
A Critical Analysis of Trade Unions (Amendment) Act 2005

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Abstract

The Trade Union Act as amended in Chapter 437 of the Law of the Federation of Nigeria (LFN) 1996, Nos 4 and 25, referred as “The Principal Act” 1996 was further amended in the Trade Unions (Amendment) Act 2005. The main sections which the amendment affected in “The Principal Act” 1996 but not limited to, were Sections 12, 16(1), 17(1), 24, 34, and 42. These Sections are the focus of discussion in this paper. The Trade Unions (Amendment) Act, 2005 provides for among other things, the democratization of the labour movement through the expansion of opportunities for the registration of federation of trade unions as well as the granting of freedom to employees to decide which unions they wish to belong. Theoretical framework of analysis used, in this paper is the Marxist theory of exploitation. In the critical analysis, flaws and gains of the Act were discussed. Concrete suggestions were proffered for future amendments.

Industrialization introduced wage labour, emergence of bourgeoisie (capitalists) and proletariat (workers), and government intervention and labour laws to regulate the activities and behaviours of people at workplace. Since colonial period, several labour laws and decrees had been enacted, and amended. “The Principal Act” 1996 was amended in the Trade Unions (Amendment) Act 2005. This Act was enacted by the National Assembly in March 2005, and assented by Chief Olusegun Obasanjo (GCFR), the then President of the Federal Republic of Nigeria. The objective of the Act is to provide democratization of the unions and labour in Nigeria; to allow individual worker to decide which trade union to belong or not, without victimization by any employer or union executives, and to allow proliferation of Central Labour Organization in this act referred as, Federation of Trade Unions. This paper has five sections in this order:- Introduction; The Principal Act 1996 as amended in Trade Unions (Amendment) Act 2005; Philosophical Bases of the Trade Unions (Amendment) Act 2005; Critical Analysis of the Trade Unions (Amendment) Act 2005; Summary and Conclusion.

The Principal Act as Amended in Trade Unions (Amendment) Act 2005

In the Trade Unions (Amendment) Act 2005, “The Principal Act 1996”, Section 12(3) is amended with a new additional Sub-section 12(4). Thus, Section 12(4) states that, notwithstanding anything to the contrary of this Act, membership of a trade union by employees shall be voluntary, and no employee shall be forced to join any trade union or be victimized for refusing to join or remain a member. (This is contained as amended in the Trade Unions (Amendment) Act 2005, Section 2).

In the Trade Unions (Amendment) Act 2005, Section 16(1) of “The Principal Act” 1996, is amended and substituted with, upon the registration and recognition of any of the trade unions specified in the 3rd schedule of this Act, an employer shall:-

- (a) Make a deduction from the wages of every worker who is a member of any of the trade unions for the purpose of paying contributions to the trade union so registered; and
- (b) Remit such deductions to the registered office of the trade union within a reasonable period or such period as may be prescribed from time to time by the Register. (This is contained as amended in Trade Unions (Amendment) Act 2005, Section 3).

Section 17 of “The Principal Act” 1996 is amended to have Sub-section 17(1) included in the Trade Unions (Amendment) Act, 2007. Section 17(1) states that, Trade Unions shall pay to the appropriate registered Federation of Trade Unions out of the contribution received from the members such sum as may from time to time, be specified in the Constitution of the Registered Federation of Trade Unions concerned. (This, as amended, is contained in the Trade Unions (Amendment) Act 2005, Section 4).

Section 24 of “The Principal Act” 1996 was amended to have Sub-section (1) and Sub-section (2) as follows:- Section 24(1) states that, 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. Section 24(2) states that, for the purposes of representation at tripartite bodies, or any other body, the registered Federations of Trade Unions shall constitute an electoral college taking into account the size of each registered federation for the purpose of electing member who will represent them. (These, as amended, are contained in the Trade Unions (Amendment) Act 2005, Section 5).

Section 34 of “The Principal Act” 1996 was amended with 3 Sub-sections in the Trade Unions (Amendment) Act 2005, Section 8, as follows:-

Section 34(1) A Federation of Trade Unions may be registered by the Registrar if:-

- (a) Its main objective is to represent the interest of employees;
- (b) It is made up of 12 or more trade unions none of which shall have been a member of another registered Federation of Trade Unions;
- (c) It has been established by resolution of National Delegates Conference of the Trade Unions that constitute its members;
- (d) It has adopted a name that does not resemble the name of another Federation of Trade Unions;

- (e) It has adopted a Constitution and or rules in accordance with the First Schedule of this Act; and
- (f) It has submitted to the Registrar an application in the prescribed form signed by at least two authorized members of at least 12 registered trade unions wishing to become its members.

