



DECLARATION OF INDUSTRIAL ACTIONS AND CONFLICT OF INTEREST WITHIN THE ORGANIZED LABOUR UNION MEMBERS IN NIGERIA

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ABSTRACT

In this paper, the words, “Strike” and “*industrial action*” are used interchangeably. Declaration of Strike by Organized Labour Unions can be said to be legitimate, once the rules are complied with. But at every point in time there are minority interests that will never support the strike. These sets of workers are usually close to the management or the political party in power, in the case of government establishments. All over the world, the collective rights of Organized labour to picket is valid and allowed, the need to maintain peace, law and order has been a contentious constitutional issue when the rights are exercised. The questions that always arise are: should the majority all the time ignore the interest of the minorities of its members? How does the organized civil society strike a balance between these two extreme and diametrically parallel situations? Can the activities of picketers, in spite of constitutional guarantees, amount to crimes against the state? If so, in what circumstances? What of tortuous liability arising therefrom? In declaring strike also, are the interests of the minorities who may not have supported the strike protected.

Keywords: Human Rights, Labour Law, Cartel, Corporate Law.

1. INTRODUCTION

Labour movements, the world over, are aimed at addressing the needs of the working class, while employers of labour are primarily concerned with making profits. The existence of these two interest groups in an industrial establishment has often resulted in trade disputes. Quite often, the disputes are resolved on the basis of compromise, while many others end in lock-outs, work-to-rule and declaration strikes. The Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC), the two main central labour organisations in the country, had in the past organised and led Nigerian workers on strikes over issues they claimed were of public interest. But recent strikes by workers in some sectors of the economy have raised the question over the rationale of using strike as an instrument for settling industrial dispute. Most often, when strike is declared, on the approval of the majority of the members without adequate protection of the minority, who because their job designation or the relationship with the employers or political party in government may not support the declaration of strike.

On July 29, 2011 teachers under the aegis of the Nigeria Union of Teachers (NUT) called off their six-week nationwide strike. The teachers were protesting the refusal by the Federal authorities to issue a circular to back the implementation of the newly introduced Teachers Salary Scale (TSS). They called off the strike following the intervention of governors of the 36 states of

the federation. The implication of the teachers' action cannot be over-emphasised as it kept children in public schools at home for as long as it lasted. But some teachers in some schools defied the declaration of strike and were teaching during the said strike. Though there was conflicts of interest in the declaration of the strike, but the benefits were enjoyed by all members of the union.

Also, on July 10, 2011 members of the National Union of Petroleum and Natural Gas Employees (NUPENG) embarked on a strike that was aborted on the third day. The workers were protesting against high cost of automotive gas oil (diesel) which, they claimed, was allegedly being manipulated by some cartel, as well as poor remuneration. Their complaint also centered on the dilapidated state of Nigerian roads which, they said, made haulage of petroleum products difficult for their members. What then are the legal requirements for ensuring industrial harmony? The Trade Dispute Act, 2004, acknowledges that trade disputes are inevitable in industrial organisations. It, however, stipulates that the first step in resolving disputes is for the workers and the management to enter into collective bargaining toward resolving any crisis internally. The Act says that when bargaining fails, the matter should be taken to the Ministry of Labour for mediation within 14 days. The law states that if the mediation fails, the issue should be taken to a Conciliator (a superior officer in the ministry) who should resolve the dispute within 14 days. It also stipulates that if the Conciliator is incapable of resolving the dispute within the period, the matter should be moved to the Industrial Arbitration Panel (IAP) where an award would be given. The award, involves the signing of a communiqué and agreement that must be binding on the employer and the workers. The Act adds that if an issue arises as to the interpretation of the award, the minister or any party to the award may make an application to the National Industrial Court for adjudication and decision. Is necessary to add that the interest of the minority must be secured in all these processes.¹

Generally, in the second half of the 19th century, standards were developed to ensure that "people work in dignity and are not unduly exploited in the course of work."² Strike as a right is a very important weapon in the armoury of organized labour. The right was acquired as a result of so many years of class struggle by the working class. The origin of this struggle is one of perennial class battles, fierce reprisals by the management and the concerned authorities against those embarking on strike and self-sacrifice by the working class. The right to strike has now

¹ MacFarlane, L. *The Right to Strike*, London Penguin Books, 1981 p. 12.

