

THE NEXUS IN PRIVATIZATION, JOB SECURITY AND STRIKE ACTION: BALANCING THE INTERPLAY BETWEEN POWER AND RULES?\*

**Abstract**

*Although privatization has emerged as a prominent strategy worldwide, including Nigeria, to enhance efficiency and attract investments, yet it often triggers job losses and instils a sense of insecurity among employees. In this context, safeguarding job security becomes paramount. Strike action serves as a powerful means to protect workers' interests during privatization when other channels fail. However, the legal framework surrounding strikes in Nigeria presents challenges, particularly regarding their legal status. Furthermore, the implications of this legal constraint on the effectiveness of strikes as a tool for safeguarding workers' interests remain a subject of debate. By exploring the impact of privatization on employment stability and critically analyzing the legal framework governing strikes, this research elucidates the challenges posed by the legal status of strikes in Nigeria. The research concludes that despite the procedural constraints for strikes under the Nigerian labour jurisdiction, workers can still embark on strike actions in Nigeria. This work also sheds light on the implications of recent constitutional amendments, revealing the evolving landscape for strike actions and its impact on workers' rights to strike in Nigeria.*

**Keywords:** Privatization, Job security, Strike action, Power, Rules

**1. Introduction**

Privatization has become a significant aspect of economic reforms in Nigeria, with various sectors transitioning from state ownership to private control. This process, aimed at promoting efficiency and economic growth, has had a profound impact on job security within the country.<sup>1</sup> The origin of public enterprises in Nigeria could be traced to the direct intervention measures of government in economic affairs, especially the need for rapid economic development.<sup>2</sup> Regrettably, many of these enterprises were inadequately planned and exhibited economic inefficiencies. They incurred substantial financial losses and consumed a disproportionate amount of domestic credit and thereby became an unsustainable burden on the national budget.<sup>3</sup> Consequently, the decision to pursue privatization and commercialization was driven by several factors which include; the belief that a well-planned privatization program would serve as an effective strategy to enhance operational efficiency, promote broader share ownership, attract foreign investment, and reduce the state's role in sectors where the private sector demonstrated greater efficiency.<sup>4</sup> Also with the adoption of the structural adjustment programme (SAP) in 1986, privatization was driven by the recommendations of international organizations such as the World Bank,<sup>5</sup> and other donor organizations.<sup>6</sup> It was a fundamental requirement for obtaining economic assistance, imposed by these external entities.<sup>7</sup>

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<sup>1</sup> A Ogaboh, MS Agba, EM Ushie and F Nkpoyen, 'Privatization, Job Security and Performance Efficiency of Privatized Enterprises in Nigeria: A Critical Reassessment' [2010] (1)(1) *Journal of Arts Science & Commerce*; 99-100.

<sup>2</sup> AA Alao and RT Kazeem, 'Privatization of Public Enterprises in Nigeria: Challenges and Prospects' [2016] (5)(1) *Entrepreneurial Journal of Management Sciences (EJMS)* <<https://allhikmah.edu.ng/ejms/index.php/ejms/issue...>> accessed 5 July 2023.

<sup>3</sup> Ibid; I Aminu and ZA Peterside, 'The Impact of Privatization of Power Sector in Nigeria: A Political Economy Approach' [2014] (5) (26) *Mediterranean Journal of Social Sciences*, 111.

<sup>4</sup> Alao and Kazeem (n 2).

J Afeikhena, Privatization and Enterprise Performance in Nigeria: Case Study of Some Privatized Enterprises, *AERC Research Paper* 175 (Nairobi, African Economic Research Consortium 2008), 1-2 <[https://www.researchgate.net/publication/4902429\\_Privatization\\_and\\_Enterprise\\_Performance\\_in\\_Nigeria\\_Case\\_Study\\_of\\_Some\\_Privatized\\_Enterprises](https://www.researchgate.net/publication/4902429_Privatization_and_Enterprise_Performance_in_Nigeria_Case_Study_of_Some_Privatized_Enterprises)> accessed 10 September 2021; AC Nwali, J Nwokeiwu and B Oganezi, 'Privatisation of Public Enterprises in Nigeria: Challenges and Prospects on Economic Development' [2019] (10)(4) *Mediterranean Journal of Social Sciences*, 137.

<sup>6</sup> CS Chukwuma, WO Odiwo and AA Kifordu, 'The Impact of Privatization and Commercialization in Nigeria', [2016] (3)(9) *International Research Journal of Management IT and Social Sciences*; 92.

<sup>7</sup> SS Aondona, 'The Impact of Privatization on The Nigerian Economy: An Assessment Of Power Holding Company Of Nigeria (PHCN) In Benue State From 1999-2018', [2019] (6)(4) *International Journal of Innovative Research and Advanced Studies (IJIRAS)* 2.

While privatization may bring potential benefits, such as increased efficiency and innovation, it can also present challenges to job security. The transition from state-owned enterprises to privately owned entities often involve workforce restructuring, layoffs, and changes in employment terms and conditions. This phenomenon is prevalent both prior to the privatization process, during the restructuring phase, and even post-privatization.<sup>8</sup> The implementation of restructuring measures undertaken in preparation for privatization often leads to workforce reduction, leaving many employees uncertain about the continuity of their employment. Unfortunately, this uncertainty persists even after the privatization is finalized, as the new owners in most cases are likely to implement cost-cutting measures that can further contribute to job insecurity.<sup>9</sup> Thus, job loss and the ensuing insecurity remain significant and widely acknowledged challenges associated with the privatization of enterprises.<sup>10</sup> This outcome is not unexpected, as it aligns with capital's interests, which seek to retrench workers and save cost to maximize profits.<sup>11</sup> In response to these issues, trade unions in Nigeria always try to take steps to protect the job security of workers. A notable means employed by them is strike action. This means is explored by them when other means fail. Strike as a potent tool wielded by workers and labour unions, empowers employees to assert their rights and defend their employment interests. Against this backdrop, it is essential to examine the interplay between privatization and job security in a privatized economy. Also, an in-depth analysis of the legal framework of strikes in Nigeria will be carried out by examining the relevant labour legislations, to shed light on its legal status. This work will progress to examine how strike can be used to protect job security during privatization.

