



Prerequisites for exercising the right to strike in the ILO jurisprudence and Nigerian labour statutes: An analysis

Emuobo Emudainohwo

Associate Professor, Faculty of Law, Delta State University Oleh Campus, Oleh, Nigeria

Abstract

The paper compares the prerequisites for exercising the right strike prescribed by the Committee on Freedom of Association (CFA) of the International Labour Organization (ILO) with the conditions for exercising the right to strike in Nigerian law. It observed that the conditions for exercising the right to strike in Nigerian law are more onerous than that of the rules prescribed in ILO jurisprudence. Some of the onerous conditions are stipulated in the Trade Dispute Act (TDA) and the Trade Unions Act (TUA). The National Industrial Court of Nigeria (NICN) has confirmed these onerous conditions for exercising the right to strike in some cases. Since the decisions of the NICN are only appealable in few matters (which does not include matters relating to exercise of the right to strike) the implication is that it is difficult for workers to exercise a legal strike in Nigeria. The paper argues that the NICN could follow the requirement or conditions for exercising the to right to strike highlighted by the CFA of the ILO. That it can do by relying on section 254 (2) of the Nigerian Constitution (as amended).

Keywords: Right to strike, prerequisites, committee on freedom of association, international labour organization, Nigeria, labour statutes, Nigerian law, ILO, worker, employee

Introduction

ILO Convention 87 guarantees freedom of association and Nigeria has ratified ILO Convention 87 and 98. The right to strike has been interpreted by the CFA of the ILO as an intrinsic corollary to the right to organize protected by Convention No. 87. Towards conditions for exercising the right to strike, the CFA has emphasized that the procedures that should be followed in a national law to make a strike lawful ought to be reasonable and should not in any way place a large limitation on the method of action open to labour unions. And that the legal method for commencing a strike ought not be so complicated or difficult as to a legal strike almost impossible. Despite the CFA's position that the prerequisites for exercising strike should not be onerous, the prescribed procedures for exercising strike in Labour statutes in Nigeria appears difficult to fulfill. The provisions stipulating conditions for exercising the right to strike can be found in the TDA and the TUA (as amended). The TDA does not specifically refer to a right to strike, but a couple of its provisions acknowledge the existence of strike. The Act defines the meaning of strike in Nigeria and also contains provisions dealing with the procedure for strike action. The TUA (as amended) prohibits employees or any other person to take part in strike or engaged in an action in furtherance or contemplation of a strike. The paper will be discussed as follows: section 1 is introductory. Section 2 focuses on the definition and types of strike. The prerequisite for exercising strike in ILO jurisprudence and some Nigerian labour statutes forms the nucleus of section 3. And section 4 is the conclusion

The Definition and Types of Strikes

a. The definition of strike

The CFA explained 'strike' as generally a temporary work stoppage (or slowdown) wilfully effected by one or more groups of workers with a view to enforcing or resisting demands or expressing grievances, or supporting other workers in their demands or grievances. The TDA in section

48(1) explain the term "strike" as the cessation or stopping of work by persons employed acting in group or a determined refusal or a refusal under a common understanding of a group employed to work for the employer, done as a method of making the employer to accede to the demands of the workers. In this definition-

- a. "cessation of work" includes purposely working at less speed or with less efficiency; and
- b. "refusal to continue to work" includes a refusal to work at normal speed or with normal efficiency.

b. Various types of strike

The rules of the ILO's supervisory bodies contain no definition of strike action which would permit definitive conclusions to be drawn regarding the legitimacy of the different ways in which strike may be exercised. Though, certain types of actions of strike (including occupying the place of work, slow down in work or working-to rule strikes), which are not simply characteristic work stoppages or industrial action have been recognised by the CFA, as long as they are conducted or carried out in a peaceable manner. Regarding forms of strike workers are deprived of (tools-down, wild-cat strikes, working to rule; go-slow, and sit-down strikes), the CFA noted that these restrictions might be justified if the strike action ceases or stops to be peaceful. The CFA has also noted that the occupation or possession of plantations by employees and others, particularly when violent acts are committed, contravenes Article 8 of ILO Convention 87. It then asked the Government, in the future, to enforce the evacuation or withdrawal orders made by the judicial or court authorities whenever criminal actions are carried out in plantations or at work places in relation with industrial actions. A work stoppage, though limited and brief, may largely be understood as a strike. This is more problematic to determine if there is no stoppage in work in itself but a slow work (go-slow strike) or if rules of work are followed strictly (work-to-rule); these kinds of strike are also as

paralysing as total stoppage. While the CFA has always regarded right to strike action as constituting a fundamental or important workers' right and of their unions, it has regarded it as such if it is utilized as a method of defending or protecting their economic interests. The right or claim to strike is an intrinsic corollary of right to organize guaranteed by ILO Convention 87.

