

AN EXAMINATION OF THE CORPORATE CRIMINAL LIABILITY OF A TRADE UNION IN NIGERIA

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Abstract

Apart from the initial controversy surrounding the legal status of trade unions in Nigeria, there exists a further area of contention, that is, the nature of criminal liability of trade unions. Though, the relevant statutes on the control of trade unions in Nigeria for example, the Trade Union (Amendment) Act, Trade Dispute Act, Labour Act and the Employee Compensation Act place several duties on trade unions, breach of which attracts criminal punishment, there is hardly prosecution in this direction in spite of lack of compliance with these laws. This apparently stems from the dilemma of the law on corporate criminal responsibility. The paper therefore seeks to examine the issues which arise in attaching criminal liability to a legal entity with particular reference to trade unions.

Introduction

Traditionally, trade unions are usually constituted for the purpose of regulating the terms and conditions of employment of workers.¹

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¹ See , section 1 of the British Trade Union Labour Relations (Consolidated) Act 1972 and the case of *Midland Cool Storage Ltd. v Turner (1972) 1 L.R. 773* for the definition of trade union.. See also for the definition of the term ‘trade union’ section 1 of the Trade Unions Act Cap. T 14 Laws of the Federation of Nigeria, 2004. (Hereafter referred to as TUA) The TUA was enacted in 1973 and has gone through series of amendments since then. The 1973 enactment as amended in 1996 is the principal enactment. In 2005, the TUA as amended was further amended as the Trade Unions (Amendment) Act 2005. One of the principal issues addressed in the 2005 amendment is the voluntariness of the membership of trade unions. See section 2 of the Trade

To this extent, whether a union is a trade union or not hardly generates serious legal controversy.² In most developing countries however, trade unions have pushed the frontiers of their assignment beyond mere regulation of terms and conditions of employment of workers.³ In Nigeria particularly, trade unions have been involved in myriads of activities which do not have the remotest connection with the terms and condition of employment of workers,⁴ thereby constituting itself as irresistible instruments of social activism. The result is that trade unions have hardly been allowed by governments anywhere to operate without any form of constraints. These constraints or control measures range from registrations⁵ and duty to render financial accounts,⁶ to prohibitions and prosecution for certain activities declared to be offences by law,⁷ etc. The concern of this paper is on prohibitions and prosecution for certain activities declared to be offences by law.

This paper therefore seeks to examine the central issues which arise in attaching criminal liability to a legal entity with particular

Unions (Amendment) Act 2005. The 2005 amendment has eleven sections and was passed into law on 30th of March, 2005. A soft copy of the 2005 amendment is available at [http://www.nigeria-law.org/tradeunion\(amendment\)act2005.htm](http://www.nigeria-law.org/tradeunion(amendment)act2005.htm) last visited in 11th of July, 2010.

² See, Bowers J. & Honeyball S., *Text on Labour Law*, 5th ed. (London: Blackstone Press Ltd., 1998), 332.

³ In *Union of Ifelodun Timber Dealers, Re* (1964) 2 ALL N LR, 63, the court held that Union of *Ifelodun Timber Dealers* was not a trade union because its main object was the protection and expansion of the timber trade and members' welfare and not the regulation of terms and condition of employment.

⁴ The Nigeria Labour Congress, for instance, was known for challenging government policies once such policies had the slightest connection with the well being of Nigerians. More often than not, the NLC was accused of being besmeared in the moldy waters of Nigerian politics.

⁵ See, sections 2 to 8 of the TUA on the procedure and requirements for registration of trade unions.

⁶ See, for instance section 37 (5) & (6), *id.*

⁷ Several provisions of the TUA and the provisions of the Trade Disputes Act Cap. T 11 Laws of the Federation of Nigeria, 2004 attached trade unions and/or their members with criminal responsibilities.

reference to trade unions. It also discusses the basis and extent of corporate criminal punishment for actual crimes and regulatory offences with reference to trade unions.

Brief History of Trade Union Movement in Nigeria

In Nigeria, before the advent of the British Colonialists, there had been in existence certain trade organizations in the area now called Nigeria. There was the association of craftsmen such as the iron mongers, bronze workers, blacksmith, wood carvers, etc.⁸ However, modern trade unionism started in Nigeria about 1912 following the formation of the Nigeria Civil Service Union. This was followed by the Railway Workers Union and the Nigeria Union of Teachers in 1931. In 1938, the Nigerian Government passed the first legislation on labour. It was titled Trade Union Ordinance. The Ordinance marked a significant beginning in the legal history of the evolution of trade unionism in Nigeria. Other subsequent enactments in this regard were founded on the Trade Union Ordinance.⁹