² Adewumi, F. and Adenuga, A. *The State of Workers' Rights in Nigeria: An Examination of the Banking Oil and Gas and Communication Sectors*, 2010, Abuja, Fredrich Febert Stiftung; Safa, O. *Conflict Management and Reconciliation in the Arab world: The work of Civil Society Organisations in Lebanon and Morocco*, 2007, Beirut: Berghof Research Centre for Constructive Conflict Management; Stevis, D. & Boswell, T. *Globalization and Labor: Democratizing Global Governance*, 2008, Lanham, MA: Rowman & Littlefield; Tillet, G. *Resolving Conflict: A Practical Approach*, 1999, Sydney University Press: Sydney; Tokunbo, M.A. *Labour Movement in Nigeria: Past and Present*, 1985, Lagos: Lantern Books; Williamson, J. *The Strange History of the Washington Consensus*, 2005, Journal of Post Keynesian Economics, 27 (2), 195-206; Winstanley, D. & Woodall, J. *The Ethical Dimension of Human Resource Management*, 2000, Human Resource Management Journal, 10 (2), 5-20; Wordofa, D. *Violent Conflicts: Key obstacles for Sub-Saharan Africa to Achieving the Millennium Development Goals – Where is the Evidence?* 2008, Paper presented at the International Conference on Peace and Security in Africa, Hilton Hotel, Addis Ababa, Ethiopia, February, 20 – 23; World Bank, *Millennium Development Goals: Confronting the Challenges of Gender Equity and Fragile states*, 2007, Washington DC: World Bank; Okene, O.V.C. *Current Issues and Developments in Workers Freedom of Association in Nigeria*, 2007, Journal of Commonwealth Law and Legal Education, 5 (1), 49-68; Okene, O.V.C. *The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law*, 2007, RADIC 15, 43–45; Okonjo-Iweala, N. & Osafo-Kwaako, P. *Nigeria's Economic Reforms: Progress and Challenges*. Brookings Global Economy and Development, Working Paper, 6, 1-30; Otofo, D. (2003). *The Generals, NLC & Trade Union Bill*. Retrieved from <http://www.thisdayonline.com/archive/2003/12/07/20031207>; Peterson, R.B. & Lewin, D. *Research on unionized Grievance Procedures: Management Issues and Recommendations*, 2000, Human Resource Management, 39 (4), 395-406;

been accepted as an indispensable part of a democratic society and a fundamental human right.³ The world over, strike is a very important tool for the defence and promotion of the rights and interests⁴ of Labour and its members and is a necessary counter force to the power of capital. In labour negotiations, strike plays the same role as warfare plays in diplomatic negotiations.⁵ Lord Wright, stating the importance of the right to embark on strike in industrial relations observed that:

“Where the rights of labour are concerned, the rights of the employers are conditioned by the rights of men to give or withhold their services. The right of workmen to strike is an essential element in the principle of collective bargaining. It is, in other words an essential element not only of the union’s bargaining process itself, it is also a necessary sanction for enforcing agreed rules.”⁶

2. DECLARATION OF STRIKE IN ACCORDANCE WITH THE LAW

In Nigeria, one of the relevant laws governing industrial activities which also appears to recognise industrial actions (strikes) is the Trade Disputes Act.⁷ Section 48(1) of the TDA defines a strike as the: “... cessation of work by a body of persons employed acting in combination, or a concerted refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work”. The Act further defines cessation of work as including “deliberately working at less than usual speed or with less than usual efficiency”, while it defines refusal to continue to work as including “*refusal to work at usual speed or with usual efficiency*”. This definition presupposes a dispute based on a trade dispute and nothing more. It does not contemplate a social, economic or political disagreement or misgiving of workers. The definition, therefore, is narrower than the one at the common law. In *Tramp Shipping Corporation v. Greenwich Marine Inc.*,⁸ Lord Denning defined a strike action broadly as:

³ Kahn-Freund, O. & Hepple, B.A. *Laws Against Strikes*, Fabian Research Series, 1972 p. 4; Leary, V. A. *The Paradox of Workers Rights as Human Rights* in Compa, L. A. & Diamond, S. F. (eds), *Human Rights, Labour Rights and International Trade*, 1996; Ben-Israel, R. *International Labour Standards: The case of the Freedom to Strike*, Kluwer, 1988 p.13; Aspinall, E. *The Construction of Grievance*, *Journal of Conflict Management*, 2007, 51 (6), 950-972; Astor, H. & Chinkin, C. *Mediator Training and Ethics*, *Australian Dispute Resolution Journal*, 1991, 22 (4), 205-223; Aturu, B. *The Nigerian Labour Laws: Principles, Cases, Commentaries and Materials*, 2005, Lagos: Frankad Publishers; Clarke, G. R. & Davies, I.T. *Mediation – When is it not an appropriate Resolution process?* 1992, *Australian Dispute Resolution Journal*, 3 (2), 70-81; Cooks, L.M. & Hale, C.L. *The Construction of Ethics in Mediation*, 1994, *Mediation Quarterly*, 12 (1), 55-84; Daly, J.P. *Explaining changes to employees: The influence of justification and change outcomes on employees, fairness judgments*, 1995, *Journal of Applied Behavioural Science*, 31, 317-372; Damachi, U.G. *Industrial Relations: A Development Dilemma*, 1985, Lagos: UNILAG Press; Getman, J. G. & Marshall, F. R. *The Continuing Assault on the Right to Strike*, 2002, *Texas Law Review*, 79 (3), 703-04; Gramberg, B.V. & Teicher, J. *Managing Neutrality and Impartiality in Workplace Conflict Resolution: The Dilemma of the HR Manager*, 2005, Victoria: School of Management, Victoria University of Technology; Greenberg, J. *Using socially fair treatment to promote acceptance of a work site smoking ban*, 1994, *Journal of Applied Psychology*, 79 (2), 288-297; Hafner-Burton, E. M. Tsutsui, K. & Meyer, J. W. *International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties*, 2008, *International Sociology*, 23 (1), 115-141

