Freedom of Association and the Protection of Trade Union Rights in Africa

O. V. C. OKENE
G. A. OKPARA

Available at: https://works.bepress.com/ovunda_v_c_okene/22/
Freedom of Association and the Protection of Trade Union Rights in Africa – Nigeria as a Case Study

Abstract

From the time that trade unions first emerged in Africa, they have suffered crude treatment and abuse from their governments. The picture is very grim as there is endemic violence against trade unionists including harassment, intimidation, torture, disappearances, arrests; murder, dismissals, threats, and attacks. In the case of Nigeria, the abuses were particularly severe during several years of military rule from 1984 to 1999. Although Nigeria has returned to democratic governance since 1999, the attack on trade union rights continues. This article argues that through such behaviour, the government of Nigeria violates workers’ freedom of association under international law and this does not augur well for the nation’s future as a liberal democracy with respect for human rights. The article further argues that there is an urgent need to protect trade union rights in Africa. Using Nigeria as a case study, the article proffers suggestions to seriously tackle the abuse of trade union rights in Africa.

I. Introduction

Men in human society are not by nature brothers.

Jean-Jacques Rousseau

Within the freedom of mind and of conscience has no meaning.

Hans Kohn

* O V C Okene, B.Sc., (Hons); LL.B., is a Senior Lecturer in Law at the University of Science and Technology, Delta, Nigeria. From July to October 2003 he was the 10th K. C. Coomassie Visiting Chair in the Law Faculty of the University of Pretoria, South Africa. He has a First Class Honours degree in Law from the University of Pretoria and a Masters in Business Administration. His research interests include human rights, labour law and constitutional law. He can be reached at ovcorke@gmail.com.

** A G. Okpara, B.Sc., (Hons); LL.B., is a Senior Lecturer in Law at the University of Science and Technology, Delta, Nigeria. He is also a Notary Public and Advocate of the Supreme Court of Nigeria. He is a founding member of the Nigerian Bar Association. He is the author of The Social Contract, London 1762.

† The Social Contract, 1762.
Freedom of association is generally regarded as safeguarding individual civil liberties. Following the principle that people may do whatever they wish as long as they do not harm others, an individual should be free to join an organization and to act in association with others as long as no harm is caused. The right to freedom of association is promoted throughout the world. At the opening of the first International Labour Organisation African Regional Conference in Lagos in 1960, the Nigerian Prime Minister Sir Abubakar Tafawa Balewa declared, "Freedom of association is one of the foundations on which we build our free nations."

Freedom of association is the key enabling right and the gateway to the exercise of a range of other rights at work. The concept of freedom of association in labour relations means that workers can form, join, or belong to a trade union and engage in collective bargaining. It also implies that the workers are entitled to go on strike whenever necessary, such as where there are unfair conditions of work, unsafe workplaces, and refusal of employers to pay wages. Members thus enjoy the right to associate for union purposes and the right to participate in all union activities. These rights are recognized both in international law and in all democratic countries of the world. If, without justification, the public authorities threaten the life and limb of the unionist to prevent him or her from taking part in union activities, freedom of association is violated.

However, African trade unions have long suffered mistreatment by their various governments. For example, in Malawi 38 trade unionists were killed while demanding for the release of Chakufwa Chihana, the Secretary-General of the Southern African Trade Union Co-ordination Council (SATUCC). SATUCC offices were subsequently closed down by the government, and the running of its activities from Malawi prohibited. Shortly after Chihana's arrest, his wife was dismissed from her job at the University of Malawi, and evicted from her home. The passport of Chihana's lawyer was impounded, and they were both attacked outside the court. In related development, the mother of an SATUCC employee was tortured to disclose his daughter's whereabouts. In Lesotho, government used its powers under the In-
ternal Security Act to charge trade union officials for holding meetings of union members, and in the commotion that followed a trade unionist was shot by the police. Furthermore, in Kenya, the offices of a newsagent were fire-bombed, the publisher and his wife arrested and charged with sedition, the publisher's passport was confiscated and thousands of publications which carried articles critical of the government were seized. These examples are numerous and can be multiplied many times over in all African countries but suffice it to say that there is high repression of trade union rights in Africa. The picture is pervasive and very grim. The whole of Africa is replete with stories of violation of union rights. No day passes in Africa without one ugly incident or the other showing government violation of trade union rights. Indeed there is endemic violence against trade unionists including harassment, intimidation, torture, disappearances, arrests, dismissals, threats, attacks and murder.9

This scenario resonates with the case of Nigeria. The abuses and violations of trade union rights in Nigeria were particularly severe during the years of military rule from 1984 to 1999. Though Nigeria has returned to democratic governance and joined the community of civilized nations, the rights of trade unions are still being violated. The International Confederation of Free Trade Unions (ICFTU) released its annual report in October 2006 and named Nigeria as one of several that suffered from increased abuses of trade union rights by the government. Nigeria was also the subject of a special paragraph by the International Labour Organisation (ILO) due to government disregard of the civil liberties essential to trade union rights.10 Recently, again, the African Trade Union Centre petitioned President Olusegun Obasanjo on the use of physical harassment and intimidation against unionists in Nigeria. The petition is coming on the heels of a similar protest by America Labour Centre accusing the Nigerian Government of anti-labour practices and dictatorial tendencies. As the Secretary-General of the African Trade Union Centre noted, "I

K. Hossain note 6, supra.
Ibid.


am afraid what we see is nothing but state repression and we are coming to the conclusion that those days when law enforcement agencies acted with impunity are not far from over. The country appears to have the trappings of democracy, but not the substance and content. Abuses of workers rights continue to take place unchecked and what we see in the country smacks of nothing else but state repression."

