

**AN APPRAISAL OF THE ROLE OF TRADE UNIONISM UNDER NIGERIAN LAW:
A CASE STUDY OF THE NIGERIA LABOUR CONGRESS**

BY

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DECLARATION

I declare that the work in this thesis entitled *An appraisal on the Role of trade unionism under Nigerian law: A case study of the Nigeria Labour Congress* has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at this or any other institution.

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Date

CERTIFICATION

This thesis entitled **AN APPRAISAL OF THE ROLE OF TRADE UNIONISM UNDER NIGERIAN LAW: A CASE STUDY OF THE NIGERIA LABOUR CONGRESS** by **ABDULMUTALIB UMAR** meets the regulations governing the Award of the Degree of Master of Law – LL.M of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This Thesis is dedicated to the entire members of my family.

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ABBREVIATIONS

AC	-	Appeal Cases
AER	-	All English Report
ANTUF	-	Association of Nigerian Trade Union Federation
ASUU	-	Academic Staff Union of Universities
ASUP	-	Academic Staff Union of Polytechnics
ASCSN	-	Association of Senior Civil Servants of Nigeria
CAP	-	Chapter
CH	-	Chancery
EPZ	-	Exporting Processing Zones
EFCC	-	Economic And Financial Crimes Commission
FRSC	-	Federal Roads Safety Corps
Ibid	-	Ibidem
ILO	-	International Labour Organization
IMF	-	International Monetary Fund
IR	-	Irish Report
LFN	-	Laws of the Federation of Nigeria
NANS	-	National Association of Nigerian Students
NLR	-	Nigeria Law Report
NLC	-	Nigeria Labour Congress
NRC	-	Nigeria Railway Corporation
NIC	-	National Industrial Court
NICA	-	National Industrial Court Act
NEPZA	-	Nigerian Export Processing Zones Authority
NUT	-	Nigerian Union of Teachers
NUEE	-	National Union of Electricity Employees
NNPC	-	Nigeria National Petroleum Corporation
NUPENG	-	National Union of Petroleum And Natural Gas
NUBIFIE	-	National Union of Banks, Insurance and Financial Institutions Employees
NWLR	-	Nigeria Weekly Law Report
OATUU	-	Organization of African Trade Union Unity
Op.cit	-	Opere Citator
PHCN	-	Power Holding Company of Nigeria

PENGASSAN-		Petroleum and Natural Gas Senior Staff Association of Nigeria
PMS	-	Premium Motor Spirit
SAP	-	Structural Adjustment Programme
SCNJ	-	Supreme Court of Nigeria Judgment
TUA	-	Trade Unions Act
TUC	-	Trade Union Congress
TDA	-	Trade Disputes Act
WACA	-	West African Court of Appeal
WLR	-	Weekly Law Report

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ABSTRACT

The writer was motivated to write on the subject of unionism with reference to the Nigeria Labour Congress owing to criticisms labeled by Nigeria on the role played by the congress. The writer's desire of changing this negative perspective of the role of unionism became the motivation for the work. Trade unions are not perceived as a potent pressure group interested in championing the rule of law, good governance and enthronement of democratic ideals for the betterment of Nigerians. Activism of the NLC is generally construed in narrow terms confining its agitation to the betterment of only workers. This problems still prevails despite the dynamism of social relations which has necessitated a paradigm shift in the traditional role of the NLC. An objective of this thesis is to educate and enlighten the Nigerian public on the roles of trade unionism towards achieving economic growth, development and in the advancement of political and social rights in Nigeria. The research methodology adopted is basically the doctrinal method of research. This is because it made it easier for the writer to identify the primary and secondary sources of trade union law and have access to available literature covering diverse aspects of the work. The thesis found that the Trade Unions (Amendment) Act 2005 and other legislation have greatly undermined the vibrancy of the Nigeria Labour Congress towards the realization of its mission statement. It is also found that there is no constant flow of vital information from the NLC to the Nigerian public, this lack of public enlightenment of its activism contributed to the negative perception it has in the eyes of Nigerians. As a matter of urgency the legislature should amend the Trade Unions (Amendment) Act 2005 and other legislation t hat impede on the development of trade unionism. The NLC should embark on massive public enlightenment of its activism so as to educate the public. The NLC provides a basis for the limitation of state power, which is tantamount to the control of the state by the civil society; to supplement the role of the political parties by stimulating politically participation; promote the development of political

attributes and creating channels other than political parties for the articulation, aggregation and representation of interest; to monitor state activities, and defend their interest and values. The role of trade unionism as portrayed by the NLC has captured the imagination of the country as the defender of the common man and as a repository of the best values of the Nigerian society. The NLC has given hope to the vast majority of Nigerians who are excluded, marginalized, exploited and oppressed that a better Nigeria is not only possible but realizable. The potency of the NLC in the democratic struggle cannot be undermined. It is significant not only in entrenching democracy, but also its sustainability.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background to the Study

Trade union means any combination of workers or employers, whether temporary or permanent the purpose of which is to regulate the terms and conditions of employment of workers¹.

Trade Unionism has been an indispensable factor in ensuring and guaranteeing stability and industrial harmony between the employer and labour. Trade Unions played pivotal roles in ensuring the free flow of goods and services to the Nigerian public which keep the Nigerian economy afloat. The Nigeria economy is stable largely owing to the activities of trade unions labouring assiduously to strike a balance between its interest and that of management. Labour and Management are two bearers of great social interests.

It is well known that trade unionism all over the world emerged for improving the economic, living and working conditions of workers.² Workers through their union representatives seek to obtain an equitable share in the profits made by the employer in order to improve their working and living standards out of the wealth they help generate.³

The above position has not been different in Nigeria. The primary objective of trade unionism had been an agitation to improve the lot of the labour force through improved conditions and terms of service from the employer. Trade unionism was basically an agitation which was meant to serve as a platform for dialogue with the employer on generally employee welfare.

In this 21st Century, it is our view that there seems to be an additional role in the basic and fundamental objectives of trade unionism in Nigeria. Trade Unionism entails playing

¹ Section 1, Trade Unions Act, Cap T.14 LFN 2004

² Audi, J.A.M (2009) Strike as a Labour Union Tool in Nigeria: Reflection on Trade Union (Amendment) Act 2005, *Ahmadu Bello University of Law and Service*. Vol. 1 No. 2, p. 110

³ Ibid

economic, social and political roles not only to the working class but practically it now extends to ordinary Nigerians even those who are not gainfully employed particularly as it relates to unpopular Government policies.

The new role assumed by trade unions in this 21st Century is not in tandem with the statutory definition of trade unions which basically is an economic union the purpose of which is to regulate the terms and conditions of employment of workers. The impact of trade unions in modern society has become pervasive economically, socially and politically. The very logic that propels the state increasingly to interfere in industrial relations equally explains the need for trade unions to take active interest in politics. The writer submits that despite the restrictive role given to trade unions under the Act, the realm of political activism can still be accommodated legally under Section 40 of the Nigerian constitution which gives individuals the right to associate and assemble freely in order to advance their rights and interest. When individuals aggregate their interests it can be manifested in many legitimate ways this paradigm shift from the statutory definition of trade unions is one of the ways in which the rights guaranteed under Section 40 of the constitution can be advanced.

Particularly, in recent times a modern and vital role of trade unionism had been evolved in the form of political activism. Political activism today by the NLC has been responsible for reversal of several government actions and policies. A good example is the role played by the NLC during the upheavals associated with the removal of fuel subsidy on the 1st day of January 2012 by the Nigerian government.

Nigerians today heavily rely on the responses of the trade unions in a wide range of issues affecting the lives of Nigerians. Labour is now seen as the voice of the Nigerian masses. This additional role of trade unionism i.e. political activism is very unique as trade unions in Nigeria have assumed an additional and difficult responsibility of protecting and

championing the rights of Nigerians as a whole by voicing out and rising against harsh, oppressive and unpopular Government policies made in recent times.

Incessant disruption of the production of goods and services by trade unions all over the world always have a negative impact on the economy of that country. The Nigerian Labour force are actively involved in all the spheres of the Nigerian economy ranging from banking, shipping, agriculture, oil and gas sector, industries etc. Any time the Central Labour Organization i.e. the Nigerian Labour Congress calls for a general strike nationwide, it always have a negative impact in all the sectors of the Nigerian economy. Nigeria always loses millions and perhaps billions of naira daily whenever there is a strike affecting the oil and gas sector which is the highest revenue earner for the country.

It is in the light of this impact that successive Nigerian Governments have always accused the trade unions of economic sabotage. Industrial actions like strike has always been used as a potent weapon by trade unions to hold Government or employers as the case may be to ransom in most instances. This has led to the reversal of some unpopular Government policies or forced the authorities to soft pedal on some of those policies.

Trade Unionism is an integral and indispensable part of achieving the basic objective of economic prosperity and industrialization to any developing country like Nigeria.

Trade Unionism had been responsible for maintaining stability in economies of developed countries through the promotion and maintenance of peace and harmonious industrial relations between management and labour. Labour and Management being the two bearers of great social interest, this interest always conflict as a result of the unequal bargaining powers possessed by these powerful forces. Through the activism of Trade Unions this conflicting interest has to a large extent been harmonized. Though, the tendency of conflict is there but its possibility has been kept to the barest minimum.

The role of trade unionism in Nigeria today cannot be overemphasized. It's an indispensable element in balancing conflicting and sometimes irreconcilable differences between management and labour and in sustaining the fragile Nigerian economy. Any reasonable and responsible Government that desires to sincerely change and bring about positive transformation to the lives and well being of its citizenry through a robust and vibrant economy can only achieve such objective by creating a conducive environment for dialogue with trade unions who constitute a majority of workers employed in all the sectors of the Nigerian economy. Activism by trade unions had been responsible for uplifting the standard of living and general well being of the Nigerian worker and also safeguarding and protecting the rights and interest of ordinary Nigerians from harsh and unpopular policies made by successive Nigerian Governments.

Trade Unions serve as a mirror for reflecting the opinions of Nigerians on various issues of national interest. Activism of trade unionism has awakened the thoughts of Nigerian citizens in various ways and literally forced the government being the largest employer of labour to imbibe civic and democratic culture in dealing with Nigerians.

The NLC prior to the amendment of the Trade Unions Act in 2005 was the only central labour organization in Nigeria. The NLC was established as the only labour centre in Nigeria by virtue of the Trade Unions Decree of 1978. It became the platform to which trade unions in Nigeria must be affiliated. The emergence of the NLC ended decades of rivalry between the four labour centers and the unions affiliated to them. The NLC is basically administered by five of its organs namely; the National Delegates Conference, the National Executive Council, Central Working Committee, National Administrative Council and the Secretariat. Over the past three decades the NLC has been the epicenter for socio-economic and political activism whenever fuel prices are hiked, elections are rigged, wages are not

paid, bogus foreign loans are taken or repaid, workers are unreasonably retrenched without due process etc.

The Nigerian Constitution amply states that “Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any association for the protection of his interests.”⁴ The right to freedom of association and assembly for the purpose of protecting one’s interest is fundamentally guaranteed under the Nigeria constitution.

In recent times, there is a paradigm shift from the traditional objectives of trade unionism. Trade unionism in this past two decades has expended its roles by delving into the realm of political activism. The writer submits that this paradigm shift is very legal because the constitution gives individuals the right to belong to any trade union for the protection of their ‘INTEREST’. It is submitted that interest can either be economic, social or political. This necessarily implies that when workers from trade unions in order to promote their political interest would be legal and constitutional. The trade Union Act has narrowly construed the role of trade unions to advancement of economic interest only. The category of interests in the constitution seems to be wider in scope therefore; this provision will provide a legal haven for trade unions to diversify their purpose and objectives. The provision of the constitution that guarantees freedom of assembly and association for the protection of a person’s interest has laid the legal backing and foundation by which trade unionism is able to expand its roles in the society. Government makes policies some of which have far reaching consequences in the society like fuel hikes. In such cases, engaging in political activism through calling mass action exemplified by political/general strikes is one of only way by which such negative policies are reversed totally or at least partially. The expanded role of trade unionism which is basically centered on political activism is the most effective way by

⁴ Section 40, Constitution of the Federal Republic of Nigeria (As amended) 1999.

which “the protection of a person’s interest” envisaged in Section 40 of the constitution can be observed.

1.2 Statement of the Problem

Trade unions are not perceived as a potent pressure group interested in championing the rule of law, good governance and enthronement of democratic ideals for the betterment of Nigerians. In the light of this general perception a writer aptly stated thus “The end of trade union activity is to protect and improve the general living standards of its members and not to provide workers with an exercise in self-government.”⁵

This writer believes the above statement is inapplicable and erroneous in this 21st century because trade unionism had already taken a step forward away from its primary objective. The Nigeria Labour Congress being the umbrella for trade unions in Nigeria and has become the mouthpiece of the oppressed Nigerian worker and masses.

Trade Unionism today is not all about agitations for the upliftment of the Nigerian worker only, but the benefits of such agitations accrue not only to the workers but also transcends all classes of Nigerians comprising working class and even the self employed. A good example of such agitation having a general benefit to Nigerians is the resistance by the Nigeria Labour Congress of the perennial increment in fuel prices by successive Nigerian governments. The last of such increments was on the 1st day of January 2012 when the Federal Government removed the subsidy which Nigerians hitherto enjoyed on petroleum products. There was uproar nationwide and that astronomical figure was effectively reduced owing to the mass action called and coordinated by the Nigeria Labour Congress.

The major problem this work intends to address is the negative perception which Nigerians have of the Nigeria Labour Congress due to lack of enlightenment on its activities in the system. The research questions the writer poses is whether the Nigeria Labour

⁵ Allen v. (1954) Power in Trade Unions, p. 122.

Congress is purely an economic organisation which plays only economic roles and whether it has contributed to the advancement of economic, social and political rights in Nigeria. It is our candid view that trade unions perform dual roles to the Nigerian society. Trade Unions owe a duty to its members workers as well as the generality of Nigerians. This assertion is aptly captured in the mission statement of the Nigeria Labour Congress which states:

The mission of the Nigeria Labour Congress is to organize, unionize and educate all categories of Nigerian workers defend and advance the political, economic, social and cultural rights of Nigerian workers, emancipate and unite Nigerian workers and PEOPLE from all forms of exploitation and discrimination; achieve gender justice in the work place and in the NLC; strengthen and deepen the ties and connections between Nigerian workers and the mutual/natural allies in and outside Nigeria; and the lead the struggle for the transformation of Nigeria into a just, humane and democratic society.⁶

In a similar vein, this objective was stated by the petroleum and Natural Gas Senior Staff Association of Nigeria in posting its tasks for the future when it boldly asserts that “we must speak not only for our members, but also for the Nigerian people.”⁷

It’s our considered view that the role of trade unionism transcends agitations for the betterment of the Nigeria worker only, it’s a misnomer to confine and de-limit the role of trade unionism in Nigeria in terms of only the Nigerian worker. The entire Nigerian citizenry are target beneficiaries of agitations by trade unions.

1.3 Scope of the Research

The scope of this thesis is basically to cover activities of trade unions right from its inception in Nigeria to present day. So many trade unions exist today in Nigeria that it will not be humanely possible to give a comprehensive detail of each. The Nigeria Labour Congress is the case study of this thesis being the most vibrant central labour organization in Nigeria. It is the platform of trade unions in the country. It gives support to affiliate trade

⁶ Retrieved from <http://www.nlcng.org> assessed on 2/9/13 at 9.10am.

⁷ Ibid

unions under its aegis ranging from advise co-ordination or organization of activities of affiliate unions or intervening in industrial dispute involving a particular trade union and its employers.

Nigeria is a member of the governing body of the International Labour Organization (ILO) and the ILO is a specialized agency of the United Nations. The main organization that co-ordinates with the ILO is the Federal Ministry of Labour and productivity. Under the ILO charter its basis as it relates to the Nigeria Labour Congress is in its cardinal tripartite principle i.e. negotiations within the organization are usually held between the representatives of government, trade unions and member states employers. Under this tripartite principle of the ILO, the NLC is the key player as it is the umbrella for trade unions in Nigeria being the most vibrant labour center in the light of recent amendment to the Trade Unions Act in 2005. The ILO charter was further reviewed in 1946 and it incorporates the 1944 Philadelphia Declaration which emphasized that freedom of association and expression are essential to be sustained for progress and the war against want requires unrelenting vigour for the promotion of common welfare. The NLC has been in the forefront for championing the observance of these principles. Section 40 of the Nigerian Constitution provides the constitutional back up to the NLC in exercising its freedom of association and assembly. Under the tripartite principle of the ILO, the NLC as a key player in the realm of industrial relations must be carried along so long as it involves issues of industrial relations in Nigeria.

The scope of this thesis will cover the roles the Nigeria Labour Congress plays to the Nigerian society as an effective tool for boosting the Nigerian economy, improving the standard of living of Nigerian workers, championing democratic ideals and protecting Nigerians from exploitative Government policies and those of other employers of labour. Though reference may be made to the pattern of actions by other trade unions outside Nigeria particularly Britain as the bulk of Nigeria's trade union law derives its historical antecedents

from the British system. Also, pattern of trade unionism under American labour law will be considered briefly. It becomes necessary to consider these two jurisdictions so as to fully understand the level of intensity of trade unionism globally.

1.4 Research Methodology

The method of research methodology to be used for this thesis is basically the doctrinal method of research for the collection and analysis of data and information.

Trade unionism in this 21st century is a dynamism subject. Economic variables are dynamic and constantly evolving. This undisputable fact radically alters conditions and circumstances of both labour and management. It becomes necessary to employ the doctrinal method of research because it will be easier to identify both primary and secondary sources of trade union law. The primary sources includes the various statutes regulating trade union activities in Nigeria like the Trade Union Act, Labour Act, Trade Disputes Act and judicial authorities (case law) decided by courts in Nigeria. In the same vein secondary sources of trade unions law are works or books written by seasoned authors and professionals in the field of labour law who have written various books covering various roles and diverse aspects of trade unionism in Nigeria.

Apart from books, other secondary sources includes articles which are bound through other avenues such as journals, periodicals, seminar or conference papers and newspaper columns. All these contain ideas of the authors on the subject matter of this thesis. It becomes necessary to carefully study and analyse these past works in order for the writer of this thesis to have a full grasp and understanding of the subject matter of this research. Studying such past works will assist the writer in harmonizing diverse ideas and opinions from other sources and to shape the writer's perspective on various issues related to trade unionism in Nigeria.

1.5 Literature Review

Trade unionism under Nigerian law is not a new aspect under Nigerian labour law. In fact this constitutes the foundation and backbone for labour law in Nigeria. Some notable Nigerian scholars and lawyers have written extensively on trade unionism in Nigeria.

Oladosu Oguniyi in his book **Nigerian Labour and Employment Law in Perspective**⁸ has given an extensive expose on trade unions. On the issue of trade unionism in Nigeria, the author basically centered on appraisal of the development of various laws relating to the formation of trade unions, legal status, registration and membership of trade unions. The author also highlighted the liability of trade unions as a result of union agitation in the forms of strikes, picketing and other forms of industrial strife which are basically aimed at improving employee welfare and better conditions of service. The author gave a category of offences to which trade unions might be held liable such as conspiracy and torts by inducing a breach of contract. The author did not make emphasis on the roles trade unions play in Nigeria. The author restricted the roles played by trade unions to general terms such as championing the cause of its members. The book however did not discuss the major roles played by trade unions in Nigeria such as economic and social functions. And a more recent role of trade unionism which has been very potent is political activism, which to a large extent had curtailed incessant and unjust policies from the government.

In the same vein, Emeka Chianu in his book *Employment Law*⁹ laid much emphasis on the need to form trade unions because collectively employees can have considerable power and influence which is to be used for self protection of its members from real and perceived exploitation and mistreatment by employers. The author equally centered the issue of trade unionism around the protection, preservation and promotion of the interest of labour without more. The author however did not also discuss the roles of trade unionism which are

⁸ Ogunniyi, O. (1991) *Nigerian Labour and Employment Law*, Folio Publishers Ltd, Lagos.

⁹ Chianu, E. (2004) *Employment Law*. Bemico Publishers, Enugu.

very crucial in uplifting the standard and quality of life of Nigerians and in achieving economic growth and prosperity.

Similarly, E.E. Uviegara in his book *LABOUR LAW IN NIGERIA*¹⁰ extensively discussed the right to form trade unions and its principal objective which is to regulate the terms and conditions of employment of workers i.e. engaging in collective bargaining. The author also highlighted the requirements for registration of trade unions and benefits enjoyed by a registered trade union. The author did not discuss the pivotal roles of trade unionism.

Akintunde Emiola in his book *Nigeria Labour Law*¹¹ wrote an expose on trade unionism. The author wrote extensively on the rights and obligations of trade union members, a comprehensive analysis on the historical development of trade unions in Nigeria. The author also gave categories of economic torts and criminal liabilities for which trade unions can be held accountable. The book had also not discussed the roles trade unions play in Nigeria. Wogu Ananaba in his book *Trade Union Movement in Nigeria*¹² wrote extensively on the historical development of trade unionism in Nigeria. The learned author gave an indepth analysis on the factors responsible for the rise of trade unions in Nigeria. From the trade union history as expounded by the author, the struggles and agitations of trade unions were basically centered on fighting oppression and repression from the colonial authorities. The author however did not discuss the role trade unions play to the Nigerian society such as socio-economic. The learned author has captured elements of political activism back then which had to do mostly with nationalist struggle for political independence. The nature of political activism now after the attainment of independence has to do more with a demand for good governance and policies necessary for securing and preserving the socio-economic and political rights of Nigerians.

¹⁰ Uviegara, E. E. (2001) *Labour Law in Nigeria*. Ethiope Publishing Corp. Benin.

¹¹ Emiola, A. (2008) *Nigeria Labour Law*. Emiola (Publishers) Ltd, Ogbomosho, 4th Edition.

¹² Ananaba, W. (1969) *Trade Union Movement in Nigeria*. Ethiope Publishing Corporation Benin.

All these authors cited above have one thing in common. They emphasized the object of trade unionism without elucidating separately on the socio-economic and political roles played by trade unions.

The roles played by trade unions in Nigeria is part and parcel of the literature of trade unions in Nigeria. Non incorporation of such roles by the authors cited above has a negative impact on the literature of trade unions. This omission contributed to the perception that Nigerians have on the role of trade unionism. The authors cited restrictively discussed to roles trade unionism and such discussion were limited only to the primary/traditional objectives of trade unions which is agitation in the cause of its members.

The lacuna in the works cited would have enlightened Nigerians into the activity of trade unions. In the past decade, trade unions have effectively combined industrial agitation with political activism.

This thesis will provide the requisite insights into trade unionism in Nigeria in this 21st Century.

1.6 Justification

This thesis becomes necessary in view of the perception that generality of Nigerians have on the roles of trade unionism in Nigeria. Nigerians in this modern times view agitations by trade unions as merely struggles benefiting only a specific section of Nigerians i.e. workers. Most people see trade unionism as a one sided struggle.

In this 21st Century, there is the need for a radical change of this perception. This perception is a misnomer and misleading in the light of recent agitations and struggles by trade unions in Nigeria. Nigerians need to comprehend and understand the social, economical and political roles and responsibilities trade unions particularly the Nigeria Labour Congress play in Nigerian society.

One expected outcome justifying this thesis is to critically educate, enlighten and broaden the knowledge of Nigerians on the roles of trade unions towards promoting good governance and serving as catalysts for the growth and development of the Nigerian economy in this 21st Century. There is a need for Nigerians to see the other side of trade union activity.

Another justification for this research is that as a result of dynamism in industrial relations, it necessary entails a change in old attitudes, ideologies and patterns of actions by trade unions in Nigeria.

In Europe and the United States, trade unionism has taken a giant leap forward and assumed a different dimension. A good example is the labour party in Britain. It has maintained the stance of being a socialist party since its inception. Part of the social democratic ideological trend of the party arose among sections of the working class across Europe at the end of the 19th Century.¹³ The labour party is a membership organization consisting of constituency labour parties, affiliated trade unions and socialist societies.¹⁴ Trade Unions have played a major role in shaping economical, social and political policies of Britain. Trade Unions are actively involved in the formulation of government policies and those not affiliated to any political party serve as independent monitors for the effective implementation of those policies. Trade Unionism in Nigeria must move with the global trend associated with the dynamism of industrial relations and agitation for good governance. Trade unionism is all about the well being of Nigerian workers and Nigerians by extension owing to the prevailing circumstances that the country finds itself in.

Another justification for this thesis is the benefits and information it will confer to certain categories of people and Nigerians in general. This thesis will benefit judges and will keep them appraised on recent developments of Nigerian labour law. The courts needs to be

¹³ Retrieved from <http://www.labour.org.uk/history> of the labour party assessed on 2/9/13 at 10.20am

¹⁴ Ibid

informed on the trends of modern labour practices as certain principles of labour law covering trade unionism has been overtaken by events in the polity.

Another justification for this thesis is that it will to a large extent influence the quality and character of the laws enacted in respect of labour matters. The National assembly being the highest law making body in the country is saddled with the responsibility of enacting laws. The foundation of every law is supposed to be anchored upon the wishes and aspirations of the people, trade unions in Nigeria practically today speak on behalf of the Nigerian masses. This thesis will provide an insight into the activities of trade unions with a view to keeping the legislators abreast with the yearnings and expectations of Nigerians.

Strike has been a potent tool in the hands of labour in achieving its aims and objectives. Earlier this year there has been moves by the executive and some elements in the legislature to amend the Nigerian Labour Act. Certain contentious clauses aimed at watering down the only potent weapon in the hands of trade unions i.e. strike has been inserted as part of the proposed amendments to the law. Before any motion calling members to embark on strike it must be voted for by majority of the members, the proposed amendment seek to criminalize any such strike embarked upon without getting the requisite vote. Such enactments are anti-labour and to a large extent anti-people. This thesis will provide an insight to the legislators on the rationale behind industrial agitations by labour and in general the roles they play to the Nigerian society.

It is only when the legislature has viewed issues from various angles and perspectives that it will be in a vantage position to make positive legislations for the good of the country. This thesis will enable the legislature to critically examine and x-ray trade unions in Nigeria even to the extent of considering it as a mini referendum on certain laws and policies of government. This is so because most trade union agitations particularly by the case study of this thesis (NLC) had seldomly been at variance with the general opinions of Nigerians. A

good example is the perennial increase or hike in fuel prices by successive Nigerian governments. This thesis will enrich the quality and character of laws made in respect of labour matters.

This thesis is justifiable to be undertaken because it will enlighten and educate students of law, academicians, sociologists and most importantly the Nigerian public at large.

1.7 Objectives

The basic objectives of this thesis are three. These objectives includes:

- i. Educating and enlightening the Nigerian public on the roles of trade unionism towards achieving economic growth, progress and development in Nigeria.
- ii. Another basic objective of this thesis is to radically change the psyche and perception of Nigerians that trade unionism is not all about industrial agitation for improvement in the standard of living of Nigerian workers, but also incorporates the yearnings and aspirations of the Nigerian society as a whole.
- iii. It is also a basic objective of this thesis to further sensitize the Nigeria Labour Congress that the Nigeria society are looking up to them and expect a lot from them especially at this time when faith and confidence of Nigerians is very low on the elected legislators saddled with the constitutional responsibility of making positive laws and voicing out for the masses.

The Nigeria Labour Congress has always played vital roles in this regard. It normally gives an ultimatum to the Nigerian Government to reverse its actions before embarking on strike after giving the necessary notice to the authorities. Threats made by trade unions are usually taken seriously because government itself acknowledges the repercussions of ignoring such agitations.

Any industrial action without the active participation of the Nigeria Labour Congress becomes futile. Active participation by trade unions makes such struggles fruitful. Critics

have argued that the NLC is no longer socially relevant and influential in the system. In reply to the critics the NLC Deputy President Comrade Promise Adewusi aptly stated that:

If the NLC is not socially relevant, why are our traducers lamenting the suspension of the last action (fuel subsidy crises); why couldn't they continue with the action on their own since they claim to be champions of the public interest? How many of them did you find on the streets when it mattered most?¹⁵

The above quotation has summed up one of the aims and objectives of this thesis. Industrial actions or general strike in Nigeria cannot succeed or have a devastating effect without the active participation of trade unions under the aegis of the NLC.

1.8 Organizational Layout

This thesis is divided into (6) chapters.

Chapter one contains a comprehensive introduction of the subject matter of this thesis. It also contains the statement of the problems in relation to trade unionism which this thesis aims at addressing. It incorporates the scope of the research, literature review and the aims and objectives of the thesis.

Chapter two (2) contains the historical development of trade unionism in Nigeria from its inception to present day. It incorporates the development of various laws relating to trade unions and the liabilities of trade unions for its actions. The chapter also contains a comprehensive list of trade unions in Nigeria duly recognised and registered under Nigerian Law.

Chapter three (3) contains an expose on the Nigeria Labour Congress. These include its historical evolution, organs and affiliates under the Trade Unions Act.

Chapter four (4) contains the case of the NLC which is the crux of this thesis. It contains an extensive expose of the socio-economic and political roles the NLC plays in

¹⁵ "NLC and Registration of New Labour Centre". In: Leadership Newspaper, p.38, Friday, June 1, 2012.

Nigeria and the emerging challenges facing the umbrella for trade unions in Nigeria in this 21st Century.

Chapter five (5) embodies a comprehensive analysis of the various dispute settlement mechanisms as contemplated by the Trade Disputes Act. These mechanisms must be exhausted before other punitive measures are taken by trade unions.

Chapter six (6) is the concluding chapter of this thesis. It incorporates the summary of the thesis, findings made in the course of writing this thesis, recommendations made on the various challenges and problems facing the NLC and the conclusion.

CHAPTER TWO

TRADE UNIONISM IN NIGERIA

2.1 Introduction

This chapter gives a comprehensive analysis of the historical development of trade unionism in Nigeria. It lays the foundation for the rapid growth and expansion of trade unions in Nigeria. As a writer aptly observed that as a result of several factors the Nigerian trade union movement had undergone a process of transition.¹⁶ The union movement is a vital part of Nigerian system of Industrial relations.¹⁷

This chapter appraises various laws promulgated during and after the military regimes which further facilitated the steady and gradual development of trade unionism in Nigeria. The entire legal frame work for Nigerian trade unions is covered by this chapter. Trade Unions at law are capable of suing and be sued in its registered name. Trade unions are subject to both civil and criminal liabilities. This chapter also comprehensively brings out the categories of civil torts and criminal offences to which the unions might be held liable in the event of breaching the provisions of the law. Under the Nigerian trade union law, trade unions are required to register the union before legal recognition is accorded to the unions for any purpose, this chapter will appraise the legal requirements and incidence of such registration and including its benefits to the trade unions. As a result of the dynamism of industrial relations and socio-economic activities in Nigeria, there are in existence so many trade unions in the system. The trade union to which a worker may be part of to a large extent depends upon the sphere of economic activity he/she is engaged in.

In this 21st Century, dynamism of industrial relations, socio-economic and political activities had made it possible for the continuous evolution of trade unions in the country.

¹⁶ Sonubi, O. Trade Unions and Their Members. In: Otobo D. and Omole M. (eds) (1984) Readings in Industrial Relations in Nigeria, Malthouse Press Ltd, Lagos, p. 34.

¹⁷ Ibid, p. 28

Nigeria has the Nigeria Labour Congress and the Trade Union Congress as the only two recognized central labour organizations in the country. Although, moves are presently being initiated by the executive to register a third central labour center in addition to the existing two. For the purpose of this thesis the writer intends to list all the trade unions affiliated to the Nigeria Labour Congress which is the subject matter of this research work.