⁴ Kahn-Freund aptly refers to these as “platitudinous confrontation of expectations and interest”; Kahn-Freund, O. *Labour and the Law*, 1977 pp. 48 - 49

⁵ Getman, J. G. & Marshall, F.R. *The continuing Assault on the Right to strike*, *Texas Law Review*, 2000-2001, 703-735 at 703 -704

⁶ *Crofter Hand Woven Harris Tweed Co. v. Veiteh* (1942) 1 All E.R. 142 at p. 158 -9

⁷ Cap. T8 LFN 2004

⁸ (1975) All E.R. 898 at 990

“A concerted stoppage of work by men done with a view of improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or the other, or supporting or sympathizing with other works in such endeavour. It is distinct from stoppage brought about by external event such as a bomb scare or by apprehension of danger.”

Although this definition is wider than the one given under section 48(1) of the Trade Disputes Act, the first segment of the definition which hinges a strike on a trade dispute and the last segment thereof which exclude external factors like bomb scare, etc agree with the said section 48(1) of the Act.⁹ In the broadest sense, a strike is a deliberate concerted work stoppage. To constitute a strike in this sense, there must be a common cessation of work and the work stoppage must be deliberate. It follows that a cessation of work by a single worker cannot be a strike, nor does it amount to a strike if a group of employees stopped working due to an external event, such as a bomb scare or apprehension of danger.¹⁰ A work-to-rule or the so called “go slow” or “work to contract” will not qualify as a strike generally since it does not amount to stoppage of work. However, a politically induced protest¹¹ or sympathy strike still qualifies as a strike.

Under the Nigerian statute, any strike which is not a fall-out of a trade dispute is not a strike within the contemplation of the Act. A “Trade Dispute” means any dispute between employers and workers or between workers and workers, which is connected with the employment or non-employment, or the terms of employment and physical conditions of work of any person.¹² It must be stated that the notion of “strike” in the true sense of the word, does not permit of most of the actions of the organized labour in Nigeria. For one a strike action should in reality be related to the terms of the employment of members of the union. A strike action cannot be called in relation to governmental policies. This is stated in the light of the definition of strike as contained in Section 48 of the Trade Dispute Act¹³ as earlier cited. Strikes are more of actions than mere expressions which, more often than not connote making known an opinion by words. Without prejudice to the rights of individuals who are also Nigerian citizens to protest on

⁹ Hon. S.T. *Rights of Organized Labour and Picketing Rights in Nigeria in Constitutional law and Jurisprudence in Nigeria*, Port Harcourt: Pearl Publishers 2004, p. 338; Okonjo-Iweala, N. & Osafo-Kwaako, P. *Nigeria's Economic Reforms: Progress and Challenges*. Brookings Global Economy and Development,

Working Paper, 6, 1-30; Otobo, D. (2003). *The Generals, NLC & Trade Union Bill*. Retrieved from <http://www.thisdayonline.com/archive/2003/12/07/20031207>; Peterson, R.B. & Lewin, D. *Research on unionized Grievance Procedures: Management Issues and Recommendations*, 2000, Human Resource Management, 39 (4), 395-406; Safa, O. *Conflict Management and Reconciliation in the Arab world: The work of Civil Society Organisations in Lebanon and Morocco*, 2007, Beirut: Berghof Research Centre for Constructive Conflict Management; Stevis, D, & Boswell, T. *Globalization and Labor: Democratizing Global Governance*, 2008, Lanham, MA: Rowman & Littlefield; Tillet, G. *Resolving Conflict: A Practical Approach*, 1999, Sydney University Press: Sydney; Tokunbo, M.A. *Labour Movement in Nigeria: Past and Present*, 1985, Lagos: Lantern Books; Williamson, J. *The Strange History of the Washington Consensus*, 2005, Journal of Post Keynesian Economics, 27 (2), 195-206; Winstanley, D. & Woodall, J. *The Ethical Dimension of Human Resource Management*, 2000, Human Resource Management Journal, 10 (2), 5-20; Wordofa, D. *Violent Conflicts: Key obstacles for Sub-Saharan Africa to Achieving the Millennium Development Goals – Where is the Evidence?* 2008, Paper presented at the International Conference on Peace and Security in Africa, Hilton Hotel, Addis Ababa, Ethiopia, February, 20 – 23; World Bank, *Millennium Development Goals: Confronting the Challenges of Gender Equity and Fragile states*, 2007, Washington DC: World Bank.