## 2. An Overview of Privatization and Job Security

Privatization in Nigeria refers to the transfer of state-owned enterprises and assets to private entities. As earlier mentioned in this work, it has become a significant aspect of economic reforms aimed at enhancing efficiency,<sup>12</sup> attracting investments, promoting economic growth<sup>13</sup> and accessing loan.<sup>14</sup> The principal Act on privatization in Nigeria is the Public Enterprises (Privatization and Commercialization) Act<sup>15</sup> and Privatization of public enterprises is carried out either through public or private issue.<sup>16</sup> Job security is perceived as the presumption or confidence index of the employees with respect to the protection of their employment within the workplace.<sup>17</sup> Job security encompasses the assurance and reasonable expectation that employees will retain their positions for a significant duration, thus enjoying a sense of stability and continuity in their employment.<sup>18</sup> It entails maintaining a low rate of job turnover over a considerable period, ensuring a safe and stable environment for both employers and employees according to Ogaboh, Agba, Ushie and Nkpoyen.<sup>19</sup> Job security therefore entails the guarantee of prolonged employment, characterized by low turnover rates, which ensures stability and a secure working environment for both employers and employees.

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<sup>8</sup> RV Hoeven, M Karshenas and G Sziraczki, 'Privatization and Labour Issues in the Context of Economic Reform'; 21o. <[https://www.elibrary.imf.org/configurable/contentpage/books\\$002f071\\$002f07315-9781557756053-en\\$002fch05.xml?t:ac=books\\$002f071\\$002f07315-9781557756053-en\\$002fch05.xml](https://www.elibrary.imf.org/configurable/contentpage/books$002f071$002f07315-9781557756053-en$002fch05.xml?t:ac=books$002f071$002f07315-9781557756053-en$002fch05.xml)>, accessed 1 June 2021.

<sup>9</sup> Ogaboh, Agba, Ushie and Nkpoyen (n 1) 100.

<sup>10</sup> OE Ezeani, 'Privatization and Labour in Africa' [2004] (1) *African Journal of Political and Administrative Studies* (AJPAS) 29.

<sup>11</sup> EA Agbro, Enajite and AJ Uwhuba, 'Privatization and Labour Resistance in Nigeria in the 21st Century: The Case of National Union of Electricity Employees (Nuee)' <<https://www.globalacademicgroup.com/journals/knowledge%20review/John.pdf>> accessed 1 July 2023.

<sup>12</sup> N Okonjo-Iweala, *Reforming the Unreformable: Lessons from Nigeria*. (MIT Press, 2012) cited in NO Excellence-Oluye, D Gberegbe and J Ibietan, 'Privatization Policy and National Development in Nigeria: A Study of The Fourth Republic', Proceedings of INTCESS 2019- 6th International Conference on Education and Social Sciences, held within the 4-6 February 2019- Dubai, U.A.E, 1320; AA Alao and RT Kazeem, 'Privatization of Public Enterprises in Nigeria: Challenges and Prospects' [2016](5)(1) *Entrepreneurial Journal of Management Sciences (EJMS)* <<https://alhikmah.edu.ng/ejms/index.php/ejms/issue...>> accessed 5 July 2023.

<sup>13</sup> Alao and Kazeem, (n 2)

<sup>14</sup> Aondona, (n 7) 2. See also, AC. Nwali, J Nwikeiwu and B. Oganezi, 'Privatization of Public enterprises in Nigeria: Challenges and Prospects of Economic development', [2019] Vol 10 No 4 *Mediterranean Journal of Social Sciences*; 137.

<sup>15</sup> Public Enterprises (Privatization and Commercialization) Act 1999.

<sup>16</sup> Ibid s. 2(1).

<sup>17</sup> RM Olulu and SA Udeorah, 'Job Security in Nigeria: The Policies and Laws VISÀ-VIS ILO Standard' [2018] Vol. ii, Issue Xii *International Journal of Research and Innovation in Social Science (IJRISS)*, 70.

<sup>18</sup> R Hodson and TA Sullivan, 'The Social Organization of Work' [2002] Belmont: Wadsworth/Thomson Learning cited in A Ogaboh, MS Agba, EM Ushie and F Nkpoyen, 'Privatization, Job Security and Performance Efficiency of Privatized Enterprises in Nigeria: A Critical Reassessment' [2010] (1)(1) *Journal of Arts Science & Commerce*; 96.

<sup>19</sup> Ogaboh, Agba, Ushie and Nkpoyen(n 1) 100.

