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Challenges of Collective Bargaining in Nigeria: Lesson From South Africa

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ABSTRACT

This article examined the challenges of collective bargaining in Nigeria. Collective bargaining is the process of discussion and negotiation between an employer and a union culminating in a written agreement or contract and the adjustment of problems arising under the agreement. The voluntary nature of collective bargaining is explicitly laid down in article 4 of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and, according to the Committee on Freedom of Association, is a fundamental aspect of the principles of freedom of association. Two essential conditions for collective bargaining to occur include the freedom to associate and the recognition of trade unions by employers. Collective bargaining is one of the components of freedom of association which is guaranteed under section 40 of the Nigerian constitution, in line with ILO principles. It is recommended that for the purpose of timely and proper implementation of collective agreements, it is needful for the Federal Government of Nigeria to encourage all her Ministries, Departments or Agencies (MDAs) to always have and maintain proper and accurate data even before entering into any collective agreement with labour unions to ensure prompt implementation of such agreements once reached and amendment of the 1999 Constitution of Nigeria.

Keywords: Collective Bargaining, Collective Agreement, Globalization**.**

INTRODUCTION

Industrial harmony is essential for economic progress and the concept of Industrial harmony desires the existence of responsibility, co-operation and sense of partnership between employers and employees. Collective bargaining is an effective instrument in the settlement of disputes and advancement of the cause of labour where certain basic conditions exist.[1] Collective bargaining is central to any industrial relations system since it is a tool through which regulated flexibility is achieved. It has been noted to help promote cooperation and mutual understanding between workers and management by providing a framework for dealing with industrial relations issues without resort to strike and lockouts.[2] Globalization and collective bargaining, the rights to strike in Nigeria, binding effect of collective agreement and its effect on contract of employment and challenges to the observance of collective agreements in Nigeria pose serious challenges to collective bargaining in Nigeria.

Globalization and Collective Bargaining

The influence of globalization on labour standards has generated a lot of academic discourses. Labour standards as used here refer to the "norms and rules that govern working conditions and industrial

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[1] P J Akhaukwa and Others, 'Effect of Collective Bargaining Process on Industrial Relations Environment in Public Universities in Kenya' [2013] (4) (2) *Mediterranean Journal of Social Science*;275 at 278; R C Sharma, *Industrial Relations and Labour Legislation* (PHI Learning Private Ltd, New Delhi 2016) 105.

[2] P J Akhaukwa and Others, 'Effect of Collective Bargaining Process on Industrial Relations Environment in Public Universities in Kenya' [2013] (4) (2) *Mediterranean Journal of Social Science*;276.

relations".[3] Commenting on globalization, Bhagwati opines thus: "the bargaining power of employer has increased vis-à-vis that of employees because employers can increasingly say in a global economy that they will pack their bags and leave".[4] Critics of the concept of globalization are of the opinion that unfair competition in labour from countries classified as developing with low standard of labour is the reason for losses on wage in developed economy thereby causing unemployment of unskilled workers as a result of more harsh wage bargaining.[5] Globalization has been criticized and identified for being responsible for increase in competitive pressure capable of making countries race to the bottom so as to ensure the attraction of footloose capital. One time General Secretary, International Confederation of Trade Union had stated that "intense competition between countries to attract foreign investment is under- mining respect for the labour standards".[6] Globalization is identified as a process of expeditious cultural, economic as well as institutional integration occurring among countries and usually motivated by liberation of trade, technological advances, capital flows, investment and pressures for the assimilation toward global standards. It leads to dissemination of advance practices of management as well as fewer forms of organization of work, results to the economic based competition among nations to be intensified and also leads to sharing of labour standards accepted globally.[7]

Globalization has been identified to be responsible for a decline in trade union across the globe. The negative effects of globalization on labour standards cannot be overemphasized, it decreases the bargaining power of labour while the bargaining power of capital is strengthened.[8] Apart from leading to wage losses as well as unemployment of unskilled workers in country already developed but that it also has negative effect on general global labour standards.

