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Protection and Promotion of Labour rights of Workers of Local Government and Allied Services in Nigeria: The role of the Nigeria Union of Local Government Employees

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ABSTRACT: *The 1999 Nigerian Constitution and other Nigerian laws seek the protection and promotion of the labour rights of Nigerian workers, including workers of the Local Government and allied services in Nigeria. This paper examines the role of the Nigeria Union of Local Government Employees (NULGE) in the protection and promotion of Labour rights of workers of the Local Government and allied services in Nigeria. The research methodology utilised is mainly doctrinal analysis of applicable primary and secondary sources. The paper finds that the violation of the labour rights of workers of the Local Government and allied services in Nigeria is unconstitutional. The paper suggests that the 1999 Nigerian Constitution should be amended to accord Nigerian workers, including workers of the Local Government and allied services a right to strike in consonance with the practice of other countries like France, South Africa, Argentina, Portugal, Angola, Rwanda and Brazil.*

KEYWORDS: labour rights, trade union, federation of trade unions, workers' trade unions, strike, picketing, essential services.

INTRODUCTION

Labour rights are legal rights as well as human rights, regarding industrial or labour relations between workers and employers[1]. In general, these labour rights influence working conditions in relations of employment[2]. The prominent labour rights, include: right to life; right to a National minimum wage; and right to collective bargaining. Workers, organised in trade unions such as the NULGE exercise the right to collective bargaining to improve working conditions of their members. Perhaps, the most prominent of these labour rights is the right to life. Other labour rights are actually dependent on this right. This is so, because without life, a worker cannot enjoy the other labour rights such as a right to a National Minimum wage.

It is disappointing that many of the labour rights of workers of the Local Government and allied services in Nigeria are being infringed upon. A typical example is the right to a National minimum wage. Needless to place on record that on 2 December 2020 workers of the Local

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1 See 'Labour Law / Definition, History, Elements & Facts/Britannica'< https://www.britannica.comotopic> accessed 2 July 2021.

2 *Ibid*.

Government and allied services in Plateau State took to the streets to protest against the refusal of the Plateau State government to pay the 30,000 naira (₦) National Minimum wage to the same, as enjoined by the National Minimum Wage Act 2019[3]. This is inspite of various international instruments signed by the Nigerian Government as well as Legislations put in place by the same to protect and promote the labour rights of Nigerian workers, including workers of the Local Government and allied services. The violation of the Labour rights of workers has adverse effect on victims of labour rights violation and the political economy of Nigeria. To be sure, lives of workers have been lost as a result of the violation of the labour rights of workers, contrary to the right to life guaranteed in section 33(1) of the 1999 Nigerian Constitution, Article 6(1) of the United Nations (UN) International Covenant on Civil and Political Rights (ICCPR) 1966 and Article 4 of the African Union (AU) African Charter on Human and Peoples' Rights (ACHPR) 1981. It should be re-called that on 18 November 1949, 21 striking miners of a coal mine situate at Enugu were shot dead by the British Colonial Police while fighting for 'back-pay' owed to them for a period of casualisation known as 'restoring' and protesting harsh working conditions.[4] Many persons really feel unhappy about the incident. To make it very bad, the government of Nigeria does not deal with or determine the employment of policemen and other security personnel who rough-handle or kill protesting workers.

A relevant question to ask at this juncture is: is the behaviour of the security personnel in rough-handling or killing protesting workers constitutional or lawful? Another pertinent question to put across is: should Nigeria provide for a right to strike in its constitution or law in line with the practice of other countries, including South Africa, France, Argentina, Angola, Rwanda and Brazil? Also, another relevant question to ask is: in safeguarding or securing Local Government and allied services workers' rights are there challenges being faced by the NULGE? These questions form the basis or foundation of this paper.

This paper examines the role of the NULGE in the protection and promotion of the labour rights of workers of the Local Government and allied services in Nigeria. This paper examines critically laws relevant to the study. This paper adopts the stance that the violation of Local Government and allied services workers' rights in Nigeria is unlawful, unconstitutional and contrary to international human rights' norms or treaties as well as the UN International Labour Organisation (ILO) Conventions 87 and 98 of 1948 and 1949, respectively. This paper shows what obtains in other nations and postulate solutions, which, if executed, could engender an end to the NULGE's challenges concerning protection and promotion of the Labour rights of workers of the Local Government and allied services in Nigeria.

Conceptual framework

A 'worker' is a key-word in this paper. It is:

[3] 'Minimum Wage: Protests ground Plateau LGAs – Punch Newspapers' <https://punching.com> minimum-wa…> accessed 23 December 2021.
[4] <http://www.pulse.ng and https://libcom.org>history>iva-val..> accessed 2 July 2021.

> any member of the public service of the Federation or of a State or any individual (other than a member of any 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, expressed or implied, oral or in writing, and whether it is a contract personally to execute any work or labour or a contract of apprenticeship[5].

The definition above is broad enough to encompass both junior and senior employees. Thus, workers in the Local Government service from Level 7 and above, below level 7 and other employees in the Local Government service as well as allied services can be regarded as workers within the meaning of workers under the TUA 2004. At any rate, an objection can be raised to the inclusion of people under a contract of apprenticeship, that is an apprentice and a contract personally to undertake any work or labour, that is an independent contractor in the definition of a worker in the TUA 2004. Arguably, these people cannot be considered to be under a contract of service, so as to call them workers. It might be plausible to amend the TUA 2004 to exclude these persons in the definition of a worker[6].

> Another key-word in this paper is 'employer'. It can be defined as:
> ... any person who has entered into a contract of employment to employ any other person as a worker either for himself or for the service of any other person, and includes the agent, manager or factor of that first mentioned person and the personal representative of a deceased employer.[7]

The employer of many Local Government workers in Nigeria is made-up of the Local Government Council and the Local Government Service Commission, established under the Local Government Law made pursuant to section 7 (1) of the 1999 Nigerian Constitution, as amended. In Delta State, for instance, section 80 of the Delta State Local Government Law[8] establishes the Local Government Service Commission for the State. The Commission is imbued with the power to:

(i) appoint people to the offices in the Local Government Service on grade Level 07 and above; and
(ii) determine the employment of the Local Government service officers[9].

A 'trade-union' is, also, another key-word in this paper. Section 1(1) of the TUA 2004 defines a trade union as:

> any combination of workers, or employers, whether temporary or permanent, the purpose of which is to regulate the terms and

5 See the Trade Unions Act (TUA) Cap T 14 Laws of the Federation of Nigeria (LFN) 2004, as amended by the Trade Unions (Amendment) Act (TUAA) No 17 of 2005, s 52.
6 AE Abuza, 'Lifting the Ban on contracting out of the check-off system in Nigeria: An analysis of the issues involved' (2013) 42(1) *The Banaras Law Journal* 61.
7 See the Labour Act Cap L1 LFN 2004, s 91.
8 Cap D 27 Laws of Delta State 2006.
9 *Ibid*., s 82(1).

> 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.

It is apparent from the statutory definition above, that an organisation must meet two conditions to qualify as a trade union in Nigeria, namely it must either be a combination of workers or employers and it must have as its purpose the regulation of the terms and conditions of employment of workers. With respect to the statutory definition, the contention can be made that it is not only workmen that can belong to a union concerning trade. Employers can also belong to a union concerning trade. In this way, in Nigeria there is in existence unions concerning trade of workers and employers. For example, the NULGE is a well-known Nigerian trade union of workers. A point to emphasise is that workers and employers cannot come together in one trade union.

The main purpose for which an association is formed is the distinguishing characteristic of a trade union from other associations. Regarding a trade union, the principal purpose must be workmen employment conditions as well as terms regulation, namely, collective bargaining. It means the process under which rules which will govern employment are negotiated between employers or association of employers and an organisation of workers or an organisation representing workers.[10] Of course, the fall-out of a successful bargain collectively is an agreement that is collective.[11].

