

APPRAISAL OF EXTANT REGULATIONS ON RECOGNITION OF TRADE UNIONS

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Abstract

This article espouses the concept of trade union and interrogates gaps inherent in extant regulations on recognition of trade unions in the workplace in Nigeria. By articulating provisions of applicable regulations in the United Kingdom, it admits the slow pace of development of labour regulations in most developing countries, which incidentally accounts for large chunk of the challenges associated with recognition of trade unions in Nigeria. As a panacea to the identified challenges, the article concludes

with the exigency for amendment of extant labour regulations on recognition of trade unions, by the National Assembly, so as to evolve a clearly thought-out, robust and dedicated normative framework with inputs of relevant stakeholders in the workplace.

Keywords: Recognition; Workplace; Workers; Trade Unions; Regulations.

1.0 Introduction

Emerging labour markets are confronted with an array of challenges revolving around meagre earnings, abysmal terms and conditions of work, and unfair labour practices. In Africa, these labour market challenges are better appreciated against the backdrop of the impoverishment of the continent accentuated primarily by the legacy of colonialism, the cold war, the workings of the international economic system and the inadequacies of and shortcomings in the policies pursued by many countries in the post-independence era.¹ Even at this, the prospects of most post-independent African States in addressing labour market challenges are exacerbated by emerging global trends tucked in the increasing automation and digitalisation of the workplace. These trends have paved way for utilisation of digital technologies for increased productivity, adoption of novel work models such as telework and other electronic platforms in

altering traditional understanding of work and creating newer opportunities outside the reach of many conservative nations. In Nigeria, the adverse impacts of unemployment and under-employment are quite profound. In the fourth quarter of 2020, unemployment rate rose from 27.1 percent to 33.3 percent.² This implies that 23,187,389 million Nigerians are unemployed in the period under review.³ This is without prejudice to high rate of under-employment.⁴ With these labour market challenges in perspective, trade unions, as indispensable entity for change in the workplace, have continued to orchestrate all sorts of agitations to address perceived deficits in the workplace. Hardly any week passes now without strike action or a threat of it in one form or another.⁵

The increasing utility of trade unions in the workplace is anchored on the acknowledgement of the right to freedom of association by both international labour standards and domestic labour regulations of states across the globe as well as the realisation of the rights and interests of parties in the workplace are better negotiated and protected under collective arrangements. As in many jurisdictions across the

¹ Olusegun Yerokun, *Casebook on Labour Law: Comments & Cases* (Princeton & Associates Publishing Company Ltd 2015) 639.

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² National Bureau of Statistics, *Labor (sic) Force Statistics: Unemployment and Underemployment Report* (Q4 2020) (March 2021) 3, 18.

³ Ibid.

⁴ Out of the total number of 46,488,079 million persons in employment in the fourth quarter of 2020, 15,915,639 million were under-employed. Ibid, 3.

⁵ Emiola Akintunde, *Nigerian Labour Law* (4th edn, Emiola (Publishers) Limited 2008) 508.

globe, extant labour regulations in Nigeria make provisions for formation, registration, organisation and operations of trade unions. However, there is gross misunderstanding of extant labour regulations on recognition of trade unions. This seemed to have been precipitated by the fact that a large chunk of extant labour regulations is couched in shabby manner. This gap gives rise to recondite legal questions the answers to which cannot readily be garnered from the provisions of extant legal regulations. The first question is whether the recognition of duly formed and registered trade unions by the employer is mandatory? Another question relates to the criteria that must be complied with for a trade union to be recognised and the purpose for which such recognition serves. It remains unclear whether workers concerned have any choice on the trade union that the employer may accord recognition, or whether a duly formed and registered trade union is obliged to formally request the employer to accord recognition. These legal questions underscore the extent of the gaps associated with the recognition of trade unions in Nigeria. Hence, the need to articulate these lacunae against the backdrop of international labour standards and global best practices as prerequisite for evolving a more workable blueprint that may serve as guide for future reforms of extant labour regulations on recognition of trade unions in Nigeria.

