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LEGAL CONSTRAINTS TO MEMBERSHIP OF A TRADE UNION IN NIGERIA

BY O.V.C. OKENE¹

I. INTRODUCTION

Trade unions have always been part of the fabric of the labour organisation and larger civil society in Nigeria. Workers join trade unions to get improvements in working and living conditions by collective action. Though trade unions are private, voluntary and autonomous organisations, they discharge indispensable public functions through membership in innumerable governmental institutions, committees, tribunals, and through rights of consultation throughout the legal system and society.

In his goodwill message to the first Annual Conference of the Trade Union Congress of Nigeria in April, 1960, Sir Abubakar Tafawa Balewa, then Prime Minister of Nigeria said, "It is true that as representatives of workers it is your duty to strive to improve the working conditions and living standards of your members. But your duty does not end there. Those of you who have been entrusted with the leadership of the trade union movement have another equally important obligation. You should educate your members to appreciate their economic, social and civic responsibilities toward the state and the community... You and your employers have contributed, in no small measure, to the remarkable progress which this country has made in recent years, but this progress is yet a beginning."²

Trade unions perform many functions, both to their members and to the society at large. As has been noted, "The fundamental and enduring concern of the honest trade union is the welfare of the workers and their families. The genuine trade union works for social justice and national progress. It works for these great ideals on their most meaningful level-the greatest good for the greatest number. The concern of the genuine trade union is that the worker is adequately paid for his labour, that his family has decent food and housing, and that his life time of toil yield dignity for himself and a happier prospect for his children."³

Over a century, trade unions have fought for the right to decent pay and conditions for workers at the workplace and generally for improved social welfare through, for example, health care, education, and social security. Generations of struggle for basic democratic rights at the workplace have created an increased labour movement advocating social justice, equality, and human dignity across the globe.⁴

Trade unions have also contributed immensely in their fight for democracy all over the world as they consist of those with relatively few rights in the society. They have contributed to extending the concept of democracy from political rights to economic rights. Rights such as free

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² See J.A. Dada, *Protecting Security of Employment: The Role of Trade Unions*, PRIVATE LAW JOURNAL, 2002, 128-150, 141

³ See *Nigerian Labour Congress Policy Paper: A Programme for the Future*, May 1962, cited in J.A. Dada, *supra* note 2 above.

⁴ International Federation of Free Trade Unions (ICFTU), *A Trade Union Guide to Globalisation*, at 18 (ICFTU 2001).

movement, the freedom to choose and engage in an occupation and to be fairly remunerated, the right to improved living conditions, the right to social health protection, the right to vocational training, as well instrumental rights which workers need to achieve these substantive rights, namely the right to freedom of association, collective bargaining, the right to strike and right of workers to participation and information.⁵

There can be no doubt that trade unions make positive contributions to the social and economic development of their countries. Indeed, the great improvements in the standard of living of mankind could not have been attained without workers and their organisations. This fact underscores the need for strong and effective trade unions in every country. However such unions cannot exist if there are serious impediments to membership.

This article examines some of the impediments to the right to membership in trade unions in Nigeria. It argues that despite the important functions of trade unions and the fundamental nature of the right to belong to a trade union⁶, the vast array of legal constraints to the membership of trade unions in Nigeria tend to frustrate the full realisation of the right to belong to a trade union in Nigeria. The article further argues that a denial or limitation by law and the public authorities of the exercise of this legitimate right by workers is a violation of international law. Nigeria must relax its stringent rules on trade union membership to enable all those who desire to belong to unions to do so freely so as to be recognised in international circles as one of the countries with respect for human rights. The conclusion is that these impediments must be relaxed if the right to belong to trade unions in Nigeria is to be meaningful.