2.2 Historical Development Of Trade Unions (Pre-Independence Era)

The term “trade union” means any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers.¹⁸ The impact of the English trade union movement on the growth and structure of Nigerian trade union has been spectacular. Prior to the advent of the British in Nigeria, the concept of paid employment was non-existent in Nigeria at that point in time. The economy of various states which make up Nigeria was basically a subsistence economy and custom had established the practice that individuals should serve their parents, family and community without remuneration.¹⁹

Extra farm labour was seldom hired and in such cases payment were made in kind e.g. food and shelter. Another reason for the non existence of paid employment before the advent of Europeans is the total absence of a standardized or universally accepted currency. With industrialization and commercialization that started in the 1940’s came wage employment. This was first introduced in the colonial public services in the earlier part of the 19th century in Nigeria.

There is no evidence that trade unionism as it is known today existed in any part of the present day Nigeria earlier than 1912.

It must not however be understood that trade organizations were altogether unknown in Nigeria before that date. Trade unionism was not an entirely new concept when the

¹⁸ Section 1 (1) Trade Union Act, cap T14, LF 2004.

¹⁹ Ananaba. W. (1969) The Trade Union Movement in Nigeria. Ethiope Publishing Corporation, Benin, p. 4.

Europeans first came to Nigeria; Africans had their associations and guilds of craftsmen with strict rules to regulate their trades and the relationship obligations and rights of members. A writer on labour relations aptly stated that group activity of this sort is strongly rooted in the tribal structure and organization of hunters, weavers and blacksmiths were widespread.²⁰ In Nigeria, associations of weavers, blacksmiths and silversmiths, potters, carpenters, masons and the like were to be found not only in big cities but also in the villages.²¹ The emergence of modern commerce and industrial activities only helped to transform the principles underlying these older associations into the better organized system of trade unionism as it is known today.

The first trade union that was formally organized in the public sector was the Civil Service Union in 1912. It was possibly formed because it was the vogue in other African countries. In 1931, two other unions namely the Nigerian Union of Teachers and the Railway Workers Union were formed. The Railway Workers Union was part of the Civil Service Union until it broke off because of dissatisfaction with the tempo with which the Civil Service Union was pursuing industrial relations activities.²²

Formal organization of workers into unions dates back to 1912, yet no significant development in industrial relations took place until the late 1930's. The obvious reason for this setback was due to factors like limited wage employment, repressive colonial policy, low level of economic activities, ignorance, social values e.g. paternalistic employment relationship and absence of legal backing. An important milestone in the development of trade unionism was recorded when the colonial administration passed the trade union ordinance into law in 1938. Earlier the Secretary for the colonies had sent general directives to all colonies that trade unions were desirable institutions for industrial democracy. The

²⁰ Yesufu T.M. (1979) *An Introduction to Industrial Relations in Nigeria*, p 33.

²¹ Emiola, A. (2008) *Nigeria Labour Law*. 4th Edition. Emiola Publishers Ltd. Ogbomosho p.424

²² Fajana S. (2000) *Industrial Relations in Nigeria: Theory and features* (2nd Edition) Panaf Press Ltd, Lagos, p. 143.

colonial administration resisted this directive claiming that trade unions would not be appropriate for a country on the verge of industrialization and given the emergent movements for political independence it was feared that it might fall into the hands of politicians. The ordinance was eventually implemented in 1939 and gave legal backing for the existing trade unions and facilitated the formation of new ones.²³

The development of trade unionism took a more dynamic form immediately after the second world war and coupled with the emerging nationalist movements. Between 1945 and 1953 some twenty four new unions were placed on the register. This period is noted for its labour unrest. Within the space of fifteen months (1949-1950) alone, there were forty-six strikes in Nigeria affecting about 50,000 workers. Among these strikes is the general strike in 1945 of railway men led by Michael Imoudu for better wages and conditions of service which paralysed the entire system of the country.²⁴ In 1946 Civil Service Unions also called out their men on strike, one of which lasted for more than a fortnight.

Most of these strikes were concerned with poor wages and conditions of service, non-payment of wages which had then fallen in arrears as in the timber industry, and the refusal by some intransigent employers to pay the cost of living allowance (COLA) awarded to workers as a result of the findings of the Harragin Commission. In some cases, strike action was taken by workers to establish their “right to negotiate” or to bring in a conciliator “in order to ensure a discussion of grievances”.

A case which was, and has ever remained a blot on Nigeria’s industrial relations was the dispute which culminated in the shooting of miners at Enugu in 1949. There has been tensions in the coal mines when underground workers began a “go slow” strike. A British officer was sent to the scene with a contingent of armed policemen. In the resultant clashes with the policemen, twenty one strikers were shot dead on the order of the British Officer.

²³ Ibid p.145

²⁴ Emiola A. Op. cit p. 426

This incident brought an uproar in Nigeria which the British administration suppressed. Many of the strikers were dismissed and the matter which began as a minor industrial action snowballed into a gigantic political conflagration. The agitation which followed led to the setting up of a commission of inquiry to look into the causes of the incident. The report of the commission to some extent alerted the nation to the appalling conditions of work in the mines.

But more importantly, the workers recognized more than ever the weaknesses in their organization. Suddenly there was a better appreciation of the need for a central collective action by all trade unions expressed in the form of a national movement.

2.2.1 Origin of Central Labour Organization

The aftermath of the Enugu saga brought the trade unionists to the realization for the need to find a common ground for the formation of a national labour movement united in ideas and purposes. The trade union ordinance of 1938 provided for the formation of trade union centers as umbrella organizations for trade unions. The registered trade unions experienced problems of co-ordination between 1930 to 1941. The first serious effort to unite the unions in an all embracing movement was around 1943 when the trade union congress and the African Civil Servants Technical Workers Union aligned to form the Trade Union Congress.

The T.U.C functioned effectively as the chief mouthpiece of the working class until around 1949 when there was a split due to political pressure that centered on the roles the T.U.C should play in the emergent nationalist movement. This crisis further split the T.U.C into two factions namely the National Federation of Labour and the Trade Union Congress of Nigeria.

In 1950 an attempt was made to form a single central labour center. The Nigeria Labour Congress was first formed by that attempt. The Nigeria Labour Congress became bedeviled with leadership crisis which led to the disintegration of the Congress.

In 1953 the All Nigerian Trade Union Federation (A.N.T.U.F) was formed and the Nigeria Labour Congress was quietly integrated into it. The A.N.T.U.F continued to dominate the labour scene until it went into oblivion in 1956.²⁵ In 1957, the National Council of Trade Union of Nigeria was formed to compete with A.N.T.U.F. Both unions co-existed between 1957 to 1959.

2.2.2 Post-Independence Era

After independence, a faction broke off from the National Trade Union Congress led by Michael Imoudu and the Trade Union Congress of Nigeria led by H. A. Adebola. These instabilities marked the post independence period affecting trade unions and their economic activities.

In 1963, labour was further balkanized along political and ideological lines. During the civil war years, trade unions were by and large sober and less turbulent ostensibly to support government effort in bringing the war to a satisfactory end. In 1975 factions of the Labour Unity Front, Nigerian Workers, Council, Nigerian Trade Union Congress and Trade Union Congress of Nigeria aligned to form the Nigeria Labour Congress. However, the then Federal Military government refused to recognize the new body.

In 1973, the most important statute of trade unions was passed dealing with central labour organizations and it repealed the Trade Union Ordinance of 1938. This in itself did not appreciably help matters much. The more decisive step was taken in 1976 by the government when the Trade Union Central Labour Organizations (Special Provisions) Decree No. 44 formally dissolved existing four rival central labour organizations, impounded their assets,

²⁵ Ibid. p.428

appointed an Administrator of Trade Union Affairs, followed by the re-organisation exercise, the re-constitution and inauguration of the Nigeria Labour Congress (NLC) on February 28, 1978 as the only central labour organization to which industrial unions must be affiliated.²⁶ This resulted in creating countervailing powers between employers and unions and imposed a mutual respect for each other.²⁷ The Nigerian government played a vital role in the promotion of a central labour organization.

In spite of the 1978 reorganization exercise, it was apparent to discerning observers that the ideological difference which bedeviled the Nigerian trade union movement in the previous decades persisted. It was against this background that the Federal Military Government promulgated on the 29th February 1988, the National Economic Emergency Power (Nigerian Labour Congress) Order 1988 under which the warring factions of the NLC were declared illegal.²⁸ The entire leadership was dissolved and a sole administrator in the person of Mr. M.O. Ogunkoya was appointed to bring back stability and sanity in the NLC.

Presently, the position of the NLC is a precarious one legally in Nigeria's industrial relations. With the enactment of the trade Union Act (Amendment) in 2005, the government has dismantled the structure it built in 1978 by de-recognizing the NLC as the central labour organization.²⁹ It amended section 34 now section 33 of the Trade Union Act by substituting for "Nigeria Labour Congress" the words "federation of trade unions". Even though the NLC is however impliedly recognized as a "federation of trade unions". The amendment effected to the trade union law has greatly undermined the powers, functions and capabilities of the NLC. The NLC no longer enjoys the monopoly it hitherto had as the only central labour organization in Nigeria. The amendment has opened a flood gate to other small unions to organize themselves and seek registration as a "federation of trade unions" in competition

²⁶ Otobo D. Understanding the New Trade Union Structure. In: Otobo D. and Omole. M. (eds) (1984) Readings in Industrial Relations in Nigeria, Malthouse Press Ltd, Lagos, p. 52

²⁷ Emiola A. Op.cit, p. 429

²⁸ Ogunniyi O. (1991) Nigeria labour and Employment Law in Perspective, Folio Publishers Ltd, Lagos, p.226

²⁹ Section 7, Trade Unions (Amendment) Act, 2005.

with the NLC. This will invariably undermine the effectiveness of the NLC which is previously perceived as the foundation for struggle and agitation by the Nigerian worker.

2.3 Legal Framework of Trade Unions

Trade unions like other statutory organizations are subject to legal control and regulation. Its operation is regulated by Nigerian statutes. The legislature has made laws governing the conduct of affairs of trade unions in Nigeria. Any action by trade unions outside the legally permissible limits is always declared ultra-vires by Nigerian courts.

2.3.1 The Nigerian Constitution

Since the attainment of independence in 1960, the constitution has always guaranteed freedom of association. The Nigerian constitution aptly provides that every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.³⁰ There is no doubt that this provision is a guarantee of a fundamental right to form or belong to a trade union of one's choice. Therefore, any person who alleges that his right to form, join or belong to a trade union of his choice has been infringed may apply to the High Court for a redress.³¹

The provision guaranteeing freedom of assembly and association is a summation of two International Labour Organisation Conventions namely convention 87 of 1948 and convention 98 of 1949 which Nigeria ratified within two weeks of independence.³²

The combined effects of these two conventions ratified by Nigeria is that it provides for a wide range of rights necessary for growth and development of industrial relations by trade unions. These includes the right to form an organization voluntarily without prior authorization, right to draw up their rules and elect their representatives, organize their

³⁰ Section 40, Constitution of the Federal Republic of Nigeria 1999 (As Amended)

³¹ Section 46, *ibid.*

³² Akanle O. Development in Commercial Business and Trade Laws. In: Aguda, A. (1985) *The Challenges of the Nigerian Nation*, Heinemann Nigeria Ltd, Ibadan, p 156.

activities and public authorities must refrain from any interference which would restrict their rights, trade unions must not be made liable to be dissolved or suspended by administrative authority and their organizations must have the right to establish and join federations, confederations and to affiliate with international organization of employees and employers.

However, the fundamental right to form trade unions is not an absolute one. The Constitution provides for derogation on grounds of public safety, public order, public morality or health, in the interest of defence or for the purpose of protecting the rights and freedom of other persons.³³ The derogation thus permitted is by law and such law must meet the criterion stipulated, that is, being reasonably justifiable in a democratic society for any one of the grounds stipulated above. The National Industrial Court in the case of Nigeria Civil Service Union V Association of Senior Civil Servants of Nigeria,³⁴ held that the “right to freedom of association guaranteed under the constitution are qualified and not absolute rights, thus, the right to associate with other persons to form a trade union must be within the limits by the Trade Union Act”.

Apart from the Nigerian Constitution other legislation such as the Labour Act which regulates protection of wages, contracts of employment and terms and conditions of employment of the Nigerian worker restate the right of a worker to associate or take part in trade unionism. The Labour Act provides that no contract of employment shall make it a condition of employment that a worker shall not join a trade union or shall relinquish membership of a trade union or otherwise be dismissed on grounds of activities associated with trade unionism.³⁵

Nigeria has signed and ratified other international treaties such as the African Charter on Human and Peoples’ Right and has been incorporated into the bulk of our laws by virtue

³³ Section 46, Constitution of the Federal Republic of Nigeria 1999 (As Amended)

³⁴ (2004) 1 NWLR, part 3, page 429

³⁵ Section 9 (6), Labour Act, Cap L1, Laws of the Federation of Nigeria 2004.

of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act contained in Volume 1 Chapter 19 Laws of the Federation of Nigeria 2004. The charter also guarantees to an individual the right to free association³⁶ and to assemble freely with others subject only to necessary restriction provided for by law.³⁷

2.3.2 Trade Unions Act

This is the law specifically enacted to regulate the conduct and operations of trade unions in Nigeria. The trade unions Act is presently encapsulated in volume fifteen Laws of the Federation of Nigeria 2004 in Chapter T14. The law sets down the procedure for registration by trade unions and its benefits thereof, union rules, names trade unions are prohibited from using, dissolution of trade unions, membership, recognition, merger of trade unions, formation of federation of trade unions, accounts and returns and immunities to civil and criminal liabilities.

This Act is the ground norm guiding the modus operandi of trade unions in Nigeria. As a general rule, every Nigerian between the ages of sixteen and twenty one and over is eligible to become a member of a trade union. Every worker who applies for admission into the appropriate union cannot be denied membership. Section 12 (2) of the Trade Union Act criminalizes any attempt by anyone to prevent any worker from joining a trade union through which only his interest can be fully realized.

However the Act itself places some restrictions on membership of trade unions. Section 11 (2) of the Act provides that it shall not be lawful for persons in the police, prison and armed forces as well as those in the customs preventive services to “combine, organize themselves or to be members of any trade union”. So also are employees in the Nigerian Security Printing and Minting Company, Staff of the Central Bank and those in any other

³⁶ Article 10

³⁷ Article 11

services authorized to bear arms. In addition the Act confers to the minister of labour the power to specify other establishments whose staff may not belong to trade unions.

In addition the president is given the power to prescribe a trade union if he is satisfied that such a trade union which is engaged in the provision of essential services to the public engages in acts calculated to disrupt the economy or smooth running of any essential service.³⁸ The trade union Act has been subjected to amendment in 2005 and certain consequential amendments have tended to undermine the effectiveness of trade unions. It sort of restricted the workers right to resort to strike as an industrial action as means of achieving its aims and objectives.

2.3.3 Trade Dispute Act

To achieve its main object, a trade union need not be unduly bellicose; it would augur well for better industrial harmony if its missions and objectives could be fulfilled without conflict. A trade union should therefore strive as much as possible to make use of available negotiating machinery for achieving maximum benefits for all its members with the minimum of friction. Unfortunately, this has not always been the case.

All workers are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, job security, redress of wrongs and good working conditions. The processes that have been used to allow workers to attain these goals and aspirations is collective bargaining. But often, the employer and the union find themselves in sharp disagreement not only on these issues but also as to the interpretation of the collective agreement and its application. Such frictions give rise to trade disputes. Collective bargaining had been one of the orthodox procedures for dispute settlement evolved in industrial relations. The underlying principle here is usually based on voluntarism on the part of the parties.

³⁸ Section 1 (1), Trade Disputes (Essential Services) Act, Cap T9, LFN 2004.

The Trade Disputes Act now embodied in Laws of the Federation of Nigeria 2004 volume fifteen chapter T8 gives the parties the freedom to negotiate on their own or under a mediator failure of which the Minister of labour is empowered to intervene in an industrial dispute with the object of promoting settlement by reconciliation.

The inability to force any of the parties to come to terms with their opponents or compel obedience to the adjudication of a peace maker had created a lacuna in the process of industrial relations. Therefore, legislation had to be explored as a means of bringing about a change of attitude to industrial negotiation.

The first of such legislations which made the most far reaching incursions into the voluntary nature of Nigeria's industrial practice was the Trade Disputes (Emergency Provisions) Decree 1968. That decree has now been repealed by the Trade Disputes Act 1976 which also re-enacted all the essential and major provisions of the 1969 Decree. The Trade Disputes Act of 1968 introduced compulsion in the settlement of labour disputes in Nigeria. The Act is the groundnorm for dispute resolution involving trade unions in Nigeria.

2.3.4 Trade Unions International Affiliation Act

This is another important legal framework for trade unions in Nigeria. This legislation gives trade unions in Nigeria the legal right to seek affiliation with any International Labour Organization or trade secretariat. The writer submits that the Act is very important because it exposes Nigerian trade unions to other international labour organization where ideas and ideologies are exchanged for mutual benefits. Therefore, through such interactions Nigeria's trade union are abreast with labour issues and policies in line with global best practice in the industry.

2.4 Registration of Trade Unions

The requirement for registration imposed on trade unions is a mandatory provision under Nigeria labour law. The Supreme Court held in the case of *Alhaji Balarabe Musa v.*

*Independent National Electoral Commission*³⁹ that “registration facilitates the exercise of regulatory and monitoring powers and the recording and certification of the fact of existence”. The law states that a trade union shall not perform any act in furtherance of its purpose unless it has been registered.⁴⁰ From the foregoing provision it is clear that a trade union must be registered before it can validly and legally perform functions in furtherance of its objectives. An unregistered trade union is prohibited from performing its functions. However, an unregistered trade union may take any step which may be necessary for the purpose of getting the union registered.⁴¹

2.4.1 Procedure for Registration

Generally where a trade union already exists in representing workers or employers, no trade union shall be registered subsequently in that respect. The rationale for this restriction is to prevent confusion that will arise as a result of proliferation of trade unions in places where unions already exist and carry out similar functions. This restriction will prevent duplicity of functions on the part of trade unions and unify the labour movement. An application for registration of a trade union must be made to the registrar and signed in the case of a trade union of workers by at least fifty members and in the case of a trade union of employers by at least two members.⁴²

Every such application by a trade union shall state the name under which the union proposes to be registered and the registered office of the union. Every application must be accompanied by two copies of the rules of the union and by a list showing the names, address, age and occupation of each of the persons by whom the application is signed and the official title names, address, age and occupation of each official of the union.⁴³

³⁹ (2003) 3 NWLR PT 806, page 72

⁴⁰ Section 2 (1), Trade Unions Act Cap T14, Laws of the Federation of Nigeria 2004

⁴¹ Provisor to section 2 (1), *ibid*

⁴² Section 3 (2), *ibid*

⁴³ Section 3 (1), *ibid*

Where the registrar receives an application for the registration of a trade union he must cause a notice of such application to be published in the gazette, stating that objections to the registration of the trade union may be submitted to him within three months of the publication of the notice.⁴⁴ At the expiration of three months, if the registrar is satisfied that no proper objection has been raised or none of the purposes of the trade union is unlawful and the requirements of the Act with respect to registration have been complied with, must subject to an acceptable name register the union and its rules.

Upon registering a union, the registrar issues a certificate of registration which is prima facie evidence that the requirements of the Trade Unions Act have been complied with and the trade union is a trade union for the purposes of the Act. Upon registration a trade union acquires a major attribute of corporate personality. A registered trade union is able to sue and be sued in its registered name. It acquires a sort of proprietary right to the registered name. It is freed from the vagaries of a representative action which constitutes a major obstacle to actions by unincorporated associations.

2.4.2 Legal Status of Unregistered Trade Unions

A trade union which has not been registered or which has ceased to be registered must not perform any act in furtherance of its purposes, but may take steps necessary for registration or dissolving the union. And if any prohibited act is performed by a trade union, then the union and all its officials and any member of the union who took an active part is guilty of an offence⁴⁵. The trade union and all its officials and any member of the union who took an active part may be liable to be prosecuted summarily by a magistrate and shall be liable on summary conviction to a fine of fifty naira (₦50)⁴⁶.

⁴⁴ Section 5 (2) Ibid

⁴⁵ Section 2 (3). Ibid

⁴⁶ Sections 50 – 51 Ibid.

However, the fact that a trade union is not registered does not make its existence unlawful. The Trade Union Act lists certain matters in respect of unregistered trade unions which may not directly be enforced by the courts which includes an agreement whereby a union is formed or any agreement whereby a person joins the union, any trusts on which any funds of the union are to be held and any agreement for the use of any premises as the office of the union.

The trade union Act mandates a trade union to be registered before it can further its objectives but at the same time, the law provides flexibility and regulation in the manner in which unregistered trade unions operate. The law gives a blanket authorization to unregistered trade unions to operate so long as such operation is not in furtherance of the purpose for which the union has been formed. In the light of the above provision of the Act a writer aptly observed section 23 (4) of the Act reinforces the argument that an unregistered trade union can sue or be sued in respect of matter which are not in furtherance of the purpose for which the union was formed.⁴⁷ It is the view of this writer that allowing an unregistered trade union to operate though not in pursuance of its objectives will defeat the criterion for registration which is mandatory under the Trade Unions Act.

2.4.3 Benefits of Registration

Upon registration, a trade union enjoys certain benefits and privileges attached to the status of registration. These benefits to a large extent draw a line of distinction with unregistered trade unions.

2.4.3.a Recognition

This is perhaps the most important benefit of registration to trade unions. In the light of this benefit the Supreme Court in the case of *Alhaji Balarabe Musa (Supra)* aptly stated that “registration facilitates the recording and certification of the fact of existence”.

⁴⁷ Uvieghara E. E. (1984) Trade Union law in Nigeria, Ethiope Publishing Corp. Benin, p 98.

Recognition by employers of labour is what facilitates negotiation and collective bargaining with trade unions. This benefit of recognition is mandatory on employers. The law provides that where there is a trade union of which persons in the employment of an employer are members, that trade union shall without further assurance on registration be entitled to recognition by the employer and the law further criminalises the refusal by an employer to accord recognition.⁴⁸

The above provision incorporates compulsory recognition of trade unions by employers. The bedrock of modern employment is the right of the worker and his employer to come to agreement on the terms and conditions of his employment. The process of collective bargaining and negotiation is basically facilitated through the act of recognition by the employer. Upon recognition, the workers automatically acquire a right to participate in negotiation. The viability and efficacy of a trade union in any particular industry depends to a large extent on the degree of recognition accorded to it.

2.4.3.b Prohibition of Actions in Torts

Trade unions under the Act enjoy some degree of immunity from tortious liability particularly as it relates to some of its activities. The Act provides that an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort.⁴⁹ However, the immunity against tortious liability is not absolute. The law subjects such immunity to certain conditions before it becomes operative. The act which the law confers exemption from liability must always be done in contemplation or furtherance of a trade dispute. The law seeks to limit the sphere of actions of trade unions as any right granted in absolute terms is bound to be abused.

This fact necessarily informed the draftsmen of the law to narrow down certain actions as constituting exemptions to tortious liability. This actions includes any act that

⁴⁸ Section 25. Trade Unions Act, Capt T14 LFN 2004.

⁴⁹ Section 43. Ibid

induces a person to break a contract of employment; or any act that constitutes an interference with the trade of some other person; or with the right of some other person to dispose of his labour as he wishes; or where a trade union member threatens that a contract of employment will be broken.

The law further provides that any action by a trade union that is not contained in the exceptions listed above becomes actionable in torts even if such act was done in contemplation of a trade dispute.⁵⁰ The provision seeks to avert opportunism and arbitrary exercise of the immunities by trade unions so as to disrupt economic activities on the slightest excuse. This will also prevent labour from being in a pole position to blackmail the employer.

This writer is of the view that the restrictions placed by the law on trade union actions to a large extent will hamper and frustrate the legitimate agitations by trade unions in this 21st Century. Socio-economic variables are dynamic in every developing society, hence other legitimate actions may be taken by unions aimed at acquiring rights or benefits to its members in the light and circumstances of a particular time. These exceptions are too narrow in scope to cover potential acts which may depend on certain circumstances. The law also laid emphasis that all such actions must be in contemplation or furtherance of a trade dispute. There is no much problem with this stipulation as actions in contemplation of a trade dispute are matters of facts decided by the courts.

2.4.3.c Tax Exemption

Tax exemption is another benefit enjoyed by a registered trade union. The law grants tax exemption on the profits of any company being a trade union registered under the Trade Union Act in so far as such profits are not derived from a trade or business carried on by such union.⁵¹ The law does not levy tax on profits generated by trade unions so long as such profits are not in consequence of a trade engaged by a trade union. The issue of finance is

⁵⁰ Section 43 (2), *ibid*

⁵¹ Section 23 (1) E. Companies Income Tax Act, Cap C21 LFN 2004.

central to the principle of trade union autonomy. To further sustain this autonomy, unions must be able to generate and manage efficiently all funds accruing to them. The main sources of trade union finances are membership contributions (check-off dues) and levies.⁵²

Trade Unions generally derive its funding from membership contributions. Source of adequate funding has always been a quagmire for Nigerian trade unions. Due to inadequate funding, some unions like the Nigerian Union of Road Transport Workers and even the Nigeria Labour Congress operate a transport scheme so as to augment its funding. This is tantamount to engaging in business and any benefits or profits derived therefrom become subject of taxation. The Nigeria Labour Congress in Kaduna operate a transport scheme which legally makes it liable to pay tax on the profits derived therefrom. The only tax exemption which the law recognizes for trade unions covers only its funds obtained by way of donation or grant from individuals or other institutions. Presently in practice trade unions are not being taxed for profits derived from business ventures but it's the law that such profits are taxable. It is the view of the writer that trade unions should not be taxed for profits derived from business ventures because such funds are only meant to supplement the meager resources of the unions for logistics and other operational costs. The profits are in no way meant to be paid to members as dividends or bonuses. Tax exemption enables trade unions having the financial disposition to fully utilize its finances to the maximum towards achieving its aims and objectives.

2.4.3.d Rights of Members to Nominate Recipients of Sums Payable Upon Death

The Trade Unions Act⁵³ makes provision whereby a member of a registered trade union may as regards any money payable by the union on his death, nominate any person as the person to whom that money is to be paid on the death of the nominator; and on receiving

⁵²Retrieved from [http://www.nlcng.org/Trade Union Finance](http://www.nlcng.org/Trade%20Union%20Finance). Nigeria Labour Congress. Accessed on 4/9/14 at 11.21am.

⁵³Section 26. Trade Unions Act, Cap T14 LFN 2004. See also Uvieghara E. (2001) Labour Law in Nigeria, Malt House Press Ltd, Lagos. p.338

satisfactory proof of the death of the nominator, the union shall pay to the nominee so much of the amount due by reason of the nominator's death.

In practice the nominees are usually the dependants of the nominator. This provision serves as a social security and insurance to the dependants of a trade union member. This goes a long way in easing the hardships experienced by family members occasioned by the death of the head of such family.

2.5 Membership of Trade Unions

The Nigerian constitution provides that every person shall be entitled to assemble freely and associate with other person and, in particular he may form or belong to any political party, trade union or any other association for the protection of his interest.⁵⁴ The constitution confers a fundamental right to every citizen of Nigeria without any discrimination to become a member of a trade union. The constitution has provided the general right to membership of a trade union. The trade union Act provides for the criterion for eligibility to membership.

A person under the age of sixteen is ineligible for membership of a trade union and a person under the age of 21 shall not be capable of being an official of a trade union.⁵⁵ Though a person of or above the age of sixteen but under the age of 21 may be a member of a trade union unless the rules of the union provide otherwise.⁵⁶

The Act also prohibits the denial of the right to membership on certain ground such as tribe, place of origin, religion or political opinion and criminalizes any such denial on the above grounds.

⁵⁴ Section 40 Constitution of Nigeria (As Amended) 1999

⁵⁵ Section 20 Trade Unions Act, Capt T14 LFN 2004

⁵⁶ Section 12, Ibid

In a similar vein, the Nigerian Labour Act provides that no contract of employment shall make it a condition of employment that a worker shall not join a trade union or dismiss a worker on grounds of trade unionism.⁵⁷

2.5.1 Restrictions on Membership

The Trade Union Act places restrictions on certain categories of workers to join a trade union. The law stipulated that workers in certain establishments shall not combine or organize themselves or to be members of a trade union. These establishments includes:

- (a) The Nigerian Army, Navy or Airforce
- (b) The Nigeria Police Force
- (c) The Customs Services, Immigration and Prison Services
- (d) The Customs Preventive Service
- (e) The Nigeria Security Printing and Minting Company
- (f) The Central Bank of Nigeria
- (g) The Nigeria Telecommunications Ltd.
- (h) Every Federal or State Government establishment the employees of which are authorized to bear arms.⁵⁸

The reason why workers in the above establishments are exempted from trade union membership is based on security grounds members of the armed forces, police and other paramilitary establishments are saddled with the responsibility of maintaining and preserving the external and internal security of Nigeria. It will be an invitation to anarchy in the society where such workers engage in industrial action. The Central Bank and the Nigeria Security Printing and Minting Company are vital economic institutions and as such engaging in industrial action by its staff will hamper the economic and political security of Nigeria.

⁵⁷ Section 9 (6) Labour Act Cap L 1 LFN 2004.

⁵⁸ Section 11 Trade Unions Act Cap T14 LFN 2004.

Further, the president is given the power to proscribe a trade union if he is satisfied that such a union which is engaged in the provision of essential services to the public engages in acts calculated to disrupt the economy or smooth running of any essential service.⁵⁹ Essential service means service in civil capacity of persons employed in the armed forces, services in connection with the supply of electricity, power, water or fuel of any kind, in connection with sound, postal and telecommunications, in connection with the maintenance of ports, harbours or for transportation of persons, goods or livestock by road, rail, sea or air, in connection with the provision of healthcare and sanitary matters, in connection to the provision of educational services and any service connected to the provision of banking services to the public.⁶⁰

Some unions like the Academic Staff Union of Universities and the Nigerian Union of Teachers who render educational services which is an essential service have gone on strike times without number. This action makes the unions liable to criminal prosecution⁶¹ but in practice government has not been able to implement and enforce the law in this regard. This is because enforcing the law is tantamount to declaring war against the unions. Any attempt by the government to proceed criminally against a trade union and its officials will erode any hope that exist for reaching an amicable settlement of the dispute. This action will prolong the impasse which will have a negative impact on the Nigerian economy. Timely resolution of industrial disputes is a necessary condition for development in any country. This has been the reason why unions in the education sector like ASUU, ASUP and NUT have not been prosecuted. Instead government will find it more convenient to adopt the 'no work no pay policy' incorporated in the Trade Disputes Act⁶² thereby still maintaining a peaceful atmosphere for negotiation between the parties.

⁵⁹ Section 1 (1) Trade Disputes (Essential Services) Act Cap T9 LFN 2004.

⁶⁰ Section 7, Ibid.

⁶¹ Section 2 Trade Unions Essential Services Act Cap T9 LFN 2004.

⁶² Section 43 Trade Disputes Act, Cap T8 LFN 2004.

The rationale for the meaning of essential services is obvious. These definitions cut across the daily activities of Nigerians and the services government render to the public. These are services that touch the lives of Nigerians daily and such services cannot be compromised by the government. Withholding such services will occasion great hardship on the public and the economy itself will be greatly affected as the country stands to lose billions of naira in transactions on a daily basis cut across various sectors of the economy.

The provision of the Trade Disputes (Essential Services) Act which restricts the right to union membership appears to be in conflict with section 40 of the constitution guaranteeing the right to form a trade union. An Act which restricts the freedom to join a trade union would therefore seem to be an assault and a serious violation of the constitution. However, the constitution has provided for derogation from the right on certain grounds which includes defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of others.⁶³ In *Osawe & ors V The Registrar of Trade Unions*,⁶⁴ an association under the name of the Nigeria United Teachers Service Workers applied for registration which the registrar refused. The Association applied to the High Court for an order to compel the registrar to register the body. On appeal, the Court of Appeal set aside the decision of the High Court compelling registration. The Appellant further appealed to the Supreme Court and the Court held that “the right of association guaranteed under section 37 (now section 40) of the constitution like the other rights in chapter IV is not an absolute right but a qualified right which can be derogated from in accordance with section 41 (now section 45) of the Constitution”.