2.0 Meaning of Trade Union

Trade unions are creation of law. Accordingly, section 1(1) Trade Unions Act 1973 (as amended) defines a trade union as “any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and conditions of employment of workers whether the combination in question would not, apart from this Act, be an unlawful combination by reason of these purposes being in restraint of trade, and whether its purposes being in restraint of trade, and whether its purposes do or do not include the provision of benefits for its members.” This makes the contention that a trade union is strictly a combination of workers erroneous. Contrary to this erroneous position, a combination of employers, satisfying requisite requirements of law, may also qualify as a trade union.⁶ The courts have even liberalised the construction of trade union by admitting properly pensioners within

the scope of the concept. In *Madu v National Union of Pensioners*,⁷ the question arose as to whether the Nigeria Union of Pensioners qualifies as a trade union. The Court of Appeal found in the affirmative on the basis that the Nigeria Union of Pensioners was listed and recognised as a trade union under the Trade Dispute Act.⁸ As the apex and umbrella body for pensioners in Nigeria, the Nigeria Union of Pensioners comprises retirees from the civil service of the federation, including local government, statutory corporations, government-owned companies, educational institutions for which the government of the federation is responsible, and such similar establishments. It also comprises private sector pensioners. Although the Nigeria Union of Pensioners does not have serving workers, it enjoys the vestige of a trade union on the strength of the fact that it is made up of retired workers who still have claims from their employers.⁹ These claims are in the nature of pension and gratuity.

There are marked distinctions between a trade union of workers and a trade union of employers. First, whereas at least fifty members are required for the registration of trade union of workers, at least two members are required for registration of a trade union of employers.¹⁰ Second, while strike is strictly reserved for workers' trade unions, employers' trade unions are entitled to lockout. Whereas strike and lockout share some similarities such that both concepts are legitimate weapons that trade unions may explore in the quest for resolving trade disputes, strike and lockout represent two ideas of the same coin.¹¹ In fact, lockout remains the converse of strike.¹² Regardless of whether a trade union is that of workers or employers, the principal purpose for which it is formed and carried on must be for regulating the terms and conditions of

⁶ Section 1(1) Trade Unions Act 2004.

⁷ (2001) 16 NWLR (Pt. 739) 346.

⁸ See 3rd Schedule, Part B, Item 24 Trade Unions Act 2004.

⁹ Bamidele Aturu, *Nigerian Labour Laws: Principles, Cases, Commentaries and Materials* (Frankad Publishers 2005) 207.

¹⁰ Section 3(1)(a) and (b) Trade Unions Act 2004.

¹¹ Agomo Chioma Kanu, *Nigerian Employment and Labour Relations: Law and Practice* (Concept Publications Limited 2011) 301.

¹² Matthias Zechariah and Grace Dalong-Opadotun 'Laws Regulating Strikes in Nigeria and the Desirability of Compliance with International Best Practices' [2016](9) *Journal of Public Law & Constitutional Practice*, 25; SC Srivastava, *Industrial Relations and Labour Law* (5th edn, Vikas Publishing House PVT Ltd. 2007) 450.

employment of workers.¹³ Membership of a trade union by employees is voluntary. No employee can be forced to join any trade union or be victimized for refusing to join or remain a member of a trade union.¹⁴ Employees enjoy the right to join a trade union or having joined, to cease to continue as a member of a trade union.¹⁵ This clearly vitiates *closed-shop arrangements* and *yellow-dog contracts*.¹⁶ To this end, courts are stripped of the power to entertain any legal proceedings instituted for the purpose of directly enforcing any agreement or for recovering damages for any breach of any agreement between the members of a trade union which makes its a term and condition that members of a trade union shall or shall not employ persons or be employed.¹⁷

The liberalisation of membership of trade union was largely stimulated by the Trade Union (Amendment) Act 2005. The enactment of this legislation represents a major departure from the pre-existing position where membership of trade union was virtually compulsory and workers often conscripted by employers to join specified trade union in their establishments. Nonetheless, there are two clear permissible situations for deprivation of membership of trade union. The first situation prevents employees recognised as “projection of management” from becoming members of a trade union if such membership of trade union will lead to a conflict of loyalties to either the trade union or to the management.¹⁸ An employee may be recognised as a projection of management within a management structure if his status, authority, powers, duties and accountability which are reflected in his conditions of service are such as normally inhere in a person exercising executive authority, whether or not delegated, within the organisation concerned.¹⁹ It needs be emphasised that these provisions are not as parsimonious as it appears. The provisions merely

place emphasis on the element of conflict of loyalty as the determining factor in precluding certain category of employees from membership of a trade union.²⁰ The second situation strips certain category of employees from forming or joining trade union.²¹ Whereas workers caught up by this provision are stripped of the benefits of collective bargaining and collective agreements, affected workers are empowered by law to set up joint consultative committees in their establishment for engagement with employers on issues in the workplace.²²

The restriction on the right of membership of trade union for this category of workers appears conflicting with section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended) which guarantees the right to peaceful assembly and association. However, the fact remains that the right to membership of trade union is a qualified and derogable right. Permissible derogation from the constitutionally guaranteed right to peaceful assembly and association is allowed for any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom or other persons.²³ This provides exceptional ground for stripping affected employees of the right to membership of trade union, a person who is otherwise eligible for membership of a particular trade union shall not be refused admission to membership of such trade union on the ground that he is of a particular

²⁰ P Ehi Oshio 'Legal Implication of Non-Registration of A Trade Union: The Nigerian Experience' [2004](8)(1-2) *Modern Practice Journal of Finance & Investment Law*, 218.