II. SOURCES OF THE RIGHT TO MEMBERSHIP OF TRADE UNIONS

A firm international consensus has evolved on the status of the right to associate as a fundamental human right. There are a number of human rights instruments which acknowledge this right, both at international and regional levels. The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, proclaims that "Everyone has the right of freedom of peaceful assembly and association."⁷ Article 23, paragraph 4, also states that "Everyone has the right to form and to join trade unions for the protection of his interests." The same principle is echoed in the International Covenant on Economic, Social and Cultural Rights (ICESCR)⁸ and the International Covenant on Civil and Political Rights (ICCPR)⁹ both of 1966 (which entered into force in 1976). The International Labour Organization (ILO) likewise recognizes freedom of association as a fundamental principle in several major documents, the most important ones being the Freedom of Association and Protection of the Right to Organise

⁵See K.D.Ewing, *The Functions of Trade Unions*, 1 INDUS. L.J. (2006); Bob Hepple, *The Role of Trade Unions in a Democratic Society*, 11 INDUS. L.J. (South Africa) 645-654 (1990); O. Kahn-Freund, *Trade Unions, the Law and Society*, 33 (3) MOD. L. REV. 241-267 (1970). (For an extended view on the role of trade unions)

⁶ See also P. Davies and M. Freedland, *KAHN-FREUND'S LABOUR AND THE LAW* (3rd ed., Sweet and Maxwell, 1983), 200-1. (The right to belong to a trade union is so fundamental that labour experts rank it along with such other rights as "free speech, religion and freedom from arbitrary arrest.")

⁷ Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948), art. 20.

⁸ International Covenant on Economic, Social, and Cultural Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc A/6316 (Jan. 3, 1976), Article 8 (1) (a)-(c).

⁹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (Mar. 23, 1976), art. 22(1).

Convention 1948 (No. 87)¹⁰ and the Right to Organise and Collective Bargaining Convention 1949 (No. 98).¹¹ Further, the right to freely associate is guaranteed in various regional documents not applicable to Nigeria, such as the European Convention on Human Rights (ECHR) 1950,¹² the European Social Charter (ESC) 1996¹³, the American Convention on Human Rights (ACHR) 1969,¹⁴ the Community Charter of Fundamental Social Rights of Worker (CCFSRW) 1989¹⁵, the EU Charter of Fundamental Rights (EUCFR) 2000¹⁶, as well as the African Charter on Human and Peoples' Rights (ACHPR) 1981.¹⁷

The freedom to associate enjoys a constitutional and statutory legitimacy in Nigeria. Section 40 of the Constitution of the Federal Republic of Nigeria 1999 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 association for the protection of his interests." The regionally applicable source of freedom of association for workers in Nigeria and Africa generally can be found in the African [Banjul] Charter of Human and Peoples Rights 1981, to which Nigeria is a State Party. Article 10 of the Charter provides that "Every individual shall have a right to free association provided that he abides by the law." Member states of the African Union who are parties to the Banjul Charter have an obligation to recognise the rights, duties and freedom enshrined therein and to "undertake to adopt legislative or other measures to give effect to them."¹⁸

The wording of the Banjul Charter shows that it was clearly designed to be binding. As Thomas Beurgental has noted, under Article 1 of the American Convention a state has the

¹⁰ See Freedom of Association and Protection of the Right to Organize Convention (ILO No. 87), 68 U.N.T.S. 17, *entered into force* July 4, 1950, art. 2-7.

¹¹ See The Right to Organize and Collective Bargaining Convention, Geneva, Switz., July 18 1951, Entry into force. No. 98, art.1-6.

¹² Convention for the Protection of Human Rights & Fundamental Freedom, Council of Europe, (Sept. 3 1953), art. 11.

¹³ European Social Charter, 529 U.N.T.S. 89, *entered into force* Feb. 26, 1965. part 1, par. 5, art. 5

¹⁴ American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, art. 16.

¹⁵ Commission of the European Communities Charter of the Fundamental Social Rights of Workers (Luxemburg, Office of Official Publications of the European Communities, 1990), art. 11.

¹⁶ Charter of Fundamental Rights of the European Union, 2000 O.J. (C364) 1 (Dec. 7, 2000), art.12 (1).