It has been correctly argued,[12] that the omission of the word 'principal' which was contained in the old definition of a trade union[13] is inadvertent. This argument is buttressed by section 7(1)(d) of the TUA 2004 which emphasises that the Registrar of Trade Unions (RTU) must cancel the registration of any trade union if it is proved to his satisfaction that the principal purpose for which the union is in practice being carried on is a purpose other than that of regulating the terms and conditions of employment of workers.

In the author's view, any other purpose must be merely ancillary to the purpose of regulating the terms and conditions of employment of workers. In order to deal adequately with the lacuna highlighted above, it might be wise to amend the TUA 2004 by adding the word 'principal' to the word 'purpose', as contained in section 1(1) of the TUA 2004.

A 'federation of trade unions' constitute key-words in this paper. They refer to, in Nigeria, 'any association or combination of trade unions, whether temporary or permanent, the purposes of

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10 O Ogunniyi, *Nigerian Labour and Employment Law in Perspective* (Lagos: Folio Publishers, 1991) 276.

11 Note that s 48 of the TDA 2004 considers a 'collective agreement' to be an agreement for disputes resolution, regarding employment terms as well as physical work conditions reached by employers or employers' organisation and a representative workmen body.

12 EE Uvieghara, *Labour Law in Nigeria* (Lagos: Malthouse Press Ltd., 2001) 316.

13 See s 2 of the TUA Cap 20 LFN and Lagos 1958.

which include that of regulation of the terms and conditions of employment of workers'.[14] The notable federations of trade unions in Nigeria are the Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC). The members of the former are mainly trade unions of junior workers such as the NULGE. While the latter's membership is constituted by senior employees' unions of trade such as the Petroleum Employees and Natural Gas Senior Staff Association of Nigeria (PENGASSAN).

The powers of the federation of trade unions can be discerned from section 35(4), (5) and (6) of the 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act. These, include to engage in collective bargaining on behalf of any trade union when it is requested to do so by that trade union which is a party to the collective bargaining.

The *Black's Law Dictionary* defines 'picketing' another key-word in this paper, thus:

> The demonstration by one or more persons outside a business or organisation to protest the entity's activities or policies and to pressure the entity to meet the protesters' demands, especially an employees' demonstration aimed at publicizing a labor dispute and influencing the public to withhold business from the employer.[15]

Picketing is usually undertaken by workers or workers' trade unions in furtherance of strike actions.

Strike actions, often simply called strikes, are work stoppages engendered by the mass refusal of employees to work.[16] They usually occur in response to employee grievances. Strikes are sometimes utilised to put pressure on government to change policies.

A Nigerian enactment gives the meaning of a 'strike'which is another key-word in this paper. For instance, the TDA 2004 states that:

> 'strike' means the cessation of work by a body of persons employed acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer, or any person or body of persons employed or to aid other workers in compelling their employer or any person or body of persons employed to accept or not to accept terms of employment and physical conditions of work; and in this definition –
>
> (a) 'cessation of work' includes deliberately working at less than usual speed or with less than usual efficiency; and

[14] See s 51 of the 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act.
[15] BA Garner (ed), *Black's Law Dictionary* (St. Paul, MN: 9th edn, Thomas Reuters 2009) 1264.
[16] <http://wapedia.mobi/en/strike action> accessed 29 October 2010.

(b) 'refusal to continue to work' includes a refusal to work at usual speed or with usual efficiency.[17]

Four points may be highlighted as vital characteristics of a 'strike' going by the statutory meaning of the same thus:

(a) A strike which is not a fall-out of a dispute of trade cannot be considered as a strike under the 2004 TDA meaning.[18] In this way, a strike which is a protest or political may not be termed a strike in the country. For example, the mass protest and strike action of January 2012 by the NLC, TUC and with the members of the same against fuel or petrol pump price increment from ₦65.00 to ₦ 141.00 per litre may be regarded as a strike which is a protest or political and consequently could not, going by the statutory meaning of a strike, be termed a strike.[19]

(b) The statutory meaning of a strike is encompassing. To be precise, 'a go slow' or work to rule' may be regarded as a strike going by the statutory meaning of a strike. This is so, because it is deliberately working with less than normal efficiency or less than normal speed.[20]

(c) In order to amount to a strike, a common cessation of work must enure and the stoppage of work has to be deliberate. Thus, a strike cannot be said to occur if some workmen cease to work due to an external happening like apprehension of harm or a bomb scare by the Independent People of Biafra (IPOB).[21]

(d) A strike by members of a union of trade in support of strike by members of another union of trade is tantamount to a strike within the statutory meaning of a strike[22]

A short historical development of the Nigeria Union of Local Government Employees

In this segment, the discussion reveals that the formation of the NULGE dates back to the period when the military ruled Nigeria which came into being on 1 January 1914.It is noteworthy that the NULGE is a duly registered workers' trade union in Nigeria under the TUA 2004 which represents the interest of workers of the Local Government and allied services in Nigeria. The Union was actually founded in 1978 when the Nigerian Government merged the following unions:

i. Amalgamated Union of County and District Council Labourers of Nigeria
ii. LCC Mechanical, Clerical and Allied Workers Union;
iii. Muslim Town Council Workers Union;
iv. Nigerian Motor Drivers' Union;

[17] See s 48(1) of the TDA 2004.
[18] Note that the 2004 Trade Disputes Act in its s 48(1) states that a dispute between employees and employers, regarding physical conditions of work and the employment or non-employment or employment terms of any individual is a trade dispute.
[19] For details, see AE Abuza, 'Strike in Nigeria: Not Yet Victory for Nigerian Workers' (2006) 1 (1) *Delta State University Commercial and Property Law Journal* 72-74 and AE Abuza, 'A Reflection on Regulation of Strikes in Nigeria' (2016) 42(1) *Commonwealth Law Bulletin* (CLB) 6.
[20] Abuza, 'A Reflection on Regulation of Strikes in Nigeria', *Ibid*.
[21] *Ibid*.
[22] *Ibid*.

v. Nigerian Union of Local Authority Staff;
vi. Rivers State Council Workers Union;
vii. Sanitary Workers Union of Nigeria;
viii. Town Planning Authorities Staff Union of Western State of Nigeria;
ix. Western State Conservancy Workers' Union; and
x. Western State Wastes Disposal Employees' Union.[23]

It should be noted that the NULGE is affiliated to the NLC and has its National Secretariat in Abuja.[24]

The NULGE members comprise all the Local Government workers.[25] It has State Chapters and local branches and offices in all the States of the Federation of Nigeria.[26] Needless to point out that the NULGE has National, State and Local Government executives who protect the interests of its members as well as oversee the activities of the same.[27] Executives of the Local Government Branch report to the State Chapter executives who in turn report to the National executives.[28] The objectives of the NULGE include:

(a) regulation of relationship between workmen and employers and between workers and workmen;
(b) establishment and maintenance of just and proper hours of work, rates of pay and conditions of service; and
(c) promotion of the welfare of union members and staff.[29]

A vital point to put forward at this stage is that the formation of a workers' trade union to represent the interest of municipal workers is not unique to the nation. It is in accordance with what obtains in other nations it turns like Zimbabwe, South Africa, the United States of America (USA), Kenya and Namibia. For instance, there exist in the USA, Namibia, Kenya, Zimbabwe and South Africa, the American Federation of State, County and Municipal Employees; the Namibia Local Authority Workers' Union (NALAWU); the Kenya Local Government workers' Union; the National Association of Local Government Officers and Employees (Zimbabwe);

