

**RIGHT TO STRIKE IN A SUSTAINABLE DEMOCRACY
(THE NIGERIA EXPERIENCE)**

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ABSTRACT

Nigeria profited to some extent from the experience of both England and events in other developing territories in the industrial relation field. It was during the period of sustainable development as to government policy changed in response to the fear and uncontrolled labour movement in period of Nation crises such as democratic prevailing condition, could create a divisive environment which could adversely affect, efforts to unite the country, with the various act's, these means that there is no right to strike in Nigeria but in practice there is strike even when the procedure is not right.

The fundamental rights to freedom of expression, and to movement, association and right to peaceful assembly shall not to be taken away from human unless he has no life, an insight into the right of organized labour is to pocket and mount pressure with a purpose to favour. The right to strike is not to right to life as the grand norm of the state as explicitly expressed, the right to strike which is germane has a great influence on the balance in Relationship between the employed and employees in our various sector of the economy, the minister encourage settlement.

However, the strategic relationship between the right to strike and the sustainable democracy in a free and fair society in a country as ours, as practically express and demonstrated by Asuu strike is right to life in our Universities is a case experience as government, and its minister want to scoff out life of human, as the human life and society depend on the environment for their survival, the wages received interrelation with environment for existence is low.

Conclusively, before going on to strike need a lot of effort and consciousness at may be deem fit, i.e. collective agreement in the 1999 constitution there is not right to strike. However, the law does not expressly say there is no right to strike, but in practice and procedure worker go on strike; hence there is always conflict of law between the master and servants in Relationship to labour law in Nigeria, Right to strike is akin to Right to life.

INTRODUCTION

The Right to Strike in Nigeria Legal System

Management and labour has interest to protect; management expects to secure at the cost which will allow a favourable condition for project production and investment. However labours expects real wages to increase steadily for a reasonable standard of life infact to have job security. Again, management staff intends the production, distribution of products, goods, services and supply of services which is planned on a calculated cost, then risked not to be interrupted. Strike is an instrument for maintaining pivot, against the Director or Management desire to protect its planned property establishment on the part of the workers, the

inevitable dispute between management have no known limits or end in industrial relations, the right to strike in a sustainable democracy is a lethal weapon for struggle in the hand of working class in our society.

Meaning of Strike

Therefore, the word “strike”, in relation to workers’ action, is any stopping of work by a group of workers including any attempt to limit, or slow down, production on purpose. This would appear to define a strike in a loose or general sense, indicative of an industrial action¹. Put differently, a strike is the temporary cessation of work efforts by employees in the pursuance of a grievance or demand.² Section 47(1), Trade Dispute Act defined “strike” thus: is an important instrument in an organized labour. Therefore, “the 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 persons 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 other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.”

Infact, the word strike includes a sympathetic strike and the so-called work-to rule or go-slow as “cessation of work” is defined to include deliberately working at less than usual speed or with less than usual efficiency and “refusal to continue to work” to include a refusal to work at usual speed or with usual efficiency³.

However, a strike entails an action by a group of persons, whether unionized or not, acting in concert. All it seemed to require is that the strikers should organize themselves in one form or resolutions containing a number of contingency actions are taken. If the unit is not unionized, the mass meeting could resolve (or elect) to join a union⁴. In other words, strike actions by individual workers are not recognized under the law, in evaluation of the Nigeria experience for a sustainable democratic practice in our country.

Strike action involved the interrupted economic process, when necessary as means of exerting pressure collectively by works on their employers. A trade union would become unveiled, if it is without sum advantage of refusal to work. The workers are interested in protecting their lives and their families against downward of their real wages and loss of job by using their strength collectively. Sir Olto Kahn Freud referred to these intes as platindimous confrontation of expectations and interest, workers will go on strike whatever the law, may have to say about it.

Right to Strike, or Freedom to Strike?

Another vital question to determine now is whether or not there is a right (or is it a freedom) in sustainable democracythe Nigeria experience, to embark on a strike action. This would necessitate a consideration of the relevant pieces of legislation. It is vital to state at the outset that the provisions of the laws in each country are fundamental to the state and condition of industrial relations in that country. This becomes the more pressing in a dispensation of increasing governmental involvement in labour matters. Bordering on governmental interventionism and control, in organized labour in Nigeria.