¹⁷ African Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58(1982), *entered into force* Oct. 21, 1986, art 10. For an extended discussion of these instruments, see L. Swepston, *Human Rights and Freedom of Association: Development through ILO Supervision*, 137:2 INT'L LAB. REV. 169-194 (1998); Gillian Morris, *Freedom of Association and the Interests of the State*, in HUMAN RIGHTS AND LABOUR LAW: ESSAYS FOR PAUL O'HIGGINS 2 (K.D. Ewing, C.A. Gearty, and B.A. Hepple, eds., Mansell Publishing Limited, 1994); Sheldon Leader, FREEDOM OF ASSOCIATION: A STUDY IN LABOR LAW AND POLITICAL THEORY 123-265 (Yale University Press, 1992); N. Valticos, *International Labour Law*, in INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS 79-92, 239-53 (Blanpain, R. ed., Deventer: Kluwer, 1984); W.B. Creighton, *Freedom of Association*, in COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS (R. Blanpain ed., Deventer: Kluwer, 1990), Chapter 17; R. Ben-Israel, INTERNATIONAL LABOUR STANDARDS: THE CASE OF THE FREEDOM TO STRIKE (Deventer: Kluwer, 1988); J. Hodges-Aeberhard, and A. Odero de Dios, , *Principles of the Committee on Freedom of Association Concerning Strikes*, 126 INT'L LAB. REV. 543 (1988); C.W. Jenks, THE INTERNATIONAL PROTECTION OF TRADE UNION FREEDOM 181-183 (Stevens and Sons, 1957); C.W. Jenks, *International Protection of Freedom of Association for Trade Union Purposes*, 87:1 INT'L LAB. REV. 1-115 (1955). See for example, Article 21(e) of the 1992 Constitution of Ghana provides that "All persons shall have the right to freedom of association, which shall include freedom to form or join trade unions or other associations, national or international, for the protection of their interest."

¹⁸ African Charter on Human and Peoples' Rights, *supra* note 17, art. 1

negative obligation “not to violate an individuals rights” and may also have the obligation to adopt “affirmative measures necessary and reasonable under the circumstances to ensure the full enjoyment of the rights the American Convention guarantees.”¹⁹ The African Charter demands a strong commitment from member states. Quite apart from establishing a duty on states to enact legislation to give effect to the Charter’s provision, it also establishes a Commission to oversee the protection of enumerated rights, which implies that states are bound to respect these rights. To hold otherwise would ignore the function of the Commission to “ensure the protection of human and peoples’ rights under conditions laid down by the present Charter.”²⁰

Furthermore, as far as trade union rights are concerned, the Commission has provided detailed guidance on trade union rights in its Guidelines for the Submission of State Reports. Under the Guidelines, States are obliged to provide information on laws, regulations and court decisions that are designated to promote, regulate or safeguard trade union rights, which include the right of trade unions to function freely, collective bargaining and the right to strike.²¹ This is a demonstration of support for the protection of trade union rights in Africa.²² In sum, there can be no doubt that international law recognizes the right to freedom of association and the right to organize.²³

¹⁹ See Richard Gittleman, *The Banjul Charter on Human and Peoples’ Rights: A Legal Analysis*, in HUMAN RIGHTS AND DEVELOPMENT IN AFRICA 155 (Claude E. Welch, Jr. and Ronald I. Meltzer, eds., State University of New York Press, 1984).

²⁰ African Charter on Human and Peoples Rights, *supra* note 17, art. 45(2).

²¹ See Promotion, Protection and Restoration of Human Rights (Guidelines for National Periodic Reports) ACHPR DOC. AFR/COM/HRP.5 (IV) (Oct. 1988), Section 11 (10) – (16), reprinted in African Commission on Human and Peoples Rights, Documentation No. 1: Activity Reports (1988-1990), p. 45. See also V.O. Nmeihelle, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE, AND INSTITUTIONS 36 (Martinus Nijhoff Publishers, 2001); R. Murray and M. Evans, DOCUMENTS OF THE AFRICAN COMMISSION ON HUMAN AND PEOPLES’ RIGHTS 127-204 (Hart Publishing, 2001).

