

AN APPRAISAL OF THE RIGHT TO UNIONIZE UNDER NIGERIA'S TRADE UNIONS ACT 2004 (AS UPDATED)

BY

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ABSTRACT

This paper focuses on the right of workers and employers in Nigeria to unionize. Workers and employers individually and collectively have the right to belong to or not to belong to trade unions/federations of trade unions of their choice. This is a fundamental right (to freedom of association) guaranteed by the Constitution of the Federal Republic of Nigeria 1999, from which no derogation is permitted, save in accordance with the provisions of the Constitution. However, we have found that the right to unionize is not an absolute one, since statutorily, members of some organizations are prohibited from forming or becoming members of trade unions; and administrative orders as opposed to judicial pronouncements have been used to sanction or proscribe some trade unions. The Trade Unions Act 2004 (as updated) decentralizes the Central Labour Organization, thereby paving the way for the emergence of federation of trade unions; and unions that form a federation of trade unions need not be in the same trades, occupations and industries. The Act further provides that only a registered trade union shall be allowed to function or perform any act for achieving the purpose for which the union has been formed. Furthermore, membership of a trade union is voluntary and without any discriminatory grounds as to community, tribe, place of origin and religion, similar to, though not having exactly the same contents as, the more general provisions of section 42 of Nigeria's Constitution. However, more fundamentally, the 'right' to unionize itself is 'discriminatory' to the extent that members of some organizations and persons holding certain managerial positions are outrightly prohibited from unionizing. Some provisions of Nigerian labour laws conflict with some provisions of the conventions and Constitution of the International Labour Organization (ILO), consequent upon which Nigeria has come under the searchlight of the ILO. Nigeria, being a member of the ILO is under obligation to comply with international labour standards/best practices. The right to unionize should be expanded; unnecessary administrative interference in, or encroachment on, labour matters and rights ought to stop; information dissemination on labour issues should be stepped up; restriction on right to unionize should apply only to establishments that are regarded internationally as performing critically sensitive functions. If that is done, the right to unionize will make more sense to Nigerian employers and workers.

Introduction

Freedom of association is one of the fundamental rights guaranteed by the Constitution of the Federal Republic of Nigeria 1999. By virtue of this constitutional provision, workers have a right to form or belong to trade unions of their choice. This right

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is also contained in other statutes, notably the Trade Unions Act, 2004 (as updated to the 31st day of December, 2010). A right operates within the confines of legally defined limits. There is a bundle of legal rights which workers are entitled to, individually and collectively, as members of recognized/registered trade unions and federation of trade unions respectively.

In this article, we will examine the nature of the rights of workers to combine, organize themselves and become members of trade unions. We will also look at the position of the Law on decentralization of the Central Labour Organization and its effects on the corporate interests of trade unions and trade unionism, as well as the implications of permitting trade unions of different trades, occupations and industries to form a Federation of Trade Unions.

The right to form or join a trade union may be curtailed on grounds of age, managerial position and membership of certain bodies/organizations/agencies. Furthermore, registration may be refused on grounds of existing unions or similarity of names with existing unions. Also, there are circumstances under which a trade union may be voluntarily dissolved, or compulsorily dissolved, as the case may be. Additionally, the President of the Federal Republic of Nigeria is empowered to proscribe, by an order, certain unions or associations in certain cases or under certain circumstances.

This work analyses the extent to which the right to belong to a trade union can be restricted or prohibited and the statutory basis for this. The right to unionize is available to both employees and employers; but in this write-up, the emphasis shall be on employees/workers. Judicial interpretations are included where necessary to explain the respective positions of the Law on the subject-matter. Although the primary statutory focus of this discourse is the Trade Unions Act, references are also made to related statutes, namely the Trade Disputes Act, Trade Disputes (Essential Services) Act, Labour Act, International Labour Organization Constitution/Conventions, and of course, the Constitution of the Federal Republic of Nigeria. Some provisions of Nigerian labour statutes have been examined in the context of ILO requirements. Recommendations are made for better labour relations in Nigeria.

Right to Unionize

The Trade Unions Act defines 'trade union' as follows:

... 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, whether the combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members.¹

The Act defines a 'worker' as:

any employee, that is to say any member of the public service of the Federation or a State or any individual (other than a member of any

¹See s. 1 (1) of Trade Unions Act, Cap. T14, Vol. 14, L.F.N. 2004 (as updated to the 31st day of December, 2010) - TUA. For another perspective to the definition of 'trade union', see s. 91 (1) of the Labour Act, Cap. L1, Vol. 7, L.F.N. 2004 (as updated to the 31st day of December, 2010) LA.

such public service) who has entered into or works under a contract with an employer whether the contract is for manual labour, clerical work or otherwise, express or implied, oral or in writing, and whether it is a contract personally to execute any work or labour or a contract of apprenticeship.²

Only trade unions that are registered under the Trade Unions Act are allowed to function or perform 'any act in furtherance of the purposes for which it has been formed'.³ Furthermore, section 12 subsection(4) of the Act provides that membership of a trade union by employees shall be voluntary. Any person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of that union on discriminatory grounds as to a particular community, tribe, place of origin, religion or political opinion.⁴ The Act makes it an offence to contravene this provision⁵. Any provision in the rules of a trade union that is inconsistent with the provision of subsection (1) of section 2 of the Act, that provision (of the trade union rules) shall, to the extent of the inconsistency, be void.⁶

Section 12 subsection (4) of the Act provides that membership of a trade union by employees shall be voluntary. In addition, no employee shall be compelled to join any trade union or be victimized for refusing to join or remain a member. The freedom to join or not to join or remain a member, of a union appears, at least theoretically, to be one of the innovations and main purposes of the Trade Unions (Amendment) Bill 2005, which was eventually passed into Law. The summary of that Bill reads:

This Bill seeks to amend 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 of freedom to employees to decide which unions to join.⁷

Section 9 subsection(6)(a) of the Labour Act provides: 'No contract shall make it a condition of employment that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union'. By section 28 of Trade Unions Act, two or more trade unions may merge and become one trade union upon fulfilling two conditions specified in section 28 subsection (1) (a) and (b).

According to the ILO, workers have a right to form and join organizations of their choice:

The right of workers and employers to form and join organizations have played a significant role in their countries' democratic

²See s. 54 TUA and s. 48 TDA for a slightly different meaning or scope of the term. See also s. 91 (1) of LA.

³See s. 2 (1) of TUA.

⁴s. 12 (1) TUA.

⁵s. 12 (2) TUA.

⁶s. 12 (3) TUA.