This article examines the government’s disturbing pattern of behaviour. We argue that the public authorities infringe the right to associate under international law by denying, limiting, or violating workers’ freedom to associate for their collective interests. The article further contends that these violations of trade union rights must be redressed. In particular, given the continued violations of trade union rights, what legal measures do the people of Nigeria have at their disposal? What moves can be taken at an international level to put pressure on the Nigerian government? How can international treaties be enforced? It is to these questions that this article seeks to reply. Before doing so, however, it may be helpful briefly to outline the sources of freedom of association and to take an overview of the nature of the violations of trade union rights in Nigeria. It must noted that though Nigeria is used as a case study the solutions suggested here can equally apply to the whole of Africa.

2. Freedom of Association in International Law

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". 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) 14 and the International Covenant on Civil and Political Rights (ICCPR) 15, both of 1966. 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 Convention 1948 (No. 87) 16 and the Right to Organise and Collective Bargaining Convention 1949 (No. 98). 17 Further, the right to freely associate is guaranteed in the European Convention on Human Rights (ECHR) 1950, the European Social Charter (ESC) 1996, the American Convention on Human Rights (ACHR) 1969, the Community Charter of Fundamental Social Rights of Worker

12 See "African Workers Accuse Nigeria of Violating ILO Conventions"
13 Article 20.
14 Article 8(1) (a)-(c).
15 Article 22(1).
16 See Articles 2-7.
17 See Articles 1-6.
18 Article 11.
19 Part 1, Paragraph 5, and Article 5.
20 Article 16.
2.1 The African Charter on Human and Peoples’ Rights

Another source of freedom of association of workers in Nigeria and Commonwealth Africa generally can be found in the African [Banjul] Charter of Human and Peoples’ Rights 1981. 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”. 23

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 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”. 25 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". 26

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.” This is a demonstration of support for the protection of trade union rights in Africa.
It is significant to note that Nigeria has ratified this Charter and made it a part of national law. In *Abacha v Fawehinmi*, 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. In sum, there can be no doubt that international law recognizes the right to freedom of association and the right to organize.

### 2.2 Constitutional Basis for Workers Freedom of Association

The freedom to associate has a constitutional basis in Nigeria, as in other African countries. Section 40 of the Constitution of the Federal Republic of Nigeria 1999 provides as follows:

> 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.

Section 40 holds great significance, for it gives the labour movement a constitutional right to associate. The Constitution further protects the worker's right not only to belong to but also to form a trade union. Thus the Constitution bars a "closed Shop,, agreement, "yellow dog" contract, or any other arrangement that compels a

---

29 2000, 6 NWLR (part 660) 228(SC).
31 See for example, Article 21(e) of the 1992 Constitution of Ghana provides that "[A]ll 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".
32 A closed shop is an agreement, usually between a trade union or unions on the one hand and the employer on the other, that makes union membership a condition of employment or continued employment. A closed shop seriously limits a worker's freedom to belong to a union of his choice.
worker to join a particular union or that excludes the worker from union membership. This covers both private employers and the government itself when acting as employer. This means that a worker can decline to join union X and instead form or join union V.

Finally, the Constitution provides for access to court to remedy any breach of the right to associate. Section 46 of the Constitution states as follows:

Any person who alleges that his right to form, join or belong to a trade union of his choice has been, is being or is likely to be infringed may apply to a High Court in the State in which the infringement is threatened or has occurred for redress.

3. Violations of Trade Union Rights: Some Illustrations

Any hope of granting legitimate power to trade unions must be based on freedom of association.

Sheldon Leader

Trade unions are the typical and universal organisation of the worker, the one that he cannot do without and through which he discovers himself and imposes himself on society. Trade unions are one of the most important political organisations available for ordinary people to achieve their human rights. The right of all members to participate in trade union activities flows from the right of workers to associate for trade union purposes. Any unlawful and unjustified action by the public authorities that impairs the right of the unionist to actively participate in union activities will violate the right to free association. Apart from the ILO, the ICESCR is one other human rights instrument that specifically protects the right of trade unions to function freely. The issue of the right of unionists to function freely without fear of


34 Other sources of the protection of the right to associate in Nigeria can be found under Section 9(6) of the Labour Act 1990 and Section 12 of the Trade Unions Act 1990. These sections show that the right to associate and belong to trade unions is open to all, regardless of ethnicity, religion, or political affiliation. They also forbid discriminating against workers based on union membership or non-membership.


37 See Article 8(c).
state and other forms of harassment brings with it the question of the relationship between trade union rights and human rights.

This relationship dates back to 1944 when the International Labour Conference proclaimed in the Declaration of Philadelphia concerning the aims and purposes of the ILO that freedom of expression and of association are essential for sustained progress. The seriousness of this relationship was also stressed in the travaux préparatoires leading to the adoption of ILO Convention 87 where it was noted that

Freedom of industrial association is but one aspect of freedom of association in general, which must itself form part of the whole range of fundamental liberties of man, all interdependent and complementary one to another, including freedom of assembly and of meeting, freedom of speech and opinion, freedom of expression and of the press and so forth.

