despite the daunting challenges that still lie ahead, other unions can learn from the NUPENGASSAN struggle, as they combat the anti-worker regimen of labour flexibilization.

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## INTRODUCTION

Hart’s (1973) groundbreaking conceptualisation of the dynamics of the informal sector emerged from field studies of work relations in Ghana. To a great extent, this reflects some peculiarities of work in more economically heterogeneous capitalist societies, particularly those of Africa, borne out of the mode of articulation of these countries into the world economy, even during the post-World War II social compromise when near full employment (in the formal sector) was the norm in the advanced capitalist world.

The subordinate articulation of developing countries into the world economy in the period of late capitalism created formal sites of *direct* exploitation of labour and natural resources by capital, resulting in the existence of a formal sector, which Baran and Sutcliffe (1957) describe as an “enclave economy” being “grafted capitalism”, within such national economies. Along with these direct sites located mainly in the urban areas, the informal economy emerged as “a residual sector, which has come to have a high degree of permanence in many African countries” (Kanyeze et al, 2006, p. 30).

It is however very important to note that, beyond this “natural” dimension of under-industrialised countries like Nigeria, extending back to the period of colonialism that ended barely 50 years ago, neoliberal structural adjustment has led to a qualitatively different form of informalisation of work and labour relations. This phenomenon, borne out of the labour market deregulation and flexibilisation regime, has led to a situation where, according to the ILO (2009), two-thirds of all workers globally are employed in the informal economy. It is “informalisation from above,” involving labour externalisation whereby employment relations are restructured so that they are covered more as commercial contracts involving third parties rather than traditional employment contracts that are strictly between employer and employee (Theron, 2010, p. 91).

Critical examinations of the informal economy in Nigeria have been more focused on the broad spectrum of informal work relations and labour processes outside the formal sector, in the sphere Theron (2010) describes as “informalisation from below.” The expansion of non-standard work arrangements in the formal sector has led to concerns—in theory by academics and in practice by the trade unions—about how to better understand and tame the spread of this development, often described as *casualization*.

The aim of this working paper is to further such investigation within the oil and gas industry, which has been the major driver of the country’s economic growth since 1958 when petroleum was discovered in commercial quantities, and especially since the mid-1970s global energy crisis. “The oil industry, which produces over 2.5 million barrels of oil a day, is the backbone of the Nigerian economy” (Fajana, 2005). While it is largely a capital-intensive industry, it has been a source of direct and indirect employment, supplying tens of thousands of jobs. Direct employment in the sector used to be largely permanent and



standard. Over the past quarter of a century though, there has been a rise in the proportion of temporary and non-standard jobs within the international oil companies, which dominate the industry, and the few domestic companies operating there as well.

Two trade unions organise within the sector. These are the National Union of Petroleum and Natural Gas Workers (NUPENG), and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). While the more militant NUPENG organises the junior workers in the sector, PENGASSAN organises senior staffers.<sup>1</sup> The two unions occasionally organise joint National Executive Council meetings in the semi-formal “NUPENGASSAN” movement, which equally serves as a platform for joint agitation. They also often jointly make deputations on industrial relations issues to the Federal Government, mainly through the Federal Ministry of Labour and Productivity (FMLP).

The paper is organised into five broad sections. The first section puts in perspective the nature, size and dynamics of the informal economy in Nigeria. It also interrogates the country’s labour laws, with specific concerns for how they could curb the spread of informalisation of work and the attendant precariousness which impinge on decent work. In the second section, the chapter looks more closely at the features, characteristics and trends of casualisation of work in the oil and gas sector. The third section dwells on the modes of organising and representing casual workers in the sector in general as the context within which administrative guidelines for these were won. It then interrogates this central success story. In the fourth section, it examines the mix of strategies and measures with which NUPENG and PENGASSAN have been able to curb the worst elements of ravaging casualization, as a follow-up to the earlier section. The fifth section draws lessons from the insights from the preceding sections, leading to conclusions.

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<sup>1</sup> Senior staffers whose work places them within the sphere of top management, even though, technically speaking, they might not be. An example would be a Senior Admin Officer.

## 1. AN OVERVIEW OF THE MAGNITUDE AND TREND OF INFORMALISATION OF WORK IN NIGERIA

According to Ogbuabor and Maloulu (2013, p. 85), "one of the major constraints to development policymaking and economic management in Nigeria is the paucity of credible statistics and systemic evidence on the informal sector." But despite this shortcoming, verifiable evidence indicates that "in recent decades, there has been a dramatic increase in nonstandard jobs due to such factors as: massive unemployment, globalization, the shift from the manufacturing sector to the service sector, and the spread of information technology" (Okafor, 2012, p. 7614).

This phenomenal rise in the informalisation of work can be traced back to the mid-1980s when the Structural Adjustment Programme was introduced by the General Ibrahim Babangida-led military junta at the behest of the International Monetary Fund. The SAP resulted in the largest scale ever of retrenchments in the formal sector. A lot of those who lost their jobs resorted to various survival strategies within the informal economy, such as petty trade and the delivery of diverse forms of services (Oshinowo, 2007). It is instructive that the perception of informal economy in the literature limits this to the informal sector, and does not capture informality within the organized private/formal sector of the economy, covering casualization and contract staffing.

Nigeria has the largest number of workers in the informal economy on the African continent (Awojobi et al, 2014, p. 304). This is hardly surprising as the country's estimated population of over 180 million represents a quarter of the population of the entire continent. It is however significant that the contribution of the informal sector to the GDP was over 70 percent in the years preceding the oil boom of the mid-1970s. Ever since then, it has remained over 50 percent. Ogbuabor and Maloulu carried out a study of the growth in size and possible causes of expansion of the informal sector, utilizing an error correction multiple indicators multiple causes (EMIMIC) model and with data generated from the Central Bank Statistical Bulletin, which shows the trend in the development of this sector from 1970 to 2010, as presented below.

**Table 1: EMIMIC Model Estimates of the Size of the Nigerian Informal Economy**

Year	*GDP (N, Million)	** EMIMIC Informal Sector (N, Million)	**Informal Sector as % of GDP
1970	5,281.0	4,075.35	77.70
1971	6,650.90	4,972.17	74.76
1972	7,187.50	5,308.03	73.85
1973	8,630.50	6,434.20	74.55
1974	18,823.10	11,959.99	63.54
1975	21,475.24	13,732.87	63.95
1976	26,655.78	16,228.50	60.88
1977	31,520.34	17,312.98	54.93
1978	34,540.10	19,143.86	55.43
1979	41,974.70	29,351.12	69.93
1980	49,632.32	33,607.34	67.71
1981	47,619.66	25,909.77	54.41
1982	49,069.28	30,781.63	62.73
1983	53,107.38	29,190.66	54.97
1984	59,622.53	33,049.14	55.43

Table 1 (Continued): EMIMIC Model Estimates of the Size of the Nigerian Informal Economy

Year	*GDP (N, Million)	** EMIMIC Informal Sector (N, Million)	**Informal Sector as % of GDP
1985	67,908.55	46,442.40	68.39
1986	69,146.99	46,732.79	67.58
1987	105,222.84	69,526.24	66.08
1988	139,085.30	92,070.19	66.20
1989	216,797.54	137,660.83	63.50
1990	267,549.99	168,877.67	63.12
1991	532,613.83	183,919.50	58.92
1992	532,613.83	352,738.95	66.23
1993	683,869.79	461,909.15	67.54
1994	899,863.22	899,863.22	69.80
1995	1,933,211.55	1,143,301.18	59.14
1996	2,702,719.13	1,503,851.71	55.64
1997	2,801,972.58	1,502,366.39	53.62
1998	2,708,430.86	1,709,562.76	63.12
1999	3,194,014.97	2,262,169.23	70.83
2000	4,582,127.29	3,070,258.46	67.01
2001	4,725,086.00	2,994,845.78	63.38
2002	6,912,381.25	6,912,381.25	57.90
2003	8,487,031.57	6,144,530.90	72.40
2004	11,411,066.91	8,339,813.59	73.09
2005	14,572,239.12	8,152,872.75	55.95
2006	18,564,594.73	11,330,817.07	61.03
2007	20,657,317.67	12,836,653.50	62.14
2008	24,296,329.29	17,922,719.98	73.77
2009	24,794,238.66	16,359,892.25	65.98
2010	29,205,782.96	29,205,782.96	71.18

Source: Ogbuabor & Maloulu , 2013, p. 96-97.

\*CBN 2010 Statistical Bulletin; \*\* Computation by Oguabor and Maloulu, 2013.

In April 2014, the Federal Government of Nigeria rebased the country's GDP, which resulted in some 89 percent nominal increase of GDP size, making the country overtake South Africa (and Egypt) as the leading African economy and the 26<sup>th</sup> largest in the world. The revised GDP figure became N80.2 trillion (\$509.9bn), of which the informal economy contributed 57.9 percent, according to Daouda Toure of the United Nations (Nwachukwu, 2014).

