

TRADE UNIONS AMENDMENT ACT 2005 AND THE LEGALITY OF STRIKE IN NIGERIA; A PAPER DELIVERED BY HON. JUSTICE O.Y. ANUWE AT THE 7TH REGISTRAR OF TRADE UNIONS' ANNUAL WORKSHOP

ABSTRACT

Since the military administration to the present day, workers' rights to express their complaints about working conditions has been seriously threatened. Research has shown that the recent amendments to the Trade Unions Act and Trade Disputes Act aimed to regulate and legitimize the right to strike actions in Nigeria. However, this has merely served as a way to curtail such rights via various pre-conditions.

In Nigeria, the right to strike is recognized as a right for workers, but it is regulated by law. Strikes are an essential tool for workers to protect their interests, improve working conditions, and address grievances. However, their implementation is subject to legal restrictions to balance workers' rights with public interest and economic stability.

A combination of the relevant legislations was examined in shaping our conclusions and recommendations. Nevertheless, this paper will explain the concept of strike while examining the right to strike in Nigeria considering current legislations, as well as the practicality of exercising such right.

INTRODUCTION

Historically, the law on strike in Nigeria has experienced a chequered legal regime. The Trade Disputes (Emergency Provisions) (Amendment No. 2) Decree No. 53 of 1969 was indeed a severe trade disputes law in Nigeria which banned the use of strike as a means of settling trade disputes. It provided for a jail term of 5 years for striking workers. This was unpalatable as it signified an outright ban of the right to strike.

In 1976, the then Military government promulgated yet another decree which tacitly guaranteed the right to strike. This decree repealed the 1969 Trade Disputes (Emergency Provision) decree and has now metamorphosed to Section 18 of the Trade Disputes Act (TDA, 2004).

The right to strike is a fundamental aspect of labor rights, allowing workers to collectively withhold their labor in pursuit of better working conditions, higher wages, or other employment benefits. In Nigeria, this right is protected by the Constitution, specifically:

Section 40 which guarantees the freedom of association, including the right to form or join a trade union, which is essential for collective bargaining and strike actions.

Section 34 which prohibits forced labor, including any labor or service extracted from a person under threat of penalty or punishment. Denying workers the right to strike would essentially force them to continue working against their will, violating this section.

However, it is important to note that the right to strike is not absolute and may be subject to certain limitations and exceptions, such as:

*National security: Strikes may be restricted or prohibited in essential services or industries critical to national security or public safety.

*Public health: Strikes may be limited or prohibited in healthcare services or other critical sectors where they could endanger public health.

*Emergency situations: Strikes may be restricted or prohibited during national emergencies or natural disasters.

Additionally, strike actions must typically meet certain requirements, such as:

*Notice period: Workers must provide their employer with adequate notice before commencing a strike.

*Peaceful and unarmed: Strikes must be conducted peacefully and without violence or intimidation.

LEGALITY OF STRIKE IN NIGERIA

By recognizing and protecting the right to strike, Nigeria's Constitution aims to balance workers' rights with the needs of employers and the broader society, promoting fair labor practices and social justice.

The legality behind a Nigerian worker to embark on strike or not, has been subject to contentious arguments, especially following the introduction of the statutory provisions of Section 17 (1) of the Trade Disputes Act of 1976 (now Section 18 (1) and (2)) of the Trade Disputes Act which seems to have taken away the right of the Nigerian worker to embark on a lawful strike. Other statutes that equally impinged on the right of the Nigerian worker to strike are Sections 31 (6) (e) of the Trade Unions Act (TUA 2005), 43 (1) Trade Disputes Act (TDA) and Section 1 Trade Disputes (Essential Services) Act (1976) which empowers the President and Commander-in-Chief to proscribe any trade union or association and the omnibus provisions of Section 45 of the 1999 Nigerian Constitution. It is contended that with the introduction of Section 17 (1) of the Trade Disputes Act, 1976 (now Section 18 (1)) the question arises whether or not the Nigerian worker has not lost his legal right to strike.

Today, some legislations that govern strike actions in Nigeria are:

- The Constitution of the Federal Republic of Nigeria (1999): This is the grundnorm of all legislations in Nigeria and it guarantees the right to freedom of association, which includes the right to form and join trade unions.