Prerequisites for Deploying the Right or Freedom to Strike in ILO Jurisprudence and some Nigerian Labour Statutes.

a. The ILO Jurisprudence

The ILO has recognized a positive right to strike that is intimately linked to the right to freedom of association. The outline of this right has been formed to a great extent by the CFA The ILO's Committee of Experts on the Application of Conventions and Recommendations, (CEACR) in its technical supervisory function, has also grounded the right or freedom to strike on Articles 2, 3, 8 and 10 of Convention No. 87, which gives employees freedom to join labour unions of their own choice, bestows upon those unions the right or freedom to establish their activities and frame programmes, and considers the objective of the labour or trade unions to be that of defending and furthering the interests or benefits of their members.

The CFA of the ILO has underscored or emphasized that the conditions or requirements that have to be met in national laws for strike to be legal should be rational and in any situation not to place a large limitation on the way of action accessible to labour union. And that legal procedures for deploying the right to strike action should not be complicated as to make a legal strike. practically impossible

b. Nigerian Labour Statutes

▪ Trade Disputes Act (Sections 4, 6, 18 (1), 5 and 42)

The conditions for deploying the right to strike action in the TDA are contained in sections 4, 6, 18 (1) and 42 of TDA. They are as follows:

1. Section 4

Section 4 prescribes the procedure the parties must take before any action is taken in court. And in this regard section 4 states that if there is agreed method for settlement of the matter apart from the provisions of the TDA, whether in the provisions of any contract between employers' organisations and workers' organisation or some other agreement, the disputing parties must first make effort to settle by that means. If the effort to settle the matter fails, or if no agreed method of settlement as are mentioned herein exists, the disputing parties must in seven (7) days of the failure meet a mediator jointly agreed on and selected by or in behalf of the disputing parties, with the aim of settling the dispute.

2. Section 5

Section 5 stipulates that notwithstanding the intention of section 4 above, where a dispute is perceived by the Labour Minister, he may by writing notify the disputing parties of his fears and the steps he intends to take to resolve the matter. The steps the Labour Minister may take include either appoint a conciliator as in section 8 of TDA or refer the matter to the Industrial Arbitration Panel (IAP) in section 9 of the Act or refer the matter to the board of inquiry in section 33 of the Act.

3. Section 6

Section 6 stipulates that If in seven days from when a mediator is chosen under section 4 of the TDA the matter is not amicably settled, the matter should be reported to the Labour Minister by or in place either of the parties in three (3) days of the end of the (7) seven days.

4. Section 18

Section 18 (1) of the TDA stipulates that a worker should not be involved in a strike where-

- a. the procedure stipulated in section 4 and 6 of the TDA (relating to voluntary settlement, appointment of a mediator or conciliator) has not been complied with.
- b. a conciliator was appointed or chosen in section 8 of the TDA for the aim of settling the dispute; or
- c. the matter has been transferred to Arbitration Panel in section 9 of the TDA; or
- d. an award was made by arbitration tribunal in section 13 (3) of the Act; or
- e. the dispute has been transferred to the NICN in section 14; or in 17 of the Act; or
- f. or the NICN has made an award on it

Any contravention of section 18 (1) is an offence and in conviction-

- a. a fine of N100 in instance of an individual or to six-months imprisonment;
- b. in the instance of a corporate body a fine of N1 ,000 will be payable.

where a matter has been resolved in the provisions of the Act either the acceptance an award made by an arbitration tribunal in section 13 of the Act or by agreement, that dispute is deemed to have ended; and any further dispute on the same matters (including dispute regarding the interpretation of an award in which the first dispute was settled) must be treated as a different dispute.

Section 42

Section 42 of TDA states that fifteen days' notice must be given by workers before ceasing or stopping work in situations of danger to property or persons.

