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ASPECTS OF THE RIGHT TO PARTICIPATE IN TRADE UNION ACTIVITIES

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This paper discusses interferences with workers' participation rights in trade union activities. It shows that interferences by the state or public authorities which deny a trade union member from active participation in the activities of his organisation will negate the right to freedom of association and potentially undermine the right to strike. A crucial issue in any consideration of freedom of association and the right to strike is how to secure the civil liberties and fundamental rights of workers and their trade unions.

The right to participate in trade union activities, including the right to strike, flows from the right of workers to associate for trade union purposes. Any unlawful and unjustified action by the public authorities to threaten the life and limb of workers, so as to prevent them from active participation in the activities of their union offends the right of association and the right to strike. In Civil Liberties Organisation v. Nigeria, for example, the African Commission on Human and Peoples' Rights ruled that:

"Freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations and that there must always be a general capacity for citizens to join, without State interference, in associations in order to attain various ends." 3

The Commission further opines that in regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of the freedom to associate and undermine fundamental rights guaranteed by the Constitution and by international human rights standards. The importance of workers' freedom was also reiterated in the preparatory work (travaux preparatoires) which led to the adoption of Convention No. 87, as was emphasised:

"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 interrelated."

3. Ibid; Resolution on the right to freedom of Association, adopted by the African Commission on Human and Peoples' Rights, 11th Ordinary Session.
4. Ibid.

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complementary to one 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 an obligation on the state to ensure maximum respect for workers rights if they are not to contravene the obligation imposed by the African Charter and ILO Convention No. 87. It is intended here to examine how the Nigerian State has kept to these obligations.

The Right to Form and Join Trade Unions

Laws that restrict the freedom of workers to form and join the organisation of their choice are clearly incompatible with freedom of association principles. "A discussion of the right to form or join a trade union inevitably raises the question of how much freedom for workers to organise and associate together should the law permit." This question has at least two sides. First, it involves non-governmental interference with the citizen's right to associate freely, e.g. to form or join a trade union. In Nigeria, trade union membership is voluntary in the sense that no employee can be compelled by law to form or to join a trade union." It is voluntary also in another, perhaps more significant, sense. There is the freedom to join or to form a union of one's choice, except for some categories of public servants. '? Secondly, the freedom to associate may demand guarantees against oppression and discrimination on account of union membership and against the employer preventing workers from joining trade unions."

In Bashorun v. Industrial Arbitration Tribunal,¹² for example, the plaintiff was a deputy manager with the Central Bank of Nigeria and was president of the Central Bank of Nigeria Employees' Union, a duly registered union. A trade dispute arose between the bank and the union and this was referred to the Industrial Arbitration Tribunal (IAT). In its ruling the tribunal recommended that the plaintiff and a certain category of staff of the bank could not join a trade union of any of the junior staff or participate in its activities. The plaintiff challenged the decision of the IAT on the ground that it was an infringement of his fundamental right to associate guaranteed under the Constitution of 1963.¹³ The court held that the plaintiff's right had been violated by the IAT's decision excluding him from membership of a union of his choice. In his judgment, Odesanya, J. said:

¹⁵ This provision is re-enacted in identical terms in section 37 of the present 1999 Constitution.
The Right to Personal Liberty and Human Dignity

"An award which derogates from a fundamental right invites the intervention of the court. The escape clause in section 26 of the Constitution does not prima facie save the award. It is not reasonably justifiable in a democratic society.""

Similarly, in *Anigboro v. Sea Trucks (Nig) Ltd* the court held that it is not for the employer to choose a trade union for his employees. The court said:

"The decision to join a trade union is exclusively that of the individual citizen and not that of his employer. His employers have no business forming a trade union let alone compelling his employees to join it. It was therefore a violation or breach of section 37 of our constitution for the defendant to insist that the plaintiff should form the Seamen and Water Transport Workers Union instead of the NUPENG. The emphasis from what can be seen from the last phrase in section 37 is to join an association for the protection of his interests.""

These cases clearly demonstrate the freedom of workers to form or join a trade union of their choice for the protection of their interests. A denial of this freedom will be tantamount to a gross violation and abuse of the principles of freedom of association. However, it must be noted that the right to associate for the protection of 'one's interests' does not apply to every type of association. For instance, if an organisation were established to overthrow the government or to engage in some kind of illegality, it would not be granted the constitutional protection of freedom of association. In *Sea Trucks (Nig) Ltd v. Payne*", for example, the Court of Appeal stated that:

"The phrase "for the protection of his interests" does not give a citizen an unrestrained freedom to join any association. It is not a freedom at large but rather, it is one that is certainly restrictive... Thus, section 37 of the 1999 Constitution must be interpreted in a manner that would give effect to the intention of the parliament to avoid lending support to unrestrained access to an association that pleases the fancy of any person and not the one that protects his interests.""