There is a clear obligation on the state to ensure respect for human rights in order not to fall foul of the spirit of Article 8 of Convention 87 which specifically provides that "The law of the land shall not be such as to impair, nor shall it be so applied as to impair the guarantees provided for in the convention". The ILO has identified certain civil liberties as essential for the exercise of trade union rights. In Nigeria, unfortunately, the state has continued to deny trade unions the free exercise of these liberties. It is to these violations that we now turn.

3.1 The Right to Personal Dignity and Safety

Freedom of association extends to the personal dignity and safety of workers; they must be free to associate and organize without fear or molestation. This is a significant aspect of trade union rights. However, it is not uncommon to hear of violence, injuries, loss of life, cruelty, torture and other forms of ill treatment, forced exile, and disappearances of workers all over the world. Many workers who try to form trade unions are spied on, harassed, pressured, threatened, suspended, fired, deported, or otherwise victimized in reprisal for exercising their right to freedom of association." The state must ensure that the lives of workers and especially their leadership are protected from both the state itself and others.

In Nigeria, workers’ right to personal dignity and safety is very precarious. Violence against trade unionists is endemic, including murder, disappearance, intimidation, torture, harassment, and detention. In 2002, shortly after the Nigerian Labour Congress (NLC) declared a nationwide strike over the increase of petroleum prices, security agents rounded up Adams Oshiomhole, the NLC President, and several other labour leaders, including Dr. Dipo Fashina, President of the Academic Staff Union

---

Sixteen other union leaders were arrested in Port Harcourt, Rivers State, while twenty-five persons, including the state secretary of NLC, Wale Olaniyan, were locked up in Ogun State by the police. In the course of the Abuja arrests, the police exhibited excessive brutality. They seized the NLC President's car and savagely beat up Dare Agbaje, the driver. ASUU President Fashina had his shirt torn and one of his fingers broken. Throughout a twenty-four hour stint in detention, they were not allowed to receive any medical attention. Much earlier, Milton Dabibi, Secretary-General of the Petroleum and Natural Gas Workers Union (PENGASSAN), and Frank Kokori, Secretary-General of the National Union of Petroleum and Natural Gas Workers (NUPENG), were detained in 1994 and 1996, respectively, for more than two years without charge or trial. When they fell into poor health, access to medical care was denied them.

With the use of the police and other law enforcement agencies to harass and assault trade unions in Nigeria, the state cannot deny responsibility. A government spokesman recently warned labour against what he described as "unnecessary confrontation", and added that the government would not tolerate "any excessive militancy" from them. This sort of statement suggests that the government tacitly supports the attacks against unions. Even where unions and workers are harassed by people outside the government, responsibility still rests on the government, for it turns a blind eye to the atrocities. Nigerian trade unions were in the vanguard of the nationalist movement, which eventually led to Nigerian independence and freedom for all citizens. It is disturbing that they are now treated as enemies by the government. The Secretary-General of the Organisation of African Trade Union Unity (OATUU) has expressed a similar view:

As a trade unionist, the question that worries me most is why trade unions which fought side by side with political parties to dislodge colonialists are not now accepted by African Governments [...]. Trade unionists are in jail or in detention [...] some under investigation, splits are being encouraged to weaken trade union leadership [...] some unions are facing threats of dissolution. There are trade unionists living in exile because they have displeased home governments. 44

The abuses of trade union rights remain a sore point in Nigeria.

3.2 Freedom of Assembly

It is very important that trade union organizations be able to organize meetings and other activities without having to seek permission from the authorities. ILO Convention 87 recognizes this fact by providing that "the public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof".

42 Ibid.
44 See Article 3(2).
Yet that has not consistently been the case in Nigeria. Organizations frequently must seek official authorization before holding a public meeting or gathering. Such a requirement can greatly diminish the exercise of free association, especially when workers seek to engage in activities that the authorities may consider a challenge against their own policies and programmes. The Nigerian Public Order Act is a radical example here: it empowers the authorities to prohibit gatherings or mass meetings generally. Unionists could be prevented from gathering to discuss a contemplated strike, for example, or to conduct an election. Convention 87 supports this claim of the right of assembly without authorization. It states:

The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof. 47

Giving such wide discretionary powers to a functionary of a state that is openly hostile to trade unions is bound to lead to abuse of power. In August 2002, for example, the federal government without reasonable cause dissolved the executive committee of the Maritime Workers Union of Nigeria (MWUN). Without an executive councilor committee, a union cannot assemble to discuss and further the interests of members.

3.3 Freedom of Opinion and Expression

The right of trade unions to function freely and properly can be affected by state or other form of censorship. Unionists need to be able to express their views openly, without fear of reprisals from the state or others. The presence of police or other security at trade union meetings could chill the freedom of expression of trade unionists and their participation in trade union activities.

Even though the Nigerian Constitution guarantees freedom of expression for every citizen, authorities take brutal measures against those trade unions perceived to be working against their interests. The Nigerian Union of Journalists has persistently complained of violations of its members’ rights. On January 4, 2002, for example, an anonymous caller who claimed to be working in tandem with the State Security Services (SSS) in Ibadan, the Oyo State capital, in a telephone conversation with Bayo Oladeji of the Nigerian Tribune, said in a muffled voice, "your [telephone] number is under surveillance and we know what you have been doing with it, especially Bayo Oladeji. This call is from the SSS and we are going to sweep that house very soon." The reason for this threat was plainly articles considered unfavourable to those in power. Other examples of violations include the acid thrown in the face of one Alifa Daniel, head of the Concord Newspapers in Kogi State, and the arrest of an editor-in-chief and journalist of the Tribune Newspapers for writing an article critical of the police."