While privatization is expected to stimulate economic growth and create new job opportunities, the process often leads to job losses and uncertainty for workers.<sup>20</sup> The transition from state-owned enterprises to privately owned entities in most cases result in workforce restructuring, layoffs, and changes in employment terms and conditions.<sup>21</sup>

That being said, the connection between privatization and job insecurity is an irrefutable reality, substantiated by numerous research on the consequential impact of privatization on employment stability. For example, the study conducted by Adekitan, Ajike, and Okoro on the job security of employees at Enugu Electricity Distribution Company (EEDC), Enugu, unveiled a distressing aftermath of privatization. The findings vividly revealed a distressing array of consequences, including significant job losses, redundancies, demotions, and an atmosphere permeated with worker intimidation.<sup>22</sup> According to them, the employment status of most of the EEDC workers shows that none of the respondents was a permanent staff, nor contract staff. They all belonged to 'other' category.<sup>23</sup> The findings of studies conducted by Ogaboh, Agba, Ushie and Nkpoyen, support the notion that privatization is associated with job insecurity and notable disruptions in the workforce. It gave notable examples which include Flour Mills' extensive layoff of approximately 900 employees in 1999 and the potential closure of NIJAMCO due to operational losses following privatization. The insurance sector also witnessed declines in employment, with Crusader Insurance PLC, Allco PLC, and Bailco PLC experiencing reductions of 7.25%, 0.9%, and 79.7% respectively. Similarly, the banking sector faced substantial reductions in employment, as Union Bank PLC, United Bank for Africa (UBA) PLC, and First Bank PLC reported workforce reductions of 25.7%, 47%, and 16.8% respectively.<sup>24</sup> These instances and many more, highlight the link between privatization and job insecurity, emphasizing the significant impact on employees in various sectors. They noted instances where privatization led to employment, like in the case of Niger Mills Calabar in Cross River State.<sup>25</sup> However, this involved an already closed down enterprise.

### 3. The Meaning of Strike Action

The Nigerian Trade Dispute Act defined strike to mean;

The cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any person or body of persons employed, or to aid other workers in compelling their employer or any persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work.<sup>26</sup>

By the above definition;

1. There must be a cessation or refusal to continue to work. (The action)
2. The cessation or refusal must be by a body of persons acting in combination. (The actors)
3. It must be in consequence of a dispute involving the terms of employment and physical conditions of work. (The reason)
4. The aim of the cessation is to compel their employer or to assist other workers in compelling their employer to accede to their demand. (The purpose/ Sanction)

The actors according to the definition are workers acting in combination to protect their interest. It should be noted the statutory definition of strike did not literally state job security as one of the objects of strike. But it is implied and covered under the terms or conditions of employment. If workers would want a better condition of employment, they are most likely going to start up from job security. The primary motivation for strike actions, as legally defined, is the purpose and the compelling force is the sanction. Strikes serve as a means for workers to compel or exert pressure on employers or relevant parties to address workers' grievances or demands.

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<sup>20</sup>Ibid 95; See RV Hoeven, M Karshenas and G Sziraczki, 'Privatization and Labour Issues in the Context of Economic Reform'; 210 <[https://www.elibrary.imf.org/configurable/contentpage/books\\$002f071\\$002f07315-9781557756053-en\\$002fch05.xml](https://www.elibrary.imf.org/configurable/contentpage/books$002f071$002f07315-9781557756053-en$002fch05.xml?t:ac=books$002f071$002f07315-9781557756053-en$002fch05.xml)> accessed 1 June 2021.

<sup>21</sup> Ogaboh, Agba, Ushie and Nkpoyen (n 1) 96.

<sup>22</sup> RA Adekitan, AK Ajike & B Okoro, 'Impact of privatization on employees' Job Security in the Enugu Electricity Distribution (EEDC)' [2016] (11)(1) *International Journal of Public Policy and Administrative Studies*; 11.

<sup>23</sup> Ibid 6.

<sup>24</sup> Ibid; See also MO Adiza, 'Privatization of Public Enterprises and Productivity: Nigeria's Dilemma' [2011] (2) (6) *Journal of Emerging Trends in Economics and Management Sciences (JETEMS)* 490-496; J. Abubakar, 'How privatized companies are collapsing' [6 January 2011] <[http:// www.dailytrust.com](http://www.dailytrust.com)> accessed.

<sup>25</sup> Adekitan, Ajike and Okoro (n 22) 6.

<sup>26</sup> Trade Disputes Act (TDA) (Cap T8) LFN 2004, s. 48. Emphasis Mine.

Removing the option of strikes would reduce the efficacy of unions' bargaining power.<sup>27</sup> In *Union Bank of Nigeria v. Edet*,<sup>28</sup> Uwaifo, JCA stated that:

It appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike should the need arise and it be appropriate

Strike is therefore an indispensable component of a democratic society and fundamental human right.<sup>29</sup> It is considered one of the bedrocks of modern industrial and democratic society. Strikes have become the most common and popular form of industrial action<sup>30</sup> serving as an effective tool to bring employers to the bargaining table. The efficacy of strikes lies in their ability to impact productivity, earnings, and the economic health of companies or governments. In the case of governments, strikes can lead to political upheaval and even change of government. Strikes are viewed as the most potent weapon in industrial action,<sup>31</sup> and are integral to the system of collective bargaining.<sup>32</sup> Lord Wright in *Crofter Harris Tweed Co. Ltd. v Veitch*<sup>33</sup> stated that 'the right to strike is an essential element in the principle of collective bargaining.' He further noted that 'It is ... essential element not only of the unions' bargaining itself, but it is also a necessary sanction for enforcing agreed rules.' Lord Wright's statement lends credence to the contention that it is necessary to ensure the implementation of agreements reached during collective bargaining.

#### 4. Evaluating the Legal Framework for strikes in Nigeria

The laws governing strikes in Nigeria consist of the Common Law position, the Trade Dispute Act and the Trade Unions Act.

