

A LEGAL EVALUATION OF THE RIGHT TO STRIKE IN NIGERIA: CHALLENGES AND PROSPECTS

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Abstract

A Legal Evaluation of the Right to Strike in Nigeria: Challenges and Prospects (Abstract) This scholarly evaluation rigorously examines the legal framework governing the right to strike within the Federal Republic of Nigeria, illuminating the primary regulatory hurdles and proposing substantive reforms. While the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees freedom of association under Section 40, it conspicuously omits an explicit right to strike. Consequently, Nigerian organized labor is fundamentally reliant on statutory instruments, notably the Trade Disputes Act (TDA), which imposes stringent procedural prerequisites and limitations. This statutory reliance effectively transforms the right to strike from a constitutional right into a statutory privilege, which often undercuts its utility as an effective collective bargaining instrument. Judicial interpretation, exemplified by key decisions such as *Union Bank of Nigeria Ltd v. Edet*, has generally adopted a cautious and restrictive approach, frequently affirming the government's power to control industrial action through procedural non-compliance rulings and the application of the "No Work, No Pay" rule. Despite these pervasive legal and judicial constraints, industrial actions remain a critical mechanism by which workers demand fair treatment, improved working conditions, and adherence to collective agreements. The study posits that meaningful reform is imperative, advocating for: constitutional recognition of the right to strike; harmonization of Nigerian labor legislation with International Labor Organization (ILO) Conventions No. 87 and No. 98; and the establishment of robust legal safeguards against worker victimization. Such comprehensive changes would enable the right to strike in Nigeria to transition from a precarious legal privilege to a genuinely recognized and balanced instrument for advancing social justice and industrial harmony.

Keywords: Right to Strike, Freedom of Association, Trade Disputes Act (TDA) and Collective Bargaining

1. Introduction

Strikes have long been one of the most powerful ways for workers to make their voices heard. They allow employees to collectively put pressure on their employers when pushing for fairer wages, better working conditions, and the protection of their basic labor rights.¹ In today's world, the right to strike is widely recognized as a cornerstone of industrial democracy. It is deeply connected to the principles of freedom of association and collective bargaining both of which are protected under international instruments such as the International Labor Organization (ILO) Conventions No. 87 on Freedom of Association and No. 98 on the Right to Organize and Collective Bargaining.² Without this right, workers' ability to negotiate fairly with employers, whether in the public or private sector, becomes significantly limited leaving them open to exploitation and unequal power dynamics.³ In Nigeria, however, the issue of strikes presents a complex paradox. On one hand, strikes have become a familiar part of the country's social, political, and economic life. Unions and professional bodies such as the Academic Staff Union of Universities (ASUU), the Nigerian Labor Congress (NLC), and the National

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¹ B.A Adejumo., "The Right to Strike in Nigeria: Legal Perspectives" (Nigerian Labour Law Review, 2019).

² ILO Convention No. 87 on Freedom of Association and Protection of the Right to Organise, 1948; ILO Convention No. 98 on the Right to Organise and Collective Bargaining, 1949.

³ S. Fajana., *Industrial Relations in Nigeria: Theory and Practice* (Labour Press, 2006).

Association of Resident Doctors (NARD) often resort to industrial action to express their grievances and demand change⁴ On the other hand, the legal framework surrounding strikes in Nigeria remains highly restrictive. The Constitution of the Federal Republic of Nigeria 1999 (as amended) does not expressly recognize the right to strike,⁵ and the Trade Disputes Act imposes strict procedural conditions that make it extremely difficult for most strikes to meet legal requirements effectively rendering many of them unlawful on technical grounds.⁶ To make matters worse, court decisions have not been consistent, alternating between allowing and restricting strike actions, leaving the true legal position uncertain.⁷ This contradiction raises important questions about whether Nigeria's legal system has achieved the right balance between protecting workers' rights and maintaining national stability. The fact that strikes continue to occur frequently, despite these legal hurdles, highlights a clear gap between the law and real-life practice. This ongoing tension has often placed labor unions, the government, and the judiciary at odds with one another.⁸ Against this backdrop, this article aims to examine how the right to strike is legally recognized in Nigeria, focusing on the challenges created by both statutory and judicial restrictions and exploring possible reforms in line with international labor standards. Specifically, it will:

- (i) Review the constitutional and statutory provisions that regulate strikes in Nigeria;
- (ii) Analyze how courts have approached strike actions;
- (iii) Compare Nigeria's framework with international instruments; and
- (iv) Suggest reforms that could help balance workers' rights with national interests.