Quite often, the informal economy is characterised rather broadly to include the rural (subsistence) economy, which could be better categorised as relics of a pre-capitalist communal economy rather than part of the (urban) informal economy. A noteworthy insight into the changing trends of the informal economy with the rebasing is that the contribution of agriculture to GDP growth has decreased in comparison to that of the tertiary sector delivering services. Agriculture, which had hitherto contributed 33 percent of the GDP, now stands at 22 percent while services, which used to be 26 percent, now stands at 51 percent. A significant proportion of these services, which include real estate, public administration, communication, finance, banking, insurance and social services such as education and healthcare, are delivered as part of an all-pervasive informal economy (Usman, 2014).

Osadolor (2011) asserts that as of 2008, "90 percent of new jobs in the country were being accounted for by the informal sector." This encompassed 80 percent of all non-agricultural employment and 60 percent of all persons employed in the urban centres. This, however, only captures some salient elements of the extent of informalisation of work, particularly in the urban centres, as it does not capture the burgeoning number of workers in the formal sector covered by nonstandard work arrangements.

Philip, Samson and Ogwu (2013, pp. 33-34) attempt to capture the gamut of the informal economy activities, categorising these into the informal productive, service and financial sub-sectors, but this attempt equally loses sight of the oil and gas sector as a site of the informal economy, for example. Drawing from Ekpo and Umoh (n.d.), it limits the informal productive sub-sector activities involving "the production of tangible goods" to "agricultural production, mining and quarrying (*excluding petroleum*), small scale manufacturing, building and construction" (emphasis mine).

This gives an inkling of the general focus of attention on the informal economy as being "small, medium and micro scale enterprises" which prioritise "self-employment" and non-large-scale employment by emergent entrepreneurs. The Nigerian State, for example, has instituted a myriad of programmes in this direction, such as the Work For Yourself Programme (WFYP) in collaboration with the ILO (Eroke, 2010), and more recently, the Subsidy Reinvestment and Empowerment Programme (SURE-P) and You Win (for youths, drawing from the SURE-P funds) in the aftermath of the January 2012 anti-fuel price hike general strike.

While a significant number of the 54.8 million employed persons in the informal economy (National Bureau of Statistics, 2010) might actually be working in such small-scale enterprises, enthrone decent work in these, with the instrumentality of traditional trade union combination, might be much more difficult than would be the case regarding "casual" workers in the larger enterprises. This is partly because they include a broad spectrum of forms of employment, including those based on family ties and those who are self-employed. The Federation of Informal Workers Organisations of Nigeria, formed in June 2010,<sup>2</sup> has been dedicated to organising within this sphere of "informalisation from below."

Indeed, unlike Ghana, which has a similar political-legal framework for labour relations with Nigeria, the ill concern for casual workers is reflected in the fact that "there is currently no statutory protection for workers in non-standard work arrangements" or NSWAs (Danesi, 2011, p. 4). However, the Labour Act's general provisions could be utilised in struggle for social protection. Indeed, the practice of casualisation involves surreptitious breaking of the Labour Act. NUPENG and PENGASSAN have to some extent been successful in utilising the Act as part of their argument and organizing repertoire.

The Act is explicit in that a worker cannot be employed on a casual basis indefinitely. After six months, or two years in some specified cases (for professionals), she or he is expected to be employed once he/she is found suitable for the job. The employers enter into temporary contracts with workers. But rather than making their employment permanent after the expiration of their contracts or letting them off as should be the case if they are not found capable of the job, fresh temporary contracts are offered. The worker tends to accept this rather than walk into the valley of the shadow of unemployment.

Women, who comprise about 50.6 percent of informal workers, are much more adversely affected. Services such as telecommunications and particularly banking, which have witnessed significant increases in employment rates, prefer female workers particularly for marketing. They are often expected to meet targets by any means possible. And to make matters worse, there is an unwritten rule in most banking houses in the country that a female employee (particularly a casual staff) is expected not to get pregnant for at least the first two years of employment if she hopes to retain the job.

To maintain this anti-worker regime, the freedom of association of workers to organise as trade union members is grossly curtailed by employers in both the big formal sector and small and medium-scale industries, particularly for workers in nonstandard work arrangements. This is despite the expressly stated right of every person to form or belong to any trade union or any other association for the protection of his or her right, as enshrined in Section 40 of the Constitution of the Federal Republic of Nigeria. The banking sector, once again, is a major point of reference. While old banks (mainly those established before the 1976-78 restructuring of the trade unions by the Federal Military Government, supposedly

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<sup>2</sup> This author had the honour of presenting the Guest paper at the FIWON Founding Conference in June 2010

along industrial lines) have been tolerant of unions, the “new generation” banks that flowered in the wake of the Structural Adjustment Programme have been rabidly anti-union.

During the bank consolidation reforms of the mid-2000s, these new banks, most of which were established in the last quarter of the 20<sup>th</sup> century, have been ready to pay the equivalence of the membership subscription of workers that would otherwise have been organised by the two unions in the sector while shutting their gates to organising. Unfortunately, the unions have not been averse to this, regarding it as a lesser evil, i.e., at least they get the membership subscription even without members instead of miss out on both membership and the membership subscription. A similar situation exists in the hotel sector. The telecoms sector is another major services industry where precarious employment holds sway (James, James, & Oyetunde, 2013). For a decade, multinational telecoms operators resisted the efforts of unions to organise workers and curb the preponderance of contingent employment in the sector. Through the labour flexibilisation strategy of subcontracting, unions were kept away from the call centres of the major telecoms firms such as Airtel and MTN, where the percentage of the workforce on third-party contracts averaged 97.9 percent (Fapohunda, 2012, p. 267). It took intense mobilisation by the Nigerian Labour Congress, including locking management out of the premises of call centres, to win union rights in these firms.<sup>3</sup>

Developments in the oil and gas industry might, however, be the most significant for the trade union movement in terms of recorded successes in the struggle of workers’ organisations aimed at mitigating the vagaries of informalisation of work in the formal sector in Nigeria, with the intent of transiting from informality to formality.

## 2. INFORMALISATION OF EMPLOYMENT RELATIONS IN THE OIL AND GAS SECTOR

“Precise figures on employment in the oil sector in Nigeria do not exist” (Fajana, 2005, p. 4). But estimates from the two trade unions in the sector point at a steady growth of employment over the last decade. This was at about 10 percent on a yearly basis up until 2005, with 80 percent of those in regular employment being Nigerians (Fajana, 2005). Employment covered by these estimates encompass “workers in oil well and natural gas well operations, including prospecting, drilling, crude oil and natural gas pipelines, refining, distribution and marketing of natural gas, extraction oil and natural gas and petroleum products including petrol stations, petroleum tanker drivers, but excluding construction of oil and gas pipelines” in line with the Trade Union Act 1977 (and as amended in 2005) delineation of the jurisdiction of NUPENG’s membership. The membership of PENGASSAN is similar, but restricted to only senior staffers in the industry.

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<sup>3</sup> See: Eze, A. (2011, October 6). NLC Shuts down Airtel services. *This Day*. Retrieved from <http://www.thisdaylive.com/articles/nlc-shuts-down-airtel-services/99919/>

The industry is divided broadly into three sectors: upstream, mid-stream, and downstream. "The upstream sector focuses on mining, exploration, production and exportation, and is dominated by multinational companies" (Chidi et al, 2011, p. 5). This includes Chevron, Elf, AGIP, Texaco, Exxon-Mobil and, the biggest of these, Shell, which is responsible for almost half of the total oil output from Nigeria. They all operate as joint venture companies with the Nigerian state. The mid-stream is concerned with the refining of petroleum products for domestic purposes. It is largely underutilized, as the three refining companies in the country, with a combined production capacity of 445,000 litres per day, operate at less than 20 percent capacity utilization. The downstream sector involves the distribution, marketing and sales of petroleum products in the domestic market. The major employers of labour in this sector are indigenous business men and women. Some of the multinational corporations, particularly Total, Mobil and AGIP, do however provide franchise rights for downstream operations dealers. A sizeable number of local oil firms operating in the upstream sector as well in the downstream sector have also become heavily involved through franchises over the past two decades.

Employment relations from the 1970s to the early 1990s were mainly permanent in the upstream and midstream sectors, with multinational firms dominating the former. Each of the private firms in these sectors operated more or less as an "integrated enterprise." Mirroring this, the unions organized members into national branches (e.g. Total branch, Shell branch, Chevron branch), with specific worksites as units of these. Collective bargaining was company-wide, involving enterprise negotiations, but on a national basis (Okuogbo, 2013 p. 41). The Nigeria National Petroleum Corporation (NNPC) was established in 1977 by the Federal Military Government, and has 13 semi-autonomous subsidiaries.<sup>4</sup> The oil workers' unions conduct centralised national bargaining, which encompasses eleven of these subsidiaries operating in the upstream and midstream.