¹⁰ Oshio, P. E. *Bank Strikes and the Law in Nigeria*, Edo State University Law Journal (1993/94) vol. 5, No. 1 pp. 83 – 95

¹¹ For instance, strike embarked upon by various trade unions against the removal of fuel subsidy in January, 2012 in Nigeria.

¹² Section 48(1) Trade Disputes Act Cap T8 LFN 2004

¹³ Cap T8 LFN, 2004

government policy, the oil subsidy removal is certainly not connected with the terms of workers' employment.¹⁴ No doubt, this same reasoning informed the judgment of the Federal High Court on the 21st September 2004. It also played a part for the injunctive order of the Court of Appeal made in *Oshiomole v. F.G.N.*,¹⁵ it was the same principles that underlined the injunctive order of the National Industrial Court (NIC)¹⁶ granted on the 6th of January, 2012. In an interesting twist to the issue, Labour in reaction to that order, stated that the dispute between it and the federal government was not that of employee and employer and that the National Industrial Court which is a specialized court handling labour related matters, lacked the jurisdiction to make the order. The question that has remained unanswered is that if the dispute was not that of employee and employer why then did labour resort to a purely labour-related line of action, i.e. strike, to press home its demands? Even though the dispute was not a purely labour dispute but one school of thought has opined

3. LABOUR STRIKES AND COLLECTIVE RIGHTS

Organised Labour in Nigeria has collective rights, both at the common law and under Nigerian law, to embark on, organize or participate in strike action. In *Crofter Harris Tweed & Co. v. Veithch*,¹⁷ Lord Wright held that: "Where the rights of labour are concerned, the rights of the employers are conditioned by the rights of the men to give or withhold their services. The right of the workman to strike is an essential element in the principle of collective bargaining. It is, in other words, an essential element not only of the union's bargaining process itself, it is also a necessary sanction for enforcing agreed rules."

Whilst the constitution does not expressly provide for the rights of citizens to embark on protests, the right to freedom of expression¹⁸ creates room for the expression of whatever ill-feelings the average citizen may have about the administration of the country including his views on governmental policies such as that by which the federal government removed the subsidy that hitherto existed on petrol.¹⁹

¹⁴ Babalola, A. *Oil Subsidy Removal Strike: The Attendant Factors and the Role of Organized Labour* <http://www.tribune.com.ng/index.php/column/afe-babalola-on-monday/36224-oil-subsidy-removal-strike-the-attendant-factors-and-the-role-of-organised-labour-3>. Retrieved on 30/05/2012; ; Okene, O.V.C. *Current Issues and Developments in Workers Freedom of Association in Nigeria*, 2007, Journal of Commonwealth Law and Legal Education, 5 (1), 49-68; Okene, O.V.C. *The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law*, 2007, RADIC 15, 43-45; Okonjo-Iweala, N. & Osafo-Kwaako, P. *Nigeria's Economic Reforms: Progress and Challenges*. Brookings Global Economy and Development, Working Paper, 6, 1-30; Otobo, D. (2003). *The Generals, NLC & Trade Union Bill*. Retrieved from <http://www.thisdayonline.com/archive/2003/12/07/20031207>; Peterson, R.B. & Lewin, D. *Research on unionized Grievance Procedures: Management Issues and Recommendations*, 2000, Human Resource Management, 39 (4), 395-406; Safa, O. *Conflict Management and Reconciliation in the Arab world: The work of Civil Society Organisations in Lebanon and Morocco*, 2007, Beirut: Berghof Research Centre for Constructive Conflict Management; Stevis, D, & Boswell, T. *Globalization and Labor: Democratizing Global Governance*, 2008, Lanham, MA: Rowman & Littlefield; Tillet, G. *Resolving Conflict: A Practical Approach*, 1999, Sydney University Press: Sydney; Tokunbo, M.A. *Labour Movement in Nigeria: Past and Present*, 1985, Lagos: Lantern Books; Williamson, J. *The Strange History of the Washington Consensus*, 2005, Journal of Post Keynesian Economics, 27 (2), 195-206

¹⁵ (2005) 1 NWLR (pt. 907) 414 at 436

¹⁶ The NIC has exclusive jurisdiction in civil causes and matters relating to or connected with any labour, employment, trade unions, Industrial relations and matters arising from workplace, the conditions of service.