Section 34 (2) Upon receipt of an application as required by Sub-section 34(1) of this section, the Registrar shall within 90 days if satisfied that all requirements with respect to the Registration of Federation of Trade Unions have been met, register the Federation concerned, and evidence such registration with the issuance of a certificate of registration.

Section 34(3), The requirements for registration of Trade Unions or Federation of Trade Unions introduced into “The Principal Act” 1996 by the Trade Unions (Amendment) Act 2005, shall not apply to any of the unions which immediately before the coming into force of this Act has been duly registered or deemed duly registered, and such Trade Unions or Federation of Trade Unions shall subject to the requirements introduced by this Act, continue to exist in accordance with the rights attached to their registration as such, unless and until they are dissolved, amalgamated, judicially forfeited or cancellation of registration certificate.

Section 42 of “The Principal Act” 1996 was amended in Section 9(1)(A) and Section 9(1)(B) of the Trade Unions (Amendment) Act 2005 as follows:

Section 9(1)(A) states that no person shall subject any other person to any kind of constraint or restriction of his personal freedom in the course of persuasion.

Section 9(1)(B) states that no Trade Union or registered Federation of Trade Unions or any member thereof shall in the course of any strike action compel any person who is not a member of its union to join any strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions, or premises of any kind for the purposes of giving effect to the strike.

The Philosophical Basis of the Trade Unions (Amendment) Act 2005

Before delving into the theme of this Section, let us first of all, consider the changes in Nigerian Trade Union laws, decrees and Acts since Independence, October 1, 1960. Nigeria inherited a trade union structure handed over by the colonial master, the British imperialists. The trade union structure was foreign and did not reflect Nigerian culture. The philosophy behind the colonial trade unionism was exploitation of the masses. The continuous demand by unions and labour for better allowances led to the cost of living allowance (COLA) awards to workers. In 1967, a decree to amend the Trade Union laws was passed by the Gowon military administration. This became necessary in order to stop the continuous strike actions and social unrests in the country. These were happening during the Nigerian civil war. So to stop the country from economic and social collapse, the decree outlawed all forms of strike actions, barricading of streets, demonstrations and lock-outs. The philosophy of this amendment was government intervention. The next major amendment in Trade Union Decree was in 1976 by the Murtala/Obasanjo administration. This was the Decree that brought about the Nigerian Labour Congress (NLC) as a Central Labour Organization with

affiliate trade union members. After the dispensation, Nigeria witnessed a civilian rule for about four years, leading to another military era of successive regimes. The period witnessed increased labour unrests, agitations and protests occasioned by harsh economic conditions, social unrests, and political tensions. To quell the labour unrests, Babangida administration used ideology of exploitation, intimidation and settlement of key figures to “pocket” Nigerian trade unionism.

The annulment of June 12, 1993 election, General Babangida stepping aside tactics, and the emergence of General Abacha administration led to more strikes, demonstrations, and unrests. To combat all these problems, the Trade Unions (Amendment) Decree 1996 emerged. The Decree outlawed all forms of strikes and lock-outs, and arrested jailed trade unionists, labour leaders, and restricted the affiliated trade unions to the Nigeria Labour Congress (NLC) to 29 retaining the NLC as the Central Labour Organization. The philosophy behind these was state control, and oppression of the masses.

The Trade Unions (Amendment) Act 2005 was the first amendment Act since the civilian administration in 1999. The period 1999/2005 and even up-to-date had witnessed many industrial unrests by the Nigerian Labour Congress (NLC); Academic Staff Union of Universities (ASUU); Nigerian Union of Teachers (NUC), among others, over national issues such as removal of government subsidies and increases in the prices of petroleum products, demands for the implementation of agreements between the government and labour unions, and demands for increase in wages and salaries. In view of the above problems, the Trade Unions (Amendment) Act 2005 emerged to correct and amend certain national issues in “The Principal Act”, 1996. The objective of the Trade Unions (Amendment) Act, 2005 is to provide for, among others, the democratization of labour movement through the expansion of opportunities for the registration of Federation of Trade Unions and the granting of freedom to employees to decide which unions they wish to belong. The philosophy behind the enactment of the Trade Unions (Amendment) Act 2005 is voluntarism and democratization of Nigerian trade unionism.