Freedom of strike means, the strike is legally permitted but no special privileges are granted. Here, the strike does not need special rules; the legal limits to the freedom to strike is hence a consequence of the general legal order. On the other hand, there is a right to strike when the legal order evaluates the pursuit of collective interest more highly than the opposed individual obligations of the employment contract. As a result, the right is guaranteed, thus necessitating that the legal order takes precautions to ensure the practice and procedure of the right. In other words, the strike is privileged. What is the position of the existing legal order in Nigeria? Is it prohibitive or protective?⁶

The Section 17(1), Trade Disputes Act profound declares that an employer must not declare or take part in a lock-out and an employee must not take part in a strike in connection with any trade dispute where(a) the procedure specified in section 3 or 5 of the Act has not been compiled with in relation to the dispute or (b) a conciliator has been appointed under section 7 of the act for the purpose of effecting a settlement of the dispute; or (c) the dispute has been referred for settlement to the Industrial Arbitration Panel under section 8 of the Act; or (d) an award by an arbitration tribunal had become binding under section 12(3) of the Act; or (e) the dispute has subsequently been referred to the National Industrial Court under section 13 (1) or 16 or this act; or (f) the National Industrial Court has issued an award on the reference. However, there is also reasonable time given to labour and minister for resources lesion.

Again section 3 of the act provides that the parties to a dispute must first attempt settlement by an agreed laid down procedure, where such exists, but where this fails or there was no such agreement in existence, they should meet under the auspices of a mediator mutually agreed upon by the parties. On the other hand, section 7 state that if within seven days the efforts of the mediator fails, a written report of this fact must be made to the Minister of Labour within three days thereafter, stating the points of disagreement and the steps already taken. Any person who contravenes the provisions of section 17(1) is guilty of an offence and is liable on conviction, in the case of an individual, to a fine of N100 or to imprisonment for six months and in the case of a body corporate, to a fine of N1000. Country where there is right to strike, there is no sustainable democracy. Again, from the foregoing, section 42(1) of the Act stipulates that any employee who takes part in a strike is not entitled to any wages or other remuneration for the period of the strike and any such period does not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity are prejudicially affected accordingly.⁷

In addition to an apparent ploy to further dissuade Trade Unions as the rallying point of workers for industrial actions, curious amendments were made to some provisions of the Trade Unions act relevant of the issue of strike by the workers. Section 3, Trade Unions (Amendment) Decree amended the provisions of section 16 of the principal Act by inserting immediately after it, a new section 16A to the effect that the employer shall make automatic deduction of check-off dues from the wages of every worker who is eligible to be a member of any of the duly registered and recognized trade unions and that such monies were to be paid to the registered office of the trade union after deduction of what is due and payable to the Central Labour Organisation. In another amendment of that same year, section 5, Trade Unions (Amendment) (No.2) further amended the newly introduced section 16A to the effect that the implementation of the section shall be made subject to the insertion of a “No Strike” clause in the relevant Collective Bargaining Agreements between the workers and their employers. Right to strike is the bedrock for sustainable development, for the citizen to achieve their independence and dignity and human fulfillment.

In other words, there should be no system of automatic check-off dues payable to the union, in the absence of a No strike clause. Quite significantly, section 6 of this Decree amended the provisions of section 17 of the principal act by inserting a subsection (4). This subsection, inter alia, stipulated that the system of automatic check-off dues in respect of any particular union, shall cease to operate immediately following a strike action embarked upon by the union in breach of the Collective Bargaining Agreement between the works union and the employer. How else can we considered this provision than as a disincentive and as care against strike actions by the unions? After all, scarcely can any union survive or hope to make any appreciable impact in the interplay of strength and influence attendant to the relations between the workers’ representatives and their employers. We make bold to say that people should work with dignity not as slaves. There was a subsequent amendment in 1999. Section 5, Trade Unions (Amendment) Decree again amended section 16A of the principal Act to the effect that the sums deducted via automatic check-off dues were to be paid directly to the registered office of the trade union. Furthermore, that the section shall take effect subject to the insertion of “No Strike and “No Lock-out” clauses in the relevant collective bargaining Agreements between the works and their employers. Unduely exploitation in course of work, is counterproductive to development.