Thus, unlike in other industrial sectors of the economy where a National Joint Industrial Council (NJIC) exists for industry-wide negotiation, in the oil and gas sector, the subsisting NJIC is strictly for bargaining within the NNPC omnibus.

Trade union membership used to be automatic, in line with the Trade Union Act, before the onslaught of casualization, and consequently, union density was almost 100 percent. Union membership of the regular workforce has gradually declined to barely 60 percent, with women accounting for 20 percent of this (Fajana, 2005).<sup>5</sup> But NUPENG has also been able to organize about the same percentage of labour contract staffers into its folds despite all odds (Okuogbo, 2013, p. 53). Women in general make up barely 15 percent of the entire workers

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<sup>4</sup> These include Duke Oil, registered for international trade in the UK; the NNPC Retail, which handles downstream retail sales; and the NNPC Pensions Limited, the pension funds administrator for the pension funds of workers in the conglomerate.

<sup>5</sup> The Trade Union (Amendment) Act 2005 made membership in trade unions voluntary. Employers could thus surreptitiously encourage workers to choose not to belong to unions, utilizing all forms of blackmail they could think of.



employed in the sector due to its nature, and they are mainly to be found in ancillary departments such as medical, legal, administrative, and public relations.

The expansion of casualisation of work in various forms within the upstream sector started in the late 1990s/early 2000s as part of a broader agenda of the deregulation and flexibilisation of labour relations in general. For example, the Consolidated Monthly Salary was introduced, as well as monetization of some non-cash benefits that workers used to enjoy, like free meals at the workplace and transportation.

In their “pursuit to maximize and control labour surplus,” employers “are devising a variety of work control strategies,” one of which is the “dual labour market” (Mordi & Mmieh, 2009, p. 440). This particular strategy furthers informalisation of labour relations, hinged on a clear demarcation being set between the “core” primary labour market segment and a “periphery” of workers in a secondary labour market. This segmentation and the categorization of some jobs as being peripheral started with junior support staffers such as gardeners, cooks and drivers. Permanent staffers offering these services were retrenched, often with severance allowances that seemed mouthwatering. The oil companies’ excuse was that they needed to focus on their core business of oil prospecting (Olawale, 2015).

Subsequently, senior staffers also offering services considered as not being “core” to the industry were also gradually eased out. These included medical personnel in the several healthcare facilities hitherto owned/run by some of the companies (medical allowances were then included in the consolidated monthly salaries), public relations officers, and personnel in the finance departments. Eventually, informalisation came to also involve workers offering core services, such as seismic, drilling and rig operations. By the mid-2000s “similar occupational categories that can be found within the core...are found within the periphery” (Mordi & Mmieh, 2009, p. 441). These include geologists and engineers.

In unfurling this turn toward informalisation, the oil companies started by directly employing non-core staffers such as healthcare personnel, caterers and security officers on fixed-term contracts. Later, there was a move towards subcontracting this labour component. NUPENG and PENGASSAN’s renewed efforts at organizing subcontract workers that employment agencies recruited led to an emphasis on the subcontracting of services. With labour contracting, what the oil firms subcontracted was human resource management. There was to a great extent a continuity in terms of the personnel recruited by or through the contractors. But with service contracting, the oil firms demanded that particular services be provided, and it then did not matter, technically speaking, if a different person rendered such every other day. The contractors were simply required to provide the services.

Whilst the labour component subcontracting was the norm, there were specific workers employed by the labour contractors that worked on the basis of fixed-term contracts after being interviewed by the multinational oil firms’ human

resource department and then recommended to the contractors. But now, the oil companies make it clear that what they need are the services that the labour required from the employment agencies render, and not necessarily defined personnel. The labour brokers build on this with ancillary staffers by rotating personnel. While in reality it is near impossible for skilled personnel to be continually rotated on the basis strictly of services provision, considering the expertise and experience needed for delivering the services they render, the brokers find a way around this, with the leverage of fixed-term contracts that do not exceed two years.

In terms of working hours, there is essentially little to no difference between permanent staff and contract workers in the upstream and midstream sectors of the industry. Similarly, for occupational health and safety issues in general, they are largely covered by the same regime. However, when it comes to wages, the take-home pay of casual workers is barely half of that for workers with regular employment ties. Of course, it must be noted that such truncated wages are still much higher than the average wages in most sectors of the Nigerian economy, and many workers would still strive to have this “privilege” rather than be unemployed. Job security, however, is virtually non-existent for casual workers. Their terms of employment (with the agencies) are such that these could be terminated with ease and with little or no severance benefits. Several efforts by the unions to ensure the unionization of these workers have been frustrated by the oil companies, but some successes have been recorded.

### 3. ORGANISATION AND REPRESENTATION OF CASUAL WORKERS: THE WATERSHED OF THE *GUIDELINES*

NUPENG and PENGASSAN have been able to find creative means to organize and represent casual workers in both the upstream and downstream sectors of the oil and gas industry. The two unions’ efforts at broadening the scopes of their organizing and representation functions have roots in the late 1990s demilitarization of the Nigerian polity. In the course of a decade of relentless struggle, they consolidated on multidimensional means of doing these, resulting in the 2011 issuance of the *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector* by the Federal Ministry of Labour and Productivity, following a tripartite process-driven series of negotiations.

In this section of the paper, we put in perspective the events leading to the unions’ initiative; the types of union organisation and structures that they have evolved into; strategies used for driving these; processes and structures used for representation and decision-making towards protection of peripheral workers; factors that have facilitated or inhibited the initiatives; and subsisting outcomes.

The two oil and gas workers' unions, particularly NUPENG, have a long history of militancy stretching from 1977, when they were formed as part of the trade union re-structuring process initiated by the then military government. When the first steps towards casualisation were taken by Shell Nigeria Petroleum Development Company (SPND) in the late 1980s, NUPENG responded with demonstrations against the company. It then issued an ultimatum to the federal government to address the emerging draconian trend.

Subsequent to this, it embarked on a symbolic one-day strike. "This led to a tripartite meeting of the Federal Government, represented by the Federal Ministry of Employment, Labour and Productivity; employers' representatives in the Oil and Gas Industry; and NUPENG officers. A communiqué was signed on 28<sup>th</sup> January 1992 on how to resolve the problem" (NUPENG, n.d.). A resolution within the communiqué empowered NUPENG "to unionise contract workers in the Oil and Gas Industry" (ibid). But the union's attempts to implement this resolution were cut short barely two years later, when the two unions were banned by the General Sani Abacha-led military junta.

The military administration organized a presidential election on June 12, 1993, seen as the final act of a tortuous four-year political transition programme. But the result of the election was annulled, and its winner, Chief MKO Abiola, jailed. NUPENG, whose General Secretary was the National Financial Secretary of Chief Abiola's Social Democratic Party, and PENGASSAN demanded the chief's release and inauguration as president. The two unions commenced an indefinite sectoral strike action in July 1994 in furtherance of this demand. The strike lasted 82 days before it was quelled. Both unions were proscribed and their leaders jailed. This was a boon for the multinational oil companies.

By the time the proscription orders were lifted in 1998 as part of the demilitarization process that led to the reinstatement of the Republic in 1999, casualisation had been institutionalized, with dire consequences for union density in the sector. These got the unions thinking and inspired much more decisive steps being taken in line with the 1992 communiqué's resolution, which recognized their right to organise contract staffers, as well as their earlier successes a decade before the proscription in organizing petrol tanker drivers.

The unions took on the challenge of organizing contingent workers in both the downstream and upstream sectors of the industry. NUPENG in particular was more involved in organizing in the downstream sector. The target groups were mainly employees of the independent marketers who loaded at the depots, and petrol station attendants and related staff. The latter comprises atomized sections of casual workers in the thousands of petrol stations across the country. They are few in numbers in each specific workplace and earn abysmally low wages, working in some instances for upwards of 12 hours a day. There was also the added complication that ownership of petrol stations is very much fragmented. The associations along this line of fragmentation are the Petrol Dealers

Association of Nigeria (PEDAN) and the Independent Petrol Marketers Association of Nigeria (IPMAN).<sup>6</sup>

Members of PEDAN acquire franchises for downstream operations from the major oil dealers operating in that sector, such as Mobil, Total and AGIP. The independent petrol marketers are local businesses that sell petroleum products under their own names. NUPENG's strategy was first to win a niche of representation with PEDAN, leveraging on negotiations with the international oil companies to effect this. Subsequently, with persistence in invoking the constitutional rights of workers to belong to trade unions and the union's legislated trade union rights to organise workers, it succeeded in also getting IPMAN to grudgingly recognize the union. The Petrol Station Workers' branch of NUPENG was established, and units of this constituted along the lines of these two associated bodies of employers, with the IPMAN branch eventually becoming even more vibrant than the PEDAN branch.

