AN APPRAISAL OF COLLECTIVE BARGAINING IN INDUSTRIAL RELATIONS IN NIGERIA*

Abstract

This work appraises Collective Bargaining in Nigeria using the International Labour Organization Standard as a point of reference in comparison with the Nigerian laws. Conflict between the employer and workers is inevitable in the workplace but it is resolved through the instrumentality of collective bargaining. Collective bargaining right and the workers' right to strike are twin rights recognized by the International Labour Organization. The Right to Collective Bargaining is recognized in Nigeria although the 1999 Constitution does not make express provision for this right. However, section 40 and other sections of the constitution. The Trade Union Act, Trade Union (Amendment) Act, Trade Disputes (Essential Services) Act, Trade Disputes Act and Banks and Other Financial Institutions Act are the laws made pursuant to the 1999 constitution covering and regulating collective bargaining by workers. The major challenge of collective bargaining is the non execution of collective agreements by the government due to absence of political will. This study also made reference to the South African Constitution and also draws lessons to the effect that there is an urgent need for the expression codification of the right to collective bargaining in the Constitution without implying the right under Section 40 of the 1999 Constitution.

Keywords: Collective Bargaining, Industrial Relations, ILO, Nigeria

1. Introduction.

Collective bargaining right by workers although not specifically enshrined in the 1999 Constitution,[1] flow from freedom of association and the right of workers to form and belong to trade unions. This right is also recognized by the Trade Disputes Act[2] and other statutes. Industrial relation is an ever changing socio-economic process and the workers and management (employer) relationship is hinged on reciprocal adjustment of interests into goals. The workers' right to bargain their employment terms and conditions is amongst the key principles of the International Labour Organization and it is the inalienable right of workers in all civilized nations (Nigeria inclusive). Also, the workers' right to bargain with their employer is very paramount to industrial unity, efficiency, effectiveness and productivity and its importance cannot be underscored. Once, there is a failed collective bargaining process, strike action by workers is inevitable.

2. Elucidation of Major Concepts

Collective Bargaining

The concept of collective bargaining like every other law concept has a definitional problem as there is no generally acceptable definition. Collective Bargaining as a term evolved from the work of Sydney and Beatrice Webbs[3] who in their thoughts see collective bargaining as the process whereby an employer and workmen representatives bargain the terms of employment on behalf the whole body instead of isolated series of contracts with individuals. Great writers and scholars such as Mills,[4] Fashoyun,[5] Adeogun, [6] and Srivastava[7] consider the concept of collective bargaining as a process whereby agreement on issues of employment terms and conditions are reached by the employer (s) and trade union (s) who are parties to the process.

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[1] Constitution of the Federal Republic of Nigeria 1999 (as amended)

[2] Cap T39 Laws of the Federation of Nigeria (LFN) 2004

[3] Sydney and Beatrice Webbs, *Industrial Democracy* (Longmans, New York Green & Co 1902) 173

[4] D. M. Mills, *Labour Management Relations* (McGraw-Hill Inc. 1989) 217

[5] T. Fashoyun, *Industrial Relations in Nigeria* (Longman Nigeria 1992) 103

[6] A. A. Adeogun, 'The Legal Framework of Industrial Relations in Nigeria' (1969) (3) *Nigerian Law Journal*; 33

[7] S. C. Srivastava, *Industrial Relations and Labour Law* (Vikas Publishers 2006) 166

Collective Bargaining has also been described as a rule making, rule interpretation and rule implementation mechanism by Ogunniyi[8] and Dunlop[9] in their views. The great and erudite Okene defined collective bargaining as the process of bargaining and conclusion of collective agreements on the workers' demands concerning certain improvements on employment terms and conditions.[10] Other scholars such as Golden[11] viewed collective bargaining as resources' distributive medium and this view is consistent with that of erudite Okene's position that the re-distribution of power and resources from the employer (s) to employee (s) is a clear objective or purpose of collective bargaining. That is, collective bargaining is a tool for equitable distribution of wealth amongst employees and the employers.