This study relies on doctrinal research methods, examining laws, constitutional provisions, judicial rulings, and international conventions to provide a detailed appraisal of the current legal framework governing the right to strike in Nigeria.⁹

2. Definition of "Strike" under Nigerian Law

The term "strike" carries both legal and industrial relations meanings. In Nigerian law, the main statutory definition is provided by the Trade Disputes Act (TDA), which describes a strike as: "a 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, to accept or not to accept terms of employment."¹⁰ This definition highlights the collective nature of a strike, a situation where workers, acting together, withhold their labor as a form of economic pressure on their employer. While the Labor Act does not directly define what a strike is, it does regulate employment conditions and trade union activities that are closely connected to the

⁴ E.E Uvieghara., *Labour Law in Nigeria* (Malthouse Press, 2001).

⁵ Constitution of the Federal Republic of Nigeria, 1999 (as amended), Sections 40 & 45.

⁶ Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004.

⁷ *Osakwe v. Registrar of Trade Unions* (1985) 1 NWLR (Pt. 4) 755; *Nigerian Union of Railway Workers v. Nigerian Railway Corporation* (1996) 4 NWLR (Pt. 442) 617.

⁸ B.A Adejumo., "The Right to Strike in Nigeria: Legal Perspectives" (2019).

⁹ Doctrinal methodology adapted from: Salami, O., "Legal Research Methods in Nigeria" (*Journal of African Law*, 2017).

¹⁰ Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004, s. 47.

exercise of this right.¹¹ Nigerian courts, over time, have also interpreted what constitutes a lawful strike, often insisting that workers must follow specific statutory procedures before a strike can be legally recognized.¹²

3. Theories of Labor Relations

Different schools of thought help explain why strikes occur and how they function within industrial relations:

- i) **Pluralist Theory:** This perspective sees the workplace as made up of different groups, employers, employees, and the state, each with its own interests. Conflict, therefore, is viewed as natural and inevitable. Strikes, from this standpoint, are legitimate tools for resolving such conflicts through collective bargaining and regulated negotiation.¹³
- ii) **Conflict Theory (Marxist Perspective):** From a Marxist lens, strikes represent a form of class struggle. Workers use industrial action to resist exploitation and demand a fairer share of resources and power within the economic system.¹⁴
- iii) **Rights-Based Approach:** This approach focuses on the idea that the right to strike is not just an industrial tactic but a fundamental human right. It flows from freedoms such as association, expression, and collective bargaining, grounding the strike in broader principles of justice and equality.¹⁵

4. International Standards on the Right to Strike

Globally, the right to strike is recognized as a core element of human and labor rights. The International Labor Organization (ILO) has consistently maintained that the right to strike is inseparable from Convention No. 87 on Freedom of Association (1948) and Convention No. 98 on the Right to Organise and Collective Bargaining (1949).¹⁶ Nigeria has ratified both conventions, but in practice, the implementation remains inconsistent. In addition, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 explicitly guarantees the right to strike under Article 8(1)(d).¹⁷ On the regional level, the African Charter on Human and Peoples' Rights (1981) - which Nigeria has ratified and incorporated into domestic law, protects the rights to freedom of association and expression, from which the right to strike has been judicially inferred.¹⁸

5. The Right to Strike: Fundamental Human Right or Statutory Privilege

Across many countries, the right to strike is treated as a fundamental human right, rooted in freedom of association. The ILO has repeatedly affirmed this position. In Nigeria, however, the picture is different. The right to strike is viewed more as a statutory privilege, dependent on strict adherence to the Trade

¹¹ Labour Act, Cap L1, Laws of the Federation of Nigeria 2004.