The Trade Union Ordinance facilitated the rapid growth and expansion of trade unions throughout Nigeria. The Ordinance led to the emergence of more trade unions also. In 1973, the Trade Unions Ordinance was replaced with the Trade Unions Act.¹⁰ Trade Unions began to proliferate with some trade unions so weak and

⁸ Evolution of trade union appears to have a common background all over. In England, it evolved from the fraternity of journey men which came into existence on the decay of the guild system. See, Adeniyi Olatunbosun, "The place of Trade Unions and their Members under the Law of Contract" (2004) 1(2) *Ife Juris Review*, 289. See generally, James G. Moher, *Trade Unions and the Law – History and a WayForward* at <http://www.historyandpolicy.org/papers/policy-paper-63.html> visited 2nd, July, 2015.

⁹ Since the enactment of the Ordinance in 1938, legislation on labour proliferated.

¹⁰ The 1973 Act is considered to be the first most important piece of legislation on Trade Unions in Nigeria.

small and other polarized along Socialist,¹¹ Capitalist and Marxist theories. Labour union movement became divided. Subsequently, the Trade Unions (Amendment) Decree¹² and Trade Union Amendment Act 1979 were passed. About 800 unions existed before the 1978 amendment.¹³

This 1979 Act disallowed all existing trade unions and substituted a new list of 70 trade unions. This arrangement was to re-organize, check proliferation of trade unions and face out those trade unions which were too small and weak. Unfortunately, this dream was not completely achieved as most unions became polarized the more and seriously submerged in politics. Elections into Nigerian Labour Congress (NLC) became an arena of violence.¹⁴ In 1985 the Federal Government promulgated the National Economic Emergency Power Order.¹⁵ Accordingly, a Sole – Administrator was appointed for NLC to organize a special delegate conference for the purpose of conducting election within 6 months of the appointment. This did not stop the rift in trade union movement in Nigeria.

¹ ¹ On the Socialist view of trade union movement see generally, Karl Kautsky, “Trade Unions and Socialism “(1901) *International Socialist Review*, available at <http://www.marxists.org/archives/kautsky/1901/04/unions.html> visited last in 2nd June, 2010.

¹ ² No. 22 of 1978.

¹ ³ This point was noted in *Udoh v. O.H.M.B* (1990) 4 NWLR (Pt. 142) 52, 67.

¹ ⁴ On the impact of violence of trade unions on development, see generally, J.D. Atemie, “Labour Union and Industrial Violence in Nigeria” (2007)1(2) *Nigeria Journal of Labour and Industrial Relations*, pp 125 – 147.

¹ ⁵ This order was made by virtue of the powers conferred on the President under the National Emergency Power Order of 1985. Upon the making of this Order, the two factions of NLC before then were declared illegal and unlawful. The purported election of the National Executive Committee and conferences held by the factions were declared null and void before the appointment of a sole Administrator to run the congress for 6 months.

Beyond the internal conflict in trade unionism, the unions have also been involved in series of struggle against the government. From 1945 till date trade unions have been involved in opposition against the Federal and State government anti-labour policies.¹⁶ From 1999 through 2007, a period under the leadership of President Olusegun Obasanjo, the NLC under the leadership of Adams Oshiommo, (now the Governor of Edo State) fought doggedly all Federal Government economically unfriendly policies with substantial result.¹⁷ These include fight against incessant rise in fuel price, value added tax increase, and the last minute sale of two refineries by the President.¹⁸

Corporate Criminal Liability and the Legal Status of Trade Unions

Legal Status of Trade Unions under Common Law¹⁹

¹ ⁶ In 1945, the Railway workers led by foremost labour leader, Dr. Michael Imoudu embarked on a 45 -day strike over cost of living allowance popularly referred to as COLA. This in turn triggered the struggle for independence in Nigeria. See Rosemary A. Daniel, "Trade Union (Amendment) Act 2005 and Labour Reform in Nigeria: Legal Implications and Challenges" (2007)I (1) *Nigeria Journal of Labour and Industrial Relations*, p. 98.

¹ ⁷ The NLC also picketed some banks and organizations whose policies were anti-union and which violated economic and freedom of association rights. See P.A.K. Adewusi, "The Role of Trade Unions in the Enhancement of Civil Liberties in Nigeria" (2007) 3 *Nigeria Journal of Labour and Industrial Relations*, 92.

¹ ⁸ Labour Unionism during this period was not without challenges as the Government meted out punitive measures like press censorship, physical and psychological intimidation and termination of employments. These Animashaun refers to as 'state violence against trade unions.' See, Animashaun Oyesola O, "Revisiting State Violence against Trade Unions" (2007) 1 (2) *Nigeria Journal of Labour and Industrial Relations*, 140.

