An Appraisal Of The Trade Union Amendment Acts Of 2005 In Relation To The Current Labour-Management Relations In Nigeria

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Abstract
In Nigeria, the federal government, as the largest single employer of labour, plays a dual role in the industrial relations practice in the country. The government plays the conflicting role of employing the largest labour as well as prescribing policies to guide labour-management relations. Thus, the industrial relations practice has had the unfortunate experience of various government transformations and interventions since the advent of the colonial rule. This paper examines the various recognition, prohibition, proscription of trade unions by the federal government and all forms of government interventions in labour management relations. The recent enactment of the New Trade Union Amendment Act of 2005 is just one of the events that have occurred in the history of labour-management relations in Nigeria. Therefore, the appraisal of the New Trade Union Amendment Act of 2005 includes the examination of the events, transformations, legislative measures an array of policies and responses that elapsed as well as the antecedents that led to the enactment of the New Trade Union Amendment Act.

Introduction
The recent enactment of the New Trade Union Amendment Act of 2005 is just one out of the events that have occurred in the history of labour-management relation in Nigeria. Therefore, before a critical appraisal of the New Trade Union Amendment Act of 2005 can be done, there is a need to examine and analyse objectively government transformation and intervention in industrial relations practice in Nigeria from the advent of the colonial rule to the antecedent that led to the enactment of the 2005 New Trade Union Amendment Act. Some of the national policies and laws enacted by government to regulate the formation, administration and operation of trade unions in Nigeria include the Trade Union Ordinance 1938, Trade disputes (Arbitration and Inquiry) Act, 1941, The Wage Board Act 1958, Trade Union Act 1969, Trade Union Act 1973, Labour Policy 1975, Trade Dispute Act 1976 including Decree No. 43 of 1978, Decrees No. 4, 24 and 29 of 1996 and the current Trade Union Act (Amendment) 2005which is under review. Most of these Acts/Decrees were either promulgated or enacted at various times by the military and civilian administrations in Nigerian without due consultations with labour. They were imposed by government and labour was dissatisfied with the various interventions.

Industrial Relations Practice in Nigeria
Omole (1991) identifies four significant phases of trade union development in Nigeria, though there has been further union development which seems to have increased the phases from four to five. The first phase which was a prohibition stage marked the introduction of paid employment in Nigeria during the colonial period. In that era there were initially no laws regulating industrial relations practice, hence, the workers were at the mercy of their employers. Even, in the public sector that was under the colonial masters, the situation was not different. The colonial administrators did not treat African workers fairly. Workers were prevented from active trade unionism, while those that were formed were not recognized. Despite lack of recognition by the government and employers, workers formed unions during this period.

This period could be described as the Laissez faire period in the history of industrial relations practice in Nigeria. This is because of the workers’ determination to form unions and government’s non-interventionist approach to the formation of unions. Omole (1991) described the next stage as the phase of recognition. It should be noted that the pre-independence experiences of labour policies under the colonial administration were pointers and relevant references to the current amendment. For instance, government’s interest in labour matters could be traced to the labour ordinance of 1938, which was as a result of pressure from the British Labour Party and the Trade Union Congress of Great Britain. The ordinance gave recognition to trade unions, it energized and encouraged the workers to unionise and to enforce and fight for their rights. The ordinance accelerated the growth and development of trade unionism in Nigeria.

One of the characteristic features of this second phase was that unions became recognised and could operate openly without any harassment, molestation and intimidation by government operatives. Despite the recognition and permission for the formation of trade unions, workers were still not treated fairly especially in the private sector. Workers continued to face hardships and difficulties because unions were too weak to put pressure on government to alleviate the suffering of the workers. This was because most union leaders lacked the required experience, education and exposure in the organisation and administration of trade unions. A large number of the union members were illiterates with very little knowledge about modern trade unionism. Among the characteristics of the union then were low membership, opportunity restricted to selected few workers, the unions were local and were not real unions in the modern usage of the word. Trade unions were free to choose their own structures with the result that all sorts of unions based on plants, enterprises or industry co-existed. Since there was no planned union structure on ground during this period, workers were free to decide on the unions of their choices. The national policy allowed a minimum of fifty workers to unionise. This law contributed greatly to the proliferation of trade unions in the country. The situation gave opportunities and undue advantages to unscrupulous and ambitious leaders to exploit the workers through the formation of mushroom trade unions. However, the outbreak of the civil war in 1967 in Nigeria marked the end of this period.

