# Application of International Labor Standards in the Nigerian Oil and Gas Sector; Regional and Domestic Perspectives.

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**Abstract.** Allegations and proven cases of corruption of government officials and the environmental effects of activities of multinational corporations informed the opinion of the international community on the Nigerian oil and gas sector for decades; shifting the consideration of compliance with international labour standards to the background. The appellate courts have also disregarded the difference between traditional treaties and bespoke international legal instruments on labour standards. This approach led to sole and restrictive application of the 1999 Constitution (as amended) in determination of applicability of legal instruments on labour rights. In spite of lack of robust judicial pronouncements, the Nigerian state hardly implements the existing mechanisms that would extract compliance with the standards by the Multinational Corporations (MNCs). At the regional level there exists an attitude of reluctance to comply with the standards due to some factors discussed in the article. The article discusses the extant Nigerian statute on the interpretation of treaties concerning the scope of application of international labour standards, which has been largely ignored and hardly ever cited to the courts.

**Keywords:** International labour standards, oil and gas sector, treaties, constitution, international legal instruments, multinational corporations.

## 1.0. INTRODUCTION.

International labour standards are norms directing how workers in member states of the International Labour Organisation (ILO) are treated in their places of work. Traditionally, they are supposed to be simple sets of rules related to basic human and labour related rights like respect for safety and health at work, prompt and adequate wages, opportunity to dialogue with the employer, etc. They also extend to issues of good governance such as labour inspection and basic labour administration.

Similar to the delineation of domestic laws into substantive and procedural laws, international labour standards can be categorised into substantive and procedural standards. Substantive standards are prescriptive rights that specify rights of workers in terms of expectations. They recommend minimum labour rights with which all ILO constituents are expected to comply. The procedural standards on the other hand emphasise what individuals and groups of people may do, or what they should refrain from doing.

## 2.0. JUSTIFICATION FOR COMPLIANCE WITH INTERNATIONAL LABOUR STANDARD.

In many less developed countries like Nigeria, the need to comply with international labour standards places the companies within them under pressure to uplift the welfare and working conditions of their workers to a level comparable to those of developed countries. In the

milieu of poor facilities, shaky social structure and low level of infrastructural development, it may be difficult to comply with these standards.

However, the following reasons justify the application of international labour standards to activities of the MNCs in the Nigerian oil and gas sector:

- The international labour standards represent the international consensus on minimum best practices whether on human rights generally or specifically on labour rights. The international community views Nigeria through the lens of activities in the oil and gas industry because its economy is substantially based on export of petroleum products.
- At the national level, the standards constitute binding legal obligations when the enabling legal instruments are ratified by Nigeria. Since Nigerian laws require domestication of foreign companies, such international labour standards in instruments ratified by Nigeria apply to operations of MNCs incorporated in Nigeria.
- Application and compliance with the standards will improve the economy of the multinational companies and the country. The '*race to the bottom'* cliché can be turned on its head to argue that enhanced labour standards can lead to higher productivity and encourage Foreign Direct Investment (Hepple 2005) A study by the International Institute for Labour Studies found a positive correlation between freedom of association, collective bargaining and Foreign Direct Investment Kucera, 2004). In 2003, in another study by the institute based on data from 162 countries, it concluded that higher manufacturing exports occurred where there was democracy, freedom of association and collective bargaining (Kucera & Sarna, 2006). The standards can therefore be used as tools to accelerate and measure economic development in Nigeria.
- Though workers in the oil and gas sector earn higher than the workers in other sectors in Nigeria, their salary and working conditions are undervalued when compared with the salary for the same job performed in the developed countries. Undervalued labour leads to inefficiency and hampers innovation and creativity. Payment of wages that are commensurate with the global average can lead to better labour management, consultation and cooperation, minimal conflicts and social stability.
- Application of the standards will act as a safety net in time of economic crisis. The recent economic crisis in the Western world showed that no economy was immune from crisis. Even the fast growing economies of Asia were slowed down by the financial crisis of 1997 by dramatic currency devaluation and falling market prices. At the point of the financial crisis in Asia, the labour standards were at low ebb. After examining the social impact of the crisis, the ILO concluded that strengthening social dialogue, freedom of association and social protection systems in the region would provide better safeguards against such economic downturn (Lee, 1998).
- Compliance with international labour standards should be taken seriously in a critical sector of a developing economy like Nigeria because the standards are products of discussions among government, employers and workers in consultation with experts around the world. They represent the international consensus on how a particular labour problem could be solved and contain input from many corners of the world. The participants in the sector can derive some benefits by incorporating them in their policies and operational objectives.