²² *Abacha v Fawehinmi*, 2000 9 NWLR Part 475 (Nigeria). (The Supreme Court held that since the African Charter has been incorporated into Nigerian law, it enjoys a status higher than a mere international convention; it is part of Nigerian *corpus juris*. Nigeria is therefore bound to implement the obligations under the Charter.)

²³ For more detailed discussion of these instruments, See L. Swepston, "Human Rights and Freedom of Association: Development through ILO Supervision," 137:2 INT’L LAB. REV. 169-194 (1998); Gillian Morris, *Freedom of Association and the Interests of the State*, in HUMAN RIGHTS AND LABOUR LAW: ESSAYS FOR PAUL O’HIGGINS 2 (K.D. Ewing, C.A. Gearty, and B.A. Hepple, eds., Mansell Publishing Limited, 1994); Sheldon Leader, FREEDOM OF ASSOCIATION: A STUDY IN LABOR LAW AND POLITICAL THEORY 123-265 (New Haven and London: Yale University Press, 1992); N. Valticos, *International Labour Law*, in INTERNATIONAL ENCYCLOPAEDIA FOR LABOUR LAW AND INDUSTRIAL RELATIONS 79-92, 239-53 (Blanpain, R. ed, Kluwer, 1984); W.B. Creighton, *Freedom of Association*, in COMPARATIVE LABOUR LAW AND INDUSTRIAL RELATIONS Chapter 17 (R. Blanpain, ed., Deventer: Kluwer, 1990); R. Ben-Israel, *International Labour Standards: The Case of the Freedom to Strike* (Deventer: Kluwer, 1988); J. Hodges-Aeberhard, and A. Odero de Dios, , *Principles of the Committee on Freedom of Association Concerning Strikes*, 126 INT’L LAB. REV. 543 (1988); C.W. Jenks, THE INTERNATIONAL PROTECTION OF TRADE UNION FREEDOM 181-183 (Stevens and Sons, 1957); C.W. Jenks, C.W., *International Protection of Freedom of Association for Trade Union Purposes*, 87:1 INT’L LAB. REV. 1-115 (1955).

III. CONSTRAINTS TO MEMBERSHIP IN TRADE UNIONS

The right to associate and belong to a trade union of one's choice is not an absolute right, after all. There are certain laws and regulations which affect the right of workers to belong to the trade association of their choice.

A. THE REQUIREMENT OF MINIMUM MEMBERSHIP

It is clear that where the minimum number of persons required for the registration of a functional trade union is pegged too high, workers' freedom of association will be impaired. In this regard, the ILO seems to support a minimum of twenty workers for the formation of a trade union.²⁴

Under Nigerian law, a legally registered entity can be constituted by 2 or more persons, however, 50 members are required to form a trade union of workers,. Because only two persons are required to form an association of employers,²⁵ the law is obviously discriminatory in the treatment of the two parties to the industrial relationship, employers and workers. This requirement would appear to unduly restrain workers and this seems to be in conflict with Convention 87.²⁶

The failure to relax the membership requirement may not be unconnected with the argument that, for Nigeria, compliance with the ILO requirements on minimum membership is not viable. The argument is that the low threshold and the formal requirements for registration would lead to the proliferation of trade unions and undermine the solidarity of trade unions and employers' associations in Nigeria. It would permit, if not encourage, the formation of trade unions and employers' associations on ethnic, religious, regional and factional lines, which could feed into the regional and factional rivalries that characterise Nigerian politics.²⁷

It is submitted, nevertheless, that the argument to sustain the high threshold for membership of trade unions in Nigeria is not justifiable in a country in a hurry to catch up with all the trappings of democracy. We must not always allow ethnic and religious sentiments to dissuade us from what is proper and necessary in a democratic society. If Nigeria is to move forward as a democratic nation it must be prepared to adopt international standards and allow freedom of association to survive. Ethnic and religious differences exist in many countries, yet elsewhere that has not been an excuse for not complying with international standards. In Ghana, for example, a minimum of two persons are required to form a trade union.²⁸ The ILO has in fact held that "the establishment of a trade union may be considerably hindered, or even rendered impossible, when legislation fixes...too high a figure, as is the case, for example where legislation requires...at least 50 founder members."²⁹

Nigeria is clearly in violation of workers' freedom of association by prescribing a high threshold of 50 members for the formation of a trade union. What is more, given the fact that

²⁴ See J. Erstling, *THE RIGHT TO ORGANISE 3* (International Labour Office, 1977).