It is pertinent to note that the provisions of the Trade Disputes (Essential Services) Act has been observed more in the breach. The provision of the Act did not prevent workers of National Electric Power Authority (now Power Holding Company of Nigeria) from going

⁶³ Section 45, Constitution of Nigeria 1999 (As Amended)

⁶⁴ (1985) 1 NWLR, Part 4, 775, at page 756

on nationwide strike and throwing the whole country into darkness in October 1988. Those involved have since been tried and given life sentences by the Miscellaneous Offences Tribunal. The verdict created ripples in industrial relations circles in Nigeria. The workers concerned have since been released after spending 24 months in jail.⁶⁵

The Nigerian labour movement has grossly violated and breached the provisions of the Trade Disputes Essential Services Act. Breakdown in negotiation between labour and management has led to several industrial actions being embarked upon most especially by workers offering essential services to the public. In fact most of the strikes embarked upon in Nigeria in this 21st century mostly involves workers engaged in the provision of essential services to Nigerians. An example of strikes embarked upon by workers engaged in the provision of essential services to Nigerian can be seen in the strike embarked upon by doctors under the aegis of the Nigeria Medical Association in 2014 and the Academic Staff Union of Universities and Polytechnics in 2013 with the latter lasting for almost a year. The fact that the Trade Union Act exempts the security agencies from engaging in trade unionism did not stop the rank and file of the Nigeria Police Force from embarking on mutiny and in the parlance of labour relations it is akin to strike. The law establishing the police makes it an offence for any police officer other than a superior police to begin, raises, abets or excites mutiny or to strike.⁶⁶

The inelegant language used by the draft men of the law will seem to suggest that a superior police officer could go on strike but this is not the case. Any police officer inclusive of a senior police officer may be proceeded against for desertion without reference to the time during which he may have been absent, and thereupon may be found guilty, either of desertion or of absence without leave⁶⁷.

⁶⁵ Ogunniyi O. op. cit. p 243.

⁶⁶ Section 37 (1) Police Act, Cap P 19, LFN 2004.

⁶⁷ Section 37(2) Ibid

For the first time in history the Nigeria Police Force went on strike during the first tenure of President Olusegun Obasanjo. The ring leaders of the strike were arrested and dismissed from service.

It is the view of this writer that the provisions of the law imposing restrictions on the right of the Nigerian worker to engage in trade unionism had been observed more in the breach than in compliance. Highhandedness, monumental corruption and insincerity to respecting and observing the terms of negotiation by the employer/government being the largest employer of labour in Nigeria has been generally responsible for the breach by trade unions in complying with relevant laws restricting trade unionism.

2.6 Liabilities of Trade Unions

Trade Unions in Nigeria engage in a wide range of activities geared towards achieving their aims and objectives against their employer. Certain actions or inactions by trade unions will ordinarily attract civil or criminal liability as the case may be, the law deems it necessary to confer immunity on certain specific actions by trade unions.

Collective withdrawal of labour without appropriate notice will constitute a breach of contract, the Trade Union Act has conferred legal immunity to the trade unions if the actions are done in contemplation or furtherance of a trade dispute. Protection by law on trade unions is a necessary evil so as to adequately safeguard and preserve the rights of workers to engage in lawful means of industrial action. In this light, a philosopher aptly observes that the main pillar of the workers right to strike takes the form of these “immunities and privileges” recognized by law.⁶⁸

2.6.1 Civil Liabilities

The Trade Union Act states that acts done in contemplation or furtherance of a trade dispute are not actionable in torts when it involves inducing someone to break a contract of

⁶⁸ Freund, O.K. (1972) *Labour and the Law*, Stevens and Sons Ltd, London, p 234

employment or it involves an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his labour or it involves a trade union threatening to breach a contract of employment and threatening to induce others to do some.⁶⁹ The Act goes further to state that any act done even if in furtherance of a strike will be actionable in tort if it does not come within the acts specified above.

Nigeria's law was fashioned after the English Trade Disputes Act 1906 particularly Section 3 of the English Act that confers immunity on trade unions in respect to tort actions. In the notorious English case of *Rookes v Barnard*,⁷⁰ the draughtsmen of the B.O.A.C through their union had agreed with the employers that neither should engage in strike or lockout. The workers went on strike in breach of the "no strike clause" in their contract of employment. The workers were held liable for using the threat of a strike in breach of the collective agreement and also because a wrong method was used i.e. intimidation. The House of Lords dismantled whatever protection the English Act might have afforded the British unions by deciding that a threat to withdraw labour in breach of a "no strike clause" in the workers contract of employment was actionable as being outside the protection offered by section 3 of the 1906 Act. A "threat to break a contract" their lordships decided was an "unlawful means" which deprived the workers of their legal immunity under the Act.

The above decision was bitterly criticized by scholars on labour law. The criticism was not so much against the logic of the judgment as against the extension of the tort of intimidation to include a threat to break a contract of employment. Subsequently the House of Lords themselves seize the first opportunity they had to narrow down the ambit of the application of the rule in **Rookes v. Bernard** (Supra). In **Morgan v. Fry**⁷¹ the Court of Appeal decided that in the absence of "no strike" clause in the contract and in the absence of

⁶⁹ Section 44 (1) Trade Unions Act, Cap T14 LFN 2004.

⁷⁰ (1964) A.C. 1129, (1964) 2 WLR 269

⁷¹ (1968) 3 WLR. 506.

unlawful means being used, the union was entitled to use strike as a weapon in an industrial conflict.

The provisions of Section 3 of the English Trade Disputes Act of 1906 was reproduced in Section 7 of the Nigerian Act of 1939, later reproduced in S.42 (1) C of the Trade Unions Act of 1973 now re-enacted under Section 44 (1) of the Trade Unions Act 2004.

The provisions of Section 44 of the trade union Act have whittled down the effects of **Rookes V Barnard**, but they have not given the trade unions or their officials a blank cheque for impunity. The provisions of subsection 2 of section 44 contains the necessary and inescapable inference that certain actions even though taken in contemplation or furtherance of a trade dispute shall nevertheless be actionable if they do not fall within the parameters set by subsection 2. Therefore, it must not be imagined for a moment that the union has an absolute and unrestricted freedom to do anything regardless of consequences of the law. Like all citizen's right, the union's rights are in themselves subject to qualifications and limitations imposed by common law and statute. These limitations includes the strict criterion laid down by law which the unions must satisfy before being immuned from tortuous liability. For any action to be covered with immunity it must be in contemplation or furtherance of a trade dispute. More over anticipation of a trade dispute must be predicated on reasonable grounds. The Trade Unions Act⁷² has narrowed down the scope of actions which the trade unions must not deviate from in order to be immuned. Any action outside these statutory exceptions becomes actionable in torts, the liability of the union being founded on the general principle of vicarious liability⁷³.

⁷² Section 44 (2) Trade Unions Act Cap T9 LFN 2004.

⁷³ Oguuniyi, O. (1991) Nigeria Labour And Employment Law In Perspective. Folio Publishers Ltd, Lagos. p.315.

These limitations have been very effective because failure to fulfill the conditions laid down by law for immunity is what gave rise to a variety of tortious actions like civil conspiracy, inducing a breach of contract and tort of intimidation.

The law also clearly specifies the reason why acts which are not actionable in torts which must be in “contemplation” or “furtherance” of a trade dispute. Statutory immunity will not extend to cover cases where extraneous matters not related to a trade dispute are the sole cause of the action; nor will immunity protect the action of a union in the case of coercive interference in which the intervener has his own self interest to serve; therefore action taken in such circumstances will not be regarded as being in contemplation or furtherance of a trade dispute.⁷⁴

To enjoy statutory immunity, the trade dispute motive must be the primary purpose of the action; there may well be other motives too, but the dominant purpose must be the trade dispute motive.

It is not absolutely necessary that there was a dispute in existence which the union was seeking to further by taking some action, it will just be enough that the union acted in contemplation of a dispute which it envisaged as likely to occur. There are however, limits to the extent to which a future prospect of dispute would afford protection. Anticipation of a dispute must be predicated on reasonable grounds. Therefore mere anticipation of a dispute at some future time (especially where such anticipation was not based on reasonable grounds) might not be enough to attract the protection provided by the statute.

Some actions taken by a trade union can expose it to tortious liability with respect to actions like civil conspiracy, including a breach of contract, tort of intimidation.

⁷⁴ Ibid. p.310

2.6.1.1 Civil Conspiracy

When a trade union organizes its members and ensures their combination as a group with the result that the combination constitutes a threat to the economic interest of others, it is known as the tort of conspiracy. It differs from criminal conspiracy because in this case actual loss must be suffered. Acts done in furtherance of trade union objectives (provided that these did not lead to doing of unlawful acts) are not actionable conspiracy.

If however, the predominant purpose of the combination or agreement is to injure another in his trade and economic loss actually results, then the tort of civil conspiracy would have been committed as the conspirators have conspired for an improper reason. Unless the real and predominant purpose of the combination is to advance the defendant's lawful interest in a matter where the defendant honestly believes that those interests would indirectly suffer if the action taken against the plaintiff was not taken, such a combination as a combination to damage a man in his trade, will be unlawful and therefore actionable.

Therefore, the significant thing is the "purpose" of the combination rather than the "result". In **Quinn V Leatham**⁷⁵ liability for civil conspiracy to injure was established. The Plaintiff employed non unionists. Officials of a trade union threatened the Plaintiff's customers because the Plaintiff had refused to dismiss non-union members of his staff. No unlawful action was shown but the union officials responsible were held liable for the tort of conspiracy as there was nothing to be achieved but the furtherance of a grudge against the plaintiff.

It sometimes happen, however, that in the pursuit of a legitimate interest a group of persons may adopt an unlawful means of achieving that object. In **Oju V Balogun**⁷⁶ members of a trade union constituted themselves into a nuisance by barricading the entrance to the

⁷⁵ (1901) A.C. 495

⁷⁶ (1980) V 7-9, CCHCH. 261

plaintiff's house, the court held the defendants liable. Similarly in **Ajao V Ashiru & Ors**,⁷⁷ the unionists made a forcible entry into the premises of the plaintiff, assaulted his servants and removed his property, the unionists were held liable. Where the means used are thus unlawful, the conspiracy is actionable even if it be in pursuit of a legitimate object.

2.6.1.2 Inducing a Breach of Contract

Perhaps the most important liability at common law is inducing a breach of contract. Unless there are express or implied terms permitting workers to go on strike, calling a strike amounts to an inducement to breach a contract. This head of liability can hardly be justified or excused by showing legitimate trade motive and only in very rare instances can a defence of justification be allowed. In **Brimelow V Casson**⁷⁸ chorus girls in a travelling theatrical company were paid such low wages that they had to resort to prostitution in order to supplement their income. It was held that the defendants who induced the workers to break their contracts with the company were not liable because their action was justified. The above case is the one case in which a defence of justification proved successful.

Inducement covered, not merely active pressure, but even communication of information intended to produce a breach. Inducing a breach of contract is an important source of liability in the context of industrial disputes.

2.6.1.3 Tort of Intimidation

The Trade Union Act now in vogue does not define the meaning of the term "intimidation" but the Act of 1939 defined it as conduct which will cause in the mind of a person reasonable apprehension of injury to him or to any member of his family or to any of his dependents or of damage to any property.⁷⁹

⁷⁷ (1952) 14 WACA 64

⁷⁸ (1924) CH 302, 479

⁷⁹ S.6 (2). Trade Unions Act Cap T14 LFN 2004

Thus intimidation may involve the use of threat of violence or illegal obstruction and this is not limited to physical violence.

The scope of the tort of intimidation was given a full exposition in the case of **Rookes V Barnard** (Supra) where the union threatened industrial action in breach of a no strike clause in the workers terms of individual employment unless the plaintiff who had withdrawn his membership of the draughtsmen union was relieved of his employment by the B.O.A.C. The plaintiff was eventually dismissed and brought an action against the respondent for using unlawful means to induce B.O.A.C to terminate his contract. The House of Lords held that this threat amounted to the tort of intimidation and was therefrom unlawful means, and that the plaintiff was entitled to recover damages. In that case Lord Reid stated “to intimidate by threatening to do what you have a legal right to do is to intimidate by lawful means and intimidation of any kind appears to me to be highly objectionable”.

The decision in **Rookes V Barnard** that a threat to procure a breach of contract amounted to intimidation certainly extended the scope of the tort to what was conducive for healthy collective bargaining.⁸⁰ The enactment by the British parliament of the Trade Dispute Act of 1965 provided a legal shield to trade unions. In Nigeria a similar provision is incorporated under Section 44 of the Trade Union Act. Intimidation by way of violence or threats of violence may be a criminal offence, but it will certainly not be actionable in tort if the threats are limited to the exertion of industrial pressure.

2.6.2 Criminal Liabilities

Trade Unions in the course of their actions or inactions may incur criminal responsibility punishable under the relevant criminal laws. The criminal offences trade unions may be held criminally liable includes criminal conspiracy, assault, common nuisance, breach of the peace and criminal breach of contract.

⁸⁰ Eniola A. Op.cit p. 534

2.6.2.1 Criminal Conspiracy

The term ‘conspiracy’ means an agreement by two or more persons to do an unlawful act or to do a lawful act by unlawful means.⁸¹

Both the criminal and penal codes contains provisions on criminal conspiracy. The criminal code provides that any person who conspires with another to commit an offence commits criminal conspiracy.⁸² Despite the prohibition of strikes by the Trade Disputes Act, strikes are still on the increase in Nigeria. Conspiracy is one offence an employee may commit either by agreeing to take a strike action or by actually partaking in it. Therefore, when employees go on strike they can be prosecuted not only for going on strike but also for criminal conspiracy. The offence of criminal conspiracy may be committed even where the conspiracy is not necessarily to commit an offence. The criminal code provides other categories of conspiracies which includes conspiring to prevent the enforcement of any law to cause injury to the person, or depreciation in the value of a person’s property; or to prevent the free and lawful disposition of any property by the owner, or to injure any person in his trade; or to effect any unlawful purpose or any lawful purpose by unlawful means.⁸³

A writer aptly commented on the above provision that there are no cases to show that this provision has ever been applied to employees on industrial action and that this may be proof enough that the section has no immediate relevance to industrial disputes.⁸⁴

Under the penal code when two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means such an agreement is called criminal conspiracy but no agreement shall amount to such unless some act is done by one or more

⁸¹ Balogun v. Attorney General of Ogun State (2001) 14 NWLR PT 733, p. 335

⁸² Section 516 – 517, Criminal Code Act, Cap C 38 LFN 2004

⁸³ Section 518, *ibid*

⁸⁴ Uvieghare E.E. *op.cit* p. 448

parties in pursuance of such agreement.⁸⁵ There is no criminal conspiracy under the penal code unless the conspirators have carried the illegal act into effect.

Both the criminal and penal code removed criminal conspiracy from the ambit of trade disputes. The criminal code stipulates that the provisions of sections 516 to 517 do not apply to agreements between persons to do any act in furtherance of a trade dispute if such act committed by one person would not be punishable as an offence. Therefore, where employees engage in industrial action in contemplation of a trade dispute they can be charged for criminal conspiracy only when they carry out an act which if done by one employee would be punishable as an offence.

Trade unions or their officials may be prosecuted under the criminal code which provides that any person who conspires with another by deceit or any fraudulent means to effect the market price of anything sold publicly or to defraud the public or to extort any property from any person is guilty of an offence.⁸⁶ In *Ogundipe V R*,⁸⁷ the appellants, officials of a union of labourers who demanded higher rates of pay from contractors who required the services of the labourers were charged under the section for conspiracy to extort. They were held not liable only because the court was unable to find that the appellants conspired to achieve their aim by any deceit or fraudulent means.

2.6.2.2 Picketing

Picketing is a demonstration by one or more persons outside a business or organization to protest the entity's activities or policies and to pressure the entity to meet the protesters demands.⁸⁸ Picketing is one way of exerting economic pressure on an employer in the hope of achieving the desired goal. Picketing may involve public demonstration and one

⁸⁵ Section 96, Penal Code Law

⁸⁶ Section 42 Criminal Code

⁸⁷ (1954) 14 WACA 465

⁸⁸ Black's Law Dictionary, 7th Edition, 1999, p.1167

of the reasons that strikers picket is to solicit public attention and support for their cause. Inherent in the right to picket are freedom of assembly and freedom of expression.

Picketing is that aspect of industrial action that consists of placing a "picket", which may comprise of a single individual or more persons, at or near the place where employees are employed for the purpose of communicating with persons on the subject matter of the action which must also be in contemplation or furtherance of a trade dispute.⁸⁹

The Trade Union Act further provides that doing any act that constitutes lawful picketing shall not constitute an offence under section 366 of the Criminal Code. The Criminal Code makes it an offence for any person to hinder any person from doing any act which he is lawfully entitled to do by threatening such a person or persistently following such other person; hiding any tools or property used by such other person; or watches or besets the house or place where such other person resides; or follow such other person with others in a disorderly manner and induces such person to believe that he will be an object of displeasure.

Though Section 42 (2) of the Trade Unions Act has provided legal protection for lawful picketing and exemption from criminal liability under section 366 of the criminal code, the right to picket is however a precarious one as a number of offences may be committed while picketing. It is settled law that section 42 (1) of the Trade Unions Act only protects lawful picketing. A combination to effect an unlawful act or do a lawful act by unlawful means constitutes criminal conspiracy and is therefore outside the protection of Section 42 (1) of the Act despite Section 42 (2) stipulating that "it shall not constitute an offence under any law in Nigeria and in particular shall not constitute an offence under section 366 of the Criminal Code or any corresponding law in any part of Nigeria.

In the course of picketing the following offences may be committed:-

⁸⁹ Section 43 (1) Trade Unions Act, Cap T14 LFN 2004.

2.6.2.3 Assault

The Criminal Code provides that any person who strikes, touches or otherwise applies force of any kind to the person of another; either directly or indirectly or who by any bodily gesture attempts or threatens to apply force of any kind is said to commit the act of assault and an assault is unlawful and constitutes an offence unless it is authorized by law.⁹⁰

Assault can be committed in the course of persuading a worker to abstain from work. The Trade Unions Act protects only a peaceful persuasion to work or abstinence; where violence or threat is employed, the picket will lose the protection of the Act. It is trite law that violence will render criminal an otherwise lawful act of peacefully persuading any person to work or abstain from working.

In the case of **Salawu Ajao V Karimu Ashiru & Ors** (Supra) the Defendants formed a picket line and forcefully entered the plaintiff's residence thereby seizing his mill and beating up his servant. The Supreme Court opined that what the unionists had done amounted to "forcible entry" and the beating up of the plaintiff's servant was a clear case of assault and is not protected by statute.

2.6.2.4 Common Nuisance

Nuisance is another offence pickets can easily commit. Under the T.U.A pickets may only attend at or near a house or place where a person resides or works or carries on business. However, a place where a person happens to be is not limited to a place where the person habitually frequents. It includes any place where an employee or other person is found however casually.

The use of the highway is always an area where pickets might commit an offence. There is no reason why pickets may not use the highway for the purpose of picketing. Everyone has a right to the use of the highway. The Irish Supreme Court pointed out in the

⁹⁰ Sections 252 and 253 Criminal Code

case of **Ferguson V O’Gorman**⁹¹ that when the legislature declared it lawful for persons to attend at or near a house or place it cannot reasonably have contemplated that such a house or place would be situated in a no man’s land. The usual approach to a residence or place of business is a public highway and unless the right to attend is a right to attend on a public highway, it is difficult to see how the right to picket can be exercised at all.⁹²

However, pickets may quite easily commit offences and even torts while using the highway. Under the Criminal code any person who prevents the public from having access to any part of the highway by an excessive and unreasonable temporary use commits an offence.⁹³ It is generally a question of fact whether use of the highway is excessive and unreasonable. In **Tynan v. Balmer**,⁹⁴ forty pickets formed and moved around in a circle on the highway in front of the main entrance to the picketed factory. The police asked the defendant to stop his fellow pickets from circulating as that was causing obstruction and intimidation, but he refused. The defendant was convicted of obstructing a policeman in the execution of his duty and dismissing his subsequent appeal, it was held that the picket’s conduct amounted to common law nuisance and an unreasonable use of the highway. It is generally a question of fact whether use of the highway is excessive and unreasonable.

2.6.2.5 Breach of Peace

Breach of peace is another offence pickets may likely commit in consequence of picketing. Due to poor organization and rising tension by pickets it may spurn out of control and may likely cause a breach of public peace.

The police have a general duty to prevent a breach of the peace and it is a criminal offence for any person to obstruct a police officer in the discharge of that duty. The test is not whether the conduct complained of is likely to lead to a breach of the peace. It is a question

⁹¹ (1937) IR. 620

⁹² Ibid

⁹³ Section 234, Criminal Code

⁹⁴ (1966) 2 ALL ER, 133

of fact whether in a particular case there are reasonable grounds for the police to believe that a breach of the peace would occur. Where a police officer reasonably anticipates the consequence of any peaceful picketing may lead to a breach of the peace either by the pickets or spectators, it is the duty of the police to take such steps as are reasonably necessary to prevent that anticipated breach of the peace.

The criminal code aptly provides that every person who in any public place conducts himself in a manner likely to cause breach of the peace commits an offence.⁹⁵ Similarly, the penal code law also provides that whoever in a public place disturbs the public peace or does any act which is likely to cause a breach of the public peace commits an offences.⁹⁶

In **Queen V Imoudu & Ors**⁹⁷ the defendants were convicted for mobilizing pickets under the aegis of the Nigerian Union of Railwaymen. The picketing took a riotous nature that amounted to breach of the public peace. The riotous behaviour was said to have arise out of the determination of the men to compel all railway workers to join in the demonstration.

Thus if a picket line is likely to lead to a breach of the public peace, this will be a criminal offence and the police will be under an obligation to disperse the pickets or arrest them if the police order is not complied with. It thus becomes clear that the statutory right conferred by Section 41 (1) of the Trade Unions Acts is limited by the possible liability for public or private nuisance and by the preventive powers of the police.

2.6.2.6 Criminal Breach of Contract

Unionists may be criminally liable for criminal breach of contract. In 1947, an amendment was effected to the criminal code that accorded breaches of certain contract of services with criminal liability.⁹⁸ In a similar vein, the penal code states that whoever being an employee engaged in any work connected with the public health or safety or with any

⁹⁵ Section 249 (D) Criminal code

⁹⁶ Sections 113 and 114 of the Penal Code Law.

⁹⁷ (1961) All NLR 13

⁹⁸ Section 305 (A) Criminal Code

service of public utility ceases from such work in pre-arranged agreement with two or more other such employees without giving his employee fifteen days notice of his intention, shall if the intention of such cessation is to interfere with the performance of any general service connected with public health, safety or utility to an extent which will cause injury or grave inconvenience to the community commits an offence.⁹⁹

⁹⁹ Section 185

CHAPTER THREE

THE NIGERIA LABOUR CONGRESS

3.1 Introduction

The Nigerian Labour Congress is a very active and vibrant central labour organization in Nigeria. The recent amendment to the Trade Union Acts in 2005 has now substituted the words “central labour organization” with “federation of trade union”¹⁰⁰.

The NLC was formally reorganized in 1976, the most decisive step was taken in 1976 by the government when the Trade Union Central Labour Organisations (Special Provisions) Decree No. 44 was enacted which formally dissolved all the existing four rival central labour organizations namely Nigeria Trade Union Congress, Labour Unity Front, United Labour Congress and the Nigeria Workers Council.¹⁰¹ The Decree in addition empowered the Federal military government to impound the assets of the dissolved unions and appoint an administrator of trade union affairs. In February 28, 1978, the Nigeria Labour Congress was constituted as the only central labour organisation in Nigeria to which industrial unions must be affiliated.¹⁰²

The emergence of the Nigeria Labour Congress ended decades of rivalry and rancour involving the four centers and the unions affiliated to them. The NLC has a chequered history surviving two instances of dissolution of its national organs and consequent appointment of a state administrator. The first was in 1988 when the NLC opposed the structural adjustment programme introduced by the Babangida regime. This opposition incensed the military government to take over the administration of the NLC. The second time the NLC suffered another major setback was in 1994 during the Sani Abacha regime. The regime became

¹⁰⁰ Sections 7 and 8, Trade Unions (Amendment) Act 2005

¹⁰¹ Otobo D. Understanding the New Trade Union Structure. In: Otobo D. and Omole M. (ed) (1984) Readings in Industrial Relations in Nigeria, Malt House Press Ltd, Lagos, p. 52

¹⁰² Retrieved from Google search:[http://wiki.answers.com/history of Trade Unionism in Nigeria](http://wiki.answers.com/history_of_Trade_Unionism_in_Nigeria) accessed on 7/8/13 at 1.15pm.

hostile and intolerant to labour movements agitating for the restoration of democracy. The national executive council was dissolved and a sole administrator was appointed.

The dissolutions exemplified the travails of the congress, its leadership, affiliates and state councils under military rule. Arbitrary, prolonged and unlawful detention of labour leaders, invasion and disruption of union meetings, seminars and other activities of congress and its components by security forces. The military invoked its legislative prerogatives to unleash all manner of legislations to check the actions of unions. With the death of Abacha, the unions reclaimed the congress culminating in a national delegates conference held on Jan. 29, 1999. The leadership led the NLC from 1999 to 2007 headed by Comrade Adams Oshiomole. Comrade Abdulwaheed Umar is the present president of the NLC.

The mission of the Nigeria Labour Congress is to organise, unionize and educate all categories of Nigerian workers defend and advance the political, economic, social and cultural rights of Nigerian workers, emancipate and unite Nigerian workers and people from all forms of exploitation and discrimination; achieve gender justice in the work place and in the NLC; strengthen and deepen the ties and connections between Nigerian workers and the mutual/natural allies in and outside Nigeria; and lead the struggle for the transformation of Nigeria into a just, human and democratic society.¹⁰³

The NLC is basically administered by five of its organs namely the National Delegates Conference, the National Executive Council, Central Working Committee, National administrative council and the secretariat.

Thus, today NLC is widely seen as the voice of the oppressed people especially in the struggle to invest in the democratic dispensation with dividends. To give this struggle a credible and just platform, the NLC has facilitated the creation of pro-democratic coalition of civil society organizations. The nucleus of this network is the trade union movement. Its

¹⁰³ Retrieved from <http://www.nlcng.org> accessed on 5/5/13 at 3.02pm

immediate agenda is to widen the margin of popular participation in governance, mobilize against anti-democratic subversion of civil rule and end the ramified regression of Nigeria and to provide the framework for discourse around the necessities and modalities for a progressive intervention in the political process.¹⁰⁴

3.2 International Affiliation

International affiliation by the NLC with other central labour organizations or international trade union bodies or organizations is a basic right as enshrined in Convention 87 of the International Labour Organization Charter (ILO). The Charter provides that workers and employers organizations shall have the right to establish and join federation and confederation and any such organization, federation or confederation and shall have the right to affiliate with international organizations of workers and employers.¹⁰⁵

The Nigerian State has continued to deny trade unions the full opportunity to exercise the right to freedom of association in this regard. The military regime particularly of General Ibrahim Babangida has encroached greatly into the affairs of the NLC. The NLC was widely perceived as a pro-democracy group and anti-military by the Babangida administration. This was the rationale behind the promulgation of several decrees barring the NLC from affiliating with any other central labour organization. The dogged stand of the NLC in agitating for a return to civil rule made the military regime wary of trade unionism and resort to draconian legislations to tame the rising influence of the NLC.

Since 1989, except for a period of just over 5 years between 1991 and 1995, there has been statutory regulation of affiliation of Nigerian trade unions and central labour organizations to international trade unions bodies or organizations.¹⁰⁶ The first statute, the Trade Unions (International Affiliation) Decree no. 35 of 1989 not only prohibited any

¹⁰⁴ Ibid

¹⁰⁵ Article 5 International Labour Organisation Charter

¹⁰⁶ Uvieghara E. E. (2001) labour laws in Nigeria Malthouse Press Ltd, Lagos, p. 378.

registered union from affiliating with any international labour organization or trade secretariat except as provided by the Decree but also provided that the central labour organization (the NLC being the only center allowed by law) and all the registered trade unions must cease to be affiliated with any international labour organization or trade secretariat except as permitted by the Decree.

The Decree permits affiliation by the NLC only to the Organization of African Trade Union Unity (OATUU), the organisation of Trade Union of West Africa and any other international labour organisation specifically approved by the government. The individual trade unions were not permitted to affiliate at all. Thus, any affiliation of any of the registered trade unions had to cease as also any affiliation of the NLC to any other international body other than the ones permitted under the Decree. The Decree was repealed in 1991 but in 1996 the Sani Abacha regime promulgated another Decree thereby re-imposing the same restrictions on international affiliation.¹⁰⁷

The advent of democracy in Nigeria in 1999 removed the strict restrictions imposed by the military on international affiliation by trade unions. The NLC or any trade union may now affiliate with any international labour organization or trade secretariat in accordance with the provisions of the law.¹⁰⁸ The procedure is that an application must be made by a trade union or NLC which must be submitted with the details for the affiliation to the minister for his approval and he is required to give his approval within 30 days of the receipt of such an application. Where 30 days and another 7 days have elapsed and the minister has not responded it is deemed that an approval has been received where the minister refuses to give approval to such an application, the trade union has a right of appeal to the National Industrial Court.¹⁰⁹ An appeal is allowed as of right from a decision of the National

¹⁰⁷ Trade Unions (International Affiliation) Act, 1996 No. 29

¹⁰⁸ Section 2, Trade Unions (International Affiliation) (Amendment) Act 1999 No. 2

¹⁰⁹ Section 1 (5), *ibid*

Industrial Court to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution. In view of this a writer aptly stated that it would seem clear that a right to affiliate with another trade union body or organisation is a fundamental right within section 40 of the constitution which guarantees a right to every person to associate with other persons and form or belong to any trade union or any other association for the protection of his interest.¹¹⁰

The importance of international affiliation by trade unions or the NLC can succinctly be summarised as follows:-

1. It makes the NLC to be abreast of international best labour practices globally and further enlighten the NLC on the global acceptable labour practices.
2. Large international affiliation have helped trade unions grow in many developing countries. By affiliation trade unions can gain access to financial assistance, training and other benefits.
3. International affiliation would bring Nigerian trade unions into contact with their counterparts in both industrialized and 3rd world countries thereby providing a useful platform for the exchange of views and ideas, mutual co-operation assistance, alliance on international industrial action and other ways to find solutions to workers problems.¹¹¹

The NLC is internationally affiliated to the International Trade Union Confederation (ITUC), African Regional Organisation of the International Trade Union Confederation, Organization of African Trade Union Unity (OATUU) and the organisation of Trade Union of West Africa.

¹¹⁰ Uvieghara E. E. op. cit, p. 379

¹¹¹ Okene O.V.C, curbing State Interference in Workers Freedom of Association in Nigeria. Available at Google search. <http://www.works.bepress.com/ovunda-v-c-okene> accessed on 7/8/13 at 2.03pm

3.3 Organs of the Nigerian Labour Congress

The Nigeria Labour Congress is administered by the following organs:

- a. The Secretariat
- b. The National Delegate Conference
- c. National Executive Council
- d. Central Working Committee
- e. National Administrative Council

The Secretariat oversees the daily operation of the congress and execute policies and decisions of organs. A General Secretary heads the secretariat assisted by Deputy and Assistant General Secretaries who run the departments. These departments includes; information, education, industrial relations, international relations, research and policy analysis, administration and establishment, gender, finance, parliamentary lobby office, health and safety.