## 3.0. FEATURES OF INTERNATIONAL LABOUR STANDARDS

The features that set international labour standards apart from the traditional treaties include:

- the sources of the standards;
- the legislative process involved in making them;
- the method of entry into force and
- the scope of their application at international, regional and domestic levels.

The *source* of a particular labour standard determines if it is a formal or less formal standard. Formal standards derive their sources from the conventions and recommendations of the ILO. These instruments often re-echo some fundamental rights contained in other international legal instruments. Less formal standards have their source in the resolutions, declarations and codes of conduct of the ILO. Though they have mere normative effect, less formal standards are part of the system of international labour standards of the ILO.

The ILO adopts a *legislative process* different from the method of making traditional treaties in terms of participation and procedure. While sovereign states are the sole participants in the making of treaties, employers and workers participate in the process of making ILO legal instruments. On the issue of procedure, the conventions and recommendations are required to be submitted by member states of the organisation to national competent authorities within 12 months or exceptionally 18 months from their adoption by the International Labour Conference. The ILO understands 'competent authority' to mean the parliament (ILO, Article 19). There are however, some borderline cases where legislative power is vested in the government, which has a body more limited than a full assembly or parliament, but nonetheless exercises legislative functions. Other borderline situations exist where the laws of a state do not provide for taking conventions or recommendations before a legislative house but action is rather taken by the executive authority. In such cases, it is due compliance with the rule if the instrument is taken before the executive authority The requirement is novel to international law and gives ILO instruments greater impact than traditional treaties. The rule is a compromise between the position of those who argue for immediate mandatory effect of conventions and those who are in favour of sovereignty of states and the supremacy of their parliaments. It is not therefore meant to force conventions down the throat of states but to ensure that they are not 'buried' or set aside without consideration. The governments can make comments or proposals while sending them to competent authorities, whether positive or negative. However, the ILO desires that conventions are submitted to the authorities at all times and not when it is likely that they would be ratified.

For the purpose of *entry into force*, ILO conventions are exempt from the application of the law of treaties. Though the Vienna Convention on the Law of Treaties, 1969, defined 'treaty' to mean an international agreement, '*whatever its particular designation',* it emphatically excluded international organisations (like ILO) from the scope of application of the Convention (article 2(1)(a). Although the Vienna Convention on the Law of Treaties, 1989 extended the definition of treaties to agreements involving international organisations, it is yet to come into force. Because of the exclusion, ILO conventions differ from traditional treaties in relation to mode of entry into force as it affects number of ratifying states and reservations. Some treaties specify a particular number of ratifying states for it to come into force. Where no date is specified for a treaty to come into force there is a presumption that all the states are expected to give their consent to be bound by its contents or that a particular category of states must be among the consenters before it comes into force. The Vienna Convention on the Law of Treaties, 1969 (article 24) provides that a treaty can also contain as many conditions as possible, precedent to its entry into force. ILO conventions on the other hand come into effect twelve months after ratification by two

member states. While reservations to treaties are permissible, ILO conventions do not permit reservations. The *scope of application* of international labour standards varies at international, regional and domestic levels. Though they apply to all member states of the ILO, different legal regimes may exist at these levels, to give effect to the standards. At the international level, the standards are contained in the legal instruments drawn up by the tripartite constituents of the ILO (government, employers and employees). They are either conventions, which are in the form of international treaties and legally binding on ratifying states, or recommendations, which serve as non-binding instruments. There are also autonomous recommendations not related to any convention.

## 4.0. APPLICATION OF INTERNATIONAL LABOUR INSTRUMENTS AT THE REGIONAL LEVEL.

At the regional level, the ILO does not encourage the existence of labour standards with regional specificity. Understandably, the organisation tries to avoid regional social dumping or a race to regions with lower labour standards, which will defeat the essence of adequate protection of workers' interests globally. In 1972, the African Advisory Committee of the ILO stressed that:

> [A]ny attempt to adopt standards on a regional basis would be a backward step and would produce anomalies and tensions between different regions and… substandard for sub humans have no place in ILO (Minutes of the Governing Body of ILO 1967, p. 82, para. 156).