47 Article 3(2).
49 Ibid.
The Committee on Freedom of Association believes that a union’s Convention 87 rights preclude any requirement that it submit all communications and publications for approval before distributing them. Any such requirement could both invade privacy and erode the autonomy and independence of trade unions and their members. The Committee on Freedom of Association also considers that the full exercise of trade union rights calls for a free flow of information, opinions, and ideas, and that workers, employers, and their organizations should enjoy freedom of opinion and expression at meetings, in publications, and in the course of other activities.

3.4 Protection of Trade Union Property

Government and its functionaries must treat trade union property like any other private property: as inviolable without reasonable justification. Searches of trade union offices and the dwellings of trade union members should be carried out only with proper warrant and in strict compliance with the purpose of the warrant. Trade union property should also be safeguarded from unwarranted destruction.

In Nigeria, government disrespect for trade union property is commonplace. The Nigerian Labour Congress and its affiliate trade unions (more than 50) have been raided by the authorities without legitimate cause. In the recent ILO Case No. 2267/Nigeria (2004) Complaint Against the Government of Nigeria on Freedom of Association, the Academic Staff Union of Universities (ASUU) brought a complaint to the ILO concerning violations of freedom of association and gross infringement of trade union rights, including summary dismissal of academic staff because they had taken strike action, and harassment and victimization of trade union members. Following strike actions by ASUU in 2001, 2002, and 2003, forty-nine lecturers of the University of Ilorin were dismissed, union property vandalized and removed, and premises were sealed. Members of staff purportedly dismissed were also brutally evicted from their living quarters.

These actions were stoutly condemned by the ILO Committee on Freedom of Association, and the Nigerian Court ordered the government to reinstate the dismissed lecturers and restore trade union property. Even so, the government has done nothing by way of taking remedial steps.

3.5 International Affiliation

International affiliation is certainly one of the basic trade union rights enshrined in Convention 87 of the ILO. Article 5 provides that

Workers’ and employers’ organisations shall have the right to establish and join federations and confederations and any such organisations, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

However, the Nigerian state has continued to deny trade unions the full opportunity to exercise their right to freedom of association in this regard. The successive mili-

---

50 See General Survey, 1983, Para. 68, note 38 above.
tary regimes between 1985 and 1999 completely banned international affiliation by trade unions. The present civilian administration is similarly hostile. Large international affiliates have helped trade unions grow in many developing countries. By affiliating with other organizations, a trade union can gain access to financial assistance, training, and other benefits. It is ironic that the same government that goes about the world seeking aid and debt forgiveness will not let its trade unions freely seek international affiliation so as to benefit from potential assistance.

International affiliation would bring Nigerian trade unions into contact with their counterparts in both industrialized and Third World countries of Asia, the Caribbean, Latin America, and the Pacific, thereby providing a useful forum for the exchange of views and ideas, mutual cooperation and assistance, alliance on international industrial action, and other ways to find solutions to workers’ problems. When it bars such affiliations, the government of Nigeria violates freedom of association.

4. Toward Protecting Trade Union Rights: Recommendations
As we have seen, repression of trade union rights is on the increase in Nigeria. Everywhere it seems there is no regard for trade union rights. The international human rights instruments to which Nigeria has ratified do claim fundamental and supreme status for freedom of association. But the gap between commitment and actual implementation continues to deepen. The ILO has repeatedly voiced outrage over Nigeria's continued flouting of labour rights. The government's actions arise out of arrogance and show contempt for the people. What can be done to solve these problems?

4.1 Initiation of Court Proceedings
One of the several strategies to seek remedy against the violations of trade union rights Nigeria is for the trade unionists to take legal action against the government in the courts of the land. The courts and their judicial powers are defined in the Constitution. The highest court which is the Supreme Court sits in one chamber in the federal capital territory, Abuja. The Court of Appeal is the next in the hierarchy and has ten divisions in different parts of Nigeria, with each division exercising jurisdiction over a number of contiguous states. This is followed by the Federal High Court, State High Courts, the National Industrial Court and then the customary or Shari’a Courts of Appeal of the state which are of equivalent jurisdiction. Finally in the hierarchy are the Magistrates and area courts which are inferior courts created by laws of different states.

---

52 See sections 4 and 6 of the 1999 Constitution of the Federal Republic of Nigeria.
53 The divisions of the Court of Appeal are sited in Port Harcourt, Abuja, Benin, Calabar, Enugu, Ibadan, Jos, Lagos, Ilorin, and Kaduna.
54 Established recently by the National Industrial Court Act 2006 which came into effect on 14 June, 2006.
From the hierarchy of the courts the proper court for trade unions to seek redress is in the High Court. This is because the Supreme Court, as the apex court, hears appeals from the Court of Appeal and has original jurisdiction only in respect of disputes between the federation and a state or between states. The Court of Appeal is established to hear appeals from Federal and State High Courts, the Code of Conduct tribunal, ad hoc electoral tribunals, and Shari’a and customary Courts of Appeal. The Federal High Courts hear case at first instance relating to federal revenue or federal government agencies. The State High Courts have unlimited jurisdiction to hear all cases and matters between the government and its citizens. In this regard, section 6(6) (a) of the Constitution extends, notwithstanding anything to the contrary in the Constitution, to all inherent powers and sanction of a court of law. Moreover, the Constitution makes the executive and legislative powers subject to the provisions of the Constitution and to the courts.