1. without prejudice or bias to section 18 TDA, if-
 - a. any worker ceases or stops, whether alone or in group with others, to do the work for which he is hired to do without giving his employer not less than fifteen days' notice of his desire to do so; and
 - b. at the period when he ceases or stops to do that work, he knew or has likely cause to believe that the likely consequence of his so doing will-
 1. endanger or risk human life; or
 2. extremely to endanger public health or the sound health of the patients of an hospital or other similar institutions; or
 3. to cause severe bodily injury to a person or persons; or
 4. to expose valuable property, whether personal or real, to destruction or injury, he will be said to have committed an offence and liable to pay a fine of N 100 or to six months imprisonment, or both

Trade Unions Act (as amended)

section 31 (6) of TUA (as amended) stipulates that no employee or trade union should take part or participate in a strike action or engage in a conduct in furtherance of a strike action unless-

- a. the employee or trade union is not engaged or involved in the provision or delivery of essential services;
- b. the strike concerns or relates to a labour dispute that is a dispute of right;
- c. the strike concerns or relates to a dispute flowing from a collective and important breach of contract of work or collective agreement on the side of the worker or employee or trade union;
- d. the provisions concerning arbitration in the TDA have been first complied with; and
- e. in the instance of an employee or a labour union, a ballot or vote has been conducted done in line with the constitution and rules of the labour union in which a simple majority of the registered members voted or chose to go on strike action.

An employee or a labour union who contravenes the provisions of the section is guilty of an offence and liable to pay a fine of N10,000 or six months imprisonment or to both on conviction.

The summary of the procedures stipulated in the foregoing provisions in the TDA is that the parties must first on their own make effort to settle the matter. Also, where a dispute is perceived by the Minister of Labour and Productivity, he may notify the parties of his fears and the steps he intends to take to resolve the dispute. The steps the Labour Minister may take include either appoint a conciliator as in sect. 8 of the TDA or refer the matter to the IAP in sect. 9 of the TDA or refer the matter to the board of inquiry in section 33 of the Act. Then sect. 18 (1) of the TDA Act stipulates that a worker should not be involved in a strike where- (a) the procedure stipulated in sect' 4 or 6, TDA (relating to voluntary settlement, appointment of a mediator or conciliator) has not been met. (b) a conciliator was appointed or chosen in sect. 8 of the TDA for the aim of settling the dispute; or (c) the matter has been transferred to the IAP in sect. 9 of the TDA; or (d) an award was made by arbitration tribunal in section 13 (3) of the Act; or (e) the dispute has been transferred to the NICN in section 14; or in 17 of the Act; or (f) or the NICN has made an award on it. Furthermore, section 42, TDA prescribes fifteen days' notice to be given by workers before stopping work in situations of danger to property or persons. And if any (a) worker stops to do work (whether alone or in group with others), without giving his employer not less than fifteen days' notice of his desire to do so; and (b) at the period when he stops to do work, if there is danger to human life or to public health or the sound health of the patients of an hospital or other similar institutions or to valuable property, whether personal or real he will be said to have committed an offence and liable to pay a fine of N 100 or to six months imprisonment, or both

The summary of further procedures which an employee intending to go on strike action must comply with are provided in section 31 (6) of the TUA (as amended) viz to wit no employee or trade union should take part or participate in a strike action or engage in a conduct in pursuit of a strike action unless- (a) the employee or trade union is not engaged or involved in the provision or delivery of essential services; (b) the strike concerns or relates to a labour dispute that is a dispute of right; (c) the strike concerns or relates to a dispute flowing from a collective or joint and important breach of contract work or agreement on the side of the worker or employee or trade union; (d) the

provisions concerning arbitration in the TDA have been first complied with; and (e) in the instance of an employee or a labour union, a ballot or vote has been conducted done in line with the constitution and rules of the labour union in which a simple majority of the registered members voted or chose to go on strike action . (7) An employee or a labour union who contravenes the provisions of the section is guilty of an offence and liable to pay a fine of N10,000, six months imprisonment or to both on conviction.

