ENFORCEMENT OF COLLECTIVE AGREEMENT IN NIGERIA: AN EXAMINATION*

Abstract
Conflicts, unarguably, exist in every sphere of human life, domestically, politically, economically and in the employer and employee relationship. The reason may not be far from the quest to individually protect one's interest against another. The issue of employees/employers conflict often scholarly referred to as industrial conflict has necessitated serious interventions aimed at regulating industrial/labour management relations through the use of "collective bargaining" where parties involved could "negotiate" with the view of reaching an agreement (often referred to as collective agreement), Collective agreement represents the agreements reached during the process of bargaining which has been reduced into writing. It is a product of collective bargaining and sets rules on how workers should be treated, to ensure that management decisions concerning workers meet the demands of justice and fairness. This work appraises, examines and evaluates collective agreements with respect to collective bargaining, the position of the law on its enforceability in Nigeria and some other. In achieving this aim, the researcher adopted doctrinal research method relying on primary and secondary sources of law. It is found that collective agreements are unenforceable due to the absence of intention to create legal relations and the principle of privity of contract. With the growing importance of collective agreement globally, it is recommended that there is the need for the amendment of various legislations to expressly support the enforcement of collective agreement legislation. The need to incorporate sanctions or fines for non compliance with collective agreements reached amongst parties is also recommended.

Keywords: Collective Agreement, Enforcement, Nigeria, An Examination

1. Introduction: Meaning of Collective Agreements

A collective agreement has been described as a contract between an employer and a labour union regulating employment conditions, wages benefits, and grievances.[1] It is seen as a product of 'a voluntary negotiation between employers or employers' organizations and workers' organizations with a view to the regulation of the terms and conditions of employment.' A collective agreement is intended to protect the socially weaker party against the socially stronger party to a contract.[2] Section 3 (3) of the Labour Act[3] defines collective agreement as "an agreement in writing regarding working conditions and terms of employment concluded between an organization of workers or an organization representing workers (or an association of such organizations) of the one part; and an organization of employers or an organization representing employers (or an association of such organizations) of the other part". According to the International Labour Organization,[4] collective agreement is any agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organizations, on the one hand, and one or more representative workers' organization, or, in the absence of such organizations, the representatives of the workers duly elected and authorized by them in accordance with national laws and regulations, on the other. From the foregoing, there arose some key elements of a collective agreement. They are:

a) The collective agreement must be in writing. The bargaining process must be documented and the issues agreed on must be reduced into writing.
b) The collective agreement must be the outcome of a collective bargaining.
c) All necessary parties must be duly and ably represented in the collective bargaining that gave rise to the collective agreement. Where any party; that is, employee or employer is not present or duly represented, such agreement is not acceptable.
d) Collective agreement is usually geared towards settlement of issues relating to working conditions and terms/contracts of employment.

2. Collective Agreement under Common Law

Under the common law, collective agreements are considered non-justiciable, even though they are the outcome of painstaking deliberations between employers of labour and their employees. They are considered a gentleman's agreement which is binding only in honour.[5] The argument always canvassed to back this submission, is that there is no inherent intention to create legal relations, and no contract is legally enforceable unless there is inherent in it, an intention to create legal relations. The English case of *Ford Motor Co. Ltd. v Amalgamated Union of Engineering and Foundary Workers*[6] is very apt as regards the position of common law on the unenforceability of collective agreements. Here, the plaintiff in 1955 negotiated an agreement with 19 trade unions which provided that "at each stage of the procedure, set

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[1] B A Garner (ed), *Black's Law Dictionary* (8th edn Thomson West 1999) 280
[2] O Kahn-Freund, 'Collective Agreements' (1940) *Modern Law Review* 225
[3] Labour Act Cap L1 Laws of the Federation of Nigeria 2004, s3(3)
[4]Collective Agreements Recommendation 91 of 1951 <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312429:NO> accessed 19 December 2023
[5] Ford v A.U.E.F. (1969) 1 WLR 339
[6] (1969) 1 WLR 339; See also *Nigerian Arab Bank v Shuiabu* (1991) 4 NWLR (Pt 186) 450

out in this agreement, every attempt will be made to resolve issues raised and until such procedure has been carried through, there shall be no stoppage of work or other unconstitutional action". In 1968 an application for injunction was brought to restrain two major industrial unions from calling an official strike contrary to the 1955 collective agreement. The main issue in the application was whether the parties intended the agreement to be a legally binding arrangement. It was held that there was no intention that the agreement would be legally binding on the parties. According to Geoffrey Lane J, there was at the time, "a climate of opinion adverse to enforceability"[7] of collective agreements.