The judiciary plays a very prominent role in a society governed by the rule of law. The judiciary has the important tasks of interpreting the Constitution and defining the scope and limits of the powers of both the executive and the legislature. Court represents the last hope of the common man against the powers of government, which makes it essential for the judiciary to exhibit a high sense of duty and commitment to the cause of justice. The judiciary must annul and invalidate any governmental or other action that violates trade union rights in Nigeria. It must fearlessly ensure that the constitution and laws of the land are fully complied with. If the courts will intervene in such matters, then we can begin to see a ray of hope for protecting trade union rights in Nigeria. As the American Supreme Court Justice Hugo Black pointed out in Chambers v Florida,

"Courts stand as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or victims of prejudice or public excitement."

It is submitted that with the right strategic choices, litigation can be an effective means of protecting workers' rights in Nigeria. Lawsuits can give rise to 'hard law' rulings that give direct redress to trade unionists. For example, in Etienam v Registrar of Trade Unions five officials of the Customs Preventive Staff Union of Nigeria applied to the Registrar of trade unions for the registration of their union. The Registrar acting on government orders not only refused to register the union but also refused to give any reason for his refusal. The Registrar who was himself a lawyer of many years standing contended that the reasons for his refusal were contained in a secret document and that it could take him a long time to obtain permission from the powers that be to produce the documents. The Chief Judge observed that although he had sympathy for the Registrar for the difficulties placed before

---

56 See sections 230-236 of the 1999 Constitution of the Federal Republic of Nigeria which deals with the Supreme Court.
57 Sections 6 and 4 of the 1999 Constitution of the Federal Republic of Nigeria, respectively.
58 Section 4(8), Ibid.
59 309 U.S. 227, 241, 1940.
producing the documents he had no sympathy for his lack of courage to do what was right. The Chief Judge declared:

If we are to live by the rule of law, all persons, government, bodies and corporations must be bound by the very rules of law which are enacted for the specific purpose of guiding us and ensuring that the alternative to the rule of law which is anarchy does not prevail. I regret to say, and particularly when the respondent is unable to adduce any argument against this appeal, the position becomes serious, when a breach of or the failure to abide by the law is committed by persons knowledgeable in law.

The Registrar was accordingly ordered by the court to register the union within thirty days, thus restoring the union’s right to legitimate existence.

Furthermore, in Anigboro v Sea Trucks (Nigeria) UT the workers of the defendants decided to join a trade union known as the National Union of Petroleum and Natural Gas Workers (NUPENG) against the wish of their employers who wanted to join the seamen's union. When the workers remained adamant, they were summarily dismissed. The Court of Appeal held that this constitutes a violation of the right to freedom of association of the defendants.

Theses cases clearly demonstrate the fact that the courts are eminently imbued with authority to protect violations of trade union rights.” As one Canadian writer noted, “A good part of global labour law is going to be created where domestic labour law is created today - in national legislatures, courts and tribunal […] Without doubt, a litigation strategy can be effective in calling trade union violators to account by fixing guilt for abuses followed by appropriate remedial course of action.

It must be noted, however, that without an active judiciary to advance the cause of human rights, democracy and the rule of law violations of trade union rights may remain unprotected. To this end, the attitude of some judges who easily support government violations or who are so timorous that they cannot come out courageously against dictatorship and tyranny must be condemned. Indeed it was in utter depreciation of such stance that Lord Atkin in Liversidge v Anderson said:

I view with apprehension […] the attitude of judges who, on a mere question of construction when faced with claims involving the liberty of the subject, show themselves more executive-minded than the executive […] In this country, amid the clash of arms, the laws are not silent: they may be changed, but they speak the same language in war as in peace […] It has always been one of the pillars of freedom, one of the principles of liberty for which on recent authority we are now fighting that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his
Consequently, trade union rights must not be allowed to suffer at the hands of the Nigerian state. The time is thus ripe for the Nigerian judiciary to embrace the legitimate authorities of judges and invalidate all acts that violate trade union rights. As we have seen, the provisions of the Constitution authorise the judiciary to play an active role. It must do so.

4.2 Lodging Complaints with the National Human Rights Commission

The Nigerian National Human Rights Commission was created by the National Human Rights Commission Act to deal with violations of human rights in Nigeria. The Commission is empowered to investigate abuses of human rights by government and publish its findings and recommendations. Complaints may be lodged with the Commission by individuals acting on their own behalf, as representatives of a group, or on behalf of others who cannot act in their own name; or by an association in the interest of its members. The Commission attempts amicable settlement of complaints, and failing amicable settlement investigates and makes recommendations to the relevant agency, which may include appropriate sanctions against any person responsible for abuses. Meetings of the commission's council are private, but the council "may, if it deems necessary allow the complainant to be represented".

Thus, trade unions are entitled to lodge complaints against the abuses of its rights by the state with the Commission as a means of seeking an end to such abuses.

It must be noted however that the commission has not been able to do much in practical terms towards human rights protection in Nigeria. The Commission itself identifies its main problems in practice as the failure of some government authorities to respond promptly or at all to enquiries from the Commission, and the lack of powers in the enabling legislation to compel compliance with such requests; the lack of trained investigative officers, and insufficient funding to cover the high cost of investigation of complaints from all over the country.