In the upstream sector, NUPENG and PENGASSAN initially attempted to get contract staffers organised within the same branches as "core workers." This was roundly resisted by the oil companies. The main argument of these primary employers was that workers in the secondary segment of the industry's labour market were not employed by the oil firms but by labour contractors. The unions thus established contract workers' branches. These exist side by side with the regular branches where workers in the primary segment are organised.

Regular workers in an oil firm are organized into a branch, with different locations as units of this. But it becomes problematic for workers directly employed by the contractors to be members of such branches, for reasons of collective bargaining. The contract workers' branches basically mirror the regular workers' branches, having equal status within the decision-making structures of the union.

The unions, however, faced continued non-recognition by the labour contractors and consequent refusal by these secondary employers to engage in collective bargaining on behalf of the contract staffers (Olawale, 2015). Attempts to repress unionisation involved the sacking of contract workers who signed up for union membership. Some of the labour contractors also established alliances with oil communities' liaison officers, using juicy carrots in the form of contracts to incorporate them to serve as bulwarks against the organising of indigenous workers within the communities (Olawale, 2015).

The unions responded with a naming and shaming tactic by identifying the more draconian labour contractors, such as Olgette Project Ltd. at the beginning of 2011. Earlier in 2010, the union also spoke out against Septa Nigeria Ltd.'s directive to the five labour contractors that provided it with contingent workers to disallow union organising efforts, as well as its manipulation of community leaders against the union (Olawale, 2015).

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<sup>6</sup> Olawale Afolabi, interview 07/06/15.

NUPENG, in particular, took the initiative in showing the linkages between casualisation and youth unemployment in the Niger delta communities, turning the tide against the incorporation of communities' elders. For example, as documented by a former General Secretary of NUPENG (Okuogbo, 2013, p. 287) in a communiqué issued at the end of a national workshop organized by the union on August 27-29, 2013 on "security of oil and gas workers in the Niger delta: challenges for stakeholders," it resolved thus:

That the under-employment that is breeding disaffection, frustration and desperation among the youths of the region can be traced to the unwholesome unemployment practices of Oil and Gas companies in the Region through adoption of Casual, Contract and Outsourcing. It was therefore resolved that there should be immediate conversion of all Casual and Contract workers of Niger Delta origin into regular and pensionable employment, no matter their designation.

Primary employers were solidly behind the denial of trade union rights for casual workers. Behind them stood the state with its coercive apparatus, but the unions remained undaunted in struggle for union recognition. A celebrated case was that of the Nigeria Liquefied Natural Gas Ltd., where NUPENG and PENGASSAN held a demonstration on November 18, 2007 against casualisation and environmental degradation after the company retracted its earlier commitment to sign a recognition agreement with the unions (Solidarity Center, 2010, p. 8).

The management called in the Joint Task Force (JTF) of military and police personnel, which dispersed the demonstration with teargas and batons. But the unions fought back with a bigger demonstration and the threat of a national strike. The company, which Shell Gas BV holds 26-percent equity shares of, caved in, eventually signing a recognition agreement and paying compensation for workers injured by the JTF.

The two unions also remained undaunted in pursuing the entrenchment of collective bargaining for casual workers, as an integral element of union recognition, resting on the provisions of; no less than five communiqués reached with the oil companies and witnessed by the Federal Ministry of Labour and Productivity between 1999 and 2005, the Trade Union and Labour Acts, as well as the express right enshrined in the 1999 Constitution of the Federal Republic of Nigeria that every worker has the right to belong to a union. Demonstrations, deputations, strikes, and threats of strikes were part of the range of struggle.

By the end of the first decade of the century, the labour contractors, prompted by the oil companies who felt the pangs of labour hours lost due to rising militancy against casualisation, agreed to the establishment of "Labour Contractors Forums," which negotiated with the two unions the terms and conditions of employment of contract staffers employed in the secondary labour market and organised by NUPENG and PENGASSAN.

Just as with the collective bargaining process with the primary employers, negotiations were enterprise-based and focused on wages; working time; overtime rates; paid leave; and occupational safety and health. The myriad of labour contractors servicing each particular oil company were constituted into one singular forum to negotiate these, thus standardising and improving the terms and conditions of the contingent staffers they employed to serve the oil firms.

However, as with each success made by the unions in de-casualising labour, the bosses re-strategised. There was a turn to greater emphasis on externalisation and flexibilisation of labour through services contracts, as mentioned earlier. It is much more difficult organising contingent staffers organized on service contracts. The situation is worsened by the playing off of unions from other sectors, which the services delivered could be described as being representative of, against the more militant oil workers' unions even against the wish of the services contract employee.

While "voluntarism" in deciding which union a worker belongs to was introduced with the Trade Union (Amendment) Act of the 2005, its administrative interpretation still upholds *jurisdictional scope* that limits union membership of a worker to the industry she or he is deemed to work in. The argument of employers, upheld by the Federal Ministry of Labour and Productivity, has been that the services rendered by the worker is primary to determining which industry he or she could be considered as belonging to. For example, as such an argument goes, a worker delivering transport services even within the oil sector could be deemed as working in the transport sector and should thus be organized by the road transport workers' union and not NUPENG or PENGASSAN.

Solidarity Center (2010, p. 16) documents the case of 122 contract staffers of Polmaz, who expressed their intention to join NUPENG as members in 2006. The labour contractor firm and Chevron, which it services, initially rejected all entreaties by the workers for their right to join a union to be respected. It took a one week strike by NUPENG for management to concede that right, but then it insisted that the union they could join was the Maritime Workers' Union of Nigeria (MWUN), based supposedly on the terms of their services contracts. This is arguably because lower wages could be negotiated for the workers if they were organised by MWUN than what the management would win in negotiations with NUPENG.

The matter dragged on for two years, during which the workers' membership subscriptions were checked off to MWUN, until NUPENG shut down the gates of a major operations centre of Chevron with over 100 tankers and members in solidarity from other branches. While MWUN and NUPENG reached a cordial resolution on representation within that specific work place, it does give an insight into how divisiveness is promoted within the services contract regime.

Several other unions, such as those of road transport workers (NURTW), food and beverages workers (NUFBTE) and civil engineering and construction workers (NUCECFWW), have also been played off against NUPENGASSAN, all in a bid to undercut the anti-casualisation campaign when a company cannot get away with outright non-recognition of unions or—which amounts more or less to the same thing—when that is very costly for its operations.

It was within this context that NUPENGASSAN forced the Federal Government and oil companies into negotiations on casualisation and other issues of concern to the unions, such as the terrible roads petrol tanker drivers plied, which had become death traps, in August 2010, with a three-day “partial petrol blockade on the federal capital district Abuja” (ICEM, 2010). At the meeting “regarding casualisation and the ever-increasing use of temporary or non-regular workers, a tripartite Technical Working Group (TWG) on Casualisation and Contract Staffing in the Oil and Gas Sector” was created, comprising representatives of the union, oil corporations and the government. The key task of the TWG, as ICEM did as well inform, was to “produce a road map that will include analysis on why prior memorandums were not adhered to, and it must issue acceptable guarantees ensuring job security for casual workers” within no more than 90 days.

The *Guidelines on Labour Administration* issued in 2011 was what came out of the TWG’s work. It was meant to be gazetted and eventually presented as the conceptual draft of a bill to the National Assembly. This was, however, not done before the curtains fell for the 7<sup>th</sup> National Assembly in June 2015. Unfortunately, this means that the current National Assembly has to initiate the process of passing the guidelines into legislation afresh. The work done hitherto shall, however, make the passage a more straightforward journey than the 7<sup>th</sup> National Assembly could have had.

The history of militancy of the oil workers’ unions, in-depth cooperation by both unions, expansion of the democratic space in the country, international solidarity particularly through ICEM,<sup>7</sup> and probably above all, the centrality of oil to the Nigerian economy<sup>8</sup> were some critical factors that facilitated the journey to the issuance of the *Guidelines*. The material and ideological dominance of labour flexibilisation as a neoliberal strategy, increasing rates of unemployment and poverty, and a mind-boggling regime of corruption and utter disregard for agreements reached are some major constraining factors, limiting the extent of success in NUPENGASSAN’s battle against casualization.

It is also instructive that, despite the robust traditions of collaboration between NUPENG and PENGASSAN, the fact that they are different unions has been exploited in the age-old tactic of divide and rule. Similarly, the preference demonstrated by oil firms and service contractors for transport and maritime

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<sup>7</sup> ICEM was one of the three global union federations that merged in 2012 to form IndustriALL Global Union.

<sup>8</sup> Chief Emeka Wogu was reported to have heaved a sigh of relief, saying: “The strike was capable of scuttling the economy because NUPENG is too strategic,” after the resolution (ICEM, *ibid.*).



unions is aimed at constraining the struggle against casualization in the same spirit of divide and rule.