However, application of international labour standards may vary across different regional groups. The International Labour Organisation abhors regional labour standards. The view that regional labour standards would lead to regional dumping is also justifiable. Moreover, the provisions of many of the conventions are fundamental; bordering on human, civil and political rights. They cannot therefore be applied differently in different regions. Specific regional application of standards would undermine the Preamble of the ILO Constitution, which provides that 'the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries' (Declaration of Philadelphia, 1919).

There are however regional approaches to international labour standards, particularly at the West African sub-regional level. The regional approaches may be implemented through Regional Trade Agreements (RTAs), Generalised System of Preferences (GSPs) or in Bilateral Investment Protection Treaties (BITs). RTAs have come to be special preferences for states because of the progressive nature of the Agreements.

The use of RTAs in trade relations places social policies in development context in a manner more preferable to global standards by establishing standards that produce more extensive and reciprocal advantages. Moreover, references to labour standards in RTAs, trade preference schemes under the Generalized System of Preferences (GSPs) and in Bilateral Investment Protection treaties (BITs) are region-specific. Most RTAs reserve to the participating states the exclusive right to exercise discretion on the applicability of provisions of labour standards.

Regional approach to application of international labour standards is, by extrapolation, in line with the ideals of the ILO, which encourage region specificity. The Constitution of the ILO addressed this issue by providing that*:*

> *In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the* ***imperfect development of industrial organisation,*** *or* ***other special circumstances make***

> ***the industrial conditions substantially different*** *and shall* ***suggest the modifications,*** *if any, which it considers may be required* ***to meet the case of such countries*** **(**Constitution of the International Labour Organisation, Art. 19(3)

A Director General of the ILO also lent his support to regional approach to international labour standards. He said that:

> *We must understand the specific context of regions and sub regions as well as the specific circumstances of the Eastern and Central European countries in transition and countries that are going through a crisis because of the impact of the international financial system, or the forces of nature. It is essential to support a retuned ILO that can be sensitive to differences and can respond with subtleness to the different ways in which the same problem can manifest itself in different societies. It seems to me absolutely indispensable to develop this institutional capacity. I believe it is important to foster sensitivity about the culture of development. You cannot really understand problems of development so long as you have a somewhat mechanical approach and solutions cannot be proposed simply because they work in other countries. We need a richness of outlook, an ability to differentiate, to understand the specific situations to respond to the real problems and propose new solutions.* (Report of the Director General of ILO Juan Somavia to the 87th Session of the International Labour Conference, 1st day of June, 1999).

The emphasis by the ILO is on the need to recognise variables peculiar to states or regions in determining labour related issues. Groups of states or regions with similar or related variables can design a framework to facilitate compliance with particular international standards. Such regional groupings can enable the participating countries negotiate rules and standards related to problems that were not patent at the time a particular international standard was set. They also make it possible for the states in the group to overcome barriers to free trade without interference from states outside the region. These approaches do not replicate international labour standards at the regional level nor do they attempt to establish regional labour standards. The purpose is to enunciate bespoke regional policies for the specific labour climate of the states within the group.

The specific circumstances that determine the African approach to international labour standards arise from the *stage of development* of the labour sector, the *structure* of the industry and the *attitude* of the states towards ILO policies. Therefore, applying Western model of labour standards without consideration of these circumstances will be a mechanical approach.

Concerning the *stage of development*, the labour sector of most African states are still in the pre-industrial revolution stage of the Western world, indicating cases of child labour, forced labour and discrimination in employment. The states in Western Europe and North America at a point in their development of the labour sector indulged in such practices.

The *structure* of the labour sector in Africa is framed by the following factors:

- the stakeholders show more interest in creating jobs rather than focusing on compliance with international labour standards;

- The tripartite structures and trade unions in the region were set up during the colonial period, which was an era of adversarial industrial relations. Consequently, the unions naturally adopted combative postures on labour issues. Agitation for improved welfare of workers therefore synchronised with struggle for liberation from colonial rule;
- The combative approach has been institutionalised by the unions in many states in the region and characterises the posture of workers' representatives in labour disputes. The states, which employ most of the workers, still have the oppressive tendencies of the colonial regime;
- the prolonged military dictatorships and corrupt leadership style in the region reinforce the lack of trust in government and its representatives on labour issues;
- There are more workers in the informal sector than in the formal sector. Stakeholders in the informal sector claim that their survival depends on their informality and non-application of formal labour standards.