Globalization has great effect on the right of works globally but the situation of Nigeria has been identified to be one of the worst cases. Therefore, it has been argued that even where globalization is not bad in its totality, it creates some setbacks for a country.[9]Globalization has been described as an ideology that is very powerful and has various manifestations. It has been traced to the 15th century and to the influence of the European and thereafter followed by the activities of colonialism, decolonization, modernization as well as global governance with it main feature on doctrines such as market and political forces.[10]As a result of the new interest developed after the World Wars, the concept of globalization acquired new features with the United Nations spearheading its control and the sequences covered political, socio-cultural, economic and technological divides in the society.

The question bordering on the relation between globalization and collective bargaining has remains a serious one demanding serious answers. There have been provisions of many explanations in this regard. A School of thought suggests that economies open to trade as well as Foreign Direct Investment (FDI) face more competitive pressure than those closed to them.11Therefore, the critics of the concept of globalization has been of the opinion that the competitive pressure is capable of inducing countries to bring down labour standards so as to remain competitive thereby attracting or retaining foreign investment into the economies while exponents of the concept of globalization are of the view that there is the likelihood of such countries having higher standards of labour.[12]

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[3] E Neumayer and I D Soysa, 'Globalization and the Right to Free Association and Collective Bargaining: An Empirical Analysis' [2006] (34) (1) *World Development*;31.

[4] J Bhagwati, 'Trade and Wages: Choosing among Alternative Explanations [1995] (1) (1) *Economic policy Review;*42.

[5] E Neumayer and I D Soysa (n3).

[6] A Chan and R J S Ross, 'Racing to the Bottom: International Trade Union without a Social Clause' [2003] (24) *Third World Quarterly*;1023.

[7] ILO, 'Progress Report on the Country Studies on the Social Impact of Globalization' [1996] <https://www.google.com/search?q=ILO+progress+report+on+the+country+studiest+on+the+social+impact+of+globalization+1996> accessed 21 January 2019.

[8] D O Kim and Others, 'The Impact of Globalization on Industrial Relations: A Comparative Study of Korea and Japan' [2001] (7) (1) *Seoul Journal of Business;*62.

[9] E E Okafor and A A Akinwale, 'Globalization and Collective Bargaining in Nigeria' [2012] (4) (11) *European Journal of Business and Management*;88.

[10] D J Acemoglu and Others, 'The Colonial Origins of Comparative Development: An Empirical Investigation' [2002] (91) *American Economic Review*;1369.

[11] E E Okafor and A A Akinwale (n9).

[12] *Ibid*.

The private sector seems to be on the high side than the public sector on issues of low level of participation of workers in trade unionism. The reason for this is not farfetched as trans-national and multi-national corporations are the main conductors of globalization and the private sector is dominated by them in Nigeria and they are rated very high for anti-unionism. These corporations never tolerated collective bargaining and trade unionism from the inception of trade union movement in the country and usually deployed security operatives in an endeavour to tackle industrial dissatisfaction.[13]

It is important to note that employers were made to respect and embrace the rights of employees since the beginning of post colonial rule in Nigeria. The forceful recruitment into the labour force by administrators of British colony in collaboration with the traditional rulers led to increase in protests by workers and introduction of wage payments by the colonial administration.[14]

Another process through which globalization affects collective bargaining in Nigeria is through state control of the process. This has been the brain behind the reason for the determination of the Nigerian Labour Congress (NLC) to always safeguard the rights of workers and to ensure the protection of the civil society towards legislation with international best practice recognized by the International Labour Organization. Collective bargaining has been severely affected in Nigeria by the amendment of labour legislation by the government in order to suit the purpose of the State. The reason for various amendments of labour legislation is implementation of government's neoliberal policies which can come by way of commercialization or privatization and deregulation and have affected collective bargaining in the country.