The Black's Law Dictionary defines collective bargaining as negotiation between an employer and the representatives of organized workers to determine the conditions of employment such as hours, wages, discipline and fringe benefits.[12] The Labour Act[13] in section 91 defines collective bargaining as the mode of arriving or attempting to arrive at a collective agreement. It is very essential to point out that the statutory definition of collective bargaining in the Labour Act[14] is too precise and that collective bargaining has in many cases broken down and did not lead to any collective agreement in recent times. Thus, there is need for the amendment of the statutory definition in the Act. Furthermore, collective bargaining has been defined to as all bargaining between an employer, a group of employers or one or more employers' organization and one or more workers' organization for determining employment working conditions and terms, regulating employers and worker relations, regulating employers or their organization or and workers' organization relations.[15]

Right

Right is one concept that is constantly been discussed and deliberated upon by individuals, groups and governments universally. Right is very essential and of great relevance in any legal system. The concept of right is so essential to the extent that there is no human society with the total absence of certain rights given to both the natural and corporate persons. A lot of scholars, researchers, jurists and writers have attempted to define and give meaning to the concept of right. Right according to Wigwe is that which by just claim, legal guarantee or moral principle is due to a person.[16] Salmond in his view conceived right as an interest recognized and protected by law.[17] Right has been defined as the recognizable claims and entitlement of people enforceable by the state.[18] The above definition is in tandem with the views of the Benefit theory of right which sees right as interest, benefit or advantage conferred on a person by the law. Furthermore, the Business Dictionary defines right as the recognized and protected claim, the breach of which is illegal.[19] The above definitions are all apt. However, Rights to me are those inalienable claims and entitlements that are recognized and enforceable by the governing authority. It is most significant to state that there are different classifications of rights for example civil rights, political rights, group rights, labour rights, natural rights, property and personal rights.

[8] O. Ogunniyi, *Nigerian Law and Employment Law in Perspective* (Folio Publishers 2004) 395
[9] J. T. Dunlop, *Collective Bargaining: Principles and Causes* (Chicago Irivim 1949) 29
[10] O. V. C. Okene, *Labour Law in Nigeria: The Law of Works* (Claxton and Derrick Limited 2011) 189
[11] C. S. Golden and V. Parker, Causes of Industrial Peace under Collective Bargaining, The National Planning Association (Harper and Bros 1949)
[12] B. A. Garner,' *Black's Law Dictionary* 'Ninth Edition; 299
[13] Cap L 1 LFN 2004
[14] *(n 14)*
[15] See Article 2 of Collective Bargaining Convention No. 154 of 1981
[16] C. C. Wigwe, *Jurisprudence and Legal Theory* (Readwidwe Publishers 2010) 382
[17] *(n 17)*
[18] <www.yourarticlelibrary.com/essay/law/rights-meanings-features-and-types-of-rights/40373> accessed on 26 February 2026
[19]<http://www.businessdictionary.com/definition/right.html> accessed on 26 February 2026

Labour Rights

As already seen, labour right is one of the classifications of rights. Labour Right has been defined as those human and legal rights in the labour environment between workers and their employer.[20] Mantouvalou defined Labour Right as those entitlements that are essentially and specifically concerned with workers.[21] Allen gave a vivid description of labour right by describing it as the heart of the struggle for human right.[22] Thus, human rights are those claims and rights which every person claims or aspires to enjoy irrespective of colour, race, religion and status.[23] Flowing from the above, Labour Rights to me are those claims and entitlements of both the employer and the employee that are enforceable by law within the workplace.

Worker/Employer

The term 'worker', 'employee' and 'workman' are terms which are been used interchangeably[24] and the importance of workers in labour globally cannot be disputed. A worker according to Davido includes a person into a contract of employment.[25] The term 'worker' has been described to include all persons who sell their labour and services.[26] A worker according to the Longman Dictionary of Contemporary English is a person who does a particular type of job.[27] Furthermore, a worker by the Nigerian Labour Act[28] is defined as any individual into works or into contract with an employer which contract may be express or implied or a contract of service or personal service but does not include persons employed except for the purpose of the employers business, persons doing administrative , executive , technical or professional functions as public officers or otherwise, representatives , agents and commercial travellers whose works are carried out outside the permanent place of the employer's firm, persons whose articles or materials are given out to be made, cleaned up, washed, altered, ornamented, finished or adapted for sale in his own home or on other premises not under the control or management of the person giving out the article or materials and persons employed in vessels or aircrafts with legislations on merchant shipping and civil aviation applicable. An employer according to section 91 of the Labour Act[29] is defined as any person who has entered into contract to employ any other person as a worker either for himself or for the service of any other person, and includes the agent, manager or factor of that first mentioned person and the personal representatives of a deceased employer. The Black's Law Dictionary[30] defines an employer as a person who controls and directs a worker under an express or implied contract of hire and who pays the salary or wages of the worker. An employer has also been defined as a person or entity that hires another to perform service under an express or implied agreement and has control, or the right to control over the manner and means of performing the services.[31]