The *attitude* of the African states to the structure and procedures of the ILO is that of suspicion and anxiety. They see the structure and procedures of the organisation as extension of western culture and neo colonialism. The constitution of the organisation appears to them to have also entrenched discriminatory tenets in spite of the principles behind the formation of the organisation. The ideals of equality often espoused by the ILO seem to them to be deprecated on the following grounds:

- The constitution of ILO (Article 7) designates some states as members of '*chief industrial importance'* (The current members of chief industrial importance are Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, United Kingdom and the United States of America) who have enormous discriminatory and overriding powers. The region had cause to complain about the provision. (The 11th African Regional Meeting of the International Labour Organization (Addis Ababa, 24–27 April 2007) adopted a resolution on Africa's representation in the Governing Body of the International Labour Office. The Resolution prayed for amendment of portions of the constitution including section 7 in order to increase the representation of the region in the membership of the Governing Body. An Instrument of Amendment seeking to increase the number of members of chief industrial importance to include representatives from all the regions has not come into effect. As at 6$^{th}$ February 2013, only two members of chief industrial importance had ratified the Instrument (India and Italy). Article 36 of the constitution provides that two thirds of delegates from member states and **at least five out of the ten members of chief industrial importance** must ratify any amendment of the constitution.
- The status of members of *chief industrial importance* is a spill over of the structure of the UNO, which places permanent members of the Security Council above other member states.
- The criteria for elevating a member to the status of chief industrial importance are hazy, flexible, and unrelated to labour credentials making it difficult for aspiring African member states to attain the status.
    - The premier Organising Committee of the 1919 Conference relied on industrial population of a member in the narrow sense and its relation to the total population, total and per capita horsepower, total length of railways and their length per 1,000 $m_2$ and the development of the merchant marine.

- A Memorandum officially submitted to the League of Nations in 1922 suggested that: '*the States of chief industrial importance are those which present the greatest importance from the point of view of the regulation of the relations between capital and labour.'* (See report of the Committee appointed to consider the criteria to be adopted in the selection of eight States of chief industrial importance, C.410.M.316 1922. V., p. 10 et seq., esp. p. 12).
- Permanent Court of International Justice in its Advisory Opinion No. 2, of 12 August interpreted the expression "industrial" as used in the Treaty of Versailles, including in its Article 393, *in the wide sense, pertaining to the various fields of productive labour.* (Permanent Court of International Justice, Advisory Opinion of 12 August 1922 (including the text of the declaration of Judge Weiss), Series B, Dossier F.a.II.
- Until 1978, contribution to the ILO budget, national revenue, external trade, and economically active population were considered as factors determining eligibility as a member of chief industrial importance. These criteria were often combined, with a relative weight given to each element. (Information to International Labour Office for the 300th Session of November 2007 by the Committee on Legal Issues and International Labour Standards

- From 1983 the Gross Domestic Product or Gross National Product was used as the sole criterion. The Impartial Committee of Experts considered that the criterion which amounts to the total value of goods and services within a country within a year is sufficient to identify members of chief industrial importance. The current criterion of using GDP of states to ascertain their eligibility as countries of chief industrial importance is misleading. Some members acquired their high scores of GDP on the aching backbones of maltreated workers in their states. High GDP in those countries therefore exist with very low Human Development Index.
- The criteria do not consider commitment of members to the ideals of ILO and level of compliance with international labour standards. The U.S.A, Italy, Germany and China had on different occasions withdrawn their membership of ILO but were on each occasion elevated to the premier status immediately on their resumption of membership.
- The Governing Body determines the eligibility of member states for the status of chief industrial importance. The constitution further provides that questions relating to the eligibility be considered by an *impartial committee* whose impartiality is doubtful and not less hazy. The committee does not include anyone from 'a state which may prove to be either just above or just below the line of demarcation between a state of chief industrial importance and other countries'.

In consequence of the scenarios above:

- None of the fifty-four African member states of the ILO has ever been admitted as a state of chief industrial importance.
- The ILO has had ten Directors-General since its inception but none has come from Africa.
- Since the inception of the ILO, membership of states of chief industrial importance changed thirteen times and shared among Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, United Kingdom, United States of America, Denmark, Switzerland, Belgium and Netherlands.