##### Common Law

Under common law, workers are obligated to serve their employers faithfully and comply with lawful orders.<sup>34</sup> Generally, any unjustified absence from work is seen as a fundamental breach of the contract, enabling the employer to dismiss the worker. This principle was established in *Rookes v. Bernard*<sup>35</sup> and reaffirmed in *Canadian Pacific Railway Company v. Zambin*.<sup>36</sup> Therefore, refusing to work, including through a strike, is a breach of the employment contract.<sup>37</sup> The common law position that a striker who withdraws his service as a result of strike will be liable for breach of his contractual obligations towards his employer except his employment contract provides otherwise is still applicable in Nigeria by virtue of the received English Law which consists of the common law, doctrines of equity and statutes of general application applicable in Britain on or before 1<sup>st</sup> January 1900. The employer is by this, entitled to summarily dismiss the striking employee. This power to dismiss which the employer possesses, describes the predicament of the striking worker as aptly summarized by Kahn Freund.<sup>38</sup> The argument is that if a worker has a right to strike in Nigeria, such a worker cannot by exercising his right, break his contract of employment. Moreover, if the contract was terminated by a strike or if the mere fact that there was a strike could entitle the employer to terminate the employment contract, the right to strike would be frustrated. The implication will be that the workers could exercise it only at the risk of sacrificing their jobs.<sup>39</sup> This means that under the common law workers are weakened. They have a weakened voice and cannot protect their interest through strike action. This situation does not represent the modern industrial relationship, where a worker is also considered a partner.

##### Trade Disputes Act (TDA)

The Trade Disputes Act recognizes strike as a tool for workers to press down their demands. However, it lays down the steps that must be complied with before a legal strike can be embarked upon in Nigeria. These steps are

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<sup>27</sup> See *Anigboro v. Sea Trucks Nig. Ltd* [1995] 6 NWLR (Pt. 299) at 62-63 cited in EA Oji and OD Amucheazi, *Employment and Labour Law in Nigeria* (Mbeyi and Associates, 2015) 287.

<sup>28</sup> [1993]4 NWLR (Pt. 287) 288.

<sup>29</sup> L. MacFarlane, *The Right to Strike* (Penguin Books 1981), 12.

<sup>30</sup> Sam Erugo, *Introduction to Nigerian Labour Law* (2nd edn, Princeton and Associates Publishing Co. Ltd 2019) 354.

<sup>31</sup> B. Rasak, P Ogunlade, O Oye, O Adeoti and M Ake, 'Labourism and Good Governance in a Democratic Society: The Role of Nigerian Labour Congress (NLC)', [2019] 7(3) *International Journal of Innovative Social Sciences & Humanities Research*; 50.

<sup>32</sup> J F Myburgh, 'Hundred Years of Strike law' *Industrial Law Journal* [2004] 25 *Industrial Law Journal* (ILJ) 966.

<sup>33</sup> [1942] All ER 142 at 159.

<sup>34</sup> B Ahmed, 'A Critical Appraisal of the Right to Strike in Nigeria' [2014] (4)(11)1 *International Journal of Humanities and Social Science*; 304.

<sup>35</sup> [1964] AC 1129.

<sup>36</sup> (1968) (Unreported) Suit No. Sc/88/64.

<sup>37</sup> Erugo (n 30) 357.

<sup>38</sup> Davis and Freedland, *Kahn-Freund's Labour Law* (3<sup>rd</sup> edn.) 354-355. Cited in Oji and Amucheazi (n 27) 304.

<sup>39</sup> Oji and Amucheazi (n 27) 303-304.

provided for under section 18(1) and (2) of the Trade Dispute Act<sup>40</sup> Section 18(1) and (2) of the Trade Disputes Act provides as follows:

1. An employer shall not declare or take part in a lockout and a worker shall not take part in a strike in connection with any trade dispute where-
  - a. the procedure specified in section 4<sup>41</sup> or 6<sup>42</sup> of this Act has not been complied with in relation to the dispute; or
  - b. a conciliator has been appointed under section 8<sup>43</sup> of this Act for the purpose of effecting a settlement of the dispute; or
  - c. the dispute has been referred for settlement to the Industrial Arbitration Panel under section 9<sup>44</sup> of the Act; or
  - d. an award by an arbitration tribunal has become binding under section 13(3) of this Act; or
  - e. the dispute has subsequently been referred to the National Industrial court under section 14(1) or 17 of this Act; or
  - f. the National Industrial Court has issued an award on the reference.
2. Anyone who contravenes subsection (1) of this Section shall be guilty of an offence and be liable on conviction-
  - a. in the case of an individual, to a fine of N100 or to imprisonment for a term of six months.
  - b. in the case of a body corporate, to a fine of N1,000.

A casual observer of section 18(1) TDA will assume the provisions are disjunctive. That is to say, workers can choose one of the options enumerated in the section. But this view is misleading in the sense that an analysis of the provisions of section 4, 6, 8, 9 13(3), 14(1) and 17 shows otherwise. It shows the steps follow consecutively, meaning that if after one step and no resolution is achieved, and the next step is embarked upon. The above requirements create numerous hurdles that must be fulfilled before embarking on strike action. The process sets in motion a circular and seemingly never-ending loop of compulsory arbitration, leaving workers trapped and with little possibility of exercising their right to strike. In essence, the right to strike appears to be more theoretical than practical.<sup>45</sup> Section 18(1) of the Trade Disputes Act significantly restricts Nigerian workers from engaging in a lawful strike once the specified process has commenced.<sup>46</sup> Consequently, workers' efforts to fulfill the preconditions outlined in Section 18 are often seen as futile.<sup>47</sup> Moreover, Section 18(2) of the Trade Disputes Act reinforces this by making non-compliance with the requirements a punishable offence. According to Agomo, as long as these provisions remain in effect, the Nigerian worker faces considerable limitations in exercising the right to strike.<sup>48</sup>