¹⁷ (1942) 1 All E. R. 142 at 158-159

¹⁸ Section 39 of the 1999 Constitution (as amended)

¹⁹ The Federal Government of Nigeria officially removed the country's subsidy on fuel on 1st January, 2012. The announcement was made by the Petroleum Products Pricing Regulatory Agency (PPPRA).

At common law, the right to strike is equated with the right of an employee to choose whom he will serve, thereby differentiating him from a slave.²⁰ The principle of the right to strike dates back to the days of slavery where a man had no right to withdraw his labour. The free man may withdraw his labour. He enters into a voluntary agreement with someone else in which he agrees to carry out some specified work in return for a specified amount of pay. If there is disagreement between them he may freely withdraw his labour. This is a most essential right, the right of every citizen, of every worker, to associate with others and withdraw his labour, to go on strike. A workforce which cannot withdraw its labour at will is either oppressed or enslaved. A free people have the right to strike and can exercise this right, supporting those who exercise.

In Nigeria, while section 34²¹ of the 1999 Constitution frowns at forced labour (thereby invariably guaranteeing right to withhold services as a result of a strike), section 40 thereof gives room for the formation of trade unions for the protection of members' interests. However, the right to strike must be exercised within the confines of the law which make the right possible in the first place. It is therefore imperative that in going about protests/strike, the citizen must be wary of trampling upon the rights of persons who may not share his view or opposition to the position of government or where they do, who may not agree with him as to how best to make their displeasure known to government²².

The right to strike in Nigeria, similar to what happens in the United Kingdom, stems from the immunities granted to workers and trade unions against civil and criminal liabilities for engaging in industrial action. Although there was no express provision on the matter, before 1968²³ the British engineered amalgam of common law and legislation which immune's trade

²⁰ Nookes v. Doncaster Amalgamatd Colliencs (1940) A. C. 1014; Cooks, L.M. & Hale, C.L. *The Construction of Ethics in Mediation*, 1994, *Mediation Quarterly*, 12 (1), 55-84; Daly, J.P. *Explaining changes to employees: The influence of justification and change outcomes on employees, fairness judgments*, 1995, *Journal of Applied Behavioural Science*, 31, 317-372; Damachi, U.G. *Industrial Relations: A Development Dilemma*, 1985, Lagos: UNILAG Press; Getman, J. G. & Marshall, F. R. *The Continuing Assault on the Right to Strike*, 2002, *Texas Law Review*, 79 (3), 703-04; Gramberg, B.V. & Teicher, J. *Managing Neutrality and Impartiality in Workplace Conflict Resolution: The Dilemma of the HR Manager*, 2005, Victoria: School of Management, Victoria University of Technology; Greenberg, J. *Using socially fair treatment to promote acceptance of a work site smoking ban*, 1994, *Journal of Applied Psychology*, 79 (2), 288-297; Hafner-Burton, E. M. Tsutsui, K. & Meyer, J. W. *International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties*, 2008, *International Sociology*, 23 (1), 115-141; Henisz, W. J., Zelner, B. A. & Guillén, M. F. *The worldwide Diffusion of Market-oriented Infrastructure Reform, 1977-1999*, 2005, *American Sociological Review*, 70 (6), 871-897

²¹ Section 34 of the 1999 Constitution (as amended) guarantees the right to dignity of human person

²² Babalola, A. *Oil Subsidy Removal Protest: Rights of Organised Labour, Citizens under the Law*. Sunday 26 February 2012. Retrieved on 25/05/2012; Aturu, B. *The Nigerian Labour Laws: Principles, Cases, Commentaries and Materials*, 2005, Lagos: Frankad Publishers; Clarke, G. R. & Davies, I.T. *Mediation – When is it not an appropriate Resolution process?* 1992, *Australian Dispute Resolution Journal*, 3 (2), 70-81; Cooks, L.M. & Hale, C.L. *The Construction of Ethics in Mediation*, 1994, *Mediation Quarterly*, 12 (1), 55-84; Daly, J.P. *Explaining changes to employees: The influence of justification and change outcomes on employees, fairness judgments*, 1995, *Journal of Applied Behavioural Science*, 31, 317-372; Damachi, U.G. *Industrial Relations: A Development Dilemma*, 1985, Lagos: UNILAG Press; Getman, J. G. & Marshall, F. R. *The Continuing Assault on the Right to Strike*, 2002, *Texas Law Review*, 79 (3), 703-04; Gramberg, B.V. & Teicher, J. *Managing Neutrality and Impartiality in Workplace Conflict Resolution: The Dilemma of the HR Manager*, 2005, Victoria: School of Management, Victoria University of Technology; Greenberg, J. *Using socially fair treatment to promote acceptance of a work site smoking ban*, 1994, *Journal of Applied Psychology*, 79 (2), 288-297; Hafner-Burton, E. M. Tsutsui, K. & Meyer, J. W. *International Human Rights Law and the Politics of Legitimation: Repressive States and Human Rights Treaties*, 2008, *International Sociology*, 23 (1), 115-141; Henisz, W. J., Zelner, B. A. & Guillén, M. F. *The worldwide Diffusion of Market-oriented Infrastructure Reform, 1977-1999*, 2005, *American Sociological Review*, 70 (6), 871-897; Huang, P.C.C. *Court Mediation in China, Past and Present*, 2006, *Modern China*, 32 (3), 275-314.