²¹ Section 11(1) Trade Unions Act 2004. Workers affected by this provision are those in the Nigerian Army, Navy or Air Force; the Nigeria Police Force; the Customs Services, the Immigration Services and the Prison Services; the Customs Preventive Service; the Nigerian Security Printing and Minting Company Limited; the Central Bank of Nigeria; the Nigerian Telecommunications Limited; every Federal or State government establishment the employees of which are authorized to bear arms; and such other establishments as the Minister may, from time to time, by order specify. Workers in these establishments are largely those engaged in the provision of essential services to which the law attaches some importance. The rationale for excluding these categories of workers from membership of trade union is to strip them of the benefits of trade unionism (inclusive of the right to strike) so as to avoid the adversely impacts that may be occasioned by form of cessation of work.

²² Ibid, section 11(2) Trade Unions Act 2004.

²³ Section 45(1)(a) and (b) Constitution of the Federal Republic of Nigeria 1999 (as amended).

¹³ Sections 1(1) and 7(1)(d) Trade Unions Act 2004.

¹⁴ Ibid, section 12(4).

¹⁵ *United Geophysical Nigeria Ltd/Integrated Data Services Ltd (UGNL/IDSL) Joint Venture JV 165 v National Union of Petroleum and Natural Gas Workers (NUPENG)* (Unreported) Suit No.NIC/3/2006. This judgment was delivered on 22nd January 2008.

¹⁶ Section 12(4) Trade Unions Act 2004.

¹⁷ Ibid, section 23(1) and (2)(a).

¹⁸ Ibid, section 3(3).

¹⁹ Ibid, section 3(4).

community, tribe, place of origin, religion or political opinion.²⁴ In recognition of the age-long concept of the “golden formula,” trade unions are immune from certain acts or conducts done in contemplation or furtherance of a trade dispute.²⁵

Trade unions come into existence through formation and registration. Formation of trade union is distinguishable from registration of trade union. A formed trade union may not necessarily be registered. An unregistered trade union cannot perform any act in furtherance of the purposes for which it has been formed.²⁶ Without prejudice to steps necessary for the purpose of getting a trade union registered, an unregistered trade union, its officials and members who take active part in violation of this is guilty of an offence.²⁷ The overall implication is that the requirement for registration of is compulsory. The system of compulsory registration of trade unions serves as a way of exercising control of fraternisation within the workplace. Registration of trade union can be attained by a duly signed application in a prescribed form to the Registrar of Trade Unions for registration.²⁸ A trade union seeking to be registered must have as its principal purpose the regulation of terms and conditions of employment. As such, the Registrar of Trade Unions may cancel the registration of a trade union if it is shown that the principal purpose for which the trade union is being carried on is other than the regulation of terms and conditions of employment.²⁹ Again, the Registrar of Trade Unions is empowered to refuse an alteration of the Rule of a union that results in altering the principal purpose for which a trade union operates.³⁰ Furthermore, registration and recognition of trade unions are independent issues. Where a trade union is duly registered, the recognition of such trade union by the employer is entirely another question.

3.0 Recognition of Trade Union in Nigeria

Recognition of trade union is the volitional act of an employer to acknowledge a trade union or its agent

with whom to negotiate or consult for the purposes of collective bargaining.³¹ Recognition of a trade union involves the acceptance by the employer that the union has negotiating rights over certain issues.³² It is a formal step towards the legitimisation of assemblage of workers for the purpose of mutual engagements using the mechanisms of collective bargaining and collective agreements. Recognition of trade unions renders a trade union the cognisable “bargaining agent” or “bargaining unit” in a particular workplace. On this basis, employees can effectively relinquish individual rights to recognised trade union to negotiate for and on their behalf on a collective basis. An employer is not bound to negotiate with a trade union unless such trade union is recognised by the employer for the purposes of collective bargaining. This is an indispensable prerequisite for the enthronement of industrial democracy and containment of trade disputes in the workplace. As to whether it is obligatory or discretionary for an employer to accord recognition to duly registered trade unions whose members are in its employment, the position of the law appears quite fluid. Section 25(1) Trade Unions Act 2004 which is often cited in support of the postulation that recognition of trade union is obligatory merely provides as follows:

For the purposes of collective bargaining all registered Unions in the employment of an employer shall constitute an electoral college to elect members who will represent them in negotiations with the employer.