The Right to Personal Liberty and Human Dign!ty

The right to freedom and security of person is undoubtedly one of the most important rights of human beings. This is also essential for the normal exercise of trade union rights. Sections 34 and 35 of the 1999 Constitution and Articles 5 and 6 of the African Charter...
guarantee the right to personal liberty and human dignity. In Chief Chinedu Eze v. inspector-General of Police and 4 Others" the court affirmed that Articles 5 and 6 of the African Charter guarantees the right of every individual to the dignity of his person and to liberty and security of his person." However, it is not uncommon to hear of violence, injuries, loss of life, cruelty, torture, forced exile, disappearances and other forms of ill treatment of workers all over the world. The state is duty-bound to ensure that the lives of workers, and especially their leadership, are protected from both the state itself and others," so that it will not be accused of harassing unionists because of their trade union activities.

In Nigeria, a worker's right to personal liberty and dignity is very precarious. There is endemic violence against trade unionists, including intimidation, torture, harassment, disappearances, detention, and murder. This is particularly so in connection with the exercise of the right to strike. In 2002, for example, shortly after the Nigerian Labour Congress (NLC) declared a nationwide strike over the increase of petroleum prices, 19 trade unionists, including the NLC President, were detained by security agents. Throughout a twenty-four hour stint in detention they were not allowed to receive any medical attention. Again, in 1994 and 1996 respectively, Milton Dabibi, National President of the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN), and Chief Frank Kokori, General Secretary of the National Union of Petroleum and Natural Gas Workers (NUPENG), were detained for more than two years without charge or trial for declaring a strike action. When they fell into poor health, access to medical care was denied them. However, in Fawehinmi v. Abacha" the Court of Appeal held that the state has a responsibility to ensure that a person in custody is not put in undue danger of his health and safety. Accordingly, where the facts show that the good health of a person in the custody of the state depends on constant access to medical care, then he is entitled to such constant medical care.

It is submitted that such acts of detention are clearly unlawful and in breach of the guarantees laid down in the Nigerian Constitution and the African Charter. In Preye Johnson v. Commissioner of Police Lagos State and 2 Others", for example, it was held that section 35(1) of the 1999 Constitution, as well as Articles 5, 6, and 7 of the African Charter, guarantees the applicant the right to personal liberty which can be curtailed only upon reasonable suspicion of having committed a criminal offence. Similarly, in Nduukwem Chiziri

21 (2007) CHR, 43-68.
22 ibid.
26 'bid.
27 ibid.
28 (1998) 1HHLRA543.

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Nice v. A-G Federation and Another" it was held that the arrest and detention of the applicant by the 2nd respondent's officers from 3 January 2006 at the Police Command Station and later at the Garki Police Station and subsequently at the Police Force Headquarters was unreasonable, unconstitutional and constituted a grave violation of the applicants fundamental right to liberty guaranteed under section 35 of the 1999 Constitution and Article 6 of the African Charter. In addition, it was held that the arrest and violent assaults on the applicant were inhuman and degrading thereby constituting a violation of his right to human dignity under section 34 of the 1999 Constitution and Article 5 of the African Charter.

There is no doubt that the use of the security forces to intimidate, harass and arrest strikers, often accompanied by the use of violence against trade unionists prior to or during strikes or protests, seriously undermines the right to strike. The police should not intervene in industrial relations except where there is a need to maintain public order. However, the police routinely infringe upon the personal liberty of workers and their union leaders in an attempt to "apprehend" or "settle strike actions. This is usually carried out under the guise of inviting union leaders for a "chat" and detaining them at the police station in order to frustrate industrial action." As Adeogun noted:

"The Police Force, however, devised some subtle but effective means of arresting strike action. They have a way of arriving promptly (albeit at the invitation of the employer) at the scene of an industrial action ostensibly to prevent breach of the peace; and in most cases, the strikers' leaders (usually union officials) got invited to the police station for a "chat". This "chat" could go on for several days, at the end of which the strike would invariably be called off. But trade union leaders are quick to point out that employers never got invited by the police for a "chat" when they resorted to lockouts or refused bluntly to implement awards of the Industrial Arbitration Tribunal.