3.4 Trade Unions Affiliated to the Nigeria Labour Congress

The trade unions affiliated to the Nigeria Labour Congress are contained in Part A of the third schedule to the Trade Unions Act. These trade unions are 29 in number and includes the following:-

1. Agricultural and Allied Workers Union of Nigeria
2. Amalgamated Union of Public Corporation, Civil Service, Technical and Recreational Services Employees.
3. Maritime Workers Union of Nigeria
4. Medical and Health Workers Union of Nigeria
5. National Association of Nigerian Nurses and Midwives
6. National Union of Air Transport Employees
7. National Union of Banks, Insurance and Financial Institutions Employees

8. National Union of Chemical, Footwear, Rubber, Leather and Non Metallic Products Employees
9. National Union of Civil Engineering, Construction, Furniture and Wood Workers
10. National Union of Electricity Employees
11. National Union of Food Beverages and Tobacco Employees
12. National Union of Hotel and Personal Services Workers
13. National Union of Petroleum and Natural Gas Workers
14. National Union of Postal and Telecommunication Employees
15. National Union of Printing, Publishing and Paper Products
16. National Union of Road Transport Workers
17. National Union of Shop and Distributive Employers
18. National Union of Textiles Garment and Tailoring Workers
19. Nigeria civil Service Union
20. Nigeria Union of Civil Service Secretarial and Stenographic Workers
21. Nigeria Union of Journalist
22. Nigeria Union of Local Government Employees
23. Nigeria Union of Mine Workers
24. Nigeria Union of Pensioners
25. Nigeria Union of Railway Men
26. Nigeria Union of Teachers
27. Non Academic Staff Union of Educational and Associated Institutions
28. Radio Television and Theatres Workers Union
29. Steel and Engineering Workers of Nigeria.

Other Trade Unions yet to be incorporated into the TUA includes the following:

1. Senior Staff Association of Nigeria Polytechnics.
2. Iron and Steel Senior Staff Association of Nigeria.
3. Association of Senior Staff of Banks, Insurance and Financial Institution.
4. Nigeria Welders and Fitters Association
5. Metal Products Senior Staff Association of Nigeria
6. Senior Staff Association of Nigerian Universities
7. Academic Staff Union of Universities.
8. National Association of Academic Technologists
9. Academic Staff Union of Research Institutions
10. Judicial Staff Union of Nigeria
11. Parliamentary Staff Association of Nigeria
12. Academic Staff Union of Polytechnic
13. Colleges of Education Academic Staff Union.

It is not a mandatory requirement that every trade union must be affiliated to the NLC before its status is recognized. Unions operating loosely without some form of central coordination are weak and cannot vibrantly articulate its objectives against the might of the state or employer. Affiliation to the NLC strengthens the framework of these unions. This affiliation makes the activism of these trade unions vibrant and potent because of the NLC's power of mobilization in solidarity with its affiliates. The NLC gives a protective cover to all its affiliates within the armbits of extant labour laws.

CHAPTER FOUR

THE ROLES PLAYED BY THE NIGERIAN LABOUR CONGRESS TOWARDS THE ACTUALIZATION OF SOCIO-ECONOMIC AND POLITICAL RIGHTS

4.1 Introduction

The impact of trade unions particularly the Nigeria Labour Congress in modern society has become pervasive, economically, socially and politically. It is never the less amazing how much ignorance there is about the nature, objectives and role of these organizations.¹¹² Even among the initiated like trade union officers or employers their concept tends to be dictated by whatever happens to be the nature of problem with which they are currently pre-occupied. The Nigeria Labour Congress was established basically for economic reasons i.e. the promotion and defence of terms and conditions of employment of its members, including the upliftment of their standard of living. There is however a shift from this initial objective today because the NLC has undertaken responsibilities and commitments in social and political affairs of the country. A writer aptly stated this fact as follows: “To discharge obligation to our members in the matter of wages, rates and employment conditions, we have to undertake responsibilities and commitments which are becoming closely interwoven with social, political and economic affairs generally”.¹¹³

A trade union is an association of persons who, for much of their working lives are exposed to similar social experiences. The NLC being a central labour organisation provides a convenient, indeed an essential platform for an exchange of these experiences and opportunity for mutual assistance and co-operation. In Nigeria, perhaps the most distinctive aspect of the social and cultural heritage is the communal or mutual support system.

¹¹² Yesufu T.M. (1984) *The Dynamics of Industrial relations*. The Nigeria Experience University Press Ltd, Ibadan, p 92

¹¹³ Carrol. F.J. (1968) *A Trade Union View of Industrial Relations*, Industrial democracy symposium of the Irish Management Institute, Dublin.

According to Yesufu T.M¹¹⁴ in his book, *The Dynamics of Industrial Relations: The Nigeria Experience*:

In the traditional Nigerian society, life's experiences were meant to be shared. It was not (as communism might imply) a system of common ownership, either of property or of the means of production or distribution nor was it a cult or a system of blind support. Glad tidings were shared and everyone assisted in alleviating the problems of his neighbours. As modern industrial life tends to atomize this communal and extended family system, in the absence of developed state of social service, the trade union must fill much of the gap. It must assist the bereaved members, the needy, celebrate with those celebrating.

4.2 Socio Economic Role

The NLC plays socio-economic roles to workers and the Nigerian Public. These roles have far-reaching effects on the lives of workers and the general public. The role of trade unions in Nigeria in this 21st Century has become pervasive economically, socially and politically. These socio-economic roles include:

4.3 Support through Co-Operatives

The Nigeria Labour Congress has its co-operative society that provides soft loans to its members. The NLC also specializes in buying things giving it to their members on loan basis. Apart from the NLC, various trade unions establish co-operative units in their unions for this purpose. The NLC also as a social institutions identify with its members during social periods such as periods of celebration like marriages, birthday, traditional festivities and also during periods of mourning when a member dies or loses his/her relation.

4.4 Workers Education

The NLC as a social institution serves as an important platform for the provision of workers education. Workers education is an important mandate of the NLC as evidenced in its mission statement where it aptly takes on the responsibility of "educating all categories of

¹¹⁴ Yesusu T.M, op. cit , p 94

Nigerian workers.¹¹⁵ Workers education is an important social role of the NLC. Joseph Mire¹¹⁶ sees workers education as:

Dealing primarily with educational needs of workers as they arise out of their participation in the labour movement, it is education carried on either under the direct union auspices or education carried on by non-labour agencies with union groups. Its objective is the improvement of the workers individual and group competence, and the advancement of his social, economic and cultural interest, so that he can become a “mature” wise and responsible citizen, able to play his part in the union and in a free society and to assure for himself if status of dignity and respect equal to those of other groups and individuals.

Another writer perceives workers education as:

All kinds of educational activities which seek to provide workers with the equipment that will help them to develop fully their individualities and enable them to fulfill more adequately their trade union and related functions and to participate more effectively in the economic and social life of modern society, both in its national and international aspects.¹¹⁷

The educational functions of the NLC is effected at varying levels. The annual local conferences by unions provide opportunity for the rank and file to learn of the state of industrial relations generally, as well as the specific problems of wages, conditions of the national economy and the enterprise e.t.c as they affect the worker. Some trade unions organise general education classes for their members but this has had greater impact at the national congress level. The NLC also performs education functions through newsletters and bulletins specifically designed to keep members abreast of the activities of the Congress, and of political, social and economic developments within the nation at large in so far as they are likely to affect the worker. Some unions also provide advisory and sometimes consultancy services to their members in respect of their rights and claims against the employer. This function can encompass the legal as well as the social and educational functions.

¹¹⁵ Retrieved from <http://www.nlcng.org> accessed on 5/5/13 at 3.10pm.

¹¹⁶ Mire J (1956). *Labour Education: A study report on needs, programmes and approach* Inter-University Labour Education Committee, p17

¹¹⁷ Ghosh, B, (1957) *Current Problems and Practices in Workers Education* (Reprint) ILO, Geneva. p 4.

This social function will lead us to ask an important question which is why the emphasis on the need for this specific area of workers education when there is provision for general education?

A reason for this emphasis can be traced to the numerical strength and solidarity of the working class. Once this solidarity is achieved, the working class will become so powerful that it will be dangerous to ignore them. Absolutely, when workers become united and lack the necessary education to make them realize that industry can only grow when all the actors understand one another, there is bound to be suspicion.¹¹⁸ It is also recognized that the ability to make use of this strength is an important factor which ultimately depends on the union's efforts in the field of education. In essence the strength could be positively used to the advantage of both union and management or negatively used to the disadvantage of the parties depending on what type of labour or workers education is provided.¹¹⁹ Where there is enough education to broaden the knowledge of workers the probability is that the positive effect would manifest.¹²⁰

Emphasis on workers education becomes more important now at this critical period of the Nigerian economy. With the instability in the economy as well as inconsistent economic policies of government, it becomes necessary to educate workers to realize that the economic problems facing the country can only be helped through the understanding, commitment and productivity of the actors in our industrial relations system. It is through the education provided in industrial relations that the needed awareness of the workers as well as management could be made possible. According to Omole most Nigerian workers "understand only the effect of the situations" and would therefore not bother to find out the

¹¹⁸ Omole, M..A. Education and Industrial Relations in: Ootobo D and Omole M. (eds) (1984) Readings in Industrial Relations in Nigeria, Malthouse Press Ltd, Lagos p 273.

¹¹⁹ Ibid

¹²⁰ Ibid

cause or the need for such situation. Through education, if any stringent measure is taken by either government or management, workers would be able to realize that such a measure is necessary because they understand the prevailing situation, but where this is lacking, an objective view of the situation cannot be assessed by most workers.¹²¹

Through labour education, the workers and their employers are encouraged to understand and view objectively the aims of public policies and the procedures needed to achieve them. Education develops the recipient (both union and management) to a level where they can tackle the problems of equity, injustice, tyranny, corruption, exploitation, favouritism, intolerance and victimization which are all present in any system in this country today. With education, the individual is aware of his rights and obligations, his privileges and their limitations in the individual's relationship not only with the industrial set up, but with the society and the government.

Education can also serve as a means of integrating the union and its members into the framework or structure of not only the management, but the government of the day. Because education is a pre-requisite to the understanding of human problems and is concerned in acclimatizing the recipients to an ever changing and dynamic society faced with numerous and complex unforeseen problems, it becomes a tool in the hands of good leaders to get support and co-operation for efforts at industrial or nation building. In industry, the workers and their unions will be equipped to make personal and collective decisions unhampered by the forces of habit and questionable tradition or maneuver by some vested interests whose main objective is individualistic. Education enables the workers to raise the level of conscious choice in addition to widening the range, this becomes a possibility because an objective and analytical mind has been developed as a result of exposure to facts, figures and related variables.

¹²¹ Ibid, p.274

Another laudable social task undertaken by the NLC is the development of a transport scheme meant not only for workers but for the public at large. A good example is the Kaduna State branch of the NLC, it can boast of over 20 fleet of buses under its transport scheme. Some of these buses operate within Kaduna metropolis, while others are used for transport to other States within Nigeria. One unique aspect of this transport scheme is that the NLC buses do not charge exorbitant rates for transport like the private commuters. The NLC charges low rates so as to ameliorate the suffering of the people who are saddled with the burden of paying exorbitant transport rates even for short distances.

A lot of people in Kaduna State who habitually patronize commercial buses always see the NLC transport scheme buses as their first option of transport. When they miss such buses they reluctantly patronize the privately owned commercial buses. Unfortunately, some of the NLC buses under its transport scheme are in a state of dis-repair in Kaduna State. Due to the weak financial base of the NLC Kaduna State chapter coupled with the fact that the aim of the transport scheme is not a profit oriented one but a social one and absence of adequate assistance by the Kaduna State government makes it difficult for the NLC to repair its broken down vehicles and add brand new buses to its fleet. Nevertheless, the NLC buses still plying the roads in Kaduna State still go a long way in reducing economic hardships to people of Kaduna State.

4.5 Housing Scheme

Another social responsibility undertaken by the NLC is the provision of a housing scheme for workers. The NLC has struggled to ensure provision of adequate housing or housing schemes to Nigerian workers over the years. The provision of housing to workers/employees is basically the responsibility of government/employer. There seems to be an abdication of this social responsibility by the government or employer as the case may be.

Employers of labour had disregarded or paid lip service attention to this social responsibility despite the existence of extant laws imposing such social responsibilities on the employer. The Employees Housing Scheme law provides that any employer whether corporate or unincorporated shall not later than six months after a requisite order is made as provided in this section, submit for the consideration of the minister proposal for the establishment of a housing scheme for his employees in respect of each state of the federation or such number of states.¹²² And a designated employer as defined by the act as any employer who has not less than 500 persons in his employment in any state of the federation or designated as such by the minister with reference to the turnover of profits of the trade or business of the employer.¹²³

It is submitted that this Act deals principally with the issue of provision of a housing scheme for employees employed in the private sector in organizations like banks, companies, etc. Section 1 of the Act makes such housing schemes obligatory on the employer and not just an issue the employer can waive non-challantly. So long as the employer satisfies the requirements of having 500 or more persons employed under him, it becomes imperative and mandatory to the employer to submit his proposals for consideration of the minister towards establishing a housing scheme for his employees. Unfortunately private sector employers have totally disregarded this social provisions of the law e.g. banks.

The private sector employers find it more convenient and economical to monetize the housing scheme in the employees salary which is always nothing to write home about. It is more convenient to monetize it because an employees housing scheme is a capital project that involves huge investment and the private sector is a profit oriented sector where the basic principle is the optimal maximization of profits and cutting down expenditure. Though some private employers try their best to provide housing schemes to their employees. A good

¹²² Section 1 (1), Employees Housing Schemes (Special Provision) Act Cap E8, LFN 2004.

¹²³ Section 1 (2), *ibid*

example are the oil companies. Shell Petroleum Development Company provides housing to its employees in states like Rivers.

Similarly, there are extant laws meant to provide similar schemes to cover workers engaged in the public service. The Federal Government Staff Housing board is established by law to facilitate and administer housing loan schemes for federal public officers. The basic function of the board is to grant advances to those eligible under the scheme for the purpose of building a residential house, or acquisition of a parcel of land, or for improving or extending a residential house for the workers use.¹²⁴ Even though laws exist imposing such social obligations, the workers are yet to satisfactorily enjoy the benefits of these social legislations. Some individual states are trying in ensuring the provision of such schemes to workers, such states includes Kaduna, Katsina, Zamfara, Niger and Sokoto States. A recent example here in Kaduna State is the recent allocation of new houses located at the new Kaduna city layout to civil servants under the State Government housing scheme.

It is in response to these lapses and abdication of social responsibility by respective employers that the NLC steps in to at least mitigate the sufferings of workers in that respect. It does so by engaging into a private partnership with private state firms for the purpose of providing affordable housing to workers. Presently, the NLC is collaborating with a private property developer Kriston Lally to develop housing estates in some parts of Nigeria for its members.¹²⁵ The Deputy President of the NLC Comrade Promise Adewusi who recently unveiled this plan said that affordable houses would be built for any willing members of the NLC's eight million members across the country. Comrade Adewusi said the NLC is worried about the 40 million housing deficit in the country as revealed by a United Nations study. The project is expected to cost about six billion dollars or 960 billion naira. Comrade Adewusi emphasized that the NLC decided to enter into this private partnership when it considered the

¹²⁴ Section 2, Federal Government Staff Housing Board Act, cap F 11 LFN 2004.

¹²⁵ Francis Okeke, "NLC Plans N960bn Housing Estates" In: Daily Trust, page 64, Monday, April 8, 2013.

favourable terms which includes the interest rate of the total amount of the property standing at 2% which is spread over 15 years as very attractive and well below what is obtainable in the mortgage environment in Nigeria today.¹²⁶ The NLC has already acquired land in Nassarawa State and other states to kick start the project and it is also reaching out to state governments where it has no land to acquire land for the project.

The memorandum of understanding has been signed for more than 2 years and until now the scheme has not taken off. It was unfortunately discovered later by the NLC that the private developer Kirston Lally was a fraud thereby making the NLC to source for another private developer namely good homes so as not defeat the intent of the scheme.

In some states, the NLC has been engaging with the state governments to provide housing to its members in cases where such governments have implemented a housing loan scheme. The Zamfara State government has allocated 484 housing units to the state chapter of the NLC for distribution to its members under the State housing loan scheme.¹²⁷ This initiative is not peculiar to the NLC alone, some other unions also have initiated similar schemes for its members. The Academic Staff Union of Universities (ASUU) of the Ahmadu Bello University Zaria has secured a loan of about N150 million from the institutions micro-finance bank to buy plots for all interested members at Shika village in Giwa local government area of Kaduna State¹²⁸. The ASUU Chairman of A.B.U Dr. Muhammed Kabir Aliyu said:

The acquisition of the plots is part of the union's welfare scheme to members to help them acquire personal houses to relocate to, especially after retirement from the service of the university, as shelter which is the most important need of every responsible family man is one of "our priorities" in ASUU, and

¹²⁶ Ibid

¹²⁷ Isah Ibrahim Maru (2002), "NLC Gets 484 Zamfara Housing Units" Available on <http://www.allafrica.com//2002022/0213>, Accessed on 12-4-2013.

¹²⁸ Francis Okeke, ABU ASUU Bus N150m worth of plots for members" In: Daily Trust, page 40, Monday, June 4th, 2012.

because lack of which is a problem, hence our commitment to help members overcome this problem".¹²⁹

It can be inferred from the above statement the importance of housing to Nigerian workers generally. The NLC is also at the forefront of agitation for the rights of the workers to housing even in some cases where government policy itself favours such provisions to workers. A good example is the impasse between the workers and management of the Nigeria Railway Corporation. Under the monetization policy of the Federal government with respect to housing, all government quarters/housing would be sold and the policy made it mandatory that the workers occupying such quarters must be given the first right of refusal in respect of the sale of the quarters of the corporation.

The management of the NRC is trying to circumvent this provision by selling the quarters to private individuals thereby ignoring the rights of the workers conferred on them by the policy. The NLC has resolved to give the staff all the necessary support in their struggle to acquire these housing quarters.¹³⁰ Presently the Nigeria Union of Railway men in conjunction with the NLC are in discussion with the management of the NRC with a view to resolving this impasse amicably.

4.6 Economic Roles of the NLC

Trade Unions statutorily are defined as a combination of workers or employers whether temporary or permanent, the purpose which is to regulate the terms and conditions of employment of workers.¹³¹

According to Yesufu T.M.¹³²

Trade Union is essentially an economic organization. Its primary concern is with the terms and conditions of work. Thus, one of the main functions is to oversee the rates of pay of its members, in order to ensure not only that wages are

¹²⁹ Ibid

¹³⁰ Communiqué of the NLC at the end of its National Executive Council Meeting held in Benin City Edo State, on August 8, 2012. Also available on www.solidarityandstruggle.blogspot.com. Accessed on 8/3/13 at 2.10am.

¹³¹ Section 1, Trade Union Acts, cap T14 LFN 2004.

¹³² Yesufu T.M, op cit p93

adequate by reference to the cost of living and accepted living standard generally, but also that they are fair by comparable with the rates and scales of pay for employee in similar or comparable employment to those of its members, method and periodicity of payment are important aspect of wage problem with which the trade union concern itself.

Audi¹³³ puts it;

Trade unionism all over the world emerged for improving the economic, living and working conditions of workers. Workers through their union representatives seek to obtain an equitable share in the profits made by the employer in order to improve their working and living standards out of the wealth they help generate.

From all the objective given by the respectable authors above one key issue is easily discernible i.e. the primary concern of any trade union is economic to its members.

4.6.1 Adequate Wages

A basic economic role played by the NLC is the agitation for a better pay/wage to the Nigerian worker in line with prevailing facts and circumstances. Various industrial actions that have taken part in this country in the past decades have basically been action based on the workers resolve to have an improved standard of living based on adequate remuneration. The platform of the NLC has always been used as an avenue for wage negotiation with the employer/government being the largest employer of labour. The issue of a better pay to workers is very important because workers productivity are always tied to wage issues. Better pay which is manifested in workers conditions and standards of living is a powerful instrument for channeling workers zeal for productivity.¹³⁴

An important role played by the NLC can be seen in its negotiations with successive Nigerian governments on the issue of adopting an equitable national minimum wage for Nigerian workers. The issue of a minimum wage has been a continuing concern for the NLC.

¹³³ Audi, J.A.M (2009) Strike as a Union Labour Tool in Nigeria: Reflection on Trade Union Act 2005, *Ahmadu Bello University Journal of Law and Service* Vol.1 No.2, p.110.

¹³⁴ Akpala, A. (1982) *Industrial Relations: Model for Developing Countries. The Nigerian System*, fourth Dimension Publishers Ltd, p 177.

A national minimum wage indicates the minimum funds required for production of labour; as such it sets out limits upon exploitation of labour and the level of surplus value that can be extracted from labour of workers.

If not for the intervention of the NLC a national minimum would not have been legislated upon in Nigeria. Since its inception (NLC) in 1978, the issue of a national minimum wage has been a serious source of concern to the NLC. The military regime of General Olusegun Obasanjo set up a panel on the issue of a national minimum wage and dragged its feet until it handed over power to Alhaji Shehu Shagari in 1979. The Shagari regime was also unwilling to consider granting workers a minimum wage until the NLC threatened to call out workers on a national strike and in May 1981 under Hassan Sunmonu the Shagari regime was forced to raise the minimum wage from ₦120 to ₦125.

The minimum wage issue continued to be central to the concerns of the NLC even when various military regimes froze or refused to pay not only wages in general but also the minimum wage in particular. The issue surfaced in relation between the NLC and each government during the entire period. A new minimum wage of ₦7,500 for federal workers and ₦5,500¹³⁵ for state workers was extracted from the Obasanjo regime by the NLC after a lot of agitation.

With the recent amendment of the National minimum wage Act in 2011, the current national minimum wage in Nigeria is pegged at ₦18,000. The NLC initially proposed a minimum wage of ₦52,000 which the Justice Alfa Belgore committee rejected. After various consultations with the NLC the current amount was finally agreed upon.

Sadly nearly two years after the ₦18,000 minimum wage was signed into law, many state governments are yet to fully comply with the law. Well over 20 states have practically failed to fully implement the National Minimum Wage for public sector workers. Enugu,

¹³⁵ Section 1, National Minimum Wage Act, cap N61, LFN 2004.

Zamfara, Niger and Ebonyi states are yet to pay the new minimum wage despite pressure from labour. Some states have tried successfully to renegotiate the modalities for the payment to civil servants. While states such as Plateau, Kwara and Nassarawa have resorted to partial implementation a situation where some categories of workers benefit while others are exempted.

More worrisome is the fact that the Federal government which signed the new wage into law has not fully complied with the provisions of the Act. Rather what the FG did was a staggered implementation by adding ₦1,000 each to workers at all grade levels. This action is based on the government's argument that it had already commenced payment of ₦17,034 as minimum salary relatively to workers under its employ.

The General Secretary of the Association of Senior Civil Servants of Nigeria (ASCSN) Comrade Alade Lawal said;

The implementation of the minimum wage was done in bad faith and workers have not benefited from the adjustment. Argument of the government is that its meant for workers in the lower/junior cadres, this argument does not hold water because services of workers in grade level 1-2 have already been outsourced to private firms.¹³⁶

Similarly state government and local governments are following the same cue of the F.G. The State governments are saying they have no such obligation to pay the new wage other than ensuring the least paid worker in the state public service earns at least ₦18,000.

The achievement of a national minimum wage as agitated by the NLC remains a landmark in the struggle for improving the living conditions of the majority of Nigerian people despite the poor implementation of the law by government being the largest employer of labour in Nigeria.

¹³⁶ Linda Eroke (2013) Poor Implementation Mars Minimum Wage. [www. This Day live.com](http://www.ThisDaylive.com)>HOME>NEWS Accessed on March 5, 2013

4.6.2 Job Security

Accordingly, as an economy develops, the problem of job security for its members becomes a vital concern of the trade union. Problems of redundancy have bedeviled industrial relations in all countries since the industrial revolution. Whether the redundancy is the result of economic recession, internal re-organization within the enterprise, mechanization or automation, it has the effect of removing the source of income of the worker, and therefore threatens the very livelihood not only of himself, but of his family also. The function of the trade union also is to interact with the employer to prevent retrenchment of labour, and if retrenchment becomes inevitable, to minimize its effects, in terms of numbers to be retrenched, compensation for retrenchment and the establishment of the rules and principles which would govern such retrenchment.¹³⁷

The NLC has been very vocal in the protection and defence of workers job security in Nigeria. This can be seen in the support given by the NLC during the travails of the 22 University of Ilorin lecturers who were sacked by the university management for engaging in trade unionism bothering on improved welfare for academic staffs of the university. After several years of litigation, the Supreme Court in the case of *Oloruntoba V Abdul-Raheem*¹³⁸ ordered the University of Ilorin to reinstate the sacked lecturers and all their full benefits be paid up to date. The actions of the NLC took multi-dimensional approaches such as strikes, protests, threats and court action.

A recent assault on the security of jobs of Nigerian workers was committed in 2011 when President Goodluck Ebele Jonathan inaugurated the Steven Oronsaye Presidential Committee on the restructuring and rationalization of federal government agencies, parastatals and commissions. The committee recommended the reduction of the statutory agencies of government from 263 to 161. And also the abolition of 38, merger of 52 and

¹³⁷ Yesufu T.M, op cit, p 93

¹³⁸ (2009) 12 NWLR (PT 456) p. 83 - 147

incorporation of some into ministerial departments. This recommendation if implemented would save the Federal government ~~₦~~862 billion between 2012 to 2015.

The NLC has charged the federal government to tread carefully in the implementation of the Oronsanye report which recommends merger and outright scrapping of its agencies. Implementing this recommendations would ultimately lead to massive job losses. The President of the NLC Comrade Abdulwaheed Umar chided the government at the inauguration of the committee for refusing to make the NLC a part of the committee.¹³⁹

The NLC agreed on the need to reduce the cost of governance but insisted it has to do mainly with government expenditure on political appointees and hangers on. The congress opposed the recommended scrapping of the EFCC and FRSC saying these organizations have proven records of success and where compelling reasons are given the NLC will not oppose merger or scrapping. The NLC advised government to pay special attention to job losses which is inevitable in such restructuring. NLC demands from the government to pay special attention to the social and labour implications of its actions. Each Nigerian worker caters for a minimum of 6-8 family members, and each job loss may automatically translate to 8 Nigerians being pushed further down the poverty line into hungers. The NLC further advised the government that job losses will lead to social dis-location.

The NLC stressed that the current precarious situation of security could be exacerbated if anticipated job losses is not carefully handled. There are also security implications to these recommendations as a jobless and hungry citizen may engage in criminal activities such as robbery as a means to survive or he may become vulnerable to be enticed by the enemies of Nigeria. Any redundancy that may be declared in the affected organizations should be in accordance with labour laws and handled as such.

¹³⁹ Olayinka Collins, "Labour Cautions Government over Panel Report" Retrieved from Google search: <http://www.Nigeriavillagesquare.com>Forum>TownHall>Themain square>. Accessed on 3/4/13 at 11.17am

The NLC has made the clarion call to the FG to invite it for negotiation as a central labour organization as the rationalization is bound to cut across various number of commissions and parastatals. It also becomes imperative on the FG to discuss with the NLC before the release of the white paper on the Oronsaye report and subsequent government action in order to avoid social and labour related crisis. The NLC has strongly assured workers that it would not abandon them and it will do the needful to protect their interests, job security and family life.

The NLC has been active over the years in protecting the job security of the Nigerian worker.

4.6.3 Machinery for Collective Bargaining

The NLC also plays an important role as a means for collective bargaining between workers and employers. Collective bargaining is a process of a party in industrial relations making proposals or demands to the other of discussing, criticizing, explaining, exploring the meaning and the effects of the proposals; of seeking to secure their acceptance.¹⁴⁰ It includes making counter proposals or modifications for similar evaluation. The essence of the whole process is to reach an agreement. Collective bargaining is a process of negotiation between workers and employers through their organizations of a contract of employment for the best possible working conditions and terms of employment.¹⁴¹

One key point that can be discerned from the above definitions is that collective bargaining basically affects the economic rights of workers and it determines the extent to which such economic rights can be enjoyed or restricted.

Since employers cannot meet their workers individually to discuss either terms of employment or the conditions/wages of employment, the NLC bargains on behalf of

¹⁴⁰ Akpala. A, op.cit p 227.

¹⁴¹ Flippo. E. (1966) Principles of Personnel Management, 2nd Edition, McGraws 41.11 Book Company, New York, p 468

individual Unions when called upon to do so. The NLC becomes a wage fixing machinery. The NLC is the prime mover of such agitation. The workers confidence is usually rested on the NLC to negotiate issues of wages on their behalf. The negotiation with the employer is only smoothed and made in decorum when the employer is dealing with the workers body.

A practical example of when the NLC acted as a wage fixing machinery is the role it played in the passing into law of the National Minimum Wage (Amendment) Act 2011 by President Goodluck Jonathan. A committee was set up which was chaired by retired Chief Justice of Nigeria Justice Alfa Belgore to dialogue with the NLC being an umbrella for trade unions in Nigeria to come up with an acceptable minimum wage. The NLC initially proposed the sum of ₦52,000 as the national minimum wage. The Belgore committee rejected this proposal citing governments inability to commit to that amount due to a downturn in the economy.

After a lot of consultations, rounds of negotiations the NLC and the committee finally agreed that the sum of ₦18,000 should be adopted as the national minimum wage for workers in Nigeria. The President signed the minimum wage into law in March 2011. It can be discerned that the government used the NLC in its quest to adopt an equitable minimum wage to Nigerian workers.

The NLC also serves as a medium of disputes resolution and industrial harmony. The NLC ensures that workers abide by the conditions of service as well as legislative enactments dealing with resolution of disputes between workers or between a worker's union and another. A practical example can be seen in the upheavals in the power sector in 2012 between the erstwhile minister of power Professor Barth Nnaji and the National Union of Electricity Employees (NUEE). The NLC played an intermediary role between the warring parties. The NLC gave the government the true picture of the causes of the crisis which culminated in sacking of the minister in August 2012.

In any event that a labour dispute is before a competent court of law, the NLC do bear the cost and effect of any industrial dispute resolved or adjudicated upon, with it as a party on behalf of either a worker or workers union. The NLC serves as a platform for use by the employer to gauge the opinion of labour on labour related issues and reforms. The NLC usually gives its inputs on any reform by the employers of labour when its invited and has always been used as a means of communication by the employer.

4.6.4 Economic Liberation of Nigeria

Another laudable achievement recorded by the NLC in the economic sphere is the role played by it to the Nigerian state. It has played vital economic roles to Nigeria as a country apart from struggles for the economic emancipation of the worker. This has been more evident in the NLC's response to socio-economic policies of government.

The NLC has contributed immensely to the resolution of major economic issues, development of appropriate national economic policies and prevention of more severe economic consequences for the country as a result of policy and action initiatives by those in control of state power. The NLC president Comrade Abdulwaheed Umar stated;

That beyond economic struggles on wages and defence of workers rights, engaging state in popular struggles on policy issues, the NLC has never hidden its opposition to neo-liberal socio-economic policies which are designed by the Bretton Woods institutions and forced down the throat of their stooges in under-developed and developing countries.¹⁴²

The struggle of the NLC against the various austerity programmes and finally the Structural Adjustment Programme are well documented. Anyanwu aptly observed the following economic inequities embedded in Babangida's S.A.P.