The issue of privity of contract is another argument canvassed for the non-enforceability of collective agreements at common law. The argument is that the privity existing is, between employers or employers' associations on the one hand and workers' union on the other hand, and not between an individual employee. The implication is that the individual employee not being privy to the agreement is prevented at common law from enforcing it, even though it was entered for his benefit. The judgement of Lord Haldane in *Dunlop Pneumatic Tyre Co. Ltd. v Selfridge Ltd*.,[8] also clearly represents the principles that only a person who is a party to a contract can sue on it, and the England law knows nothing of a *jus quaesitiumtertia*[9] arising by way of contract. Such a right may be conferred by way of property, as for example, under a trust, but it cannot be conferred on a stranger to a contract as a right *in personam* to enforce the contract.[10] The question is, are these individual employees really third parties here, for all intent and purposes? These employees are actually the unions that have delegated powers to some of the members to represent them in a bargaining table and those representatives are merely their mouthpiece and confer what the members want. No decision is made without the members agreeing to it. How then can it be comfortably said that they are third parties? No wonder some jurisdictions have moved away from this stand. The privity rule is no longer in operation in many jurisdictions around the world. Some jurisdictions have enacted statutes to even allow a stranger to an agreement the right to enforce a term intended to benefit him.[11]

3. Collective Agreement under Nigerian Labour and Industrial Law

Collective agreement under the Nigerian labour and industrial law is defined and regulated by the Labour Act,[12] Trade Dispute Act,[13] National Industrial Court Act[14] and importantly the Common Law. Nigeria is a common law country and its courts have consistently followed the common law principle that collective agreements are binding only in honour and also not enforceable/non justiciable due to the absence of privity. Nigerian Courts have, in several cases declined to enforce them as a matter of course when relied upon by an individual employee. In the case of *Osoh &Ors v Unity Bank Plc*,[15] the appellants' employments were terminated by the respondents on the ground that the appellants' services were no longer needed. The appellants contended that the termination of their employments was wrong because under a collective agreement between the appellants' trade union and the Nigerian Employers Association of Banks, Insurance and Allied Institutions (of which the respondent was a member), the respondent could only determine the appellants' employment on the ground of redundancy. The appellants also argued that under the same agreement, the respondent had wrongly computed their terminal benefits. The Supreme Court held that there was want of privity of contract between the appellants and the respondents and as such the appellants could not enforce the collective agreement against the respondents.

4. Enforceability of Collective Agreement in Nigeria

A collective agreement as already noted under the Nigeria Labour and Industrial Law is unfortunately not regarded as a binding document. It is generally considered as gentlemen's agreement only binding in honour.[16]The argument backing the assertion as earlier stated, is that collective agreements do not have the essential ingredient of 'intention to enter into a legal relationship', and therefore not enforceable. Some notable impediments to the enforcement of collective agreement in Nigeria are weak legal and legislative frameworks, division, politicization and polarization of trade unions and lack of goodwill and commitment on the side of the Employers/Government to the collective agreement. An argument which the writer considers unsubstantiated considering the efforts put into the bargaining which metamorphosed into the collective agreement. It is different if the agreement clearly states that it is not justiciable. Additionally, where an agreement is made in a commercial context, the law raises a presumption that the parties do intend to create legal relations by the agreement. Intention is implied by the fact that it is not expressly denied. If expressly denied (as in a so-called gentlemen's agreement) it could then be argued that the contract may not be enforceable. The Nigerian case law and statutes recognize certain circumstances under which collective agreements would be enforceable by the Courts. These circumstances are:

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[7] *ibid* at 355
[8] 10 (1915) A. C. 847
[9] It means rights on account of third parties
[10] *ibid* at 853
[11] See the English Contract (Rights of Third Parties) Act 1999, for a discussion of the Act, See P Kincaid , 'Privity Reform in England' (1999)116 Law Quarterly Review,43 cited in E Chianu, '*Employment law*' (Ondo: Bemicov Publishers, 2006) 78
[12] Section 91
[13] Section 48
[14] Section 54
[15] (2013) 9 NWLR (Pt 1358) 1
[16] *African Continental Bank PLC v Benedict Nbisike* (1995) 8 NWLR (Pt 416) 725

a. where the collective agreement is incorporated into an individual employee's contract of employment,
b. where under the Trade Disputes Act[17] the Minister orders that a collective agreement or any part thereof be enforceable between employers and employees,
c. where a party to the collective agreement has already relied on and claimed a right under it or it has become a custom or industry practice.
d. and recently by virtue of the provision of Section 7 (1) (c) (i) and 7(6) of the National Industrial Court Act[18]

These circumstances are discussed *seriatim* hereunder.

Incorporation of the Collective Agreement into the Contract of Employment

To be enforceable in Nigeria, a collective agreement must be incorporated into the contract of employment of the individual employee who seeks to rely on it in claim of a right otherwise the claim cannot stand. This is based on the doctrine of privity of contract. The argument for this as enunciated in several case laws is that the individual employee not being a party to the agreement is not allowed to enforce its content, even though the agreement was made for his benefit. However once the latter is incorporated into a contract of employment, by the act of the parties, then it becomes binding on them and therefore enforceable. In *Anaja v UBA Plc,*[19] the Court of Appeal held that a collective agreement on its own does not give an individual employee the right of action in respect of any breach of its terms unless it is accepted to form part of the terms of employment. This is because, the agreement is not between the employer and his employee and as such, a nonparty cannot (legally) enforce a contract even if it was made for his benefit. Thus, a collective agreement is at best a gentleman's agreement, an extra-legal document totally devoid of sanctions. This position of the law was also aptly illustrated in the case of *Union Bank of Nigeria v Edet*[20] where the Respondent's employment was terminated with one month's notice. He contended that under a collective agreement between his union and the appellant he was supposed to be given three written warnings before his employment could be terminated and that the requirement of the agreement was not complied with by the appellant. The Court of Appeal in dismissing that contention held per Uwaifo J.C.A., that Collective agreements except where they have been adopted as forming part of the terms of employment, are not intended to give, or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest nor are they meant to supplant or even supplement their contract of service.[21]

Iwunze[22] has submitted that the Nigerian position that the collective agreement is not enforceable by an individual employee unless it is incorporated into his individual contract of employment creates a rather impossible situation. This impossibility is to be found in situations where a collective agreement postdates the employee's contract of employment. In such situation, it is impossible for the collective agreement to form part and parcel of the employee's contract of employment, except there is a review to incorporate same. This situation arose in *Texaco (Nig.) PLC v Kehinde*,[23] where the employee's contract of employment commenced in 1981, however, the employee sought to claim under a collective agreement between the employer and his union entered much later after his employment had commenced. It was held that the claim was not maintainable because the collective agreement was not incorporated into the employee's contract of employment. Another burning issue is in determining at what stage incorporation takes effect for the purposes of knowing the terms of employment at every point. In incorporating a collective agreement into a contract of employment, it must be in clear terms and devoid of any ambiguity, failure of which, might be held to be unclear whether there is an intention to incorporate same into the employment contract, except where it can operate as an implied term even when the contract of employment is silent on it.