(Underlining for emphasis)

The above provision has been identified as the extant regulation on recognition of trade unions.³³ It abrogates section 24(1) Trade Unions Act 1990 which states that where a trade union of which persons in the employment of an employer are members, that trade union shall, without further assurance, on registration,

²⁴ Section 12(1) Trade Unions Act 2004.

²⁵ Ibid, section 24(1) Trade Unions Act 2004 and section 44(1)(a)-(d).

²⁶ Ibid, section 2(1).

²⁷ Ibid, section 2(3)(a) and (b).

²⁸ Ibid, section 3(1).

²⁹ Ibid, section 7(1)(d).

³⁰ Ibid, section 29(2)(b).

³¹ Kenneth U Eze and Abdulmalik S Gatugel, 'A Brief Legal Reflection on the Recognition of Trade Unions under the Law in Nigeria' [2015](36) *Journal of Law, Policy and Globalization*, 6.

³² Emmanuel Ayangearumun Kenen, 'Trade Union Laws and Labour Relations in Nigeria: A Critical Examination' [2019/2020](9) *Benue State University Law Journal*, 92.

³³ Ibid, 95.

be entitled to recognition by the employer.³⁴ Even at this, the extant regulation on recognition of trade unions is inherently problematic. This is in view of the fact that section 25(1) Trade Unions Act 2004 does not provide any insight on the modalities for constituting an electoral college. It is not clear whether trade unions in a particular workplace are represented in a constituted electoral college on equal basis or on the basis of proportion of its members. This lacuna has the proclivity of rendering a workplace with acrimonious relations among trade unions to further inter-trade union disputes. Again, it undermines the prospects of utilising collective bargaining and collective agreements in addressing trade disputes in the workplace. In any case, for purpose of collective bargaining, the only criteria imbued in the above provision is the requirement of registration and not recognition of the trade union in question. The inference is that duly registered trade unions are entitled to engage the employer in collective bargaining even without any form of recognition by such employer. In this regard, the view that recognition of trade union allows for negotiation with the registered trade unions in order to prevent trade dispute³⁵ is without concrete base. This is more so that the Minister of Labour had severally mandated employers, through subsidiary legislations, to accord recognition to certain trade unions.³⁶ This ministerial step would have been needless if the issue of recognition of trade unions is automatic and obligatory. As compelling as this may seem, the National Industrial Court of Nigeria, relying on the provisions of sections 5(7) and 25(1) Trade Unions Act 2004 and section 5(3)(a) and (b) Labour Act 2004, is of

the view that that recognition of a trade union by an employer is automatic and compulsory.³⁷ Anything short of this inevitably culminates in recognition dispute.

Recognition dispute is one relating to whether it is obligatory or discretionary for an employer to accord recognition to trade union(s) to which its workers are members³⁸ or dispute as to which of two unions has jurisdiction over workers in a particular trade or profession.³⁹ Refusal of an employer to accord recognition to a trade union to unionize eligible members in its employment is a ground for a valid trade dispute even if the trade union is yet to form a branch on the employer's premises.⁴⁰ Against these backdrops, it appears the stance of the National Industrial Court of Nigeria relating to automatic and compulsory recognition of a trade union by an employer predicated on the exigency of minimising the propensity of recognition disputes which falls under the broader spectrum of trade disputes. Whereas the stance of the National Industrial Court of Nigeria has gained increased acknowledgement,⁴¹ its implication raises questions which cannot be satisfactorily answered without snags. This is aggravated by the absence of clear-cut modalities for ascribing registered trade unions recognition by employers under extant labour regulations. However, this lacuna is augmented by judicial decisions which create assemblage of principles guiding recognition of trade unions.

The main principle that runs through judicial decisions on recognition of trade union is to the effect that once any trade union exhibits enough intention to be recognised by an employer, by indicating its willingness to unionise workers who are eligible to be

³⁴ Under the abrogated section 24(2) Trade Unions Act 1990, an employer deliberately fails to recognize any trade union registered pursuant to the provision of section 24(1) is guilty of an offence and liable on summary conviction to a fine of N1,000.

³⁵ Eze and Gatugel (n 31) 10.

³⁶ Under section 1(1) Trade Union (Compulsory Recognition) Order 1976, the Consolidated Petroleum, Chemical and General Workers' Union of Nigeria is entitled to be recognised by Michelin (Nigeria) Limited as representing the junior workers in the employment of that company. Similarly, under section 1(1) Trade Union (Compulsory Recognition) (No. 2) Order 1976, the Food and Drinks Workers' Union of Nigeria is entitled to be recognised by Lagos Airport Hotel Limited, as representing the junior workers in the employment of that company.

³⁷ *Corporate Affairs Commission v Amalgamated Union Public Corporations, Civil Service Technical and Recreational Employees* (2004) 1 NLLR (Pt. 1) 1; *Mix and Bake Flour Mill Industries Ltd v. National Union of Food, Beverage and Tobacco Employees* (2004) 1 NLLR (Pt. 4) 247.