¹ ⁹ See generally, R. C. Simpson, "The Significance of the Legal Status of Trade Unions in Britain And Australia" (1979) 18(2) *Journal Of Industrial Relations*, 229-242 and Henry R. Seager, " The Legal Status of Trade Unions in The United Kingdom, with Conclusions Applicable to The United

At common law a trade union is an unincorporated association. The implication is that it is not a separate legal entity from its members. Its property is vested in the hands of trustees.²⁰ Trade unions at common law are more or less of the same legal status with clubs or associations.²¹ The best that was ascribed to trade union at common law was as in the decision of the court in *Taff Vale Railway Company v. Amalgamated Society of Railway Servants*²² where it was held that Unions could sue in tort.²³

The courts in Nigeria appear to be more definite on the issue of the legal status of a trade union. The Supreme Court, per Anigololu, JSC stated the point as follows:

A registered trade union is a legal person and the birth and death of legal persons are determined not by nature but by law. They came into existence at the will of the law and they endure during its pleasure. Their extinction is called dissolution and that is what section 2(1) of Decree No. 22 of 1978 did to the 1st Appellant.²⁴

States” (1907) 22 (4) *Political Science Quarterly*, 611-629.

² ⁰ See Bowers and Honeyball, *supra* note Error: Reference source not found, p. 324.

² ¹ *id.*

² ² (1901) AC 426.

² ³ Much later in *Bonsor v. Musicians’ Union* (1956) AC 104, Lord Morton held the view that a union was a body distinct from the individual members who compose it, while Lord parker referred to a trade union as “a near corporation.”

² ⁴ See *Nigeria Nurses Association v. A – G Federation* (1981) 12 N.SCC, 441. In this case, the Nigeria Nurses Association went to court to institute proceedings at a time when the Association had already been dissolved by Decree No. 22 of 1978. The Supreme Court held at page 457 further that “Corporations are undoubtedly legal persons and the better view is that registered trade unions and friendly societies are also legal persons though not verbally regarded as corporations”.

The Supreme Court further pushed this point further some years thereafter when it said:

The principal and jural units to which the law ascribes legal personality are: (a) Human beings (b) Companies incorporated under the various companies Act (c) Corporate sole with perpetual succession, (d) Trade Unions (d) Partnership (e) Friendly societies.²⁵

Legal Status of Trade Union under Trade Unions Act

Although, the TUA makes copious provisions for the registration of trade unions, it is not statutorily settled whether a trade union by virtue of registration under the TUA, is a legal person.²⁶ No provision of the TUA deals directly with the legal personality of a trade union.

It does appear however that a community reading of some sections of the TUA discloses that the draftsmen intended that Trade Unions be treated as one clothed with a garb of legal personality.²⁷ For instance section 24 of the TUA for instance provided:

² ⁵ See *Fawehinmin v. N.B.A (No. 2)* (1989) 2 NWLR (pt 105) 558, 645. However, in *Abakaliki L.G.A. v. Abakaliki R.M.O.* (1990) 6 NWLR (pt 155) 182, the court was of the view that mere registration under the Registration of Business named Act does not confer the attribute of suing and being sued *co-nomine* on the registered body. This decision is not out of place as it does not relate to trade unions. Businesses are required to sue and be sued in a particular way by the rules of court. However, a trade union is not a business organization.

² ⁶ In *Nigeria Civil Service Union v. Essien* (1985) 3 NWLR (pt. 12) 306, 320 the term “Registered” under section 27(1) of the Trade Unions Act of 1973 was considered and the Supreme Court, per Nnaemeka-Agu JSC held the view that the use of the word as it relates to registration of trade unions having recourse to the Blacks Law Dictionary, is more or less “(entering) on record in some official register or record of list.”

² ⁷ See for instance, sections 12(3), 15(2), 16, 22, 35(3), 39 etc. of the TUA.

- (1) An action against a trade union (whether of workers or employers) in respect of any tortious act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance of a trade dispute shall not be entertained by any court in Nigeria.
- (2) Subsection (1) of this section applies both to *an action against a trade union in its registered name* and to an action against one or more person as representatives of a trade union.

From the provision of subsection 2 of section 24 above it can be implied that trade unions can be sued in their registered name. Where the question is whether in the absence of express statutory provision, a particular unincorporated association has the status of a suable entity which can be inferred from a statute or a series of statutes, the court must go through the task of leafing meticulously through the statutes in order to determine the point.

It does also appear that a trade union is capable of being convicted separately from its members for offences contrary to the Act.²⁸ Under section 23 of the TUA, trade unions derive certain benefits upon registration which tend to support the argument in favour of legal personality. These benefits include:²⁹

- a. Ability to enter into contract.
- b. Capacity to sue and be sued in its registered name.³⁰

²⁸ For instance, under section 21(4) of the T U A, if a trade union continues for more than 30 days without a registered office, the trade union is guilty of an offence.