That the International Monetary Fund and World Bank economic policy packages embedded in IBB's Structural Adjustment Programme provide avert encouragement to the fostering of an unregulated dependent capitalist development

¹⁴² Speech Delivered by the NLC President at the 37th Foundation Anniversary of Haks – Is, the second largest Trade Union Center in Turkey. Sunday, October 21, 2012, p.3

model in Nigeria. In this process advanced nations are perpetrating the present inequitable international division of labour, selling their manufactured goods, securing raw materials and exporting their surplus capital with maximum benefits. While they preach de-regulation, de-control free trade and the elimination of subsidies to poor nations like Nigeria, they themselves control their foreign trade and maintain welfare schemes and various subsidies.¹⁴³

The above economic realities of this neo-liberal policy made the NLC to rise staunchly against the imposition of this inequitable and lopsided economic policy of the Babangida's regime. The participation of the NLC in the debate over the World Bank/IMF loan contributed to the defeat of the government's initial position which was to take the loan.¹⁴⁴ Thereafter, the imposition of S.A.P as Nigeria's alternative to the loan but which in practice reflected the same conditions as these provided by the I.M.F for the loan met with strong resistance from the NLC. As the NLC observed in the report of the national executive council to the aborted Benin Quadrennial Delegates Conference on February 24, 1988 that government's argument for the introduction of SAP that by rejecting the IMF loan, the measures have become necessary as a self imposed strategy for solving the nation's economic crisis and in order to encourage self reliance and sufficiency is untenable.¹⁴⁵

The components of SAP either by coincidence or otherwise are the same as the IMF. Despite opposition by the NLC, the Babangida regime proceeded with the various SAP policies. But the NLC can look back and say that it predicted that SAP would ruin the country as it certainly did. It is also true that but for the opposition of NLC several other components of SAP would have been introduced in that period and that would have worsened living conditions and the national economy even further. In recent times, incessant fuel hikes by various Nigerian governments i.e. removal of fuel subsidies and deregulating the oil sectors

¹⁴³ Anyanwu C, (1992) President Babangida's Structural Adjustment Programme and inflation in Nigeria, *Journal of Social Development in Africa* Vol. 7, No. 1, p 20.

¹⁴⁴ Iyayi, F. NLC at 30: Contributions to Development and National Liberation. An Address delivered at the 30th Anniversary of the NLC held at the Yar'adua Center, Abuja, February 28, 2008, pp 7-8

¹⁴⁵ Ibid

are still part and parcel of the neo-liberalists policies that are continuously being imposed on developing economies particularly in third world countries like Nigeria.

Neo-liberal economic structuring in Nigeria according to Onyeonoru can be traced to the debt trap that became evident by the early 1980s during the Shagari administration.¹⁴⁶ The debt crisis led to pressure by the IMF and the World Bank for the country to adopt neo liberal economic structure embodied in the SAP. The succeeding Buhari regime resisted the pressure and preferred instead to employ tight fiscal policies. It was Babangida’s regime that finally adopted SAP which promoted commercialization, privatization, liberalization and deregulation. The gradual implementation of these policies led to adverse labour market conditions due to high level of unemployment, massive retrenchment and job insecurity.

Other by products of neo-liberal policies include the emerging forms and patterns of employment such as casualization, out sourcing and contract employment. With the ascendancy of economic neo-liberalism, labour policy changed from limited intervention/guided democracy to labour domination. This change had an adverse effect on workers rights in Nigeria.

According to Onyeonoru¹⁴⁷ the problem of casualization is not recent in the oil industry and has become a common place among big employers like the Mobil, Chevron and Shell and other private oil companies. The table below provides a platform for a proper understanding of the dire situation as studied by Adenugba.¹⁴⁸

Company	Permanent Staff	Casual/Contract Staff
Nigeria Agip Oil	211	1,500
Mobil Producing	492	2,200

¹⁴⁶ Adenugba, A.A. (2011) Workers Rights and the Challenge of Neo-Liberal Agenda in Nigeria. *Nigerian Journal of Labour Law and Industrial Relations* Vol. 5 No. 4, p 73. See also Onyeonoru, I. (2004) Globalisation and The Trade Union Resistance in Nigeria. *African Journal for the Psychological Study of Social Issues* Vol. 7 No. 1, pp 71-98.

¹⁴⁷ Onyeonoru, I. op cit, ibid

¹⁴⁸ Adenugba A. A. op. cit p 76

Shell	520	8000
Total Nig. Ltd	136	534
Chevron	450	3,000

The most disturbing aspects of this casual/contract employees is that primarily they are not full fledged members of staff, they are not in any way qualified to join trade unions where such exists; they enjoy poorer conditions of service and they have no avenue to engage in consultation with management or to negotiate their terms of employment. Ordinarily, they do not have access to existing negotiated agreements in the organization and the level of job insecurity is very high as their services could be dispensed away at any time. In totality they have limited rights in the work place. The provisional nature of workers appointment makes unionization difficult in order to challenge appalling and inhumane working environment.

Most worrisome is the fact that most multi-national companies operating in Nigeria bring in expatriates to take full time employment with all the benefits that accrue to the job while Nigerians are placed on contract which is being renewed without benefits. Even public enterprises managed by the Federal government like the NNPC, PHCN and some state governments have contract/casual workers in its employ.

The NLC has tried in this respect but unfortunately its effort had been undermined by several factors like unfavourable labour laws interpreted by the Nigeria courts especially the common law doctrine of master and servant relationship which incorporates the fundamental principle of labour law that “an employee cannot be foisted on an unwilling employer”. Under such a relationship, the employer can simply wake up and dismiss the employee for no reason whatsoever and sadly the courts of law will hold same as legal and valid. In DAODU V UBA PLC¹⁴⁹ where the plaintiff was unjustly sacked by the defendant, the court held that

¹⁴⁹ (2004) 9 NWLR (part 878), page 276

the employer can bring the appointment of his employee to an end for any reason or for no reason at all. Again in *WEJIN V ASHAKA CEMENT CO. LTD.*¹⁵⁰ the court of appeal held that the power to terminate is absolute in that where a contract has been properly terminated, intention and motive both become irrelevant. In a similar vein the Supreme Court dropped a bombshell in *BEN CHUKWUMAH V SHELL*¹⁵¹ when it declare that in considering the circumstances in which an employment was terminated, such reasons like malice, caprice, bad faith, the injured feelings of the plaintiff or the inconveniences a party may have suffered are irrelevant and cannot be taken into account so long as the termination is in accordance with the terms of the contract.

Other factors that have frustrated the efforts of the NLC includes the ease with which government and employers abandon signed agreements with the labour unions at the slightest opportunity, the “profit before workers” syndrome, global financial crisis and unprecedented rate of employment contract and other forms of precarious work undermine trade union rights.

4.7 Political Role of the NLC

Political activism are efforts and agitations made to promote, impede or direct social, political, economic or environmental change.

The realm of political activism has been an important aspect of trade unionism in Nigeria. There is perhaps no aspect of the role of trade unions that generates so much debate as the political. While trade unionism derives essentially from economic roots, it is equally the case that the dividing line between economics and politics can be very blurred indeed.¹⁵² The very logic which propels the state increasingly to interfere in industrial relations, equally explains the need for the trade unions to take an active interest in politics.

¹⁵⁰ (1991) 8 NWLR (part 211), page 608

¹⁵¹ (1993) 4 NWLR (part 284) page 512

¹⁵² Yesufu, T.M. op.cit, p 95

The principles and policies which underly labour legislations, the need for the state to intervene in vital aspects of the life and work of the employee, for legislatures and governments to maintain a close and continuing alertness in what goes on in an industry, these are political issues which touch the worker closely. So also general policies made by government especially economic ones are issues that not only affects the worker but the general public. For this reason, trade unions all over the world are highly politically conscious. In some countries like Britain and Australia, they have organised effective and viable political parties. Elsewhere, in the United States of America, the unions organise political pressure groups in the legislature to promote workers interest, they provide financial support to parliamentary candidates who are favourably disposed towards improving the lot of the working class and actively campaign against others.

A good illustration is the labour party in Britain. It has maintained the stance of being a socialist party since its inception. Part of the social democratic ideological trend of the party arose among sections of the working class across Europe at the end of the 19th Century.¹⁵³ The labour party is a membership organization consisting of constituency labour parties, affiliated trade unions and socialist societies.¹⁵⁴ Trade Unions have played major roles in shaping economical, social and political policies of Britain. Trade Unions are actively involved in the formulation of government policies and those not affiliated to any political party serve as independent monitors for the effective implementation of those policies.

Trade unions are combinations of workers or employers the purpose of which is to regulate the terms and conditions of employment of workers.¹⁵⁵ It is essentially an economic organisation and its primary objective is workers welfare. However, in modern day Nigeria, the role played by trade unions particularly the NLC transcends its definition and objective as

¹⁵³ Retrieved from <http://www.labour.org.uk/history> of the labour party. Accessed on 3/4/13 at 6.08pm.

¹⁵⁴ Ibid

¹⁵⁵ Section 1 (1) Trade Union Act, Cap T14 LFN 2004.

provided under statute. A writer¹⁵⁶ aptly observes that trade unions in discharging its obligations, it becomes imperative for it to undertake responsibilities and commitments which are becoming closely interwoven with social, political and economic affairs generally.

Trade unions derive their authority to participate in politics under the Trade Unions Act. Generally trade union dues are not to be applied for political purposes, but where the rules of a trade union provides otherwise the funds can be used in furtherance of political objectives.¹⁵⁷ Political objectives under the Act means the making of contributions towards the funds of any political party, the payment of any expenses incurred by a candidate for election to any political office in Nigeria and the holding of any meeting or the distribution of any literature or document in support of any candidate.¹⁵⁸

The Nigeria constitution provides that no association other than a political party, shall canvass for votes for any candidate at any election or contribute to the funds of any political party or to the election expenses of any candidate at an election.¹⁵⁹ It would appear that the above constitutional provision potentially has watered down the provision of the T.U.A that authorizes trade unions to apply its funds for political purposes when provided under its rules. This provision of the T.U.A becomes untenable especially in the light of the supremacy of the constitution over any legislation.¹⁶⁰ This appears to be the only safe and reasonable conclusion we can draw from this circumstances as presently there is no case that the Nigerian courts have pronounced on the seeming conflict between the constitution and the T.U.A.

There is nothing new in labour's participation in politics in Nigeria. The trade union movement has been in the forefront of advancing civil liberties in the society. Be it during the colonial era, with the concomitant agitation for Nigeria's independence or the era of military

¹⁵⁶ Carrol, F.J. op.cit p.12

¹⁵⁷ Section 15 (1), Trade Unions Act, capt T14, LFN 2004

¹⁵⁸ Section 15 (3), ibid

¹⁵⁹ Section 221, Constitution of The Federal Republic of Nigeria (As Amended) 1999.

¹⁶⁰ Section 1 (1) and (3), ibid

rule with the clamour for a return to constitutional democracy. Trade unions have always played pivotal roles.

During the colonial era, labour's political activism was basically centered on the nationalist movement. It participated actively in bringing to an end the oppressive and repressive colonial regime. In 1945 a veteran trade unionist, Pa Michael Imoudu led his railway workers union to a 44-day strike which snowballed into a mass protest joined by other nationalists. This considerably weakened the colonial administration leading to early independence for Nigeria.

In this era, with the attainment of independence came a new dawn of political leadership in Nigeria. The military regimes have presided over the affairs of this country for a greater part of its independence. The military is well known for its widespread human rights abuses, massive suppression of pro-democracy activists and agendas and the institutionalization of corruption in both the public and private sectors.

During the military era, the NLC and other trade unions were pre-occupied with agitating for the observance of fundamental human rights by the military juntas and for a return to democratic rule. In these agitations, trade unionists payed a heavy toll before success was achieved in these areas.

With the inception of democratic rule on the 29th of May 1999 in Nigeria, came a cankerworm that was less pronounced during the military regime i.e. bad governance and endemic widespread corruption. Nigeria politicians/ government have failed to deliver the much anticipated so-called dividends of democracy. Nigerians became disappointed as democracy seems to usher a new block of political leadership anchored and sustained on institutionalized corruption.

The power block presiding over the socio-economic and political lives of Nigerians are conservatives. Most government policies like deregulation of the oil sector and the

privatization of public corporations have further plunged the millions of Nigerian masses down the poverty line. Nigerian politics is a body of unfulfilled promises as aptly observed by Aliyu Umaru;

Nigerian politics has been a sad chronicle of unfulfilled promises, dashed hopes and unrealized expectations. As a result, the common man has continually suffered deprivations, hardships, exploitations and oppression. In contrast, the privileged few roll in wealth derived from superior profits, fronting for foreign business, kick backs on government contracts, price speculations and ill gotten gains. Why has our politics meant wealth and licentiousness for a few but deprivations and frustrations for the masses?

We have wrong policies meant to serve existing vested interests at the expense of the people. A few good policies that could have brought benefits for the people have been ruined in the process of implementation, because the system, by and large, works on the side of privilege.

All this points to an all important reality. Nigeria is in the process of far reaching social transformation. Two great forces face each other, and are locked in a grim struggle for survival and ascendancy. On the one side, the forces of privilege are resolved to protect their interests at all cost under the existing social order. These are the conservatives because their political stand is to protect, retain and sustain the existing social order. On the other side, the forces of the people are determined to replace the existing social order that harbours so much hardship and frustration for them, with a new social order in which there will be equality, liberty, freedom from want and social justice. These are the progressives, because their political stand is to replace a system of oppression and exploitation with a new society that guarantees a freer and fuller life for all.¹⁶¹

This constant and ever deepening struggle between the forces of conservation on the one hand and those of progress on the other hand is the prime moving force of contemporary Nigerian life. The NLC is a progressive agent in this context, agitating for a more humane and democratic society. The political activism of the NLC could better be understood in the sphere of certain political movements on certain fundamental key issues, most especially the role played by the NLC in the struggle for democracy in Nigeria.

¹⁶¹ Umaru, A. (2000) June 12 and The Cultured North: Some Aspects of Nigeria's Politics in Perspective. Axis Research Agency Limited, Kaduna, p 259.

Democracy consists of a set of rights and processes as well as procedures that are in place for guaranteeing, protecting and expanding those rights. NLC has made enormous contributions to the struggle for democracy in Nigeria.¹⁶² These contributions are marked in particular in the following areas:-

- (i) Nigerian Sovereign Rights
- (ii) Popular Rights/People's Rights
- (iii) Workers Rights
- (iv) Perennial government policy of incessant fuel hikes

4.7.1 Nigerian Sovereign Rights

Generally all economic and political struggles of the NLC have been informed by a vision of genuine national liberation for Nigeria. In all its documents and actions, the NLC has consistently defended the sovereignty of Nigeria. It has done this in its positions on the various Structural Adjustment Programmes, external debt, neo-liberal agenda of the Nigerian state, devaluation of the naira e.t.c. The SAP affected Nigeria's sovereign in that the Babangida's administration as part of International Monetary Fund (IMF) prescription was asked to stabilize Nigeria's economy by fulfilling conditions such as adopting policies of fiscal and budgetary austerity exchange rate devaluation, cuts in real wages and cuts in public expenditure.¹⁶³

4.7.2 Popular/Peoples Rights

The NLC has been a significant contributor to the development and guarantee of popular rights also known as civil liberties in Nigeria. The trade union movement in Nigeria having been founded on the fundamental principle of freedom of association and the right to protect the welfare of its members, has a duty not only to enunciate and expand the doctrine

¹⁶² Alalade, F. O. (2004) Trade Unions and Democratic option in Nigeria (2004) *Journal of Social Sciences*, Vol. 9 No.3, pp 201 – 206.

¹⁶³ Mojubaolu Okome (2012), State and Civil Society in Nigeria in The Era of SAP (1986-1993). Retrieved from <http://www.westafrica.review.com>. Accessed on 30/5/14 at 9.10pm.

of civil liberties but also to doggedly and jealously defend this in a society that will want to trample on the civil liberties of the hapless populace.

These contributions are marked in the struggle against military rule, struggle for transparent free and fair elections, in opposition to massive electoral frauds in its role of monitoring elections, contributing to the debate on the political future of Nigeria and in the struggle to remove patently corrupt public officers from office. A good illustration of this facts can be seen in the alliance forged between the NLC, ASSU and NANS in 1984 to force the Buhari regime to respect fundamental human rights,¹⁶⁴ the general strike by NUPENG and PENGASSAN affiliates of the NLC over the annulment of the most free and fair election ever held in Nigeria on the 12th of June 1993 exerted enormous pressure that culminated in the unceremonious exit of the Babangida regime.¹⁶⁵ When the Abacha regime reneged on its promise to revalidate the results of the annulled elections, the labour movement through the NLC led a coalition of civil organizations to engage and confront his regime even at personal risks to the unionists.

Between June 2003 and 11th October, 2004, the labour movement with the Oshiomole led NLC in coalition with other civil society organizations engaged the Obasanjo's government in a mass protest four times over the latter's anti-people increase in the prices of petroleum products.¹⁶⁶

The NLC voiced out vehemently when the 2007 general elections were massively rigged even the late president Yar'adua that emerged victorious acknowledged the flaws associated with his election. This outcry from the NLC, Civil Societies and notable personalities prompted late President Yar'adua to constitute a committee on electoral reforms chaired by Justice Muhammad Lawal Uwais (rtd) and some of its recommendations were

¹⁶⁴ Iyayi, F, NLC at 30. Contributions to Development and National Liberation in Nigeria. Address delivered at the 30th Anniversary of the NLC held at the Yar'adua Center Abuja, February 28, 2008, pp 7-10.

¹⁶⁵ Ibid

¹⁶⁶ Adewusi, P.A.K (2007) The Role of Trade Unions In The Enhancement of Civil Liberties in Nigeria. *Nigerian Journal of Labour Law and Industrial Relations* Vol.1 No. 3, p94.

incorporated into the Electoral Act 2010. Festus Iyayi¹⁶⁷ aptly observed that “the NLC action contributed to the popular disenchantment with the Buhari government and its subsequent overthrow in August 1985”.

In most civilized societies, these liberties have been positively enacted into municipal laws and therefore have transformed into enforceable fundamental rights. In Nigeria, these rights have been encapsulated in the country’s constitution.¹⁶⁸ However, there are those rights enshrined in our constitution¹⁶⁹ but which are not justifiable and therefore not legally enforceable. Without pressure on the government of the day from the NLC, these rights may therefore not be worth more than the ink with which they are printed.

Labour is able to mastermind these safeguards against the abuse of the civil liberties of the citizenry in Nigeria because the three tiers of government (that is the local, state and federal government) are the largest employers of labour. As Audi puts it:

Both labour and management are two great social powers who have certain interest to protect; management has legitimate expectations; it expects to secure labour at the price that would allow a reasonable margin for investment. It also expects the production and distribution of goods and supply of services which is planned on a calculated cost and risk not to be interrupted.¹⁷⁰

When there is a breach or likelihood of a breach of the civil liberties, the labour movement through the NLC because of its enormous power of organization and procedures which may necessarily lead to work stoppage and a resultant limbo in production, government who is most likely is the most transgressor and also the largest employer of labour, is likely to be severely affected and would therefore retrace its steps leading to the

¹⁶⁷ Iyayi, F. op. cit pp 7-10

¹⁶⁸ See chapter IV of the Nigerian constitution 1999 (As amended)

¹⁶⁹ See chapter II, *ibid*

¹⁷⁰ Audi, J. M. Strike As A Labour and Masses Tools in the Context of the Labour Act 2005. Being a paper presented at the SSANU Workshop on Trade Union Management, held at the University of Nigeria Nsukka. See also Audi, J.A.M (2009) Strike As A Labour Union Tool In Nigeria: Reflections on Trade Unions (Amendment) Act 2005. *Ahmadu Bello University Journal of Law and Service*, Vol. 1 No. 2, p.110.

triumph of the trade union movement and the attendant enhancement of civil liberties which otherwise would have been abridged as a result of mis-governance.

Democratic governance is supposed to be the bastion of civil liberties but the Nigerian experience often leads to a travesty of these liberties. Therefore the NLC continues to engage these constitutional governments with a view to making them entrench and respect civil liberties/popular rights of the populace.

4.7.3 Workers Rights

As a workers organization, it is understandable that the NLC has over the years defended, protected and deepened workers rights. These efforts have covered not only their rights in the work place but also in the larger society. Part of the strategy deployed by the NLC has included the education of large number of its leadership. It has thus established harmattan and rain schools.

Workers rights are issues of concern to the NLC that are not taken lightly. Wherever the rights of workers are being infringed upon, the NLC will always step up to the challenge. The NLC has also picketed banks as was the case when it mobilized its 28 affiliates and 37 state councils to picket first bank of Nigeria in 2002. The NLC has to a large extent fought the issue of casualization and non unionization of labour. The rise of new generation banks came with the attendant consequences of casualization of labour and denial of unionization. The workers in these new generation banks have accused the management of those banks of unfair labour practices, unilateral retrenchment of workers without recourse to extant labour laws.

The action of the managements of the new generation banks have greatly undermined trade unions laws, the International Labour Organization Conventions 87 and 98 guaranteeing freedom of association and right to collective bargaining. In 2004 the NLC planned a massive picketing of 53 new generation banks which includes Equity Bank, Chartered Bank, Diamond

Bank, Equatorial Trust Bank, African Continental Bank, City Express Bank, Continental Trust Bank, Lion Bank, Broad Bank, Standard Trust Bank, Fidelity Bank, Oceanic Bank, Fountain Trust Bank, Regent Bank, First Atlantic Bank, Fortune Bank, Eco Bank, Prudent Bank, Omega Bank, FSB International Bank, Capital International Bank, Midas Bank and International Trust Bank.¹⁷¹

Following the threat of nationwide picketing of the affected banks by the NLC, a truce was finally reached between the NLC and the management of the affected banks. The most important of this agreement reached is the resolution by the management to recognize the National Union of Banks, Insurance and Financial Institution Employees (NUBIFIE) and the Association of Senior Staff of Banks Insurance and other Financial Institutions as the appropriate unions to organise employees in the banking industry.¹⁷²

4.7.4 Government Policy of Incessant Fuel Hikes

Perhaps the most visible contribution of the NLC in terms of its political activism in relation to national salvation and development is provided by the long history of opposition to the penchant of the ruling class for seeing in fuel prices the most ready avenue for increasing local revenues for the primitive accumulation of capital. Thus, every regime has sought to increase fuel prices and also met with resistance from the NLC. From January 6, 1978 to May 27, 2007, the various Nigerian governments increased fuel prices a total of 18 times¹⁷³ with January 1st 2012 being the 19th term.

NLC led protest against this fuel hikes 10 times and participated as a major force in protest action with other civil society groups 3 times. All the protests from 1998 were led by the NLC.

¹⁷¹ Cletus Akinsaya and Christ Nwachukwu NLC, Banks Reach Truce: Labour Suspends Picketing. Available at <http://www.news.biafranigeriaworld.com/archives> accessed on 3/5/13.

¹⁷² Ibid

¹⁷³ Alubo S. O. (2007) "Fueling the crisis labour, the state and pump price increase in Nigeria. A commissioned research paper of the NLC, p.5

The more recent of this government policy was on the 1st of January 2012 when President Goodluck Jonathan announced the withdrawal of petroleum subsidy by his administration and pegging the price of premium motor spirit (PMS) at N138 per litre. This announcement drew nationwide condemnation with an ultimatum given to the government by the NLC to rescind its anti-people declaration. When the government stubbornly refused the NLC mobilized the whole country to participate in a general/political strike. According to Audi “General strike coverage is across all people and it is to induce government or parliament to take certain actions”.¹⁷⁴ Otto Kahn Freund¹⁷⁵ observed that “the truth of the matter is that once again we are faced with the quagmire of mixed motives and in search of test which would enable us to disentangle the manifold purposes that determine human action. A general strike may have political and social objectives”.

Audi, further opines that:

Political strikes are the most frequent industrial action. Its basic objective is to induce change in governmental policies or that of local government or industries. The strike is so termed because it is targeted to a policy. For example, workers may strike in protest against a government decision to raise school fees, health services fees, etc.

The number of possible causes of strikes are limitless, ranging from the most trivial to one aimed at bringing down the government or even overthrow the constitution and the prevailing economic system. Thus, government is involved in political strike.¹⁷⁶

The resultant strike co-ordinated by the NLC in the wake of the January 2012 general strike resulted in loss amounting to several billions of Naira in both the public and private sectors. This negative impact on the Nigerian economy occasioned by the strike forced the government to unilaterally peg the price of premium motor spirit at ₦97 per litre.

¹⁷⁴ Audi, J.A.M. (2009) Strike As A Labour Union Tool In Nigeria: Reflections on Trade Unions (Amendment) Act 2005. *Ahmadu Bello University Journal of Law and Service*, Vol. 1, No. 2, p.112

¹⁷⁵ Ibid

¹⁷⁶ Audi, J.A.M (1991-1992) strike and the law in Nigeria, *Ahmadu Bello University Law Society Journal*, Vol. 9-10, A.B.U Press, p 97

It is our candid view that the prevailing price of N97/litre is too astronomical to Nigerians but without the political activism of the NLC in coalition with other civil society organizations it would have been much worse. The 50% increase by the government has given rise to the natural consequence of inflation covering all our daily lives ranging from food, shelter, housing, education and local businesses. The government is saddled with the constitutional responsibility of making laws/policies that will guarantee and preserve the political, social and economic security/rights of its citizens.¹⁷⁷ Most often than not, the government has been breaching and violating its constitutional responsibilities to Nigerians.

The NLC had always stepped in on such occasions to challenge the government in order to advance the economic, social and political rights of Nigerians.

4.8 Contemporary Issues

The NLC has been contributing its own quota in the discourse of issues of concern to the society. It has given its own contribution to various contemporary issues affecting the Nigerian State. Some of these topical issues includes:-

4.8.1 Corruption

The NLC has been a vanguard in the fight against corruption which is a cankerworm against the socio-economic development of Nigeria. Nigeria is a typical of a country in Africa whose development has been undermined by the menace of corrupt practices. Without doubt, corruption has permeated the Nigerian society and in the words of Achebe¹⁷⁸ anyone who can say that corruption in Nigeria has not yet been alarming is either a fool, crook or else does not live in this country.

The resources meant for water supply, roads, education, health and other basic and social services that are captured and stolen by a handful of Nigerians through corrupt acts stultify economic and social development hence creeping poverty all over the place. The

¹⁷⁷ Chapter II, Constitution of the Federal Republic of Nigeria (As Amended) 1999.

¹⁷⁸ Achebe, C. (1988) *The Trouble with Nigeria*, Fourth Dimension Publishers, Enugu.

NLC has voiced out and called for the prosecution of corrupt public officials like the cases of James Ibori, John Yakubu Yesufu (Pension thief) and even the former President Olusegun Obasanjo. NLC was among the bodies that pressurized the federal government into prosecuting all those individuals and oil firms indicted by the Farouk Lawan committee that investigated the fuel subsidy scam by which Nigeria lost a colossal amount of money.

4.8.2 Security

The NLC has also criticized the government's handling of the security situation in the country. This covers crisis involving Boko Haram, kidnapping, assassinations and armed robbery which are the main threats to the security of Nigerians. Recently in 2012, the NLC lost one of its own in the person of Comrade Olaitan Oyerinde who was a deputy general secretary of the NLC on leave of absence to the Edo State Governor as a principal private secretary. He was brutally murdered at his residence in Benin City and the Nigerian police have been so ineffective in its investigation of the matter. The NLC president Abdulwaheed Omar aptly stated that "the inability of our security agencies to conclude this case (Oyerinde's murder) is a major sign that we live in a country where safety of all citizens seems not to be a serious business of government."¹⁷⁹

4.8.3 Constitutional Amendment

The NLC has been one of the major contributors to the ongoing amendment of the Nigerian Constitution. It has submitted its recommendations on some vital key issues affecting the economic, political and social security of Nigerians to the constitution review committee. These recommendations cover the following vital areas:

4.8.4.a Primary Education

Primary Education being the foundation and bedrock of education, there is the need to raise the remuneration of teachers in this respect. The NLC opines that the present pay is not

¹⁷⁹ Francis Okeke, "NLC decries inability to prosecute Olaitan's Killers". In: Daily Trust, page 8, Tuesday, May 7, 2013.

commensurate with the nature and demands of the job. The NLC recommends that primary school teachers salary must be guaranteed drawing it from the first line charge of the federation account in order to ensure smooth running of primary education in Nigeria.¹⁸⁰

4.8.4.b Local Government Autonomy

The NLC is of the view that the local governments as presently constituted are appendages of state government and avenues for siphoning public funds by overbearing governors. The practice and principle of joint account holding is inimical to the autonomy of the local government councils.¹⁸¹ The Nigerian constitution provides that each state shall maintain a special account to be called “State Joint Local Government Account” into which shall be paid all allocations to the local government councils of the state from the federation account and from the government of the State.¹⁸² The NLC is of the view that the present arrangement not only makes the local government councils vulnerable and ineffective but also runs counter to the spirit and letter of the local government council reform. NLC recommended for the full autonomy of the councils as the third tier of government.

4.8.4.c Electoral Reform

The NLC observes that free and fair elections are key to viable and sustainable democracy anywhere in the world. A breach of this key component will almost always invite violence, alienation, apathy and other forms of threat to democracy. The NLC recommends for the inclusion into the constitution of the Justice Lawal Uwais report on electoral reform 2008.

¹⁸⁰ The Position of the Nigeria Labour Congress on the Review of the 1999 Constitution of the Federal Republic of Nigeria. Available at Google search.<http://www.nlcng.org>. Accessed on 3/4/13 at 4.08pm.

¹⁸¹ Ibid

¹⁸² Section 162(6), Constitution of the Federal Republic of Nigeria (As Amended) 1999

4.8.4.d Minimum Wage Law

The constitution confers on the national assembly the responsibility for making legislations on the minimum wage.¹⁸³ The national minimum wage is not fixed by fiat as consideration is given to cost of living, capacity to pay and probable impact on key macro economic variables viz employment and inflation. This is the arrangement some unscrupulous Nigerian governors want to destroy if their lobby to put the minimum wage law on the concurrent legislative list succeeds. The NLC recommends that the minimum wage law should be retained in the exclusive legislative list so as to ensure a minimum national standard as in most civilized economies and to ensure protection for the weakest and vulnerable workers.

In the United States of America the minimum wage in States is higher than the national, the NLC is of the view that the governors of states in Nigeria cannot be trusted with that responsibility especially in view of statements credited to various governors that viability of the present minimum wage to a large extent will depend upon a review of the revenue sharing formula in which the federal government takes 56% and the states get 24%.¹⁸⁴

4.8.4.e Immunity Clause

The Nigerian constitution has conferred restriction on legal proceedings against the president/vice president, governor/deputy governor.¹⁸⁵ The NLC acknowledges the intent of the clause as an attempt to guarantee for incumbents serene and stable milieu free of distractions, but it has emerged a culture of impunity, brigandage and plundering.

The NLC recommends that the relevant section be amended to make its beneficiaries accountable for their actions while in office especially those pertaining to corruption and related serious criminal offences.

¹⁸³ Section 4, *ibid*

¹⁸⁴ Section 1, Allocation of Revenue (Federation Account e.t.c) Act, Cap A15 Laws of the Federation of Nigeria 2004.

¹⁸⁵ Section 308, Constitution of the Federal Republic of Nigeria (As Amended) 1999.

4.8.4.f Fundamental Objectives And Directive Policy

One of the finest provisions of the constitution is chapter II which deals with the fundamental objectives and directive principles of state policy which prescribe socio-economic rights to Nigerians. Unfortunately these rights are not justiciable therefore unenforceable. Thus, they are no more than the ordinary words to fill space in the constitution.

The NLC recommends that as part of the process of making state governments accountable the provisions of chapter II of the constitution be made justiciable and enforceable. This recommendation will go a long way in lifting Nigerians from the doldrums of poverty.