By Reliance under the Custom, Trade Practice and Usage in the Industry

A collective agreement where although not incorporated into a contract of employment, but has overtime become the practice of an industry may be implied into an employee contract of employment by virtue of custom and usage.[24] It will also be deemed to have been incorporated when the parties have been acting on the terms of the collective agreement. This would appear to be a progressive paradigm shift in judicial attitude on the issue of enforceability of collective agreements. In a couple of cases, the courts have also held that where the employer has placed reliance on the collective agreement, he would not be heard to say that the agreement upon which he has already relied on is unenforceable by the employee because it is not incorporated into his contract of employment. In *Cooperative and Commerce Bank (Nig.)*

[17] Cap T8, Laws of the Federation 2004
[18] 2006
[19] (2011) 15 NWLR (Pt 1270) 377
[20] 18 (1993) 4 NWLR (Pt 287) 288
[21] *ibid* at 291
[22] V Iwunze, 'The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' (2013) Vol. 4 No 4 *International Journal of Advanced Legal Studies and Governance* 5
[23] (2001) 6 NWLR (Pt 708) 224
[24] In *Daniels v Shell BP Petroleum* (1962) 1 All NLR 19, it was held that a custom or trade practice may be presumed to have been incorporated into the terms of employment where no express provision is agreed

Limited v Okonkwo,[25] the employee was dismissed by the bank and the letter of dismissal alleged that the employee was dismissed for flouting a clause in a country-wide collective agreement. At trial, the employee sought to rely on the same collective agreement but the employer objected on the ground that the collective agreement was unenforceable. The Court of Appeal held that having relied on the collective agreement to dismiss the employee, the employer was estopped from urging that the agreement was unenforceable. In *African Continental Bank v Nwodika,*[26] Ubaezeonu J. C. A. made effort to move the law beyond the traditional question of whether the collective agreement was incorporated into the contract of employment. The learned justice held that the question whether or not a collective agreement would bind an employer in an individual employee's action should depend on a variety of factors, namely: if it was incorporated into the contract of employment, if one exists, the state of the pleading; the evidence before the court; and the conduct of the parties.[27] By this multiple approach the court is not to consider only the question of incorporation of the collective agreement into the employee's contract of employment in isolation in the determination of whether the collective agreement is enforceable. It is only a factor among others to be considered by the court. Similarly, where the provisions of a collective agreement have been acted upon by management in the past in a manner that suggests that it is binding, such as taking benefit of it in the past against an employee, the agreement would be enforceable without the necessity of it being incorporated into an individual employee's contract of employment. In *Adegboyega v Barclays Bank of Nigeria*,[28]Akibo Savage, J held that where an employer had acted on a collective agreement in such a way as to give the impression that it is binding, the agreement would be taken to have been impliedly incorporated into an individual employee's contract of employment. This is because to allow it would mean that the court now allows a party to approbate and reprobate at the same time.[29]This could be seen as a form of estoppel.

By the Provision of Section 3 of the Trade Disputes Act[30]

Section 3 (1) of the Trade Disputes Act provides that where there is a collective agreement for the settlement of a trade dispute, at least three copies of the agreement are to be deposited by the parties thereto with the Minister, who has a discretion to make an order as to the enforceability of the agreement or a portion of it. The effect of this provision is that for an agreement reached from bargaining for the settlement of a trade dispute to become binding, it will need the consent/approval of the Minister, who may decide otherwise or on the part he deems fit. The implication is that before the Minister can make an order under section 3(3) of the Act, the collective agreement must also relate to the "settlement of a trade dispute"[31]. A collective agreement which or part of which does not relate to the settlement of a trade dispute will not come within the ambit of section 3 of the Act. The issue that arises with regards to this provision is, what if it had to do with a collective agreement reached with a government establishment, the minister been a government representative. In exercising his discretion, will justice be served? Will there not be a biased decision? It deserves pointing out that it is a view shared by many scholars, that given the numerous industrial crises that have occurred in Nigeria over the years in both the public and private sectors, and given thought to the doubtless inclination of government to the prevention of such crises, one could safely surmise that the Minister will not frequently order collective agreements or parts thereof to be binding between employers and workers.[32]The requirement that all collective agreements for the settlement of trade disputes need to be received and approved by the Minister of Labour and Employment, has whittled down the efficacy of collective bargaining as a tool for resolving matters arising from trade disputes in industrial relations in Nigeria and this should not be so.