²⁹ See *Udoh v. O.H.M.B supra note Error: Reference source not found at pg 67* on the interpretation to be accorded to the section on benefits of registration.

³⁰ Note that any person with sufficient interest can also sue on behalf of a trade union. In *Sobade v. Imagie* (1989) 4 NWLR (pt 114) 250, 261, the

Trade Unions may be prosecuted for offences in their own name and can have judgment, order or award made in any proceedings enforced against their property as if they were bodies incorporated. It can be sufficiently inferred from the TUA that a trade union is a legal entity at least for the purposes listed in section 23 of the Act though not a corporate legal entity. Despite the fact that a trade union is not an incorporated body, the TUA has conferred a status expressed by way of benefits on the union. This status elevates trade unions above other unincorporated bodies to the extent that trade unions can sue in their own name. It is recommended that any subsequent amendment to the TUA should make provision for a clear and distinct legal status of a trade union. In England for instance, in order to achieve the aim of making unions pay for the consequences of their industrial action, the Industrial Relation Act of 1971 imposed corporate status on all unions.³¹ What is more, a situation may even arise where a trade union may be regarded as the agent of its members.³²

Corporate Criminal Liability of Trade Unions

For a long time, the common law of England did not generally permit a corporation to be convicted of a crime.³³ The problem

Court held that an injunction restraining any such application of funds of a trade union may be granted by the appropriate High Court upon the application of the Attorney- General of the Federation or of the Registrar or of any five or more members of the union. In *Elufioye v. Halilu* (1990) 2 NWLR (pt 130), 22 the Court was of the view that to read the rule in *Foss v. Harbottle* into the Trade Unions Act is erroneous because there is no interpretation of the rule throughout the common wealth to the effect that without being a member of a company or union a thirty party cannot sue in the limited situation of prevention of wrongful dissipation of union's fund.

³ ¹ See Bower and Honeyball *supra* note Error: Reference source not found p. 324. The provision of the Industrial Relation Act 1971 conferring corporate status on trade unions in England was subsequently reversed by Trade Unions and Labour Relation Act 1974 thereby forbidding unions to register under the English Companies Act 1985. *Id.*

³ ² See, *Edward v. Skyways Ltd.* (1964) 1 All E.R. 494.

which common law was faced with was the task of imposing criminal liability on corporation because of the difficulty of attributing *mens rea* (i.e a blame worthy state of mind) to an abstract, a non-human entity called a corporation.³⁴ Thus, while the common law recognizes the appropriateness of vicarious liability for tort compensation, it rejected vicarious liability for crimes since crimes required *mens rea* or personal fault.³⁵ Under the doctrine of vicarious liability,³⁶ the master whether an individual or a corporate body, is made liable for the conduct of his servant in the course of the servant's employment. This doctrine was justified on the ground that since the master acquired the benefits of the servant's work, he should also carry the burdens. More often than not servants were impecunious and therefore if compensation was to be forthcoming, it would have to be obtained from the master.³⁷

This was not the case with the commission of crime by corporation at common law. Common law gave to legal entities corporate immunity from criminal law. Majorly, apart from who to impute or attribute with criminal intention, the issue of who to put in the duck

³ ³ See Gerry Ferguson "Corruption and Corporate Criminal Liability" available at http://www.iccr.law.ubc.ca/Publications/Reports/Ferguson_G.DPF. last visited in 11th, July 2010.

³ ⁴ Note that even though it has been argued that a trade union is not a corporate body, there is no differences between a corporate entity and a trade union as regards the issue of criminal liability as both have to do with an abstraction.

³ ⁵ See, *R v. Huggins* (1730), 92 E.R. 518. There were however three common law crimes i.e public nuisance, criminal libel and contempt of court where the Court did not require *mens rea*. See *R. v. Great North of England Ry. Co.* (1846), 115 E.R. 1294 and *R. v. Stephen* (1866) L.R. 1 Q.B. 702. (public nuisance); *R. v. Holbrook* (1878), 4 Q.B.D 42, (criminal libel); and *R. v. Evening Standard Co. Ltd.* (1954) 1 Q.B. 578(contempt).

³ ⁶ On vicarious liability, see generally, P.I. Iweoha, "Master and Servant Relationship; Scope and Application of the Doctrine of Vicarious Liability in Nigeria (2010) 4(1) *Nigerian Journal of Labour and Industrial Relations*, pp. 1 – 22.