The *Guidelines on Labour Administration: Issues in Contract Staffing/Outsourcing in the Oil and Gas Sector*, as issued on May 25, 2011 by the Federal Ministry of Labour and Productivity, addressed "(s)ix (6) critical areas of concern", being:

1. Differences between permanent and fixed contract jobs;
2. Migration from contract to permanent employment;
3. Unionisation;
4. Collective bargaining;
5. Dispute resolution; and
6. Job security and capacity building for contract staff

Some of the cardinal points it highlighted in these areas of concern are: restriction of outsourcing to non-core jobs; first shot opportunities for permanent jobs vacancies to be reserved for contract staff; respect for "the sanctity of collectively bargained agreements" and mandatory collective bargaining between contractors and their employees; respect for "the pronouncements of statutory dispute resolution bodies;" annual submission of remuneration, training and development plans of contractors for their employees to the ministry towards ensuring these; and other activities of the secondary and third party employers conforming with national labour laws and ILO core standards.

It is not surprising that the item dwelt upon the most in the document is "unionisation." The inalienable right of "every worker to be unionized" was stressed, and it was further explicitly put that "all Contract Staff under Manpower/Labour Contract shall belong either to" NUPENG or PENGASSAN "as appropriate." And even the principal oil companies are enjoined to endeavour "to facilitate unionisation and collective bargaining by streamlining labour contractors especially where there are large numbers of such." But the contentious issue of organising casual workers under service contracts still exists.

The *Guidelines* stipulate that "for all Service Contracts, trade union membership shall be determined by the economic activities of the Contractor Company and in line with extant Labour Laws." This, however, is a case of begging the question, considering the thrust of the re-organisation of the trade union structure in the country supposedly along industrial lines in 1976-78 and subsequently.<sup>9</sup> Due to the better wages and working conditions that NUPENG and PENGASSAN are wont to negotiate for, employers prefer other unions organising casual workers. It also serves as a wedge for furthering division of and thus control over the workforce.

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<sup>9</sup> The merger of enterprise-based unions into 42 "industrial unions" by the military during the 1976-78 restructuring exercise has been consolidated in the Decree No 4 of 1996 and the Trade Union (Amendment) Act of 2005. Thus, in the health sector, for example, it is not unusual to have non-core health personnel as members of the Medical and Health Workers' Union of Nigeria. The example of Polmaz and Chevron above, however, shows how employers manipulate the labour laws by resting on the caveat for service contractors to actually (attempt to) *determine* the unions employees belong to.



The basis for separating service contractors from labour contractors is one that enhances such manipulation. "Where a contractor supplies only personnel, it shall be deemed to be a Labour Contractor," but "where the contractor supplies personnel with equipment, it shall be deemed to be a service contractor." Thus, merely equipping the same personnel with personal protective equipment, for example, transforms her/him into a casual worker employed on the basis of a service contract.

Despite the persistent challenges in rolling back precarity of casual workers, such as the contrived opacity of service contracts and continued impunity of employers, the issuance of the *Guidelines* has improved the institutional bargaining power of the unions, by serving as a critical point of reference, and is considered as a "major victory" (Olawale, 2015).

The issuance of the *Guidelines* has, however, not been a magic wand. Impunity by the employers in flouting its contents, surreptitiously or at times quite blatantly, has been an unfortunate norm. The Federal Government has also not helped matters. It has not been firm in upholding the tenets collectively reached and codified in the *Guidelines*. The unions have, however, not rested on their oars. They have continually challenged the spate of infringements on the provisions of the policy document. Ensuring the passage of the contents of the *Guidelines* as legislation would be of utmost importance for criminalizing such infringements and further strengthening the institutional bargaining power it latently vests in the NUPENG and PENGASSAN.

There is also the need for closer collaboration with sister unions to tear off the anti-union mask of service contracts within the industry. While the broader civil society movement has been vibrant in resisting the deregulation of the downstream sector of the industry and the consequent increases of fuel pump prices that this birth, there has been little or no interaction between the unions and the civil society movement, despite the unions' militancy. There is a need to bridge this gap towards deepening the organising bargaining power of NUPENG and PENGASSAN against precarity.

## 4. MIX OF STRATEGIES AND MEASURES FOR COMBATING PRECARIOUS EMPLOYMENT IN THE OIL AND GAS INDUSTRY

The oil and gas workers' unions have been relentless in combating precarious employment in the industry, as can be gleaned from the preceding section. NUPENG has faced greater obstacles from the employers in organising *all categories* of membership. While 75 to 80 percent of regular staffers eligible for membership of PENGASSAN belong to the union, just 5 to 10 percent of those that could belong to NUPENG are card-carrying members of the union (Chidi et al, 2011, p. 6). Partly as a consequence of this, NUPENG has had to be more creative and militant in its organising drive, which also has a longer history.

### 4.1 The role of collective bargaining

A key element of this repertoire of organising is the inventive approach to collective bargaining that allows for flexibility while covering specific segments of contingent workers as branches and units of branches. The first step in this direction, according to Okuogbo (2013, p. v), was the establishment of the Petrol Tanker Drivers (PTD) branch in 1983. This group of itinerant workers had always had pride of place as the nexus of petroleum products distribution, and with this the potential power for disrupting the running of the national economy. Ubeku (1983) reports that "in 1977, a single strike by tanker drivers...paralyzed the whole nation."

But despite this combinational strength, they earned wages that were arbitrarily set by the different employers, with huge disparities, until NUPENG helped their employers to constitute themselves into one representative body of owners, the National Association of Road Transport Owners (NARTO) in 1990, pointing out the advantages of collective bargaining with the branch over possible wild-cat strikes, which had become endemic. It subsequently evolved an association bargaining model for multi-employer negotiations with NARTO.

Shortly before the proscription of the union in the mid-1990s, the Independent Marketers branch was also formed. This comprised employees of marketers who purchase petroleum products from the depots after they are dropped off by the tanker drivers. These marketers are themselves organized as the Depot and Petroleum Products Marketers Association (DAPPMA). Subsequent to organising the IMB branch, the Petrol Station Workers (PSW) branch was equally formed by the end of the 1990s, after the thaw of militarization of the polity and industrial relations.

The establishment of collective bargaining between IPMAN and PEDAN with NUPENG's Petrol Station Workers' branch drew strength, inspiration and lessons from the earlier successes of organizing the PTD branch and IMB, particularly with regards to adapting the association bargaining model earlier developed with

NARTO for the PTD branch. But thus far, efforts at building the branch have not been as successful as NUPENG aspires for. This is largely because of the weakened associational power that petrol station workers wield as a result of their atomisation on one hand, and the relatively unskilled nature of the services rendered by most petrol station workers on the other.

Speaking to the delegates conference of the branch, Comrade Isaac Aberare, the NUPENG General Secretary, lamented the fact that there were thousands of petrol station workers that were “yet...(to be) fully unionised or integrated” into the branch (Ahiuma-Young, 2013). He further observed that “(t)he combination of Petroleum Tanker Drivers, PTD, and fully integrated PSW members will bring any government to its knees when we embark on a nation-wide strike.”

The PSW branch has, however, not been as successful as the PTD as earlier stated. This is particularly so with its IPMAN unit. This situation has been worsened by factionalisation of the employers as a result of a tussle for leadership since 2013, which has made it impossible to sign any CBA with the body. In a press statement issued in June 2014, Roland Abu, the PSW branch chairman, condemned the “pittance as salaries” paid to members by “IPMAN members-owned filling stations,” describing this as “modern-day slavery.” These ranged from N5,000 (\$28) to N8,000 (\$45) per month.

Expressing “disgust at the outright refusal of the past IPMAN leadership to negotiate conditions of service” with the union, the PSW threatened strike action (along with the main NUPENG body), demanding an end to the IPMAN crisis to pave the way for collective bargaining. The plans for a strike were shelved to allow for dialogue with the state and IPMAN representatives,<sup>10</sup> but naught came out of the dialogue.

The case with the PEDAN unit has been more favourable for PSW branch members. A new CBA was signed by NUPENG with PEDAN in September 2013.<sup>11</sup> But when signing this, Igwe Achese, the NUPENG National President, observed that the former agreement had been haphazardly implemented, and stressed that members concerned were “tired of being denied benefits provided in the Collective Bargaining Agreement,” and the union would not shy away from “confrontation” with the employers if “prompt positive action”<sup>12</sup> is not taken in line with the letters and spirit of the new CBA.

There have been positives steps taken after the CBA was signed.<sup>13</sup> Apart from better wages, which in some cases were treble the take-home pay of members in the IPMAN unit, the working environment is much safer and workers are provided with uniforms and personal protective equipment where necessary as defined in the CBA, according to activist members of both NUPENG and PENGASSAN. Members are also sent for training programmes to refresh their knowledge and

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<sup>10</sup> See: <http://www.informationng.com/2014/06/nupeng-suspends-nationwide-strike.html>

<sup>11</sup> See: <https://primeenergyreports.wordpress.com/2013/09/17/nupeng-urges-petroleum-dealers-to-uphold-agreements/>

<sup>12</sup> *ibid*

<sup>13</sup> Interview with Olawale A. 12/06/15.

re-tool them for the work. However, a significant number of members on lower pay scales in PEDAN units are still paid less than the N18,000 (\$90<sup>14</sup>) national minimum wage. A leeway exploited by employers to get away with this is that the 2011 National Minimum Wage Act applies only to establishments with no less than 50 employees. Most petrol stations employ much less than this number.