Critical Analysis of Trade Unions (Amendment) Act, 2005

The theoretical foundation of this analysis is Karl Marx theory of capitalist exploitation. This occurs when economic/political class uses its powers to make laws that subject the masses/workers to exploitation. In application of the theory to this paper, it means that the political powers/elites in Nigeria have been promulgating decrees and enacting laws which help them sustain the exploitation of the working class, the masses.

It is discovered in this paper, that one of the conspicuous effects of the Trade Unions (Amendment) Act 2005, is the proliferation of trade unionism in Nigeria. Before now, NLC was the only Central Labour Organization. But today, we have two Federations of trade unions, namely:- Nigeria Labour Congress, and Trade Union Congress. The proliferation may inspire many more “umbrella bodies” to emerge. They might become too weak to effect credible impacts on the Government, and trade union functions. Most of them may be existing only in name, but very ineffective and

dysfunctional in trade union activities. So, proliferation of Federation of Trade Unions may not be healthy for effective labour practices, and relations.

Secondly, the Act prescribes freedom of workers to join any trade union of their choice or even not to join at all. By this prescription, any member of staff who is not a member of an in-house trade union may be allowed to enjoy any negotiated package with the financial *bona fide* members who pay union dues regularly. The non-members of the union may be asked by the union executives to have their separate collective bargaining and agreements with their management since they do not contribute financially to support the activities of the in-house trade union. This might not be healthy in industrial relations; it is likely to cause misunderstandings between the executive of the trade unions and the workers, and industrial disharmony. Again since the Act prescribes freedom of choice to workers, either to join trade unions or not, the executives of in-house trade union might use their powers to compel non-members to join the unions or face the consequences. By so doing, they flout, and contravene the dictates and prescriptions of the Act which emphasizes freedom and democratization of Nigerian trade unionism.

Different observers had different views about the emergence of the Trade Unions (Amendment) Act 2005. They believed that the emergence was due to the dominance of the Nigeria Labour Congress (NLC) during the tenure of the then President, Adams Oshiomole. He organized constant industrial strikes to challenge the arbitrary decisions of the Government. He became very popular among the masses, and sort of un-popular with the Government. Hence, the Government saw NLC as a clog in the wheel of progress and created a diversionary Central Labour Organization called the Trade Union Congress (TUC). NLC saw the proliferation of Central Labour Organization as a bid to cause collusion between NLC and TUC. Based on what transpired that led to the enactment of the Act, it was viewed as a sheer demonstration of the ruling class to check the excesses of the NLC leadership. The ideology behind democratization by Olusegun Obasanjo administration was to break the stronghold of labour movement, and engender any arbitrary decision on the masses. If such decisions and actions of the Government persist in the future, it then means that the future of labour movement in Nigeria will be bleak.

Summary and Conclusions

The Trade Unions (Amendment) Act 2005 pretends to be democratic in theory and implementation, but it is a lucid demonstration of dominance of the political class over the electorates/the subordinate masses. The government employed its power to demobilize the NLC dominance by deleting Section 34 of "The Principal Act" 1996, and enshrining the proliferation of the Federation of Trade Unions instead, in order to weaken and debilitate its abilities to organize strikes and challenge Government arbitrary decisions on the masses. Although the Act appears to be ill-motivated, it has helped to give the Nigerian workers, the opportunity, privilege and freedom to choose unions and Federation of Trade Unions for memberships.

In view of the above analysis, it is the recommendation of this paper that the Nigerian Government should in future engage in genuine amendments in trade union

Acts with the aim to ameliorate the plights of the Nigerian workers rather than settling scores with the Federations of Trade Unions.

References

Fashoyin, T. (2005). *Industrial relations in Nigeria*. Lagos: Longmans Publishers:

Federal Republic of Nigeria (1976). *Trade disputes (essential services) decree 1976*, No.23. Lagos: Government Press.

Federal Republic of Nigeria (1977). *Trade disputes (essential services) (amendment) decree 1977 No.69*. Supplement to Official Gazette No.57.Vol. 64 Lagos: Government Press

Obi, R.U. (1995). *Industrial sociology and labour relations in Nigeria*. Benin: Ethiope Publishers.

The Laws of the Federation of Nigeria, (LFN) (1990) Chapter 432. *Trade Disputes Act*. Lagos: Government Press.

The Laws of the Federation of Nigeria, (LFN) (1996). *Trade Unions Act, Cap 437*.
Now
Referred as "The Principal Act." Sections 1-54. Lagos: Government Press

The Laws of the Federation of Nigeria (2005) *Trade Unions (Amendment) Act 2005*
Section 1-11. Lagos: Government Press