²³ The year 1968 heralded the beginning of legislations affecting the right to strike in Nigeria with the promulgation of the Trade Disputes Emergency Provisions Act of 1968 outlawing the right to embark on strike during the war in order to sustain the war.

unions and workers from criminal and a civil liabilities attendant upon strike actions had become part of our legal system.

4. LIABILITY OF PERSONS ENGAGED IN A STRIKE

4.1 Criminal Liability

Undoubtedly, no sane society will permit organised labour or any group of persons, masquerading under the guise of exerting group pressure, to press home some points or to gain advantages and, to infringe on its criminal or penal laws without the necessary sanctions. In *Mogul Steamship Co. Ltd. v. McGregor, Gow & Company*,²⁴ Lord Halsbury aptly summed up the position thus: “Intimidation, violence, molestation, or the procurement of people to break their contracts, are all of them unlawful acts; and I entertain no doubt that a combination to procure people to do such acts is a conspiracy and unlawful.” In Nigeria, the statutes governing the subject matter include: The Criminal Code²⁵, Penal Code²⁶, the Trade Unions Act²⁷, the Trade Dispute Act²⁸ and the Public Order Act²⁹. It is apposite to reproduce section 43 of the Trade Unions Act. It is to the effect that:

“It shall be lawful for one or more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information or of peacefully persuading any person to work or abstain from working” (see section 43(1))

Furthermore, section 43(2) states:

“According, the doing of anything declared by subsection (1) of this section to be lawful shall not constitute an offence under any law in force in Nigeria or any part thereof, and in particular shall not constitute an offence under section 366 of the Criminal Code or any corresponding enactment in force in any part of Nigeria.

From the above, the two conditions that must be satisfied to make picketing lawful are that it must be done: (1) in contemplation or furtherance of a trade dispute (2) merely for the purpose of peacefully obtaining information or peacefully persuading any person to work or abstain from work. It is submitted that subsection (2) is therefore, only designed to amplify the operative words in subsection (1). It is imperative to state that under section 43(1) of the Trade Unions Act, the right to picket must be based on a trade dispute and must be peaceful. By the same token, it is safe to aver that organised labour has no right to picket on an organization if its demands are not based on a trade dispute. Secondly, the activities of the picketers must be within the confines of the law.

²⁴ (1892) A.C. 25 at p. 37

²⁵ Cap C 38 LFN 2004

²⁶ Cap. P3 LFN 2004

²⁷ Cap. T14 LFN 2004

²⁸ Cap T8 LFN 2004

²⁹ Cap P 42 LFN 2004

In *Piddington v. Bates*³⁰ members of a particular union had gathered in a place for a peaceful picket over a trade dispute. The respondent, a police officer, directed that only two picketers should picket per each door of the premises picketed. The appellant, who disagreed, gently pushed aside the policeman and went about his picketing activities. On a charge of obstructing a police officer in the lawful discharge of his duties, court convicted the appellant, saying that what he did came under the contemplation of the definition of ‘obstructing’ a police officer. On appeal, the appellate court dismissed held that the respondent police officer was perfectly doing his lawful duties when he directed that only two persons should picket per door, because the officer had suspected a likely breach of the peace if many persons were allowed to picket per door. In Nigeria, *Garba & ors. v University of Maiduguri*³¹ is an authority that students should not come together under the cover of unionism to engage in criminal acts of arson, looting and assault. The Supreme Court allowed the appeal of the students on the ground that the disciplinary board that “tried” and “convicted” them was incompetent in law to do so, since those acts committed by the students were criminal in nature, hence ought to have been tried by a regular court or tribunal established by law.

However, if a majority vote is obtained, the dispute is referred to the concerned government agency for resolution. Only if the government-appointed arbitrator determines that a resolution is not possible is the right to strike granted. These government-imposed delays prevent most employees and their unions from ever declaring legal strikes. However, illegal strikes or work stoppages have occurred within individual companies and occasionally, in entire industries.

4.2 Civil Liability

In addition, apart from government control through the use of the instrumentality of penal laws, government also has the right to use the civil law to control excesses in this regard. Comparatively, civil law is more lenient with picketers than criminal or penal law. Section 44(1) of the Trade Unions Act provides:

An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on any one or more of the following grounds only, that is to say-

- (a) that it induces some other person to break a contract of employment; or
- (b) that it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of capital or his labour as he wishes; or
- (c) that it consists in his threatening that a contract of employment (whether one to which he is a party or not) will be broken; or
- (d) that it consists in his threatening that he will induce some other person to break a contract of employment to which that other person is a party.