Looking carefully at this latest amendment, we can detect a double-barreled subterfuge on the part of the lawmakers. One, the prerogative to make necessary remittances to the Central Labour Organization had been ceded to the union. Second, a “No lockout’ clauses was also to be in served alongside the “No strike’ clause. This would appear protective of the workers’ interests. However, as pointed out by a writer, the prohibition of lockouts can hardly be regarded as limiting the rights and powers of employers in the same way and to the extent to which a ban on strikes affects the rights and powers of employees.

Academics and Scholars has contended that the above principle and procedure have virtually prohibited strikes by workers in Nigeria. Furthermore, as a result, there can hardly be any strike that would be deemed legal. Therefore, strike can no longer claim constitutionality. This would appear to because the law, as we have seen it, has prohibited strikes in respect of any trade dispute. Section 47(!) defines “trade dispute” as any dispute between employers and works or between workers and workers, which is connected with the employment or non-employment⁸, or the terms of employment and physical conditions of work of any

person. Most occasions for a strike action by labour, could be perceived as involving a trade dispute, and if so, apparently caught by this provision.⁹

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights¹⁰ was adopted and proclaimed by the United Nations General Assembly on December 10, 1948. It is a 'declaration' that would be automatically binding on all member countries of the United Nations and does not require that anyone should sign it, unlike a protocol. It follows that it takes a binding effect on Nigeria. Quite pointedly, the cumulative effect of the Preamble and article 30 of the Declaration is that every individual and organ of society shall strive towards securing a global recognition and observance of the Declaration as well as refrain from any act capable of derogating from any of this provisions.

Article 4 declares that no one shall be held in slavery or servitude; while article 23 states inter alia, that everyone has the right to work, to just and favourable conditions of work and to just and favourable remuneration. In addition, Article 24 provides for the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

It has been contended that dispute or conflict between a master and his servant is an inherent possibility given that they have clashing interests, especially in terms of wages or salary. Demands of employees such as higher wages, more fringe benefits, and more conducive working conditions will increase the employer's costs and are likely to be ignored by the employer, who wishes to maximize profit. Thus, strike becomes a way out for employees to protect against unfair treatment by the employer. In our opinion, it would smirk of modern enslavement if workers were to be denied the right to engage in industrial actions, particularly, the right to strike, interest and Right are two fundamental tools in Trade Dispute.

International Labour Organisation Conventions

International Labour Organisation of the United Nations specialized agency responsible for promoting labour rights and decent working conditions¹¹. Its primary vehicle for doing so is the adoption of conventions and recommendations, which set out universal labour standards agreed to at international labour conferences of the ILO, and then ratified by member countries.¹² Principal among the ILO Conventions relevant to our subject are Conventions Nos. 87, and 98. The first is titled 'Convention Concerning freedom of association and Protection of the Right to Organise', while the second is referred to as 'Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collective.

Article 2 of Convention No. 87 provides that servants and masters, without discrimination whatsoever, 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.¹³ Also, article 3 stipulate the right of workers and employer organization to draw up their constitutions and rules, elect their representatives in full freedom, organize their administration and activities and formulate their programs all without any interference from the public authorities (government). Furthermore, by Article 8(2), the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the rights guaranteed in the Convention.¹⁴

On the other hand, under Article 4 of Convention No. 98, measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between servants or masters' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements. Also, machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize as already defined.¹⁵

The Conventions do not, in explicit terms, stipulate the workers' right to strike. However, it has been widely accepted that this right to strike is "the corollary of the effective realization of the right to collective bargaining" and that 'if it does not exist, bargaining risks being inconsequential – dead letter'. In other words, the right to strike is an integral component of the right to collective bargaining. It follows that, whether by municipal or local laws or by international specifications, recognition of the right of works to collectively bargain with their employers, without more, contain in it, a recognition of the right of these works to strike in appropriate cases.¹⁶ 1999 Nigeria Constitution provide that government can impinge on the right of privacy, freedom of movement.

At this juncture, it becomes imperative to determine the degree to which the conflicting interests of the employees, employers and even the State. In matters of industrial relations could be synthesized to produce a wholesome effect on all the parties.¹⁷ This need becomes the more pressing considering the fact that the health of the nation may not be easily diverted from the happenings in the labour sector, bearing in mind that at the national level, the strike tendency of workers is a vital factor that can influence the investment decision by multinational companies. An economy that shows a high disposition in workers to strike is likely to be regarded as high risk by investors, due to the instability and unpredictability of fortunes such a trend portends, in Nigeria in the interest of Defence, Public Safety, Public Order for the purpose of protecting the right and freedom of other person, the preservation of an effective and efficient system of Trade Dispute, is for a new down on legal reality based legal system in home of contemporary relationship contemporary public interest of state for the right to strike in Nigeria.