²⁵ The Trade Unions Act, Chapter 437 Laws of the Federation of Nigeria, 1990, §3 (1) (a) (b).

²⁶ See J. Erstling, *THE RIGHT TO ORGANISE 3* (International Labour Office, 1977).

²⁷ Nigeria: Collective Labour Relations Conceptual Draft, available at <http://www.necang.org/downloads/draftcollective.pdf#search=%22collective%20labour%20relations%20act%20nigeria%22> Last accessed 10 January 2007.

²⁸ The Labour Act 2003 (Ghana), § 80(1), provides that "Two or more workers employed in the same undertaking may form a trade union.

²⁹ ILO Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee (Geneva: International Labour Office 1985), Para 255.

over 80 per cent of enterprises employ less than 50 persons in Nigeria, this provision of the law is tantamount to industrial disenfranchisement. It is therefore suggested that Nigerian law should be amended to stipulate for a minimum of say two persons for the formation of a trade union.

B. RESTRICTION OF MEMBERSHIP TO PARTICULAR TRADES OR INDUSTRIES

The restriction of membership to particular trades or industries can also affect the right of workers to belong to the trade union of their choice. The ILO Committee of Experts has pointed out that the question of trade union “structure is not only related to the general problem of the free establishment of occupational organisations, but also to that of the promotion of strong and effective organisations, and that in certain cases the desirability of general unions may arise more especially in cases where the industry is scarcely developed with a small or medium sized undertakings scattered throughout the country.”

This implies that general unions should be encouraged. For example, nothing should stop a banker from joining and being represented by a general union, especially if the general union consists of other smaller unions. The Trade Unions Act of Nigeria prevents the registration of a union where the interest of the workers sought to be covered are already catered for by an existing union.³⁰ It is submitted that this is an infringement of a right to belong to the union of one’s choice.

C. LIMITATIONS AS REGARDS PERSONS

Despite the ILO Convention 87 provision that workers without distinction whatsoever shall have the right to establish and to join organisations of their own choosing without previous authorisation,³¹ certain categories of workers are specifically denied the right to belong to trade unions and consequently cannot also contemplate strike action. These workers include the armed forces and the police, other public workers in the Central Bank of Nigeria, customs, external telecommunications, security minting and printing, immigration, firemen and prison staff, domestic workers and farmworkers.³²

1. *The Armed Forces and the Police*

As far as the ILO is concerned, the issue of whether members of the armed forces and the police have the right to organise is left to the discretion of the various States to decide. The neutral position of the ILO seems to take cognisance of the fact that the police and the armed forces in some countries have the right to organise³³, whereas in other countries this right is denied or severely limited. The ILO’s neutrality is shown in Article 9(1) of Convention which states that, “The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.”

³⁰ See Trade Unions Act, *supra* note 25, at §5 (4).

³¹ See Freedom of Association and Protection of the Right to Organise Convention, *supra* note 10, at art.2

³² See Trade Unions Act, *supra* note 25, at §11(1). See also Trade Unions (Prohibition) (Federal Fire Service) Order 1976.

³³ This is the case in Germany for example. See Hodges-Aeberhard, J., *The Right to Organise in Article 2 of Convention 87: What is meant by Workers “without distinction whatsoever”* 128:2 INT’L LAB. REV.180 (1989).

Similar neutral attitudes to the application of the right to organise to members of the armed forces and the police are taken by other human rights instruments such as the European Convention on Human Rights, the European Social Charter, EU Charter of Fundamental Rights, and the Community Charter of Fundamental Social Rights of Workers. These instruments clearly leave the determination and regulation of the right to organise by workers in the armed forces and the police to domestic law.