⁷See 'Explanatory Memorandum' at p. A200 of the Trade Unions (Amendment Act) 2005, now injected into the TUA 2004 (as updated to the 31st day of December, 2010). Other than the issue of strike and lock out, the 2005 amendment, as far as union membership is concerned, focused only on employees rather than on both employees and employers. However, in the full text of the TUA and in related statutes, clearly, both employees and employers have equal rights to form and joint trade unions.

transformation. From advising governments on labour legislation to providing education and training from trade unions and employer groups, the ILO is regularly engaged in promoting freedom of association. The ILO's Committee on Freedom of Association was set up in 1951 to examine violations of workers' and employers' organizing rights. The committee was tripartite and handles complaints in ILO Member States whether or not they have ratified freedom of association conventions. Through the Committee on Freedom of Association and other supervisory mechanisms, the ILO has frequently defended rights of trade unions and employers' organizations.⁸

Section 40 of the Constitution of the Federal Republic of Nigeria 1999 provides:

'Every person shall be entitled to assemble freely 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 interest...!'⁹

This is a fundamental right, an inalienable right, conferred on workers, and on employers, individually and collectively. The right to unionize is basically three-fold, namely the right to (a) form or join a trade union of one's choice (b) remain a member (c) refuse to join or refuse to remain a member.

Secondly, the Act prohibits discriminatory rules as a basis of admission to membership of a trade union. The discriminatory grounds are restricted to community, tribe, place of origin and religion. However, nothing is said of other grounds such as sex, physical disabilities, infection by so-called 'terminal' diseases/conditions, such as cancer, HIV/Aids, hepatitis, and so on. Similarly, section 42 of Nigeria's Constitution condemns discrimination or according of any privilege or advantage to a person on grounds that the person comes from a particular community, ethnic group, place of origin, sex, religion or political opinion. It also prohibits subjection of a person to discrimination merely by circumstances of his/her birth. But this constitutional provision stresses more on the practical application of any law in force in Nigeria or any such executive or administrative action.

Kanyip has commented on the point of divergence between the right against discrimination provided for under section 12(1) of the Trade Unions Act on the one hand,

⁸ILO. 'Freedom of Association and Right to Collective Bargaining'. ILO, Geneva, n.d. ilo.org. Accessed 10 Oct.2012.

⁹See also Perrins, B. *Trade Union Law*. London:Butterworth,1985:159.This right is recognized by or under Chapter IV of International Labour Organization(ILO) Constitution 1972(as amended); Art. 2 & 4 of ILO Freedom of Association and Protection of the Right to Organise and Collective Bargaining Convention 1948(No.87)(done in San Fransisco, USA); Art. 1& 2 of Geneva Convention on Right to Organise and Collective Bargaining Convention 1949(No.98);Art.10 of African Charter on Human and Peoples Rights(ACHPR)(also known as the Banjul Charter),and Art.23 of United Nations Declaration of Human Rights(UNDHR)1948.Furthermore,s.3(b) of New Zealand's Employment Relations Act 2000 contains a similar provision. But in Nigeria, several of these treaties are either not being implemented/enforced or have not been domesticated in line with municipal law requirement, ie by virtue of s.12(1) of the Constitution.

and on the other hand, right to freedom from discrimination under section 42 of Nigeria's Constitution:

A fundamental right of workers, for instance, is the right against discrimination. Yet other than in relation to the right to join a trade union where a worker's right against discrimination is provided for under section 12(1) of the Trade Unions Act(TUA)2004, nowhere in our labour law is the right against discrimination specifically provided for. The tendency is to subsume the right within the broader context of the constitutional right to freedom from discrimination under section 42 of the 1999 Constitution and then treat it as a constitutional, not a workplace issue. The drawback with this approach is that discrimination as a work issue is more peculiar (and takes account of more issues such as HIV/AIDS, equality of pay and treatment, gender mainstreaming, sexual harassment, etc) than discrimination as a constitutional issue. The protective nuances that the right to discrimination gains when it is specifically provided for in the labour statutes is lost if it is left in the realm of constitutional law...¹⁰

In view of section 12 of the Trade Unions Act, it follows that public and private organizations/employers that refuse to allow their employees/workers to form or join trade unions are contravening the Act, and more importantly, the Constitution of the country; hence such employees have the right to proceed against their employers to obtain legal remedies. Section 46 subsection (1) of the Constitution provides: 'Any person who alleges that any of the provisions of this chapter has been, is being or is likely to be contravened in any state in relation to him may apply to a High Court in that State for redress'. In the same vein, employees may legally challenge any trade union rule, policy or action that forces an employee to belong to a particular trade union, or a union that victimizes an employee for refusing to join or remain a member, because this is clearly an illegal act. Apart from the constitutional provisions, the Trade Unions Act and Trade Disputes Act provide various mechanisms and channels for workers and trade unions to ventilate their grievances; but it is beyond the scope of this write-up to go into those details.

Restriction of Rights to Unionize

Since no right is absolute, the right to unionize has exceptions, restrictions and, in some instances, even prohibitions. For example, some persons are prohibited from becoming members of any trade union whatsoever, merely by reason of their age, the nature of their work or the positions they are occupying in their organizations. Moreover, an association will be denied registration because there is an existing union representing same class of persons or interest as an already registered union; or where there is a substantial similarity of name with an already registered union.

(a) Capacity/Age

A person under the age of 16 is not eligible to become a member of a union.¹¹ A

¹⁰Kanyip, B.B. 'Current Issues in Labour Dispute Resolution in Nigeria'. *National Industrial Court*, 2011. Available at nic.gov.ng Accessed on 9 Oct. 2012. Hon. Justice Benedict Bakwaph Kanyip, Ph.D., is the Presiding Judge of National Industrial Court of Nigeria(NIC),Lagos Division.

¹¹ See s. 20 (1) TUA.

person who is 16 or above, but below 21 is prohibited from holding office as an official of a union.¹²

(b) Managerial Positions

In 1978, the Trade Unions Act was amended. It provided that no executive or senior staff could be a member or hold an office in a union whose members were employees of a rank junior to his own, but could do so in a trade union of employees of equal or higher rank than his own.¹³ In 1979, it was further amended by section 3 subsections (3) and (4), which is in pari materia with section 3 subsection (3) of the Trade Unions Act 2004 (as updated to 2010). It states:

No staff recognised as a projection of management within the management structure of any organization shall be a member of or hold office in a trade union (whether or not the members of that trade union are workers of a rank junior, equal or higher than his own) if such membership of or the holding of such office in a trade union will lead to a conflict of his loyalties to either the union or to the management.

However, the Act does not define what 'management staff' means, nor does it give specific examples of it. This provision is the basis for 'management staff' of some organizations not joining, or not being in the membership of, trade unions; or where they were already members, they ceased to become members, or at least ceased to hold offices, upon becoming (presumably, by appointment, promotion or election as the case may be) 'management staff'; of course, if applicable, with liberty to resume their membership after ceasing to hold such managerial positions or offices. We see this happening in companies, and some other organizations in both the public and private sectors. However, there are situations where controversies and uncertainties may arise, for instance, in higher educational institutions such as universities, colleges of education and polytechnics: should a vice chancellor, or a deputy vice chancellor, or a dean, or a head of department, or a director of a(n) centre/institute/division/unit, or of any related office/establishment, join or remain (as the case may be) a member of the Academic Staff Union of Universities (ASUU)? Similarly, should a university registrar, or a bursar, be, or remain, a member of, for example, the Senior Staff Association of Nigerian Universities (SSANU)? Are these persons 'management staff' within the meaning of the statute, or are they ordinary administrators, with freedom to unionize? What is the criterion, or what are the criteria, for eligibility of such persons for union membership and/or holding of positions therein: is it the payment of union dues and/or benefiting from fruits of collective agreements and other packages, rights and privileges enjoyed by members of trade unions? What are the possible areas of conflict of loyalties, if any, and who determines them? Does eligibility of such persons for membership of trade unions automatically confer on them the right to hold offices in their unions? If the answer to the last question is in the negative, does this prima facie raise a question of conflict of loyalties? These questions may not all be answered here. Nevertheless, it is important to note that the condoning of a practice, no matter how 'popular' or

¹²See s. 20 (2) TUA.