¹² *Nigerian Union of Railway Workers v. Nigerian Railway Corporation* (1996) 4 NWLR (Pt. 442) 617.

¹³ S. Fajana., *Industrial Relations in Nigeria: Theory and Practice* (Labour Press, 2006).

¹⁴ D. Otobo., *Industrial Relations: Theory and Controversies* (Malthouse Press, 2000).

¹⁵ *ibid.*

¹⁶ ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (ILO, Geneva, 2018).

¹⁷ International Covenant on Economic, Social and Cultural Rights, 1966, Art. 8(1)(d)

¹⁸ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9 LFN 2004.

Disputes Act (TDA).¹⁹ Although Section 40 of the 1999 Constitution (as amended) guarantees the freedom of association, it does not explicitly include the right to strike.²⁰ As a result, Nigerian courts often hold that a strike is only lawful when all statutory procedures have been properly followed including steps such as referring disputes to industrial arbitration, issuing strike notices, and exhausting all dispute resolution mechanisms. This creates a fundamental tension in Nigeria's labor system: while strikes are a common part of social and political life, their legal foundation remains weak and uncertain, caught between international human rights principles and restrictive domestic laws.

6. Constitutional Provisions

The Constitution of the Federal Republic of Nigeria 1999 (CFRN, as amended) guarantees the right to freedom of association under Section 40, which provides that: "Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests."²¹ This section gives workers the freedom to form and join trade unions - a key foundation for collective bargaining and industrial action, including strikes. However, the Constitution does not explicitly recognize the right to strike, unlike some other jurisdictions and international instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR).²² This omission has created legal uncertainty, allowing courts and legislation to treat strikes not as a fundamental right, but as an activity that depends strictly on procedural compliance.

7. Statutory Regulation

The Trade Disputes Act (TDA), Cap T8, LFN 2004, remains the primary law regulating strikes in Nigeria. Under the Act, a strike is only lawful when certain conditions are met:

1. There must be a trade dispute between employers and workers.
2. The dispute must be referred to mediation, conciliation, or arbitration through the Industrial Arbitration Panel (IAP) or the National Industrial Court (NIC).
3. All statutory dispute-resolution mechanisms must be exhausted before the strike begins.
4. At least seven days' notice must be issued before the commencement of the strike.²³

If these steps are not followed, the strike becomes unlawful, and workers may face penalties, including loss of wages, dismissal, or even criminal liability under the Act.²⁴ The Labor Act, Cap L1, LFN 2004, though mainly focused on employment conditions, also impacts strike actions indirectly. It imposes certain duties on workers and unions, particularly in essential service sectors, where strikes are tightly restricted or outright prohibited.²⁵

¹⁹ E.E Uvieghara., *Labour Law in Nigeria* (Malthouse Press, 2001).

²⁰ Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 40.

²¹ *ibid.*

²² International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, Art. 8(1)(d).

²³ Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004, ss. 4–18.

²⁴ B.A Adejumo., "The Right to Strike in Nigeria: Legal Perspectives" (Nigerian Labour Law Review, 2019).

²⁵ Labour Act, Cap L1, Laws of the Federation of Nigeria 2004.

8. Judicial Interpretation

The courts in Nigeria have significantly influenced how the right to strike is understood and applied. In *Osawe v. Registrar of Trade Unions* (1985) 1 NWLR (Pt. 4) 755, the Supreme Court upheld the government's authority to regulate union activities, stating that the right to strike is not absolute, but subject to legal control.²⁶ Similarly, in *Union Bank of Nigeria Ltd v. Edet* (1993) 4 NWLR (Pt. 287) 288, the Court of Appeal ruled that workers who go on strike without following the procedures in the TDA are not protected by law and can face disciplinary action.²⁷ In more recent cases, particularly before the National Industrial Court (NIC), judges have shown a more balanced attitude cautiously recognizing the right to strike as a legitimate part of industrial relations, but still within the strict boundaries of statutory requirements.²⁸ Some NIC decisions have acknowledged the international importance of the right to strike as reflected in ILO conventions, but Nigerian courts have consistently placed domestic law above international norms when conflicts arise.²⁹ As a result, the judiciary continues to adopt a restrictive stance, treating the right to strike as a statutory privilege rather than a constitutional guarantee.