Commenting on the situation in Sri Lanka, an editorial canvassed that:

“It is clear that right now sectional needs and the interests of individual unions are prevailing over a coordinated and consensual approach, on the part of the works, to resolving their problems. (However) it should be the principle of aggrieved unions to aim at arriving at solutions, which would make everyone to the dispute a winner.¹⁸this includes the State and the people, for it is the latter who suffer most from strike action. The absence of such a principle makes industrial action anti-national and callously indifferent to the needs of the people; temporary cessation of work is not a criminal offence.

The above description is very apposite of the situation in Nigeria at the moment. There is an increasing surge in the frequency of strikes by the unions. Sometimes, we see the resolution of and instrueail crisis in one sub-sector becoming the grouse of another union in that same sub-sector or another. This has created an atmosphere of confusion in the minds of the public and apathy even in the workers themselves. The cumulative effect of such a situation cannot be over emphasizednor ignored¹⁹.

The question arises as to the degree of culpability of the government in creating or fostering the present industrial environment. This is because of the apparent lack of will, or is it a bent towards mischief, by those in government in their tardiness or outright reluctance or refusal to apply the relevant provisions of the law in most strike situations. What then is the essence of a law that will neither be obeyed nor enforced? We content, and forcibly, too, that a determinate enforcement of the no-work-no-pay rule will separate the serious strikes from the frivolous ones, thus clearing the spectacle of the present mess. It is high time striking unions and their members were made to bear the full weight of their actions.

Infact being able to effectively implement the law, even in its current state, the government may have to first do a self-cleansing as the general feeling is that governance in Nigeria is that of squander mania. It is challenging to note the position taken by the British Prime Minister, Tony Blair, in response to then recent strike action by the firefighters, under the aegis of Fire Brigades Union. The workers were agitating for a 40% pay increase. According to him, he would not risk the economy for the sake of the firefighters, while adding that rises above 4% must be paid for by changes in working practices, or efficiency savings. The fear was that giving a larger wage would trigger demands from other public sector workers.

However, this pragmatic position of government has sent serious signals to the strikers and certainly would provide necessary threshold for further discussions and negotiations between the parties. The union certainly, will have to take a serious look at its strength, both real and imagined, as well as its demands. By the strike, the parties would have been able to estimate the relative power of the other. In unmistakable terms, the interests and welfare of the nation as a whole were projected over and above that of a section of it. The Nigerian government can take a cue from this development.

The elaborate procedures and practices made for ensuring industrial peace strikes and lockouts have remained rampant. This is hardly surprising as workers and their organizations generally recognize their right to strike as a legitimate means of defending their occupational interests. Lord Wright in the leading case²⁰ described the right to strike as “an essential element in the principles of collective bargaining” without which organized labour is powerless to deal with management²⁰. He continued:

The rights of labour are concerned, the rights of the employer are conditioned by the rights of the means to give or withhold their service. It is in in other words an essential element not only of the union’s bargaining process itself, it is also a necessary sanction for enforcing agreed rules.

The right to strike is an integral part of the right ingrained in the personal status of a citizen to choose for himself whom he will serve which distinguished him for a slave.

Similarly, Professor Wedderburn while commenting on the decision on the court in *Rookes v Barnard* stated that it is:

A vigorous reaffirmation of the right to strike... the policy of the judgements may be said to be that which the struggles between courts and unions bequeathed to modern (English) industrial law, namely, the recognition of the right to strike for collective union interests.

In the more recent case of *Union Bank of Nigeria Ltd v Edet, Uwaifo, J.C.A.* (as he then was reviewing the situation, said:

It appears that whenever an employer ignores or breaches a term of that agreement, resort could only be had, it at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate.