Also section 44(2) went further as follows:

“Nothing in subsection (1) of this section shall prevent an act done in contemplation or furtherance of a trade dispute from being actionable in tort on any ground not mentioned in that subsection.”

What is clear from the provisions are: first the word “peacefully” used in subsection (1) of section 44. This means that no action will accrue to an aggrieved person in the instances cited in paragraph (a) – (d) of that subsection even if the picketing acts consist of the use of force. Secondly, only those acts mentioned in paragraphs (a) – (d) are not actionable; any other unlawful act is actionable against the picketers. Flowing from this, if the acts are not done “in

³⁰ (1960) 3 All E. R. 60

³¹ (1986) 1 NSCC 245

contemplation or furtherance of a trade dispute”, then the exclusionary provisions of paragraphs (a) – (d) of section 44(1) would be inapplicable.

The peculiar nature of the provisions of section 44 of the Trade Unions Act has rendered most English decisions and obiter dicta on tortious liability inapplicable to Nigeria. Decisions that tortious and/or contractual liabilities accompany unguarded labour activities and picketing such as *Rokes v. Bernard*,³² *Tarquay Hotel Ltd v. Cousins*³³ and *Daily Mirror Newspapers Ltd. v. Gardner*³⁴ etc become less important guides. However, in *Strafford v. Lindley*,³⁵ it was held that acts of picketing that are permitted by statutes, even if they are manifestly unlawful, are not tortious or actionable. Also in *Hubbard v. Pitt*³⁶ it was held that: “the word “picket” is used, no doubt, because of the example shown by workers who, in a trade dispute, picket in support of their demands...picketing a person’s premises (even if done with a view to compel or persuade) is not unlawful unless it is associated with other conduct (of) a nuisance in itself. Nor is it a nuisance for people to obtain or to communicate information..... it does not become a nuisance unless, it is associated with obstruction, violence, intimidation, molestation or threats.”

The above situation is not too different in the United States of America and other civil jurisdiction. Thus in *Thomas v. Collins*,³⁷ the U.S. Supreme Court held that the right to gather together, discuss and inform people concerning the merits and de-merits of labour unions and the need to join them is protected, not only as a part of free speech, but also as a part of free assembly.

5. STATE CONTROL AND REGULATION OF STRIKE

The 1999 Constitution³⁸ provides that the government can through a law, impugn on the rights to privacy, freedom of association/assembly and freedom of movement: “*in the interest of*

³² (1964) A.C. 129

³³ (1969) 2 Ch. 106

³⁴ (1968) Q. B 768

³⁵ (1965) A. C 304

³⁶ (1976) Q.B 142 per Lord Denning, M. R; Henisz, W. J., Zelner, B. A. & Guillén, M. F. *The worldwide Diffusion of Market-oriented Infrastructure Reform, 1977-1999*, 2005, *American Sociological Review*, 70 (6), 871-897; Huang, P.C.C. *Court Mediation in China, Past and Present*, 2006, *Modern China*, 32 (3), 275-314; Hyman, R. *The Political Economy of Industrial Relations Theory and Practice in a Cold Climate*, 1989, London: MacMillan Press; International Labour Organisation, *International Labour Standards: A Global Approach*, 2002, Geneva: ILO; International Labour Organisation, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee*, 2006, 5th (revised) edition. Geneva: ILO; Jameson, J.K. *Toward a Comprehensive Model for the Assessment and Management of Intra-organizational Conflict: Developing the Framework*, 1999, *International Journal of Conflict Management*, 10 (3), 268-294; Komolafe, F. *Government admits shortcomings in job creation efforts*, 2007, Retrieved May 31 2007 from <http://www.vanguardngr.com/articles/2002/features/labour/>; McCabe, D. M. *Alternative Dispute Resolution and Employee Voice in Non-union Employment: An Ethical Analysis of Organizational Due Process Procedures and Mechanisms— The case of the United States*, 1997, *Journal of Business Ethics*, 16 (3), 349-356; McCabe, D.M. & Rabil, J.M. *Administering the Employment Relationship: The Ethics of Conflict Resolution in Relation to Justice in the Workplace*, 2001, *Journal of Business Ethics*, 36 (1), 33-48