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[20] <https://en.wikipedia.org/wiki/Labor_rights> accessed on 2 June 2022

[21]<https://www.researchgate.net/profile/Virginia_Mantouvalou/publication/256013033_Are_Labour_Rights_Human_Rights/links/55f6a35308ae1d98039773b3/Are-Labour-Rights-Human-Rights.pdf> accessed on 26 February 2026

[22] <https://www.amnesty.org.uk/press-releases/labour-rights-are-human-rights-25-years-solidarity> accessed on 26 February 2026

[23] U. O. Umozurike, *'The African Charter on Human and Peoples Rights'* (Martinus Nijhoff Publishers 1997) 5

[24] A. Emiola, *Nigerian Labour Law* (Ibadan University Press 1982) 18

[25] G. Davidou, 'Who is Worker' (2005) (34) (1*) Industrial Law Journal*; 59

[26] B. Creighton and S. McCrystal, 'Who is a Worker under International Law' (2015-2016) (37) *Comp. Labour Law and Policy Journal*; 691 < https://heinoline.org/ HOL/LangPage=hein.journals/clip37&div=41&id=page=> accessed on 26 February, 2026

[27] Longman Dictionary of Contemporary English, New Living Edition (Pearson Longman) 1903

[28] See section 91 (1) of the Labour Act. See also section 54 of the Trade Union Act.

[29] *(n 29)*

[30] (n 13) 604

[31] < https://definitions.uslegal.com/e/employer/> accessed on 26 February 2026

3. Significance and Functions of Collective Bargaining

The significance of collective bargaining cannot be under estimated as collective bargaining plays a pivotal role in resolving trade disputes. Collective bargaining is aimed at settling employment terms and conditions and it is an alternative to and replacement of individual attempt at negotiation.[32] There is the doubt that there is an imbalance in the power configuration at the work environment and employers wield so much power. Collective bargaining as a concept and principle equalizes the power configuration imbalance in the workplace as power stands against power.[33] Without the concept of collective bargaining, trade unions would have the difficulty to negotiate for better wages, better working conditions and general welfare. Collective bargaining is most significant to workers as it gives them the opportunity to partake in discussions affecting their working lives and the major interest of labour union is the securing of wages concessions from employers (management) through collective action.[34] Basically, there are four major functions of collective bargaining and they are as follows: Settlement of disputes, Work place democracy, Redistribution of wealth, and Promotion of efficiency[35]

The settlement of trade disputes is one significant objective /function of collective bargaining. Collective bargaining is a tool for the settlement of disputes through the instrumentality of negotiation of employment terms and conditions and it is an avenue for the parties to the bargaining process to air, listen to and accommodate their views by compromise for the attainment of industrial peace since the conflict between the employer and the employee is perpetual.[36] Thus, the settlement of the terms and conditions of employment is the primary aim of collective bargaining.[37] Collective bargaining is a cardinal mechanism for wealth redistribution. The redistribution of power and resources between the employer and workers is a function of collective bargaining.[38] It also ensures the reduction of inequality between the employer and employee. Through the instrumentality of collective bargaining, the working conditions of the workers are improved through the redistribution of the employers' profit to them. Collective bargaining helps in the promotion of economic efficiency by curbing and or reducing the conflicts between the employer and the employee in the work place.[39] It gives motivation to the workers to cooperate to increase productivities.[40]