[23] See 'Nigeria Union of Local Government Employees' < https:// www. en.m.wikipedia.org> accessed 3 July 2021.
[24] <https://m. guardian. Ngo tag> nulge> accessed 3 July 2021. See, also, the Constitution of the Nigeria Union of Local Government Employees (CNULGE), as amended in 2016 and approved by the RTU on 21 March 2017, rule 1 (ii).
[25] Note that the NULGE members, also, include persons employed in Municipal Government, Municipal Government Service, Area Council, Development Councils/Areas/Centres, Public and private utility services, Town and Country planning service, joint transport service established under Government Edict or law, Pension Board of Staff of the Local Government, Commission of the Local Government Service, Waste Disposal Service as well as Environmental Sanitation Authority. See the CNULGE, as amended in 2016, rule 3(i)
[26] *Ibid.*
[27] *Ibid.* For details on the organs of the NULGE and duties of the Officers, see the CNULGE, as amended in 2016 (n 24), rules 6-25.
[28] *Ibid*.
[29] For details on the objectives of the NULGE, see the CNULGE, as amended in 2016, rule 2.

and the South African Municipal Workers' Union (SAMWU), respectively- all representing the interest of municipal workers.[30]

The Law and Labour rights of Workers of the Local Government and Allied Services in Nigeria

A discourse under Labour rights of Nigerian workers of the Local Government and Allied Services and the Law encompasses international agreements and municipal enactments in Nigeria. The major legal norms which seek to protect and promote the Labour rights of Nigerian workers, including workers of the Local Government and allied services are discussed as follows:

International Agreements

These international agreements include:

AU African Charter on Human and Peoples' Rights 1981.

Aside from signing and ratifying the African Charter, Nigeria has made the ACHPR an aspect of the country's municipal Law, as required by the ACHPR and the 1999 Nigerian Constitution. In *Abacha v Fawehinmi,*[31] the apex Court of Nigeria declared that because the ACHPR had been made a part of the law in the country, the same had a status greater than an international agreement and the Charter had become an aspect of the body of Laws in the country.

The ACHPR guarantees to every individual, including a worker of the local Government and allied services such labour rights as: right to life; right to the respect of the dignity inherent in a human being and to the recognition of his legal status; right to have his cause heard; right to receive information; right to express and disseminate his opinion within the law; right to free association, provided that he abides by the law; right to assemble freely with others; right to freedom of movement and residence within the borders of a State, provided he abides by the law; and right to work under equitable and satisfactory conditions and he shall receive equal pay for equal work in its articles 5, 7, 9(1), 9(2), 10(1), 11, 12(1) and 15, respectively.

A key short-coming of the ACHPR relates to its 'claw-back' phrases. In actuality, these are qualifications and phrases of limitations which allow, in situations of normality contravention of a duty for some specific reasons that are public in nature.[32] These phrases like 'within the law' which permeate the ACHPR allow countries in Africa to restrict labour rights to the highest

[30] <https://en.m.wikipedia.org'wiki>, <https:im.facebook.com,nalawu.18>, https://archiveshub.jsl.ac.uk>data>, and <http://www.icwa.orgDER-28 PDF> accessed 19 July 2021.

[31] [2000] 6 NWLR (Pt. 660) 228, Supreme Court (SC), Nigeria.

[32] H Rosalyn, 'Derogations under Human Rights Treaties' (1976 - 77) 48 Brit. Y.B Int. 281, quoted in NO Odiaka, 'Examination of the Claw-Back Clauses in the African Charter on Human and Peoples' Rights' (2015) 11 *Unizik Law Journal* 183 and AE Abuza, 'The Imperative of banning male genital mutilation or cutting in Nigeria: what lessons from other countries?' (2019) 45 (3) *Commonwealth Law Bulletin* 532.

degree permitted by municipal legislations, in this way undermining the scope as well as content of the same.[33]

Municipal Enactments

These municipal enactments include:

The Constitution of the Federal Republic of Nigeria 1999.

The Law above is Nigeria's basic law. It guarantees to every citizen, including a worker of the Local Government and allied services labour rights. To be specific, under its Chapter Two, it is provided that the sanctity of the human person shall be recognised and human dignity shall be maintained.[34] In addition to this, it is provided under its Chapter Two that:

(a) every citizen without discrimination on any group whatsoever, has opportunity for securing adequate means of livelihood as well as adequate opportunity to secure suitable employment;
(b) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life;
(c) the health, safety and welfare of all persons in employment are safeguarded and not endangered or abused;
(d) there is equal pay for equal work without discrimination on account of sex, or on any other ground whatsoever.[35]

[33] See F Ouguergouz, The African Charter on Human and Peoples' Rights (Martinus Nijhoff, 2003), quoted in Odiaka, *Ibid*., M Mutua, 'The African Human Rights System: A Critical Evaluation' 6 < https:// www. hdr. unpd. org/sites/default/files/mutua. pdf> accessed 20 January 2022 and and Abuza, *Ibid.* Furthermore, see the ACHPR, arts 9 – 13(1). Other international instruments which also guarantee to the workers, including workers of the Local Government and allied services the right to life, the right not to be subjected to torture or inhuman, or degrading treatment, slavery or servitude, and be required to perform forced or compulsory labour, right to a fair hearing, right to form or join or belong to a trade union or freedom of association, right to strike, right to collective bargaining and other labour rights, include: (a) UN ICCPR 1966, arts 7, 8, 19, 21 and 22(1); (b) Universal Declaration of Human Rights (UDHR) 1948, arts 4, 23 and 24; (c) UN International Covenant on Economic, Social and Cultural Rights (CESCR) 1966, arts 1, 8(1)(a) and 8(1)(d); (d)UN ILO Convention Concerning Freedom of Association and Protection of the Right to Organise 1948 (Convention 87 of 1948), arts 2 and 3; (e) UN ILO Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively 1949 (Convention 98 of 1949), arts 1, 3 and 4. Like the UN ICCPR, UN CESCR and UN ILO Convention 87 of 1948, the UN ILO Convention 98 of 1949 as at today has the effect of a legislation that enjoys domestication, as enjoined by the 1999 Nigerian basic law in its sub-section (1) of section 12 and, consequently, has the effect of law in the country. This is so, because Convention 98 above accords labour rights like as in its arts 1 to 4 and the country has ensured ratification of the same. See *Aero Contractors Company of Nigeria Limited v National Association of Aircrafts Pilots and Engineers and Two Others [2014] 42 NLLR (Pt. 133) 64, 717,* per Kanyip, Judge of the NICN. (f) the UN ILO Declaration on Fundamental Principles and Rights at Work 1998. See 'About the Declaration –ilo' <https://www.ilo.org> Lang-en> accessed 6 July 2021; (g) the Arab Charter on Human Rights (ACHR) 2004, arts 8, 10, 13, 20, 24 and 32; (h) the European Convention on Human Rights (ECHR) 1953, formerly known as Convention for the Protection of Human Rights and Fundamental Freedoms 1953, arts, 3, 4, 6, 10, 13, 14 and 13; and (h) The American Convention on Human Rights (AMCHR) 1969, arts 5(2), 6, 8, 13, 15, 16 and 23. Note that the ACHR, ECHR and AMCHR are not legally-binding on Nigeria, as the nation is neither a member of the Council of the League of Arab States or Council of Europe or Organisation of American States nor State-Party to the ACHR, ECHR and AMCHR.

[34] See s 17(2).

[35] See s 17(3).