In line with Section 7 (1) (c) (i)[33] of the National Industrial Court Act[34] **and the Third Alteration of the Constitution**

The Third Alteration to the Constitution has brought modification to the applicability of a collective agreement to the benefit of an individual employee and to the extent to which an employee can rely on such agreement.[35] Under the provision of section 254 (1) (j) (i) of the Constitution, the National Industrial Court has been bestowed with the jurisdiction in terms of the interpretation and application of any collective agreement. The provision of Section 7(1) (c) (i) of the National Industrial Court Act (NICA) which provides that "The Court shall have and exercise exclusive jurisdiction in civil causes and matters – relating to the determination or any question as to the interpretation of any

[25] (2001) 15 NWLR (Pt 735) 114; See *African Continental Bank Plc v Nbisike* (1995) 15 NWLR (Pt. 416) 725 where both parties relied on the same collective agreement and the Court of Appeal, per Edozie J.C.A. held that the contract was not enforceable. Also see African Nigeria Plc v Osisanya (2001) 1 NWLR (Pt 642) 598 where both the employer and the employee relied on the collective agreement but the court held that the dismissal procedure contained in the collective agreement was not binding on the employee as the collective agreement was not justiciable

[26] (1996) 4 NWLR (Pt 443) 470

[27] *ibid* at pp 473-474

[28] (1977) 3 CCHCJ 497

[29] *Halsall v Brizell* (1957) Ch. 197

[30] Cap T8 Laws of the Federation of Nigeria 2004

[31] *ibid*

[32] Iwunze (n 24) 6

[33] It provides that a court shall have and exercise jurisdiction relating to the determination of any question as to interpretation of any collective agreement

[34] Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, Section 254(c) is also very instructive here

[35] *Onuorah v Access Bank Plc* (2015) NLLR (Pt 186) 90-91 paras H-B

collective agreement" also gave jurisdiction to the Industrial Court to interpret collective agreements. The Court is required to carry out this jurisdiction, in line with the provision of section 7 (6) of NICA,[36] by considering good or international best practice in labour. This, the Court can do by borrowing a leaf from international instruments and steps taken by other countries in that area. For example, in the United States, a collective agreement is seen as an enforceable agreement and the privity rule is circumvented by two ways; by custom and usage, where if an employee sues an employer for breach of the terms of a collective agreement, he is only saying that the terms of his employment, by custom and usage cannot be different from those contained in a collective agreement entered between his union and the employer. Secondly the agency theory, where the trade union acts as the agent of its principals who are members of the union so that whenever it bargains with the employer, it is in fact bargaining for the members.[37] Also in England, a third party can enforce a collective agreement, if it purports to confer a benefit on that third party.

It is encouraging to note that the Nigerian Industrial Court have in recent times begun to jettison the strict application of the privity rule in the interpretation of collective agreements. They now hold that an employee can seek a benefit under a collective agreement, however, the employee seeking to rely on a relevant collective agreement must first provide evidence and convincing proof of membership of the trade union.[38] The rule which now appears settled is analogous to the privity rule in the general law of contract. However, it is important to note that the approach of the Court is that mere evidence of deductions of check-off dues is not enough proof,[39] neither is the fact that membership was pleaded and not disputed by the other party enough evidence.[40]The stand taken by the Court is that proof required has to be by direct documentary evidence. This stand puts an unnecessary extra burden on the employer. Proof of direct deductions of check-off dues by employer and remittance to a trade union should ordinarily be sufficient evidence of membership of that trade union, without more.

With this shift, the provision of section 23 (2) (d) of the Trade Unions Act which prohibits the Court from entertaining any legal proceeding instituted for the purpose of directly enforcing "any agreement such that every party thereto is one or other of the following, that is to say a trade union, a federation of trade unions or the central labour organization", in the face of the provision of section 254 C of the Constitution on the jurisdiction of the National Industrial Court over collective agreements appears redundant. Ordinarily, a collective agreement between the workers union and an employer would not be caught up by this provision but this is not the case with an agreement between an employers and employees union, considering the interpretation of the trade union under section 1 of the Act except that provision will be interpreted as referring to workers only.[41] Section 16 (1) of the Trade Disputes Act also gives the National Industrial Court power to interpret any term or provision of a collective agreement and its decision final and conclusive. It is my view that there is still a lot of work to be done by the National Industrial Court with the enormous power given to them in changing the status of collective agreement in Nigeria.

