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THE DECRIMINALIZATION OF NIGERIAN LABOUR LAW

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ABSTRACT

This paper makes a case for the decriminalization of Nigerian labour law. Numerous Criminal offences run like golden threats through Nigerian Labour Law, especially in the area of industrial conflicts - as contained in the Trade Disputes Act 2004 and the Trade Unions (Amendment) Act 2005.

Key Words: Labour Law, Decriminalisation of Labour law, Nigeria, Policy Reform.

INTRODUCTION

This paper makes a case for the decriminalization of Nigerian labour law. Numerous Criminal offences run like golden threats through Nigerian Labour Law, especially in the area of industrial conflicts - as contained in the Trade Disputes Act 2004 and the Trade Unions (Amendment) Act 2005. The paper identifies and examines the applicable criminal offences, such as criminal conspiracy, conspiracy to extort by deceit and other penal sanctions imposed by statute. The paper argues for the removal of criminal sanctions in labour relations. The discussions and findings shows that invoking criminal sanctions in labour relations is anomalous as it places an extreme burden on the criminal justice system, which consequently leads to violations not been penalized effectively or at all. The study contributes towards the development of Nigerian labour law and jurisprudence in general, and the findings can be effectively incorporated in Nigerian Labour Law.

CRIMINALISATION OF LABOUR IN NIGERIA

The focus of this section is on the sanctions which workers and trade unions may be subjected to for exercising the right to strike. The areas examined in the following sections below are criminal conspiracy, conspiracy to extort, and penal sanctions imposed by the Trade Disputes Act 2005 and the Trade Union (Amendment) Act 2005.

➤ **Criminal Conspiracy**

Workers may be liable for the crime of criminal conspiracy where they agree to take part, or actually take part, in a strike action. As previously noted, a conspiracy consists in the agreement of two or more persons to do an unlawful act by an unlawful means. Although the crime of conspiracy is constituted by mere agreement to commit an unlawful act, the civil right of action is not complete unless the conspirators undertake an act in pursuance of their agreement causing damage of the plaintiff. Thus, the crime of conspiracy is committed by the mere agreement of two or more persons to effect any

unlawful purpose whether as their ultimate aim or only as a means to it. The crime is complete if there is such an agreement, even if nothing is done in pursuance of it.' In *Majekodunmi v. R*² the West African Court of Appeal said:

*"The gist of the offence of criminal conspiracy lies, not in doing the act or effecting the purpose for which the conspiracy is formed, but in the forming of the scheme or the agreement between the parties."*³

The offence of criminal conspiracy is contained in the Criminal Code.⁴ The relevant sections for the purposes of liability for strike action are contained in sections 516 to 518 which provide generally to the effect that any person who conspires to effect any unlawful purpose or to effect any lawful purpose by any unlawful means is guilty of an offence, and is liable to imprisonment for two years.⁵

These provisions show that the offence of criminal conspiracy is committed where a person conspires with another to commit an offence. To constitute an offence, there must be an act or omission which renders the person doing the act or making the omission liable to punishment under the criminal code, or under any Act, or law.⁶

Under the provisions employees and trade unions in Nigeria can be prosecuted not only for going on-strike but also for criminal conspiracy for agreeing together to undertake a strike action. Merely agreeing to undertake strike action is tantamount to an agreement to effect an unlawful purpose. Furthermore, where employees actually embark on a strike action there will be no need to prove that the agreement for the strike was to effect an unlawful purpose. An example of such a situation would be an

¹See *Crofter Hand-Woven Harris Tweed Co. Ltd. v. Veitch* [1942] AC 435
²[1952] 14 WACA 64.

³*ibid*

⁴The Criminal Code is contained in the Criminal Code Act Chapter 77 Laws of the Federation of Nigeria 2004. and it applies in the states that make up Southern Nigeria. The Penal Code is contained in the Penal Code Law, Chapter 89, Laws of Northern Nigeria 1963 and it applies in the states that make up Northern Nigeria.