Labour rights guaranteed to every person, including a worker of the Local Government and allied services can also be found in other provisions of the Nigerian Constitution. For example, under Chapter Four of the 1999 Nigerian Constitution, it is provided that:

(a) every person is entitled to a right to life;[36]
(b) every citizen is entitled to respect for the dignity of his person, and consequently - no citizen shall be subjected to treatment that is degrading or not human or torture; no citizen shall be placed under servitude or slavery; and no citizen shall be subjected to labour which is compulsory or forced;[37]
(c) every citizen shall be entitled to a hearing which is fair within a period that is reasonable by a court of law or other body created by legislation and composed in such a way as to ensure that it is not partial and dependent;[38]
(d) every person shall be entitled to the freedom of expression, including the freedom to hold opinions and to receive and impart ideas and information without any interference;[39]
(e) every individual shall be entitled to freely assemble and associate with other people, and in particular he may form or belong to a trade union or any other association for the protection of his interests;[40] and
(f) every citizen is entitled to freely move throughout Nigeria and to reside in any part of the same.[41]

An important section to take into cognisance is sub-section (1) of section 45 of the 1999 Nigerian Constitution. It declares that nothing in sections 37, 38, 39, 40 and 41 of the Constitution shall be considered to render any enactment not to be valid which is reasonably justifiable in a society that is democratic in the interest of public health, public order, public safety, public morality, defence or for the aim of protecting the freedom and rights of other individuals. To be specific, in *Pharmabase Nigeria Limited v Ilegbusi Olatokunbo*[42] the appeal Court stated that rights which are fundamental are not absolute. It should be re-called that in the earlier case of the *Registered Trustees of National Association of Community Health Practitioners of Nigeria v Medical and Health Workers Union of Nigeria,*[43] the Supreme Court of Nigeria held that the freedom of association guaranteed under section 40 of the 1999 Nigerian Constitution is not absolute but a qualified right which can be derogated from in consonance

[36] See s 33(1). This right was upheld in *Emmanuel Eze v The State* [2018] 16 NWLR (Pt. 1644) 1, 6, SC, Nigeria and *Stanley Azuogu v The State* [2018] 16 NWLR (Pt. 1644) 46, 51, SC, Nigeria.
[37] See s 34(1).
[38] See s 36(1). Note that the denial of a fair hearing to a party is fatal and renders the entire proceedings and judgment of a court null and void. See *Kembengta Obonna Effiong Offiong Andong and 6 Others v Okon Asuquo and 8 Others* [2020] 11 NWLR (Pt.1736) 580, 584, CA, Nigeria.
[39] See s 39(1).
[40] See s 40. This right was upheld in *Panya Anigboro v Sea Trucks Ltd* [1985] 6 NWLR (Pt. 399) 41, 62, CA, Nigeria. where the appellant an employee of the respondent brought an application under the Fundamental Rights (Enforcement) Procedure Rules 1979 before a High Court of Justice in Warri. The Court of Appeal held, on appeal, that the summary dismissal of the appellant because he joined a trade union other than the one preferred by the respondent was a violation of the appellant's right to freedom of association under section 37 of the 1979 Nigerian Constitution (now section 40 of the 1999 Nigerian Constitution).
[41] See s 41. This right was upheld in *Otu Gregory Apph and 5 Others v Mathias Oturie* [2019] 6 NWLR (Pt. 1667) 111, 113, CA, Nigeria.
[42] [2020] 10 NWLR (Pt.1732) 379,386, CA, Nigeria.
[43] [2008] 2 NWLR (Pt.1072) 575, 584, SC, Nigeria.

with section 45(1) of the 1999 Nigerian Constitution. Needless to say that sub-section (1) of section 45 can be considered as the clause of derogation. Clearly, the rights connected with workers in section 34(1), namely right not to be subject to a treatment which is degrading or not human or torture, slavery or servitude, and be required to perform forced or compulsory labour and section 36(1), that is right to a hearing which is fair within a period that is reasonable by a court of law or other body created by statute which are guaranteed under the UDHR, ACHPR, ICCPR, ACHR, ECHR and AMCHR, as indicated already, cannot suffer from derogation as a result of any enactment under the clause of derogation.

Another significant provision to take into cognisance is section 7(1) of the 1999 Nigerian Constitution which guarantees democratically elected local government councils in Nigeria, to be created by a law of every State. It is in pursuance of the provisions above, that the Delta State Government enacted the Delta State Local Government Law 2006, as disclosed before.

Section 254 C of the 1999 Nigerian Constitution is, also, another significant provision. It bestows on the National Industrial Court of Nigeria (NICN), established under section 254A (1) of the 1999 Nigerian Constitution, exclusive jurisdiction to hear and determine all labour or employment-related disputes, including employment disputes involving workers of the Local Government and allied services.[44]

Of course, the 1999 Nigerian Constitution, as amended by the CTAA 2010 brings to the fore the issue of the finality of the decision of the NICN. It must be pointed out that this issue has a long history. To cut matters short, it should be re-called that the TDA 1990 had provided in section 20 (3) that 'no appeal shall lie to any other body or person from any determination of the Court'. In 1992, this provision was substituted. The substitute provision is that 'an appeal from the decision of the Court shall lie as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria, 1979'.[45] In 2006, the substitute provision was substituted. The later substitute provision is that 'an appeal from the decisions of the Court shall lie only as of right to the Court of Appeal only on questions of fundamental rights as contained in Chapter IV of the Constitution of the Federal Republic of Nigeria 1999'.[46]

In 2010, the later substitute provision was substituted as can be discerned from section 243 of the 1999 Nigerian Constitution, as amended by the CTAA 2010. It states thus:

> (2) An appeal shall lie from the decision of the National Industrial Court as of right to the Court of Appeal on questions of fundamental rights as contained in Chapter IV of this

[44] For details, see the 1999 Nigerian Constitution, as amended by the Constitution (Third Alteration) Act (CTAA) 2010, s 254C (1)-(6). See also *Musa Ismaila Maigana v Industrial Training Fund and Another* [2021] 8 NWLR (Pt. 1777) 1, 9, SC, Nigeria.

[45] See Trade Disputes (Amendment) Decree No. 47 of 1992, s 6(a).

[46] See section 9(2) of the National Industrial Court Act (NICA)2006.

Constitution as it relates to matters upon which the National Industrial Court has jurisdiction.

(3) An Appeal shall only lie from the decision of the National Industrial Court to the Court of Appeal as may be prescribed by an Act of the National Assembly:
Provided that where an Act or law prescribes that an appeal shall lie from the decisions of the National Industrial Court to the Court of Appeal, such appeal shall be with the leave of the Court of Appeal.

(4) Without prejudice to the provisions of section 254 C (5) of this Act, the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final.

Needless to point out that sub-section (3) of section 243 of the 1999 Nigerian basic law, amended by the CTAA 2010 is similar in verbiage to sub-section (1) of section 9 of the NICA 2006.

It can be discerned from section 243 (2) and (3) of the 1999 Nigerian Constitution, as amended by the CTAA 2010 that the decision of the NICN shall be final save on questions of fundamental rights where an appeal can be filed before the Court of Appeal whose decision on the matter is final.

On 30 June 2017, the Supreme Court of Nigeria gave its decision on the issue of finality of the decision of the NICN in *Skye Bank Public Limited Company v Victor Anaemem Iwu*.[47] In the case, the respondent/ claimant was formerly a staff of Afribank Nigeria Public Limited Company. His employment was determined, upon his dismissal, on 6 July 2011 for gross misconduct by his employer, Afribank Nigeria Public Limited Company. The respondent/claimant instituted an action in the NICN against Mainstream Bank Limited, successor-in-title of Afribank Nigeria Public Limited Company, claiming, among other reliefs, a declaration for wrongful termination of his employment, unpaid salaries and other benefits allegedly due to him while in the course of his employment. Mainstream Bank Limited raised a preliminary objection on the NICN's jurisdiction. The NICN ruled that it was bestowed with the authority to hear and determine the issue. Being dis-satisfied with the decision of the NICN, the Mainstream Bank Limited appealed against the decision of the NICN to the Court of Appeal and subsequently applied to amend its Notice of appeal. The respondent/claimant raised an objection to the application to amend the Notice of appeal and stated that the Court of Appeal lacked the jurisdiction to hear the appeal. He argued that the NICN decisions can only be appealed on issues bordering on fundamental rights.