### **Trade Unions Act**

The Trade Unions Act also recognises strike. It provides for the category of workers permitted to strike, grounds for strike and the procedure for strike. According to Section 31(6)(e) of the Trade Unions Act.<sup>49</sup>

No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a trade dispute unless-

- a. the person, trade union or employer is not engaged in the provision of essential services;
- b. the strike or lockout concerns a labour dispute that constitutes a dispute of right;

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<sup>40</sup> Cap T8 LFN 2004

<sup>41</sup> S.4 provides for steps to be taken before a dispute is reported. According to the provision, if any agreed means of settlement exists, whether provided by the Trade Dispute Act or provisions of any agreement, it should first be explored. If the attempt to settle as provided under subsection (1) fails or no such means of settlement as provided under subsection (1) exists, the parties shall within 7 days of the failure or where no means exist within 7 days of the dispute arising meet together or through their representatives under the presidency of a mediator agreed upon by both parties to try amicable settlement of the dispute.

<sup>42</sup> It provides that if a dispute is not settled in line with section 4(2), on appointing a mediator within 7 days, the dispute shall be reported to the Minister by or on behalf of either of the parties within 3 days of the end of seven days.

<sup>43</sup> This section provides for the appointment of a conciliator by the Minister. If settlement is reached within 7 days, the Conciliator reports back to the Minister with the terms of settlement reached. The terms are binding on both parties, and any breach of the terms is considered an offence. In case of failure or inability to bring about settlement, the conciliator also reports back to the Minister.

<sup>44</sup> It provides for reference to an arbitration tribunal if conciliation fails.

<sup>45</sup> OVC Okene, 'The Status of the Right to Strike in Nigeria: A Perspective from International and Comparative Law' (2007) *African Journal of International and Comparative Law*, <<https://www.researchgate.net/publication/250228471>>, 46. See also, JAM Audi, 'Strikes and the Law in Nigeria', (1991-1992) (9) *Ahmadu Bello University Law Journal*, 84.

<sup>46</sup> EE Uvieghara, *Labour Law in Nigeria* (Malthouse Press Limited 2001), 446.

<sup>47</sup> Erugo (n 30) 364.

<sup>48</sup> C Agomo, *Nigerian Employment and Labour Relations; Law and Practice*, (Concept Publications Ltd. 2011), 297.

<sup>49</sup> Trade Unions Act LFN 2004 as Amended by the Trade Unions (Amendment) Act. 2005. See also, TUA, 2005, s. 6(e).

- c. the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer;
- d. the provisions for arbitration in the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004 have first been complied with; and
- e. in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

In accordance with Section 31(6)(e) of the Trade Union Act (TUA), a strike must be in contemplation or furtherance of a trade dispute, must not involve workers in essential services,<sup>50</sup> and must pertain to a dispute of right. The preamble to the Trade Disputes (Essential Services) Act also grants the President the authority to proscribe trade unions or associations involved in essential services and seize their assets if deemed disruptive. This restrictive definition of 'essential service' encompasses numerous sectors, leaving only a few where workers can legally strike.

Furthermore, it should be noted that strikes in Nigeria are only permitted for disputes of right, as specified under Section 31(9)(a) of the TUA.<sup>51</sup> Such disputes of right pertain to alleged violations of established rights within employment contracts. However, this restriction contrasts with international practice, where industrial actions are allowed for disputes of interests. According to Madhuku, limiting the right to strike to disputes of interest is a common restriction imposed on the right to strike.<sup>52</sup> In line with International Labour Organization (ILO) standards, the right to strike should not solely be confined to industrial disputes that are likely to be resolved through the signing of collective agreements. Workers and their organizations should be able to express in a broader context, if necessary, their dissatisfaction as regards economic and social matters affecting their interests.<sup>53</sup> In addition, meeting the requirement for a simple majority vote of all registered members presents significant challenges. It demands gathering a considerable number of members in a single location to cast their votes. This aspect of the law according to Glame, Awhefeada and Edu seems to indicate the statute's intention to discourage strikes.<sup>54</sup> Online voting may become a solution; however, it has its own challenges like network fluctuations and limited coverage. As a result, workers' ability to undertake legally permissible strikes remains heavily restricted under the existing labour laws. Also, section 43(1) of the Trade Disputes Act stipulates that workers who participate in a strike shall not be entitled to receive wages or remuneration for the strike period. Additionally, the duration of the strike will not be considered when calculating the continuity of employment, thereby affecting the rights dependent on such continuity. The first arm of this provision was tested in the case of *Abdulraheem & Ors. v. Olufeagba & Ors.*<sup>55</sup> In the above case, Abdullahi, JCA held that, 'It is my considered view that in the light of the unambiguous provision of the law stated supra, the award of the salaries and allowances to the respondents by the trial Judge is not only illegal but also inequitable.' Section 43(1) implies that the employment contract is suspended during a strike, following Lord Denning's Suspension Theory. Nigeria's approach to strikes aligns with this theory, suggesting that striking workers do not intend to terminate their employment contracts but rather aim to achieve certain objectives and eventually return to work. Employers rarely apply the common law position of repudiation of contract for the sake of 'Industrial Peace'. In other words, it is lawful for workers to agree with the employer that wages will be paid, and no other detriment suffered even when strike actions are embarked on.<sup>56</sup>

## **5. Immunity for Strike Action Under the Nigerian Law**

Immunity under the law refers to the exemption from legal obligations and penalties for certain actions, as in 'immunity from prosecution'. Section 24 and 44 and 43 of the Trade Unions Act grants trade unions, their representatives, and members immunity in tort for actions taken in contemplation and furtherance of a trade

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<sup>50</sup> See also Trade Disputes (Essential Services) Act Cap T9 2004.