5. Collective Agreement in Selected Jurisdictions

England

An appropriate jurisdiction to consider first in comparison with Nigeria and other jurisdiction is England, where the doctrine of privity of contract originated from before it became part of the Nigerian *corpus juris* by reason of colonization. There, the doctrine has through legislation been revised since 1999.[42] In England today, the doctrine that a third party cannot enforce a contract has ceased to be the law. A third party can now enforce a contract in two situations: Firstly, if the third party is mentioned in the contract as the person authorized to enforce it, and secondly, if the contract purports to confer a benefit on the third party. Similarly, under the English Trade Union and Labour Relations (Consolidation) Act, 1992,[43] a collective agreement is enforceable where it is in writing and where expressly provided that the agreement is legally binding on the parties thereto. Thus, the anachronistic doctrine of privity of contract no longer weighs down collective agreement in England.

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[36] 2006 which provides that 'the Court shall in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, have due regard to good or international best practice in labour or industrial relations and what amounts to good or international best practice in labour or industrial relations shall be a question of fact'

[37] See C O Gregory, 'The Enforcement of Collective Agreements in the United states' (1968) Current Legal Problems 168; C. W Summers, 'Collective Agreements and the Law of Contract' (1969) 78 *Yale Law Journal* 525

[38] Onuorah v Access Bank PLC (supra) where it was held that 'actual proof of membership is key to recovery under a collective agreement'

[39] Habu v NUT Taraba State (2005) 4 FWLR (Pt 283) 646

[40] *ibid* at paras B-E

[41] In the United Kingdom where the probation originated from, the employers' association no longer falls within the definition. See section 28 of UK Trade Union and Labour Relations Act, 1974 as amended

[42] Section 1 of the Contracts (Right of Third Parties) Act 1999

[43] Section 179 (1) (2) of the Act

United States of America

In the United States of America (USA), collective agreements are enforceable by individual employees. There, the privity rule is circumvented through two theories. The first is referred to as the "custom and usage" theory which is to the effect that, if an employee sues an employer for breach of the terms of a collective agreement, he is only saying that the terms of his employment, by custom or usage equates to those bargained for by his union. That is to say that by custom and usage, the terms of his employment cannot be different from those contained in a collective agreement entered between his union and the employer. The second is the "agency theory". This theory stipulates that a Trade Union acts as the agent of its principals who are members of the union so that whenever it bargains with the employer, it is in fact bargaining for the members.[44] Accordingly, in the USA, all collective agreements are enforceable.[45]

Netherlands

In the Netherlands, no distinction is drawn between an individual employee's contract of employment and the collective agreement entered into between his union and employer. In fact, any agreement between an individual employee and the employer is void if it derogates from an existing collective agreement. In this jurisdiction, if an individual employee and an employer agree contrary to the provisions of a collective agreement, the collective agreement prevails.[46] Thus, collective agreements in the Netherlands to which an employee's union is a party will cover the employee whether the agreement predates or postdates his individual contract of employment. By virtue of their Collective Agreement Act, all collective agreements are legally binding on the parties thereto.

6. Conclusion and Recommendations

With the developmental and statutory changes in the status of collective agreement in other jurisdictions, the failure of Nigeria to take adequate steps to make collective agreement reached by virtue of a painstaking deliberation and negotiation between the concerned bodies, enforceable is most unfortunate. The continued use of the common law principle on the issue of collective agreement and the position of our labour statutes which looks more like a codification of the common law principle is a sign of an attempt to stifle the progress of the Nigerian Labour and Industrial law in that area. Why Nigeria should continue to dwell in the shadow of these common law principles with regard to collective agreement even when it has been buried since 1999 in the jurisdiction where it came from[47]is a question that begs for an answer. Consequent upon want of privity, individual employees lack *locus standi* to enforce collective agreements validly reached on their behalf by their unions and for a supposed absence of intention to create legal relations, unions are unable to enforce collective agreements reached with employers or employers' associations. The steps been taken of recent by the National Industrial Court in line with section 254 C of the Constitution and the provision of section 7(1)(c)(i) and section 7(6) of NICA for an employee to benefit from an agreement reached on his/her behalf is commendable and a much expected one, however there is the need for more to be done. There is indeed an urgent need for a jurisprudential shift to make a clear provision for the justiciability of collective agreement and make the enforcement of collective agreement more flexible.