³ ⁷ See Gerry Ferguson, *supra* note Error: Reference source not found, pg 4.

and how to punish a body which only exists in law (especially where law prescribes only corporal punishment) was a very discouraging factor to criminal corporate liability until the early twentieth century.³⁸ According to Lord Viscount Haldane:³⁹

[A] Corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation... for if Mr. Lennard was the directing mind of the company, then his action must, unless a corporation is not to be liable at all, have been an action which was the action of the company itself...⁴⁰

The directing mind theory was subsequently applied without restriction in finding a legal entity liable for the commission of crime. In *R v. Fane Robinson Ltd*,⁴¹ a Canadian court following this theory held that:

³ ⁸ In 1915 Lord Viscount Haldane laid down the principle now known today in company law as the Directing Mind Theory” in the case of *Lennard’s Carrying Co. Ltd. V. Asiatic Petroleum Co.* [1915] A.C. 705, 713 (H.L.)

Surprisingly, this breakthrough came in from a suit for a claim in civil liability decided by the House of Lords.

³ ⁹ Lord Viscount Haldane’s courage has not been embraced wholly in some other jurisdiction. In Belgium the courts have accepted that a legal entity could be held liable but could not be punished. See Cedric Guyot, “The Criminal Liability of Directors and Legal Entities in the Travel Industry (2001) *International Travel Law Journal*, 28 also available at [http://www.tourismlaw.eu/documents/published/bycegu/Directors liability pdf](http://www.tourismlaw.eu/documents/published/bycegu/Directors%20liability.pdf).

⁴ ⁰ *Lennard’s Carrying Co. Ltd. v. Asiatic Petroleum Co.* *supra* note Error: Reference source not found p. 713.

⁴ ¹ (1941), 76 C.C.C 196 at 203.

(The two corporate officers) were the acting and directing will of Fane Robinson Ltd., generally and in particular in respect of the subject – matter of the offences with which it is charged, that their culpable intention (*mens rea*) and their illegal act (*actus reus*) were the intention and the act of the company and that conspiracy to defraud and obtaining money by false pretences are offences which a corporation is capable of committing.

In determining the directing mind, the court looks at which of the employees is or are in sufficient *de facto* control of a sphere of corporate operations so as to make him or them directing minds of the corporation.⁴² The factor which distinguishes a directing mind from normal employees is the capacity to exercise decision – making authority on matter of corporate policy, rather than merely to give effect to such policy on an operational basis whether at head office or across the sea.⁴³

How then do trade unions come in? In Nigeria particularly, the Supreme Court has accepted that trade unions are legal entities.⁴⁴ Accordingly, they can sue and be sued in their name whether for the enforcement of a civil right or in respect of the commission of crime. The TUA creates a number of regulatory offences as opposed to actual crimes. These offences impose criminal responsibility either on the officials of the trade union, the trade

⁴ ² See Hanna, D. “Corporate Criminal Liability, (1988-89), 31 *Crim. L.Q.* 452 at 464.

⁴ ³ See the Canadian case of the *Rhones v. The Peter A.B. Widener* (1993) 1 SC. R 497 summarized in D. Stuart, “Punishing Corporate Criminals with Restraint (1995), 6(2) *Criminal Law Forum* 219, 235 – 36.

⁴ ⁴ See, *Nigeria Nurses Association v. A – G Federation supra* note Error: Reference source not found p. 441. Though, a trade union is not a corporate body in the context of the term in company law, the TUA itself envisages that a trade union should at least be capable of suing and being sued in its name.

union itself or both. Some of the offences for which a trade union is criminally liable range from offences relating to failure to pay up 10 percent of total sum received by trade unions⁴⁵ to failure to sell copies of the union rules on request⁴⁶ and continuing as a trade union without registration.⁴⁷

Commission of Regulatory offences by Trade Union

Almost all the offences created under the TUA are merely regulatory in that they are mainly targeted at regulating the activities and management of trade unions. Accordingly, the penalties are usually in terms of fines or at worst, cancellation of registration of trade union.⁴⁸ This kind of offences has never created the burden of how to attach criminal liability to trade unions because all that is needed to be proved is the *actus reus*. Most regulatory offences are strict liability offences and as such all that is needed for conviction is that the act was actually done or the omission was actually made.⁴⁹ The offence of continuing as a trade union without registration or of failure to send audited account to the Registrar of trade unions within one month of such audit⁵⁰ are all regulatory offences and require no *mens rea*. This accounts for why the offences created by the TUA are without provisos requiring an inquiry into the state of mind of the offender. Such

⁴ ⁵ See section 18(1) and (2) of TUA

⁴ ⁶ *Id.*, section 22. Under this section, both the union and affected officials are criminal liable upon conviction..

⁴ ⁷ *Id.*, section 21(4).