In the upstream sector, collective bargaining for casual workers is conducted by NUPENG and PENGASSAN with the Contractors Forum of each oil company. These Forums started as a mechanism for involving casual staffers employed by the labour contractors in “social dialogue,” according to Fajana (2005, p. 30-31). He also points out that joint consultation committees are equally used for a similar purpose regarding regular workers. But these mechanisms of social dialogue “cannot be considered a substitute for collective bargaining,” being strictly consultative.

The first success of NUPENG at broadening the Contractors’ Forum mandate to involve collective bargaining was on April 7, 2004, when the union signed an agreement to that effect with Shell Petroleum Development Company of Nigeria Ltd (SPDC) and SPDC labour contractors, in a process mediated by the Federal Ministry of Labour and Productivity (Fajana, 2005, p. 30). Collective bargaining with (labour) Contractors Forums is now the norm in the upstream sector of the industry.

However, there are furtive efforts to undermine this by some employers, at times working in collaboration, from both the primary and secondary segments of the industry’s labour market. For example, Olawale (2013) notes that Chevron’s termination of the contract with its six largest labour contractors was largely as a result of NUPENG’s insistence on the conversion of a significant number of casual employees into permanent status as a collective bargaining demand. He further avers that Chevron encouraged the new contractors that replaced these not to recognise NUPENG, and instead relate with its sister union, PENGASSAN, thus playing the divide and rule card.

With regards to service contractors as noted hitherto, the situation is much more complex and tenuous. It is not only that the division of union representation on the basis of “economic activities of the Contractor Company” as endorsed by the *Guidelines* runs against the grain of the industry-wide basis, which the Nigerian trade union movement is supposed to be organised on. In actuality, an anti-union mile has been taken with this hair-splitting inch. According to Olawale (2015), only Nigeria Agip Oil Co. (NAOC) Ltd. and Total Exploration & Production Nig. Ltd. have agreed to form service contractors’ forums for the negotiation of CBAs with the union for the service contract workers.

Even with these islands of breakthroughs into organising casual workers in service contract firms, all is not well. At the time of writing, the NAOC Service Contractors Forum has refused to renew the last two-year CBA it entered into in 2010, since 2012. Meanwhile, contract staffers employed by the firms are being

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<sup>14</sup> At current exchange rate.

sacked without being paid the requisite severance benefits (Olawale, 2015). NUPENG’s protests against this state of affairs have not been met with positive action by either NAOC or the Services Contract Firm.

In Shell Petroleum Development Company, where the first Labour Contractors Forum was established, management has frustrated the agreement reached with NUPENG on July 27, 2011 to ensure the establishment of a Services Contract Forum of the company (Olawale, 2015). Thus, casual workers who are increasingly being employed through services contractor firms face horrendous working conditions compared to those employed by the Labour Contractors. An example of this is that “workers terminated at the expiration of contract are only paid one month basic salary irrespective of numbers of years in service” (Olawale, 2015).

#### **4.2 Legislative, policy and judicial initiatives**

NUPENG and PENGASSAN have initiated several initiatives for the enactment of legislation and policies to combat casualisation, within the context of, as well as towards, expanding the explicit provisions of the labour law. The issuance of the May 23, 2011 *Guidelines* is quite clearly the most successful of these. It is, however, part of a broader gamut of initiatives, some of which have been successful, some of which have not. Legal steps have also been taken by the unions towards enforcing anti-casualisation in specific cases where extant legislation and policies have been clearly breached by employers.

The oil workers’ unions have endeavoured to influence the legislative process towards stemming casualisation in the industry, utilising advocacy and deputation. Letters and memorandums have been submitted to the National Assembly. They have consistently submitted these to both the Senate and the House of Representatives through these legislative chambers’ committees on labour and the oil and gas industry and at public hearings held by these committees. They have generated ideas and perspectives on specific issues of concern at workshops and seminars organised in collaboration with consultants,<sup>15</sup> and also participated in stakeholders’ forums, workshops and seminars organised in conjunction with or at the behest of either or both of the chambers of the National Assembly.

The approach of “NUPENGASSAN” to this process of legislative engagement is rooted in the unions’ traditions of broad struggle, which have linked economic “bread and butter” concerns with social issues relating to the industry and the Nigerian polity as a whole. Thus, not surprisingly, their pursuit of anti-casualisation legislation has been part and parcel of broader initiatives aimed at deepening social justice and equity in the oil and gas industry. This perspective was explicitly put by PENGASSAN in its position to the House of Representatives in 2001 thus: “...NUPENGASSAN is a working class movement whose primary role

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<sup>15</sup> An example of this was a series of workshops and seminars organised for the Total E & P branch of PENGASSAN by this author on behalf of J’Aiye Management Consultants at Port Harcourt and Abuja in 2010 and 2011.

is not only to press for industrial justice and equity in the Nigerian oil and gas industry but social justice and good governance generally in Nigeria”.<sup>16</sup>

The Petroleum Industry Bill (PIB), which has become the longest standing bill yet to be passed into law by the National Assembly, is the substratum of legislative advocacy by the unions in this regard<sup>17</sup>. That is because of the comprehensive nature of the bill, which is meant to serve as the grundnorm of sorts for operations in and governance of the oil and gas industry in the country. Its passage would definitely be a watershed as it is intended to bring about an overhaul of the industry.

The plethora of submissions “NUPENGASSAN” made collectively and singularly as both NUPENG and PENGASSAN to the two national legislative chambers regarding the PIB has included propositions on several issues. These include demands for the institutionalisation of regulatory mechanisms for the industry amidst the spate of deregulatory measures within the industry (such as the Petroleum Products Pricing Regulation board), insistence on the presence of unions’ representation in the governing boards of such structures, the expansion of the refining capacity utilisation and the building of downstream infrastructure. Labour issues have however been the most exhaustive of issues taken up by the unions in their propositions and demands.

Essentially, NUPENGASSAN has called for “mandatory recognition of the right to freedom of association and effective collective bargaining” in the industry; compliance with “all International Labour Conventions that have been ratified by Nigeria; the collective agreements with the labour unions and the extant labour laws as a minimum standard” in labour relations within the industry; transition of workers to the new companies that would be established once the bill is passed and comes to effect “on the same terms and conditions” that they presently enjoy; ensuring “proper arrangements are made...to ensure that the liabilities of the NNPC and other agencies to their staff such as pensions to retired and serving employees are adequately provided for, prior to the effective commencement date of the PIB”; ensuring that “companies in the oil and gas industry do not use the PIB as a ploy to disengage Nigerians”; and ensuring the “training and re-training of the downstream sector workers.”

NUPENG and PENGASSAN have expanded policy influence by challenging policy initiatives and practices of the state and oil companies that degrade work and further the informalisation of employment and labour relations. This takes the form of letters demanding reversals or mitigating measures, and when such are not forthcoming, the unions organise protest demonstrations or threaten/embark

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<sup>16</sup> See PENGASSAN (2001) “PENGASSAN position to presented at stakeholders’ forum organised by the House of Representatives committee on downstream sector at Transcorp Hilton Hotel, Abuja on Monday, November, 26 2011. Available online: [http://tandicebsolutions.com/index.php?option=com\\_content&view=article&id=185:pengassan-position-presented-at-downstream-stakeholders-forum&catid=48:dsc-nov-2012&Itemid=228](http://tandicebsolutions.com/index.php?option=com_content&view=article&id=185:pengassan-position-presented-at-downstream-stakeholders-forum&catid=48:dsc-nov-2012&Itemid=228)

<sup>17</sup> The bill was eventually passed by the Senate (the upper chamber of the country’s bicameral National Assembly) in May 2017 as the Petroleum Industry Governance Bill. But at the time of publication of this *Working Paper*, though, it is yet to be enacted as a law, since the House of Representatives (the lower chamber) is yet to equally pass it.

on strike action. When the state commenced its deregulation of the industry in 2002, by divesting its shares in the African Petroleum Plc for example, the unions went on strike in September, after several efforts at getting the Bureau for Public Enterprises responsible for the process to bring workers’ anti-casualisation concerns to the fore of deregulation. This led to the establishment of a Tripartite Oil and Gas Reform Committee “to formulate strategies in the oil industry” (Fajana, 2005, p. 8-9).