Right to strike is recognized and protected by law: therefore, the various legislations in the country attest to this. First, there is the common law right to strike where adequate notice sufficient to terminate the contract of employment is given²¹. There is nothing in any law in Nigeria which has taken away this right. Oshio has argued that to insist otherwise is to take the rather ridiculous position that once a citizen's right to withdraw his service during a strike will amount to forced labour and thus offend S.31 of the 1979 (S.34 of the 1999) Constitution.²² We note in this regard the remark by Ogunniyi that-

A situation where there is no need to decide whether or not to work and where people are compelled to work is compatible only with totalitarianism. Therefore, the right to go on strike is fundamental to the employment relationship and is compatible with the traditional values of a society which professes democracy.

Section 42 of the Banks and other Financial Institutions Act, 1991 recognizes the right of the bank workers to go on strike and protects the banks from incurring liability by reason of their inability to open to customers due to the strike action of their employees.

Meanwhile, under S.23 of the Trade Disputes Act, 1979 the trade union which involved in a strike is immune from liability in respect of any tortious act alleged to have been committed by or on its behalf in contemplation of or in furtherance of a trade dispute. The employee-striker also enjoys immunity under S.43(1) of the Act which provides:

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

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

It is meritorious to note that penal sanctions in S. 17(1) of the Trade Disputes Act, 1976 for embarking on strikes or lockout in contravention of the section (₦100.00 or six months imprisonment for a worker who goes on strike and a fine of ₦1,000.00 for corporate body on conviction) did not deter workers and employers. This led to the criticism of Tao Fasoyin when he said:

...the first year of the operation of the act has shown the contemptuous attitude of trade unions to the provision...

Indeed, the statutes did not stop strikes and lockouts; rather there was an upsurge in the number of strikes. Emiola stated that:

Attaching criminal sanctions to a lawful withdrawal of labour... does not help the development of healthy industrial relations, on the contrary, it will embitter workers the more.

Prof. Adeogun, known for his strong views on industrial law, hammered home the nail on the matter when he declared:

Our experience has shown that criminal sanctions do not have any appreciable or substantial effect on an existing strike nor do they have much effect as a deterrent from strike. It must be realized that at this level of

human relations, criminal sanctions derivemost of their effect not from the degree of penalty but from the social stigma attaching to them. And surely, if instead, the effect is to produce acclamation of the criminal, then, their value not only is lost but is reversed. Right to strike shall not be criminal offence, nor civil right to strike is not breach of trust, it hence all not amount to breach of contracts, but for the progress of sustainable democracy development.

Infact at Section 13(c) TDA S17(1)F read, TDA, Justice Uwaifo did not put it succuntively into consideration the right to strike of an employee or union, to engage on a strike flight attendants strike to protest the reduction in Benefit (2) to remove (a prospective junior from a Jury Panel by a peremptory challenge or a challenge for cause or challenge for cause or peremptory challenge under challenge (case jury).

An employer can permanently been replaced an economic strike but coming back to an unreplaced position simply because the worker was on strike of general strike. A strikeorganised to affect an entire industry.

Illegal strike: A strike using unlawful procedure.

A strike to obtain unlawful objectives as in a strike to force an employer to stop doing business with a particular company. However we have various types of strike action but to name a few²³.

1. Jurisctiational strike
2. Organizational strike
3. Outlaw strike
4. Quikie strike
5. Recognition strike
6. Secondary strike
7. Sit down strike
8. Sympathy strike
9. Whipsaw strike
10. Wildcat strike, a strike not authorities bya union or by a collective bargaining agreement.
11. General Strike.
12. Economic Strike etc.

Assuming a union in an organisation and the employer of the worker in that organisation are off between the NIC on a Trade dispute without compliance with section 3 & 5 of the Trade Dispute Act can NIC take the matter *Madulolu v. Nkedilian*

Condition a, which is relevant, before the court can criticized must have meet the condition. When they are not meant, the court cannot exercised jurisdiction.

From the constitution no right to strike. However, the law does not expressly say, there is no right to strike, but in practice worker gone on strike.

A strike has been defined as:

An organized cessation or slowdown of work by employees to compel the employer to meet the employees' demands.

Thus, a cessation of work by one employee is not a strike, neither will it be a strike properly socalled if the goal is not to compel the employer to meet the demands of the employees.

In *Tramp Shipping Corporation v Greenwich Marine Inc.*, Lord Denning, M. R. defined strike as:

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

By this definition, to qualify as a strike, the work stoppage must have as its goal the improvement of wages or conditions of employment; it includes sympathy strike, but excludes external events such as bomb scare or apprehension of danger.