⁴ ⁸ This is so where the trade union is in the habit of flouting the provisions of TUA after warning or if any of the purposes of the union are unlawful, or the registration was obtained by fraud or as a result of mistake, or the principal purpose of the union is other than that of regulating the terms and conditions of employment of workers. See section 7(2) – (9) of the TUA for the procedure for cancellation of the registration of trade union.

⁴ ⁹ On strict liability offences, see Okonkwo and Naish, *Criminal Law in Nigeria*, 2nd ed. (Ibandan: Spectrum Law Publishing, 1990) p. 60

⁵ ⁰ See section 39 TUA.

terms as “knowingly”, “intentionally”, etc. are obviously absent in all the offences.⁵¹

Another offence created to regulate trade unions is the offence of embarking on strike in contravention of section 17(1) of the Trade Dispute Act.⁵² The section prevents workers from going on strike, and employers from imposing a lock-out while negotiations or arbitral proceedings are in progress. The section also prevents the initiation of any industrial action after the National Industrial Court⁵³ has given its award. A worker who goes on strike is liable on conviction to a fine of ₦100.00 or six months imprisonment while a corporate body is liable to a fine of ₦1,000.00⁵⁴

⁵ ¹ From the forgoing, the issue of legal entities not being able to have a mind capable of being guilty does not arise.

⁵ ² Cap. T. 8 Laws of the Federation of Nigeria 2004.

⁵ ³ The decision of the National Industrial Court (NIC) under the Trade Dispute Act was final. See section 21 of the Trade Dispute Act. The National Industrial Court has been re – established under the National Industrial Court Act, 2006. The 2006 Act has generated a lot of controversies mostly as to the scope of the jurisdiction of the NIC . See, Brown E. Umukoro, “The New National Industrial Court: Another still Birth in Industrial Dispute Resolution in Nigeria” (2006) *Warri Bar Journal*, 36 – 50. Adetokunbo Kayode, SAN, “The Role and Place of the National Industrial Court in the Nigerian Legal System: The Journey so Far” A paper presented at a 3 – day conference organized by the NIC, at Sheraton Hotel and Towers, Abuja, 2003. See also B.A. Adejumo, “Opportunities for Effective Utilization for National Industrial Court” a paper presented at NBA Conference, Ilorin, 2006, 7.

⁵ ⁴ Unfortunately, this punitive provisions have not stopped strikes and lock-outs; rather there is an upward surge in the number of strikes. See O.V.C. Okene, “The Legal Regulation of Strikes in Nigeria: A Critical Appraisal (2001)5 (4) *MPJAL*, 614.

It must be noted that the right to strike⁵⁵ still remains a controversy in Nigeria even though the NIC Act still maintains that the NIC is the final arbiter on the matter in respect of which jurisdiction is vested on it and that no appeal lies to the Court of Appeal or any other court except as may be prescribed by the NIC Act or any other Act of the National Assembly.⁵⁶ The effect of this is that a union which decides to embark on strike after an unfavourable decision from the NIC could be cited for contempt. As it stands at the moment, there is no provision in the NIC Act or any other Act of the National Assembly which provides for matters in respect of which appeal can lie from the NIC to the Court of Appeal.

⁵ ⁵ The argument on the issue of whether or not there is a right to strike in Nigeria remains a continuing debate leaving legal writers and the general public more confused by each write up. On the issue of strike in Nigeria, see generally, Gogo G. Otuturu, "The Right of Workers to Strike in Nigeria: A Critical Appraisal (2009) 3(2) *Nigeria Journal of Labour and Industrial Relations*, 37 – 48; O.V.C. Okene, *Supra* note Error: Reference source not found, pp 601 – 616; Sampson I. Erugo, "Exploding the Myth of Strike – A Review of the 'No Strike Clause' of Decree No. 26 of 1996", (1996) *Abia State University Law Journal*, . 59, A. Emiola, "The Legal Approach to Industrial Relation in Nigeria (1988) 2 *Calabar Law Journal*, 32; S.O. Ukhuegbe, "The Right to Strike in Nigeria; A Perspective from International and Comparative Law " in *Selected Essays in Law*, Faculty of Law University of Benin, 1996, 148, etc. It appears however under the Trade Union (Amendment) Act 2005 by section 6(6)(a) that it is only trade unions engaged in essential services that are completely banned from going on strike in Nigeria at the moment. See Rosemary A. Daniel, *supra* noteError: Reference source not found , 107 – 109. Before now those in essential services were to give their employer 15 days before embarking on strike. See section 40(1) of Trade Dispute Act. Though it cannot be said that an employee can legally proceed on strike merely because his is not engaged in essential services having regard to section 6 (6) (d) of the Trade Union (Amendment) Act 2005 which provides that employees cannot proceed on strike except the provision of the TDA has been complied with. The TDA requires that employing should vent their grievances through the procedure laid down by the TDA. The procedure ends with appeal to the NIC from which no appeal can be taken. This is a tactical way of saying that there is no right to strike in Nigeria.