Collective bargaining strives to the enthronement of democratic practices in the work environment and it gives workers some bargaining power to that of the employer.[41] It has a civilizing impact on the working life and environment of workers and the employers are subjected to the rule of law.[42] It gives the workers the strength to air their views, opinions, concerns and problems to the employer. It is of note to state that collective bargaining as a principle or concept is significant to the employees, employer and society. That is, it is tripartite in nature as to the importance and the importance to the employees is as follows:

[32] Kehinde and Others,' The Current Status of Collective Bargaining and its Implication in Bottom –Line Performance in Nigerian Oil and Gas' (2012) (3)(6) *IOSR Journal of Humanities and Social Sciences*; 18

[33] See O. Kahn-Freund, '*Labour and the Law* '(London: Stevens and Sons, 1977) 51

[34] F. C. Nwoke, 'Rethinking the Enforceability of Collective Bargaining Agreement in Nigeria' (2000) (4)(4) *Modern Practice Journal of Finance and Investment Law*; 372

[35] (n 8)

[36] P. C. Weiler. *Governing the Workplace: The Future of Labour and Employment Law* (Cambridge/Harvard 1990) 151

[37] O. V. C. Okene, 'The Objectives of the Right to Collective Bargaining: A Note' (2014) < https://works.bepress.com/ovunda_v_c_okene/57/ > accessed on 26 February 2026

[38] K. G. Dau- Schmidt, 'A Bargaining Analysis of America Labour Law and the Search for Bargaining Equity and Industrial Peace' (1992) (91) *Michaw Law Review*; 419

[39] R. B. Freedman and J. L. Meduff, '*What do Unions do*?' (New York Basic Books 1994) 5 cited in O. V. C. Okene (n 8)

[40] (n 8)

[41] J. K. Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston Houghton Mifflin,1956) 9 cited in O.V.C. Okene (n 8)

[42] A. Flanders, *Management and Unions: The Theory and Reforms of Industrial Relations* (Faber and Faber: 1970) 181

i. It limits the powers of the employers in taking arbitrary actions against the workers. This is so because the employers' freedom to take actions single handedly is totally discouraged.
ii. It boasts the productivity of workers.
iii. It brings about prompt and fair resolutions in trade disputes.
iv. It gives a sense of self respect amongst the workers.
v. It boasts and strengthens the workers power of bargaining as a group.[43]

To the employer, the merits are:
i. It plays a crucial role in industrial disputes settlement and prevention.
ii. It brings about simplicity at the bargaining level in issues resolution by the employer.
iii. It creates room for increment in workers involvement in the work place decision making and also provides a medium of communication between both parties.
iv. It promotes the job security idea among workers which ultimately will lead the reduction in the cost of labour turnover to the employer.

Furthermore, to the society, the merits are:
i. It helps the society in the attainment of industrial peace.
ii. It establishes a healthy industrial climate for the development of the society.
iii. The discrimination and exploitation of workers by their employers is constantly being checked.
iv. It extends democratic principle into the industrial environment.[44]

4. The Relationship between Freedom of Association, Collective Bargaining and Right to Strike

Freedom of association, collective bargaining and the right to strike are concepts that are interrelated. Freedom of association has two views as to its content.[45] The first view is that it extends no further than the right of an individual worker to join an association.[46] The second view contends that in order to give freedom of association a more meaning, all other rights and freedoms that are in such association must be encompassed inclusive of the right to strike[47] and the right to negotiate collectively. It deserves to be stated that Lord Wedderburn in his point of view stated that freedom of association can either be interpreted purposively or restrictively.[48] The purposive interpretation protects all the association's activities inclusive of the right to strike while the restrictive interpretation means nothing more than the right to join a trade association and nothing more.[49]

Okene in his opinion stated that freedom of association in its simple and everyday form includes anything from the right to form, join, engage in activities and remain in trade unions, to the right to negotiate collectively, the right to strike and trade union independence. It is very essential to state that without freedom of association, workers will not have the power to negotiate collectively and to strike. Also, freedom of association will be totally empty without the right to strike and collective bargaining. The court in *Retail Workers v. Government of Saskatchewan*[50] held inter alia that to be in association connotes to act in association and the freedom to bargain collectively of which the right to withdraw services is integral, is at the very heart of the existence of association of workers.