In Nigeria, the armed forces personnel and the police are completely debarred from combining, organising or becoming members of a trade union.³⁴ Also debarred from unionism is “every Federal or State government establishment, the employees of which are authorised to bear arms.”³⁵ This class of “arms bearers” do not fall under the police or the armed forces in the strict sense but arguably they can be classified under this heading since they are workers who bear arms and are seen to perform important security functions as well. It is submitted that the denial of the freedom to associate by the armed forces in the barracks, the police and public officers who bear arms is justifiable. These workers have important security functions and responsibilities to the entire nation and it is in the public interest that they should not be allowed to organise so as to ensure peace and security of the nation at all times, both internally and externally. The workers in the armed forces and police are protected from unionism in order not to weaken and dilute or compromise their loyalty to the state in readiness to perform their security functions. Grunfeld has expressed a similar view:

The power to repel domestic as well as foreign enemies of the state depends on the command and obedience of the armed forces and the police force. Therefore these major components of state power must be protected by law from any attempt to weaken them through direct approach to individuals to abandon their allegiance or through membership of organisation loyalty to which may conflict with loyalty to the state.³⁶

Despite this severe restriction on the right to organise by members of the armed forces and the police in Nigeria, they are however entitled to take part in the setting up of joint consultative committees. This is made possible by the provisions of section 11(2) of the Trade Unions Act, which states that it shall not be lawful for persons employed in any of the establishments to which subsection (1) relates to combine, organise themselves, or to be members of a trade union, for purposes of employment, but nothing in this section shall be construed as preventing the setting up of joint consultative committees in the establishments concerned. Based on this provision the Armed Forces Consultative Committee made up of the Army, Navy and the Air Force has been set up by the President. This seems to provide an alternative form of representation where matters affecting the welfare and efficiency of the armed forces can be generally discussed. Such bodies cannot, however, be brought within the definition of a trade union and are in no way ideal substitutes for trade unions. The denial of the actual right to organise by members of the armed forces and police means that in practice they are also denied the right to collective action.

2. *Public Servants*

The concept of the public service is wide in the Nigerian sense. Quite apart from the members of the armed forces and the police, section 11(1) of the Trade Unions Act also prohibit persons

³⁴ See Trade Unions Act, *supra* note 25, at §11(1) (a)-(b).

³⁵ *Id.* at §11(1) (g).

³⁶ C. Grunfeld, MODERN TRADE UNION LAW 322 (Sweet and Maxwell, 1980).

employed in the customs service and employees of the Nigerian Security Printing and Minting Company from forming or joining trade unions. The same provision is extended to employees of the Central Bank of Nigeria as well workers in the Nigerian External Telecommunications Limited. Furthermore, the staff of any service - be it of federal or of state government - the employees of which are authorised to bear arms are all prohibited from being members of, or taking part in the activities of a trade union.

The categories of workers prohibited in this way are not closed. The Minister of Labour, Employment and Productivity is further empowered to specify by regulations “such other establishments...from time to time” whose staff may be brought within the provision prohibiting them from belonging to, or taking part in, the activities of a trade union.³⁷ This is a blanket provision which can be used to further deny workers the right to organise.

It is submitted that the provisions of law denying Nigerian civil servants the right to organise themselves into trade unions offend the spirit of ILO Convention 87. The Committee on Freedom of Association has stressed that the Convention

gives effect to the generally accepted principle that workers, without distinction whatsoever should have the right to establish and join organisations of their own choosing, and that, this right applies to workers, whether public or private, whether civil servants or not, with the sole possible exception of members of the armed services and police.³⁸

Indeed a discussion in the *travaux preparatoires* leading to the adoption of Convention 87 affirms the right of public employees to organise. It was stated there that “the principle of freedom of association was to be guaranteed both to workers in private industry and to public employees.”³⁹

The position was reiterated by the ILO in connection with the famous case of *Government Communication Headquarters v. UK (GCHQ)*⁴⁰ involving the British government and its civil servants working in the area of security. Notwithstanding a tradition of over sixty years of trade union activity at the GCHQ, the government banned the staff union and replaced it with a departmental staff association. The union took the matter to the ILO and to the European Commission of Human Rights in Strasbourg. The ILO Freedom of Association Committee ruled that the ban on trade unionism at the GCHQ “was not in conformity” with Convention 87. It reiterated the provisions of article 2 which provides that workers “without distinction whatsoever shall have the right to establish, and subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorization.”⁴¹ The Committee also found the UK government in contravention of article 11 of the European Convention on Human

³⁷ See, Trade Unions Act, *supra* note 25, at §11(1) (i).