The Commission is also considered to be too weak and lacks the will to speak out clearly against abuses or investigate complaints effectively. In particular, Justice Nwokedi, the commission chair, who also heads the Nigerian Law Reform Commission, is considered to be over cautious and lacking in forcefulness. Other members of the commission are members of government departments and have no record of human rights activism. As Obiorah noted:

---

For more discussion, see K. Eso, Thoughts on Law and Jurisprudence, Lagos, 1990, pp. 170-171.

Formerly Decree No. 22 of 1995 which was promulgated by the military government of General Sanni Abacha in late 1995.

See Information Brochure, Abuja, National Human Rights Commission, no publication date.

The National Human Rights Commission is doing valuable work in terms of the promotion of human rights. However, in terms of human rights protection, it requires strengthening of its powers, capacity and finances. To date the Commission has seemed - maybe understandably under military rule - frightened to criticize the government publicly. It will have to be more outspoken on government policies and on individual cases if it is to be effective in future.

However, despite these problems, the commission has successfully fought for the release of political prisoners, including trade unionists. One must therefore hope that the commission will take seriously its role as an autonomous guarantor of constitutional rights and will have the courage and determination to take prompt action where necessary against the government for violation of trade union rights.

4.3 Lodging Complaints with the African Commission on Human and Peoples’ Rights (ACHPR)

Another measure towards protecting trade union rights in Nigeria is for those whose rights have been violated to lodge complaints with the African Commission on Human and Peoples’ Rights. State parties to the Charter automatically recognise the competence of the Commission to hear complaints against it. The Charter is enforceable by individual or collective action in the African Commission of Human and Peoples’ Rights. The procedure is that the Commission receives communication concerning violations of human rights from a state party against another state for consideration. Where an amicable settlement is not possible the Commission reports back to the Assembly of Heads of States and Government. The Commission also receives and considers communication from individuals and non-state organisations provided the said communication satisfies the following conditions:

1. indicate their authors even if the latter request anonymity,
2. are compatible with the Charter of the Organization of African Unity or with present Charter,
3. are not written in disparaging or insulting language directed against the state concerned and its institutions or to the Organization of African Unity,
4. are not based exclusively on news disseminated through the mass media,
5. are sent after exhausting local remedies, if any unless it is obvious that this procedure is unduly prolonged,
6. are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
7. do not deal with cases which have been settled by these states involved in accordance with the principles of the Charter of the United Nations, or the

---

*69 Ibid, p. 239.

*70 See Article 55 of the Charter.
Charter of the Organisation of African Unity or provisions of the present Charter."

Where the communication to the Commission reveals any special case of massive violations, this is brought to the notice of the Assembly of Heads of State and Government and will only proceed for an in-depth investigation if the Assembly so requests. This means that cases of individual or relatively minor violations go unremedied." Besides, even in the so called cases of massive violations, all that the Commission does is to provide reports of in-depth study or make recommendations to the Assembly of Heads of State and Government. The Assembly of Heads of States and Government is not in session all through the year and the Commission has no powers to summon them or to enforce any of its findings or recommendation."

The lamentable conclusion is that the Commission does not possess much force toward the redress of human rights violations and need to be strengthened to have enforcement "teeth" so that it will not be seen as only a paper tiger. A former Chairman of the Commission has expressed a similar view:

The enforcement procedure is unsatisfactory. In the absence of a court and effective measures to a breach, the Charter may well be a paper tiger except for public opinion that may be whipped up against the offender. The Commission may investigate, discuss and make recommendations to the states concerned. Do these include the award of damages, restoration or reparation? The Assembly can only ask the commission to make in-depth studies. The Charter does not state that it can condemn an offending state." One salutary development however with the work of the Commission is that all the deliberations, reports and decisions of the Commission are now given wide publicity. Publicity is a big weapon in the area of human rights violations. It exposes the violations, puts shame on the violators and in fact also acts as deterrence to future violations." However, one must hope that speedy reforms are introduced to enable the Commission to perform effectively the enviable role of protecting human rights violations in Africa.

71 See Article 55(2), ibid.
4.4 Pressure by the International Community

The international community can assist immensely towards the restoration and respect of the rights of trade unionists by mounting pressure on the Nigerian government. The international community here includes international trade union organisations, world labour bodies and the governments of other countries. For example, Articles 24 and 26 of the ILO Constitution allows for representation to be made by industrial associations and state members respectively to the ILO concerning breaches of obligations by any member state. Through this means pressure can be escalated against the Nigeria government to redress the violations of trade union rights in Nigeria. Pressure must continue to be mounted especially by trade organisations such as the International Confederation of Free Trade Unions (ICFTU), World Council of Labour (WCL), the Organisation of African Trade Union Unity (OATUU), the British Trade Union Congress (TUC), the American Trade Union Centre (ATUC) and similar organisations in order to assist trade unionists regain their freedom in Nigeria. Publicity and exposure are useful and may even act as a possible sanction against violations of human rights.76

4.5 Enforcement of International Treaties

The existence of international human rights regime to protect individuals against state abuse seems to be a reality. The first step towards this system began when the Universal Declaration of Human Rights was passed in 1948 as a non-binding UN General Assembly resolution. Since then a number of human rights instruments have been put in place whereby various states have consented to the global idea of regulating state behaviour with regard to individuals within a state’s own territory. This is manifested in instruments such as the International Covenant on Civil and Political Rights and in the Optional Protocol” as well as in the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples Rights. Professor Louis Henkin has noted that these instruments do not create rights but merely recognise rights already in existence “in some other moral or legal order”.78