The phase three has to do with the limited conscious government intervention in industrial relations practice in the country, especially during the Nigerian Civil War 1967-1970. Government embarked on a policy of limited intervention because it wanted the growth of industrial democracy and to continue to guarantee the freedom of association.
Yesufu (1984). Furthermore, in this phase, government’s intervention became more pronounced than before. Various decrees were promulgated to establish the rules of the game and to consolidate the new government’s stand in industrial relations. During the Nigerian Civil War, government promulgated the Trade Disputes (Emergency (Provisions Decree) Act No. 21, 1968. The decree suspended the Trade Dispute (Arbitration and Inquiry Act of 1941). The main objective of this decree was to maintain industrial peace and harmony by banning strikes and lock-outs and also to make provision for disputes settlement during the war. The government further amended the decree with the Trade Disputes (Emergency Provision Amendment Decree No. 53 of 1969). The decree established an Industrial Arbitration Tribunal whose decision on trade dispute was final, but the banning of strikes and lock-outs were retained in the amendment. It equally stated that the approval of the Federal Military Government must be sought before any wage increase could be implemented by any employer of labour in the country.

The civil war situation in the country fuelled the government interference in industrial relations. The decrees were enacted by government to disallow any labour problem from distracting the attention of government from prosecuting the civil war. Government now involved itself in the issues of wage increases, productivity, training, dispute resolution, workers’ welfare, workplace, health safety and factory security. Such issues were no longer regarded as exclusive subjects for labour and management. The two emergency trade union dispute Acts of 1968 and 1969, notwithstanding the government still allowed the principle of industrial democracy which gave both the employer and workers the opportunity to settle their problems of wages and conditions of employment based on the principle of collective bargaining but only intervened as an impartial arbiter whenever a dead-lock arose.

In 1973, a Trade Decree No. 31 was enacted by the Federal Military Government to regulate the process of registration of trade unions. The new approach was a clear departure from the old order. The registration of trade union was to be effected compulsorily by all employers of labour. The main goal of this decree was the general provision for protection of wages and contract of appointment. A common feature in this phase was the proliferation of trade unions and the Central Labour Organisation (CLO) in the country. This proliferation was very problematic in the history of industrial relations practice in Nigeria. According to Omole (1991) by the end of this phase in 1970’s, about 1000 trade unions and five Central Labour Organisations had emerged in the country. The Central Labour Organisations, dabbled into conflict of ideology and international affiliations that could have caused this country a great political confusion, if not nipped in the bud. A number of splits occurred in the unions over the question of foreign affiliation Ubeka (1975).

The fourth phase is the period of proscription and banning of trade unions. Government was completely dissatisfied with the industrial relations practice and in 1975, it promulgated a decree banning any form of international affiliation of trade unions in Nigeria except the International Labour Organisation. In 1976, government set up the Adebiyi Tribunal that investigated the activities of trade unionism in Nigeria. Consequent upon his report government promulgated the 1978 Trade Union Act. The certificates of registration of all the existing Central Labour Organisations were revoked while some trade unions leaders were banned from further participation in trade union
activities in the country. Government appointed a sole administrator to coordinate and administer the affairs of all the registered trade unions. The Administrator restructured the trade unions and limited the number to seventy (70), comprising 42 industrial unions, 9 employers’ association, 15 senior management staff associations and 4 professional unions. The highlight of the exercise was that for the first time in the history of industrial relations in Nigeria government approved that the senior public servants should set up their own union. A single central union was created and named, the Nigeria Labour Congress, under which all 42 unions were affiliated. However, government deliberately did not institute a central administration for the Senior Staff Association.

Government further established its firm control of industrial relations practice in Nigeria. In 1996, another Trade Unions (Amendment) Decree 4 was enacted to restructure the affiliates of the Nigerian Labour Congress (NLC). This reduced the number to twenty-nine while Decree 22 structured the trade unions along industrial line (Fajana, 2002). One of the main clauses of the 1996 Amendment Act was to identify the Nigerian Labour Congress as the only central labour organisation. The Decree allowed for ten percent of all monies to be remitted to the central labour organisation. The responsibilities imposed on the Nigeria Labour Congress by the 1996 Act are as follows:

(a) To represent the general interest of its members on any international advisory body set up by the government of the federation;
(b) Collection and dissemination to its members information and advice on economic and social matters;
(c) Render advice, encouragement and financial assistance to members.
(d) Promote the education of members of trade unions in the field of labour relations and related field; and
(e) To render any other assistance as provided for in the articles of affiliation (Egbewole, 2005).