¹³See s. 1 (1) (a) Trade Unions (Amendment) Act 1978. See also, Uvieghara E.E. *Labour Law in Nigeria*. Lagos, Mathouse, 321 - 322

'established' it may be, does not make it lawful or legal. Secondly, the nature of an organization and the functions of its 'management staff' in the hierarchy/cadre of authority, are critical factors in determining eligibility, particularly when that staff is part of the highest decision-making body of the organization/institution, or when his/her position and/or responsibility is so crucial and critical that it can be said to be a direct extension of the highest authority in that organization/institution. Thirdly, only a court pronouncement will settle these contentious issues with finality, for the issue is not as simple as it appears to be. Thus, in the case of Nigerian Union of Petroleum and Natural Gas Workers V. NNPC,¹⁴ the High Court of Lagos State, per Ayorinde, J. held that the position of each management staff must be considered in the light of his status, authority, powers, duties and accountability, and that each case must be treated separately to determine whether the position held by a certain staff will not lead to a conflict of loyalty. The learned Judge added that a management staff is not determined by the whim of the employer, but by considering whether the functions of that staff have the normal attributes of an employee who exercises executive authority.

(c) Members of Certain Bodies Prevented from Becoming Members of Trade Unions

Section 11 subsection (1) (a) to (i) of the Trade Unions Act provides that persons employed in any of the following establishments are prohibited from becoming members of a trade union. They are: (a) the Nigerian Army, Navy or Air Force; (b) the Nigeria Police Force;¹⁵ (c) the Customs Services, the Immigrations Services and the Prisons Services; (d) the Customs Preventive Service; (e) the Nigerian Security Printing and Minting Company Limited; (f) the Central Bank of Nigeria; (g) the Nigerian Telecommunications Limited; (h) every Federal or State Government establishment the employees of which are authorized to bear arms; and (i) such other establishments as the Minister may, from time to time, by order specify.¹⁶ This prohibition is a public policy issue. Provisions of the Trade Disputes Act and the Trade Unions Act do not apply to the aforementioned bodies. Section 11 (2) of the Trade Unions Act states:

It shall not be lawful for persons employed in any of the establishments to which subsection (1) of this section relates to combine, organise themselves, or to be members of a trade union, for purposes of employment, but nothing in this section shall be construed as preventing the setting up of joint consultative committees in the establishments

¹⁴(Unreported) Suit No. LD/13/83.

¹⁵See also s. 89 (2) of L.A..

¹⁶See s. 11(1)(a) (i) TUA and s. 49 (2) TDA. See also Trade Unions (Prohibition) (Federal Service) Order L.N. 42 of 1976, re-enacted under Cap. T14, Vol. 14, LFN 2004 Subsidiary Legislation where employees of the Federal Fire Service are prohibited from combining, organizing or becoming members of a trade union. Any of the organizations, companies and agencies(whose employees are prohibited from unionizing) may be liquidated, or their names changed due to government's re-organization, commercialization and/or privatization programmes ,and any such change may affect its status in terms of eligibility or otherwise of its employees to form or join a trade union.

concerned.

Earlier on, in the case of *Basorun V. Industrial Arbitration Tribunal*,¹⁷ the plaintiff had challenged the constitutionality of prohibiting him to be in the union of his choice. The plaintiff herein was a deputy manager in the Central Bank of Nigeria (CBN) and was also president of the CBN Employees Union, a duly registered union of junior employees of the bank. A trade dispute arose between the bank and the union. The matter was referred to the Industrial Arbitration Panel for its decision. The tribunal, in its award, recommended, among other things, that:

The Commissioner for Labour confirmed that award by an order exercised pursuant to his statutory powers, and therefore, it became binding. The plaintiff, however, challenged the action in the High Court, praying the court to declare that his constitutional right to remain in his chosen union had been infringed by the order of the commissioner. Adesanya, J. held that the terms of the confirmed award were wide enough to invite the intervention of the court, where an award of the Industrial Arbitration Tribunal had the effect of curtailing the freedom of choice of an employee (in this case, an employee of the CBN) to join a trade union of his choice.

Section 34 subsection (3), Part B, Third Schedule to the Trade Unions Act 2004 (as updated to 2010) provides for jurisdictional scope of re-structured trade unions, among which is National Union of Banks, Insurance and Financial Institutions, with areas of jurisdiction as “workers in banks and closely related institutions, such as mortgage companies, industrial and loan institutions ...”. However, this provision does not indicate whether or not CBN workers generally, or at least a category of the workers, are included or are entitled to be included, as members of that union; and none of the interpretation sections of the Act defines what 'bank' means in this context. On the other hand, section 11, subsection 1 (f) of the Act states in clear and unambiguous terms that 'it shall not be lawful for persons employed in any of the establishments to which subsection (1) of this section relates [which includes employees of the CBN] to combine, organize themselves, or to be members of a trade union, for purposes of employment...'. The Act came into effect on 1st November 1973. However, the listing of the establishments whose employees are prohibited from forming or joining a trade union came up as a result of an amendment to the Act in 1989.

The following points should be noted in respect of workers in some organizations who are prevented from forming or joining trade unions:

1. The Statute/Act establishing each of these organizations/agencies/establishments, and (where applicable) subsidiary legislation made pursuant thereto, is silent on the right or otherwise to unionize, but the nature of their duties/functions are very instructive with regard to determining their eligibility or otherwise for union membership.
2. The list of organizations whose members/employees are prohibited from unionizing, is not foreclosed or exhaustive. The Minister of Employment, Labour and Productivity may by order, specify more organizations that will come under the ambit of this prohibition. In the Laws of the Federation of

¹⁷ (Unreported) Suit No. LD/105/71, Lagos State High Court.