(2012: Guy Rider **(U.K)** 1999-2012 Juan Somavia (**Chile**) 1989-1999 Michel Hansenne (**Belgium)** 1974-1989 Francis Blanchard **(France)**1970-1973 Clarence Wilfred Jenks **(UK)** 1948-1970 David A. Morse **(U.S.A)** 1941-1948 Edward Phelan (**Ireland)** 1939-1941 John G. Winant **(U.S.A.)** 1932-1938 Harold Butler **(U.K)** 1919-1932 Albert Thomas **(France))** .

## 5.0. APPLICATION OF INTERNATIONAL LABOUR INSTRUMENTS AT THE DOMESTIC LEVEL

At the national level, statutes and the collective agreements between the employers and the employees set the rules but the application of international labour standards depends on the treaty making procedures of different states. In Nigeria, ratified international labour standards are inferior to the constitution but rank higher than other domestic statutes. The Nigerian Companies and Allied Matters Act (Laws of the Federation of Nigeria, cap. C 20, 2004 s. 54). provides for domestication of subsidiaries of companies operating in Nigeria by a mandatory incorporation under Nigeria law. The international labour standards ratified by Nigeria and domestic statutes on labour and human rights are therefore binding on them.

Nigeria has ratified the eight fundamental ILO Conventions and many other legal instruments of the ILO. It is also a signatory to other relevant international legal instruments. The constitution of Nigeria provides for submission of treaties before its 'competent authority' (the Senate and House of Representatives) for enacting such treaties into law before they become applicable to Nigeria (Constitution of the Federal Republic of Nigeria, 1999, s. 12(1). The effect of this was that mere ratification of a treaty does not validate it or make it applicable in Nigeria.

The Supreme Court of Nigeria validated this view in *Abacha v Fawehinmi* (2000) when it held that treaties formed no part of domestic law unless enacted by the legislature. It said that domestic courts had no jurisdiction to construe or apply such treaties nor could unincorporated treaties change the law of the land. Such unincorporated treaties should not have direct effect upon citizens' rights and duties in common or statute law. They may however indirectly influence the construction of statutes or give rise to a legitimate expectation by citizens that the government would observe the terms of an unincorporated treaty.

Abacha's case laid the foundation for denying application of many international legal instruments to Nigeria on the ground of non-incorporation through enactment. It relied on the judgment of the Privy Council in *John Junior Higgs and David Mitchell v The Minister of National Security and others*[*] [1999] (*Higgs Case*)**.** In Higgs case, the Privy Council was considering a planned execution of prisoners who were awaiting a decision of the Organisation of American States (OAS) on whether there was a breach of their fundamental rights. The Privy Council held that an international treaty could only be incorporated by statute and a national court could not rule on what was an issue for the international organisation.

In spite of making mention of s. 12(1) of the Constitution, the Supreme Court quoted and relied on a statement in Higgs case to the effect that '*in the law of England and the Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown'*. Ogundare JSC who read the lead judgment approved the above statement in Higgs case by saying that '*in my respectful view, I think the above passage represents the correct position of the law, not only in England but in Nigeria as well'*.

In *Medical Health Workers Union of Nigeria v Minister of Health and Productivity & ors* (2005) the Court of Appeal, relying on the two Supreme Court decisions held that:

> In so far as the ILO convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply. ... Where, however, the treaty is enacted into law by the National Assembly as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and People's Rights (Ratification and Enforcement Act, Cap. 10, Laws of the Federation of Nigeria, 1990).... it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the Courts.

In *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Minister of Labour and Productivity* (2005), the Supreme Court applied the *ratio* in Abacha's case to determine the applicability of a ratified ILO convention to Nigeria. It held that '*in so far as the ILO Convention has not been enacted into law by the National Assembly it has no force of law in Nigeria and it cannot possibly apply'*.

The Nigerian courts were thus persuaded by the laws of the United Kingdom and the Bahamas on the applicability of treaties to hold that conventions on labour rights require enactment into law before they take effect in Nigeria.