There is the need for a legislative and statutory change in the Nigerian labour and industrial relations law. Thus, a reform of same to align with international best labour practices and global trends is recommended. One of the ways to achieve this is the enactment of a new labour law to be known as the Labour Relations and Employment Rights Act. The contents of this Act should be in line with international best labour practices and decent work agenda, putting into consideration global trends in international relations. The Act should amongst other things clearly provide for the interpretation and justiciability of collective agreement. It should also clearly provide for the right of parties to the agreement and the right of an individual member of the union to claim benefit under it. The change should also consider the right of a third party to whose benefit a right insures in a collective agreement to which he is not a party, to claim under the agreement. This should receive legislative imprimatur in Nigeria. This is the trend in the more advanced jurisdictions like England, United States of America, amongst others who have enacted legislations that have effectively nullified the common law doctrine of privity of contract so that in those jurisdictions, third parties could claim under such contracts which, though they are not parties to, some benefit insured in their favour. The legislature should also come up with an instrument where management (Government) shall be compelled to recognize employees and their union(s) in collective bargaining and to see the act of non recognition of employee's union(s) as a criminal offence for peace and growth of the nation's economy.

Also, there should also be a review on the provisions on strike, as the present provision appears more like an attempt to frustrate the enforcement of collective agreement. Furthermore, whilst we wait for a clear statutory legislation on the justiciability of collective agreements, the Court should in resolving cases, be able to improvise and apply the severance

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[44] C O Gregory 'The Enforcement of Collective Agreement in the United States: Current Legal Problem', 78th *Yale Law Journal* (1969) 525

[45] *ibid* at 6

[46] See National Report presented by Justice Arnold Zack at the X1Vth meeting of European Labour Court Judges, Paris on the 4th of September 2006

[47] See United Kingdom Contracts (Right of Third Parties) Act 1999, Section 1

rule[48] in the general law of contract, such that provisions in a collective agreement which admit of immediate enforcement can be enforced while leaving out those that are merely aspirational and futuristic. The Court should also begin to apply *the doctrine of estoppel*, which has received statutory affirmation in our laws,[49] whereby a court may preclude or *estop* a person from going back on his word or alleging facts that are contrary to his promises or representation. The application of this principle in the interpretation of the collective agreement and the intention of the parties thereto ordinarily will make collective agreement justiciable and applicable to parties to it and individual employees who desires to claim a right under it. That will put an end to issue of it been a mere gentleman's agreement binding only in honour, with no intention to create legal relation. All the employee would need to show is that he believed the representation of the other party to be true and acted upon it.[50]

The above steps if taken will help bring to an end the industrial disharmony and poor employer-employee relation in Nigeria leading to industrial actions and the hardship associated with same, due to the failure on the part of employers to abide by the terms of collective agreements voluntarily reached with workers' unions, especially in the public sector. The numerous cases involving the Academic Staff Union of Universities (ASUU) and the Academic Staff Union of Polytechnics (ASUP) on the one hand and the Federal Government of Nigeria on the other hand which usually disrupts tertiary education are instructive.

[48] Under the severance rule, where a contract has parts which are void and others which are not, the Court could excise the void part and enforce the other parts: Hopkins v Prescott (1847) 4 C. B. 578; *Goodinson v Goodinson* (1954) 2 Q. B. 118; *Adesanya v Otuewu* (1993) 1 NWLR (Pt. 270) 414.

[49] Evidence Act, No 18 2011, Section 169

[50] Acting upon it could mean a lot, including the fact that the employee continued working in that establishment despite better offers from another establishment, etc