The decree spelt out the qualification for union members and a modified process of check-off due deductions was established. During the interventionist policy, government set up some Commissions/Tribunals to recommend befitting wages and conditions of service for public servants. They made valuable contributions to the sustenance and stabilization of the conditions of service of the civil servants in Nigeria. Some of these commissions were Mbanefo (1959), Morgan (1964), Elwood (1966), Adebo (1971) and Udoji (1975) etc.

The fifth phase was all along the current phase until the promulgation of the New Trade Union Amendment Act of 2005 which will be critically appraised in this paper. This phase was an attempt by government to recognise the independence of unions and freedom of association. This period also includes the recent government announcement of 15% fifteen percent increase in salaries and wages of the federal employees with effect from 1st January, 2007. Also, the phase includes the Federal Government monetization policy for workers in federal establishments. Having thus examined the various government interventionist approach to industrial relations practice in Nigeria, it is pertinent here to look into the antecedents that led to the enactment of the New Trade Union Act of 2005.

Antecedents to the Enactment of the New Trade Union Amendment Act of 2005
Prior to the enactment of this Act, many reasons have been advanced that necessitated the promulgation of the New Trade Union Amendment Act of 2005.

**Government Perspectives for the Enactment of the New Trade Union Amendment Act of 2005.**


1) That the past labour laws were made by the military despots and their regimes and as such are not in accordance with the present democratic dispensation embarked upon since 1999. The labour laws have to be reformed in accordance with the nascent democracy in Nigeria.

2) That the main objective of the new labour reforms is to allow for democratisation and liberalisation of the unions and to permit freedom of association by allowing each worker to belong to any union instead of the only one central organisation, the Nigeria Labour Congress.

3) Federal government saw the NLC as a clog in the wheel of progress and so it decided to stop its monopoly and its arrogance.

4) The breaking of the NLC monopoly as the only central labour organisation might have been seen by Obasanjo’s regime as part of the on-going democratisation, deregulation and liberalization exercise.

5) It is insinuated in some quarters that the Government decided to deal with NLC because of its alleged militancy and confrontational approach to government policies.

6) Government argued that the New Trade Union Amendment Act of 2005 is in line with the provision of the constitution which guarantees the freedom of association which is a fundamental human right.

7) Government saw NLC as its employee; it could not therefore be watching its employees becoming an obstacle to government’s interest, so it decided to break its backbone through the Act.

**Reasons Advanced by NLC for Governments Enactment of the 2005 Trade Union Amendment Act**

1. NLC argued that the government was not comfortable with it hence, government saw it as a clog in the wheel of “progress” and so it decided to put a stop to its monopoly.

2. NLC further argued that government was afraid of the alleged militancy and confrontational attitude of NLC leaders against some government policies and decisions. For example NLC was opposed to the constant increases in fuel prices, privatization policy, sales of certain government houses and offices to some powerful individuals in the society. On the increase in fuel prices, NLC always went on strike and the Federal Government was not comfortable with the situation.

3. The federal government and indeed some government functionaries must have been thinking that the NLC was constituting itself to an opposition party for which the constitution does not provide for and as such it must be crushed.
4. The prevailing scenario as at the time the Amendment was proposed and presented to the National Assembly by the President coincides with the time the NLC was making a vehement and strong agitation against the increase in pump price of fuel.

5. NLC further argued that the purpose of the New Trade Union Amendment Act of 2005 was perhaps to enable the government apply the divide and rule policy or to play one union or congress against the other or to create conflicting interests among the workers in their organisations.

6. Also there was the thinking in quarters that the Amendment Act 2005 was informed by politics rather than any empirical, scientific or democratic considerations as proposed by its proponents.

7. The NLC also argued that the organisation was Obasanjo creation in 1978 when it was convenient for him as a military dictator to manipulate one Central Labour Organisation to his advantage and in 2005 it dumped the NLC to create one additional Central Labour Organisation to weaken the NLC.