### 5.1. What did the Nigerian draftsman really intend?

With the greatest respect, I disagree with the reasoning in *Abacha's case* and other judgments anchored on it on the following grounds:

i. In the first instance, it is curious why the Supreme Court would extend a law based on deference to the prerogative of the British crown to Nigeria. It is correct to say that the right to enter into treaties is one of the prerogative powers of the British crown since sovereignty in the United Kingdom lies in the Crown. Moreover, Britain operates an unwritten constitution. In Nigeria, sovereignty lies in the people and flows from the provisions of a written constitution from which all other laws derive their validity. The guide on giving effect to international legal instruments must thus be given by the constitution or any other law deriving its ultimate source and validity from it.

ii. Furthermore, ratified ILO conventions contrary to the position of the Supreme Court are applicable to Nigeria without enactment by the National Assembly:

- There is a domestic law in Nigeria on the making of treaties. Unfortunately, the attention of neither the Supreme Court nor the lower courts that relied on *Abacha's* case was drawn to the Treaties (Making Procedure, etc.) Act. (2004). The Act gave comprehensive guide on how to give effect to treaties under Nigerian law. It defined 'Treaty or Agreements' as:

  > *[I]nstruments whereby an obligation under international law is undertaken between the Federation and any other country and includes "conventions", "Act", "general acts", "protocols", "agreements" and "modi-vivendi", whether they are bilateral or multi-lateral in nature.*

  It provides that:

> *The treaty making procedure specified in this Act shall be binding and applicable for the making of any treaty between the Federation and any other country on any matter on the* ***Exclusive List*** *contained in the Constitution of the Federal Republic of Nigeria 1999*.The exclusive legislative list contains issues on Labour, including trade unions, industrial relations; conditions, safety and welfare of labour; industrial disputes, prescribing a national minimum wage for the Federation or any part thereof; and industrial arbitration. (1999 Constitution, Part 1, item 34).

The Act classified treaties into three:

a. ***law-making treaties,*** *being agreements* ***constituting rules which govern inter- state relationship and co-operation*** *in any area of endeavour AND* ***which have the effect of altering or modifying existing legislation*** *or* ***which affects the legislative powers of the National Assembly;***
b. *agreements which impose financial,* ***political and social obligations on Nigeria*** *or which are of scientific or technological import;*
c. ***agreements*** *which deal with mutual exchange of cultural and educational facilities.* (Treaty (Making Procedure etc.) Act s. 3(1).

The Act gives a direction on ratification and enactment by providing that the treaties or agreements specified in:

- *paragraph (a) of subsection (1) of this section need to be* ***enacted into law;***
- *paragraph (b) of subsection (1) of this section need to be* ***ratified;***
- *paragraph (c) of subsection (1) of this section* ***may not need to be ratified.*** *(*section 3(2).

It puts the meaning of 'treaty' more clearly and in a firm perspective by stating categorically that it is an obligation between Nigeria (the federation) and any other country and included '*conventions ...agreements... whether they are bilateral or multilateral'* (section 3(3). It gave clarity to the intentions of the legislature by classifying treaties into three categories:

- Those that must be enacted into law, (category A)
- Those that only need to be ratified (category B) and
- Those that need not be ratified (category C).

*Category (**A**) treaties.*

Treaties in Category A have two characteristics:

- They must be treaties constituting rules which govern inter- state relationship and co-operation ***(relationship between Nigeria and another country)*** *AND*
- They have the effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly.

Reference to treaties in section 12(1) of the Constitution relates to treaties in category (A). The section clearly refers to treaties made between Nigeria and ***any other country*** to the

exclusion of other forms of international legal instruments like conventions or recommendations, which more commonly contain international labour obligations.

The second feature of category (A) treaties is that they must have been intended to have the '*effect of altering or modifying existing legislation or which affects the legislative powers of the National Assembly'*. The international legal instruments of the ILO are always subject to domestic laws. They are never meant to subvert the legislative powers of a member state. Article 19 of the ILO Constitution rather preserves the parliamentary or legislative roles and powers of member states in respect of making of conventions and recommendations.

*Category (B) treaties.*

Treaties in category B are those ***agreements** which:*

- impose **financial**, **political and social obligations on Nigeria** OR
- are of scientific or technological import.