[43]<www.naukrihub.com/industrial/importance-of-collective-bargaining.html> accessed on 26 February 2026
[44]<https://www.mbaknol.com/human-resource-management/subjective-matter-and-importance-of-collective-bargaining/> accessed on 28 February 2026
[45]O.V.C. Okene, 'The Relationship between Freedom of Association, Collective Bargaining and the Right to Strike' in *A Colossus of Legislative Governance: Judicial Papers in Honour of Rt. Hon. Eugene Odo, Hon. Speaker, Enugu State House of Assembly* (Rocana Nigeria 2012) 263-264
[46] *(n 46)*
[47] C. W. Summers, 'Freedom of Association and Compulsory Trade Union Membership in Sweden and United States of America' (1964) (1) (112) *University of Pennsylvania Law Review;* 647
[48] Lord Wedderburn, 'Freedom of Association and the Philosophies of Labour Law' (1989) (18) *Industrial Law Journal*; 16
[49] (n 49)
[50] (1985)19 DLR 609

From the above, it is cannot be disputed that the right to strike and collective bargaining are dependent on freedom of association. Freedom of association is also empty without the right to strike and collective bargaining.

5. International Labour Organization Instruments on Collective Bargaining

i. Collective Bargaining Convention, 1981(No. 154)[51]
ii. Right to Organise and Collective Bargaining Convention 1949, (No. 98)[52]
iii. Collective Bargaining Recommendation, 1981 (No. 163)[53]
iv. Labour Relations (Public Service) Convention, 1978 (No.151)[54]
v. Collective Agreements Recommendation, 1951 (No. 91)[55]

The Collective Bargaining Convention, 1981 (No. 154) is the convention that gives definition to the concept of collective bargaining and also urges for the promotion of the concept in all economic activities and the public service.[56] The Right to Organize and Collective Bargaining Convention, 1949 (No. 98) sets out the appropriate measures to national conditions that are to be taken for the promotion, full development and utilization of collective bargaining.[57] The Collective Bargaining Recommendation, 1981 (No. 163) contains a number of recommendations that supplement the Collective Bargaining Convention, 1981. The Labour Relations (Public Service) Convention, 1978 (151) is concerned with the protection of the right to organize and procedures for determining conditions in the public service and also encourages negotiations between parties. The Collective Agreements Recommendation, 1951(No. 91) is the convention that defines collective agreements and calls for mutual respect for collective agreements by parties

6. International Labour Organization and Recognition of the Union/Workers' Organization in Collective Bargaining

In the procedure for collective bargaining, the recognition of the right of unions to partake in the bargaining process and to negotiate on behalf of workers is sine qua non. That is, the International Labour Organization recognizes the union as a necessary party to collective bargaining.[58] Suffice to state that where the majority of the workers are represented by the trade union, the union enjoys the right to be the exclusive negotiation agent for all the workers in the bargaining unit; and trade unions which take part in the collective bargaining process may represent only their own workers or all the workers in the negotiating unit.[59] It deserves to be stated that the Committee of Experts has asserted that the above positions are in compliance with International Labour conventions.[60] Also, the Committee on Freedom of Association has given its assent to the principle and decisions along the same lines with the Expert Committee[61] and has further posited that a provision which states that a collective agreement may be negotiated with a union with absolute majority of the worker in a firm cannot be said to promote or enhance collective bargaining as contemplated Article 4 of convention No. 98.[62]

7. The Legality of Collective Bargaining in Nigeria

There is indeed no doubt that the right of both the trade union (workers) and the employer to collectively bargain on issues concerning the terms and conditions of service is legal, permissible and recognized

[51] The Convention was adopted in the 67th International Labour Conference session of 3rd June, 1981 in Geneva.
[52] The Convention was adopted in the 32nd International Labour Conference session of 1st July, 1949.
[53] The Recommendation was adopted in the 67th International Labour Conference of 19th July, 1981.
[54] The Convention was adopted in the 64th International Labour Conference of 2nd June, 1978.
[55] The Recommendation was adopted in the 34th International Labour Conference of 29th June, 1951.
[56] See Article 2 of Collective Bargaining Convention ,1981 (No. 154)
[57] See Article 4 of the Convention.
[58] O.V.C. Okene,' International Labour Standards and the Challenges of Collective Bargaining in Nigeria' (2009) () *Caribbean Law Review;241*
[59] B. Gernigon and Others, 'Collective Bargaining: ILO Standards and the Principles of Supervisory Bodies' <www.ilo.org/wcmsp5/groups/public /@ed-norm/...wcms-087931.pdf accessed on 23 January 2026
[60] *(n 60)*
[61] See Committee on Freedom of Association, 1996, paras 831-842
[62] *(n62)*