It appears that the NICN decisions confirm or endorse the complicated procedures prescribed for strike in the Nigerian labour legislations aforementioned. Some of the following NICN decisions are: In *Chigozie Sunday Nzekwe v Geoplex Drillteq Limited and another* the plaintiff/ claimant was employed by the first defendant (Geoplex Drillteq Limited) at the demand of the second defendant to work in the second defendants' oil rig. After a while the plaintiff and other employees or workers demanded for better working condition resulting in an industrial action. and stoppage of employment in the second defendant oil rig. The NICN held that there exists no fact before it relating to the plaintiff/claimant's and other employees following the procedure for strike stipulated in the TDA before they embarked om the industrial action which had devastating effect on production and operations of the first defendant. The NICN further held that the method of the plaintiff/claimant's and other employees were illegitimate when considered with the TDA. Also, in *Attorney-General of Rivers State v Dr George Matthew Ela and others*, one of the issues for determination was whether the defendants are excluded from strike action in Rivers State first without complying with the mandatory procedure stipulated in the TDA. The NICN held that considering exhibits and the documents before it is evident that, in declaring a strike on 2nd August 2021, the defendants did not follow section 31(6) of the TUA and sec. 18(1) of the TDA, that renders the declaration of their strike action unlawful. In *Greenville Liquefied Natural Gas Co. Ltd v Nigerian Union of Petroleum and Natural Gas Workers*, the NICN stated that both the TUA and the TDA are the procedures and background for strike provided the procedure laid down on strikes legal.

The CFA of the ILO has explained that the requirements or procedures in national laws for strike action must not place a huge limitation or clog on the method of action accessible to trade unions. And that procedures for a strike must not be so difficult as to make it almost impossible to declare a lawful strike. This has not been followed by Nigeria as shown in the complicated and difficult procedures for strike contained in the Nigerian TDA and TUA. It is significant to note that Nigeria has ratified ILO Convention on Freedom of Association and Protection of the Right to Organize Convention. ILO Convention 87 guarantees freedom of association. And the right or freedom to strike has been interpreted by the ILO as an intrinsic outcome or corollary to the right or freedom to organize protected by Convention No. 87. It can be argued that since the Nigerian law on strike is onerous, and Nigeria has ratified ILO Convention 87 (which convention has been interpreted to favour right or freedom to strike) the NICN should follow the interpretation of right or freedom to strike by the CFA of the ILO.

Conclusion

The paper compares the ILO's requirement for strike action with the Nigerian procedure for deploying the freedom to strike. The CFA of the ILO has explained that the requirements or procedures in national laws for strike action must not place a huge limitation or clog on the method of action accessible to trade unions. And that procedures for a strike must not be so difficult as to make it almost impossible to declare a lawful strike. This has not been followed by Nigeria as shown in the complicated and difficult procedures for strike contained in the Nigerian TDA and TUA. This position has been confirmed by NICN several decisions of the NICN. In *Chigozie Sunday Nzekwe v Geoplex Drillteq Limited and another* the plaintiff/claimant was employed by the first defendant (Geoplex Drillteq Limited) the NICN held that the method of the plaintiff/claimant's and other employees were illegitimate when considered with the TDA. Also, in *Attorney-General of Rivers State v Dr George Matthew Ela and others*, the NICN held that considering exhibits and the documents before it is evident that, in announcing a strike on 2nd August 2021, the defendants did not follow the provisions of section 31(6) of the TUA and sect. 18(1) of the TDA, that renders the declaration of their strike action unlawful. In *Greenville Liquefied Natural Gas Co. Ltd v Nigerian Union of Petroleum and Natural Gas Workers*, the NICN stated that both the TUA and the TDA are the procedures and background for strike provided the procedure laid down on strikes legal. Nigeria has ratified ILO Convention on Freedom of Association and Protection of the Right to Organize Convention. ILO Convention 87 guarantees freedom of association. And the right or freedom to strike has been interpreted by the ILO as an intrinsic outcome or corollary to the right or freedom to organize protected by Convention No. 87. It can be argued that since the Nigerian law on strike is onerous, and Nigeria has ratified ILO Convention 87 (which convention has been interpreted to favour right to strike) the NICN should follow the interpretation or construction of the ILO on the prerequisite for strike.