Surely, this approach hampers the unions in their ability to exercise the right to strike. With the use of police and other law enforcement agencies to harass and assault trade unionists, the state cannot deny responsibility for such actions. A government spokesman once warned workers against what he described as "unnecessary confrontation," and added that the

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Indeed, the use of the police to interfere in labour relations offends the principles of freedom of association. The ILO has ruled that the use of the police for strike-breaking purposes is an infringement of trade union rights.5

Nigerian trade unionists were in the vanguard of the nationalist movement, which led to Nigerian independence and freedom for all citizens.6 It is disturbing that they are now treated as enemies by the state. As the Secretary General of the Organisation of African Trade Union Unity (OATUU) noted:

"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... [T]rade 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."7

The violations of the right to personal liberty and dignity through arrests, detention and police interventions have a chilling effect and undermine the right to strike, as workers are put in perpetual fear by the state machinery. This also demonstrates that Nigeria is in violation of the right to personal liberty and dignity of its workers, thereby undermining the right to strike.

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6 (1978-79) NICLR 61,67-68.
7 Ibid.
10 Ibid.
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Freedom of Assembly

It is very important that trade union organisations be able to organise meetings and other activities without having to seek permission from the authorities. Section 40 of the 1999 Constitution and Article 11 of the African Charter guarantee the right to freedom of assembly. ILO Convention No. 87 also supports this claim for the right of assembly asserting that the "public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof." In *All Nigeria Peoples' Party and 11 Others v. Inspector-General of Police*, it was held that by the combined effect of sections 39 and 40 of the 1999 Constitution as well as Article 11 of the African Charter, the rights to peaceful assembly and association are guaranteed to all citizens.

Yet that has not consistently been the case in Nigeria. Organizations must frequently seek official authorization before holding a public meeting or gathering. Having to ask for such permission could greatly affect the exercise of their right to function freely, particularly when workers seek to engage in activities directed at the authorities themselves. The Public Order Act 1990 is an example in point. The Act empowers the authorities to prohibit gatherings or mass meetings generally. This means that unionists could be prevented from gathering for the purpose of conducting a ballot before strike action, for example. This provision has always been abused by the government.

In addition to the Public Order Act, there exist provisions in the Criminal Procedure Act 2004 which, it is submitted, also interfere with the right to participate in trade union activities. In terms of this law, the police have the power to be present at any meeting on authorization from a magistrate who has reasonable grounds for believing that the internal security of the country or the maintenance of public order may be endangered, or if he considers that an offence is likely to be committed at the meeting. The giving of such discretion to a functionary of a state which is 'openly hostile to trade unions is rather concerning, there is so much potential for an abuse of power.

Furthermore, there have also been other interferences with the right to participate in union activities, especially the exercise of the right to strike. For example, in 1988 the General Ibrahim Babangida military junta dissolved the executive council of the Nigeria Labour Congress (NLC) and appointed a sole administrator. This was because the NLC had assembled its members for a meeting wherein it voiced opposition to the Structural Adjustment Programme (SAP) initiated by the government, and had embarked on strike in...
The government action in proscribing trade unions and in dismissing workers for strike action exemplifies the travails of labour and its leadership, especially under military rule. Generally, prolonged and unlawful detention of labour leaders, invasion and disruption of union meetings, seminars and other activities of labour by security forces and a vicious anti-labour campaign by the state marked the period.

With the return to democracy in May 1999 one would expect respect for the right of assembly. However, this trend seems to have continued. In August 2002, for example, the Federal Government dissolved the executive committee of the Maritime Workers Union of Nigeria (MWUN) because the union executive had called a meeting to decide on a proposed strike action. "Without an executive council the Committee can therefore only conclude that the removal of the national executive council members of the NLC, NUPENG and PENGASSAN from office by the government authorities is a serious infringement of the free exercise of trade union rights ... [W]hen trade unionists or union leaders are dismissed for having exercised the right to strike, it can only conclude that they have been punished for their trade union activities and discriminated against contrary to Article 1 of Convention No. 98 and the principles of freedom of association."

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In International Confederation of Free Trade Unions (ICFTU) and Others v. Government of Nigeria the ICFTU took the matter to the ILO contending that the arbitrary actions were contrary to Article 8 of Convention No. 87 and the principles of freedom of association. The Committee on Freedom of Association ruled that the dissolution of the executives council of the three unions (the NLC, NUPENG and PENGASSAN) and their replacement with government-appointed administrators, as well as the sealing off of union offices and the dismissal of some striking workers, "was not in conformity" with Convention No. 87. The Committee said:

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Furthermore, in 1994, during the regime of General Sani Abacha, similar treatment was meted out to the two unions in the oil and gas industry, namely the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Senior Staff Association of Nigeria (PENGASSAN). These unions' offices were sealed off and surrounded by the police and all telephone lines were cut, rendering all normal trade union activities impossible. Essentially, these organizations were disbanded for exercising the right to strike against the introduction of the SAP. Many of the oil workers dismissed for taking part in the strike were never reinstated."

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or committee a union cannot assemble to discuss and further the interests of members, especially as concerns the right to strike. There is little doubt that such unfettered discretion constitutes an infringement of the African Charter and the constitutional provisions on the freedom of assembly.