The Court of Appeal heard the preliminary objection and adjourned for ruling. During the pendency of the matter at the Court of Appeal, Skye Bank became the successor-in-title of the Mainstream Bank Limited and was granted leave of court to continue with the matter.

[47] [2017] LPELR 42595, SC, Nigeria.

Before the next adjourned date, Skye Bank applied to the Court of Appeal to state a case to the Supreme Court of Nigeria for its opinion on the constitutional issues raised in the respondent/claimant's objection, on the ground that there were two conflicting decisions of the appeal Court on its jurisdiction to decide Notices of appeal emanating from the NICN's judgments. In one decision, it held that it had appellate jurisdiction on all decisions of the NICN[48] while in the other decision, it held that its appellate jurisdiction is only on decisions bordering on fundamental rights[49], as disclosed before.

The Court of Appeal formulated three issues for the Supreme Court of Nigeria to determine under section 295 (3) of the 1999 Nigerian Constitution as follows:

(i) is the Court of Appeal as an appellate court created by the Constitution of the Federal Republic of Nigeria 1999 (as amended) having the jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine all appeals arising from the decisions of the NICN?
(ii) is there in existence any constitutional provision which expressly divested the Court of Appeal of its appellate jurisdiction over all decisions on civil matters emanating from the NICN?
(iii) is the Court of Appeal's jurisdiction to hear civil appeals from the decision of the NICN confined to only questions of fundamental rights?

The Supreme Court of Nigeria considered relevant statutory provisions, including sections 240, 242, 243(2), (3) and (4) and 254D (1) of the 1999 Constitution, as amended by the CTAA 2010 as well as section 9(1) and (2) of the NICA 2006 in coming to its decision in the case above. It declared that the literal interpretation of section 243(2) and (3) would lead to its ambiguous interpretation. The apex Court stated clearly that the National Assembly could not have intended that section 243(2) and (3) could validly curtail or circumscribe the right to appeal to the appeal Court over NICN's judgments expressly consecrated by sections 240 and 243(4), for to do so would mean that its intendment was to render the latter provisions redundant and ineffectual a state of affairs which is against the Anglo-Nigerian jurisprudence. In reliance on section 240 and the fact that no constitutional provision expressly removed the jurisdiction over appeals of the appeal Court in respect of all NICN's judgments on civil matters, the Supreme Court of Nigeria came to the conclusion that the decisions of the NICN are not final as they can be appealed against to the appeal Court and that the same had the final decisions in view of sections 242 and 243(2) of the 1999 Nigerian Constitution, as amended by the CTAA 2010. Ultimately, the apex Court held that the answers to the three issues stated to it are:

(a) the Court of Appeal has jurisdiction to the exclusion of any other court in Nigeria to hear and determine all appeals arising from the decisions of the NICN;

[48] See the *Local Government Service Commission of Ekiti State v Bamisaye* [2013] LPELR 20407, CA, Nigeria.
[49] See the *Lagos Sheraton Hotel and Towers v Hotel and Personal Services Senior Officers Association* [2014] LPELR 23340, CA, Nigeria.

(b) no constitutional provisions expressly removed the appellate jurisdiction of the Court of Appeal over all decisions of the NICN on civil matters; and
(c) the Court of Appeal's jurisdiction to hear and determine civil appeals coming from the NICN is not confined to fundamental right matters.

The author has reservations about the decision of the Supreme Court of Nigeria in the case above. Without mincing words, it is the author's humble view that the decision of the apex Court is not correct for the following reasons. First, in line with the doctrine of separation of powers which Nigeria has accepted as part of its system of government, the legislature should amend a statute where words used in the same lead to their ambiguous interpretation. The court is not allowed under the doctrine to substitute its own words for the words used in the statute in order to give them a meaning which suits the court, as the apex Court did in the case above.

In the second place, the apex Court seems to be oblivious of the fact that the NICN's decisions on labour disputes are considered final, except when they border on questions of fundamental rights as contained in Chapter IV of the 1999 Constitution, because it is a court which specialises on employment relations and employment issues and judges of the same have profound knowledge and experience in the practice as well as law of employment relations and conditions of employment in the country.[50]

Thirdly, the power bestowed on the appeal Court, created by the 1999 Nigerian basic law in its sub-section (1) of section 237, to adjudicate over appeals arising from the NICN's judgments by section 240 of the 1999 Nigerian Constitution, as amended by the CTAA 2010 is subject to other constitutional provisions, including section 243 (2) and (3) of the 1999 Nigerian Constitution, as amended by the CTAA 2010. The truth is that there is no Act of the National Assembly which has made any prescription, widening the right of appeal from the decisions of the NICN beyond its current scope as contained in section 243(2) above. In *Local Government Service Commission of Ekiti State and Another v Asubiojo*,[51] the Court of Appeal affirmed that there was no Act of the National Assembly that had prescribed the right of appeal that shall lie from the decision of the NICN to the Court of Appeal, as particularly provided for by section 243(3) of the 1999 Nigerian Constitution, as amended by the CTAA 2010. An important point to bear in mind is that the provisions of section 243(3) are mandatory with the compulsory 'shall'. With respect to interpretation of the term 'shall' when utilised in a legislation, the appeal Court in Nigeria pointed out in *Musa Baba-Panya v President of the Federal Republic of Nigeria and Two Others*[52] thus:

[50] Note that section 254B (3) & 4 of the 1999 Nigerian Constitution, as amended by the CTAA 2010 provides that aside from being legal practitioners of not less than 10 years standing, the President and the judges of the NICN must have considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria. Of course, the President and appeal Court Justices are not required to have such qualifications, as can be seen from section 238(3) of the 1999 Nigerian Constitution.

[51] [2013] LPELR 20403, CA, Nigeria.

[52] [2018] 15 NWLR (Pt. 1643) 395, 401-02 CA, Nigeria, quoted in AE Abuza, 'A Reflection on the issues involved in the Exercise of the Power of the Attorney- General to enter a nolle prosequi under the 1999 Constitution of Nigeria' (2020) 1 *Africa Journal of Comparative Constitutional Law* 95.

> Whenever the word 'shall' is used in a statute and indeed the Constitution, it presupposes a compulsory action, conduct or duty. It admits of no discretion whatsoever.

In the earlier case of *John Echelunkwo and 90 Others v Igbo-Etiti Local Government Area*[53] the Nigerian Court of Appeal, also, stated that:

> Whenever the word 'shall' is used in an enactment, it denotes imperativeness and mandatoriness. It leaves no room for discretion at all. It is a word of command; one which always or which must be given a compulsory meaning as denoting obligation. It has a peremptory meaning. It has the invaluable significance of excluding the idea of discretion and imposes a duty which must be enforced.

The pronouncements of the Court of Appeal above, implicate that the Court of Appeal must only hear and determine an appeal over the decision of the NICN as may be prescribed by an Act of the National Assembly and that this requirement must be implemented by legal implementation bodies such as the apex Court of Nigeria.

Fourthly, there is nothing fundamentally wrong with the Court of Appeal exercising appellate jurisdiction over all decisions of the NICN. Be that as it may, the 1999 Nigerian Constitution must be amended to explicitly say so or the National Assembly must promulgate a law pursuant to section 243(3) widening the right of appeal over decisions of the NICN on civil matters beyond issues of fundamental rights as contained in Chapter IV of the 1999 Nigerian Constitution. In addition to this, the 1999 Nigerian Constitution must be amended to require that aside from being legal practitioners of not less than 12 years standing, some of the Justices to be appointed to the Court of Appeal should, be people who have considerable knowledge and experience in the practice and law of industrial relations and employment conditions in the country.