<sup>51</sup> 'Disputes of right' means any labour dispute arising from the negotiation, application, interpretation or implementation of contract of employment or collective agreement under this Act or any other enactment or law governing matters relating to terms and conditions of employment. It involves alleged violations of established rights in employment contracts and agreement.

<sup>52</sup> L Madhuku, 'The Right to Strike in Southern Africa' (1997) 136(4) *International Labour Review*; 521.

<sup>53</sup> ILO, Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body, (Fifth Edn International Labour Office, 2006), Para. 537.

<sup>54</sup> BPS Glame, UV Awhefeada and OK Edu, 'An Overview of The Right to Strike in Nigeria and Some Selected Jurisdictions' [2020] (11)(2) *Beijing Law Review*; 480<  
<https://www.scirp.org/journal/paperinformation.aspx?paperid=99995>>, accessed 9 September, 2021.

<sup>55</sup> [2006] 17 NWLR (Pt. 1008) 280.

<sup>56</sup> AS Gatugel and KU Eze, A Brief Legal Reflection on the Recognition of Trade Unions: The Law in Nigeria [2015] 36 *Journal Of Law, Policy And Globalization* 113-114; See also *Oyo State v. Alhaji Bashir Apapa and 3 Ors* (Unrep.) Suit No. NIC/36/2007, the judgement of which was delivered on July 15, 2008.

dispute. This immunity serves as a protective measure for trade unions during strikes, but it is limited to the grounds specified in the provisions. The grounds are that the strike must be in contemplation or furtherance of a trade dispute. Any actions outside of these provisions can still be subject to legal action. The Criminal Code also grants immunity to trade union officials from prosecution for criminal conspiracy committed by them in contemplation or in furtherance of a trade dispute. However, trade unions can still face criminal liability under the Code for actions not connected to a trade dispute, despite Section 518A for an act(s) not in contemplation or furtherance of a trade dispute. This should however flow from meeting of the other conditions stated under section 18(1) of the TDA and section 31(6) of the TUA.

## 6. Strike Action as a Strategy for Protecting Job Security

Strike action just like collective bargaining serves as one of the strategic approaches employed by workers and labour unions to protect job security in the face of potential threats posed by various factors,<sup>57</sup> including privatization. This is because strike is a concomitant of the collective bargaining process<sup>58</sup> and essence of collective bargaining is the protection of the interest of workers and job security is paramount. It is an action taken by workers as a protest,<sup>59</sup> a protest against unfavorable working conditions, employment practices, or other grievances. Strike action is fundamental to robust industrial relations. Note strike action is usually not the first option explored by the unions. It only becomes an option when government or employer(s) of labour refuses to negotiate, when negotiation fails or when there is a refusal to implement the content of an agreement entered into at the negotiation table.<sup>60</sup> It involves the routes available to the unions by the provision of the laws to express their grievances, pursue their claims, seek to resolve their differences and assert their perceived right when the need arises.<sup>61</sup> 'Work to rule', 'go slow' and 'ban on overtime' falls within the definition of strike under section 48 TDA.<sup>62</sup>

Section 48 of the Trade Disputes Act defines a strike as workers coming together to protect their interests, with a strong emphasis on the importance of 'job security,' as previously highlighted. The question is, how can this be achieved in the context of privatization with its job security issues, given the challenges presented by the legal framework for strikes in Nigeria? This is where the power of cessation of work comes in. The potency of strikes lies in the compelling force exerted by workers through the cessation of work. When workers join together in agreement, their ability to disrupt production, hamper capital flow, and affect the nation's functioning becomes a significant concern for employers. In general, without the power and authority on the part of workers through their combination, the pursuit of those needs could be ignored or even penalized by employers.<sup>63</sup> The fear of these repercussions compels employers to take workers' demands seriously. The power of collective action therefore becomes the driving force that forces employers to listen and respond to workers' concerns, particularly with regards to job security.

There has been several analysis back and forth on the legal framework on strike in Nigeria. The analysis of the impact of the legislations on strike exposes an attempt to frustrate strike action once commenced. A fact that has been alluded to by many scholars.<sup>64</sup> However, what the reviews have failed to do is to consider the concept of

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<sup>57</sup> BC Uzoh, 'Strike Action: The Only Weapon Available to Public Sector Employees in Nigeria in their Agitation for Better Working Conditions' [2021] (4) *ZIK Journal of Multidisciplinary Research*, 2 < [https://www.researchgate.net/publication/357680697\\_Strike\\_Action\\_The\\_Only\\_Weapon\\_Available\\_to\\_Public\\_Sector\\_Employees\\_in\\_Nigeria\\_in\\_their\\_Agitation\\_for\\_Better\\_Working\\_Conditions](https://www.researchgate.net/publication/357680697_Strike_Action_The_Only_Weapon_Available_to_Public_Sector_Employees_in_Nigeria_in_their_Agitation_for_Better_Working_Conditions)> assessed 8 July 2023.

<sup>58</sup> C Unini, 'The Right To Strike Action In Nigeria: An Aspect Of Industrial Law' [28 March 2022] < <https://thenigerialawyer.com/the-right-to-strike-action-in-nigeria-an-aspect-of-industrial-law/>> assessed 9 June 2022.

<sup>59</sup> Mairi Robinson(ed) and George Davidson(ed), *Chambers 21<sup>st</sup> Century Dictionary* (Chambers Harrap Publishers Ltd 1999) 691.

<sup>60</sup> *Union Bank of Nigeria v. Edet* [1993]4 NWLR (Pt. 287) 288.