³⁸ *Beetham v Trinidad Cement Ltd* (1960) AC 132; EE Uvieghara, *Labour Law in Nigeria* (Malthouse Press Ltd. 2001) 487.

³⁹ Emiola (n 5) 524.

⁴⁰ *Management of Tuyil Nigeria Limited v National Union of Chemical, footwear, Rubber, Leather and Non-Metallic Product Employee* (Unreported) Suit No. NIC/9/2003. This judgment was delivered on 23rd January 2008.

⁴¹ Eze and Gatugel (n 31) 6.

its members, the employer is obliged to accord recognition and not pose obstacles in the way of such unionisation.⁴² In *Trans International Bank Plc. v National Union of Banks, Insurance and Finance Institutions Employees*,⁴³ the National Industrial Court held that the employer is obliged to accord recognition to the trade union and allow the trade union to unionise eligible members by making available to the trade union the names of its staff that are eligible to members of the trade union.⁴⁴ The implication of this decision is that the fact of recognition of a trade union can be inferred from the conduct of an employer, viz., where an employer readily makes its staff list available to the trade union is pursuance of a trade union's quest to unionise eligible workers on the staff list. The presence of a recognised trade union in a workplace is irrefutable. This plays out in relation to deduction of check-off dues from the wages of workers by employers for onward remittance to recognised trade unions.⁴⁵

The duty to deduct check-off dues is mandatory and no employer is permitted to choose whether or not to do so.⁴⁶ It does not lie in the discretion of an employer to refuse to make deduction and remittance of check-

off dues on the assumption that the workers are reluctant to join a particular trade union. Pursuant to section 5(3) Labour Act 2004, the obligation to deduct and remit check-off dues of eligible members of a trade union can only be abrogated where a worker decides to contract out of the system in writing. With the use of the expression "a worker" in section 5(3) Labour Act 2004, it is clear that the intention of the legislators is to reserve the decision to contract out of check-off system for individual worker, and not a collective decision by concerted members of a trade union.⁴⁷ However, in the case of eligible members of trade unions specified in Part B of Schedule 3 of the Trade Unions Act, deduction and remittance can only be made with the written consent of eligible members.⁴⁸ In any case, the total amount of deductions that may be made from the wages of a worker in any one month shall not exceed one third of the wages of the worker for that month.⁴⁹ It must be admitted that there are perceived inconsistency in extant labour regulations on the criteria for deduction and remittance of check-off dues. On the one hand, section 17(a) Trade Unions Act 2004 places emphasis on actual membership of a trade union as the basis for deduction and remittance of check-off dues. On the hand, section 5(3) Labour Act 2004 adopts eligibility for membership as the criteria for deduction and remittance of check-off dues. A larger chunk of decisions of the National Industrial Court of Nigeria favours the latter position.⁵⁰ Accordingly, Eze and Gatugel summarise the current position of the law thus:

⁴² *Management of Tuyil Nigeria Limited v National Union of Chemical, footwear, Rubber, Leather and Non-Metallic Product Employee* (Unreported) Suit No. NIC/9/2003. This judgment was delivered on 23rd January 2008.

⁴³ (Unreported) Suit No. NIC/17/2000. This judgment was delivered on 3rd May 2007.

⁴⁴ See also *Golden Silk Industry Nig. Ltd. v Steel and Engineering Workers Union of Nigeria* Unreported Suit No. NICN/ABJ/413/2015. This judgment was delivered on 16th December 2016.

⁴⁵ Section 5(3)(a) and (b) Labour Act 2004; *Management of Tuyil Nigeria Limited v National Union of Chemical, footwear, Rubber, Leather and Non-Metallic Product Employee* (Unreported) Suit No. NIC/9/2003. This judgment was delivered on 23rd January 2008.; *Trans International Bank PLC v National Union of Banks, Insurance and Finance Institutions Employees* (Unreported) Suit No. NIC/17/2000. This judgment was delivered on 3rd May 2007; *Mix and Bake Flour Mill Industries Ltd. v National Union of Banks Insurance and Finance Institutions Employees* (2004) 1 NLLR (Pt. 2) 247. Under section 18(1) Trade Unions Act 2004, a trade union to which check-off dues have been remitted is obliged to pay to the appropriate registered federation of trade unions out of the contribution received from their members, such amount as may, from time to time, be specified in the constitution of the registered federation of trade unions. It should be noted that Federation of Trade Unions are currently known as *Central Labour Organisations*. *The Nigeria Labour Congress (NLC) and Trade Union Congress (TUC) are the Central Labour Organizations in Nigeria*.