⁵ ⁶ See section 9 of the NIC Act, 2006.

Furthermore, it has also been observed that the form of industrial action most susceptible to criminal liability is picketing.⁵⁷ Picketing ordinarily involves the act of peacefully hanging around the premises of the employer with a view to preventing other worker from working or the employer from going on with his business until the reason for the action is resolved.⁵⁸ Picketing is usually carried out on behalf of a Trade Union and where members of a trade union commit a crime in the process nothing prevents a criminal action against the union especially where the actual culprit is mixed up in the crowd and not identifiable. It is worthy of note that acts arising out of picketing are not actionable in tort under certain conditions.⁵⁹

Commission of Real Offence by Trade Union

The Criminal Code and the Penal Code which are the major statutes regulating criminal behaviour in Nigeria prohibit criminal acts and omissions adopting the term ‘person’ or other terms referring to human actors. The law is that legal entities may also be subject to these prohibitions primarily through the construction of other statutes e.g. the Interpretation Act.⁶⁰ The Interpretation Act

⁵⁷ See Legal Issues Relating to Industrial Action in Hongkong available at <http://www.mayerbrown.com/publications/article.Asp?ld=47038&nid=6> visited last 11th July, 2010.

⁵⁸ See P.A.K. Adewusi, *supra* note Error: Reference source not found, p. 92. For the definition of the term picketing, see Etteh, E. “Strike as a Labour and Masses Tool in the Context of the New Trade Unions (Amendment) Act 2005, being a paper delivered at the Senior Staff Association of Nigeria’s (SSANU) workshop held from 30/6/2005 – 1/7/2005 at the University of Nigeria, Nsukka, cited in P.A.K. Adewusi, *ld.*

⁵⁹ See section 43 of the Trade Unions Act.

⁶⁰ See, section 3 of the old Interpretation Act. Another Act was passed in 1964 which excluded section 3 of the old Act. The Criminal Code in section 1 also defines a ‘person’ but that definition is not helpful. The criminal procedure act (part 51) provides for the charging of a corporation. Reliance on interpretation statute as a basis for charging legal entities for real offences would mean that entities which do not come within the purview of a ‘person’ in law are not subject to criminal prosecution.

defines person to include legal persons. According to Gruner, “corporations and other organizations are included in statutory references to human actor unless the surrounding context suggests otherwise.”⁶¹ The implication therefore is that even a trade union can be punished for real offences as well as regulatory offences. According to Okonkwo and Naish⁶² “there is no reason why in principle a corporation should not be convicted under the Criminal Code.” An offence which can be committed by a natural person acting as an individual can also be committed by a legal entity acting through its agent. The understanding is that even if a criminal standard does not prohibit corporate conduct, the presumption is that corporate activities must conform to criminal laws to the same extent as similar activities by individuals. Flowing from this, a trade union can be convicted for fraud under a regular criminal statute book like the Criminal Code and Penal Code. The question which may now arise is: whether a trade union or any other legal entity can be punished for all offences. This appears to be a challenge to the advancement of punishment of legal entities for real offences. For instance, punishment for murder is death sentence. The question therefore is: even if a trade union is found guilty of murder can it be punished accordingly?⁶³

In the United States, a notable case was decided on the issue of whether interpretation statute should be read as allowing an association to be treated as a person within the *informa pauperis* statute. The Supreme Court of USA held that it would be allowed unless the surrounding circumstances indicated otherwise.⁶⁴ The

⁶ ¹ See, Richard S. Gruner, “Corporate Criminal liability and Prevention, New York: Law Journal Press, 2004, 3.02.

⁶ ² See, Okonkwo *supra* note Error: Reference source not found p. 125

⁶ ³ Probably this was the difficulty the Belgian Supreme Court had when it accepted that a legal entity could be held liable for crimes but could not be punished. See, the decision of that Court of April, 1946 (Cass., 8 April 1946, Pas., 1946, p. 136) cited by Cedric Guyot, *supra* note Error: Reference source not found p.28. In Nigeria, a court has held that a corporation cannot be charged with an offence for which imprisonment is the only punishment (A.G. Eastern Region) v. Amalgamated Press(1956-57)1 E.R.L.R. 12.)