<sup>61</sup> Sam Erugo, *Introduction to Nigerian Labour Law* (2nd edn, Princeton and Associates Publishing Co. Ltd 2019); 354.

<sup>62</sup> 'Cessation of work' and 'concerted refusal' to continue work are the terms used by section 48 TDA to describe what a strike is. Cessation of work according to the section 48(1) TDA includes deliberately working at less than usual speed or with less efficiency while the refusal to work involves a refusal to work at a usual speed with usual efficiency.

<sup>63</sup> C Fisher, 'What Is Power & Authority in Industrial Relations?' CHRON < <https://smallbusiness.chron.com/power-authority-industrial-relations-80591.html>. Accessed 9 July 2023.

<sup>64</sup> See EE Uvieghara, *Labour Law in Nigeria* (Lagos: Malthouse Press Limited 2001) 446; A Emiola, *Nigerian Labour Law* (4th edn, Emiola Publishers Limited 2008) 507; R Idubor, *Employment and Trade Dispute Law in Nigeria* (Benin City: AMBIK Press 1999) cited in Glame, Awhefeada and Edu (n 60) 474; AE Abuza, A Reflection on Regulation of Strikes in Nigeria [2016] *Commonwealth Law Bulletin*, 42, 3-37 cited in Glame, Awhefeada and Edu (n 60) 474; Erugo (n 30) 364; OVC Okene, The Right of Workers to Strike in a Democratic Society: The Case of Nigeria [2007] 19(1) *Sri Lanka Journal of International Law*, 207-208 < [https://www.researchgate.net/publication/274311115\\_THE\\_RIGHT\\_OF\\_WORKERS\\_TO\\_STRIKE\\_IN\\_A\\_DEMOCRATIC\\_SOCIETY\\_THE\\_CASE\\_OF\\_NIGERIA](https://www.researchgate.net/publication/274311115_THE_RIGHT_OF_WORKERS_TO_STRIKE_IN_A_DEMOCRATIC_SOCIETY_THE_CASE_OF_NIGERIA)> accessed 1 July 2023.

power in all this. The place of the holder of the power of coercion during threat of strike actions and the impact of exercising that power cannot be removed. Therefore, despite legal restraints outlined in section 18(1) and (2) of the TDA, section 43(1) of the TDA, and section 31(6)(e) of the TUA, workers retain the power to exercise their rights. The potential paralyzation of companies, the economy, and the government serves as the driving force for employers to think twice before dismissing workers' demands. This realization grants workers the strength to proceed with strikes when deemed necessary, even in sectors classified as essential services. Over the years, despite legal restrictions, workers have consistently initiated strikes in various sectors, including those considered essential services like education. Even the Academic Staff Union of Universities, the Nigerian Union of Teachers, and the Medical and Health Workers' Union of Nigeria have resorted to strikes despite their essential service categorization, showcasing the potency of the power wielded by united workers.<sup>65</sup> According to Uzoh, these strikes are incessant simply because they are the only weapon these unions have in their agitation for better working conditions for their members.<sup>66</sup> These strikes have also been recorded during privatization.<sup>67</sup> The impact of this power wielded by worker through their combination cannot be underestimated, especially during privatization processes where job security might be at risk. Workers in privatized enterprises face uncertainties, and strikes serve as a vital tool to secure their employment. By uniting in a common cause, workers can assert their needs and influence the decisions made by employers and government authorities. In addition, strikes have far-reaching consequences beyond the immediate workplace, affecting broader society and the economy.<sup>68</sup> Prolonged strikes can disrupt supply chains, negatively impacting the economy and causing inconvenience to citizens. The potential for such widespread effects strengthens workers' bargaining position, making it harder for employers and the government to totally ignore their demands. This highlights the significant role that workers' collective power can play in shaping policies and decisions during privatization. Strikes can also influence public opinion, shape government policies beyond privatization, and impact discourse on workers right.

In practice, government is often reluctant to penalize striking workers due to potential repercussions. Enforcing penalties could be seen as a declaration of war against the unions and may hinder the possibility of amicable settlement of disputes in the future. Furthermore, considering the adverse effects of strikes on companies, sectors, the economy, and the general population, punitive actions against trade unions may lead to more negative impacts on Nigeria's economy. This underscores the fact that, regardless of restrictions, 'Nigerian workers have made ample use of this freedom to strike'<sup>69</sup> providing a powerful tool that trade unions can use to secure the job stability of employees of these privatized enterprises.

In conclusion, strikes hold immense significance for workers in Nigeria, particularly during privatization, as they seek to safeguard their job security. The compelling force behind the cessation of work, combined with the unwavering resolve of workers despite legal restrictions, creates a potent tool that effectively influences employers, the economy, and government policies. The power of trade unions in mobilizing collective action underscores the significant influence workers possess in shaping employment conditions and influencing employers' decisions. By utilizing strikes, workers demonstrate their ability to disrupt and impact various aspects of the nation, reinforcing the importance of this tactic as an effective means of protecting their interests. This collective action serves as a crucial tool for maintaining job security during times of change and uncertainty. As workers continue to assert their just demands, the power of collective action through strikes will continue to be a driving force in shaping employment conditions and advocating for workers' rights in Nigeria's evolving economic landscape. Acknowledging the fact that strike can also lead to socio economic instability, it should be used only when it is the only option available. The problem is that, despite being the mediator in the industrial relations system and the largest employer of labor in Nigeria, government has consistently failed to fulfill its responsibilities. Its insensitivity to the welfare of workers has resulted in a situation where unless workers resort to strike action, pays little attention to their grievances. Consequently, strike action has become the predominant method of addressing workers' issues, overshadowing the more desirable approach of collective bargaining.<sup>70</sup>

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<sup>65</sup> Uzoh (n 57) 12-14.