Nigeria, 2004 (updated to 2010), there is no additional list of such organizations apart from the existing seven contained therein. Notwithstanding, Section 11 subsection 1 (h) is couched in clear and unequivocal terms to automatically include 'every Federal or State government establishment the employees of which are authorized to bear arms'. The only problem is, whether it is only a section of the employees of such an organization that is authorized to bear arms or it has to be the whole of it, to bring the employees of that organization in the group of those ones prohibited from forming or joining trade unions. This writer submits that even if it is only a part of that organization that its members, or officers and men, are authorized to bear arms, all the employees of the organization will be affected, because any employee may be posted, transferred or elevated, to any department pursuant to an administrative decision or a statutory requirement. One organization that may fall under those in the prohibited list is the Nigeria Security and Civil Defence Corps (NSCDC). The establishment Act of NSCDC¹⁸ is silent on issue of unionism. Unless there is an order published by the Minister in a Federal Gazette to prohibit NSCDC employees from forming or joining a trade union, the most reliable provision we can fall back on is section 11 subsection 1 (h) of the Trade Unions Act. But there is no doubt that employees of NSCDC, by nature of their work as provided for in the NSCDC Establishment Act, provide 'essential services' within the meaning stated in section 48, subsection 1 (b) and First Schedule of Trade Dispute Act; section 7 (Interpretation section) of the Trade Disputes (Essential Services) Act, particularly section 7 (b) (iv) and (v) thereof; and finally, section 3 subsection (1) (a) to (u) of the NSCDC Establishment Act itself. An arm of the NSCDC has been trained and authorized to bear arms after all. Section 3 of the NSCDC (Amendment) Act 2007 provides: 'For the purpose of efficiently carrying out its functions set out in section 3 of the Principal Act, the Corps shall maintain an armed squad which shall be entitled to bear fire arms and deployed by the office of the Commandant General.'¹⁹

Whereas employees of the Nigeria Police Force (NPF) are clearly prohibited from unionizing, it is not clear whether their counterparts in the Traffic Warden Service (TWS) are equally prohibited. Although the TWS is, in a sense, part of the NPF, in the case of *Etim V. Inspector-General of Police*,²⁰ the Court of Appeal held (per Mohammed, JCA, who delivered lead judgment), while interpreting section 3, and section 59 subsections (1), (2) and (3) of the Police Act,²¹ that traffic wardens are not members of the NPF. Section 59 subsection (3) of the

¹⁸See Nigeria Security and Civil Defence Act, Cap N146, L.F.N. 2004 (updated to 2010). Commencement date was 28th June, 2003. The Act has no subsidiary legislation.

¹⁹The approval by Nigerian Government of arms bearing for NSCDC has been widely reported, eg: Njoku, L. 'Government Begins Arming of Civil Defence Corps'. *Guardian Newspaper* (Nigeria), 9 Sept. 2012, ngrguardiannews.com. Accessed on 20 Oct. 2012; 'Arming the Civil Defence Corps'. *This Day Newspaper* (Nigeria), 3 July, 2012. Editorial, thisdaylive.com Accessed on 20 Oct. 2012; 'President Jonathan Arms Nigerian Civil Defence with Sophisticated Weapons'. *Sahara Reporters* (New York), 13 July, 2012, saharareporters.com. Accessed on 20 Oct. 2012; Nigeria Security and Civil Defence Corps. 'Arms Handling: 58 NSDC Officers Conclude Training'. *NSCDC News*, 30 April 2012, nscdc.gov.ng. Accessed on 21 Oct. 2012.

²⁰[2000]F.W.L.R.(Pt. 21)767 at 782 paras. G-P, at 783 paras.A-B.

²¹Cap.359,L.F.N.,1990;re-enacted as Cap.P19, Vol.13, L.F.N., 2004 (as updated to 2010).

Police Act provides: 'The warden service shall be a part of the Nigeria Police Force, and accordingly references to the police force established under this Act shall, subject to the provisions of this Act, include references to the warden service'. Nevertheless, subsection (4) provides: 'Notwithstanding subsection(3) of this section, in so far as any enactment(whether passed or made before or after the commencement of this Act)requires police officers to perform military duties, that enactment shall not, in the absence of express provision to the contrary, extend to traffic wardens'.

The Police Act states that without prejudice to the generality of subsection (6) (of section 59), a traffic warden shall be required to deal, inter alia, with the following matters: '(a) general control and direction of motor traffic on the highway; (b) assisting pedestrians to cross the road; and (c)controlling vehicles stopping or parking in unauthorized places'²². It is in the light of the above-mentioned factors that we ought to give our opinion as to whether reference to the NPF in the Trade Unions Act and in related statutes, also extends to the TWS. But this writer does not intend to go further to give an opinion on this issue here.

Apart from the armed forces, the police and the NSCDC, there are other national security agencies, established 'for the effective conduct of national security'.²³ These agencies are (a) the Defence Intelligence Agency (DIA), (b) the National Intelligence Agency (NIA) and (c) the State Security Service (SSS). By the nature of their duties/functions, employees of these public organizations are authorized to bear arms, though not necessarily openly (by reason of the peculiarity of their jobs). However, the Act establishing these agencies does not expressly say that they are authorized to bear arms. Their general functions include the prevention and detection of crimes, protection and preservation of classified matters, intelligence services and general maintenance of security.²⁴ With respect to the DIA, such other responsibilities affecting defence intelligence of a military nature, both within and outside Nigeria, may be granted by the President, or the Chief of Defence Staff, as the case may be, as they may deem necessary. With respect to the NIA, such additional responsibilities affecting national intelligence outside Nigeria may be granted, as may be deemed necessary, by the National Defence Council or the President, as the case may be. In the case of the SSS, other responsibilities affecting internal security within Nigeria may be granted as the National Assembly or the President, as the case may be, may deem necessary. Based on the aforementioned duties/functions of these security agencies, apparently, their employees are not allowed to join or belong to trade unions.

Although the Federal Road Safety Commission (FRSC) is a para-military organization, it is not expressly listed as one of the bodies whose employees are prohibited from forming or joining trade unions. Neither the FRSC establishment Act nor its Subsidiary Legislation²⁵ mentions the status of the FRSC with respect to trade

²²S.59(6)(a) (c) of the Act. To get more information on the TWS, see the whole of s.59-69, and the Police Act Subsidiary Legislation.

²³See s.1 of National Security Agencies ('NSA') Act, Cap. N74, Vol. 9, LFN, 2004 (as updated to 31st Dec. 2010). See also, s.315(1)(a),(5)(d) &(6) of Nigeria's Constitution.

²⁴See s.2 of NSA Act. S. 2 (1)(a) (c) spells out the general duties of the DIA; s.2(2)(a) (b) spells out the duties of the NIA and s. 2(3)(a) (c) spells out those of the SSS.

²⁵See Federal Road Safety Commission (Establishment) Act, No. 22 of 2007, Cap. F19, Vol. 6 L.F.N., 2004 (updated to 2010); commencement, 25th May, 2007. See also National Road Traffic Regulations, S.I. 20 of 2004, commencement date as 12th January, 2004.

unions. But with respect to Laws on provision of 'essential services' (as stated above), it seems the FRSC is included; for instance, the organization may be said to engage in activities “... of, for, or in connection with, transportation of persons, goods or livestock by road...”²⁶. In view of its functions, its employees may be prohibited from forming or belonging to a trade union.

Another example is possibly the National Emergency Management Agency (NEMA). It performs critical functions with respect to emergency situations, such as disaster management, search and rescue operations, emergency relief operations and supply as well as rehabilitation of victims of 'natural or other disasters.' The interpretation of 'natural or other disasters' 'include any disaster arising from any crisis, epidemic, drought, flood, earthquake, storm, train, roads, aircraft, oil spillage or other accidents and mass deportation or repatriation of Nigerians from any other country'.²⁷ We submit that the expression 'other accidents' may also include fire disasters. Hence, it is unlikely that employees of that agency will be allowed to form or belong to trade unions.