- The Trade Disputes Act: This act defines a strike as "the cessation of work by a body of persons employed acting in combination or a concerted refusal under a common understanding of any number of persons employed to continue to work for an employer." The Act further provides procedures or resolving disputes under section 18(1).
- International Labour Organization (ILO) Conventions: Nigeria has ratified several ILO conventions that recognize the right to strike, including the Freedom of Association and Protection of the Right to Organize Convention.
- African Charter on Human and Peoples' Rights*: This charter recognizes the right to freedom of association and the right to strike.

These legislations provide a framework for the exercise of the right to strike in Nigeria and establish the procedures for declaring a strike action.

Even though this paper focuses on the **Trade Unions (Amendment) Act 2005** and the legality of strike in Nigeria, I must at this point, point out that prior to the Trade Unions (Amendment) Act 2005, strikes were not entirely prohibited in Nigeria, but the legal framework surrounding strikes was more restrictive.

Under the Trade Unions Act 1973, strikes were allowed, but there were limitations and requirements, such as:

- Compulsory conciliation: Disputes had to be referred to conciliation before a strike could be called.
- Restrictions on strike action: Strikes were only permitted in certain circumstances, like when an agreement had been reached but not implemented.
- Prohibition in essential services: Strikes were prohibited in essential services like health, water, and electricity.
- Police permit: Strikers needed a police permit to hold a rally or demonstration.
- Court intervention: Courts could intervene to stop a strike or restrict strike action.

The 1973 Act also criminalized certain strike-related activities, like "inciting" or "participating" in an illegal strike.

Now, the Trade Unions Amendment Act 2005 relaxed some of these restrictions and expanded workers' rights to strike, while still maintaining some limitations and requirements.

The Trade Unions Amendment Act 2005 is a significant piece of legislation that impacts the labor landscape in Nigeria. Regarding the legality of strikes in Nigeria, here are some key points to consider:

- **Constitutional right:** As I mentioned earlier, the right to strike is enshrined in Section 40 of the Nigerian Constitution, which guarantees the freedom of association and assembly.
- **Trade Unions Act:** The Trade Unions Act (2004) and its amendment (2005) regulate the formation and operations of trade unions in Nigeria. The Act recognizes the right of workers to form and join trade unions and engage in collective bargaining.
- **Strike requirements:** For a strike to be legal in Nigeria, it must meet certain requirements:
 - (i) **Notice:** The trade union must provide the employer with a written notice of the intention to go on strike, specifying the reasons and duration (Section 26 of the Trade Unions Act).
 - (ii) **Balloting:** The union must conduct a secret ballot of its members to approve the strike action (Section 27).
 - (iii) **Peaceful and unarmed:** Strikes must be conducted peacefully and without violence or intimidation.
- **Exceptions:** Strikes are prohibited in certain essential services, such as:
 - *Health services* (except non-core services)
 - *Water and electricity supply*
 - *Airport and port services*
 - *Prison services*
 - *Firefighting services*
- **Industrial Court:** The National Industrial Court (NIC) has jurisdiction over labor disputes, including strike actions. The court can intervene to resolve disputes and make rulings on the legality of strikes.
- **Limitations:** While the right to strike is constitutionally guaranteed, it is not absolute. Strikes may be restricted or prohibited in certain circumstances, such as national emergencies or public health crises.

To go deeper into the Trade Unions Amendment Act 2005 and its implications for the legality of strikes in Nigeria, mention must be made of the following Sections of the Trade Unions Act:

- **Section 26 of the Trade Unions Act:** This section requires that a trade union must provide the employer with a written notice of the intention to go on strike, specifying the reasons and duration. This notice must be given at least 15 days before the commencement of the strike.
- **Section 27:** This section mandates that the union must conduct a secret ballot of its members to approve the strike action. This ensures that the decision to strike is democratic and representative of the union members' wishes.

- Peaceful and unarmed: Strikes must be conducted peacefully and without violence or intimidation. This means that strikers must not engage in any conduct that could be deemed violent or threatening.
- **Exceptions:** As mentioned earlier, strikes are prohibited in certain essential services. This includes health services (except non-core services), water and electricity supply, airport and port services, prison services, and firefighting services.
- National Industrial Court: The NIC has jurisdiction over labor disputes, including strike actions. The court can intervene to resolve disputes and make rulings on the legality of strikes.
- Limitations: While the right to strike is constitutionally guaranteed, it is not absolute. Strikes may be restricted or prohibited in certain circumstances, such as national emergencies or public health crises.

Trade Unions Amendment Act 2005: This amendment introduced changes to the Trade Unions Act, including the requirement for a secret ballot and the specification of essential services where strikes are prohibited.