in Nigeria. Collective bargaining right is not specifically enshrined in the 1999 constitution[63] but that notwithstanding; sections 17 (3) (b) (b) and (c)[64], 34 (1) (b) (c)[65], 39 (1) and 40[66] of the said constitution are positive to giving backing to the right. Section 34 (1) (b) and (c)[67] out rightly prohibits involuntary servitude and forced labour and as such rules out any employer/ employee relationship that might translate to unfair labour practices. Thus, any arrangement by the government or employers to deny the workers the right to collectively bargain employment terms and conditions will amount to servitude, forced labour and unfair labour practices. Section 39[68] of the Constitution guarantees the freedom of speech and by inference gives the workers and employers freedom to voice their collective opinions in labour matters. The workers' right to collectively bargain is also inferred from section 40 of the constitution which gives the workers the right to form or join a trade union to protect their interests. Suffice to state that the freedom of association includes the right to protect the interests of the members of a trade union and the right to bargain collectively as confirmed in *Schmidt and Dalstrom v. Sweden.*[69] Also, section 5 of Trade Union (Amendment) Act[70] provides that registered trade unions are to be recognized for collective bargaining purposes. It is most significant furthermore to state that sections 4, 5 and 6 of the Trade Disputes Act[71] encourage collective bargaining and also provide a legal framework for it. The government under the Wages Boards and Industrial Council Act[72] seems to have created the institutional framework for collective bargaining purpose. From all the above, it is safe to conclude that notwithstanding the non-codification collective bargaining right in the 1999 constitution, collective bargaining is legal and constitutional in Nigeria.

8. Challenges and Limitations of Collective Bargaining in Nigeria

Although Collective Bargaining is practiced in Nigeria, it cannot be said that there are no challenges. Though there also stipulations in several statutes in Nigeria on collective bargaining, it cannot be totally correct to say that their applications are in full compliance with the International Labour Organization Standards. The challenges of collective bargaining in Nigeria are as follows:

Implementation of Collective Agreement: The implementation of collective agreements in Nigeria is a major challenge. The non-implementation of agreements entered into by most labour unions and government militate the efficacy of collective bargaining. The failure to implement agreements collectively bargained or entered into is a flagrant breach of the ILO principle of mutual respect to collective agreements contained in Recommendation No. 91 of 1951. The provision of section 3 (3) of the Trade Disputes Act giving the minister the power to give effect to the provisions of the agreement or any part thereof is a big problem to collective bargaining. The challenge of implementation of collective agreement in Nigeria no doubt is as a result of lack of political will, absence of governance structure for execution, and lack of timely appropriation provision.[73] Political will is the tool and denominator for policies, laws, decisions/ agreements implementation all over the globe and Nigeria is no exception. As seen many times, the government has signed numerous collective agreements with the trade unions without the readiness to discharge the financial obligation on their part. It deserves at this point to note that the non-implementation of Federal Government/ASUU agreement is a product of absence political will and such is a challenge.

[63] 1999 Constitution of the Federal Republic of Nigeria (as amended)
[64] (n 64)
[65] (n 64)
[66] (n 64)
[67] (n 64)
[68] (n 64)
[69] EU.C HR, Series A, No 21 (976)
[70] Cap T437 LFN 2005
[71] Cap T39 LFN 2004
[72] Cap W1 LFN 2004
[73] M. J. D. Akpan,' Nature of Collective Agreements in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges' (2017) (5)(6) *Global Journal of Politics and Law Research*, 24-25

Imposition of Compulsory Arbitration of Trade Disputes Settlement: The statutory imposition of compulsory arbitration by the combined reading of sections 31 (6) (d) of the Trade Union Act[74] and sections 5, 6, 7, 8, 9, 14 and 33 of the Trade Disputes Act creates a challenge to collective bargaining. Undoubtedly, the attempt by the Act to take away the right to strike which has been held to be essential to collective bargaining is a limitation on the right to freely and periodically dialogue for better wages and conditions of service. According to Uvieghara, the introduction since 1968 of what is in effect compulsory arbitration of trade dispute would appear to have had negative effect on collective bargaining in both the public and private sector.