The NLC is the major buffer against any unconstitutional or anti-democratic bid for power in the country. The near absence of the opposition contributed to the prominence and popularity enjoyed by the congress. On the need for a credible opposition it was aptly observed:-

They have joined the ruling party to share in the national cake. It has been a case of if you cannot beat them, join them. This is a very unfortunate situation. The ruling party has taken advantage of no opposition to perpetrate their devious actions in elections. The last minute attempt by opposition parties to form a granite alliance was indeed a late hour misconception. The opposition must go back to the drawing board, realign forces and engage the government in a matured, constructive and positive manner.¹⁸⁶

In all areas, the NLC has captured the imagination of the country as the defender of the common man and as the repository of the best values of the Nigerian society. Infact NLC has given hope to the vast majority of Nigerians who are excluded, marginalized, exploited and oppressed that a better Nigeria is not only possible but realizable. This imagination is so

¹⁸⁶ Job, F.A. Findings of the Justice, Development, Peace and Caritas at the Completion of the 2007 General Elections. A paper presented at the International Press Conference organized by the Catholic Bishop Conference of Nigeria held at the Conference Hall of the Catholic Secretariat of Nigeria, Lagos, on Tuesday, April 24, 2007. p. 33

robust and alive that ordinary men and women not only identify with the NLC but expect it to be the answer to all their problems.

It is the NLC that has always mobilized Nigerians in their millions to rise against anti-people policies made by successive Nigerian regimes and not the opposition. Thus, the country now expects the NLC to act when elections are rigged, fuel prices are hiked, when wages are not paid, when leaders loot, when foreign loans are being taken through the back door, when bogus foreign loans are being paid off, when student activists are expelled by some high handed Vice-Chancellors. In fact presently there have been some pleas made to the NLC to look beyond its primary function and objectives under the law and venture actively into political activism. It was stated thus:

As a pressure group, the labour organization need to look beyond mere welfare of members. The whole nation should be their constituency. As the producers of wealth, they should exert influence on governance issues especially on how the wealth of the nation is distributed, managed and consolidated.¹⁸⁷

The present economic, social and political stability that Nigerians enjoy is nothing to write home about, but it can be asserted to a large extent that these were made possible because of the socio-economic roles and political activism of the NLC.

4.9 Challenges Facing the NLC in this 21st Century

The NLC just like any other organization has its own challenges impeding or hindering the realization of its aims and objectives to its members and the society at large. The dynamism of economic, political variables and industrial relations has its effects on the NLC. Right from its inception in 1978 the NLC has withstood its challenges at that point in time. The main challenge at that point in time is the interference in union activities by successive military regimes which can be seen in various draconian military decrees placing

¹⁸⁷ "Worker's Fate in a Collapsing Economy". In Leadership Newspaper, Thursday, May 2nd, page 3, 2013.

restrictions on its freedom, proscribing it and even taking over its affairs by the appointment of an administrator.

With the inception of democracy coupled with the rise of the ruling political elite, new round of challenges are bound to the NLC. The so called freedom from state interference with union affairs that NLC believes it will enjoy is so far from reality. The basic difference with the military regime here is that trade union freedom and operations are curtailed albeit using legal means known under the law as against the tyrannical and oppressive approach of the military regimes. Some of the basic challenges which the NLC faces in this 21st Century in Nigeria includes:

- i) Inadequate Finances
- ii) Leadership Crisis/corruption
- iii) Anti-Labour Legislations
- iv) Violence against affiliates of the NLC by the State.

4.9.1 Inadequate Finances

The issue of finance is very key and central to the principle of trade union independence. The source of funding to the NLC is autonomous from government revenue. The main source of finance to the NLC is through membership contribution also known as check off dues. Under this system, moneys are deducted from the wages and salaries of workers being members of a particular trade union¹⁸⁸ and the trade union remits 10% of the dues collected from its members to the NLC.¹⁸⁹ To ascertain and sustain this independence, trade unions must be able to generate and manage efficiently all funds accruing to them.

Today, the responsibilities and roles assumed by the NLC has not only stretched the resources of the NLC but also raised serious issues about the proper roles of the NLC and how use of existing resources can be prioritized to ensure more effective performance. The

¹⁸⁸ Section 17, Trade Unions Act, Cap T14 LFN 2004

¹⁸⁹ Section 18, *ibid*

NLC has invested a colossal amount of resources towards providing for educative and enlightenment programmes to its members and the general public on various political and national issues ranging from incessant fuel hikes, electoral reforms, constitutional amendment, foreign loans and debt, youth unemployment, corruption, e.t.c. All these sensitization programmes by the NLC involve a lot of money although in some instances such seminars or conferences are done in conjunction with other civil society organizations. But the NLC being the rallying point of most of these civil society organizations shoulder a substantial part of the cost.

Overtime, the venturing into active political activism by the NLC has taken a heavy toll on its finances in organizing sensitization programmes for the general Nigerian public. For example the paucity of funds had been responsible behind the NLC Kaduna State Chapter's decision to operate a transport scheme even though at reduced costs to the members of the public. The affairs or running of any organization or union to a large extent depends on its financial base. Strong financial base determines the vibrancy of any trade union. The recent amendment of the Trade Union Act that provides for additional labour centers has further affected the financial base of the NLC, the 10% paid by unions will now be paid to other labour centers having the unions as its affiliates.

4.9.2 Leadership Crisis

The NLC just like most organizations has its own internal crisis basically centered on its leadership. The internal squabbling that characterised Nigeria's earliest trade unions seems to have re-surfaced again. This leadership crisis are generally caused by internal crisis such as high handedness and undemocratic nature of its leadership, internal rivalry and corruption. The external image of any organization does not necessarily depict its strength, capacity or even potential.

The Adams Oshiomole era was one that witnessed relative stability in the leadership of the NLC. The internal crisis ranging within the NLC became more pronounced during the second tenure of Comrade Abdulwaheed Omar. A classical example of the crisis within the NLC is the 2015 general election of the congress. The elections of the NLC was scheduled to hold on the 9 of February 2015 but due to violence and irregularities it was rescheduled to March 12, 2015. The elections produced Comrade Ayuba Waba as the President of the NLC to defeat Joe Ajaero of the Nigerian Union of Electricity Employees, 23 trade unions rejected the result and on March 19 held another election producing Joe Ajaero as the president. The NLC now has two factions with different presidents. Despite this factionalization the faction of the NLC led by Comrade Ayuba Wabba seem to have the stamp of legitimacy and authority as a result o its recognition by the Federal Government. This recent event has seriously undermined the unity of the congress.

Other sources of crisis within the NLC include appointment to federal government boards to fill the quota granted to the NLC in organizations like the salaries and wages commission, Michael Imoudu Institute for Labour Studies and the Petroleum pricing and regulatory agency.

4.9.3 Corruption

Corruption has been one of the traits associated with Nigeria's earliest trade unions. Recent events in the struggle against the removal of fuel subsidy on the 1st of January 2012 has to some extent done harm to the reputation of the NLC. Initially the NLC took a hard line stand on the issue thereby insisting that government must revert back to the old price of PMS pegged at ₦65/litre before dialogue could reasonably take place. The writer submits the strike by the NLC on increase in price PMS is illegal by virtue of the trade unions Amendment Act 2005. This is because the technical and cumbersome procedure laid down for embarking on strike by the Act i.e. forming a quorum before voting had been bypassed by the NLC. This

evasion of the Act become necessary in view of time constraints and other logistics, it appears to be a case of the end justifies the means. The clandestine manner by which the government announced the new price of ₦97/litre without any opposition from the NLC raises a lot of doubt and suspicion as to its prior knowledge of government's decision. A former governor of Kaduna State aptly stated that "suspension of the strike by the NLC is a betrayal of the Nigerian people, the NLC all along co-operated with the civil societies, but when its time for negotiation the civil societies were schemed out"¹⁹⁰. Similarly it was aptly observed thus:

The biggest loser of the fuel subsidy removal debacle is the NLC and TUC for playing with the emotion and trust of Nigerians after promising to negotiate with the government until the old price is restored; only to turn around and call off the strike when the federal government reduced it to ₦97. To most of us the NLC/TUC betrayed the trust of millions of Nigerians. This betrayal of goodwill citing security as a mantra has downplayed yet another moment for Nigerians and the country to once and for all tackle and break the price of their Lilliputian and unproductive ruling elites.¹⁹¹

The accusations and allegations that the NLC has been bribed by the government appear to be a bit credible in view of the reason by the NLC for calling off the strike which is that the government promised to use force on protesters. For the first time in Nigeria's history, the government has seen the collective resolve of Nigerians to fight exploitation. The state has seen the sacrifice and determination of Nigerians to fight for their right and freedom against the insensitive and unproductive ruling elite whose mission seem to be to further impoverish the already impoverished masses of the country.

During the workers day celebration on the 1st of May 2013 President Goodluck Jonathan also chided the NLC for condoning and perpetuating corruption in Nigeria when he observed that;

¹⁹⁰ Balarabe Musa (2012) "Suspension of strike is betrayal of the Nigerian people". Retrieved on 16th May 2013 from <http://www.newsdiaryonline.com>.

¹⁹¹ Bukhari Muhammed and Bello Jega (2012) "Post fuel subsidy removal protest. The winners, losers and future of Nigeria. Retrieved on 16th May, 2012 from <http://www.elombah.com>

Labour has been in the forefront for the demand of good governance and increased action corruption and these issues are being vigorously tackled from various fronts. Prosecution are being pursued in matters arising from petrol subsidy, fraud, embezzlement of pension fund and other serious long standing malpractices demystified by this administration. **Given that some of these perpetrators are senior and junior members of labour unions**, greater attention to peer review action on the part of labour will be much more appreciated.¹⁹²

The problem of corruption and other related practices appear to have tainted the good image and integrity of the NLC in the eyes of some Nigerians notwithstanding the feat achieved by the NLC in the past three decades.

4.9.4 Anti-Labour Legislation

The Nigerian legal system is replete with legislation that has so far curtailed the activism of the NLC towards the actualization of socio-economic and political rights to Nigerians. These laws have greatly undermined the NLC in the realization of one of its mandates which is to defend and advance the political, economic, social and cultural rights of Nigerians and to lead the struggles for the transformation of Nigeria into a just humane and democratic society. These laws include the Trade Unions (Amendment) Act 2005, Export Processing Zones Act 1992, The Nigerian Constitution and the Public Order Act.

4.9.4.a The Nigerian Constitution

The Nigerian Constitution gives individuals the right and freedom to assemble freely and associate with others and in particular they may join any political party, trade/union or association for the protection of their interest.¹⁹³ At the same time the constitution goes further to provide that no association other than a political party shall canvass for votes for any candidate at an election or contribute to the funds of any political party.¹⁹⁴ Whereas, the Trade Unions Act (TUA) provides that the funds of a trade union generally shall not be

¹⁹² Isiaka Wakili "Go After Your Corrupt Members" in Daily Trust Newspaper, Thursday, May 2nd, 2013, page 3.

¹⁹³ Section 40, Constitution of The Federal Republic of Nigeria (As Amended) 1999

¹⁹⁴ Section 221, *ibid*

applied to the furtherance of any political objective unless the rules of a trade union otherwise provides.¹⁹⁵ There is a clear case of the T.U.A being contrary to the Constitution. From the foregoing, it means the NLC being the brain behind the formation of the labour party in Nigeria cannot in any way participate in its activities without going contrary to the provisions of the law.

4.9.4.b Trade Unions (Amendment) Act 2005

The Trade Unions Act¹⁹⁶ is the law that regulates the operations of trade unions in Nigeria. The trade Union Act was amended in 1978¹⁹⁷ making the NLC the only Central Labour Organization in Nigeria. Before, most NLC leaders did not object to the policies of the government of the day. However things began to change with the coming into power of the Obasanjo led democratic government. The government introduced some policies considered anti-people particularly the incessant fuel hikes. To this end, the NLC under the leadership of Comrade Adams Oshiomole stood against these anti-people policies by mobilizing its members and Nigerians to go on strike.

The NLC in the absence of a vibrant opposition became the rallying point for opposition against the government in this current democratic dispensation. The NLC is seen as a threat as aptly stated by the Minister of Employment, Labour and Productivity Hassan Muhammed Lawal that “The NLC has ventured into the arena of politics and has installed itself as the unofficial opposition party in the democratic process. It never sees anything good in well intentioned decision of government”.¹⁹⁸

It is against this background that the Obasanjo regime decided to “clip the wings” of the NLC and sent to the National Assembly a bill of an amendment to the Trade Union Act of 1978. This would not have generated so much controversy if not that it came at the time when

¹⁹⁵ Section 15 (3), Trade Unions Act, Cap T 14, Laws of The Federation of Nigeria 2004.

¹⁹⁶ Cap T14 LFN 2004.

¹⁹⁷ Trade Union Amendment Decree No. 22 of 1978

¹⁹⁸ Danesi, R.A (2007) Trade Union (Amendment) Act 2005 and Labour Reform In Nigeria: Legal Implications And Challenges. *Journal of Labour Law and Industrial Relation* Vol. 1, p. 105.

the NLC had become too vocal and in opposition to government's anti-workers/people policies. It is crystal clear that the new labour bill that was passed on the 9th of September 2004 by the Senate¹⁹⁹ was introduced by President Obasanjo to curb the powers and undermine the efficacy of the NLC as a potent weapon against oppression of the masses.

The government had hidden under the guise of democratizing the labour movement through the expansion of opportunities for the registration of the federation of Trade Unions as well as granting freedom of choice to workers to decide which union they wish to belong to undermine the NLC. From the Trade Unions (Amendment) Act of 2005, the key issues that threaten the potency of the NLC includes:

- Democratization of labour
- The right to strike
- The ban on picketing

1. Democratization of Labour

This Act amends the Trade Unions Act, as amended to provide for among other things the democratization of the labour movement through the expansion of opportunities for the registration of federation of Trade Unions as well as the granting freedom to employees to decide which unions they wish to belong.²⁰⁰

The above explanatory memorandum has been the main reason behind the amendment of the Trade Unions Act so as to essentially democratize and strengthen the labour movement. It is submitted that the above quotation is in consonance with the International Labour Organization Conventions 87 and 98 on the freedom of Association and Protection of the Right to organize and the Right to Organize and Collective bargaining of 1948. The Convention provides that “workers and employers, without distinction whatsoever,

¹⁹⁹ “Senate Breaks Labour, Passes Amendment Bill, Removes ‘No Strike’ clause, okays voluntary membership”. In: Vanguard Newspaper, Friday, September 10, 2004.

²⁰⁰ Explanatory Memorandum, Trade Unions (Amendment) Act, 2005.

shall have the right to establish and subject only to the rules of the organization concerned to join organizations of their own choosing without previous authorization.²⁰¹

The rationale appears laudable but the motive behind the amendment indicates bad faith and a mere attempt to cripple the NLC and its affiliates especially when statements credited to the Minister of Labour Hassan Muhammed Lawal²⁰² accusing the NLC of installing itself as the unofficial opposition party in the democratic process are taken into consideration. In considering the purported democratization of labour it becomes imperative to consider the certain principles of labour law affected by the amendments.

2. Collective Bargaining

Under the principal Act²⁰³ Section 24 provides that once a trade union has duly been registered an employer must recognize the union immediately. The amendment substitutes Section 24 of the Principal Act and states that “for the purpose of collective bargaining all registered unions in the employment of an employer shall constitute an electoral college to select members who will represent them in negotiations with employer.”²⁰⁴

This provision in the Principal Act has been considered by labour relations experts to mean that recognition is for the purpose of collective bargaining. With this amendment, it appears there is no automatic recognition for any union anymore upon registration as was the case in the past. We humbly submit that the provision of section 24 of the principal Act is more DEMOCRATIC than the provision in the amended Act which makes recognition automatic upon registration.

A critical examinations of section 25 of the Trade Unions Act contained in Cap T14 LFN, 2004 will show is in pari materia with section 24 of the Trade Unions Act 1990 affected by the amendment. The Trade Unions (Amendment) Act 2005 amended only the Principal Act

²⁰¹ Article 2 of International Labour Organization Convention 87 of 1948

²⁰² Danesi, R.A. Op. cit, p 105.

²⁰³ Trade Unions, Cap 437 LFN 1990

²⁰⁴ Section 24(1) Trade Unions (Amendment) Act 2005.

of 190, therefore the implication of this amendment is that Section 25 of the 2004 Act is still an extant legislation in this regard. The inelegance in the amendment has created confusion in the certainty of the law. The Trade Unions (Amendment) Act 2005 is completely silent on the status of section 25 of the Trade Unions Act contained in Cap T14, LFN, 2004. The writer submits that there is no judicial authority yet on this novel area and the amendment as it is seem to create uncertainty on the correct position of the law. It is submitted that despite the uncertainty on the correct position of the law, the amendment still betrayed its motive which is to impede on unionism in the polity.

3. Centralization

The NLC had been the only central labour organization in Nigeria. The recent amendment had altered this position or status enjoyed by the NLC. Section 33 of the principal Act is deleted and the phrase, “Central Labour Organization” is substituted with the phrase, “Federation of Trade Unions” wherever it appears in the principal Act. It is section 33 of the Principal Act that brought into being the NLC as the only central labour organization in 1978. Critics believe that because of the political activism of the NLC, the government sought to centralize the labour center not necessarily to democratize it.

The government sees the NLC as too powerful and will always be able to mobilize the populace for a general strike against the government’s unpopular policies; therefore its wings have to be curbed by ensuring that more labour centers come aboard to remove the ‘MONOPOLY’ enjoyed by the NLC. The original bill was actually asking for the NLC to be proscribed, outlaw strikes, impose restrictions on the administration of the check off system, and vest on the minister of labour the discretion to register a new labour center.²⁰⁵ But the Senate left the NLC alone as a labour center.²⁰⁶

²⁰⁵ Danesi, R.A. op.cit, p. 105

²⁰⁶ Ibid

However the NLC shall continue to exist unless and until it is dissolved, amalgamated, judicially forfeited or its registration cancelled.²⁰⁷ Allowing a multiplicity of labour centers will invariably affect unity and stability in the labour movement. The initial vote of the four labour centers prior to the 1978 Decree was to come together under one labour center and speak with one voice. This pre-supposes an attempt at unification and democratization of unionism in Nigeria. The poser by this writer is when workers come together and decide that they should operate under an umbrella, what could be more democratic than that? It is not the prerogative of government to set up labour centers. Labour centers should evolve from the workers themselves without prior authorization from any administrative authority otherwise it is no more a democratic process.

4. Freedom of Association

In its opposition to the passage of the Amendment Act, an organization known as the Democratic Socialist Movement²⁰⁸ in Nigeria, notes:

If passed into an Act, the legal and democratic rights of Nigerian workers to freely associate and embark on collective struggles to strive to better their own lots would fare no better than that of the working masses of the stone age era a virtual slavery condition, where employers whims and caprices constitute the laws.

After section 12 (3) of the Principal Act, a new subsection (4) has been added and it provides that “Notwithstanding anything to the contrary in this Act, membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member”. Similarly the Nigerian

²⁰⁷ Section 34 (3) Trade Union (Amendment) Act 2005.

²⁰⁸ Democratic Socialist Movement (DSM) Obasanjo’s Trade Union Bill: NLC must lead a fight against this Frontal Assault on Workers Rights Now!” August 21, 2004.

Constitution²⁰⁹ guarantees freedom of association. Other ILO instruments signed and ratified by Nigeria guaranteeing freedom of association includes Conventions 87²¹⁰ and 98.²¹¹

It is pertinent to note that in enacting this amendment the international principle of TRIPARTITE CONSULTATION for any amendment to be consistent with the ILO Conventions were not complied with. The other principal actors in the industrial relations environment were not taken into consideration. Before the bill which is now an Act was enacted, there was tripartite committee consisting of Government, Employers Representatives and Employee Representatives (NLC) looking at the labour laws and working very hard on how to make them address the current realities on the ground by complying with international labour standards. One would have thought that the committees should have been allowed to do its work and submit a report that will be beneficial to the three industrial relation actors in the labour parlance. There were therefore a number of contradictions, not consistent with the freedom of association.

It is submitted that the unilateral approach of the Nigerian government in the amendment regrettably departs from the time honoured principle of tripartite consultation enshrined in Convention 144 of the ILO which Nigeria ratified in 1994.

Notwithstanding the fact that the Act provides that membership of a trade union shall be voluntary, it states in Section 34 (2) that an application for registration of a trade union should be submitted to the Registrar of Trade Unions. Moreover, he shall only register the trade union if he is “SATISFIED” that all the requirements have been met.²¹² It is our submission that the discretionary power vested on the Registrar by the use of the word “If SATISFIED” may be abused by the Registrar and an infringement on the freedom of association of Nigerian workers. Even though the ILO is against a centralized labour

²⁰⁹ Section 40

²¹⁰ ILO Convention on the Freedom of Association and Protection of the Right to organise 1948

²¹¹ ILO Convention on the Right to organize and collective bargaining, 1948

²¹² Trade Union (Amendment) Act 2005.

organization's system, it is explicit in its proclamation that workers should be the ones to decide the union they wish to belong to without any previous authorization from any administrative body.²¹³

5. Ban on Picketing

Workers have a right to go near a house or place of work to persuade any person to work or not to work if it is done in contemplation or furtherance of a trade dispute and thus workers cannot be charged with any offence arising from peaceful picketing.²¹⁴ However, section 42 (1) A and (1) B of the Amendment²¹⁵ provides that:

1(A) No person shall subject any other person to any kind of constraint or restriction of his personal freedom in the course of persuasion;

1 (B) No trade union or registered Federation of Trade Union or any member thereof shall in the course of any strike action compel any person who is not a member of its union to join any strike or in any manner whatsoever, prevent aircrafts from flying or obstruct public highways institutions or premises of any kind for the purposes of giving effect to the strike.

The new amendment places an outright ban on picketing and actually makes it an offence to engage in picketing during industrial action. This provision legally speaking has whittled down the protection given to members of trade unions and the NLC for engaging in peaceful picketing under the provisions of section 42 (2) of the Principal Act. Peaceful picketing by the NLC is the reason why success was achieved in according recognition to the National Union of Banks, Insurance and Financial Institutions Employees by banks in Nigeria.

The new amendment strips the NLC of any criminal immunity it might have enjoyed under the principal Act thereby making the NLC liable to criminal prosecution for engaging

²¹³ Article 2 ILO Convention 87 of 1948

²¹⁴ Section 42 (1) and (2) Trade Unions Act, Cap T14 LFN 2004

²¹⁵ Section 9, Trade Union (Amendment) Act 2005.

in picketing. This amendment is seen as a victory to the oppressive employers of labour as such means (picketing) is no longer available to be used against them.

6. The Right to Strike

It is a basic fact that all workers throughout the world are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, security of job, redress of wrongs and good working conditions. But often the employer and the unions find themselves in sharp disagreement such friction gives rise to trade disputes and strike. The question that readily comes to mind is what is strike? The Trade Disputes Act²¹⁶ defines strike as:

Cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of person employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid others in compelling their employer to accept or not to accept terms of employment and physical condition of work, and in this definition.

- (a) “Cessation of work” includes deliberately working at less than usual speed or with less than usual efficiency and
- (b) “Refusal to continue to work” includes a refusal to work at usual speed or with usual efficiency.

On the above definition of a strike, it is submitted that a strike is a deliberate stoppage of work by workers or a temporary withdrawal of services. To constitute a real strike, there must be a common cessation of work and the stoppage must be deliberate. Therefore a cessation of work by individual worker cannot be 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. In *TRAMP SHIPPING CORPORATION V GREENWICH MARINE INC*²¹⁷ A strike was defined as a “concerted stoppage of work by men done with a view to improving their wages or conditions of employment, or given vent to a grievance or

²¹⁶ Section 48 (1), *ibid*

²¹⁷ (1975) All E.R. 898

making a protest about something or the other or supporting or sympathizing with other workmen in such endeavour”.

The right to strike in Nigeria by workers and their unions is surely recognized as a legitimate means of defending their occupational interests. As a matter of fact, the right to strike is an essential element in the principle of collective bargaining. Without it organized labour will be hamstrung to deal with management effectively.²¹⁸ Lord Wright aptly observes thus:

Where the rights of labour are concerned, the right 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 not only of the union’s bargaining process itself, it is also a necessary sanction for enforcing agreed rules.²¹⁹

In the case of UNION BANK OF NIGERIA LTD V EDET²²⁰, Uwaifo J.C.A reviewed the situation and said “it appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate.

In his book: Nigerian Labour and Employment Law in Perspective,²²¹ O. O. Oguniyi eruditely remarked as follows:

A situation where there is no freedom to decide whether or not to work and where people can be compelled to work is compatible with totalitarianism. Therefore the right to go on strike is fundamental to the employment relationship and its compatible with the traditional values of a society which profess democracy.

The NLC has been using political strikes as a potent tool for inducing recognition aimed at achieving concessions. The basic aim of this strike is to induce a change in

²¹⁸ Okene, O.V.C (2001) The Legal Regulation of Strike in Nigeria: A Critical Appraisal, *Modern Practice Journal of Finance and Investment Law* Nigeria and International (October 2001) vol. 5 No.4

²¹⁹ Crufter Harris Tweed v. Veitch (1942) 1 All ER 142 at 150, see also Freund O.K. (1972), *Labour and the Law*, London, p 234

²²⁰ (1993) 4 NWLR PT (287) 288 at 291

²²¹ Folio Publishers Ltd, Lagos, 1991.

government policies or that of industries. All the successes recorded by the NLC in achieving total or partial reversal of fuel hikes by government were achieved mainly through political strikes. In Nigeria today the right to strike has been highly circumscribed by section 17 of the Trade Disputes Act²²², therefore there was really no point in banning strikes again as the amendment had proposed. The original bill sent by Obasanjo sought to outlaw strikes which the National Assembly modified by limiting the ban on workers in the essential services. So also the “no work no pay” policy has not deterred workers from going on strike.

Through the new amendment, the NLC must subject the consideration of strike to a vote by which a two third majority must be obtained.²²³ It is submitted that this places a cumbersome procedure on the NLC in view of time constraints and other logistics. If this technical procedure imposed on the NLC is holistically adhered to the damage sought to be prevented would have been occasioned. This is because before the NLC can form the required quorum the government will always swiftly obtain an injunction from the National Industrial Court against the NLC as was the case during the January 2012 strike against the hike in fuel price. The amendment has prescribed penal sanctions for breach to a tune of ₦10,000 or six months imprisonment thereby intimidating the NLC.

The then Senate President Adolphus Wabara in his first ever public comment on the bill actually betrayed part of the reason for the bill when he stated that the NLC was the main obstacle to Nigeria securing debt relief as the country’s creditors, the International Financial Institutions, had been complaining over the incessant strikes and protest led by labour.²²⁴ Can we then deduce from this, that there was external influence involved in the passage of the bill into an Act, or even the bill itself.

²²² Trade Dispute Act, cap 432 LFN 1990

²²³ Section 30 (6), Trade Union (Amendment) Act 2005.

²²⁴ Danesi, R.A. op.cit, p 108

7. Strikes and Essential Services

The new amendment²²⁵ stipulates that no person, trade union or employer shall take part in strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless the person, trade union or employer is not engaged in the provision of essential services.

By this new provision people who work in the essential services are banned from going on strike and the penalty for doing so is a fine of ₦10,000 or six months imprisonment or both.²²⁶ Essential services cover key areas of work such as health, education, finance, air rail and water transport, electricity, production of military wares.²²⁷ The basic concept of essential services expressed the idea that certain activities are of fundamental importance to the community, the disruption of which will have particularly harmful consequences.

Based on the argument that public policy demand that such services should be operated without interruption, only few critics will see fault in the idea of placing restrictions on right of workers in essential services to embark on strike. But in curtailing this right, the government needs to give a blueprint on how such workers grievances can be addressed i.e. how the workers can receive adequate compensation schemes through a guaranteed annual pay rise. The government did not incorporate any built in formular in their conditions of service which will ensure annual updating of their salaries linked to the monthly index of their average earning. Majority of the affiliates of the NLC are affected by this amendment as most of them offer essential service to the community. The amendment has robed such workers of the right to go on strike conferred on them by the Principal Act²²⁸ which requires only 15 days notice to be given.

²²⁵ Section 30 (6) (A), Trade Union (Amendment) Act 2005.

²²⁶ Section 30 (7) Ibid

²²⁷ Section 7(1) Trade Dispute (Essential Services) Act, Cap T9 LFN 2004.

²²⁸ Section 40 (1) Trade Disputes Act, Cap 432, Laws of the Federation of Nigeria 1990

We humbly submit that strike is the weapon for last resort that the NLC uses in order to compel the employer to honour an agreement or government to reconsider its socio-economic policies inimical to the social, economical and political security of Nigerians. If workers are denied this right to strike, then what will they be left with? It is the knowledge that the NLC possesses this potent weapon that has checkmated potential rash socio-economic policies by the government.

4.9.5 Export Processing Zones Act 1992

In Nigeria, the Nigeria Export Processing Zones Authority Act No. 63 of 1992 is the enabling law governing operations within the EPZs in Nigeria. The pioneer free zone, Calabar Free Trade Zone was commissioned in 2001. Today, out of a total of 16 EPZs licensed 9 are operational with both government and private owners involved.

One major feature of the EPZ scheme is that the development of such zone is ultimately dependent upon, and perhaps, is conditioned by the presence of foreign firm.²²⁹ Some of the incentives offered by the Nigeria Export Processing Zone Authority (NEPZA) includes total foreign ownership of enterprise, tax holiday, unrestricted remittance of profits and dividends, waiver of import or export licensed and permission to employ foreign managers and qualified personnel by companies operating in the zones, among others to attract foreign investors.

It is largely based on this over-indulgence of foreign investors that workers and their allies have expressed fears about the social conditions in the EPZs. In Nigeria, for instance one of the conditions of employment drawn up NEPZA is that “workers employed by companies operating in the EPZ would not go on strike for a period of 10 years from the commencement of operations”.²³⁰ This is apart from the 10yrs moratorium placed on the

²²⁹ Adewunmi, F. (2007) Protecting Workers Rights in the Export Processing Zones (EPZ), Challenges for The Labour Movement. *Nigerian Journal of Labour Laws and Industrial Relations* Vol. 1 No.3 p. 77.

²³⁰ Section 18 (5) Nigerian export Processing Zones Act, 1992

formation of trade unions. Similarly the Decree²³¹ makes it difficult and impossible for the NLC (workers representatives) to gain free access to the EPZ's.

In the absence of trade unions and the right to strike, how would workers protect their interests? More importantly, why should workers rights be mortgaged in the name of foreign direct investment, export promotion or economic development, which may only benefit a few members of the society.

The NEPZ Decree is one of the extant anti-labour legislations in Nigeria. The Decree has massively abridged the rights of workers guaranteed under section 40 of the Nigerian constitution to freely associate and the ILO conventions 87 and 98 of 1948 safeguarding the right to freedom of association and right to organise and collective bargaining. The ILO adopted Resolution 29²³² in its fourth Tripartite Technical Meeting for the Leather and Footwear industry which calls for the full application of ILO standards in the EPZs and for the promotion of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Tripartite Declaration provides that all relevant international labour standards notably conventions 87 and 98 must be respected by multinational enterprises.²³³

The EPZs are supposed to be vehicles for the attraction of the much needed foreign direct investment for under-developed and developing countries. Unfortunately, they have also been havens for some of the worst work practices and denial of workers right to associate in defence of their rights and for the advancement of their interests. Thus, constitutes one of the most inhumane “race to the bottom” characteristic of the neo-liberal pathway to socio-economic development of countries.

²³¹ Section 13 (1) *ibid*

²³² Adewunmi, F. (2007) Protecting Workers Rights in the Export Processing Zones (EPZ) Challenges for the Labour Movement, *Nigerian Journal of Labour Law and Industrial Relations* Vol. 1 No. 3, p. 82

²³³ Yinusa, C. “Enduring Compliance with International Labour Standard in the EPZs” In: Adewumi F. (ed) (1997) *Labour Relations in the Export Processing Zones: Challenges for Organised Labour*, Friedrich Ebert Foundation, Lagos.