³⁸ See Article 2 of Convention 151 and Recommendation 159 of 1978 on Labour Relations in the Public Service of the ILO.

³⁹ Official Bulletin, 1974, Supplement, 139th Report, Case No 373, Para 171

⁴⁰ International Labour Office, 234th Report of the Freedom of Association Committee, Case No 1261, Geneva, 1984

⁴¹ S. Corby, *Limitation on Freedom of Association in the Civil Service and the ILO's Response*, 15 INDUS. L.J. 161,163 (1986).

Rights as it had failed to “take all necessary and appropriate measures to ensure that workers...may exercise freely the right to organise.”⁴²

For Nigeria, the lumping together of the armed forces and police on the one hand and other public servants such as bank staff and telecommunication employees on the other, cannot be justified as it results in denying the latter their rights under the ILO Convention. It is submitted that the law should make a difference between categories of civil servants. There may be civil servants the nature of whose jobs merit a restriction or a total ban on their right to organise, while on the other hand, there does not seem to be any justification in the denial of say, dust bin collectors, employed by the Central Bank of Nigeria, of their right to constitute a proper trade union for the protection of their rights.⁴³

D. THE RIGHT TO ORGANISE IN EXPORT PROCESSING ZONES (EPZS)

An export processing zone could be defined as “a clearly demarcated industrial zone which constitutes a free trade enclave outside a country's normal customs and trading system where foreign enterprises produce principally for export and benefit from certain tax and financial incentives.”⁴⁴

The concept of Export Processing Zones originated out the desire to permit employers to import materials to be processed in an EPZ area of a country and then re-exported without the payment of duty and other tariffs. The EPZ system began in the 1960's with the creation of a zone near Shannon airport in Ireland which suffered loss of employment in the refuelling of aircraft on transatlantic routes. The creation of EPZ's was seen as a less expensive method of creating jobs without spending scarce taxpayers' money and avoiding a bureaucratic system of reimbursing import taxes on goods intended for export.⁴⁵

However, from the beginning this attractive idea had a major drawback. This is because it requires the sealing off of the zone or of designated factories, often behind high fences, to prevent untaxed goods being smuggled into the rest of the economy. With the spread of the EPZ concept around the world, governments found that they had to add further incentives to attract footloose investors to their enclave; subsidised factory buildings, telecommunication links, energy supplies and most worrying of all, guarantees that the labour force would stay cheap and uncomplaining.⁴⁶

In Nigeria, workers' employed in the Export Processing Zones are absolutely denied the right to form unions, bargain collectively and exercise the right to strike. In addition, the EPZ Authority is given the mandate to handle the resolution of all disputes between employers and

⁴² *Id.* at 164. However, in direct contrast to the ILO, the Commission on Human Rights accepted that the prohibition of trade unions was defensible on the grounds of “national security” even if it was in breach of Convention No 87. See Lord Wedderburn, *Freedom of Association or Right to Organise?* 18 *INDUS. REL. J.* 4, 244, 254 (1987).

⁴³ Dustbin collectors employed by the Central Bank of Nigeria are civil servants per definition and are therefore subject to the strictures of the Act.