⁴⁶ *Management of Tuyil Nigeria Limited v National Union of Chemical, footwear, Rubber, Leather and Non-Metallic Product Employee*

(Unreported) Suit No. NIC/9/2003. This judgment was delivered on 23rd January 2008.

⁴⁷ See the view of Bolaji-Yusuff, JCA, in *Eze & Ors. v Udeh & Ors.* (2017) LPELR-42716(CA), pp. 30-32.

⁴⁸ Section 5(4) Labour Act 2004.

⁴⁹ Ibid, section 5(7).

⁵⁰ *Management of Tuyil Nigeria Limited v National Union of Chemical, footwear, Rubber, Leather and Non-Metallic Product Employee* (Unreported) Suit No. NIC/9/2003. This judgment was delivered on 23rd January 2008; *Trans International Bank PLC v National Union of Banks, Insurance and Finance Institutions Employees* (Unreported) Suit No. NIC/17/2000. This judgment was delivered on 3rd May 2007; *Mix and Bake Flour Mill Industries Ltd. v National Union of Banks Insurance and Finance Institutions Employees* (2004) 1 NLLR (Pt. 2) 247; Chioma Agomo 'Legal Protection of Workers' Human Rights in Nigeria: Regulatory Changes and Challenges' in Colin Fenwick and Tonia Novitz (eds) *Human Rights at Work: Perspectives on Law and Regulations* (Hart Publishing 2010) 246.

...eligibility is the yardstick. Since recognition is compulsory and eligibility is the yardstick, once a trade union indicates its willingness to unionize workers who are eligible to be its members, an employer is obliged to accord recognition and not to impose restraint in the way of such unionization. An employer is not expected to throw spanners in the works when a branch union is to be established. The employer is expected to avail the workers the opportunity and all the assistance for the smooth take-off of the branch union and create the enabling environment for it to function or operate. The essence of this is to create room for collective bargaining towards ensuring industrial harmony.⁵¹

The above view encapsulates the criteria as well as purport for recognition of trade unions in the workplace. It also unequivocally renders "eligibility for membership" as criteria for deduction and remittance of check-off dues to recognised trade unions in Nigeria. Since deduction of check-off dues is not based on membership of the trade union concerned but on eligibility for such membership, a worker who resigns from a trade union would still be liable to have check-off dues deducted from his wages if he remains eligible for membership of the trade union concerned by the employer.⁵² For most employers, the obligation for deduction and remittance of check-off dues is not a problematic issue except in situation where there are agitations for entitlement to deducted check-off dues among rival trade unions within a workplace. This is more so that remittance by an employer to a trade union that is not entitled by law undermines the prospects of the worker concerned to fully enjoy the perquisites of membership of trade union. This may also render the employer liable to the worker from whose salary or wages the deduction was wrongly made.

In the United Kingdom, there are two options to trade union recognition. The first option which is anchored on the ideals of voluntarism is known as *Voluntary Recognition*. This option allows trade unions to seek recognition by negotiation with an employer on

a voluntary basis, without the involvement of the Central Arbitration Committee (CAC),⁵³ and usually evidenced by a Voluntary Recognition Agreement (VRA) which sets out the fact of the recognition, including the extent to which recognised trade union can deal with the employer, and provides framework for consultation and collective bargaining.⁵⁴ The second option is *Statutory Recognition* otherwise known as *Compulsory Recognition*. This option is anchored on the ideals of interventionism. Under the Trade Union and Labour Relations (Consolidation) Act 1992 and the Employment Relations Act 1999 (as amended by the Employment Relations Act 2004),⁵⁵ an employer may be compelled to recognise a trade union for collective bargaining by following clearly delineated statutory procedures. Where a trade union's claim for recognition for purpose of collective bargaining cannot be resolved bilaterally with the employer concerned, the trade union may refer the matter to the Central Arbitration Committee (CAC) for determination.⁵⁶ Recognition cannot be accorded a trade union when another independent trade union is already recognised as the bargaining agent "on behalf of any workers falling within the relevant bargaining unit."⁵⁷ This is to avoid fragmentation of trade unions within an undertaking. In *Independent Workers Union of Great Britain v Secretary of State for Business, Energy and Industrial Strategy & Ors.*,⁵⁸ the Court of Appeal sitting on appeal from the decisions of the Queen's Bench Division, rejected the demand of trade union for Compulsory Recognition on the basis that there was

⁵³ The Central Arbitration Committee (CAC) is an independent tribunal imbued with statutory powers on all matters in relation to recognition of trade union where the employer and a trade union cannot agree on Voluntary Recognition. See CAC decision of *URTU v Booles' Tools and Pipe Fittings Limited* (TUR1/477/2005).