3. The bodies prohibited are public bodies, that is, organizations engaged in services of the Federation or State Government, as opposed to private organizations. In contrast, prohibition of employees of organizations engaged in provision of “essential services” from embarking on strike or declaring a lock-out (which is not covered by this write-up), affects workers or employees of the specified bodies in both public and private organizations. Yet, it is arguable whether the expression 'such other establishments' contained in section 11 subsection 1(a) to(i) of Trade Unions Act includes private establishments, the employees of which the Minister may, by order, prohibit from unionizing; or it refers to the same public establishments. This issue borders on canons of interpretation.

4. The Trade Unions Act makes provision for “joint consultative committees” but it does not define what that means, and/or its functions, benefits and limitations, if any.

5. Although employees and employers in both public and private organizations engaged in the provision of 'essential services' are prohibited from declaring/embarking on strikes or lock-outs,²⁸ the Trade Unions Act is silent about the right or otherwise to unionize by employees and employers of private organizations who provide those 'essential services'. This may be a controversial point when we look at it from the perspective of section 40 of the Constitution. Similarly, it is difficult, if ever possible, to permit a right to unionize on the one hand and prohibit a right to go on strike or declare a lock-out on the other hand. However, where this exists, it will seem as giving a right with one hand and taking it away with the other, and is, therefore, counter-productive.

7. Prohibiting employees of an organization from unionizing simply on grounds of the nature of their work, or the managerial position they are holding, raises a constitutional question, which only the courts can resolve conclusively.

The following agencies should be areas of interest for further studies, as to whether or not they have a right to form or join a trade union: National Agency for Food and Drug Administration and Control (NAFDAC) and the National Drug Law Enforcement Agency (NDLEA).²⁹

²⁶See s. 7 (b) (iii) of Trade Disputes (Essential Services) Act, Cap. T9, Vol. 14, L.F.N. 2004 (as updated to 2010) (TD [ES]A).

²⁷See s.6 NEMA (Establishment, etc) Act, Cap.N33, Vol. 9,L.F.N. 2004 (as updated to 2010).

²⁸See s. 31 (6) (a) of TUA.

²⁹Look up the enabling Acts: NAFDAC Act Cap.N1,Vol. 9,LFN,2004,esp. s.5 and the NDLEA Act,Cap.N30, Vol. 9,LFN,2004,esp. s.3 & 4.

(d) Registration Refused on Grounds of Existing Registered Union

Registration of a trade union may be refused if it will lead to duplication or proliferation of trade unions or cause chaos in the society. The rationale behind this is that there is an existing union with similar aims and objectives which already sufficiently caters for the interests of workers of that category; hence it is unnecessary to set up another one. The object of this law is to maintain public order and protect the rights and freedom of others, to reduce existing chaos in trade unions and resultant economic instability by preventing proliferation of trade unions.³⁰ Refusal under this circumstance will not be an infringement on the right to form or belong to a trade union. It is predicated on public policy, and finds protection in case law, and above all, by section 45 (1) (a) of the Constitution of Federal Republic of Nigeria 1999, the country's grundnorm. Section 45 subsection (1) (a) provides:

- Nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate what is reasonably justifiable in a democratic society
- (a) in the interest of defence, public safety, public order, morality or public health, or
 - (b) for the purpose of protecting the rights and freedom of other persons...

An unregistered trade union is prohibited from functioning.³¹ No trade union shall be registered, except with the approval of the Minister of Employment, Labour and Productivity. The Minister has to be satisfied that the union seeking registration has met the requirements: '... that it is expedient to register the union either by re-grouping existing trade unions, registering a new trade union or otherwise howsoever'.³² The above stated 'derogation clause' contained in section 45 subsection 1 of the Constitution is in addition to the provisos found in most sections of the fundamental rights provisions contained in Chapter IV of the Constitution.

Restrictions are also imposed on use of names of trade unions. Thus, a trade union 'shall not be registered under a name that is identical with that of any existing trade union or so nearly resembling the name of any existing trade union as to be likely to deceive the members or the public.'³³

The Registrar of Trade Unions³⁴ shall refuse to register a trade union '... under a name containing any words which, in the opinion of the Registrar, are deceptive or objectionable in that they contain a reference (direct or indirect) to any personage, practice or institution, or are otherwise unsuitable as name for a trade union'.³⁵ Even after a trade union has been registered, the minister may, due to overriding public interest, revoke the certificate of registration of any trade union specified in Part A of the Third Schedule to the Trade Unions Act.³⁶ There are several benefits of registration for a trade

³⁰See s. 3 (2) and s. 5 (4) of TUA; and the cases of *Erasmus Osawe and Ors V. Registrar of Trade Unions* (1985) 1 N.W.L.R. (Pt. 1), p. 755; (1985) 5 SC 348, and *Reg. Trustees Health V. Medical Workers* (2008) 1 KLR (Pt. 248), p. 655. See also s. 3 of TD (ES) A..

³¹See s. 2 of TUA.

³²See s. 3 (2) of TUA. See also s. 5 thereof.

³³See s. 6 (1) of TUA.

³⁴See s. 46 and 54 of TUA.

³⁵See s. 6 (2) of TUA.

³⁶See s. 7 (9) of TUA.

union, but this goes beyond the scope of this article to discuss.³⁷

The Trade Unions Act provides for compulsory recognition, by an employer, of a registered trade union.³⁸ But the provisions of section 25 of the Act under which this appears have contents totally unrelated to its heading. The Trade Unions (Amendment) Act 2005, which has been incorporated in the 2010 update of the Act, is also silent about it. According to Uvieghara, the provision of compulsory recognition of trade unions by employers was first enacted by the Trade Unions Act 1973, and was modified by section 1 of the Trade Unions (Amendment) Act 1978.³⁹ However, this author does not say whether it existed in the Trade Unions Act 1990.

Section 24 subsection (1) of the 1978 Act provided that once a trade union was registered in accordance with the provisions of the Act, and there were persons in the employment of an employer that were members of that union, the employer must accord recognition to that trade union. Section 24 subsection (2) provided the penalty for deliberate failure by an employer to recognize any such registered trade union.

We submit that the non-inclusion of this provision in the current Trade Unions Act was perhaps due to an oversight by reviewers of the Act, the more so that the head notes of section 25 of Trade Unions Act 2004 states: 'Recognition of registered trade union obligatory'. If this is an inadvertent omission, it is taken care of by the Revised Edition (Laws of the Federation of Nigeria) Act 2007 [an Act repealing the Revised Edition (Laws of the Federation of Nigeria) Act 1990].⁴⁰ Section 2 thereof states: "An inadvertent omission, alteration or amendment of any existing statute shall not affect the validity and applicability of the statute". Section 4 (Interpretation section) states: "existing statutes" means any enactment, subsidiary instrument, legislation in force before giving of effect to the provision of this Act".

The following are instances where government has given orders, either for trade unions to be entitled to be compulsorily recognized by their employers, or to make it unlawful for employees of such trades, occupations or industries to form or become members of trade unions.