Once a state ratifies a human rights instrument, it is recognising the existence of these rights and is also agreeing to domesticate the treaties in its legal system.7 Consequently a state cannot refuse to permit the international community to discuss alleged breaches of the instrument or to take other appropriate action on the ground

76 There are peripheral views which emphasise the importance of publicity and exposure by non-governmental organisations as a possible sanction against violations of human rights. See I.G. Shivji, The Concept of Human Rights in Africa, London, 1989, p. 86.
79 There must however be evidence of actual domestication by enacting a law or statute to the effect. For example, Nigeria domesticated the African Charter by enacting the African Charter on Human and Peoples Rights (Ratification and Enforcement) Act, Chapter 10, Laws of the Federal Republic of Nigeria 1990.
that such discussion or action violates the sovereignty of the breaching state." Thus the alleged violations of trade union rights in Nigeria are legitimate issues of international concern. The international community must therefore act to protect trade unionists in Nigeria. Two ways to address this are suggested below.

More importantly, the need for states to comply with international treaties regarding respect for human rights is further justified by the fact human rights violations tend to threaten international security. This is because atrocities within a sovereign state may upset neighbouring states and thus disturb world peace." This is in consonance with Article 55 of the United Nations Charter which proclaims that the "promotion of respect for human rights helps create conditions of stability and well-being" and the preamble of the Universal Declaration of Human Rights which affirms that "recognition of [...] equal and inalienable rights of all members of the human family is the foundation of [...] peace in the world".82

(a) Enforcement by the International Labour Organisation (ILO)

Nigeria is a member of the Governing Body of the ILO and has ratified ILO Conventions 87 and 98. Nigeria has also ratified both International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). Accordingly, Nigeria is bound by these instruments. This means that workers and trade union organizations in Nigeria, like those in most other countries, have the right to lodge complaints with the ILO Committee on Freedom of Association concerning any infringements of workers' freedoms.

The ILO has the capacity to enforce compliance with international treaties. Article 22 of the ILO Constitution requires government to submit regular reports regarding their implementation of ratified conventions to be reviewed by the Committee of Experts on the Application of Conventions and Recommendations for possible inconsistencies between ratified conventions and national law and practice. Secondly, non-state actors like trade unions are also authorised to reveal possible inconsistencies between the requirements of conventions or recommendations and the domestic situation of states.83

Where complaints are made by non-state actors to the ILO pursuant to Article 26 of the Constitution which deals with lodging of complaints, an Independent Commission of Inquiry is usually established to investigate and make recommendations on remedial steps to be taken to redress the violations. The complaint procedure under Article 26 and the report of the Commission appointed to examine the alleged vio-

---


82 Ibid.

lations is the only means of establishing a legally binding determination of breach of a convention by a state.84

Where a state fails or refuses to abide by the decision of the Commission of Inquiry, the only enforcement option left to the ILO is to have recourse to Article 33 of the Constitution which provides that "in the event of any member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith". The recommendation could include some forms of internal sanctions such as ban on technical cooperation and trade sanctions on the erring state. The threat or implementation of measures under Article 33 is a serious matter to any state and will invariably force such a state to redress alleged violations of treaties respecting human rights. This was the course taken against Myanmar in 2000. This action had a measurable impact and indeed succeeded in forcing the state of Myanmar to take remedial steps to redress human rights violations.86

A similar course of action was taken by the ILO against Nigeria. The Commission of Inquiry regarding trade union rights in Nigeria was established according to procedures under Article 26 of the ILO Constitution, which are invoked in the event of persistent and serious violations of international labour standards and repeated refusal of a member State to align its labour practices with the recommendations of the ILO's supervisory mechanisms. The ILO's Committee on Freedom of Association has repeatedly called on Nigeria to release imprisoned trade unionists, end harassment of trade unions and take measures to guarantee respect for the civil liberties essential to trade union rights. In recent findings, the Committee underscored the persistent deterioration of trade union rights and denounced the non-respect of civil liberties in Nigeria. Consequently, on 17 August 1997, a four-person ILO team visited the country for one week of fact-finding in respect of serious allegations of disregard for workers' rights and violations of ILO Convention 87. This led to the government dropping charges against 21 strike leaders in Kaduna, who had criminal charges pending against them for exercising the right to strike in 1997.87 Indeed the Commission of Inquiry is one of the most serious steps the ILO

---

85 This may also involve seeking the necessary approval of the World Trade Organisation (WTO).
can take against a government that has failed to observe the provisions of a Convention. The Commission of Inquiry is a final recourse in the ILO supervisory system. The decisions of the Commission are not subject to appeal by any ILO body."

It has been said, however, that "The ILO has no teeth" in the sense that it could not effectively enforce obligations by states. But this can no longer be true given its increasing preparedness not only to bark but also bite. The Myanmar and Nigerian experiences provide empirical evidence which confirms this trend. As Francis Maupin admirably noted, "the old lady that appeared to have been born without teeth seemed to be growing them exactly as she passed her 80th year with respect to Myanmar."