Section 47(1) of the (Nigerian) Trade Disputes Act (TDA), 1976 defines a strike as:²⁴

...“the 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 persons 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 other workers in compelling their employer or any persons or body of persons

employed, to accept or not to accept terms of employment and physical conditions 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.

The statutory definition, any strike which is not in consequence of a trade dispute is not a strike within the meaning of the Act. A “trade dispute” means any dispute between employers and workers or between works and workers, which is connected with the implement or non-employment, or the terms of employment and physical conditions of work of any person. In effect, the statutory definition of a strike is wider and more comprehensive than the common law definition. Whereas under the common law, ‘work-to-rule’ or ‘go-slow’ is not a strike it is recognized as such under the statute since it is ‘deliberately working at less than usual speed or with less than usual efficiency’. Similarly, a political strike cannot qualify as a strike under the statutory definition though a sympathy strike by members of another trade union will qualify. In the circumstance, the main difference between the common law and statutory definitions is that in Nigeria, political and protest strikes would qualify as strike as common law but not under the Act.

Other words which will be used in the paper and which deserve to be specially defined are arbitration, conciliation and mediation, which are normally or frequently used in trade dispute as follows.

Arbitration

This has been defined as:

A method of dispute resolution involving one or more neutral third parties who are usually agreed to be the disputing parties and whose decision is binding.

Conciliation

Conciliation is the process in which a neutral person meets with the parties to a dispute (often labour) and explores how the dispute might be resolved.

Mediation

This has been defined as a method of

“nonbinding dispute resolution involving a neutral third party who tries to help the disputing parties reach a mutually agreeable solution”.

The issue as to the distinction between **mediation** and **conciliation** is widely debated among those interested in alternative dispute resolution (ADR). Some suggest that conciliation is ‘a nonbinding arbitration’ whereas mediation is merely ‘assisted negotiation.’ Others insist that conciliation involves third parties trying to bring together disputing parties to help them reconcile their differences, whereas mediation goes further by allowing the third party to suggest terms on which the dispute might be resolved. In this paper the two will be used as dictated by the Trade Disputes Act, 1976 as amended which in any event did not define the three words.

Strike has been a tool for servant to negotiate in a democratic government, such that servant will be a slave in the hand of its master, have right to strike is an inevitable experience as a tool in a due diligence procedure and practice in trade dispute, therefore when the condition has been met there is a right to strike, with all the necessary monument paid to the worker who went on strike.

Recommendations

The provision of institutional variables which forms the basis of workers’ employees such as wages and salaries, work ethics, sanctity of collective bargaining, and conditions of work should be fair to the workers. This will in return bring about peace and harmony for maximum production, which in turn is responsible for acceleration of economic growth. Rapid economic growth and the resultant economic prosperity brings about education, scientific and technological advancement of the people in a sustainable democratic environment. Since this would minimize the inevitable conflict, so that any dispute that may arise would be taken care of by the laid down procedure. The provided procedure for settlement of such dispute under the Act is unnecessarily long and time consuming – authority especially with the involvement of the Minister of Labour

for the reference of trade disputes for conciliation, mediation, arbitration and finally adjudication. The non-availability of direct access to the court leads to delays, this metamorphosis into hardship by worker. That it took 20 months to adjudicate the case of Management of Union Bank of Nigeria Ltd. v. National Union of Banks Insurance and Financial Institution Employees. Delays in the settlement of trade disputes ought to be avoided as such disputes relates to sensitive issues affecting not only the parties, but the purse of the nation as well. Also the dispute settlement mechanism has to be workable and acceptable to both labour and management. Strikes would continue to be on the increase where the workers no longer have confidence in its working as they hardly obtain a fair remedy especially against unfair dismissal. It hardly award re-engagement order even where the dismissal is “unfair” and the only remedy available in this respect is severance payments. Lack of confidence on the court and the long laid down statutory procedure for the settlement of trade dispute makes the workers to resort to strike first then, negotiation last.

State’s active intervention in industrial relations erodes collectives bargaining, leading to government, centred ... for employment of the workers. Labour and Management know their problems and are best placed to find solutions to such problems as they are directly concerned in the production process, through discussion, persuasion, compromise and agreement, i.e. negotiation. Such a governmental policy is considered inadequate in evaluating its impact on the national economy, trade unions, as well as hindering industrial harmony, social justice and industrial democracy. The consequence of such intervention is indiscipline, agitation and strikes, which consequently affects production.