The Treaty (Making Procedure) Act clearly excludes treaties in this category from the application of section 12(1) of the 1999 Constitution. They merely require ratification by the competent authority for them to be applicable in Nigeria. The first feature of these treaties is that they do not create any inter- state relationship between Nigeria and any other country. Secondly, they merely raise financial, political and social obligations on Nigeria. Conventions and other instruments of the ILO fall within this category. They are 'agreements' made by Nigeria, other countries and representatives of employers and workers creating some obligations on Nigeria which create obligations on Nigeria to comply with the standards and not any agreement with another state.

The principles of freedom of association, organisation and collective bargaining which were in issue in *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Minister of Labour and Productivity and MHWUN v Minister of Health & Productivity & Ors* fall within the category. The same issues including right to personal liberty were before the Supreme Court in *Abacha's case.* By ratifying Conventions No. 87 and 98 of the ILO or indeed any other instrument on labour rights, which merely raise obligations on Nigeria, such instruments become applicable without more.

*Category (C) treaties.*

This category refers to treaties that *deal with mutual exchange of cultural and educational facilities.* They are outside the scope of this thesis and thus will not be discussed further.

iii. The Nigerian Constitution does not require the National Assembly to incorporate ILO instruments on core labour standards into law through enactment before they come into effect. It would have said so clearly if the framers of the constitution so intended. Besides, the obligation to abide by the provisions of the Core Labour Standards (CLS) is an inherent requirement for membership of ILO. The Declaration on Fundamental Principles and Rights at Work, 1998 declares that:

> *[A]ll Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the organisation to respect, to promote and to realize, in good faith and in accordance with the constitution, the principles concerning the fundamental rights which are the subject of those conventions, namely:*
>
> - *freedom of association and the effective recognition of the right to collective bargaining;*
> - *the elimination of all forms of forced or compulsory labour;*
> - *the effective abolition of child labour; and*

- *the elimination of discrimination in respect of employment and occupation.* ( Article. 2).

Though Declarations are not legally binding on signatory states, it is good international practice to interpret domestic legislations to give effect to ratified international legal instruments. The view held by the Supreme Court in *Abacha's* case would definitely defeat the sense of commitment of Nigeria as a member state of the ILO. Moreover, the provisions of the Nigerian constitution and the African Charter on Human and Peoples' Right, 1981 are in tandem with the spirit of Convention Nos. 87 and 98 of the ILO. The Charter was domesticated into Nigerian Law by the African Peoples and Human Rights (Domestication) Act, Laws of the Federation of Nigeria, 2004.The presumption that the drafters of the constitution did not intend that section 12(1) should apply to ILO instruments is therefore valid.

iv. The authoritative value of the decisions of the Supreme Court has been eroded by provision of Constitution of Nigeria (Third Alteration) Act, 2010, which gave exclusive jurisdiction to the National Industrial Court on interpretation of international legal instruments on labour matters. It provides that:

> ***Notwithstanding anything to the contrary in this Constitution****, the National Industrial Court shall have the jurisdiction and power to deal with* ***any matter connected with*** *or pertaining to the application of* ***any international convention, treaty or protocol*** *of which* ***Nigeria has ratified relating to labour, employment, workplace, industrial relations*** *or matters connected therewith.* (Section 254(c)(2). (**Emphasis added**).

v. The National Industrial Court Act, 2006, section 7(6) confers jurisdiction on the National Industrial Court relaxed the hurdle of enactment of international labour instruments into law. It enjoins the Court to have due regard to *good or international best practice in labour or industrial relations* while exercising its jurisdiction. On what amounts to good or international best practice in labour or industrial relations, the Act provides that *it shall be a question of fact*. If interpreted very strictly, the Court can apply un-ratified instruments, which contain standards deemed by it to be of good or international practice in labour or industrial relations. This provision has an underlying progressive intention. However, it will be stretching the power of the court too far. It will be undermining the sovereignty of the Nigerian state if all it takes for a labour convention to apply to Nigeria is the view of a court that the instrument provides for good or international best practice.