4.9.6 Nigeria Public Order Act

The Nigerian Public Order Act is another law that seriously restricts the exercise of the right conferred under section 40 of the Nigerian Constitution. Freedom of association incorporates the freedom to assemble freely. The NLC frequently seeks official authorization before holding a public gathering or mass protests and risk brutality or prosecution from the authorities as the case may be²³⁴. Through the instrumentality of the law, the right to assemble and associate freely is under the strict supervision and censorship of the Nigerian state.

For every public protest/gathering under the Act, there is the need to procure a police permit. Once the police are sure that such public gathering is against the policy of the government of the day, they usually withhold such permits. Apart from this legal constraint, the state also employs threats and intimidations against the NLC from attempting to hold such processions.

For instance, a former Inspector General of Police, Mr. Sunday Ehindero stated that he will use “more than minimum force” to deal with workers union and others who may be willing to protest the 2007 general election during the May Day²³⁵. The provisions of the Public Order Act will prevent/hinder the NLC from gathering to discuss a contemplated strike or to conduct an election. It is the submission of this writer that giving such wide discretionary power to a functionary of the state that is openly hostile to trade unions is bound to lead to abuse of power.

4.9.7 Violence against Affiliates of the NLC

The issue of violence against Nigerian workers can be traced right to the colonial era particularly the shooting of miners in Enugu in 1949 in which a British officer spearheaded

²³⁴ See Section 1, 2, and 3 of the Public Order Act, Cap P 42 Laws of the Federation of Nigeria 2004.

²³⁵ Oyesole, A. O. (2007) Resisting State Violence Against Trade Unions in Nigeria, *Nigerian Journal of Industrial Relations and Labour Law* Vol.1 No. 2, p 142.

the killing of 21 strikers. From the time labour movement first emerged in Nigeria, they have been prone to abuse. This abuse reached its highest during the military regimes.

Although Nigeria has returned to democratic governance, the abridgment of trade union rights continues. State violence manifests itself in many ways, such as dictatorial rule, press censorship; and physical and psychological intimidation of the citizenry. The labour unions have employed peaceful protest, peaceful demonstration, legal challenges, sit down strikes, work to rule and the likes but this has proved to be ineffective in resisting state violence in Nigeria. Instead students, workers unions or any aggrieved group usually resort to militant demonstration as the only viable means of resisting state violence.²³⁶ By and large, general strike is the most potent weapon of trade union in Nigeria as they cannot match the awesome state machinery for repression.

The military regimes were masters in the art of unleashing violence against trade unions. For instance the Babangida regime literally spent 1987 and 1988 fighting organized labour because of its opposition to the structural adjustment programme (SAP) through a policy that included settlement, arbitrary detentions and constant harassment of union officials.²³⁷ In this 21st century under democratic governance, their civilian counterparts however employs subtle means of violence like intimidation, blackmail, divide and rule, bribery and manipulation of the law. Sometime, they engage in naked violence through the use of regular and mobile police.

The violence against trade unions and the NLC can better be appreciated from two perspectives:

- i) Freedom of Association
- ii) Right to the dignity of human person

²³⁶ Madubukor, D. (1991) State violence in Nigeria, *Journal of Philosophy and Social Action*, p 63.

²³⁷ Otobo, D. (1995) *The Trade Union Movement in Nigeria, Yesterday, Today and Tomorrow*, Malthouse Press Ltd, Lagos, p 41

4.9.7.a Freedom of Association

This is guaranteed under Nigerian Constitution²³⁸ as Sir Abubakar Tafawa rightly observed that “freedom of association is one of the foundation on which we built our free nations” at the opening of the first ILO African Regional Conference in Lagos in 1960.²³⁹

Under the Nigerian law, trade unions are leaving in fear in exercising this right as exemplified by the travails of workers engaged in the essential services. Where by exercising such right they risk proscription from the president.²⁴⁰ Thus the exercise of the power of proscription of trade unions engaged in essential services is discretionary and subject to abuse just like the past.²⁴¹

Freedom of association incorporates the freedom to assemble freely. Trade unions frequently seek official authorization before holding a public meeting or gathering and risk brutality or prosecution from the authorities as the case may be.²⁴²

Such a requirement can greatly diminish the exercise of free association especially when workers seek to engage in activities that the authorities may consider hostile or critical to its policies. Through the instrumentality of the law, the right to assemble and associate freely is under the strict supervision and censorship of the Nigerian state. For every public meeting or demonstration there is the need to procure a police permit, once the police are sure that such public gathering is against the policy of the government of the day, they usually withhold permit. Notwithstanding these legal constraints on trade unions, the state also employs threats and intimidations against workers from attempting to hold such processions. For instance a former Inspector General of Police Sunday Ehindero stated that he will use

²³⁸ Section 40

²³⁹ Johnston G.A. (1970) *The ILO*, Europe Publication, London, p 150

²⁴⁰ Section 1, Trade Disputes (Essential Services) Act, Cap T9 LFN 2004

²⁴¹ Babangida proscribed both the NLC and ASUU in 1988

²⁴² See sections 1, 2 & 3 of the Public Order Act, Cap p 42, Law of the Federation of Nigeria 2004.

“MORE THAN MINIMUM FORCE” to deal with workers union and others who may be willing to protest the 2007 election during the May Day.²⁴³

The provisions of the Public Order Act will prevent unionists from gathering to discuss a contemplated strike or to conduct an election. In August 2002, the Federal government without reasonable excuse dissolved the Maritime Workers Union of Nigeria without an executive council or committee.²⁴⁴ Union cannot assemble to discuss and further the interest of members. It is our submission that giving such wide discretionary power to a functionary of the state that is openly hostile to trade unions is bound to lead to abuse of power.

4.9.7.b Right to the Dignity of Human Person

The Constitution of the Federal Republic of Nigeria (As Amended) guarantees this right. It provides that “Every individual is entitled to the respect of his person and accordingly No person shall be subject to torture or inhuman treatment”.²⁴⁵

In fact freedom of association extends to a persons dignity and safety of workers. Workers must associate freely and organise without fear of molestation. This is key to trade union rights. In Nigeria, workers right to personal dignity is precarious. Violence against trade unions is endemic including murder, disappearance, intimidation, torture, harassment and detention. In 2002 shortly after the NLC declared a nationwide strike over fuel increase, security agents rounded up Comrade Adams Oshiomole²⁴⁶ and several labour leaders including Dr. Dipo Fashina.²⁴⁷ 16 other union leaders were arrested in Port Harcourt, 25 persons including the State Secretary of NLC Wale Olaniyan were arrested in Ogun State.

²⁴³ Oyesole, A.O. (2007) Resisting State Violence Against Trade Unions in Nigeria. *Nigerian Journal of Labour Law and Industrial Relations* Vol.1 No. 2 p 142

²⁴⁴ Okene, O.V.C op,cit

²⁴⁵ Section 34 of the Nigeria Constitution (1999) As Amended

²⁴⁶ Former President of the NLC

²⁴⁷ Former President of the Academic Staff Union of University (ASUU)

In the course of the Abuja arrest, the police exhibited excessive brutality. They seized the NLC President's car and savagely beat up Dare Agbaje the driver. Dr. Dipo Fashina had his T-shirt torn and one of his fingers broken.²⁴⁸ Throughout a 24hr stint they were denied medical attention.

This action by a democratically elected government is just a reminiscent of the military era where it was even worst. For instance Milton Dabibi the General Secretary of PENGASSAN and Frank Ovie Kokori of NUPENG were detained in 1994 and 1996 respectively for more than 2yrs without charge or trial and were denied medical aid throughout their period of incarceration.²⁴⁹

With the use of state machinery to harass and assault trade unionists, the state cannot deny responsibility. A government spokesman warned labour against "unnecessary confrontation" and added government will not tolerate "any excessive militancy"²⁵⁰.

The above statement suggest a tacit approval to attacks on trade unions even if it is from outside, responsibility rest on government for it turns a blind eye to such atrocities. It is our submission that the most disheartening and interesting aspect is that such violations are perpetrated in most cases using the instrumentality of the law. The law confers wide discretionary powers on state functionaries who under the prevailing circumstance do not have any favourable disposition towards organized labour. The state has tailored the existing laws in such a way and manner as to dictate the rhythm and pace of trade unionism in Nigeria.

²⁴⁸ 2002 Annual Report on Human Rights Situation in Nigeria, Committee for the Defence of Human Rights (CDHR) 2002, p 131.

²⁴⁹ Ibid

²⁵⁰ Ibid

CHAPTER FIVE

AN OVERVIEW OF MECHANISMS FOR SETTLEMENT OF TRADE DISPUTES UNDER NIGERIAN LAW

5.1 Introduction

In this 21st Century, globalization, communication and information technology has radically altered the way work is organized and performed. These factors have changed the basic relationship that hitherto existed between the employers and the employees. In this era, there is neither total monopoly of power by employers or employees. However, social divide, which had favoured the employer at the expense of the employees, domination and difference in interest and values, are still sources of conflict in all organizations.²⁵¹

All workers are alike in the sense that they desire recognition, satisfaction, fair wages and salaries, security of job, redress of wrongs and good working conditions. The employers on the other hand expect to secure labour at the price that would allow a reasonable margin for investment and further expect an uninterrupted production and distribution of goods and supply of services which is planned on a calculated cost and risk.²⁵² The government itself desires to see the key players in industrial relations having a harmonious relationship so as to impact positively on the economy. The general public who are also the ultimate consumers also expect a fair price of goods and uninterrupted services.

The employees and the employers are the human vectors of all economic activities, their interactions necessarily leads to conflicts and that such conflicts have serious negative repercussions for the overall economic development of a nation if not well managed.

²⁵¹ Dauda, Y.A. (2007) Employment of Independent Arbitrators in the Management of Trade Disputes and Industrial Crisis in Nigeria, *Nigerian Journal of Labour Law and Industrial Relations* Vol.1, No. 1, p.26.

²⁵² Audi, J.A.M. (1998) Strikes and the law in Nigeria, *Journal of Law Students Society, Ahmadu Bello University Zaria*. Vol. 2, P.73.

The sources of conflicts are numerous, some of which are peculiar to respective organizations or industry and some others located outside the enterprise.²⁵³ Internal sources of conflicts would include style of management, nature of physical environment of the work place, consciousness of workers, other conditions of service, efficacy or otherwise of the promotion system and cumbersomeness of grievance and disputes procedures. The external sources of conflicts includes government's industrial and economic policies, nature of national economic mismanagement and general distribution of wealth and power in society.

The mechanism that has been used in western developed countries to achieve industrial harmony is collective bargaining.²⁵⁴ In Nigeria if collective bargaining fails which is based on the principle of voluntarism, other statutory mechanisms will be explored which have introduced elements of compulsion in resolving industrial conflicts.

It is usually the belief of most entrepreneurs and managers that improved workers salary and working conditions will reduce organizational profits and owner's fortunes. The demand for equitable share of organization's fortune and employer and manager's interest to get the largest portion of organizational returns at workers expense or to get more than their own fair share places them in constant disputes with the workers. This conflicting interest of the employees and the employers is the major source of conflicts in all organizations and it is the cause of major trade disputes. Workers feel threatened and oppressed when employers increase their own share of the organizational profit at their expense. In all nations and organizations, conflict is endemic. It is part of national and organizational life and its effective management is a necessity for corporate survival of a country or organization.

²⁵³ Otobo, D. Strikes and Lockouts in Nigeria. Some Theoretical Notes. In: Otobo D. and Omole M. (eds) (1984) Readings in Industrial Relations in Nigeria. Malthouse Press Ltd. Lagos, p 223.

²⁵⁴ Collective Bargaining may be defined as the process of resolving conflict over wages and other conditions of work in which parties willingly negotiate and reach mutually agreed solutions.

As the economy of any nation revolves around employers and employees, whose interactions must necessarily lead to conflicts,²⁵⁵ there must be a way of resolving such conflicts whenever they arise. Because labour issues are economic issues which affect the welfare of the citizenry and the nation, governments all over the world have considered it necessary to strike a balance between the competing forces in their economies. This is because no nation has ever thrived in an atmosphere of industrial strife and disharmony.

In order to manage conflict such that it will not be an agent of disequilibrium, disruption and destruction, rules and regulations are made by organizations and laws and policies by nations. These are to create enabling environment for settlement of disputes to forestall the breakdown of negotiation and stoppage of work by workers or closure by management. Responsive and responsible government always takes all necessary precautions to avert national strikes or industrial crisis because of its adverse effects on the people and the economy. In view of this necessity, Nigerian government has made statutory provisions for the settlement of trade disputes in the country. Such law includes the Trade Disputes Act and the National Industrial Court Act which have explicitly set out the mechanisms for the settlement and resolution of trade disputes in Nigeria.²⁵⁶ The legal framework for settlement of trade disputes still incorporates the principle of voluntarism in settling trade disputes i.e. through negotiation. Generally under the law, when voluntary settlement becomes impossible or difficult, other statutory mechanisms with elements of compulsion or coercion will apply irrespective of the choice of the parties. Judgments or awards made by such statutory bodies are binding and enforceable against the parties to a trade dispute.

²⁵⁵ Chianu, E. (2004) *Employment Law*, Bemico Publishers (Nig) Ltd, Akure, pp 267 – 288. See also Smith, A. (2003) *The Wealth of Nations*, Bantam Dell, New York, pp 91-121 and 193-197.

²⁵⁶ The NIC Act substantially repealed the Trade Disputes Act. Section 53 of the NIC Act provides that Part II of the Trade Disputes Act is hereby repealed, the other provisions of the Trade Disputes Act shall be construed with such modification as may be necessary to bring it into conformity with the provisions of the NIC Act, if any provision of the Trade Disputes Act is inconsistent with the provisions of the NIC Act the provisions of the NIC Act shall prevail.

5.2 Meaning of Trade Disputes Under The Law

Trade Unionism has often culminated in a manifestation of trade disputes in Nigeria. The phrase “trade dispute” has been statutorily defined by several statutes on labour law such as the Trade Disputes Act, Trade Unions Act and the National Industrial Court Act. The definitions in the first two enactments are in pari materia whereas, the definition in the NICA is wider in that it incorporates certain fundamental issues in its definition of the term.

Section 48 of the Trade Disputes Act provides that:

Trade dispute mean 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.²⁵⁷

Whereas under the NICA,

Trade dispute means any dispute between employers and employees, including disputes between their respective organizations and federation which is connected with the employment or non-employment of any person, terms of employment and physical conditions of work of any person, the conclusion or variation of collective agreement and an alleged dispute.²⁵⁸

Judicial authorities like the cases of *N.N.B PLC v. OGOH*²⁵⁹ *NURTW v. RTEAN*²⁶⁰ and *EKONG v. OSIDE*²⁶¹ are a mere restatement of the statutory definition of trade dispute.

It is aptly observed by this writer that the definition of “trade disputes” under NICA is wider in scope than that under the Trade Disputes Act particularly from three perspectives namely:

²⁵⁷ Section 48, Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004.

²⁵⁸ Section 54, National Industrial Court Act, 2006.

²⁵⁹ (2001) 13 NWLR PT. 729 .P. 240

²⁶⁰ (2001) 14 NWLR PT. 733, p. 319

²⁶¹ (2005) 4 NWLR PT 929, P. 106.

- i) While disputes between “the respective organizations and federations” of employers and employees is incorporated under the NICA, it is conspicuously absent in the definition under the TDA.
- ii) The subject matter of trade disputes under the NICA extends to the “conclusion or variation of a collective agreement and an alleged dispute.
- iii) The insertion of the omnibus phrase “an alleged dispute” without a specific definition has even made endless the types of trade disputes conceivable under that definition provided the disputes is between employees and employers, including disputes between their respective organizations and federations.

In effect, there are three basic elements in the definition of trade dispute. First, the subject matter of a trade dispute; secondly, the parties thereto; and thirdly, its purpose.²⁶² The subject matter of trade dispute is multi-dimensional. It may involve the “employment or non-employment of any person” or the “terms of employment and physical conditions of any person” or the conditions of work of any person”, or “the conclusion or variation of collective agreement”, or “an alleged dispute”.

A party to a trade dispute for the purpose of adjudication includes every person served with notice of, or attending, any proceeding, who, although not named on the record of proceeding, has the like interest in the subject matter of the proceeding as a person named on the record of the proceedings.²⁶³ The actual parties to a dispute are the workers on the one hand, and the employer on the other. A party may also be any person or body with juristic personality.²⁶⁴ The basic purpose or object of a trade dispute must be to promote the interest of the workers or employers concerned.

²⁶² Emiola, A. (1979) Nigerian Labour Laws. Ibadan University Press, University of Ibadan Nigeria p 195.

²⁶³ Section 54, National industrial Court Act, 2006.

²⁶⁴ Nigeria Union of Pharmacist, Medical Technologists and Professions Allied to Medicine V Obafemi Awolowo University Teaching Hospital Management Board and 2 ors (Unreported) Suit No. NIC/8/2006. Ruling delivered on June 25, 2008.

5.3 Methods of Settlement of Trade Disputes in Nigeria

The methods of settlement of trade disputes has to do with the systematic procedure evolved or designed to resolve conflicts between workers and their employers.

A trade dispute may be of interest or right. A trade dispute of right is concerned with the conflict of interest in collective bargaining arising out of the making of a new agreement on terms and conditions of work, or the renewal of those which have expired. Trade dispute on rights are those which involves alleged violation of rights already established or incorporated in employment contracts/agreements. These category of rights are regarded as legal rights because the claims are based on the contractual relations between the parties.

Rights are distinct from interest in the sense that the latter connotes not entitlement but desires. Disagreement or conflicts about rights are said to be “justifiable disputes”. In other words, they may be subject to adjudication. In respect of disputes over interests, they may be settled by “haggling out the differences or settling them”.²⁶⁵ But because these disputes are non justifiable, they cannot be disposed off by litigation. Therefore, any discussion of settlement of trade disputes must focus primarily on the rights of workers as opposed to their interests. These rights may be conferred on them by statute, established practice or collective agreement reached through the channel of collective bargaining. They are advantages, already achieved to which the individual has definite and guaranteed entitlement.²⁶⁶

There are generally two systematic approaches to the settlement of trade disputes in Nigeria. The first is the grievance procedure²⁶⁷, usually incorporated into the procedural or collective agreement. This first approach is anchored on the principles of “voluntarism” for

²⁶⁵ Paul, F.B, (1965) Settlement of Disputes Over Grievances in United States, Industrial Relations Center, University of Hawaii p.4

²⁶⁶ Iwuji, E.C. Settlement of Trade Disputes. In: Otobo, D. and Omole, M. (eds) (1987) Readings in Industrial Relations in Nigeria, Malthouse Press Ltd, Lagos p.205.

²⁶⁷ Means an internal mechanism usually incorporated in terms of contract for settlement of disputes and akin to collective bargaining in a wider sense.

amicable settlement of industrial/trade disputes. The parties here without any compulsion willingly negotiate and achieve compromise on various contentious issues which have been the source of disharmony or trade dispute. The second approach is the statutory procedures²⁶⁸ incorporated in the Trade Disputes Act (TDA) and the National Industrial Court Act (NICA).

It is necessary to emphasise the point that the dispute resolution processes which are to be discussed as provided under part 1 of the TDA have been preserved under section 7 (3) of the NICA which aptly states that “Notwithstanding anything to the contrary, any matter under subsection 1 (A) of this section may go through the process of conciliation or arbitration before such matter is heard by the court”.

5.4 Collective Bargaining

Oladosu Ogunniyi²⁶⁹ defined collective bargaining “as the process of working out a modus vivendi between two parties employer and trade union organization in matters appertaining to terms and conditions of employment i.e. the rights and interests of both parties, or simply the process of making rules which will govern employment”.

Uvieghara²⁷⁰ defined collective bargaining to mean “a term applied to those arrangements under which wages and conditions of employment are settled by a bargain in the form of an agreement made between employers or associations of employers and workers organizations.

Akintunde Emiola²⁷¹ defined the term “as a means whereby terms and conditions of employment are settled by negotiation producing an agreement between employer’s and worker’s organizations.

From all the above definitions by the learned authors one key component that is general is the principle of “voluntarism” in settling of trade disputes. Parties are enjoined to

²⁶⁸ Means a mechanism for dispute settlement regulated by statute, binding and enforceable against the parties.

²⁶⁹ Ogunniyi, O. (1991) Nigeria Labour And Employment Law in Perspective. Folio Publishers Ltd, Lagos, p.276.

²⁷⁰ Uvieghara, E. E. (2001) Labour Law in Nigeria. Malthouse Press Ltd, Lagos, p. 388

²⁷¹ Emiola, A. (2008) Nigeria Labour Law. 4th Edition Emiola (Publishers) Ltd, Ogbomosho, p 459.

explore internal mechanism first and foremost before any next step is taken. In the light of this Emiola observed that:

To achieve its main object, a trade union need not be unduly bellicose, it would augur well for better industrial harmony if its mission could be fulfilled without conflict. A trade union should, therefore, strive as much as possible to make use of available negotiating machinery for achieving maximum benefits for all its members with the minimum of friction.²⁷²

Statutes have provided the machinery whereby leaders of a trade union organization or representatives of workers can sit down with the management round a negotiating table and iron out their differences in an atmosphere of mutual trust and understanding. This is fully entrenched by law²⁷³ and practice. International labour instruments signed and ratified by Nigeria such as the International Labour Convention No. 98 enjoins members of the organization to take measures appropriate to national conditions where necessary, to encourage and promote full development and utilization of machinery for voluntary negotiation between employers or employer's organization and workers organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements.²⁷⁴

Collective bargaining is a highly flexible system of settling trade disputes as it involves the balancing of the two great social powers i.e. labour and management from time to time. With this method, the discretion of employer in the area of unilateral decisions affecting the welfare of workers will be restricted, hence, ensuring workers industry which in turn ensure industrial democracy.²⁷⁵

²⁷² Ibid pp 459-560

²⁷³ Section 3, Trade Dispute Act, Cap T8, LFN 2004.

²⁷⁴ Article 4, Nigeria ratified the Convention on 17th October, 1960.

²⁷⁵ Audi, J.A.M. op.cit, p.75.

The methods used in collective bargaining are of two types namely²⁷⁶:

1. Contractual Method
2. Institutional Method

5.4.1 Contractual Method

This method is static. Here, the representatives of the employer and workers meet to negotiate for the purpose of resolving trade disputes. They bargain and if they succeed, they come up with a collective agreement. It is static because after the conclusion of the agreement, it remains the only agreement that binds the parties. It remains static even when the situation or circumstances surrounding the agreement changes. This is especially so when the agreement has been deposited with the Minister of Labour and he has made an order making the agreement binding on the employers and workers to whom the agreement relates and failure to abide by that order is punishable.²⁷⁷

5.4.2 Institutional Method

This method is dynamic. Under this method labour and management come together to set up an institution and a constitution. The institution or body will consist of an equal number of representatives from labour and management. This method is dynamic because any bilateral agreement or resolution reached through this means is always open to interpretation or modification, hence, it is an open ended agreement. Besides a time limit is usually not fixed for its operation. It is amenable to changes once the facts and circumstances upon which it is based no longer exist, it becomes subject to modifications as the expediency of the time dictates.

The concept of collective bargaining is a combination of two broad words, “collective” and “bargaining”. It is called “collective” because both the employer and the employees act as a group rather than as individuals. And it is called “bargaining” because the

²⁷⁶ Ibid, Pp 75-76

²⁷⁷ Section 3 (3) and (4), Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria, 2004.

method of reaching an agreement involves negotiation of proposals and counter-proposals, offers, acceptance or compromise. Collective bargaining has its limits as rightly pointed out by Uvieghara that collective bargaining cannot solve all problems.²⁷⁸ Where the parties have failed to willingly negotiate an agreement, statutory procedure having elements of compulsion will then apply and will have a binding effect on the parties. According to Uvieghara some institutions of collective bargaining includes the wages board system, industrial wages board, joint industrial council and presently today most of these institutions have been fused into the National Salaries Income and Wages Commission.²⁷⁹

5.5 Other Mechanisms for Settlement of Trade Disputes

The Trade Disputes Act²⁸⁰ provides for other statutory mechanisms for settlement of trade disputes in Nigeria. These other mechanisms generally come into play when collective bargaining fails or is ineffective. Those mechanisms includes mediation, conciliation, arbitration and board of inquiry. Conversely, the NICA provides for adjudication at the national industrial court (NIC) as the final point of call of trade disputes resolution, although the decision of the NIC is subject of appeal to the court of appeal whose decision in respect of any appeal arising from any civil jurisdiction of the NIC is final.²⁸¹ The NICA has repealed part II of the Trade Disputes Act and other provisions of the TDA shall be construed with such modifications as may be necessary to bring it into conformity with the provisions of the NICA. If any provision of the TDA is inconsistent with the provisions of the NICA, the provisions of the NICA shall prevail.²⁸²

²⁷⁸ Uvieghara, E.E. Nigerian Labour Law. Past, Present and Future. An Inaugural Lecture Delivered at the Main Auditorium of the University of Lagos on 15th April, 1987.

²⁷⁹ Section 1, National Salaries, Income Act and Wages Commission Act Cap. N72 Laws of the Federation of Nigeria 2004.

²⁸⁰ Sections 4 – 19, Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004.

²⁸¹ Section 5 (2) and (4) Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010.

²⁸² Section 53, National Industrial Court Act, 2006.

5.5.1 Mediation

The term “mediation” is defined as a method of non binding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution.²⁸³ Mediation is one of the oldest mechanisms for resolving conflicts. It was aptly observed thus:

Mediation is not a new phenomenon in Nigeria particularly with regard to the ancient Benin Empire; Mediation was used for resolving conflicts because of their emphasis on moral persuasion and their ability to maintain harmony in human relationship. In the environs of Benin City, the village or family head principally functioned as the arbitrator or mediator to resolve conflicts or disputes among his people; the parties were also at liberty to request any member of the community in whom they reposed confidence to mediate with the undertaking to abide by his decision.²⁸⁴

Under the TDA, if the attempt to settle the trade dispute through collective bargaining fails or if no such agreed means of settlement exists, the parties shall within seven days of the failure or where no such means exists, within seven days of the date on which the dispute arises or is first apprehended meet together either by themselves or through their representatives, under the presidency of a mediator mutually agreed upon and appointed by or on behalf of the parties, with a view to amicable settlement of the dispute.²⁸⁵ This notwithstanding, where a trade dispute is apprehended by the minister, he may in writing inform the parties of his apprehension and the steps he intends to take in order to resolve the dispute.²⁸⁶ Some of the steps the minister may take includes appointment of conciliator and reference to the industrial arbitration panel or board of inquiry.²⁸⁷

However if the dispute is subjected to mediation and within seven days of the date on which a mediator is appointed, the dispute is not settled, the dispute shall be reported to the

²⁸³ Black's Law Dictionary, 8th Edition, Thomson and West, 2004, p. 1009

²⁸⁴ Akpata, E. (1997) *The Nigerian Arbitration Law in Focus*, West African Books Publishers Ltd, Lagos, p.1

²⁸⁵ Section 4 (2) Trade Disputes Act, Cap T8, LFN 2004.

²⁸⁶ Section 5 (1), *ibid*

²⁸⁷ Section 5 (2), *ibid*.

Minister by or on behalf of either of the parties within three days from the end of the seven days. The report to the Minister shall be in writing and shall record the points on which the parties disagree and describe the steps already taken by the parties to reach a settlement.²⁸⁸ The Minister may further proceed to exercise such of his powers under sections 8, 9, 17 or 33 of the TDA as may appear to him appropriate.²⁸⁹

The use of mediation in the settlement of trade disputes depends on the discretion of the Minister as he may, as earlier noted, decide to by-pass this method. This has rendered mediation as a means of settlement of trade dispute a mere statutory provision.

5.5.2 Conciliation

Conciliation is defined as a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved.²⁹⁰ It is a relatively unstructured method of dispute resolution in which a third party facilitates communication between the parties in an attempt to help them settle their differences. The mechanism of conciliation comes into use in all human fields of activities including domestic, business, national and international political conflicts. Conciliation approach is to encourage the disputing parties to discuss their differences and to help them develop their own proposed solutions.

Sometimes conciliation is called “mediation” or “good offices”. Mediation, however, does a little more than this. It implies a much stronger form of intervention because a mediator is permitted to offer to the parties proposals which they are free to consider towards their settlement. It is suggested that the shade of difference between the two is so slight that it can be neglected and both terms can be used interchangeably.²⁹¹ But in situations such as could be found in West Africa, mediation can much more easily promote settlement than conciliation. The steps that a conciliator may take to bring about an amicable settlement vary

²⁸⁸ Section 6, *ibid*

²⁸⁹ Section 7 (2), *ibid*

²⁹⁰ Black's Law Dictionary, 8th Edition, p. 307.

²⁹¹ Akpala, A. (1982) *Industrial Relations Model for Developing Countries: The Nigerian System*. Fourth Dimension Publishers Ltd, p. 263.

from one country to another, but always his function is to assist the parties towards a mutually acceptable compromise or solution. For this, the only powers on which he can really rely are his powers of reasoning and persuasion.

A unique and essential characteristic of the conciliation process is its flexibility, which sets it apart from other methods of settling industrial disputes. A conciliator cannot follow the same procedure in every case; he must adjust his approaches, strategy and techniques to the circumstances of the dispute. The practice of conciliation in industrial disputes has developed mainly in connection with disputes arising from the failure of collective bargaining. Conciliation has thus been described as an extension of collective bargaining with third party assistance, or simply as “assisted collective bargaining”.

The Minister of Labour shall if not satisfied that the requirements for mediation have been substantially complied with, issue to the parties a notice specifying those requirements and may specify in the notice the time within which any step must be taken.²⁹² If the time given in the notice expires or if no period is given, after the expiration of fourteen days, the dispute remains unsettled and the Minister is satisfied that the steps specified in the notice have been taken or that either party is refusing to comply²⁹³, he shall appoint a fit person to act as a conciliator for the purpose of settlement of the dispute.²⁹⁴ The conciliator is expected to inquire into the causes and circumstances of the dispute and effect its settlement within seven days. After settlement, the conciliator shall report to the Minister and forward to him the memorandum of the terms of settlement signed by the representatives of the parties. As from the date it is signed or such other date as may be specified therein, the terms recorded in the memorandum become binding on the employers and the employers to whom the terms relate.²⁹⁵ The breach by any person of the terms of a binding memorandum is an offence

²⁹² Section 7 (1) Trade Disputes Act, Cap T8, LFN 2004.

²⁹³ Section 7 (2), *ibid*.

²⁹⁴ Section 8 (1), *ibid*

²⁹⁵ Section 8 (3), *ibid*

punishable on conviction, with a fine, in the case of an employee or a trade union of ₦200 and in the case of an employer or an organization representing employers, of ₦2000.²⁹⁶

The TDA did not define who may be a fit person to act as a conciliator and did not give room for the parties to participate in choosing such a fit person. The appointment of a fit person to act as a conciliator is solely within the whims and caprices of the minister of labour. The Minister too, may even wish to by-pass the conciliator method to refer the matter for arbitration. If the conciliator does not reach settlement within seven days of his appointment, he shall forthwith report the matter to the Minister of Labour, who may in turn refer the dispute to arbitration tribunal.

It is the view of this writer that the discretionary power conferred on the Minister of Labour to appoint a conciliator is always subject to abuse. The practical applicability of this section is always divorced from its theory. In trade disputes involving government and workers, where conciliation is to be explored, the tendency for the Minister to bring in a third party with bias against the worker is always high. In such disputes, the Minister indirectly is also a party. A conciliator appointed by the Minister most often has a pre-determined goal and objective which he sets out to achieve. In practice, the neutrality and independence of the conciliator can hardly be divorced or separated from his appointment by the Minister.