(b) UN Security Council Intervention

The violations of trade union rights in Nigeria has been of concern to the international community for a long time and one way to secure enforcement and respect for international obligations is for the UN Security Council to take radical steps to remedy this situation. Article 1 of the UN Charter declares that the purpose of the UN is "to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion". The Human Rights Committee set up under Article 28 of the ICCPR is empowered to investigate both inter-state and individual complaints on violations of human rights. Individuals and groups such as trade unions have the right to lodge complaints with the Committee based on the Optional Protocol approved by the UN General Assembly on 16 December 1966. As already discussed above, atrocities within a national state are a matter of international law as it could disturb world peace. It is submitted that the UN cannot sit by and condone massive violations of human rights by the Nigerian state." The UN can

---

88 In the event of an unfavourable finding on its labour practices, a country's only recourse would be to the International Court of Justice.

89 Ibid, p. 86.

90 The Optional Protocol provides that any State Party to the Covenant which ratifies the Protocol hereby "recognises the competence of the Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of violation by that State Party of any of the rights set forth in the Covenant". Articles 2 and 3 of the Protocol provide for the exhaustion of domestic remedies and also provide that communications shall be considered inadmissible if they are anonymous, abusive or incompatible with the provisions of the Covenant. For more detailed discussion, see P.R. Ghandi, "The Human Rights Committee and the Right of Individual Communication", 1986, LVII British Yearbook of International Law; T. Opsahl, "The Human Rights Committee", in P. Alston (ed.), The United Nations and Human Rights: A Critical Appraisal, Oxford, 1992, pp. 369-444; A.H. Robertson and I.G. Merills, Human Rights In the World: An Introduction to the Study of the International Protection of Human Rights, India, 2005.

91 In fact Chapter VII overrides Article 2(7) of the UN Charter which deals with matters essentially within the domestic jurisdiction of any state.
legitimately act to stop infractions of human rights. What is happening in Nigeria can be said to constitute crimes against humanity or at best crimes against trade unionists on a very large scale and the UN Security Council must therefore act to protect the human rights of the citizens and ensure peaceful relations in the world.92

4.6 Resistance by Trade Unionists

Beyond doubt, the history of military domination of politics and governance largely accounts for the authoritarianism of the Nigerian state today, as indeed in many African states. But those times are past. Democracy extols the rule of law. The rule of law seeks to ensure that a government acts within the constraints of its constitution. It also provides for equality before the law and due process of law. Now that Nigeria has returned to full-fledged democratic governance, the government must respect the rule of law and the human rights of the citizens, including the rights of trade unionists. The government should be bound by its constitutional provisions. As a constitutional government, it should not take any arbitrary action to violate trade union rights. To do otherwise is to foster an environment where authoritarianism flourishes, the rule of law is negated, and neither officials nor private entities respect trade union rights and dignity. If the government continues to violate the rights of trade unionists they may be justified in taking steps to resist such violations which may include revolution.

This is because freedom of association or the right to organize extends up to and includes the right to resort to a revolution where the people find that their interests are not served by a particular social, economic and political order. Thus, if all other attempts to get the government of Nigeria to redress the violations of the human rights of trade unionists, then it is possible to envisage an eventual revolution by all workers against the government. This seems quite possible given the historical antecedents of the idea of human rights itself. For example, the famous 1776 American Declaration of the Rights of Man which proclaimed self-evident truths and inalienable rights also declared, "That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute a new Government [...]" Similarly, the French Declaration of 1789 included among its 'sacred' rights the right to 'resistance of oppression'. As was declared:

The end of all political associations is the preservation of the natural and imprescriptible rights of man; and these rights are liberty, property, security, and resistance of oppression.

As Shivji argues, "when pushed to the wall, workers can make a revolution against oppression, authoritarianism and all violations of their human rights. Indeed, these early declaration of rights were regarded as justifications for revolution." It is submitted, however, that this argument reads more like a revolutionary sermon. If we

94 Ibid.
must avoid polemic, we would rather subscribe to the argument that sits within the rule of law being extolled. Government must therefore show maximum respect for democracy and the rule of law and ensure that trade union rights are protected.

5. Conclusion

Nigeria continues to violate trade union rights, contrary to both its own constitution and international standards. The gap between commitment and actual practice remains embarrassing and alarming. There have been serious violations of trade union rights affecting almost every trade union in Nigeria. The government continues to give low priority to human rights. A few of the violations have been discussed here, but we must stress that this account is far from exhaustive, for violations of workers and trade union rights are usually unreported.

Human right is indivisible. This means that it cannot be guaranteed to other sections of the society while workers are lagging behind. The Nigerian authorities must take more energetic action to protect trade union rights. The authorities must provide an enabling environment for freedom of association, in which trade unions can flourish. They must ensure that there is less frequent use of statutory powers restrictive of human rights. The status quo, with union leaders and other unionists hounded and arrested with no regard for due process, is unacceptable. Like other liberal democracies, the government of Nigeria must respect the rights that trade unions derive from the freedom of association. Indeed, it should encourage and empower unions to help with the task of economic development.

On the other hand, trade unionists must take seriously to the recommendations proffered in this article and assume responsibility for the protection of their rights. They must take bold steps to challenge and complain to the court, to the ILO and other human rights institutions against any arbitrary and inconsistent use of executive powers to violate their rights. These measures, it is hoped, will go a long way towards protecting trade union rights in Nigeria and Africa generally.

One measure of the health of any society is the extent to which its legal system is in tune with contemporary realities and contemporary public opinion. One must hope that Nigeria will unleash its trade unions and restore its posture as a liberal democratic nation that respects the rule of law. Given Nigeria’s leadership of the African Union and its important role and status as a member of the Governing Body of the International Labour Organization, it must be expected to show very positive examples in all spheres of respect for global labour standards, especially trade union rights.