⁵Section 516 provides in full that: "Any person who conspires with another to commit any felony, or to do any act in any part of the world which if done in Nigeria would be a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for seven years, or, if the greatest punishment to which a person convicted of the felony in question is liable is less than imprisonment for seven years, then to such lesser punishment. Section 517 provides that: "Any person who conspires with another to commit any offence which is not a felony, or to do any act in any part of the world, which if done in Nigeria would be an offence but not a felony, and which is an offence under the laws in force in the place where it is proposed to be done, is guilty of a misdemeanour and is liable to imprisonment for two years." And section 518 provides that: "Any person who conspires with another to effect any of the following purposes (1 to prevent or defeat the execution or enforcement of any Act, Law, Statute, or Order; or (2) to cause any injury to the person or reputation of any person, or to depreciate the value of any property of any person; or (3) to prevent or obstruct the free and lawful disposition of any property by the owner thereof for its fair value; or (4) to injure any person in his trade or profession; or (5) to prevent or obstruct, by means of any act or acts which if done by an individual person would constitute an offence on his part, the free and lawful exercise by any person of his trade, profession, or occupation; or (6) to effect any unlawful purpose; or (7) to effect any lawful purpose by any unlawful means; is guilty of a misdemeanour, and is liable to imprisonment for two years. An offender cannot be arrested without warrant."

⁶See section 2 of the Criminal Code Chapter 77 Laws of the Federation of Nigeria 2004.

agreement by the National Union of Road Transport Workers (NURTW) to undertake industrial action without complying with the requirements of the Trade Disputes Act 1990.

Subsections 1-7 of section 518 contain very wide provisions which could hinder employees and trade unions in their pursuit of legitimate industrial action. Nigerian courts have not had the opportunity to consider the actual application of this section to strikes and industrial disputes, but an illustration can be found in the Australian case of *Brisbane Shipwrights' Provident Union v. Heggie*⁷ where the equivalent of subsection 4 was applied." In that case, the respondent was employed as a shipwright in the service of the Queensland government at one of the government docks. He was asked to join the union and pay the admission fees but he refused. The union then informed the government that, unless the respondent was dismissed, the union would call out its men employed at the dock on strike. It was held that the union action amounted to conspiracy to injure the respondent in his trade or profession."

CONSPIRACY TO EXTORT BY DECEIT

Employees, trade unions and their officials may also be liable under section 422 of the Nigerian Criminal Code 2004 for conspiracy to extort by deceit. This section provides that any person who conspires with another by deceit or any fraudulent means to affect the market price of anything publicly sold, or to defraud the public, or any person, whether a particular person or not, or to extort any property from any person, is guilty of a felony, and is liable to imprisonment for seven years."

Thus, where employees or trade union official conspire and threaten the employer to either increase the wages of the employees or face strike action this could amount to criminal liability for extortion. That unions can be prosecuted under this section is demonstrated by *Ogundipe v. R.*¹¹ In that case the appellants, officials of a union of labourers who demanded higher wages, were charged with conspiracy to extort. It was held that the appellants were not liable, but only on account of the lack of evidence of conspiracy to achieve their aim by any deceit or fraudulent means. The policy behind this provision seems to be that the exercise of the right to strike should not lead to illegitimate economic pressure on the employer."

PENAL SANCTIONS IMPOSED BY THE LABOUR STATUTES

Both the Trade Disputes Act 2004 and the Trade Union (Amendment) Act 2005 provide for criminal sanctions where workers go on strike. Section 17 (2) of the Trade Disputes Act provides for a fine not exceeding ₦100.00(US\$0.84) or six months'

7(1906) 3 CLR 686.

8Although the case went to court as a civil, not criminal, conspiracy.

9See: generally E. E. Uvieghara, *Labour Law in Nigeria* (Lagos and Oxford: Malthouse Press Ltd, 2001), pp. 447-450; E. E. Uvieghara, "Strike Actions and the Criminal Law" (1972) 6 *The Nigerian Law Journal*, pp. 88-102.

10Section 422 Criminal Code 1990

11(1954) 14 WACA 465.