The Rights to Strike in Nigeria

The right to strike has been identified as one of the challenges to collective bargaining. It is the very basis for the success of collective bargaining process. It must be in the background of a collective bargaining for it to be successful.[15] Commenting on the right to strike MacFarlane stated thus: "The right to strike is a keystone of modern industrial society. No society which lacks that right can be democratic. Any society which seeks to become democratic must secure that right".[16]

Position the right to strike occupies in the collective bargaining paradigm is very vital.[17] It is an essential tool for securing the interests and welfare of employees in collective bargaining process. Right to strike and its role are recognized across the globe.[18] This right is usually exercisable where negotiations break down in the course of collective bargaining. Where this happens trade unions will encourage members to commence strike action. Strike of this form was held to be functional to collective bargaining in the case of *Union Bank of Nigeria Ltd. v Edet*.[19] The role play by strike in labour negotiation is akin to that plays by warfare in diplomacy.[20] In the words of Myburg:

> It is one of the ironies of collective bargaining that the attainment of the object of industrial peace should depend on the threat of conflict. The reason for this dependence is a functional one. The freedom to threaten strike action and, if need be, to carry out the threat is protected, because in an imperfect world, the system of collective bargaining requires it.[21]

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[13] E E Okafor and A S Bode-Okunade, *Introduction to Industrial Relations* (Mubak Press, Ibadan 2005) 219; I P Onyeonoru, *Industrial Sociology in African Context* (Samlad Press, Ibadan 2000) 59.

[14] D Otobo, *The Role of Trade Unions in Nigerian Industrial Relations* (Mathouse Press, London 1987) 420.

[15] O V C Okene, 'International Labour Standards and the Challenges of Collective Bargaining in Nigeria' [2009] (1) (12) *Recht in Africa/Law in Africa/Droit en Afrique*;124.

[16] L MacFarlane, *The Right to Strike* (Penguin Books, London 1981)12.

[17] A A Adeogun, 'Industrial Relations and the Law' in T O Elia (ed), *Law and Development* (University of Lagos Press, Lagos 1972)122.

[18] O Kahn-Freund, *Labour and the Law* (Stevens and Sons, London 1977) 48.

[19] (1993) 4 NWLR (pt 287) 288 at 291.

[20] J G Getman and F R Marshal, 'The Continuing Assault on the Rights to Strike' [2000-2001] (79) (3) *Texas Law Review*; 703.

[21] J F Myburg, '100 Years of Strike Law'[2004] (25) *Industrial Law Journal*;966.

The International Labour Organization (ILO) being the world labour body has described the right to strike as one of the important ways through which the social and economic interests of workers and organizations are promoted and protected.[22]

It is noteworthy that despite the important position the right to strike occupies in employment this right seems to be denied in Nigeria. The right is not protected by Nigerian law. There is absolute denial of the right to strike in the public sector in Nigeria. Workers in the public sector are classified as employees in the essential services and are made subject to compulsory arbitration in the place of the exercise of this right.[23] The ILO has rules against this practice in Nigeria through its supervisory body such as the Governing Body Committee on Freedom of Association (CFA). The CFA ruling on this is to the effect that only workers in the public service whose exercise of authority is in the name of the State or providing services capable of endangering the safety of a personal, health or life of part or the whole of the population should be regarded as employees in the essential services.[24] To this end, the CFA ruled that public servants in industrial or commercial services owned by State cannot be said to be exercising authority in the State's name.[25] Therefore, it is submitted in this work that there is need for are formation of Nigerian law(s) so that a distinction can be drawn between public servants in state-owned enterprises and companies and public servants in the proper sense of the words. This is necessary so that it would be clear to know those to be denied the right to strike which are usually public servants.