³⁷ 323 U.S. 516, 65 S. Ct. 315

³⁸ Section 45 (1) (a) and (b) of the 1999 Constitution (as amended); Okene, O.V.C. *Current Issues and Developments in Workers Freedom of Association in Nigeria*, 2007, *Journal of Commonwealth Law and Legal Education*, 5 (1), 49-68; Okene, O.V.C. *The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law*, 2007, *RADIC* 15, 43–45; Okonjo-Iweala, N. & Osafo-Kwaako, P. *Nigeria’s Economic Reforms: Progress and Challenges*. Brookings Global Economy and Development, Working Paper, 6, 1-30; Otodo, D. (2003). *The Generals, NLC & Trade Union Bill*. Retrieved from <http://www.thisdayonline.com/archive/2003/12/07/20031207>; Peterson, R.B. & Lewin, D. *Research on unionized Grievance Procedures: Management Issues and Recommendations*, 2000, *Human Resource Management*, 39 (4), 395-406; Safa, O. *Conflict Management and Reconciliation in the Arab world: The work of Civil Society Organisations in Lebanon and Morocco*, 2007, Beirut: Berghof Research Centre for Constructive Conflict Management; Stevis, D, & Boswell, T. *Globalization and Labor: Democratizing Global Governance*, 2008, Lanham, MA: Rowman & Littlefield; Tillet, G. *Resolving Conflict: A Practical*

defence, public safety, public order, public morality or public health” or “*for the purpose of protecting the rights and freedom of other persons.*” This constitutional provision, it is submitted, accords with all democratic ideals all over the world. In a bid to regulate strike in Nigeria, the Nigerian Senate has before it a Bill to make it unlawful for the trade unions in Nigeria to embark on any strike without obtaining the permission of the different organs of the union through a ballot.³⁹ Reacting to this development, the Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC) stated:

The arguments canvassed in support of the proposed amendments to the act are not only laughable but shows serious lack of understanding of not only the relevant laws of the country but also the operations of the Trade Unions in Nigeria....Presently, the labour movement in the U.K as represented by the TUC is a major partner in the Labour Party while the AFICIO in the US is a major stakeholder in the Democratic Party where they freely contribute both financially and technically but the labour movement in Nigeria is yet to rise to the 1940s and 1960s level in Nigeria.....we call on Senator Heineken to quickly withdraw that Bill.....⁴⁰

Is sack or dismissal a way to regulate a strike action? Lagos state made history on 7th May, 2012 by becoming the first state in Nigeria to fire 788 doctors in a swoop.⁴¹ The state government made good its promise to disengage the doctors for failing to respond to queries issued to them and for failing to face a disciplinary panel after participating in a three-day warning strike between April 11 and 13 2012. This is a new and dangerous dimension to handling labour crisis especially in Nigeria. While countries like Sudan, Kenya⁴² and Zimbabwe have dismissed doctors, Lagos government’s action remains novel in Nigeria. Government at both state and federal levels had in the past, threatened either to suspend salaries of striking workers or lay them off completely, none had ever been hold enough to mete out these punishments for the sake of industrial harmony. The truth remains that sacking a doctor because he embarked on a strike to prove a point, is not the best thing to do. Lagos State Government must be commended though for recalling the sacked doctors.

6. CONCLUSION

Declaration of strike and right to strike are very important instrument of negotiation of any organised labour Union in any society. However in declaring the strike, the interest of the minorities within the members should protected so that they can still enjoy the confidence of their employers.

Approach, 1999, Sydney University Press: Sydney; Tokunbo, M.A. *Labour Movement in Nigeria: Past and Present*, 1985, Lagos: Lantern Books; Williamson, J. *The Strange History of the Washington Consensus*, 2005, Journal of Post Keynesian Economics, 27 (2), 195-206; Winstanley, D. & Woodall, J. *The Ethical Dimension of Human Resource Management*, 2000, Human Resource Management Journal, 10 (2), 5-20

³⁹ The Bill is sponsored by Mr. Heineken Lokpobori representing Bayelsa West in the Nigerian Senate

⁴⁰ Press statement by Nigeria Labour Congress (NLC) and Trade Union Congress (TUC) on the Anti-Labour Bill currently before the Senate on Wednesday 14th March, 2012, at Labour House, Abuja.

⁴¹ The sacked 788 doctors have since been recalled. They were recalled on 4th June, 2012 and have started collecting their individual official letters of reinstatement from the Health Service Commission; “Lagos doctors collect recall letters”, <http://www.vanguardngr.com/2012/06/lagos-doctors-collect-recall-letters>, Retrieved on June 6, 2012.

⁴² Kenya fired 25,000 health care workers in March 2012.

The functional value of declaration of strike is that it hastens the quick resolutions of the crisis between the Employers and the Employees.

The International Labour Organisation (ILO) attaches great premium to the need to secure and protect the declaration of strike throughout the world and has repeatedly demonstrated its unflinching commitment to all workers by insisting that the declaration of strike must be protected at all times and can only be denied in exceptional circumstances in the interest of the peace and security of the society. In declaring strike, the interest of the minority should not be marginalized.

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