Compulsory Recognition of Registered Trade Union by Employers: The Trade Union (Amendment) Act in section 5 provides for compulsory recognition of registered trade unions for collective bargaining purposes. The problem is that contrary to the internationally accepted 'most representative union principles' adopted by most states like South Africa,[75] the Act has an arrangement that is controversial problematic and prone to abuse by employers. According to erudite Okene, the statutory arrangement whereby all the unions registered in the employment of an employer is made to constitute an electoral college to elect members who would negotiate with the employers, raises a serious concern and is one of the several challenges to the collective bargaining in Nigeria.[76] That is, the provision of section 5 which neither prescribed the Electoral College constituting modalities nor prescribed the procedure to resolve any disputes on which the union should represent the employees is blind and leaves much confusion rather than promoting collective bargaining**.**

Government Interference in Collective Bargaining Process: The Wages Board and Industrial Council Act which is aimed at institutionalizing collective bargaining in Nigeria has by the provisions of the Act vested too much control in government through the Minister. The constitution of the Industrial Wages Board within the private sector and public sector by the act seem to be within the discretionary power of the Minister.[77]Also, where any wages agreement is reached by the Joint Industrial Council, it can only become binding when given a declaration order by the Minister.[78]

Enforcement of Collective Agreement in Nigeria: Collective agreement in the Trade Disputes Act is defined as any agreement in writing between workers organization/representative and employers' organization/representative on terms and conditions of employment.[79] Similarly, Collective agreement according to Odunaiya is any agreement for the settling of disputes on terms and conditions of employment.[80] Collective agreements in Nigeria are generally unenforceable as a matter of general presumption. The general presumption that collective agreement is unenforceable is anchored on the absence of privity of contract[81] which is a common law principle. The court in New *Nigeria Bank Plc v Egun*[82] held inter alia that a collective agreement is at best a gentleman's agreement and an extra-judicial document devoid of action and enforcement. Also, the Supreme Court in *Osoh & Ors v. Unity Bank Plc*[83] upheld the unenforceability of collective agreement when it held inter alia that the appellants and the respondent had no privity of contract. At this stage, it is very essential to look at the enforcement of collective bargaining under the headings below:

Enforcement of Collective Agreement under the Trade Disputes Act: The Trade Disputes Act in Section 3 (1) provides that upon the execution thereof within fourteen days, at least three copies of collective agreement for the resolution of trade disputes shall be deposited with the Minister of Labour by the

[74] Cap 14 LFN 2004
[75] See Part A, sections 11 and 14 of the LRA of South Africa
[76] O.V. C. Okene, 'Internationalization of Nigerian Labour Law: Current Developments in Workers' Freedom of Association' (2016) (2)(2) *Port Harcourt Journal of Business Law*, 5- 8
[77] See Section 1 of Wages Board and Industrial Council Act.
[78] See Sections 18 and 19 of the said Act.
[79] See Section 48 of the Trade Disputes Act.
[80] V. A. Odunaiya,' *Law and Practice of Industrial Relations in Nigeria'* (Passfield Publishers 2006) 325
[81] See the case of *Dunlop Pneumatic Tyre Co. Ltd v. Selfridge Ltd* (1915) AC 847
[82] (2001) FWLR (Pt. 64) 322 at 339 CA
[83](2013) 9 NWLR (pt.1358) 1

parties. Section 3 (3) provides that the Minister may upon the receipt of those copies deposited in accordance with subsection (1) shall make an order, the terms of which may in respect to that agreement specify the provisions of the agreement or any part thereof which shall be binding on the parties. A critical and careful perusal of the sections above in the Trade Disputes Act is to the effect that either party may seek redress to enforce collective agreement in the court of competent jurisdiction.