The Act is named the Trade Union (Amendment) Act, 2005. It amended the Trade Unions Acts of 1978 and 1996 as amended to further bring about among other things, the democratization and liberation of Labour movement and trade unionism in Nigeria and through the expansion of opportunities such as the registration of Central Labour Organisations and the granting of freedom to employees to decide which unions they wish to join.

The principal Act has fifty-fourth (54) sections but only eight (8) sections were affected by the 2005 Amendment Act. Those affected are sections 12, 16a, 17, 24, 30, 33, 34 and 42. It is, however, pertinent to mention here that the Trade Unions Amendment Act of 2005 does not replace the principal Act which is known as the Trade Union Act. The affected areas included areas of voluntarism, payment of due, collective bargaining, representation, ban on strike or lock-out, registration of more central labour organisations and personal freedom (non-compelling Act). They are briefly explained below:

1. **Voluntarism**: Section 2 of the new Act explains that membership of a trade union by employees shall be voluntary and no employee shall be forced to join any trade union or be victimised for refusing to join or remain a member.

2. **Payment of Due**: Section 4 of the new Act expresses that Trade Unions shall pay to the appropriate registered federation of trade unions out of the contributions received from their members, such sum as may, from time to time, be specified in the constitution of the registered federation of trade union concerned.

3. **Collective Bargain**: Section 5 of the new act points out 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 in negotiations with the employer.
4. **On Representation:** Section 5 states that for the representation of tripartite bodies or any other body, the Federations of Trade Unions shall constitute an electoral college taking into account the size of each registered federation.

5. **Ban on Strike or Lockout:** Section 6 expresses that no person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a strike or lockout unless:
   
   (a) the person, trade union or employer is not engaged in the provision of essential services.
   
   (b) the strike or lockout concerns a labour dispute that constitutes a dispute of right.
   
   (c) the strike or lockout concerns a dispute arising from a collective and fundamental breach of contract of employment or collective agreement on the part of the employee, trade union or employer.
   
   (d) the provisions for arbitration in the trade Disputes Act Cap 432 1990 have first been complied with, and
   
   (e) in the case of an employee or a trade union a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike.

6. **Registration of more central labour organisation:** Section 8 of the (2005) points to the following: A federation of trade unions may be registered by the Minister of Labour and Productivity 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 the national delegates conference of the trade;
   
   (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;
   
   (f) it has a head office in the Federal Republic of Nigeria; and
   
   (g) it has submitted to the Minister of Labour and Productivity an application in the prescribed form signed by at least two trade unions wishing to become its members. Further, Section 8(2) states that, upon receipt of an application as required by Subsection (1) of this section, the registrar shall within 90 days if satisfied that all requirements with respect to the registration of the Trade Unions have been met, register the federation concerned and evidence such registration with the issuance of a certificate of registration. Personal Freedom/Non Compelling Act: Section 9 provides that:
   
   (h) no person shall subject any other person to any kind of constraint or restriction of his personal freedom in the course of persuasion.
   
   (i) No trade 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 aircrafts from flying or obstruct public highways institutions or premises of any kind for the purpose of giving effect to the strike. Section 24(2) says for the purpose of representation at tripartite bodies or any other body, the registered Federation of Trade Unions shall constitute an electoral college. At present, two such Federations exist. They are Nigeria Labour Congress (NLC) and the Trade Union Congress (TUC).

Section 6 of the Amendment Act which amends Section 30(6), (7), (8) and (a) bans strike and lock-out unless:

(a) the union is not involved in the provision of essential services
(b) the strike is a labour dispute and
(c) a ballot has been conducted and a single majority of all registered members voted to embark on that strike. 
The Act further stipulates a fine of N10,000.00 (ten thousand naira) or six months imprisonment as penalty for breach of this provision.

Section 7 of the Amendment Act which amends Section 33 of the Principal Act and which creates the Nigeria Labour Congress (NLC) as the only central labour organisation has now been removed from the Act.

7. Section 8 of the Amendment Act that amends Section 34 provides for the registration of a Federation of Trade Unions. The minimum number of Trade Unions shall be 12 (twelve) and shall complete the appropriate forms. The Minister of Labour and Productivity is conferred with the power by section 51(1) of the Principal Act to issue regulations as he deems necessary from time to time as necessary or as expedient to carry this Act into effect. In line with this power so conferred on him, the minister can make regulations in respect of registration of unions and other related matters.