<sup>66</sup> Ibid 14-15.

<sup>67</sup> Aondona (n 7) 2.

<sup>68</sup> BC Uzoh and KC Anigbogu, 'The Challenges and Prospects of Trade Unions in Nigeria' [2013] (5)(1) Nnamdi Azikiwe University, Awka Journal of Sociology cited in BC Uzoh, 'Strike Action: The Only Weapon Available to Public Sector Employees in Nigeria in their Agitation for Better Working Conditions' [2021](4) ZIK Journal of Multidisciplinary Research; 12.

<sup>69</sup> AA Adeogun 'Strikes – The Law and the Institutionalization of Labour Protest in Nigeria', [1980] (16) (1) *Indian Journal of Industrial Relations*; 6.

<sup>70</sup> Uzoh (n 57) 12-14.



## 7. The Constitutional Amendment (Third Alteration) Act as a Possible Defence in Cases of Victimization or Court Action

There is a possibility that when workers exercise the power to strike, some of the strikers might be singled out and victimized as a result. The Constitutional Amendment (Third Alteration) Act 2010, section 254C(1) (f)(h) and section 7(6) of the National Industrial Court Act (NICA) 2006 can be utilized as a defence on the ground that International best labour practices recognizes the right of a worker to strike. The Constitutional Amendment (Third Alteration) Act brought notable changes in the legal framework governing labour in Nigeria some of which touch on industrial actions and by extension strike action. Its effect on the legal status of strikes in Nigeria can be far-reaching and significant. Part of the innovations introduced by the Third Alteration Act is on the justiciability and enforcement of ILO Conventions as provided for under section 254C. Section 254C (1) of the Constitutional Amendment (Third Alteration) Act provides that:

Notwithstanding anything to the contrary in this Constitution, *the National Industrial Court shall have the jurisdiction and power to deal with any matter connected with or pertaining to the application of any international convention, treaty or protocol of which Nigeria has ratified relating to labour, employment, workplace, industrial relations or matters connected therewith.*<sup>71</sup>

f) relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

(h) relating to, connected with or pertaining to the application or interpretation of international labour standards

Section 7(6) of National Industrial Court Act (NICA) 2006 empowers the National Industrial Court to apply good or international best labour practices in adjudicating on matters before it.<sup>72</sup> Section 7(6) of the National Industrial Court Act provides that:

The court shall, in exercising its jurisdiction or any of the powers conferred upon it by this Act or any other enactment or law, *have due regard to good or international best practice in labour or industrial relations* and what amounts to good or international best practice In labour or industrial relations shall be a question of fact.<sup>73</sup>

International best labour practices encompass international labour standards, with the right to strike being one of them. These standards are established in international legal instruments from organizations such as the United Nations (UN), the International Labour Organization (ILO), and other regional bodies. They universally recognize and uphold the right to strike, making it an integral part of labour rights. This fundamental right is regulated by the following international legal instruments, including the Universal Declaration of Human Rights<sup>74</sup> and the International Covenant on Economic, Social and Cultural Rights adopted 1966,<sup>75</sup> both of which are under the purview of the United Nations. These instruments universally recognize and protect the right to strike as a fundamental aspect of labour rights. These best practices also include the ILO Conventions. ILO is a United Nations Agency responsible for upholding global standards.<sup>76</sup> The major ones are the Convention No. 87 of 1948 on Freedom of Association and Protection of the Right to Organise and Convention No. 98 of 1949 on the Right to organize and Bargain collectively. By the provisions of section 7(6) of the National Industrial Court Act, the court is allowed to apply international best practices in labour. Therefore, in case of strike by workers to protect their interests under privatization and the employers decides to victimize them using any of the legal constraints available under the Nigerian legal framework on strike, these workers can rely on these conventions as a defence to argue that what they merely exercised was their fundamental right to strike.

## 8. Conclusion

The Trade Unions Act (TUA) and Trade Disputes Act (TDA) indirectly aim to restrict and curtail the right to strike. This potentially weakens the efficacy of trade unions, limiting their ability to effectively protect workers' interests and reducing their impact to mere symbolic gestures instead of ensuring substantive change. Despite these frustrating provisions, workers have continued to exercise their power to strike to compel employers to

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<sup>71</sup> Emphasis Added.

<sup>72</sup> *Oyo State Government v Alhaji Apapa* [2008] 11 NLLR (Pt 29) 228.

<sup>73</sup> Emphasis Added.

<sup>74</sup> Universal Declaration of Human Rights adopted and proclaimed by the UN General Assembly in Resolution No. 217A (XXX), Dec 10, 1948, Article 20(1).

<sup>75</sup> United Nations Human Rights, International Covenant on Economic, Social and Cultural Rights

<<https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights>> Article 8(1)(d) and (2) and Article 2(1)

<sup>76</sup> Okene (n 62) 31.

meet their demands, a practice that has persisted over the years. Thus, despite the provision of the TDA and TUA, trade unions possess significant power through strike actions, capable of disrupting production, economies, and compelling employers and the government to take necessary actions. This power allows workers to utilize strikes to safeguard their job security, especially during privatization. Furthermore, with the Constitutional Amendment (Third Alteration) Act acknowledging international best practices, workers can lawfully exercise the right to strike during privatization to protect their interests. In addition, it is contended that if a case regarding the right to strike during privatization is brought before the National Industrial Court (NIC) invoking international conventions and practices, it is expected that the NIC would rule in favour of upholding the internationally recognized right to strike.