In the final analysis, it is argued that the apex Court's judgment in the *Skye Bank* case is unconstitutional and a nullity. This contention is predicated on the 1999 Nigerian constitutional provisions of sub-section (3) of section 1. The argument is strengthened by the apex Court's judgment in *Okulate v Awosanya*[54] and *Attorney-General of Abia State v Attorney-General of the Federation*[55]

The 1999 Nigerian basic law is besetted with some problems that should be pinpointed. To start with, the Nigerian basic law doesn't provide for a right to strike, unlike the constitutions of South Africa, France, Argentina, Portugal, Angola, Rwanda and Brazil, which provide for a right to strike.[56]

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53 [2013] 7 NWLR (Pt. 1352) 1, 8, CA, Nigeria, quoted in *Ibid*.
54 [2000] FWLR (Pt. 25) 1666, 1671, SC, Nigeria, quoted in *Ibid.*
55 [2002] 6 NWLR (Pt. 763) 264, SC, Nigeria, quoted in *Ibid*.
56 See the Constitution of the Republic of South Africa 1996, s 23(2) (c); Pre-amble to the Constitution of the Republic of France 1946 affirmed in the Constitution of the Republic of France 1958; Constitution of Argentine Nation 1853, as amended in 1994, s 14, bis (2), the Constitution of Portugal 1976, as amended in

Secondly, numerous Nigerian citizens are oblivious of the 1999 Nigerian basic law and or importance and purpose of the labour rights accorded to all Nigerian workers under Two and Four Chapters of the basic law of the Land.[57] Thirdly, the 1999 Nigerian basic law does not provide for the meaning of the elastic words: 'public order, 'public morality', 'defence' 'public health' as well as 'public safety' as utilised in sub-section (1) of section 45 above.[58] Fourthly, the rights encapsulated in the provisions of the Two Chapter are not justiciable, going by sub-section (6)(c) of section 6 of the 1999 Nigerian basic law.[59] Finally, the 1999 Nigerian basic law has 'claw-back' phrases in sub-section (1) of section 45 above and in numerous other provisions that accord rights of workers so as to make it feasible for the Nigerian legislature to enact legislations which are derogation from or restrict numerous rights of workers enshrined in the Constitution to all citizens of Nigeria, including workers of the Local Government and allied services.[60]

1997, art 57; the Constitution of Angola 1992, art 43(1), the Constitution of Rwanda, 1991, art 32; and Constitution of Federal Republic of Brazil 1988, as amended, art 9. Quoted in AE Abuza, 'The National Industrial Court and the Third Alteration Act 2010: An Evaluation' (2012) 12(3) *The Constitution: A Journal of Constitutional Development* 106.

57 Nigeria should organise lectures of public nature to awaken citizens of Nigeria on the importance or purpose of the Local Government and allied services workers' rights.

58 Abuza (n 32) 535.

59 See *Musa Baba-Panya* (n 52). It should be noted, however, that the Nigerian Parliament can make justiciable any of the provisions of Chapter Two by enacting specific laws for its enforcement. See *Attorney-General of Ondo State v Attorney-General of the Federation* [2002] 9 NWLR (Pt.772) 222, 272, SC, Nigeria.

60 Other Nigerian Legislations which also guarantee to the workers, including workers of the Local Government and allied services labour rights include: (a) Trade Disputes Act 2004. It guarantees to workers a right to strike but workers must not go on strike, regarding any dispute of trade, among other conditions, where the approved procedure as contained in the Act for settlement of trade dispute has not been complied with. See TDA 2004, s 18(1). It is a crime to act contrary to the provisions above. See TDA 2004, s18(2). It is argued that sub-section 1 of section 18 leaves no room for a lawful strike, as the net effect of s 18(1) and (2) is the ban on strike and criminalisation of strikes. See, for example, Uvieghara, (n 12) 388-450; E Chianu, Employment Law (Akure: Bemicov Publication Nigeria Ltd., 2004) 280-81. For details, see Abuza (n 20). Lastly, the TDA 2004 in its s 48(1) defines 'essential services' to embrace almost the entire workers of the public sector. This is unacceptable, because not all public sector workers should come under essential services. Essential services should be defined in Nigeria as only those services the interruption of which would endanger the safety of persons, life or the whole or part of the population's health like services in the security, health and power sub-sectors of the political economy of Nigeria in alignment with the practice of other countries, including Lesotho and the position of the UN ILO Committee of Experts on Freedom of Association on the matter. See Abuza (n 20) 32. (b) the Trade Unions Act 2004. The 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act forbids any conduct made in furtherance or contemplation of a strike action in its sub-s (6) of s 31. Of course, picketing is one such conduct, as workers don't undertake picketing while doing their jobs conscientiously. Workers embark on picketing only further to a strike action. See Chianu above, 284. Also, the 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act in its s 31(6) (a) forbids workers of essential services from undertaking a strike action. It, however, permits strike for workers of service which is not essential subject to some conditions being met in its s 31(6) (a)-(e), such as the provisions of arbitration in the TDA 2004 have first been complied with. It is a crime to act contrary to the provisions above. Note that both essential and non-essential service workers, must go through compulsory arbitration and the determination of the appeal Court shall be final, going by the apex Court's decision in *Skye Bank* (n 47). Arguably, the over-all effect of sub-s (6) of s 31 of the 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act is the prohibition and criminalisation of strike by non-essential service workers.

The Role of the Nigeria Union of Local Government Employees in the Protection and Promotion of Labour rights of its members

In this segment, the discussion shows the role of the NULGE in the protection and promotion of the Labour rights of its members.

The NULGE has significant functions to perform. They include:

(a) the union makes efforts to ensure that salaries, promotional arrears and fringe benefits of its members are paid to the same promptly;
(b) the union ensures that there is a reciprocal attitude by its members through dedication to their duties; and
(c) the union employs collective bargaining to resolve disputes at the Local Government level. Disputes may arise in the Local Government Council, for instance, due to non-payment of allowances, salaries and other fringe benefits. In the resolution of disputes arising from the above, the NULGE negotiates on behalf of the workers. The representatives of the NULGE negotiate, for example, with the management of the Local Government Council or Area Council which comprises of the Chairman and other political appointees. Of course, during the bargaining process, compromises are made which can lead to the resolution of the

This is so, because before they can embark on strike the same must first comply with the 2004 Trade Disputes Act arbitration provisions. Compliance with these provisions means the said workers cannot embark on strike, as the decision of the Court of Appeal given on appeal over the award of the NICN is final, as disclosed above. It should be noted that the word utilised is 'and' in sub-s (6) (a)-(c) of s 31 above. In this way, provisions of the same must be conjunctively read. The Nigerian Legislators had at the back of their minds that all the conditions contained in sub-s (6) (a)-(c) of s 31 above must be complied with prior to a strike action by non-essential service workers, that is why they put 'and' after sub-s (6)(d) of s 31 above. See Abuza above, 22. Lastly, s 16A of the TUA 2004, as amended by the TUAA 2005 authorises an employer to make deductions from the wages of every worker who is a member of any of the trade unions registered and recognised for the purpose of paying contributions to the trade union so registered and remit such deductions to the registered office of the trade union within a reasonable period or such period as may be stipulated from time to time by the Registrar. These provisions requiring the employer to remit such deductions to the registered office of the trade union within a reasonable period or such period as may be prescribed from time to time by the RTU are unacceptable, because they confer wide-discretionary powers on the employer or RTU. Akanle, rightly vilifies the bestowing of powers of wide-discretionary nature on public officials, as such powers are susceptible to misuse. O Akanle, 'Pollution Control Regulation in Nigerian Oil Industry' published as Occasional Paper 16 by the Nigerian Institute of Advanced Legal Studies, Lagos 1991 14, quoted in Abuza (n 52) 102; and (c) The Labour Act 2004. It guarantees to workers, among other labour rights, right of women workers to maternity leave of 12 weeks and to receive not less than 50% of their wages upon proceeding on maternity leave. See Labour Act 2004, ss 5(3)(a) & (b), 7, 11, 9(6), 53(1) & 54. The Act is limited in scope and application, as it only covers and protects junior employees, in view of the definition of a worker in its s 91. Thus, senior employees cannot seek sanctuary under the same. Also, the Act does not guarantee to a male worker a right to paternity leave, unlike the position in Enugu State where Governor Ifeanyi Uguanyi has amended the Civil Service Rules of the State to accord male civil servants the right to proceed on three weeks' paternity leave with full pay upon the putting to birth of their wives and in Lagos State where the government has evolved a policy to accord male civil servants 10 days paternity leave with full pay upon the putting to birth of their wives. These are to enable the male civil servants support their wives in nurturing their new-born during the teething stage. See 'Lagos approves 10-day Paternity Leave for Civil Servants'<https://www.vanguardngr.com/2014/07/ Lagos-approves-10-day-paternity leave-civil servants> and 'Jubilation Greets Introduction of Paternity Leave for Enugu Male Civil Servants' <https://www.vanguardngr.com 2015/08/jubilation/greets-introduction/of paternity leave for enugu-male-civil-servants/> accessed 12 August 2021.