Enforcement of Collective Agreement by the Adoption of Collective Agreement into the Contract of Employment: For a collective agreement to be enforced in Nigeria, it must be embodied into the contract of employment of the worker who seeks to strictly rely on it.[84] Once it is embodied as part of the contract of employment, the principle of privity of contract becomes applicable and prima facie, it becomes part of the individual contract of employment. In *Nigerian Deposit Insurance Corporation v. Obende*[85] *and Osagie v. New Nigeria Bank plc*,[86] the court reiterated the position that collective agreement is unenforceable by agreement except integrated as part of the terms of employment. In *Union Bank of Nigeria Limited v. Edet*,[87] the respondent's service with the appellants was terminated with one-month notice. The respondent argued that he was entitled to three (3) months notice in the collective agreement with the appellants and his union before his employment could be terminated. The Court in dismissing his argument held that collective agreement can only be enforceable where it is adopted into the contract of employment. Furthermore, the Supreme Court in *SPDC Nig Ltd v. Nwawka*[88] held that it will not rely on an extraneous agreement and policy statement not part of the contract between the parties and not also being embodied into the contract of employment as basis of the plaintiff's action. It is necessary at this point to state that the issues as to the interpretation of collective agreement is by S. 20 (1) of the Trade Disputes Act exclusively vested in the National Industrial Court.[89]

From the above, it is submitted that the Nigerian legal regime which permits the enforceability only where it is incorporated as part of the contract of employment creates rather an impossible and difficult situation in the public sector. This principle is at best possible in the Nigerian private sector. It is most significant to bring to light that where a party had earlier relied on collective agreement, same may be enforced as that party will be estopped from acting otherwise. In *Cooperative and Commerce Bank (Nig) Lmited v. Okonkwo*,[90] an employee was summarily dismissed on a collective agreement and at the trial court; the employee relied on the said collective agreement which the employer objected to the unenforceable. The court held inter alia that since the employer (appellants) relied on the collective agreement to summarily dismiss the employee (respondent), the appellants were estopped from arguing that the agreement was unenforceable. Similarly, in *African Continental Bank v. Nwodike*,[91] the court per Ubazeonu JCA held that the question whether a collective bargaining is enforceable or not will depend on the conduct of the parties, the evidence before the court, and the incorporation into contract employment

9. Collective Bargaining in South Africa: Lessons to be drawn from Nigeria

Collective Bargaining Right is one of the rights expressly codified in the constitution of South Africa.[92] Section 23(5) of the South African constitution confers that right by providing that, 'Every trade union, employers' organization and employer has the right to engage in collective bargaining. National legislation may be enacted to regulate collective bargaining'. The Labour Relations Act which is a national legislation in Chapter III, Part A, B and C makes provisions regulating collective bargaining.

[84] V. Iwunze, 'The General Unenforceability of Collective Agreements in Nigeria: The Paradox of Agreement without Agreement', (2013) (4)(3) *International Journal of Advanced Legal Studies and Governance*; 4
[85] (2002) FWLR (Pt. 116) 921 at 944 CA
[86] (2005) All FWLR (pt.257) 1485 at 1510 CA
[87] (1993)4 NWLR (pt..287)288
[88] (2003) FWLR (Pt. 144) 506 at 526 SC
[89] See *Ekong & Anor v. Oside & Ors* (2004) All FWLR (Pt. 216)562 at 570-1
[90] (2001)15 NWLR (Pt. 735) 104
[91] (1996) 4 NWLR (pt.443)470
[92] Constitution of the Republic of South Africa, 1996

10. Conclusion

The right of workers to collectively bargain with their employer no doubt is an indispensable right in industrial relations and the 1999 Constitution by implication recognizes this right by workers. Without the workers and their employers sitting on a round table to discuss issues affecting employment, there is bound to be industrial crisis. Thus, it is concluded that collective bargaining is the tool for peace, harmony and co-existence between the workers and the employer. Having looked at the extant statutory provisions on collective bargaining in Nigeria and having seen that the 1999 constitution of Nigeria does not expressly provide for the right to collective bargaining, it is recommended that there is an urgent need for the express codification of the right to collective bargaining in the constitution of Nigeria as seen in the case of South Africa and this can be achieved by amendment of the constitution.