Compulsory recognition orders have been given in respect of the following: Trade Union (Compulsory Recognition) Order⁴¹ in respect of Machelin (Nig.) Ltd and a trade union. That order states that the Consolidated Petroleum, Chemical and General Workers' Union of Nigeria is entitled to be recognized by Michelin (Nigeria) Limited as representing the junior workers of that company with effect from the publication of that Order in the Federal Gazette. Then section 7 (Interpretation section) of the Trade Disputes (Essential Services) Act, particularly subsection (b) (iv) and (v), states that the purposes of the recognition are as follows:

- (a) Collective bargaining in respect of
 - (i) wages and salaries of junior workers
 - (ii) hours of work and general conditions of service of the said workers.

³⁷See eg Uvieghara, E.E., note 13 above, at 338.

³⁸See s. 25 of TUA.

³⁹Uvieghara, E.E., note 13 above, at 339.

⁴⁰Date of commencement, 25th May, 2007. See Vol. 1, L.F.N. 2004 (as updated to 2010), p. xcix.

⁴¹L.N. 18 of 1976, re-enacted as Trade Unions Act Subsidiary Legislation, Cap T 14, Vol. 24, LFN, 2004 (updated to 2010).

- (b) Such other ancillary matters as are normally within the competence of a trade union.

Another compulsory recognition Order was given in respect of Lagos Air-port Hotel Limited and a trade union. That Order, known as the Trade Union (Compulsory Recognition) (No. 2) Order,⁴² provides that the Foods and Drinks Workers' Union of Nigeria, is entitled to be recognized by Lagos Air-port Hotel Limited, as representing the junior workers in the employment of the company and to be accorded the rights and privileges enjoyed by a trade union as specified in that Order.

On the other hand, by the Trade Unions (Prohibition) (Federal Fire Service) Order, it shall be unlawful for employers of the Federal Fire Service to combine, organize themselves or become members of a trade union. Section 1 subsection (1) (a) and (b) of Trade Disputes (Essential Services) Act⁴³ empowers the President of Nigeria to proscribe trade unions or associations, any of the members of which are employed in essential services, if it (a) is or has been engaged in acts calculated to disrupt the economy or acts calculated to obstruct or disrupt the smooth running of any essential service; or (b) has, where applicable, wilfully failed to comply with the procedure specified in the Trade Disputes Act in relation to the reporting and settlement of trade disputes.⁴⁴

Section 3, subsection (a) of the same Act places restriction on formation of new trade unions or associations consisting of the same or substantially the same members as those of proscribed union. Such a trade union or association shall not be registered under the Trade Unions Act until a period of not less than six months has elapsed since the date of the proscription order. Subsection (b) of this section provides that no association having the same or similar objectives, and consisting of the same or substantially the same members, as those of the proscribed association shall be formed until a period of not less than six months has elapsed since the issuance of the proscription order.⁴⁵ Section 9 of Trade Unions Act provides for compulsory dissolution of trade unions in certain circumstances, where (a) application for registration of a trade union is finally refused; or (b) the registration of a trade union is cancelled under section 7 of the Act, that is, by reason of registration obtained by fraud or as a result of mistake; or where any of the purposes of the union is unlawful; or that despite warning in writing from the Registrar of Trade Unions, the union has deliberately contravened or continued to contravene any provisions of this Act or the Regulations; or the principal purpose for which the union is in practice carried on is a purpose other than the terms and conditions of employment of workers; or the union though still in existence, has ceased to function; or the union has ceased to exist.⁴⁶ Finally, section 10 of Trade Unions Act provides for voluntary dissolution of trade unions.

⁴² L.N. 69 of 1976, re-enacted under Trade Unions Act Subsidiary Legislation, Cap. T14, Vol. 14, L.F.N., 2004 (updated to 2010).

⁴³ L.N. 42 of 1976 re-enacted under Trade Unions Act Subsidiary Legislation, Cap. T14, Vol. 14, L.F.N. 2004 (updated to 2010). But see Art. 4 of ILO Freedom of Association and Protection of the Right to Organise Convention 1948(No.87), stated in notes 8 & 9 above.

⁴⁴ See, generally, TDA.

⁴⁵ For a more elaborate information, see, generally, TD (ES) Act. See, generally, TDA.

⁴⁶ See s.7(1) (a) (f) of TUA. See also subsections (2) & (3) of s. 7.

It is important to note that although most of the registered and 'popular' trade unions are those of employees/workers, there are also many of them that have been formed by employers.⁴⁷

Formation of Federation of Trade Unions

One of the outstanding innovations of the Trade Unions (Amendment) Act 2005 was the provision for formation of a Federation of Trade Unions.⁴⁸ Section 30, subsection (1) of Trade Unions Act 2004 provides as follows: 'Subject to this section, two or more trade unions whose members are employed in the same trade, occupation or industry, or in substantially similar trades or industries, may form a Federation of Trade Unions ...'. The conditions for formation of a Federation of Trade Unions are as laid down in that Act.⁴⁹ On another note, section 31 of the Trade Unions Act provides for admission of further trade unions to membership of a registered federation. Under this section, the conditions are liberal, but with a proviso:

Subject to this section, a trade union may become a member of a registered Federation of Trade Unions, whether or not members of the trade union wishing to join the registered Federation of Trade Unions are employed in trades, occupations or industries which are similar to the trades, occupations or industries of the trade unions which formed the registered federation which the trade union seeks to join.⁵⁰

The combined effects of sections 30 and 31 of Trade Unions Act are that: the Nigeria Labour Congress (NLC) ceases to be the Central Labour Organization, which invariably paves the way for Federation of Trade Unions (FTUs) to emerge and thrive. The supposed monopoly of the NLC has consequently, been broken. By these 'reforms', unions have been decentralized, with resultant diffusion of power. Labour unions can now enter into alliances to form a Federation of Trade Unions even if they belong to different trades, occupations or industries. As at the time of writing (in July 2012), there were two FTU's in Nigeria: The Nigeria Labour Congress (NLC) and Trade Union Congress (TUC).⁵¹

⁴⁷Some examples include : National Union of Agricultural and Allied Employers, National Union of Dock Labour Employers, Hotel and Personal Services Employers' Association, Construction and Civil Engineers Employers' Association of Nigeria, Road Transport Employers' Association, Precision, Electrical and Related Equipment Employers Association, Nigeria Employers' Association of Banks, Insurance and Allied Institutions; Association of Food, Beverage and Tobacco Employers, and Performing Musicians Employers Association. There are other employers' unions in automobile, iron and steel, shipping, metal products, leather, footwear and rubber industries, paper and paper-board manufacturers, furniture, fixture and woodworking, textile, garments and tailoring; etc.

⁴⁸See s. 7 (1) and (2), and s. 8 (1) of the Trade Unions (Amendment) Act 2005 as incorporated into s. 30 of TUA 2004 (as updated to 2010).

⁴⁹S. 30 (1) (a) (c), (2), (3), (4), (5) and (6) of TUA.