> dispute. Nevertheless, if collective bargaining fails, the NULGE may resort to strike as the last option to enforce its will or to get the authorities to listen.[61]

It is crystal clear that the NULGE has utilised the weapon of strike to press home the demands of its members on several occasions in a bid to protect the labour rights of its members. These strikes have contributed in no small measure to the improvement of the conditions of service of its members as well as enhancing the welfare of its members. A typical example is the indefinite strike by the NULGE members in the Federal Capital Territory (FCT), Abuja on 19 August 2015.[62]. The activities of the FCT Area Councils were paralysed by the strike. The workers under the NULGE had embarked upon the industrial action to press home their demands for the payment of 20% monitisation/arrears by the Area Councils' authorities.[63]Alhassan Yakubu Abubakar, President of the NULGE, FCT Chapter pointed out that the strike became unavoidable since the union had exhausted all avenues of dialogue.

Challenges of the Nigeria Union of Local Government Employees

Four core challenges of the NULGE in the protection and promotion of labour rights of its members can be identified. Firstly, there is the problem of State government's intervention in or interference with the affairs of the union. It should be re-called that in early May 2021, the Osun State Government wanted to monitor and conduct the NULGE election in the State.[64] This is contrary to article 3 of the UN ILO Convention 87 of 1948. It guarantees the right of workers' organisations such as the NULGE to draw up their constitutions and rules, elect their representatives in full freedom, organise their administration and activities and formulate their programmes - all without any interference from the public authorities such as the Osun State government. To make matters worse, the State government was bent on helping the union conduct the election despite a court order prohibiting the conduct of the election.[65] The NULGE members in Osun State rightly protested against the Osun State government in consonance with sections 39 and 40 of the 1999 Nigerian Constitution, as amended. This was on 10 May, 2021.[66] Adeyeye Jacobs, President of the NULGE, Osun State Chapter emphasised that it was an aberration for the Osun State government to help the union conduct the election when there was a court order restraining the conduct of the election.[67]

Secondly, there is failure on the part of many State governments, through the State Local Government Service Commission, to release the NULGE's monthly check-off dues deductions to the Union.[68] This is certainly unlawful, being contrary to section 16A of the TUA 2004, as

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61 For details, see '*National Union of Local Government Employees*/walyben'<https//www.walyben.com,the nation…> accessed 7 July 2021.
62 <https://dailytrust.com>nulge-strike>accessed 7 July 2021.
63 *Ibid.*
64 <http://www.vanguard.com> accessed 7 July 2021.
65 *Ibid.*
66 *Ibid.*
67 *Ibid.* The NULGE members can file a suit against recalcitrant employers in the NICN to give effect to art 3 of the Convention above.
68 *Ibid.*

amended by the TUAA 2005. The author wishes to re-call section 16A above[69]. The failure to release the NULGE's monthly check-off dues deductions by the Osun State government was another reason which informed the 10 May 2021 protest- strike against the Osun State government by members of the Osun State Chapter of the NULGE.[70] Of course, the NULGE is a duly registered workers trade union in Nigeria, as disclosed before as well as recognised by the Osun State government. It is rather sad and bizarre that the Osun State government through the Local Government Service Commission in that State, after making deductions from the salaries of every worker who is a NULGE member for the purpose of paying contributions to the NULGE, could refuse or fail to remit such deductions to the registered office of the NULGE within a reasonable period. This is one of the problems that brings to the fore the need for the administrative and financial independence of the Local Government system in Nigeria. At the moment, the local governments are tied to the apron strings of the State government.[71] The NULGE had called for constitutional amendment to guarantee administrative and financial independence of local governments in Nigeria.[72] The NULGE believes that the major problem plaguing the Local Government System is the lack of full administrative and financial independence.[73] It stresses that once full administrative and financial autonomy are granted to the Local Government, the challenges of the Local Government Areas, including underdevelopment of the grassroots would be things of the past.[74]

In actuality, President Muhammadu Buhari, following the plea of the leadership of the Association of Local Governments in Nigeria (ALGON) to free the Local Government from the apron strings of State governors,[75] had assured the ALGON of his administration's support for constitutional amendment to engender the autonomy of the government at the local level in the country.[76]

It is an open secret that the Bill for an Act to amend the 1999 Nigerian Constitution to provide for Local Government autonomy that was presented to the National Assembly by the Federal Government of Nigeria (FGN) for legislative action was vehemently supported by President Buhari. The immediate passage of the Bill into law by the National Assembly was, however, frustrated by many State governors who are opposed to Local Government autonomy.[77] It is gratifying to note that in August 2021, the National Assembly passed into law the Local

69 Note that each member of the NULGE shall pay monthly check-off dues of 3% of his monthly salary for the up-keep and maintenance of the Union. See the CNULGE, as amended in 2016 (n 27), rule 4(i).
70 <http://www.vanguard.com> (n 64).
71 SA Adewole, 'Autonomy of Local Governments under Nigerian Law' <https://www.researchgate.net>3356..> accessed 10 September 2021.
72 <https://www.blueprint.ng.auton...m...> accessed 7 July 2021.
73 Ibid.
74 See 'Bill seeking to delist LGs from Constitution won't succeed-Abia NULGE boss'< http://www.vanguardngr.>com> accessed 7 July 2021. For details on a strong case for Local Government autonomy in Nigeria, see OI Eme, E Izueke and N Ewuim, 'Local Government and Fiscal Autonomy for Local Government in Nigeria' <https://www.longdom.org>…> accessed 7 July 2021.
75 See (n 72)
76 Ibid.
77 <https://m.guardian.ng>appointments> accessed 7 July 2021.

Government (Autonomy) Bill.[78] The State Houses of Assembly should give their approval forthwith to the Bill, as required under section 9(2) of the 1999 Nigerian Constitution, as amended.