## 6.0. SCOPE OF INTERNATIONAL LABOUR STANDARDS APPLICABLE TO MULTINATIONAL CORPORATIONS.

The multinational corporations (MNCs) are the largest employers of labour in Africa beside the governments, hence the consideration of the scope of application of international labour standards to their activities. The international labour standards notionally refer to conventions and recommendations of the ILO. These instruments are products of legislative processes of governments, employers' and employee's representatives, as traditional constituents of the organisation. Though the MNCs in their capacity as employers, may participate in the process of adopting conventions or recommendations through employers' representatives, they are not parties to the instruments, *strictu sensu,* because conventions are binding only on sovereign states that have the capacity to sign or ratify them. In the case of *Anglo-Iranian Oil Co. Case (United Kingdom v Iran)* (1952) the Anglo-Iranian Oil Corporation (a company registered in the United Kingdom) signed an agreement with the Iranian government in 1933. In the spring

of 1952, the Iranian government passed laws that nationalised the oil industry in Iran. Consequently, a dispute arose between the Anglo-Iranian Oil Corporation and Iran. The United Kingdom adopted the cause, by virtue of diplomatic protection. The International Court of Justice (ICJ) held that corporations do not have international legal personality.

If the sources of international labour standards are limited to conventions and recommendations, which apply to states in their capacity as international legal personnel, the MNCs can avoid compliance with those standards. Though the MNCs are not sovereign states, their activities and involvement in labour matters are more pervasive than those of some states are. Their budget and labour force, even in their diminished non-state status, dwarf those of many sovereign states. Their participation in the international labour scene cannot therefore be glossed over on the ground that they are not parties to conventions and recommendations. Moreover, there are always pressures on them to raise labour standards in their subsidiary companies operating outside their home states. These pressures have spill over effects in the local labour markets where those subsidiaries operate (Brown & Stern, 2008).

Consequently, consideration of other instruments besides conventions and recommendations is necessary to bring the activities of the MNCs within global focus and supervision. Though such 'less formal instruments' do not have origin in the normal legislative process of the ILO, they have salutary effect on states and non-state actors in the international labour scene (Valticos , 1982).

The first of these less formal instruments is *Resolutions* adopted by the International Labour Conference. The supervisory bodies of the ILO use the Resolutions as guidelines and terms of reference for appraisal of national situations and recommendations addressed to governments. Resolutions and conclusions of the technical committees of experts and of bodies set up to deal with particular sectors or subjects also form part of the international labour standards.

*Special conferences* are also less formal instruments. They can be convened by the ILO outside its institutional framework to deal with labour matters that pertain to specific countries, which cannot therefore be dealt with by universal instruments. Such conferences may be convened jointly with other international organisations whose activities have direct or indirect bearing with the subject matter. Resolutions and recommendations of such conferences have considerable weight and are useful sources of international labour standards.

The third set of labour instruments outside the ILO legislative process is the *United Nations Instruments and Instruments of Regional Organisations.* The United Nations Organisation does not strictly speaking deal with labour matters having recognised the ILO as the specialised agency on labour issues. However, certain instruments of the UNO broach on labour related questions. The Universal Declaration of Human Rights, 1948 contains a number of provisions concerning labour matters. The Covenant on Civil and Political Rights 1966 provides against non-discrimination, forced labour and freedom of association while the Covenant on Economic, Social and Cultural Rights, 1966 contains some provisions relating to labour. The provisions of these less formal instruments can affect industrial relations among the stakeholders in Nigerian oil and gas sector.

## 7.0. CONCLUSION.

The map of the Nigerian oil and gas sector discloses a firm grip of the activities by the MNCs in the absence of effective competition from indigenous firms who lack the capacity to invest in activities in the sector. The Nigerian state conceptually displays a commitment to the precepts of international labour standards. It ratified the relevant international instruments and adopted a very liberal approach towards their application in the sector and in labour matters generally.

The need for substantial compliance with international labour standards manifests profoundly in the sector since the proceeds from the sector contribute substantially to the gross domestic product. The strength of Nigeria in international relations and its national interest anchor on the comparative advantage in international transactions on oil and gas. The international community therefore measures the commitment of Nigeria to the welfare of its citizens by gauging the extent of compliance with international standards in the oil and gas sector. Other reasons for the need to comply with the standards were also highlighted which include the benefits accruing from such compliance to the government and the MNCs.

The labour law jurisprudence of Britain influenced the development of labour law in Nigeria. Britain traditionally adopts enviable welfarist labour policies. Nigerian labour law theoretically followed that pattern and developed labour policies along the British model. However, typical of Nigeria, the judicial and administrative mechanisms for enforcement of international labour standards have not applied the provisions of the Treaty (Making Procedure) Act in interpretation and application of international labour standards. Hopefully, the courts and parties shall in future rely on the Act in interpretation and application of international labour instruments in resolution of labour disputes.

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