The Trade Unions Amendment Act 2005 provides the following conditions for a strike to be legal in Nigeria:

- Written Notice: The trade union must provide the employer with a written notice of the intention to go on strike, specifying the reasons and duration (Section 26).
- Secret Ballot: The union must conduct a secret ballot of its members to approve the strike action (Section 27).
- Peaceful and Unarmed: Strikes must be conducted peacefully and without violence or intimidation.
- 15-Day Notice Period: The written notice must be given at least 15 days before the commencement of the strike.
- Dispute Resolution: The union must have attempted to resolve the dispute through negotiation or conciliation.
- No Strike in Essential Services: Strikes are prohibited in essential services like health, water, electricity, airports, ports, prisons, and firefighting services.
- Compliance with Court Orders: The union must comply with any court orders or rulings related to the strike.
- No Strike during Negotiations: Strikes are prohibited while negotiations or conciliation efforts are ongoing.
- Post-Strike Report*: The union must submit a report to the Minister of Labour and Employment within 14 days after the strike, detailing the reasons, duration, and outcome.

Please note that these conditions are subject to interpretation by the courts and may evolve through case law and future amendments. Before 2006, for instance, it took the High Court of the Federal Capital Territory as per *Federal Government of Nigeria v. Adams Oshiomhole* [2004] 1 NLLR (Pt. 2) 326, the Court of Appeal as per *Federal Government of Nigeria v. Adams Oshiomhole* [2004] 1 NLLR (Pt. 2) 339 and the Federal High Court as per *Federal Government of Nigeria v. Adams Oshiomhole* [2004] 1 NLLR (Pt. 3) 541 to decide whether Comrade Adams Oshiomhole and the Nigeria Labour Congress (NLC) can validly lead Nigerians on a strike action.

The Court of Appeal decision in the instant case has had a significant impact on the conditions for strike in Nigeria. The case established that a strike can only be called if it meets the requirements of section 48 of the Trade Disputes Act, which includes the existence of a trade dispute.

This decision tended to ratify the provisions of the Trade Unions Amendment Act 2005, which requires a secret ballot and a written notice to be given to the employer before a strike can commence. The Court of Appeal decision reinforced the importance of following the proper procedures before embarking on a strike.

However, it's worth noting that the case also highlighted the need for the government to respect the rights of workers to engage in industrial action. The decision emphasized that the government should not use its power to prevent strikes or intimidate workers from exercising their rights.

Overall, the *Oshiomole vs FGN* case has had a lasting impact on the labor landscape in Nigeria, and its implications are still felt today.

I leave you with a poser:"

Is a careful reading of Section 6 of the Trade Unions Amendment Act 2005 not tantamount to a ban on strike? Take note of the opening words: "No person, Trade Union or employer shall take part in a strike or lock out or engage in any conduct in contemplation or furtherance of a strike or lockout unless: a, b, c, d, e." If read along with **Section 40** of the constitution which guarantees the freedom of association, including the right to form or join a trade union, which is essential for collective bargaining and strike actions, can it not be said to be in violation of the Constitution?

This question, while not meant to incite your minds, remains relevant yet unanswered, as it's differing dimensions rear its head at various times, depending on the circumstances of each case. If for instance the stated conditions are met, then the strike is lawful; or isn't it?

In any case, industrial actions are an integral part of industrial relations, and therefore inevitable. There is need therefore, for employers and government to recognize and embrace trade unions for a harmonious and smooth labour and industrial relations. Remember, strike is usually reserved as the last weapon during negotiations between Management and the Union, which may occur just before; or immediately after, the negotiation fails. In Union Bank of Nigeria Plc v. Edet (1993), Uwaifo (JCA) as he was, had this to say with regard to the right to strike, and ensuring that collective agreements are enforced.

CONCLUSION

While the legal framework recognizes the right to strike, practical barriers, including bureaucratic delays and political interference, can limit its effective exercise. Strikes in Nigeria often draw attention to broader social issues, including inadequate wages, poor working conditions, and government policies.

Thankfully, Government and employers alike have embraced the idea of going to court to ventilate their grievances against employees and unions. This is a welcome development, and it is hereby encouraged. In order not to clog the wheel of economic progress in Nigeria, both government and labour are advised to respect and implement collective agreements reached during negotiations. This will help in ensuring a smooth and vibrant economy.

Strike action in Nigeria is a right for workers, but it is not absolute. It must be exercised within the parameters of the law to ensure its legitimacy, and to protect the public interest.

Thank you for listening. I wish you all fruitful deliberations.

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