Thirdly, the NULGE members cannot embark on a lawful strike in Nigeria to protect their labour rights in view of sections 18(1) and (2) of the TDA 2004 and 31(6) and (7) of the TUA 2004, as amended by the TUAA 2005. It has been contended that Nigerian workers do not have a right to strike[79]. A point to note is that notwithstanding the provisions above, workers in Nigeria have continued to employ the weapon of strike to press home their demands for better conditions of service and the protection of labour rights generally. This demonstrates the futility of banning and criminalising strike in Nigeria. Labour realises that strike an aspect of the process of collective bargaining, is a potent weapon at its disposal to compel employers to meet with workers' demands.[80]

Over the years, strike appears to be the only language employers of labour understand and no government, no matter how strong, has succeeded in denying workers the employment of strike in resolving trade disputes.[81] The position adopted by Hepple as well as Freund on the issue is apt. In their view: '… workers will go on strike whatever the law says about it… no government however strong can suppress concerted stoppages of work'.[82]

The postulation of Akpan is more of a stronger note. The author avers thus:

> Let the punishment be capital workers will continue to exercise (the right to go on strike) after all (sic), the freedom of workers to even combine was acquired through toil and blood bath. Let the workers who exercise this right be tied to the stakes and burnt, the right to strike will always arise from the ashes of their own holocaust.[83]

Lastly, the NULGE members may not be able to carry-out a lawful picketing in Nigeria, in view of sub-section (6) of section 31 of the 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act. It constitutes a devastating assault on the right to peaceful picketing enunciated under section 43(1) of the TUA 2004, as amended by the TUAA 2005 as well as sections 39 and 40 of the 1999 Nigerian Constitutions, as amended. The TUAA 2005 is, therefore, void to the extent of its inconsistency with the 1999 Nigerian Constitution. This assertion is fortified by the insightful provision in section 1(3) of the 1999 Nigerian Constitution

78 See 'NULGE lauds National Assembly for passing LG autonomy bill' <https://guardian.ng>news>nulge.i..> accessed 14 December 2021.
79 Abuza, 'Strike in Nigeria: Not yet victory for Nigerian Workers' (n 19) 76 - 77.
80 Abuza (n 56) 97.
81 *Ibid.*
82 K Freund and P Hepple, *Law Against Strikes* (London: Fabian Research Series, 1972) quoted in H Ajaiyi, 'The Legal Rights and Obligations of Doctors in Nigeria" (2003) 1(4) *Nigerian Bar Journal* 582.
83 Akpan, 'Right of workers', 71 quoted in Chianu (n 60) 285.

and the decision of the Supreme Court of Nigeria in *Attorney-General of Abia State v Attorney-General of the Federation*.[84]

Observations/Findings

In this segment, the author gives the summary of the observations or findings during the study, as can be seen in the preceding sections.

It is pellucid from the foregoing examination of the role of the NULGE in the protection and promotion of the labour rights of workers of the Local Government and allied services in Nigeria that the violation of the labour rights of workers of the Local Government and allied services in Nigeria is unlawful, unconstitutional and not in tune with global instruments on rights of human beings as well as UN ILO Conventions 87 and 98 of 1948 and 1949, respectively. Regardless, it is observable with grief that the violation of labour rights of workers in Nigeria, including workers of the Local Government and allied services in Nigeria keeps occurring without an end in sight. In this way, numerous workers' rights in Nigeria, including workers of the Local Government and allied services encapsulated under international law and the Nigerian law have been unduly eroded in Nigeria. A typical example is the *Panya* case. The provisions of Chapter Four of the 1999 Nigerian basic law that borders on 'Fundamental Rights', of which section 40 is an aspect, are too important to change or question. Should any provision require amendment, the 1999 Nigerian basic law provides for a tedious and challenging procedure in sub-section (3) of section 9. Nigeria, in this connection, must implement, as well as demonstrate regard for, the nation's basic law.

A continuation of the problem of violation of the labour rights of workers in Nigeria, including workers of the Local Government and allied services in Nigeria constitutes a fatal blow to the development, protection as well as survival of workers of the Local Government and allied services in Nigeria. Their development, protection as well as survival should be of profound concern to all citizens of Nigeria and, consequently, must be ensured. With a badly treated workforce at the local government level, for instance, there is no way Nigeria can accomplish economic development at the grass-root level. These workers at the Local Government level, for example, would not give their best in the quest to develop rapidly the local Government or FCT Council areas in Nigeria and create wealth. It is not for mere sloganeering that the motto of the NLC is 'Labour creates wealth'. The truth is that it is labour that creates wealth in the Local Government areas or Council areas in Nigeria.

[84] See *Attorney-General of Abia State* (n 55). The TUA 2004 should be amended to expunge the expression 'any conduct in contemplation or furtherance of a strike or lock-out'. The right to peaceful picketing guaranteed in sub-s 1 of s 43 of the 2004 Trade Unions Act, as amended by the 2005 Trade Unions (Amendment) Act must be left intact in tune with the practice in other countries, like Ghana, Zimbabwe, South Africa, the USA and the United Kingdom (UK). See the Labour Act 2003 of Ghana, s171(1); the Labour Relations (Amendment) Act 2003 of Zimbabwe, s38; the South African Constitution 1996, s.17; *Thornmill v Alabama* 310 US 88 [1940]; and the UK Trade Unions and Labour Relations (Consolidation) Act 1992, s 220(1)(a) & (b), quoted in Abuza (n 56) 98.

Of course, democracy suffers with the violation of the labour rights of workers of the Local Government and allied services, guaranteed under the Nigerian law and international instruments, as disclosed before. Nigeria must do everything possible to uphold the rule of law which is a vital component of a government that is hinged on democracy which Nigeria today warmly embraces.[85] Needless to point out that the country is obligated to show respect for international law and its treaty obligations, as enjoined by section 19(d) of the 1999 Nigerian Constitution, as amended.

Also, it is observable that the NULGE, in carry-out its mandate to protect the interests of workers of the Local Government and allied services as well as their labour rights, is confronted with numerous challenges. They, include the fact that the NULGE's members cannot embark on a lawful strike in Nigeria. These challenges must be addressed by the civilian administration of President Buhari so that the NULGE's role in fighting for the interest of workers of the Local Government and allied services can yield the desired results.

Recommendations

The challenges of the NULGE in the protection and promotion of labour rights of workers of the Local Government and allied services in Nigeria should be tackled in the country. The author strongly recommends the following with a view to overcoming these challenges:

(i) Section 16A of the TUA 2004 should be amended by the Nigerian Parliament to make failure of the employer to remit check-off dues deductions to the registered office of a recognised trade union within two weeks after payment of monthly salaries a crime punishable with ₦50,000,000.00 fine and any order that the court may deem necessary to grant.

(ii) The 1999 Nigerian Constitution should be amended by the Nigerian Parliament to provide for a right to strike in consonance with the practice in other countries like France, South Africa and so on with a proviso for workers to provide a level of service that is minimal.[86] It's in tune with the practice of other countries, including France.[87] It should be re-called that as early as its second meeting in 1952, the ILO's Freedom of Association Committee affirmed the principles of the right to strike, stating that it's an essential element of trade union rights.[88]

(iii) Nigeria must rise to the challenge of faithfully enforcing the NIgerian laws which accord workers labour rights.

CONCLUDING SECTION

[85] See s 14 of the 1999 Nigerian Constitution.
[86] Abuza (n 56) 98.
[87] Quoted in *Ibid*., 109.
[88] See Second Report, 1952 Case No. 28 (Jamaica) para.68. cited in 1994, 'Freedom of Association and Collective Bargaining: The Right to Strike'<http://training, iteib.it25945.htm> accessed 29 July 2009, quoted in *Ibid.*

The examination of the role of the NULGE in the protection and promotion of labour rights of workers of the Local Government and allied services in the country has been undertaken by this paper. The paper pointed out gaps in the numerous relevant legal norms and averred without mincing words that the violation of the labour rights of workers of the Local Government and allied services in Nigeria is unlawful, unconstitutional and contrary to international human rights' norms or treaties as well as the UN ILO Conventions 87 and 98 of 1948 and 1949, respectively. This paper, also, highlighted the practice in other countries and advanced suggestions and recommendations, which, if carried-out could effectively address the challenges of the NULGE in its role of protection and promotion of labour rights of the workers of the Local Government and allied services in Nigeria.