The contestation for policy influence has been tortuous, quite often involving episodic ad hoc tripartite “stakeholders’ meetings,” often summoned by the Federal Ministry of Labour and Productivity with the aim of arresting deepening conflict that could erupt with the restiveness of the unions. This reflects an arguable fact that the oil companies might not be averse to institutionalised standing committees on labour-management relations becoming moribund, if the unions are complacent. For example, as Okuogbo (2013, p. 56) observes, there is a “Standing Committee on industrial relations matters in the oil and gas industry” that is supposed to provide “policy guidelines and directions to cover the lacuna discovered in our labour laws.” But it has been largely ineffectual, with its meetings being few and far between.

The most important victory won by expanding the policy space in the industry is the *Guidelines*. And as pointed out hitherto, this evolved from an ad hoc process in the wake of the struggle by the unions against casualisation. Implementation of policies and legislation aimed at curbing casualisation has, however, continued to be a sore point that has provoked litigations. Both NUPENG and PENGASSAN have at different times dragged oil companies and their contractor forums to the Industrial Arbitration Panel (IAP) and the appellate National Industrial Court (NIC), with contradictory outcomes. Probably the most important of these were those by NUPENG against SPDC and its Labour Contractors Forum, ruled on by the IAP in 2011, and that by PENGASSAN against Mobil Producing Nigeria Unlimited (MPNU), ruled on by the NIC in 2012.

In the first case, NUPENG won at the IAP against the management’s union-busting activities. But Shell and its labour contractors refused to respect the IAP ruling as it should be duty-bound to whilst the ruling subsists, even as it proceeded to the NIC (Leader S et al, 2012, p. 113-114). In the second case, PENGASSAN lost at the IAP to the MPNU in 2010 in its attempt to hold the company responsible for the unfair sacking of the union’s MPNU contract staff branch leaders. In stating its case, PENGASSAN showed that these members had actually worked for MPNU directly for between five and 20 years before being moved over to Manpower Services Contractors (MPS) *after* being interviewed by MPNU for these, subsequent to their formal disengagement by MPNU as primary employer. The second major ground of the union’s case was that the staffers were sacked because of their union activities.

PENGASSAN appealed to the NIC, which in 2012 still ruled against the union in its judgment. It upheld that the facts were clear that the MPS and not MPNU was the employer of the workers, and thus the latter could not be held responsible for the



decisions deemed taken by the former. Regarding the second issue, it equally upheld the IAP’s ruling with the alibi that the contractor firm was not joined in the case *ab initio*.<sup>18</sup>

Legislation and policy advocacy by the unions have not specifically challenged or been directly influenced by such labour market institutions as the minimum wage or concerns regarding social protection as codified in the labour law. This is as a result of the favourable positioning of workers in the industry, including contingent workers, in relation to the broader situation of the working-class movement. “Large oil companies set wages higher than other sectors” and “even in outsourcing and contracting companies, pay rates are usually higher than those in manufacturing companies” (Fajana, 2005, p. 10).

For example, while the subsisting National Minimum Wage as passed in 2011 is a paltry N18,000 (\$49.93), with a graduate entering the civil service earning less than N50,000 (\$138.70) after taxes, the least paid graduate contract staff in the oil and gas industry earns thrice this amount and about double what a fresh university graduate employed in manufacturing would earn. Meanwhile, the remuneration of a permanent staff is, at the very least, double the take-home pay of a casual staff doing the same work. Thus, there is greater concentration on collective bargaining mechanisms for wage-fixing, which also includes regular increments that are juicier than those stipulated in legislation and policies that guide remuneration of workers in general, particularly in the public sector.

Social security for the working-class in Nigeria is very rudimentary, being basically hinged on a contributory pension scheme wherein both employers and employees pay 7.5 percent of the workers’ basic wages into Retirement Savings Accounts of the employees. The pension scheme is defined by the National Pension (Amendment) Act of 2004, and is mandatory for employers of 50 or more workers. The contractors as employers are bound by the law to pay their portion of the contributory pension along with the portion from each worker after being deducted from the employee’s salaries into their RSAs, just as the oil companies do. But a number of these, particularly the smaller ones, do not pay these amounts as and at when due. Furthermore, they also hold on to the employees’ deductions, and same goes for Personal Income Tax as well as membership subscriptions checked off by the employer, which are supposed to be paid into the coffers of the union immediately as stipulated in the Trade Union (Amendment) Act.

The National Health Insurance Scheme commenced in 2005 after several false starts, subsequent to when the idea was first mooted in parliament during the 1960-66 First Republic. But it presently covers just about 3.5million persons. Most of these are those in the employ of the federal and state governments. Employees in a number of industries are also enrolled on the scheme. As with the contributory pension scheme, 7.5 percent of the worker’s basic pay is deducted for the purpose of the scheme while the employee pays a like sum to a Health

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<sup>18</sup> See Suit No: NIC/LA/47/2010, available online: [http://judgment.nicn.gov.ng/pdf.php?case\\_id=368](http://judgment.nicn.gov.ng/pdf.php?case_id=368).



Management Organisation (HMO). The oil and gas industry is, however, one of those where the NHIS is not utilised. This is obviously because the package for healthcare of employees is better than that enjoyed by workers on the NHIS.

For those on permanent employment, “in the past, companies would reimburse employees’ medical bills,” but now a medical allowance “to cover medical expenses of employees and their families” is included in the Consolidated Monthly Salary package (Fajana, 2005, p. 12). The medical allowance is a sizeable quantum of take-home pay of casual workers as well, being about a fifth of this. Thus, a proposition by some contractors to enroll casual staffers on the NHIS was turned down.<sup>19</sup>

### 4.3 Building alliances, coalitions and campaigns

NUPENGASSAN has been able to establish synergies with other trade unions and segments of the broader civil society in waging its struggle against the casualisation of labour and employment relations in the oil and gas industry, both nationally and internationally, in diverse ways. Along with this, the unions have also been exceedingly successful in keeping the anti-casualisation struggle on the front burner of public discourse, using “print and electronic media to sensitize the general public on the challenges and negative effects of the wanton usage of contract labour and outsourcing of workers” (Olawale, 2015).

At the international level, NUPENG and PENGASSAN have leveraged on their membership of the global union federation (GUF) International Federation of Chemical, Energy, Mine and General Workers’ Unions (ICEM), and later IndustriALL, “to raise international condemnation of the lack of the adoption of international best practice, and flagrant violations of core international labour standards” (Olawale, 2015). This has been by presenting reports and submitting draft resolutions at conferences of the global union federation on the subject matter. Beyond the multilateral platform of the GUF, the unions have also established bilateral relations with sister-unions in the home countries of those multi-national companies that perpetuate casualisation. Examples of these include the United States steel workers’ union and that of the Mobil Producing International.

Apart from unions, “NUPENGASSAN” has had its case presented internationally by international NGOs and solidarity support organisations within the labour movement. The AFL-CIO’s Solidarity Center is a resounding example of this. Its 2010 pamphlet on “Oil and Casualization of Labour in the Niger Delta,” which was the third in its *Degradation of Work* series, has been a reference point on the precarious conditions of work and employment relations which NUPENG and PENGASSAN are combating.

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<sup>19</sup> Interview of Deji Kolawole, a former PENGASSAN National Publicity Secretary, 13/06/15.

At the national level, the Nigeria Labour Congress and Trade Union Congress, which NUPENG<sup>20</sup> and PENGASSAN respectively are affiliated to, have both stood by the two unions singly and collectively in condemning casualisation. But there has not been much synergy beyond condemnation. While the federations have been at the fore of mass mobilization against the deregulation of the downstream sector and consequent fuel pump price increments, they have not led the picketing of any oil firm perpetuating unfair labour practices as they have done in the banking and telecommunication sectors. This, though, might be as a result of the strength of the oil and gas workers’ unions themselves. The NLC anti-casualisation committee has over the years risen up more in defense of unions that have less mobilisational prowess.

“NUPENGASSAN” has, however, forged closer collaboration with unions operating in the sector by dint of the gerrymandering of unions’ jurisdictional scope, with the stratagem of services contract employment. Education and training has been a useful tool for doing this (Olawale, 2015). Joint training sessions have been organized with unions such as the Maritime Workers’ Union of Nigeria (MWUN), the National Union of Civil Engineering, Construction, the Furniture and Wood Workers (NUCECFWW), the National Union of Road Transport Workers (NURTW), and the National Union of Hotel and Personal Services Workers (NUHPSW). These have been helpful in healing the fractured relations between NUPENG and PENGASSAN on one hand and between both unions and these sister unions on the other hand. Working together through education and training sessions, the unions have collectively helped to raise rank-and-file members’ consciousness on issues that underline casualisation and “develop appropriate positions and strategies to adopt” in challenging both primary and secondary employers (Olawale, 2015).

NUPENG and PENGASSAN have also worked closely with other IndustriALL affiliates in the country<sup>21</sup> to raise the profile of October 7 as Decent Work Day, by demonstrating and picketing companies infamous for their ruthless use of casual labor. The IndustriALL affiliates have also utilized anti-casualisation days to draw attention to casualisation and the need to curb it. NUPENG and PENGASSAN have been very active in funding this, with their members joining demonstrations in their numbers.