References

1. Attorney-General of Rivers State v Dr George Matthew Ela and others, unreported, Suit No. NICN/LA/279/2021, judgment delivered on 9th November 2021 by Justice Ikechi Gerald Nweneka, <https://nicnadr.gov.ng/judgement/> accessed 24th November 2023
2. Attorney-General of Rivers State v Dr George Matthew Ela and others, unreported, Suit No. NICN/LA/279/2021, judgment delivered on 9th November 2021 by Justice Ikechi Gerald Nweneka, <https://nicnadr.gov.ng/judgement/> accessed 24th November 2023
3. Bernard Gernigon, Alberto Otero and Horacio Guido, ILO Principles Concerning the Right to Strike (ILO Geneva, 1998) 12
4. Both Conventions (Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Right to Organise and Collective Bargaining Convention, 1949 (No. 98) were ratified by Nigeria in 1960
5. CAP. T8 L.F.N. 2004
6. Chigozie Sunday Nzekwe v Geoplex Drillteq Limited and another unreported, Suit No. NICN/PHC/160/2013, judgment delivered on 10th April 2021 by Justice Z.M.Bashir <https://nicnadr.gov.ng/judgement/> accessed 24th November 2023
7. Chigozie Sunday Nzekwe v Geoplex Drillteq Limited and another unreported, Suit No. NICN/PHC/160/2013, judgment delivered on 10th April 2021 by Justice Z.M.Bashir <https://nicnadr.gov.ng/judgement/> accessed 24th November 2023
8. Emuobo Emudainohwo, Possible influence of the international labour organization's standards on some provisions of the African charter, International Journal of Law, Policy and Social Review (2023) 5(2),69-74, Also in, <https://www.researchgate.net/profile/Emuobo-Emudainohwo/research> accessed 4th April 2024,
9. Emuobo Emudainohwo, Labour Disputes Settlement in Nigeria: Alternative Dispute Resolution (ADR) Procedures, <https://www.researchgate.net/profile/Emuobo-Emudainohwo/research> accessed 4th April 2024, also in *Nasarawa Journal of Public and International Law (NJPIL)*, (2017) 4 (1) 27-41
10. Emuobo Emudainohwo, The Legal Framework for Workers' Freedom of Association in Nigeria: A Critical Appraisal, <https://www.researchgate.net/profile/Emuobo-Emudainohwo/research> accessed 4th April 2024, also in *The Calabar Law Journal* (2017) 18, 133-150,
11. Greenville Liquefied Natural Gas Co. Ltd v Nigerian Union of Petroleum and Natural Gas Workers, unreported Suit No: NICN/ABJ/80/2022, judgment delivered by Hon Justice E.N. Agbakoba on the 28th of July 2022, <https://nicnadr.gov.ng/judgement/> accessed 24th November 2023
12. Greenville Liquefied Natural Gas Co. Ltd v Nigerian Union of Petroleum and Natural Gas Workers, unreported Suit No: NICN/ABJ/80/2022, judgment delivered by Hon Justice E.N. Agbakoba on the 28th of July 2022, <https://nicnadr.gov.ng/judgement/> accessed 24th November 2023
13. Ibid
14. ILO Convention on Freedom of Association and Protection of the Right to Organize Convention., 1948
15. ILO Convention on Freedom of Association and Protection of the Right to Organize Convention. 1948
16. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 754, Committee on Freedom of Association, set up by the Governing Body of the International Labour Office in 1951, is to deal with complaints of infringement of freedom of association submitted to it either by governments or by organizations of employers or of workers.
17. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 789
18. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 790
19. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 783

20. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 784
21. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 785
22. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 751, p.143
23. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 754
24. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 789
25. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 790
26. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 789
27. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 790
28. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 754, Committee on Freedom of Association, set up by the Governing Body of the International Labour Office in 1951, is to deal with complaints of infringement of freedom of association submitted to it either by governments or by organizations of employers or of workers.
29. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 789
30. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 790
31. ILO, Freedom of Association: Compilation of decisions of the Committee on Freedom of Association (ILO Geneva Sixth edition 2018) Para 754, Committee on Freedom of Association, set up by the Governing Body of the International Labour Office in 1951, is to deal with complaints of infringement of freedom of association submitted to it either by governments or by organizations of employers or of workers.
32. Janice R. Bellace 'The ILO and the right to strike' *International Labour Review*, (2014) 153 (1) 29
33. Janice R. Bellace 'The ILO and the right to strike' *International Labour Review*, (2014) 153 (1) 30
34. section 48 (1) of the Trade Disputes Act - CAP. T8 L.F.N. 2004, see also *Adams Oshiomhole & Anor. v Federal Government of Nigeria & another* (2007) 7 N. L. L. R. (Pt. 18) 164
35. See section 17, 42 and 47 of the Trade Dispute Act, Chapter 432 of the Laws of the Federation of Nigeria 1990
36. Trade Dispute Act, section 5
37. Trade Disputes Act - CAP. T8 Laws of the Federation of Nigeria, 2004
38. Trade Disputes Act section 4
39. Trade Unions Act, Cap T14, Laws of the Federation of Nigeria 2004. Section 31 (6)
40. Trade Unions Act, Cap T14, Laws of the Federation of Nigeria 2004. Section 31 (6)