The introduction of the new trade union amendment act of 2005 affects labour-management relations in Nigeria as follows:

The Nigeria Labour Congress which was hitherto the only central labour organisation in the country opposed vehemently to the new 2005 Amendment Act. It was argued that the law was principally enacted to disregister the NLC, reduce its powers and control on labour as well as to check the rising profile of labour as a stiff opposition to the Federal Government most, especially, when it takes any unpopular labour policies. 

The Amendment Act out-lawed strikes and lock-outs of workers and it empowered the Minister of Labour and Productivity to register de-register any union or central labour organisation. The Minister being a political appointee of the President is duty bound to listen to the dictates from the President and will not be in a position to deal with the labour issues dispassionately and devoid of any emotion.

Since the labour unions are no longer affiliated to one central labour organisation, there is the tendency to envisage the problem of leadership and factionalism. The present Trade Union Amendment Act of 2005 will definitely lead to multiple unionism and the future formation of more Central Labour Organisations is capable of leading to the formation of mushroom unions.
The new trade union amendment act of 2005 makes trade unionism voluntary in Nigeria. It broke the monopoly of the Nigeria Labour Congress. The Nigeria Labour Congress and the Trade Union Congress are now the only paralleled central labour organisations in Nigeria and they are to represent the workers at the tripartite bodies. Availability of wide options for workers to join either NLC, TUC and other CLO are now opened. It does not ban strikes and lockouts completely but it makes clarifications on how strikes and lock-outs can be legitimately carried out. Emphasis was laid on prompt and quick remittance of members’ check-off dues to their registered unions.

It has now widened the negotiation table and scope of collective bargaining since it has allowed the newly registered Federation of Trade Unions as well as other Central Labour Organisations to co-exist with the Nigerian Labour Congress. Since it is no longer compulsory to join trade unions, workers are free to leave the unions and once this happens their check-off dues are automatically stopped. There are possibilities of regular inter-unions crises and inter-federation of unions feuds in the industrial relations practice in Nigeria. The new trade union Amendment Act of 2005 is a new development in labour-management relations in Nigeria and a new dimensions to the industrial relations practice in country which is in accordance with the nascent democracy in Nigeria. There seems to be some understanding between the NLC and the TUC for now because they have jointly opposed the Federal Government withdrawal of the fifteen percent (15%) salary increase earlier given to the federal government workers. But for how long this understanding will last only time shall tell.

Section 6 of the Act bans strike and lock-out. Some employers might take advantage of this section to outlaw strikes and lock-outs in their organisations. Where this happens, the labour unions may not have the legal backing to call out workers on strike. These multiple unions might just survive initially to provide jobs for leaders and officials of the unions temporarily but they may collapse on the long run. Government instead of dealing with one central labour organisation would have to deal with various central labour organisations and the consequences might be too expensive and cumbersome for the government. The Federal Minister of Labour Productivity shall be dealing with multiple central labour organisations. This might be humanly too much for him to handle.

Conclusion

The enactment of the 2005 new Trade Union Amendment Act was politically motivated by the Federal Government because it considered the NLC as constituting itself into an opposition party that must be crushed since there was no provision for that in the 1999 constitution. Furthermore, the Federal Government was not comfortable with NLC for its alleged militancy and confrontational approach against some obnoxious and anti-people government policies. For instance the NLC was always calling its members on strike whenever there was arbitrary increases in fuel prices, privatisation/monetisation policies, sales of government houses/offices to some top and powerful government officials and influential politicians. The government therefore under the camouflage of its democratisation, deregulation and liberalisation policy decided to break the NLC’s monopoly as the only central labour organisation by
recognising the Trade Union Congress of Nigeria as another central labour organisation and the encouragement of the formation of other federated unions.

The power given to the Federal Minister of Labour and Productivity to register and de-register any of central labour organisations or unions is too wide and uncomfortable for the workers.

Notwithstanding the above argument, it should be noted that the trade unions Amendment Act of 2005 makes provision for industrial democracy between labour and management. The section provides as follows:

for the purpose 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

With the establishment of multi-federation of trade unions in Nigeria, it is envisaged that it would lead to a myriad of problems between the workers, employers and the government. There is no doubt that from 2005 when the Act was enacted, industrial relations practice in Nigeria has taken a new dimension which is different from the old order and if the Act is set out to improve on the industrial relations practice in Nigeria or it is set out to curb the “excesses” of the Nigeria Labour Congress.

REFERENCES