⁵⁰See also s. 6 (a) of Trade Unions (Amendment) Act, 2005, which amended the TUA 1990 ("the Principal Act").

⁵¹The President of NLC is Comrade Abdulwaheed Omar while that of TUC is Comrade Peter Esele

Ordinarily, the right by trade unions to join any federation of trade unions of their choice is proper. However, it also has the potential of creating counter-productive effects on the labour unions concerned as well as chaos in the nation. First, such unions may have differences in interests and salary structures. For instance, in the universities, ASUU (Academic Staff Union of Universities), SSANU (Senior Staff Association of Nigerian Universities), NASU (Non-Academic Staff Union of Educational and Associated Institutions) and NAAT (National Association of Academic Technologists), are bodies affiliated to the NLC, whose members have, fundamentally, different interests and salary structures. Therefore, it may be difficult for them to effectively mobilize themselves for collective bargaining to broker collective (bargaining) agreements.⁵² The other issue is that there may be chaos in the nation when members of a FTUs declare a state-wide or nation-wide strike or lockout on a matter that affects only a segment of the federated union, as opposed to an interest that affects all member unions of the federated union. Such an industrial action has the capacity to cripple economic and other activities in the country unnecessarily, especially considering the growing incidence of “sympathy strike” or “solidarity strike” amongst workers nowadays.

Similarly, the Trade Union Congress of Nigeria (TUC) is made up of over twenty unions that have different trades, occupations, or industries.⁵³ What is common to all of them is that, it is a federation of senior staff unions, but many of them belong to different trades, occupations and industries. It should also be noted that even a trade union may have members who belong to different occupations and therefore susceptible to the same 'problems' as an FTU, as outlined above; SSAUTHRIA, and Association of Food, Beverage and Tobacco Employers, are some of such associations.

Role of the ILO in Trade Union Activities in Nigeria

Nigeria is a Member State of the ILO. It is imperative to note that the ILO, a specialized agency of the United Nations, watches over the activities of its constituents/member countries to ensure that they comply with decent international labour standards. The ILO Office for Nigeria, Ghana, Liberia, Sierra Leone and the Gambia, is located in Abuja, Nigeria, and “coordinates and oversees the activities undertaken in these five West African countries”.⁵⁴

Nigeria has come under searchlight of the ILO. Thus, the ILO has received and considered several complaints/cases on Nigeria on issues such as right to form or join trade unions.⁵⁵ prohibition of employers and workers from forming or joining

⁵²Zechariah, M. “Examine the Trade Unions (Amendment) Act, 2005: it's Innovations and Effects on Labour Unions”. University of Jos, Master of Laws, Seminar Paper, 14 Dec. 2009, p. 10, 11, 20 & 21.

⁵³E.g., Agriculture and Allied Senior Staff Association (AASSA), Air Transport Service Senior Staff Association of Nigeria (ATSSSAN), Construction and Civil Engineering Senior Staff Association (CCESSA), Senior Staff Association of Universities, Teaching Hospitals and Research Institutes and Associated Institutes (SSAUTHRIA), Academic Staff Union of Secondary Schools (ASUSS) and Association of Professional Footballers of Nigeria.

⁵⁴See ILO. “ILO Office for Nigeria”. *ILO*, Geneva, n.d. ilo.org. Accessed on 22 Oct. 2012.

For example, by those in Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security, Printing and Minting Company Limited, the Central Bank of Nigeria and Nigeria Telecommunications.

⁵⁵ILO. “Freedom of Association Cases”; Case No. 2267 (Nigeria); Complaint Date: 26 March, 2003” *ILO*, Geneva, 2003. ilo.org. Accessed on 10 Oct. 2012.

organizations of their choice if another organization exists; and restrictions on right to unionize by workers in the export processing zones (EPZs). Other issues are criminalization of (violent-free) strikes, arrest and detention of trade union officials, and so on. In 2003, the Academic Staff Union of Universities (ASUU) alleged “acts of anti-union discrimination including dismissals, and the raiding and sealing of trade union premises during a strike at the University of Ilorin”.⁵⁶ Following the enactment of the Trade Unions (Amendment) Act, 2005, ASUU lodged a complaint with the ILO: “The complainant organization alleges that the Government's 2005 amendments to the Trade Union Act adopted without proper tripartite consultation, violates established freedom of association principles on strikes, essential services and the right to organize”.⁵⁷

The ILO has extensively reviewed a number of provisions of Nigeria's labour statutes and labour policies and practices, and has made some observations and recommendations as follows:

In its previous comments, the Committee had raised its concern over the legislatively imposed trade union monopoly and in this respect, it requested the Government to amend section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee notes that the Government states in its report that the Trade Union (Amendment) Act 2005 has addressed this concern by, inter alia, stating in section 2 that “... 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”, and that union membership is therefore voluntary including in national practice backed by jurisprudence. Observing that section 3(2) of the Trade Union Act has not been amended by the language of the 2005 Trade Union (Amendment) Act, the Committee considers that the maintenance of the restriction in section 3(2) contradicts the voluntary union membership stipulated in section 12 (4) of that Act. The Committee reiterates that under Article 2 of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction

⁵⁶ “ILO. Freedom of Association Cases”. *ILO*, Geneva, 2005. See Case No. 2432 (Nigeria). Complaint Date: 6 June, 2005. ilo.org. Accessed on 10 Oct. 2012.

⁵⁷ ILO. 'Follow up to the Conclusions of the Committee on the Application of Standards'. International Labour Conference, 100th Session, June, 2011. *ILO*, Geneva, 2011. ilo.org. Accessed on 10 Oct. 2012; See also, ILO. “Supervising the Application of International Labour Standards for Nigeria”. *ILO*, Geneva, 2011. ilo.org. Accessed on 10 Oct. 2012. ILO. “Reports of the Officers of the Governing Body; First Report: Observance by Nigeria of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98): Report on the Direct Contacts Mission to Nigeria” (17–21 August 1998). *ILO*, Geneva, 1998. ilo.org. Accessed on 10 Oct. 2012; “ILO Wants Nigeria to Amend Sec 3 (2) of TU Act”. *Nigerian Tribune*, 2 March 2011. tribune.com.ng Accessed on 9 Oct. 2012.

whatsoever (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 45), and that it is important for workers to be able to establish a new trade union for reasons of independence, effectiveness or ideological choice. It therefore once again requests the Government to amend section 3(2) of the principal Trade Union Act taking into account the aforementioned principles.⁵⁸

The ILO has further noted as follows:

The Committee notes the comments of the International Trade Union Confederation (ITUC) dated 4 August 2011 on the application of the Convention in particular to violence against and arrest of union members in oil and health sectors, as well as police repression of workers participating in meetings and dismissals of strikers. The Committee recalls that arrest, even if only briefly, of trade union leaders and trade unionists, and of employers' organizations, for legitimate activities in relation with their right of association constitutes a violation of the principles of freedom of association.... The Committee once again recalls that workers, without distinction whatsoever, shall have the right to establish and to join organizations of their choosing and that the only exceptions authorized by the Convention are members of the police and armed forces, who should be defined in a restrictive manner and should not include, for example, civilian workers in the manufacturing establishments.⁵⁹