Court here provided insight into how courts will evaluate interpretation or definition statute in applying penal and regulatory statutes to organizations. The Court described a two – step process. They as follows: The courts should not deem an artificial entity like an association, trade union or corporation to be within the statutory reference to a “person” where:

- (a) such a construction would raise logical inconsistencies and practical application problems under the statute at issue or under related statute, and
- (b) where the exclusion of the artificial entity from term of the statute would substantially frustrate the purpose or intendment of the statute.

It may appear that some of these practical application problems include inability to punish within the confine of the penal statute. It does also appear that exempting an entity like trade union from criminal offence like homicide would not frustrate the purpose of the penal statute especially where the human actor can be identified. The purpose of the Criminal Code or the Penal Code would still be realized without subjecting offending trade unions or other artificial entities to punishment for offences for which only a human offender can practically be punished for. Prosecution of artificial bodies for criminal offences (except in some cases of fraud by multinational companies and sedition) is not too common in Nigeria even though our statute books are replete with provisions prohibiting both regulatory and actual offences by legal entities.

⁶ ⁴ See, 506 U.S. 194,113 S.G. S I. Summarized in Richard S. Gruner, *Supra. Id.*, 506 U.S. at 211. In Nigeria, it has been held in *R v. Opara* (1943) 9 W.A.C.A. 70 that the subject-matter of section 100 of the Criminal Code (an offence described as “public officers receiving property to show favour) was such that it was repugnant to define a ‘person’ so as to include a corporation.

Effectiveness of Criminal Sanction on Trade Unions in Nigeria

Several penalties exist for punishing violations of the provisions of the TUA. For instance, the TUA prohibits the application of the fund of trade unions to legal proceedings relating to the election or appointment into any office of a trade union.⁶⁵ The punishment for this offence is ₦5,000 upon conviction. Where a trade union fails to remit 10% of contribution received from members as required by the Act, the trade union is guilty of an offence and liable on conviction to a fine of two times the said sum.⁶⁶ Furthermore, where no punishment is specified for any offence under the Act, the punishment generally is a fine of ₦50 upon conviction.⁶⁷ Under the Trade Union (Amendment) Act⁶⁸ participation in a strike or lock – out contrary to the Act attracts the fine of ₦10,000 or six months imprisonment or to both the fine and imprisonment.⁶⁹

From the foregoing, one may be tempted to think that the increase of fine by the 2005 Act would bring deterrence through the criminal sanctions on trade unions. The contrary appears to be the case. According to Emiola⁷⁰

Attaching criminal sanctions to a lawful withdraw of labour... does not help the development of healthy industrial relations, on the contrary, it will embitter workers the more.

⁶ ⁵ See, section 16, *id.*

⁶ ⁶ See, section 18. *id.*

⁶ ⁷ See section 50, *ld.*

⁶ ⁸ See section 30(7) of the Trade Unions (Amendment) Act, 2005.

⁶ ⁹ Under section 17 of the Trade Dispute Act, the sanction for strike and lock – out is N100 for industrial worker or six months imprisonment whereas for a corporate body, a fine of N1,000.

⁷ ⁰ A. Emiola, *Nigerian Labour Law*, 2nd ed. (1982) p. 239. See A. A. Adeogun, “The Enforcement of Labour Laws and Economic Development” A paper presented at the National Seminar on Revitalization of the Economy and Economic Development, Organized by the Nigeria Institute of Advanced Legal studies Lagos from 1–3 February, 1984.

While trade unions may comply somewhat with certain regulatory provisions of labour statutes, experience has shown that strike and lock – out will continue to exist. It is also of interest to note that if the government must imposed fines, then most of the fines imposed by the TUA are inadequate having regards to present day economic realities. When we say criminal sanction does not necessarily prevent industrial actions, it is worst when the fines are ridiculously too low. A fine of a thousand naira in Nigeria for the violation of any offence in the 21st century, to say the least, is ridiculous.

Conclusion

The law is now very clear that legal entities are as much criminally responsible as human being except where it is logically impracticable to so attach a responsibility having regard to the nature of the offence or where a statute provides otherwise. While trade unions have not been disturbed with criminal prosecution as such under Nigerian penal laws, some of the penal provisions in the TUA (especially those having to do with remission of fund to the government's account) are deserving of being enforced with same zest with which the authorities would prosecute individuals for tax violation.⁷¹

If the authorities cannot achieve deterrence through criminal sanction, they should achieve economic benefit. The number of registered trade unions at the moment is alarming. If these unions are genuinely committed to their statutory financial duty to the government, the later would generate a considerable sum of money from the unions.

⁷¹ Some other provisions of the TUA such as section 22 (failure to sell copies of the union rules to members on demand) section 39 (failure of the trade union to send audited account to the Registrar) etc, may not give way to prosecution most of the time as such offence are likely to end up in mediation and negotiation.