9. Challenges to the Legal Recognition of the Right to Strike in Nigeria

Despite the prevalence of strikes in Nigeria, the legal and institutional framework imposes several obstacles that undermine their recognition as a legitimate exercise of workers' rights.

i) Restrictive Legal Procedures

The Trade Disputes Act (TDA) sets out demanding procedural steps that must be followed before any strike can be considered lawful. Workers are required to go through mediation, conciliation, arbitration, and possibly a referral to the National Industrial Court (NIC) before taking industrial action.³⁰ In reality, these processes are often lengthy, bureaucratic, and slow, making them unsuitable for addressing urgent workplace issues. As a result, strikes lose their effectiveness as spontaneous bargaining tools, since unions risk being declared unlawful if they act before completing these time-consuming formalities.³¹

ii) Criminalization and Penalization of Unlawful Strikes

Under the TDA, any union or group of workers that goes on strike without meeting all statutory conditions can face criminal sanctions.³ Courts have also consistently ruled that such strikes are unlawful, exposing workers to dismissal, wage loss, and other disciplinary actions.³² This tendency to criminalize industrial action discourages workers and unions from freely exercising their right to strike, thereby reducing its practical value as a legitimate form of protest.

iii) Government's Use of Injunctions and the "No Work, No Pay" Policy

The Nigerian government often turns to the courts for injunctions to stop unions from striking, particularly in vital sectors like education and healthcare. In *Attorney General of Oyo State v. Nigerian*

²⁶ *Osakwe v. Registrar of Trade Unions* (1985) 1 NWLR (Pt. 4) 755.

²⁷ *Union Bank of Nigeria Ltd v. Edet* (1993) 4 NWLR (Pt. 287) 288.

²⁸ E.E Uvieghara., *Labour Law in Nigeria* (Malthouse Press, 2001).

²⁹ ILO, *Freedom of Association: Compilation of Decisions of the Committee on Freedom of Association* (ILO, Geneva, 2018).

³⁰ Trade Disputes Act, Cap T8, Laws of the Federation of Nigeria 2004, ss. 4–18.

³¹ E.E Uvieghara., *Labour Law in Nigeria* (Malthouse Press, 2001).

³² *Union Bank of Nigeria Ltd v. Edet* (1993) 4 NWLR (Pt. 287) 288.

Labor Congress (NLC), for example, the court upheld the government's power to restrain strikes through injunctions, even when negotiations had already broken down.³³ In addition, the government regularly enforces the "No Work, No Pay" rule found in Section 43 of the Trade Disputes Act, which states that workers who go on strike are not entitled to wages during the period of the strike.³⁴ This rule is often applied punitively, as seen in disputes involving the Academic Staff Union of Universities (ASUU), where salaries were withheld to deter future industrial actions. Consequently, the policy has become a tool of economic pressure rather than a neutral enforcement mechanism.

iv) Weak Enforcement of Collective Bargaining Agreements

Even when strikes lead to successful negotiations the resulting collective agreements are frequently ignored or violated by employers and government authorities. A notable example is the repeated failure of the Federal Government to honor several agreements reached with ASUU, which has triggered recurring strike cycles. The absence of strong, binding enforcement mechanisms means such agreements are often treated as political promises rather than legal commitments.³⁵ This undermines trust between labor and government and weakens the power of strike-induced bargaining.

v) Political Interference in Labor Relations

Labor relations in Nigeria are often deeply politicized. Rather than treating strikes as genuine industrial disputes, governments have frequently viewed them as political threats. Over the years, successive administrations have used coercive tactics such as deregistering unions, freezing union bank accounts, or supporting rival factions to weaken organized labor. This kind of interference erodes union independence, discourages free association, and undermines the legitimacy of the right to strike.

vi) Poor Protection of Workers against Victimization

Although Nigerian labor laws theoretically prohibit unfair labor practices, in practice, workers who take part in strikes often face victimization through dismissal, demotion, or workplace discrimination. In contrast to countries where anti-victimization laws offer strong protection to striking workers, Nigeria's legal framework provides limited safeguards. Courts have typically sided with employers especially when strikes fail to meet procedural requirements leaving many workers unprotected and vulnerable.