1. ⁴⁴ See *ICFTU* <<http://www.itcilo.it/english/actrav/telearn/global/ilo/frame/epzicftu.htm>> **last accessed 23 January 2007**

2. ⁴⁵ See *International Confederation of Free Trade Unions: Anti-union repression in the export processing zones* <<http://www.itcilo.it/english/actrav/telearn/global/ilo/frame/epzicftu.htm>> **last accessed 23 January 2007.**

⁴⁶ *Id.*

employees arising from the workplace and contract of employment, instead of workers' organizations or unions.⁴⁷

It is submitted that the absolute prohibition of the right to strike in Export Processing Zones in Nigeria is incompatible with international labour standards which demands that no restrictions should be placed on the workers in the way of organizing their activities to protect their interests in the workplace. The ILO Convention No. 87 guarantees that all workers, without distinction whatsoever, shall have the right to establish organizations of their own choosing and that such organizations shall have the right to organize their activities and to formulate their programmes, including the right to strike.⁴⁸ In Mauritius, for example, there is no such restriction in their EPZs. There are nearly 300 active trade unions in the EPZs of Mauritius representing 22 per cent of workers.⁴⁹

IV. CONCLUSION

The right to belong to a trade union is a fundamental right of every worker. Trade unions constitute the mouthpiece for the struggle for social justice and for the rights of the working people in the world. International human rights instruments to which Nigeria has ratified do claim fundamental status for the right to membership of trade unions.

As we have seen, the extent to which Nigerian law protects the right to belong to trade unions appears inadequate. On a closer scrutiny, one discovers that there exists an array of legal constraints to the membership of trade unions in Nigeria. Restrictions are placed on number of persons who can form a union, there are restrictions relating to particular trades or industry and on special categories of persons. Furthermore, those in Export Processing Zones are completely denied the right to trade unionism.

These restrictions must be removed in order for Nigerian workers to freely enlist in trade unions of their choice and take advantage of the benefits of such associations. One must hope that Nigeria will unleash its workers and restore its posture as a liberal democratic nation that respects the rule of law.

⁴⁷ See Federal Republic of Nigeria Official Gazette No. 67 Vol. 79 21st December 1992. section 4 (e)

⁴⁸ See *supra* note 10, art. 2 -3.

⁴⁹ See International Confederation of Free Trade Unions: Anti-union repression in the export processing zones <<http://www.itcilo.it/english/actrav/telearn/global/ilo/frame/epzicftu.htm>> last accessed 23 January 2007.

THE FARMERS' PROFESSIONAL COOPERATIVE LAW (P.R.C.)

IN ECONOMIC, POLITICAL, AND LEGAL CONTEXT

BY KEVIN SCHWARTZ*

I. INTRODUCTION

China is a nation in the midst of a profound transformation. After centuries as the world's largest economy, it rapidly fell under foreign domination and fractured into civil war. When China again took its fate into its own hands in its present incarnation, the People's Republic of China, it did so as a Communist state that avoided binding geopolitical encumbrances. China closed its doors to the world and did not substantially reenter the international economic community until 1978, when it began a series of structural and institutional reforms that led to astonishing levels of economic growth.

These reforms began with the peasantry, or *nongmin*, yet the rural focus faded, and urban development quickly outpaced growth in the countryside. As the Center liberalized its control over China, fewer services and protections were afforded to the Chinese people. Dissatisfied with their plight, *nongmin* have become increasingly disgruntled, and rural unrest has escalated in recent years.

In part as a response to the economic conditions in the countryside, Beijing promulgated the Farmers Professional Cooperative Law (FPCL). This law, which went into effect on July 1, 2007, will permit farmers to increase their standard of living, and it will also provide an avenue through which important rights-related information can be disseminated.

This paper is a contextual presentation of the FPCL. It seeks to place the FPCL in an economic, political, and legal context that will provide readers with a holistic view of not only the need for farmers' professional cooperatives (FPCs), but the impact this new law permitting them will have on the people who benefit from it most.

After this Introduction (Section I), Section II presents a comprehensive background, which will relate the upheavals that the *nongmin* have had to face over the past century and more, and the difficulties under which they labored. Section III provides a deeper look into China's most recent era, the "Reform and Opening Up" period. During this period, major changes have taken place throughout China in economic, political, and legal contexts that have had an important impact on the countryside.

Section IV discusses the FPCL itself. It begins with an introduction to FPCs, and goes on to investigate the economic and political needs for an FPCL and the impact such a law will have

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