A major gap in the virile alliance-building efforts of the unions against casualisation is that with indigenous civil society organizations.<sup>22</sup> While they have collaborated with civil society organizations arrayed around the Nigerian Extractive Industries Transparency Initiative to some extent in generating data on the state of the industry, civil society organizations have not been active as allies on the picket lines and other forms of protest organized by the unions, outside of those organized by the IndustriALL affiliates in Nigeria as a whole.

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<sup>20</sup> NUPENG broke away from NLC following the elections of the 2015 National Delegates Conference of the Congress. In December 2016, it was one of the unions that formed a new labour centre, United Labour Congress.

<sup>21</sup> These unions are mainly in manufacturing.

<sup>22</sup> Interview of Olawale, 12/06/15.

This is despite the fact that radical civil society organizations affiliated to the United Action for Democracy (UAD) and Joint Action Front (JAF) have been at the fore of mass protests organized by the trade unions under the aegis of the NLC and TUC.<sup>23</sup> This is definitely partly a result of the moribund state of the Labour Civil Society Coalition (LASCO) on the one hand, and the fact that these pro-working class organizations and their coalitions (UAD & JAF) have related more with the union federations, on the other hand.

But a counter-factual can be found in the involvement of JAF in those demonstrations organized by the National Union of Electricity Employees in Lagos when the Power Holding Company of Nigeria was being unbundled, with thousands of the union's members' contracts terminated. The oil workers' unions poor concern for cultivating relations with the CSOs could be a result of the perspective expressed by a former General Secretary of NUPENG, Elijah Okuogbo (2013, p. 145) that civil society efforts "have always been minimal compared to the role played by the labour movement" in "challenging government's policies that are anti-people."

While this is arguable, such perspectives lose sight of the fact that the radical civil society movement is actually part and parcel of the labour movement broadly put, beyond just the trade union movement. Incidentally, radical civil society is very active in those cities and towns where NUPENGASSAN has the bulk of membership. Considering the vibrancy of the radical civil society movement in Lagos and the oil-rich Port Harcourt City, which is a nerve centre of the NUPENGASSAN membership, the oil workers' unions stand to benefit immensely from building closer collaboration and alliances with the radical civil society movement.

NUPENGASSAN has, however, been ingenious in its use of the mass media for sensitizing Nigerians to the plight of casual workers. While the two unions carry out media campaigns under their singular names more often than as NUPENGASSAN, there is a Joint NUPENGASSAN Committee on Casualisation and Contract Employment, which helps to streamline strategy. Officials of both unions have been some of the most regular faces from the trade union movement on national television. And irrespective of what the item of discussion is, they do get to put in a word or two on the evils of casualisation.

They have also issued a plethora of press statements against the scourge. Perhaps the most innovative use of the mass media has, however, been the professional packaging of a "30-minute documentary on the unfair/inhumane practices of

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<sup>23</sup> United Action for Democracy was formed in 1997 as a pro-democracy coalition of radical civic organisations. It provided leadership in the decisive final phase of anti-military dictatorship struggle (1997-1999). In 2004, it spearheaded the formation of the Labour Civil Society Coalition (LASCO) with the NLC and TUC. It constituted the Joint Action Forum in 2015 as a clearing house for the civil society component of LASCO, to bring in some Leftist groups that had stayed away from the coalition or which left after the defeat of the military. Tensions emerged between UAD and JAF, which was its baby in 2011, when JAF became the Joint Action Front and adopted a constitution aimed at making it a national coalition as well (most of the other groups outside UAD in JAF are mainly Lagos-based). UAD thus subsequently disaffiliated from JAF. But both bodies have maintained fraternal relations in the turf of struggle. This author was elected National Convener of UAD in November 2013.

Shell Petroleum Development Company” by NUPENG, which was aired on primetime slots of the African International Television, the leading privately-owned broadcast station in the country, at the union’s expense.

## 5. LESSONS AND INSIGHTS

NUPENGASSAN has been able to curtail the vagaries of casualisation through aggressive organizing and an innovative thrust to negotiation, which evolved multiple forms of collective bargaining by establishing representational models that are appropriate precisely because they aptly mirror the dynamics of employer-employee characteristics in the industry.

The struggle of NUPENGASSAN does benefit from the strategic place of oil in the country’s economy and militant traditions of the two oil workers’ unions. But without the creative representational models they have developed, the successes recorded in organizing casual workers and improving their lot would have been near impossible.

As elaborated on hitherto, “there are three types of collective bargaining in the oil and gas industry” (Okuogbo, 2013, p. 40). These are the traditional industry-wide collective bargaining which is done only with the Nigeria National Petroleum Corporation; the enterprise-wide bargaining with the multinational oil companies in the upstream sector; and the multi-employer collective bargaining, done with NARTO, PEDAN and IPMAN in the downstream sector.

Of these, NUPENG initiated the third. And with the second, the oil workers’ unions collectively expanded enterprise-wide bargaining with the establishment of bargaining structures and mechanisms with Labour Contractors Forums within the different enterprises. It is quite noteworthy that towards initiating multi-employer bargaining, NUPENG actually helped in getting the concerned atomized employers organized into a body that could then serve as a party to collective bargaining with the union in the case of NUPENG PTD branch as recorded above. It has also broadened the horizons of multi-employers bargaining efforts beyond those with NARTO, PEDAN and IPMAN, in a pro-active manner, at the jetties. Before the Jetties and Petroleum Tank Farms Owners of Nigeria (JEPTFON) was formed in 2010, NUPENG established a JEPTFON branch (Okuogbo, 2013, p. 252).

Unfortunately, this has not made JEPTFON as welcoming as the other employers’ bodies that NUPENG has secured recognition from, even if grudgingly, and has been engaging in multi-employer bargaining with. Indeed, as Olawale (2015) observes: “All the depots and tank farm owners/employers are resisting unionization of their employees in the downstream sector of the industry. Attempts made so far have resulted in mass termination of workers’ contracts and sacking of union officials, some of which are cases still pending at the ministry.” But the successes from earlier multi-employer relations established, particularly with IPMAN, are being leveraged to address this teething problem. NUPENG has been calling for a “stakeholders meeting with depot owners” that would include

both IPMAN and JEPTFON (Olawale, 2015). There is an overlap in the membership of both, which could help bring this quest to fruition, opening the door for collective bargaining with JEPTFON.

Lessons from the successes of NUPENG (and PENGASSAN) in evolving and utilizing the multi-employer bargaining model would be invaluable for unions in the health and education sectors that have thus far not been very successful in organizing privately owned health facilities and schools, respectively.

Re-interpreting and utilizing “stakeholders’ forums” as ad hoc bipartite and tripartite arenas for episodic but impactful negotiations can also be cited as a very useful and resourceful element of the repertoire of NUPENGASSAN’s tactic in combating casualisation. It should always be remembered that the *Guidelines* emanated from such a forum in 2010.

## 6. CONCLUSION

The journey thus far, leading to and after the issuance of the *Guidelines* in 2011, has not been a bed of roses, nor does it have an “and they lived happily ever after” resonance. But it does show that when unions dare to struggle and think out of the box, they dare to win the *de facto* transition to formality of nonstandard work arrangements, to some extent.

This article represents an effort at illustrating this truism with the case of NUPENGASSAN. The major victory that the issuance of the *Guidelines* represents can be best appreciated by situating it within the context of the earlier defeats and victories of NUPENGASSAN from daring to struggle and evolving non-traditional bargaining mechanisms.

It is, however, noteworthy that despite the *Guidelines* provisions, several employers in the industry have been recalcitrant, refusing to recognize trade unions or respect collective agreements. It would have been expected that there would have been stiffer insistence on compliance by the state. But in a situation where the state holds collective agreements reached with public sector workers’ unions in utter contempt, prompting long-lasting strikes in the health and education sector as noted by Aye (2015), it lacks the rectitude to make private sector firms conform with such set guidelines, even if perchance it were interested in doing this.

Thus, the ball still falls back in the court of the unions. Unions must remain undaunted, guarding each victory won against casualisation as much as they can whilst doing everything possible to stretch the limits of the anti-casualisation frontier. Despite the intransigence of the employer class and the state, respect for the laws and policies they set and break gets foisted upon them in the face of workers’ power won through both organising associational power and institutionalisation of these laws and policies.

It is unlikely that the immediate future will be any rosier than it is now for NUPENGASSAN with the fluctuation in oil revenue. But that is precisely why this movement should remain undeterred in its struggle. More than ever, the need to forge alliances with other trade unions, civic organisations and communities in the oil sector cannot be overemphasized. The fate of the oil workers is bound with that of the working-class as a whole. NUPENGASSAN has proven itself a trail blazer; it remains a torch-bearer in combating precarious work. This working paper hopes to inspire a continuation of such traditions of militancy and creative thinking by other unions towards securing the transition of an ever-increasing number of workers from nonstandard work arrangements to formality.

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