5.5.3 Arbitration

Arbitration is simply defined as the determination of disputes by the decision of one or more persons called arbitrators.²⁹⁷ Many commercial contracts contain an arbitration clause or agreement by which the parties agree in the event of a dispute between them, that the dispute will be referred to arbitration. An arbitration is a legally effective adjudication of a dispute otherwise than by the ordinary procedure of the courts. For the purpose of this

²⁹⁶ Section 8 (4), Ibid

²⁹⁷ Osborne's Concise Law Dictionary, 9th Edition, Sweet and Maxwell 2001, p. 35.

thesis, the mechanism of Arbitration explored here is a statutory one in which the parties have no right to choose the arbitrators.

The appointment of the arbitrators is made by the Minister. When conciliation fails and all the internal machineries for settlement have been exhausted the matter can go for arbitration. Arbitration is like conciliation in that it has the purpose of facilitating agreement between the disputing parties. It is however, different from conciliation in that the parties are not guided to further negotiation but requested to submit their claims to the arbitrator and support the claims with all the facts and arguments in their command. But they leave the decision to be made by the arbitrator in the form of an award. This means that at the point of going to arbitration the choice is between resort to open trial of strength and conflict by strike or lockout on the one hand, and reference to arbitration on the other. Arbitration thus provides a way out or a means of saving face in a deadlock.

Where the Minister receives a report from a conciliator of his failure or inability to bring about a settlement of the dispute, he must refer it to the Industrial Arbitration Panel within fourteen days of receipt of the report.²⁹⁸ The TDA established the Industrial Arbitration Panel which shall consist of a chairman, vice-chairman and not less than ten other members all of whom shall be appointed by the Minister.²⁹⁹ A trade dispute may be referred to the Arbitration Panel under sections 5, 7 and 9 of the TDA. For the purpose of the settlement of any dispute referred to the panel by the Minister, the chairman of the panel shall constitute an arbitration tribunal.³⁰⁰

An arbitration may consist of a sole arbitrator selected from among the members of the panel by the chairman and assisted by assessors or of one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by

²⁹⁸ Section 9 (1), Trade Disputes Act, Cap T8, LFN 2004.

²⁹⁹ Section 9 (2), Ibid

³⁰⁰ Section 9 (3) Ibid.

or on behalf of the employees concerned, all nominations being made from among the members of the panel and presided over by the chairman or vice-chairman.³⁰¹ An arbitration tribunal shall make its award within 21 days of its constitution or such longer period as the minister may in any particular case allow.³⁰² The tribunal shall not communicate its award to the parties affected but shall make a copy available to the Minister, who may consider it desirable to refer the award back to the tribunal for reconsideration.³⁰³

It is the view of this writer that the law confers wide discretionary powers on the Minister. This discretionary power of the Minister punctures the credibility of an award made by the tribunal. This gives room to the Minister to keep referring a matter back to the Arbitration tribunal until the award reflects his wishes and expectations. However, the idea of referring back the award to the tribunal is only possible if the matter has not been referred to the National Industrial Court (NIC) for adjudication.

Section 13 (4) of the TDA³⁰⁴ provides:

If no objection to the award of the tribunal is given to the Minister within the time and in the manner specified in the notice... the (Minister) shall publish in the gazette a notice confirming the award and the award shall be binding on the employers and workers to whom it relates as from the date of the award (or such earlier or later date as may be specified in the award).

But where an award is rejected, the aggrieved party may now appeal from the decision of the arbitral tribunal to the NIC³⁰⁵ as may be provided under its rules 'or any enactment,³⁰⁶ and in every civil cause or matter commenced in the court, law and equity shall be administered.³⁰⁷

³⁰¹ Section 9 (4) Trade Disputes Act, Cap T8 LFN 2004.

³⁰² Section 13 (1), Ibid

³⁰³ Section 13 (3), Ibid

³⁰⁴ Cap T8, Laws of the Federation of Nigeria, 2004.

³⁰⁵ Section 14 (1), Ibid

³⁰⁶ Section 7 (4), National Industrial Court Act 2006.

³⁰⁷ Section 13, Ibid

The Industrial Arbitration Panel has power to enforce its awards and may commit for contempt any person or a representative of a trade union or association who does any act or omission which in the opinion of the panel constitutes contempt of the panel.³⁰⁸ However, such power of committal is incomplete as the chairman of the Industrial Arbitration Panel is expected to commit such a person for trial in the High Court. The Minister of labour is expected upon receipt of a copy of the award of the tribunal to immediately cause to be given to the parties or their representatives with a stipulation that within not more than seven days, either party to the dispute may object to the award. If there is no objection within the seven days given, the Minister may then confirm the award by publishing in the Federal Gazette a notice to that effect.

It should be noted that the award is binding on the parties only when it has been confirmed by the parties.

5.5.4 Board of Inquiry

Another mechanism for resolving trade disputes is the power of the Minister of Labour to constitute a Board of Inquiry.³⁰⁹ This system is rarely used, most probably because of the statutory limitation implicit in constituting the Board of Inquiry. Under Section 33 (1) of the TDA the board of inquiry set up by the Minister is statutorily expected to only inquire into the causes and circumstances of the trade dispute in question and report thereon to the Minister. The statute is silent as to what may be of the report by either the Minister or any other authority and there is no provision in the statute of the TDA or NICA on the enforcement of report of a Board of inquiry. It therefore, means that if such a report is simply

³⁰⁸ Section 23, Trade Disputes Act, Cap T8 LFN 2004.

³⁰⁹ Section 33 – 34, Ibid

filed away, this will be perfectly lawful and valid.³¹⁰ The Board of inquiring is simply a fact finding committee and devoid of the power to make recommendations to the Minister.

5.5.5 Adjudication

Before June 14, 2006, Part II of the TDA regulates the adjudication of trade disputes by the NIC. The said part II provided for the establishment, constitution, composition, structure and powers of the NIC. This part II has been repealed³¹¹ by NICA. Under this new legal regime, the NIC has been restructured and repositioned towards a smooth and effective settlement of labour/industrial disputes in Nigeria. However, other relevant provisions of the TDA apart from part II are still applicable to the NIC but to the extent that they are consistent with the provisions of the NICA.³¹² The passing of the NICA in 2006 restructured and repositioned the court for effective settlement of trade disputes as a specialized court and the Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 further widened the scope of the court's jurisdiction and put to bed all the legal arguments surrounding the court's status vis-à-vis the constitution.

5.5.6 The National Industrial Court

Historically, the first time a specialized industrial relations court was established in Nigeria to deal with labour, trade and industrial relations disputes was in 1976. In that year, the National Industrial Court (NIC) was established pursuant to the Trade Disputes Decree No. 7 – later Act (TDA), but it actually took off two years later. It is pertinent to note that prior to the establishment of the NIC, industrial relations law and practice were modelled on the non-interventionist and voluntary model of the British system.³¹³ This meant that

³¹⁰ Kanyip, B.B. (2007) The NIC: Current Dispensation in the Resolution of Labour Disputes, A Paper presented at the Refresher Course for Judges and Khadis, Organized by the National Judicial Institute, Held at Abuja from March 12-16, p. 19

³¹¹ Section 53 (1), National Industrial Court Act 2006.

³¹² Section 53 (3), Ibid

³¹³ Agomo, C.K. (2000) 'Nigeria' in Labour and Industrial Relations in the International Encyclopedia of Law, p.38-39.

industrial relations dispute were settled at the discretion of the parties involved. Often parties resorted to self helps (strikes and lockouts) or the regular courts to seek redress.

This proved unsatisfactory and the industrial relations climate became chaotic and tensed with incessant strikes. To checkmate this trend, the Government first experimented with the establishment of an Industrial Arbitration Panel³¹⁴ in 1970 which achieved a lot of success. The success record of this experiment was the impetus for the establishment of a permanent and more elaborate structure to handle industrial relations disputes in 1976. From inception, the NIC was meant to be a superior court of record comparable to the other superior courts of record of the nation.³¹⁵

This court carried out its functions without hindrance until 1979 when the 1979 Constitution was promulgated and unfortunately omitted the court in its section which listed the superior courts of the land. Similar omission was made under the 1999 Constitution. This omission has generated heated debates on the constitutionality and exclusive jurisdiction conferred on the NIC.³¹⁶

Audi observed thus:

The legal structure of the NIC and the position accorded it in the constitution did not enable the court to satisfy its role of contributing to accelerating peace and harmony for industrialization; the statutory structures which provided for the court were seriously flawed and this affected its credibility and performance constitutionally for meaningful achievements.³¹⁷

A learned Author similarly echoed thus:

³¹⁴ Emiola, A. (2000) *Nigeria Labour Law*, Emiola (Publishing) Limited, Ogbomosho, Nigeria. P. 358.

³¹⁵ Section 22 of Decree No. 7 of 1976 which amended the 1963 Constitution to include the NIC as one of the Federal Superior Courts of Record of Nigeria. See also Decree No. 47 of 1992 which made the court a superior court of record and the National Industrial Court Act 2006 which attempted to cure the defect of not listing the court again in section 6 (5) of the 1999 Constitution.

³¹⁶ Section 7, National Industrial Court Act, 2006.

³¹⁷ Audi, J.A.M (2006 – 2007) Change in Climate: The National Industrial Court Act 2006 A Vehicle For accelerating Disputes Settlement Towards Industrial Harmony in Nigeria. *Ahmadu Bello University Law Journal* Vol. 25-26, p.81

The NIC is not and cannot be a superior court of record for that status can only be validly conferred, not by any statute pretending to its conferment on any court as the NIC Act purports to do, but by the Constitution; the NIC does not have EXCLUSIVE jurisdiction on labour matters, rather it has concurrent jurisdiction with the High Courts on labour matters; statutory vesting of exclusive jurisdiction on the NIC (S.7) riles the general 'unlimited' jurisdiction of the High Courts which is subject only to the constitution while the statutory ouster of the High Courts jurisdiction (S.11 of NICA) constitutionally vested is ineffective to achieve that goal.³¹⁸

The above position seems to be given credence to by Adekeye J.C.A as he was not in doubt as to this position of the law, hence, he held after setting down the provisions of Section 272 (1) & (2) of the 1999 Constitution in the case of ATTORNEY GENERAL OF OYO STATE v. NIGERIA LABOUR CONGRESS, OYO STATE CHAPTER & 4ORS³¹⁹ that:

The interpretation of the foregoing is that except for matters falling within section 251 of the 1999 Constitution, the High Court of the state has unlimited jurisdiction in all matters. It is apparent that trade dispute matter does not come within the ambit of section 251 of the 1999 Constitution. There is nothing in the Constitution which ousts the jurisdiction of the High Court of a State from entertaining a trade dispute matter.

However, in subsequent cases like UDOH & 2ORS v. ORTHOPAEDIC HOSPITALS MANAGEMENT BOARD & ANOR³²⁰, NATIONAL UNION OF ROAD TRANSPORT WORKERS v. OGBODO³²¹, TIDEX (NIG) LTD. v. MASKEW³²², MADU & 2 ORS v. NIGERIA UNION OF PENSIONERS³²³ and IME EKONG v. GODFREY OSIDE³²⁴ the ouster clause was upheld and declared effective. These conflicting judgments further

³¹⁸ Chiafor, A.B. (2007) Reflections on The Constitutionality of The Superior Court of Record Status and Exclusive Jurisdiction Clauses of the NIC Act 2006. *Nigerian Journal of Labour Law and Industrial Relations* Vo.1 No.3, p. 44

³¹⁹ (2003) 8 NWLR (PT 821) 1 at p. 32

³²⁰ (1993) 7 SCNJ 436

³²¹ (1998) 2 NWLR (PT 587) 189 CA

³²² (1998) NWLR (PT. 739) 404 CA

³²³ (2001) 16 NWLR (PT 739) 346 CA

³²⁴ (2004) 43 WRN 79 at 90

deepened the confusions that already exist as to the status and jurisdiction of the NIC most especially as prior verdicts of courts were not nullified.

Today the NIC has been re-established as the National Industrial Court of Nigeria.³²⁵ Section 6 of the 1999 Constitution was altered to include the NICN in the list of superior courts of record, meaning it can now exercise all the powers of a superior court of record. The court was granted exclusive civil jurisdiction in all matters and causes arising from industrial relations and for the first time conferred with criminal jurisdiction in industrial relations matters.³²⁶

5.5.6.a Jurisdiction

Jurisdiction is the most vital and potent weapon of any court of law. One of the landmark achievement of the constitutional amendment as it affects the NIC is in the sphere of its jurisdiction. Its jurisdiction has been enlarged and conferred to the exclusion of any court in Nigeria. The lacuna that hitherto existed which had been a source of jurisdictional conflicts before courts has been covered explicitly and unequivocally leaving nothing to the imagination of courts. Under the present amendment the areas where the NIC will have and exercise jurisdiction³²⁷ to the exclusion of any other court in civil causes and matters includes the following:-

- a) Causes or matters connected with any labour employment, trade unions, industrial relations and matters arising from work place, the conditions of service, including health, safety, welfare of labour, employee, worker and matters incidental thereto or connected therewith;

³²⁵ Section 2, Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010

³²⁶ Section 254 C (5) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended)

³²⁷ Section 254 C (1), Ibid

- b) Causes in relation to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees Compensation Act or any other law relating to labour, employment, industrial relations, work place or any other enactment replacing the Acts or Laws.
- c) Matters relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lockout or any industrial action or any conduct in contemplation or in furtherance of a strike, lockout or any industrial action and matters connected therewith;
- d) Matters relating to or connected with any dispute arising over the interpretation and applications of the provisions of Chapter IV of the Constitution as it relates to any employment labour, industrial relations, trade unionism, employers association or any other matter which the court has jurisdiction to hear and determine;
- e) Matters relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith;
- f) Matters relating or connected with unfair labour practices or international best practices in labour, employment and industrial relation matters;
- g) Matters relating to or connected with any dispute arising from discrimination or sexual harassment at work place;
- h) Matters relating to, connected with or pertaining to the application or interpretation of international labour standards;
- i) Matters connected with or related to child labour, child abuse, human trafficking or any matter related thereto;

- j) Matters relating to the determination of any question as to the interpretation and application of any:-
- (i) Collective agreement;
 - (ii) Award or order made by any arbitral tribunal in respect of a trade dispute or a trade union dispute;
 - (iii) Award or judgment of the court;
 - (iv) Term of settlement of any trade dispute;
 - (v) Trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
 - (vi) Trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or workplace;
 - (vii) Dispute relating to any personnel matter arising from any free trade zone in the federation or any part thereof.
- k) Matters connected to disputes arising from payment or non-payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any civil or public servant.
- l) Matters relating to:
- (i) Appeals from the decisions of the Registrar of trade unions, or matters relating thereto;
 - (ii) Appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations;

- (iii) Such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not as may be conferred upon it by an Act of the National Assembly.
- m) Matters relating to the registration of collective agreements.
- n) The NIC shall have and exercise jurisdiction and powers in criminal causes and matters arising from any cause of which jurisdiction is conferred on the NIC.
- o) **Notwithstanding** anything to the contrary in this Constitution, the NIC shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.

The above clause is one of the major innovations ushered in by the regime of the Third Alteration Act. It confers on the NIC the jurisdiction to invoke the provisions of any international labour treaty or convention to which Nigeria is a signatory notwithstanding that same have not been domesticated via an Act of the National Assembly. The Nigerian Constitution aptly provides that no treaty between Nigeria and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly.³²⁸ This provision is commendable in that same has effectively removed the ‘constitutional clog’ in the wheel of enforcement of international labour conventions duly ratified by Nigerians. The court is now empowered to invoke and enforce the arrays of international labour conventions duly ratified by Nigeria (but not yet domesticated) and most of which have acquired the force of customary international law recognized by civilized nations of the world.

³²⁸ Section 12 (1), *Ibid.* See also *Abacha v. Fawehinmi* (2000) 6 NWLR PT (160) 228.

Employees and employers are the human vectors of all economic activities, their interactions necessarily leads to conflicts. Such conflicts have serious negative repercussions for the overall economic development of a nation if not well managed. In order to effectively manage industrial crises/disputes, statutory provisions have provided the requisite mechanisms for resolving such disputes. The parties are given the leverage to voluntarily settle their disputes, if attempts to settle a trade dispute voluntarily between parties fail, then statutory settlement through the instrumentality of the Trade Disputes Act³²⁹ comes in handy.

Many national strikes in Nigeria were the outcome of breakdown of negotiation between the Nigeria Labour Congress and the Federal Government and this is often destructive economically and socially. National Industrial and local strike in most cases often create suspicion and distrust, obstructs co-operative action, deepens differences and decreases employees and organizational productivity. Industrial strikes may also lead to irresponsible behavior and destruction of lives and properties. On the other hand, occasional conflicts also has the tendency of increasing workers involvement and problem solving skill, it clarifies issues, strengthen relationship and increase productivity if well managed. Conflict should be resolved immediately to enable uninterrupted production³³⁰. The rationale for state intervention in the settlement of industrial disputes is based on the principle of public policy. Prolonged industrial crises is inimical to public good. Therefore, the evolution of mechanisms for settlement of trade disputes under the supervision of the state becomes necessary and indispensable towards achieving economic prosperity and industrialization in Nigeria.

³²⁹ Section 3 (2) Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria, 2004.

³³⁰ Fasum, J. Strategic Issues in Labour Relations. In: Fombrium J.F. et al (eds) (1984) Strategic Human Resource Management, John Wiley & Son.

CHAPTER SIX

CONCLUSION

6.1 Summary

Trade Unionism has been an indispensable factor in ensuring and guaranteeing stability and industrial harmony between the employer and labour. It is an integral component of achieving the basic objective of economic prosperity and industrialization for any developing country like Nigeria. Trade Unionism has hitherto been anchored on an agitation for the improvement of the standard of living of the Nigerian labour force. In this 21st century, there is a paradigm shift in this traditional objective of trade unionism in Nigeria. Trade unionism entails playing socio-economic and political roles not only to the working class but practically extends to all Nigerians.

The NLC which is an active and vibrant central labour organization in Nigeria has been the rallying point as a progressive agent in the quest for the transformation of Nigeria into a just, humane and democratic society.

The impact of the NLC in modern Nigeria has become pervasive economically, socially and politically. Some laudable social roles which the NLC has played to Nigerian workers includes support through various kinds of co-operatives, provision of workers education and the initiation of housing schemes. Another cardinal role it has played in the polity can be seen from the economic sphere. This is discernible in its agitation for adequate wages, job security and the economic liberation of Nigeria. Economic liberation of Nigeria becomes more evident in the NLC's response to politico-economic policies of government. The NLC has never hidden its opposition to neo-liberal socio economic policies which are designed by foreign financial institutions and forced down the throat of developing countries like Nigeria. The struggle of the NLC against various austerity programmes and the structural adjustment programme are well documented.

The concept of political activism has been explored by the NLC to drive home its position on socio-economic and political affairs in Nigeria. The very logic that propels the State increasingly to interfere in industrial relations equally explains the need for the NLC to take an active interest in politics. This concept by the NLC has been marked particularly in the areas of struggles for the protection of Nigerian sovereign rights, peoples/popular rights, workers rights and the perennial government policy of incessant fuel hikes. The NLC has immensely contributed its own quota in the political discourse of Nigeria by submitting its memorandum to National Assembly committee on constitutional amendments where it made far reaching submissions on some contentious issues of national concern like corruption, insecurity, local government autonomy, minimum wage law, immunity clause, electoral reform and the justiciability of the fundamental objectives and directive principles of state policy.

The NLC does not operate in a vacuum as there are laws regulating its conduct and operations. Some of these legislations includes the Trade Disputes Act (TDA) and the National Industrial Court Act (2006). In order to manage conflict such that it will not be an agent of disequilibrium and disruption, rules and regulations are made by organizations and law and policies by nations. The legislation above have explicitly set out the mechanisms for the settlement and resolution of trade disputes in Nigeria. The NLC is expected to follow the channels provided by law in the settlement of trade disputes.

The challenges facing the NLC are surmountable with appropriate amendments to some of the extant laws and its effective implementation. The roles of trade unionism in Nigeria's polity through the instrumentality of the NLC cannot be over emphasized. The benefits Nigerians enjoys today vis-à-vis the country's wealth is nothing to write home about but it can be said with some degree of authority that without the activism of the NLC some of these benefits would not have been possible.

6.2 Conclusion

Trade unionism has been an indispensable factor in ensuring and guaranteeing stability and industrial harmony between the employer and labour. The primary objective of trade unionism had been economic reasons. This objective had been well captured in this thesis in line with the social and economic functions to workers the Nigeria labour congress has been playing in the polity.

In recent times, there is a paradigm shift from this traditional objectives of trade unionism. Trade unionism in this past decades has widened its roles by delving into the realm of political activism. The expanded role of trade unionism which basically centered on political activism is one of the most effective ways by which the political and socio-economic rights and security of Nigerians is protected.

This thesis has shown that through political activism the Nigeria Labour Congress has captured the imagination of the country as the defender of the common man and as the repository of the best values of the Nigerian society. The NLC has given hope to the vast majority Nigerians who are excluded, marginalized, exploited and oppressed and that a better Nigeria is not possible but realizeable. This imagination is so robust and alive that ordinary Nigerians not only identify with the NLC but expect it to be the answer.

Thus, the country now expects the NLC to act when elections are rigged, fuel prices are hiked, workers are sacked arbitrarily, leaders loot, foreign loans are being taken through the back door, bogus foreign loans are being paid off and when trade unions involved in different spheres of the Nigerian economy embark on industrial actions.

The role of trade unionism as exemplified by the NLC in Nigeria today cannot be over emphasized. It has been an indispensable element in balancing conflicting and sometimes irreconcilable differences between management and labour and in sustaining the

fragile Nigerian economy. Trade Unionism is an integral part of achieving the basic objective of economic prosperity and industrialization to any developing country like Nigeria.

The present economic, social and political rights and stability that Nigerians enjoy vis-à-vis the human material resources of the country is nothing to write home about, but it can be asserted to a large extent that these were made possible because of the role trade unionism play in the polity. This role is well captured by the activism of the NLC.

6.3 Findings

The NLC just like any organization has its own challenges which hinder the realization of its objectives to its members and the society at large. The dynamism of socio-economic and political variables has its effect on the NLC in this 21st century which it needs to urgently address. It is in line with this that this thesis makes the following findings:

- i) It has been found that the NLC has not been publicising its activities. The necessary publicity is lacking and this has partly contributed to the general perception which Nigerians have of the NLC. In January 2012 when the NLC called out Nigerians on strike it did not embark on a massive public enlightenment campaign to educate Nigerians on the implications of the economic policy of deregulation introduced by the Nigerian Federal Government. Bulletins of the NLC on national issues do not normally reach ordinary Nigerians rather they are circulated only within members affiliated to the NLC.
- ii) It has also been found that some extant labour legislation in Nigeria like the Trade Unions (Amendment) Act 2005, Export Processing Zones Act 1992, Public Order Act and the Nigerian Constitution constitute an impediment to the development of trade unionism in Nigeria.
 - a) Section 221 of the Nigerian Constitution has excluded the NLC from participating actively in the democratic process by providing that only a political party shall

canvass for votes for a candidate at an election or contribute to the funds of any political party.

- b) Section 9 of the Trade Unions (Amendment) Act places an outright ban on picketing thereby making the NLC liable for criminal prosecution for engaging in picketing. Section 24 (1) of the Act expunges the legal duty of recognition of a trade union by an employer despite satisfying all the requirement laid down by law for registration. Section 30 (6) of the Act introduced a technicality before a strike can be called. The NLC must subject the consideration of a strike to a vote by which a vote of 2/3 majority must be obtained.
 - c) Sections 18 (5) and section (13) 1 of the Export Processing Zones Act bans workers engaged by companies operating in the EPZs from going on strike for a period of 10yrs and makes it difficult for the NLC to gain free access to the EPZS for the purpose of inspection in order to determine whether the work environment and other perquisites of work conforms with international best practice for workers in similar clime.
 - d) Sections 1, 2 and 3 of the Public Order Act have curtailed the exercise of the right of freedom of association which incorporates the freedom to assemble freely. For every public protest or gathering the State gives the final permit.
- iii) It has been found that the NLC being an active and vibrant central labour organization in Nigeria lacks the adequate funds to vigorously pursue its mandate as contained in its mission statement. The major source of funding of the NLC is provided in Section 17 of the TUA which stipulates that affiliate unions should remit 10% of its members check off dues to the NLC. The funds remitted to the NLC have become inadequate lately considering the role which the NLC plays in the polity today. Venturing into activism to sustain democracy and champion the cause of Nigerians has outstretched

the resources of the NLC. This has raised serious issues about the proper roles of the NLC and how use of existing resources can be prioritized thereby relegating some of its objectives to the background.

- iv) It is observed that trade unionists in the course of their activism are exposed to risks of various kinds from the oppressive institution of the state like the police and the military. In 2002 shortly after the NLC declared a nationwide strike over fuel increase, security agents rounded up labour leaders like Comrade Adams Oshiomole in Abuja manhandled his driver and other activists like Dr. Dipo Fashina. In 2012 Comrade Olaitan Oyerinde a deputy general secretary of the NLC was brutally murdered in Benin City.
- v) It has been observed that the government being the largest employer of labour has been sidelining the NLC in the formulation and implementation of policies affecting workers rights. The Nigerian government in 2011 constituted the Stephen Oronsanye Presidential committee on the restructuring and rationalization of federal government agencies parastatals commissions. The government refused to make the NLC a member of the committee despite the fact that the committee's recommendations will have far reaching implications on the future of Nigerian workers which the NLC represents.
- vi) It is also observed that leadership crisis and corruption have been key elements in undermining the image of the NLC in the eyes of Nigerians. Internal crisis regarding the leadership of the NLC has exposed the disunity between the affiliates of the NLC. Allegations of corrupt practices by principal officers of the NLC in the wake of the fuel hike strike in 2012 cannot be ignored most especially in the way the NLC called off the nationwide strike and its reason for it i.e. the government has threatened to clamp down hard on protesters.

- vii) It is found that the Trade Unions Act has granted immunity in torts to unionists for acts done in contemplation or furtherance of a trade dispute. The Act has enumerated the exemptions to liability in a restrictive sense despite the dynamism of industrial relations. Section 44 has granted exemptions to liability in tort action against unionists for acts done in contemplation or furtherance of a trade dispute which only includes doing acts that involves inducing someone to break in contract of employment, interfering with the trade, business or employment of some other person, threatening to break a contract of employment or induce someone to do same.
- viii) It is observed that the Trade Disputes Act confers on the Minister of Labour and Productivity the discretionary powers to appoint a conciliator for parties to an industrial dispute. This also includes the power to determine the constitution of the Industrial Arbitration Panel thereby puncturing the credibility of an award made by the panel. It is observed that sections 8 and 9 of the TDA confers discretionary powers on the Minister of Labour and Productivity to appoint a conciliator or referral to an arbitral tribunal including appointment of its members for parties to an industrial dispute. Section 13(3) of the TDA gives the minister the power to reject an award made by an arbitral tribunal and send back such an award for consideration and review by the tribunal.

6.4 Recommendations

The following recommendations are made to address the observations raised in this thesis:

- i. The NLC should embark on a massive public enlightenment campaign of its activities. Nigerians are still not enlightened as to the political activism of the NLC in the whole democratic process. Town hall meetings should be organized for the general public after specific periods in all the geo-political zones of the country.

Where there is a consistent interactive session between Nigerians and the NLC, Nigerians will be better placed to appreciate the relevance of the NLC in the polity.

- ii. Some contentious provisions of the Nigerian Constitution 1999, Public Order Act, Export Processing Zones Act and the Nigerian Constitution should be amended. Pro-labour clauses should be incorporated to give more leverage to the NLC for its activism for the benefit of Nigerians.
 - a. Section 221 Nigerian Constitution the writer recommends that the provision should be amended to expunge the embargo placed on organized labour from political participation.
 - b. Section 1, 2 and 23 of the Nigerian Public Order Act, the writer recommends that the provisions should be amended and the ultimate decision should not rest on any functionary of the state. The NLC or any trade union willing to hold any rally should only be duty bound to notify the authorities and partner the police for the purpose of maintaining law and order during such processions.
 - c. Section 18 (5) and 13 (1) of the Export Processing Zones Act (EPZs) the writer recommends that the sections should be amended and labour friendly clauses should be inserted given the NLC assess into the EPZs for inspection purposes and removing the ban placed on the right to strike (10 years) and the 10 years moratorium placed on the formation of trade unions.
 - d. Trades Unions (Amendment) Act, the writer recommends that the position in section 42 (1) and (2) of the Principal Act should be re-introduced as it gives more leverage to the NLC to agitate for legitimate demands without running the risks of committing an offence. The technical procedure prescribed for strike should be expunged.

- iii. The NLC should strive for alternative means of financing its activities apart from members subscriptions which is grossly inadequate. Funds should be sought from foreign endowment funds like the National Endowment for Democracy (NED) as a grant to assist the NLC in the struggle to strengthen institutions of democracy in Nigeria.
- iv. The Nigerian judiciary should without intimidation or fear give judgments aimed at preserving the freedom of association and assembly guaranteed under the 1999 Constitution. The judiciary is enjoined to pronounce on such clear violation of the freedom and right to associate and award punitive damages as compensation and also to award penal sanctions. This attitude by the courts will force the state to exercise caution in dealing with the NLC and the general public in times of mass protests.
- v. The government should always consult with the NLC in the formulation and implementation of policies affecting workers rights. It is through this consultation that the government will be able to determine the practicality of its muted policies and possible ways of implementing same with little or no friction. The input of the NLC is vital in order to maintain harmony in industrial relations.
- vi. The NLC should strive to checkmate the leadership crisis bedeviling it. This has a serious negative impact on its image in the eyes of Nigerians. The leadership of the NLC should promote internal democracy within the Congress. Credible members should be elected into the executive committee so as to checkmate incidence of corruption and leadership crisis in running the affairs of the congress. The congress should ensure transparency in electoral processes in order to produce credible leaders. This will eliminate the possibility of disunity in the NLC.
- vii. The exceptions to tortuous liability incorporated in section 44 of the Trade Unions Act should be widened to accommodate other likely scenarios not contemplated by

the Act. This may include a scenario where aggrieved workers barricade the premises of their employer denying him access to it without any act of violence. This act may have a psychological effect on such employer. The Act has narrowly construed these exceptions to the barest minimum without any room for accommodating other peaceful conducts which may be triggered by the dynamism of social interactions. Since incorporating all forms of acts is not possible an omnibus clause should be inserted to accommodate all potential. The most important factor to be considered is the end result of such act which is in furtherance or contemplation of a trade dispute.

- viii. The wide discretionary powers given to the Minister of Labour and Productivity in the appointment of conciliators and arbitrators by the Trade Disputes Act should be curtailed in order to give credibility to the process. The provision of section 4 of the TDA which gave the disputing parties the leverage to mutually agree on the appointment of an acceptable third party should also be extended to the appointment of conciliators and arbitrators. The minister's power to reject an award made by an arbitral tribunal and to send back such an award for consideration should be expunged. This unfettered power gives room for suspicion and legally allows the Minister the chance to temper with awards made by arbitral tribunals until it reflects his exceptions. In arbitral awards related to disputes involving government and workers, the consequences of this power could be damaging.
- ix. Government being the largest employer of labour in Nigeria should have the political will to implement labour legislation. Government is generally touted as the custodian of public good and are such irrespective of the sphere of national life in which they are, government has a basic duty to protect and ensure for the citizenry a humane existence. Implementation of extant labour legislation will go a long way in

checkmating avoidable industrial actions that will always have a negative impact on the Nigerian people and economy.

- x. The writer recommends the further amendment of the Trade Unions (Amendment) Act 2005, this becomes necessary with due respect to the draftsmen the inelegance in the law has created confusion in the system. It explicitly amended the Principal Act of 1990 leaving behind the Trade Unions Act contained in Cap T14 LFN, 2004. The provisions amended in the 1990 Act are in *pari-materia* with the 2004 Act. In the absence of any pronouncement by a court on the validity of the 2004 Act, the amendment appears to be an exercise in futility. The amendment should be total without leaving a contrary legislation in existence.

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