12See *Oimskal Shipping Co v. ITWF* [1991] 4 ALL ER 871.

imprisonment for individuals and in the case of a body corporate body a fine of ₦1,000(US\$8.43) is imposed on conviction. The Trade Union (Amendment) Act provides in cases where the prohibition on the right to strike is breached for a fine of up to ₦10,000(US\$84.38) or six months' imprisonment or both the fine and imprisonment."

A different approach is taken as regards essential services where the right to strike is explicitly prohibited in any circumstance. As previously noted, the Head of State is empowered to proscribe any trade union or association whose members are employed in essential services and who have engaged in acts calculated to disrupt the smooth running of any essential service or, where applicable, have wilfully failed to comply with the procedure for the settlement of trade disputes." Furthermore, strikers can be detained for 'acts prejudicial to industrial peace.'" In addition, such strikers can also be made liable for a fine of ₦10,000(US\$84.38) or six months' imprisonment or both."

CRIMINAL SANCTIONS IN LABOUR RELATIONS: HAVE THEY BEEN EFFECTIVE?

The question may be asked at this stage as to how effective and realistic are the laws criminalising and banning strikes in Nigeria, Why should the exercise of the right to strike be criminalised when the proper thing to do is to seek for ways of reconciling the causes of conflict between the parties? However, despite the economic sanctions imposed by the employer and the physical sanctions imposed by the state: inexorably and unstopably strikes continue to occur. Indeed, the industrial relations experience in Nigeria shows that the prohibition on strikes does not necessarily prevent workers from taking industrial action irrespective of what the law may provide to the contrary." However, these disciplinary penalties must nevertheless be seen as a method of curtailing the right to strike and of punishing those who strike.

There is no doubt that workers go on strike because they have real grievances about important issues which affect their well-being in the world of work. It is therefore important to find ways of solving the problems of workers rather than punishing them when they are constrained to go on strike in a bid to realise such legitimate demands. A progressive approach to good labour-relations does not lie in the imposition of stiff penalties for the exercise of the right to strike, but in speedily finding solutions to labour-management misunderstanding. Indeed, the ILO has ruled that the existence of heavy sanctions for strike action may well create more problems than they resolve; the

13 Section 6(6)(a) Trade Union (Amendment) Act 2005.

14Section 1 Trade Disputes (Essential Services) Act 2004.

15*Ibid*, section 8.

16Section 6(6)(a) Trade Union (Amendment) Act 2005.

17See O. P. Ipaye, "Employment and Labour Relations Law in Nigeria: Proposals for Reform," in T. Fagbohun (ed.), *Developments and Reforms: Nigeria's Commercial Laws and Essays in Honour of Chris Ogunbajo*, OFR (The Law Center, Faculty of Law, Lagos State University, Nigeria, 1998) , p. 407. See also: A. K. Ubeku, *Industrial Relations in Developing Countries - The Case of Nigeria* (London: Longman Press, 1983), p.166; T. Fashoyin, *Industrial Relations in Nigeria* (Nigeria: Longman Nigeria, 1992), p.199; A. Emiola, *Nigerian Labour Law* (Ibadan: Ibadan University Press Ltd, 1982), p. 273; A. A. Adeopun, *From Contract to Status in Quest for Security* (University of Lagos Press, 1986), p. 43; O.V.C. Okene, "Current Issues and Development5 in Workers' Freedom of Association in Nigeria" (2007) 5:1 *Journal of Commonwealth Law and Legal Education*, p. 61.

application of penal sanctions does not favour the development of harmonious industrial relations"Clearly the subjection of employees to criminal liability by way of fines and imprisonment is contrary to the ILO provision that no one should be deprived of their freedom or be subjected to penal sanctions for the act of organising or participating in a peaceful strike."