10. Conclusion

This article has examined how the right to strike is legally recognized in Nigeria, considering the Constitution, statutory laws, court rulings, and international labor standards. It shows that although Nigerian workers are granted the freedom of association under Section 40 of the 1999 Constitution (as amended), the lack of an explicit constitutional right to strike has created a paradox strikes are common, yet often legally restricted. An analysis of laws such as the Trade Disputes Act (TDA) and landmark cases like *Union Bank v. Edet* (1993) reveals that Nigerian law places excessive procedural barriers on strikes, criminalizes non-compliance, and gives the government and employers wide powers to limit their impact through court injunctions and the "no work, no pay" rule. Despite these constraints, such

³³ Attorney General of Oyo State v. Nigerian Labour Congress (NLC) (Unreported, NIC Judgment, 2003).

³⁴ Trade Disputes Act, Cap T8, LFN 2004, s. 43 ("No Work, No Pay").

³⁵ B. A Adejumo., "The Right to Strike in Nigeria

restrictions have not stopped strikes; instead, they have fuelled greater unrest, as seen in repeated industrial actions by the Academic Staff Union of Universities (ASUU), the Nigeria Labor Congress (NLC), and various medical unions. Still, strikes should not be seen merely as disturbances. They represent an essential democratic means for workers to demand fair pay, safe working conditions, and respect for agreements reached through collective bargaining. However, if not properly managed, they can disrupt essential services and affect national stability, particularly in critical sectors like health and education. The real challenge for Nigeria lies in finding a fair balance between protecting workers' rights and maintaining public welfare. Meaningful reform is the only way forward. Nigeria must constitutionally recognize the right to strike, align its labor laws with ILO Conventions 87 and 98, strengthen the enforcement of collective agreements, and encourage a more progressive, worker-friendly approach in judicial decisions. At the same time, trade unions must act responsibly - ensuring that strikes are used as a last resort for legitimate labor grievances, not as tools of political confrontation⁽⁹⁾. In the end, the right to strike in Nigeria should evolve from being a fragile statutory privilege in to a clearly defined and fairly regulated fundamental right. Only then can strikes serve as a force for industrial justice and genuine social progress, rather than recurring symbols of conflict between labor and the state.

11. Recommendations

In the circumstances, the following recommendations are hereby submitted:

- i. The legislature should amend the Trade Disputes Act 2004 to provide a precise definition of 'essential services,' aligning this amendment with international standards set by the International Labor Organization (ILO). This will help eliminate ambiguities and prevent arbitrary interpretations that restrict workers' rights to strike.
- ii. The government should revise the Public Service Rules 2023 to exempt non-essential public servants from strike prohibitions. By aligning these rules with constitutional provisions and international labor standards, Nigeria can support the legitimate exercise of strike rights within the public sector.
- iii. Mediation mechanisms should be strengthened and institutional frameworks modeled after the UK's Advisory, Conciliation and Arbitration Service (ACAS) to ensure timely and effective mediation of labor disputes. This proactive approach could help reduce the necessity for strikes by facilitating dialogue and negotiation between workers and employers.
- iv. There should be an enhancement of judicial consistency through regular training and awareness programs especially for members of the National Industrial Court (NIC) to ensure consistent application of labor rights provisions, particularly regarding the interpretation of strike actions. This would foster legal predictability and build trust in the judiciary among labor unions and workers. Tripartite dialogue mechanism involving government, employers, and trade unions should be institutionalized to regularly discuss labor policies, worker rights, and strike-related regulations. This collaborative approach can enhance transparency and build a cooperative environment in labor relations, ensuring that workers' voices are adequately represented in decision-making processes.