Moreover, the ILO has noted, with interest, efforts made by the Government of Nigeria to tackle the problem posed by section 13(1) of the 'EPZ Authority Decree 1992', which provision 'makes it difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the EPZ.'⁶⁰ Section 13(1) of the Act provides: 'No person shall enter, remain in or reside in a Zone without the prior permission of the Authority'. Subsection (2) provides for the penalty for contravention of the provisions of subsection (1); thus, any person who contravenes this provision shall have his permit revoked by the Authority. As a preliminary step towards amending this provision, the Federal Ministry of Labour and Productivity had published a document entitled: 'Guidelines on Labour Administration Issues in Contract Staffing/Outsourcing in Oil and Gas Sector'. The ILO, therefore, requested the Government to transmit a copy of that guideline to it, while it (the Government) should take the necessary steps to amend the relevant legislation, that is section 13 of NEPZA. At this juncture, we ought to know that recommendations or decisions of the ILO do not have a binding force; in other words, they are merely advisory, and not enforceable. Therefore, the ILO cannot impose sanctions on governments. The ILO receives or registers complaints against entities that are in breach of its rules, and treats the cases accordingly. It draws the attention of the

⁵⁸ ILO. 'Follow up to the Conclusions of the Committee on the Application of Standards', *ibid*.

⁵⁹ *Ibid*. The Act was first promulgated as the Nigeria Export Processing Zones Authority Decree, No. 63 of 1992, with commencement date as 19th November, 1992. It has been retained as the Nigeria Export Processing Zones Act ('NEPZA'), Cap. N107, Vol. 10, the Laws of the Federation of Nigeria, 2004 (as updated to the 31st day of December, 2010).

⁶⁰ For the various methods of expressing consent to be bound by a treaty, see, e.g., Art. 11-17 of the Vienna Convention on the Law of Treaties, 1969 ('VCLT').

affected states to the complaints and entertains their responses, if any. A willing member state may be guided by an ILO recommendation to enact, amend, strengthen or enforce its national laws to comply with international labour standards/conventions. However, a labour convention, being a treaty, has binding force if it has been voluntarily entered into (signed), ratified, accepted, approved and/or acceded to (as the case may be), by a party thereto,⁶¹ based on the basic principle of international law known as *pacta sunt servanda*,⁶² meaning that treaty obligations must be complied with or respected in good faith.⁶² We submit that ILO recommendations predicated on a labour convention, issued against a state/an entity that is in violation of labour standards, if not complied with by that state/entity, is tantamount to breach of the convention itself; consequently, appropriate measures, such as sanctions, may be imposed on that state/entity by the relevant authorities.

Conclusion

The Trade Unions Act 2004 (as updated) has tremendously widened the scope of the right to form and join a trade union, or a federation of trade unions, as the case may be. An employee or employer has a right to form and join a union of his/her choice or not to join at all; a right to remain in the union and a right to opt out of it. The monopoly of the Nigeria Labour Congress (NLC) as the sole Central Labour Organization has been broken, resulting in decentralization of labour unions and therefore diffusion of powers. This has given birth to two Federations of Trade Unions - the Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC), with possibilities of more emerging. However, the democratic face given to Labour Unionism has both positive and negative effects on, or implications for, trade unions in general, because some of the rights of trade unions have been curtailed, for instance, in relation to certain establishments prohibited from forming or joining trade unions, and proscription of a trade union by a presidential order. The right of employees to unionize has come a long way, but there is a need to embark on more realistic reforms to forge ahead.

We recommend that the right to unionize should be the inalienable right of an employer and an employee in every establishment. On the other hand, all employers and employers' organizations ought to exercise a high sense of responsibility in their conducts because every right goes with duties/obligations. Even though some establishments such as the armed forces and the police are exempted from exercising the right to form and belong to trade unions, their welfare should be well taken care of, so that they will not feel as if some benefits have been withheld from them by reason of their not being allowed to form and join trade unions.

Secondly, in order to guard against conflicting interests and chaos in labour relations and union activities, trade unions and federations of trade unions should consist of only trade unions who belong to the same, or substantially the same, trades, occupations or industries.

Thirdly, the list of establishments prohibited from forming or joining trade unions, those that have been given compulsory recognition to unionize, those that have

⁶¹ Latin for 'agreements must be kept'.

⁶² See, e.g., Art. 26 of VCLT. See also Art. 27 & 46 of VCLT,

& Art. 2, para. 2 of United Nations Charter 1945; cf Art. 34 of VCLT, Art. 2, para. 6 of UN Charter, etc.

been proscribed, and those that have been dissolved, should not only be published in a Federal Gazette but should also be circulated to all national and state libraries, published on official websites of relevant Federal Government and state establishments and distributed to all national secretariats/offices of registered trade unions and FTUs. The national secretariats/offices of the respective trade unions and FTUs should, in turn, make copies available to their branches and/or affiliates as the case may be. Importantly too, in view of the crucial roles played by the Industrial Arbitration Tribunals (IATs), and the National Industrial Court (NIC), such bodies should also be given access to all necessary information that will facilitate the smooth dispensation of justice, including information on recognized, dissolved or proscribed trade unions.

Fourthly, the law against discrimination of persons for purposes of joining trade unions of their choice, should be widened to prohibit discrimination on other grounds such as sex, physical disabilities, HIV/Aids, et cetera; provided that such persons are recognized as, first and foremost, workers within the ambit of the Law.

Fifthly, a union should not be proscribed merely because of the acts of its members; instead, sanctions should be meted out only to individual members of that group whose acts are contrary to an existing/extant Law, or indeed, to a union rule; and the proscription order should come from a court and not by an administrative body or a presidential order.

Since Nigeria has voluntarily chosen to remain as a Member State of the ILO and has ratified or acceded to major ILO Conventions on trade unionism and labour standards, it behoves her to adhere to good/international best practices/standards in labour/industrial relations as stipulated under section 7 subsection (6) of the NIC Act 2006, and section 254C subsection (1) (h) and (vi) and subsection (2), of the 1999 Constitution.⁶³

⁶³ See, for instance, Adejumo, B. A. 'The National Industrial Court of Nigeria: Past, Present and Future'. Being a Paper Delivered at the Refresher Course Organised for Judicial Officers of Between 3 – 5 Years Post Appointment by National Judicial Institute, Otutu Obaseki Auditorium, Abuja on the 24th March, 2011. *NIC*, 2011. ilo.org. Accessed 2 Nov. 2011. See also s. 19 (d) of Nigeria's Constitution. Nigeria's 1999 Constitution has been altered three times, the last alteration being the Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010, which further altered the Constitution of the Federal Republic of Nigeria, Cap. C23, Laws of the Federation of Nigeria, 2004 ('the Principal Act') for the establishment of the National Industrial Court under this Constitution. The Act was assented to (by Mr. President) on 14th March, 2011. As at the time of writing, the National Assembly was in the process of effecting more alterations to the Constitution and was receiving inputs/memoranda from individuals and groups and/or holding public hearings/sessions in that regard.