⁵⁴ The Voluntary Recognition Agreement (VRA) is legally-enforceable by the parties thereto, and the only remedy opened for breach of VRA by either side is a court order of specific performance. See para. 31(4) and 31(6) Trade Union and Labour Relations (Consolidation) Act 1992. The Central Arbitration Committee (CAC) is an independent tribunal imbued with statutory powers on all matters in relation to recognition of trade union where the employer and a trade union cannot agree on Voluntary Recognition.

⁵⁵ Schedule A1 to the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended).

⁵⁶ Section 70A Employment Relations Act 1999. *The operations of the Central Arbitration Committee (CAC) in relation to Compulsory Recognition hold for England, Wales and Scotland*. In Northern Ireland, issues of Compulsory Recognition are dealt with by the Industrial Court.

⁵¹ Eze and Gatugel (n 31) 10.

⁵² *Udoh v O.H.M.B.* (1990) 4 NWLR (Pt. 142) 52 at 72, paras. D-F.

already another trade union recognised bargaining agent. This Court further observed that such refusal is not a violation of article 11 of the European Convention on Human Rights 1950 which guarantees the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests. In as much as the notion of recognition of trade unions in the workplace has increasingly gained inroad into labour jurisprudence of states across the globe, deficits in extant labour laws and regulations in Nigeria relating to the question of de-recognition of trade unions leaves so much to be desired. This is in contradiction with the position in the United Kingdom.⁵⁹ This deficit seems to suggest that recognising a trade union is not an irrevocable decision in Nigeria.

4.0 Proliferation of Trade Unions

Proliferation of trade unions remains a major challenge for recognition of trade unions in the workplace. Contention by trade unions for recognition as legitimate representative of workers in an establishment has the propensity of placing the employer in an impasse with the temptation for most employers to adopt the notion of “sufficiently representation” to resolve such stalemate. The challenge of proliferation of trade unions persists in spite the provision of extant labour regulation prohibiting registration of a trade union where there exist another sufficiently representing the interest of the workers or employers of the one sought to be registered.⁶⁰ This raises the question whether this statutory restriction is antithetic to section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended) which recognises the right to peaceful assembly and freedom of association. This constitutional prescription entitles individuals in the workplace to form or belong to any trade union or any other association for the protection of collective interests.⁶¹ Membership of trade unions provides

platform for engagement in trade union activities. The right to freedom of association guaranteed under the Constitution of India does not carry with it the concomitant right of recognition of a trade union by an employer. Hence, withdrawal of recognition does not infringe on the right to freedom of association.⁶²

Admittedly, section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended) and the right it creates do not exist in isolation. The constitutional right to peaceful assembly and freedom of association is not absolute. It is qualified right that may be derogated from under a number of legally permissible grounds. Section 45(1) Constitution of the Federal Republic of Nigeria 1999 (as amended) permits derogation by any law that is reasonably justifiable in a democratic society which is in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom or other persons. The Trade Unions Act 2004 has been treated by the court as one of such laws envisaged by the constitution. In legitimising the restrictions placed on the qualification to join a particular trade union, the Court of Appeal, per Yahaya, JCA, in *Governing Council of NTI, Kaduna & Anor. v NASU*,⁶³ observed as follows:

...the Judicial Staff Union of Nigeria, the Resident Doctors Association or the Dock Workers Association of Nigeria, cannot go and unionize the employees of the National Teachers Institute or the Transmission Company of Nigeria. There is, therefore, a restriction in that regard, and the restriction is one that is recognised required by the Constitution itself.

The qualification for membership of a trade union is determined by the trade or industry of prospective members. It is also intrinsically linked to the question whether the trade union sufficiently represents the interest of the trade or industry of the prospective member. In *Osawe v Registrar of Trade Unions*,⁶⁴ the appellants applied to the Registrar of Trade Unions for registration of a trade union called the “Nigerian United Teaching Services Workers Union” otherwise

⁵⁷ Paragraph 35, Schedule A1 Trade Union and Labour Relations (Consolidation) Act 1992.

⁵⁸ [2021] EWCA Civ 260.

⁵⁹ Schedule A1, Part VI Trade Union and Labour Relations (Consolidation) Act 1992.

⁶⁰ Section 3(2) Trade Unions Act 2004.

⁶¹ Section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁶² Article 19(1)(c) Constitution of India 1949 (as amended).

⁶³ (2018) LPELR-44557(CA), 28-29.