Section 32A of the Trade Disputes Act of 1977 is preferable to Section 13 which prohibits strike without actually preventing its occurrence. This is why it should be applied by the National Industrial Court to all category of workers that goes on strike against its master. We have seen the Union Bank and Asuu case mentioned above where the court refused to apply Section 32A on the workers that threatened to go on strike and actually embarked on industrial action. Only by applying it can we test its impact on curtailing work-stoppages. Nevertheless, workers cannot be subjected to unfair institution variables, long and time consuming dispute settlement mechanism and be prevented from resorting to strike actions. Strike is the ultimate weapon the worker have against his master or managements’ refusal to negotiate and to abide by the collective agreement. Where employment factors are conducive to industrial peace and harmony strike would be used as a last resort and the loss of an-days would be fewer, student, consumers or the public would be supplied goods and services with a minimal interruption and at a reasonable price if not stable.

The right to go on strike is guaranteed by Section 37 of the 1979 Constitution (i.e. the right to form a trade union). The trade Unions Act of 1973 also provides for the formation, registration, membership and organisation of Trade Unions. Immunity too is guaranteed against civil and criminal actions when it is in contemplation or furtherance of a trade dispute; the Panel Code under Section 96 as well as Section 518A of the criminal Code provides for criminal immunity. Civil immunity is contained in Sections 11 and 46 of the trade Unions act, 1973. That notwithstanding, there is no fundamental right to go on strike. The negation of the right to strike is contained in section 41 of the 1979 Constitution implying that the State can intervene in strikes in times of war and other public emergency Threatening the life of the nation, as it was the case during the civil war. Consequently, the right to strike in Nigeria is not an absolute one. This is also the case in Britain. There the European social chapter in the European conventions recognizes the fact that the State can intervene during strikes and emergency threatening the nation.

Conclusion

We had experience in the country where there is no right to strike in Nigeria since independent in 1960, because of the colonization to exploit Africa territory, as the country of Africa had just moved from primitive civilization, but of recent we have Africa countries, that has right to strike entrenched in their constitution, which might been as a result they got their independence late, like South Africa, Lesotho, Tanzania, Mauritius, Zambia, Nairobia etc recognize Right to strike in their constitution. Therefore we are calling on the government to amend the 1999 constitution to outright include right to strike, as the Asuu experience has shown that universities sector has been oppressed for that so long, except the TEFUND to ameliorate the situation now, hence resulting to all most slavery job at university sector, compare to the salary of other universities in other part of the world, or in comparism to the elected politician who contribute lesser to National growth, therefore to have sustainable democracy for development, right to strike should

be legalized in Nigeria to stop, the disparity of emolument in this inter labour relationship, in our economy and industry sector.

That experience in Nigeria, has shown from 1960s, the emolument of the labour and the master there had been gap expansion, since the constitution was not enshrine with right to strike, since 1960 therefore Academics were not properly paid lead to the decline in wages upto now. The citizen now grave for political position with higher wages and stay for few years in office, be a billionaire in cash, than academic years spent, you stay for life time, pension might not be paid, removal of right to strike in our constitution is of demerit than merit causing underdevelopment in sustainable democracy in a country like ours.

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2. Fajana Sola, *Industrial Relations in Nigeria, theory & Features*, Second Edition, Labofin and Court of Appeal., 2000, p. 231
3. *Ibid*, see also Uvieghara, E.E. *Labour Law in Nigeria*, 1st Edition-Malthouse Law Books, 2001, pp. 445-446.
4. See Fajana, *op. cit.*, pp. 229-230.
5. See Birk, *op. cit.*, pp. 265-291.
6. *Supra*
7. Section 42 (1) (b) guarantees the worker his remuneration and rights which are dependent on the continuity of period of employment, during the period of lockout by the employer.
8. Cap 437, *Laws of the Federation of Nigeria*, 1990.
9. See Uvieghara, *op. cit.* p. 446; Fajana, *op.cit.*, pp. 231-232; *Eche v. State Education Commission* (1983) 1 FNR 386. Constitutional strikes refer to actions that conform to the due procedure of the relevant collective agreement.
10. United Nations General Assembly resolution 217 (111, 1948).
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12. See Ngeow, *op. cit.* pp. 1-3
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