Another major reason why it has been considered improper to allow the criminal law to play a significant part in the regulation of industrial disputes is that, in practice, it has been found difficult to enforce criminal sanctions against workers involved in a strike action. Sending some thousands of dockworkers workers to prison; for example, may not be a practical proposal. In 1978 for example, 2,500 teachers belonging to the Lagos State Branch of the Nigerian Union of Teachers (NUT) went on strike against the Teaching Services Commission's failure to improve conditions of service. Although the strike was in breach of the law, the government did not prosecute the teachers apparently due to the practical futility of the execution of sanctions." This is similar to the much-quoted UK experience which *involved* tr.e.the Betteshanger Colliery in Kent where, in 1941, 4,000 miners of the Kent Miners' Union went on strike in breach of wartime legislation. Summonses were served on 1,000 'workers, who later pleaded guilty. All the workers were fined and three of their leaders were imprisoned. However, it was not possible to enforce the fines against the workers because of their large numbers. The government was subsequently forced to abandon the case and also released the imprisoned union leaders. As the Donovan Commission noted, this episode confirmed "the fruitlessness of the 'use of penal sanctions for the purpose of enforcing industrial peace.' Besides, the prosecution of the offenders may engender unpleasant reactions and consequences among the citizens .

Indeed, criminal sanctions appear to *have* failed. Not only *have* they proved to be difficult to enforce, but their social desirability, especially when they *involve* imprisonment, is dubious. As Adeogun noted:

"That workers resort to industrial action *even* in the face of these *stiff* penalties vividly reminds us of what strikes are about. They are about grievances, actual or imagined, arising from industrial life. Unless a speedy and *effective* system is devised for resolving such grievances, strikes will surely take place, if only to focus the attention of the government and society at large on the grievances. It is therefore unrealistic to put a total ban on strikes. Undoubtedly, there is a need for some sort of statutory curb on the freedom to strike but, surely, a total ban runs counter to the principle of voluntary *collective* bargaining, the

18 ILO: *Freedom of Association and Collective Bargaining: The Right to strike, General Survey, 1994* Report III part 48, para. 177.

19 ILO: *Digest of Decisions and Principles of the Freedom of Association Committee* Fifth (Revised) edition (Geneva: International Labour Office, 2006), para. 672.

20 AA Adeogun, "Strikes- The Law and the Institutionalisation of Labour Protests in Nigeria (1980) 16(1) *Indian Journal of Industrial Relations*, p. 9.

21 *Royal Commission on Trade Unions and Employers' Associations 1965-1968, Cmnd. 3623* (1968), para 487. See generally, G. S. Morris, *Strikes in Essential Services* (London and New York: Mansell Publishing Limited, 1986), pp. 191-192.

fostering of which is a declared policy of the State.,²²

From the foregoing, it is clear that the ban on strikes is not effective and not justifiable. Suppressing the right to strike does not enhance the development of labour-relations, and is contrary to contemporary democratic notions." As Kahn-Freund noted:

"No country I know of suppresses the freedom to strike in peace time, except dictatorships and countries practising active racial discrimination [A] legal system which suppresses the freedom to strike puts the workers at the mercy of the employees. This - in all its simplicity - is the essence of the matter.,²⁴

To be fair, Nigeria may not correctly be described as a dictatorship and it is not known for a policy of racial discrimination, but it is unfortunate that at a time when many nations are increasingly realising the need for a right to strike and taking appropriate steps to protect workers" that Nigerian law, instead, is being more repressive of the most essential right of workers. This certainly will not make the workers happy and puts them at a disadvantage in labour-management relationships.

Furthermore, the question may be asked as to what is the wisdom behind retaining the ban on strikes in our statute books? It could be argued that penal sanctions operate as a deterrent to would-be strikers. However, whatever deterrent effect this might have is weakened in the face of strikes by workers, none of which has led to prosecutions by the government." As Adeogun noted:

"Our experience has shown that criminal sanctions do not have any appreciable or substantial effect on an existing strike nor do they have much effect as a deterrent from strike. It must be realised that at this level of human relations, criminal sanctions derive most of their effect not from the degree of penalty but from the social stigma attaching to them. And surely, if instead, the effect is to produce acclamation of the criminal, then, their value not only is lost but is reversed!:"