⁶⁴ (1985) 1 NWLR (Pt. 4) 755.

called the “Nigerian Administrative Staff Union of Primary and Post Primary Schools.” Relying on the provisions of Section 5(5) Trade Unions Act 1973 and Section 3(2) Trade Unions (Amendment) Act 1978, the Registrar of Trade Unions refused to register the association on the ground that there is in existence a trade union known as the “Non-Academic Staff Union of Educational and Associated Institutions” which sufficiently caters for the interests of members of the proposed trade union. Aggrieved, the appellants appealed to the High Court in Benin against the Registrar's decision and sought an order of Court compelling the Registrar to register the proposed trade union. The order was granted, necessitating the respondents appeal to the Court of Appeal. The Court of Appeal allowed the appeal and set aside the decision of the High Court. The appellants appealed to the Supreme Court against the decision of the Court of Appeal was dismissed by the apex court, which held, inter alia, that the provisions of sections 3 and 5 of the Trade Unions Act 1978 which spell out conditions to be met by an applicant before it could be registered as a Trade Union are not inconsistent with the provisions of section 37 of the 1979 Constitution which is *pari materia* with section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended).⁶⁵

The above legislation under which the decision of the apex court was anchored was enacted in the interest of public order. Prior to the enactment of the legislation, proliferation of trade unions was widespread. This rendered the workplace increasingly chaotic and susceptible to skirmishes. It therefore follows that the enactment of the legislation was prompted by the need to instil order in the workplace and also in trade unionism drive. The essence is to cushion the rate of recognition disputes. Recognition dispute may be construed as disputes as to which of two trade unions has jurisdiction over workers in a particular trade or profession.⁶⁶ Recognition disputes fall under the broader spectrum of inter-union dispute

which itself is a dispute between two or more trade unions simpliciter.⁶⁷ Inter-union dispute qualifies as a trade dispute. As such, inter-union dispute, and by implication recognition dispute, must go through the dispute settlement processes outlined by the Trade Disputes Act 2004.⁶⁸ This mandatory requirement of the law is also a prerequisite for a trade union to declare or engage in strike in respect of recognition dispute(s) in the workplace. The significance of recognition of trade unions in the quest for managing trade disputes has necessitated a number of states across the globe to enact dedicated labour regulations for regulating the modalities and incidences of recognition of trade unions.⁷⁰ However, it must be admitted that this trend has not gained significant inroad into the labour regulations of African States.

5.0 Conclusion

It has been shown that the recognition of trade unions in the workplace is in the interests of the employers, workers and trade unions. This is anchored on the fact that recognition of trade unions is a prerequisite for activation of mutual engagements, using collective bargaining mechanisms, which often culminates in collective agreements. On account of the slow pace of development of labour regulations in most developing countries, it is shown that extant normative framework on recognition of trade unions is sparse and devoid of all-inclusive modalities for addressing different scenarios of squabbles that may arise. This heralds the need to alter the *status quo* to address this gap and many other concerns. Labour is an item under the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (amended).⁷¹ The legislative power in respect of matters in the Exclusive Legislative List is vested in the National Assembly which comprises the Senate and

⁶⁵ The provision of section 37 of the Constitution of the Federal Republic of Nigeria 1979 is in *pari materia* with section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended).

⁶⁶ *National Union of Petroleum and Natural Gas Workers (NUPENG) v Maritime Workers' Union of Nigeria* (Unreported) Suit No. NIC/LA/48/2010. This judgment was delivered on 21st June 2012; Emiola (n 38) 524.

⁶⁷ Section 54 National Industrial Court Act 2006; Aturu (n 8) 109.

⁶⁸ *Amalgamated Union of Public Corporations, Civil Service Technical and Recreational Services Employees (AUPCTRE) v FCDA* (Unreported) Suit No. NIC/17/2006; *FC Udoh & Ors. v Orthopaedic Hospital Management Board & Ors.* (1993) 7 NWLR (Pt. 304) 139.

⁶⁹ *Association of Senior Staff of Banks, Insurance and Financial Institutions (ASSBIFI) v Union Bank of Nigeria Plc & Ors.* (Unreported) Suit No. NIC/11/2007.

⁷⁰ See Fiji's Trade Unions (Recognition) Act (No. 53) 1998.

⁷¹ Item 34, Exclusive Legislative List, Part I, Second Schedule Constitution of the Federal Republic of Nigeria 1999 (as amended).

the House of Representatives.⁷² It behoves the National Assembly to evolve clearly thought-out, robust and dedicated normative framework to guide and regulate recognition of trade unions. This framework must be such that takes cognisance of all the issues of concerns raised and also address all grey areas identified. Relevant stakeholders must be

involved in all stages of this quest, and the ultimate outcome must be subjected to continuous adaptation as circumstances in the workplace warrant. In the meantime, debates on the notion of recognition of trade unions should be sustained so as to keep the discourse on the front-burner.

⁷² Ibid, section 4(1)-(3).