The futility of the use of penal sanctions in industrial relations is also confirmed by worldwide experience, which shows that legal prohibitions and restrictions have been powerless to prevent strikes and that penal sanctions which remain on the statute book

22 A. Adeogun, *From Contract to Status in Quest for Security* (University of Lagos Press 1987), p. 44.

23 O. Kahn-Freund, *Labour and the Law* (London: Stevens and Sons, 1972), p. 234. See also C. Woolfson and M. Beck, "The Right to Strike, Labour Market Liberalization and the New Labour Code in Pre-Accession Lithuania" (2002-2003) 28 (1) *Review of Central and East European Law*, p. 82.

24 O. Kahn-Freund, *Labour and the Law* (London: Stevens and Sons, 1972), pp. 8 and 234.

25 This can be evidenced by the fact that many national constitutions in Europe and Africa now expressly provide for the right to strike. See "International Observatory of Labour Law" <<http://www.ilo.org/public/english/dialogue/ifpdial/IV/observato rv/profiles/ger.htm>> (14 January 2007).

26 A. A. Adeogun, *From Contract to Status in Quest for Security* (University of Lagos Press, 1987), p.44.

27 Adeogun, A.A., "The Enforcement of Labour Laws and Economic Development," a paper presented at the National Seminar on Revitalisation of the economy and Economic Development, organised by the Nigerian Institute of Advanced Legal Studies Lagos, between 1-3 February, 1984 p.7.

are of "theoretical, educational or residual value.?"

However, the fact that Nigerian workers have embarked on strikes despite the heavy sanctions does not mean that they have the right to strike. Power does not legitimate itself. Having the economic or moral power to do something does not *ipso facto* confer any legal right to do it. It must be noted that the right to strike is a legal and not a sociological concept and where strikes are forbidden, as in the present situation of Nigeria, there is no such right - however frequently they may occur." But criminal sanctions certainly cannot solve the magic of foreclosing strikes by workers when they are determined to strike at all costs. A similar view was taken by Sir Hartley Shawcross in connection with the wartime industrial legislation in Great Britain. In 1946 he explained to the House of Commons:

*"You might as well try to bring down a rocket bomb with a pea shooter, as try to stop a strike by the process of the criminal law. The way to stop strikes is not by policemen but by a conciliation officer, not by assize courts, but by the arbitration tribunals."*³⁰

There is no doubt that the imposition of penal sanctions has added further nails into the coffin of the right to strike in Nigeria. Indeed, the continued suppression of the right to strike remains a sore point in industrial relations in Nigeria and this underscores the fact that Nigerian law is deficient in the protection of the right to strike.

CONCLUDING REMARKS

This paper has examined the criminalization of Nigerian labour law and various types of liability which workers and their trade unions may be subjected to for engaging in industrial action. As has been seen, these liabilities include criminal conspiracy, conspiracy to extort by deceit, fines, imprisonment and detention.

Nigerian law is clearly thus at variance with international labour standards which prescribe that criminal sanctions should not be permitted in labour relations. It is our hope therefore that Nigeria will take steps to reform its labour relations policy and decriminalise labour law. In fact, given Nigeria's leadership position in the African Union and its pride of place in the comity of nations one must hope that the needed reform in this area of overarching importance is attended to quickly, so as to also bring Nigerian labour law in conformity with international standards.. This is the position taken by many democratic societies.

28 E. Cordova, "Strikes in the Public Service: Some Determinants and Trends" (1985) 124 *International Labour Review*, p. 167.

29 O. Kahn-Freund and BA Hepple, *Laws Against Strikes: International Comparisons in Social Policy* (London: Fabians Society, 1972), p.5; 1. Novitz, *International and European Protection of the Right to Strike* (Oxford: Oxford University Press, 2003), p. 4.

30 *Hansard*, Feb. 12, 1946, cols. 199-200. See also Bretten, R., "The Right to Strike in New Zealand" (1968) 17 *International and Comparative Law Quarterly*, p. 756..