The exercise of the right to strike in the private sector seems to be in theory.[26] For employees in the sector to exercise this right they are expected to observe all the procedures for dispute settlement as required by provisions of the relevant statute.[27] These workers are expected to go through another process of settlement where they are dissatisfied with the award of National Industrial Court.[28] This shows that the settlement process seems to be endless. It is difficult to exercise the right to strike when considered the process of perpetual and compulsory arbitration despite the *de jure* provision for the exercise of such right under the Act.[29]

The ILO frowns at the complicated as well as cumbersome procedure of dispute resolution that seems to frustrate the exercise of the right process, the ILO observed thus:

> *These systems make it possible to prohibit virtually all strikes or tend to end them quickly; such prohibition seriously limits the means available to trade unions to further defend the interests of their members, as well as their right to organize their activities and to formulate their programmes, and is not compatible with Article 3 of Convention No. 87.*[30]

Flowing from the above, therefore, is very obvious that the system of arbitration permitted by law serves as a great limitation to the exercise of the right to strike in the country. The Nigerian system has been condemned by the ILO through the Committee of Experts on the Application of Conventions and Recommendations (CEACR). The Committee has called for the amendment of the Trade Disputes Act of Nigeria as a way of limiting the imposition of compulsory arbitration process to essential services alone.

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[22] ILO, Digest of Decisions and Principles of the Freedom of Association Committee (5th revised edn, International Labour Office, Geneva 2006), para 521.

[23] Trade Disputes (Essential Services) Act 2004, s 9 (1).

[24] ILO (n22), paras 575 and 576.

[25] *Ibid*, para 577.

[26] O V C Okene (n15) 126.

[27] Trade Dispute Act 2004, ss 3, 5, 7, 8 and 17.

[28] *Ibid*, s 17 (3).

[29] Trade Disputes Act 2004.

[30] ILO (n22), paras 564 and 568.

[31] ILO, CEACR, 96th Session 2007: Individual Observation concerning Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) Nigeria <www.ilo.org/dyn/normlex/en/f?p=NORM LEXPUB:12100:0:: No::p12100_ILO-CODE:co87> accessed 27 January 2019.

That is public servants saddled with the responsibility of exercising essential authority in the case of urgent national emergency or in the name of the State.[31] Therefore, suggested that for collective bargaining to be effective in Nigeria, the right to strike need to be guaranteed.

Enforceability of Collective Agreements

The binding effect of collective agreement is conditional as the Minister of Labour may make provision by way of an order for collective agreement or a part thereof to be binding on the parties-employers and workers. For the Minister to make such order, three copies of such agreements must be deposited with him/her within thirty (30) days of its execution.[32] As a result, there are objections to the enforcement of collective agreement irrespective of the parties involved.[33] O. Kahn-Freund has suggested that collective agreements are not contracts and lack the essential ingredients of contracts such as intention of the parties to enter into legal relationship hence, they could not be enforced by Nigerian courts. The professor of law concludes that collective agreement is likened to an industrial code intended to be binding in honour. Contrary to the opinion of Professor O. Kahn-Freund, Professor Wedderburn is of the idea that the issue of enforceability of collective agreement is not a closed one.[34] The problem of enforceability of collective agreement seems not to be settled in spite of the provision of the Labour Act.[35]

There seems to be two conditions under which collective agreement would be enforceable in Nigeria's courts to wit: where such order as required by the Minister under section 3 (1) as well as where a party to the agreement has already placed reliance on it and claimed any right under the agreement.[36]

Courts in Nigeria have demonstrated unwillingness towards the enforcement of collective agreements in plethora of cases.[37] Collective agreement need to be incorporated into the contract of employment of the employee who is seeking to rely on it in a claim for it to be enforceable and stand. Here is a reason anchored on the principle of privity of contract. It does not matter that such agreement was made for the benefit of the individual employee. It was illustrated in the case of *Union Bank of Nigeria v Edet*[38] where the Court of Appeal per Uwaifo JCA stated as follows:

> *Collective agreements except where they have been adopted as forming part of the terms of employment, are not intended to give, or capable of giving individual employees a right to litigate over an alleged breach of their terms as may be conceived by them to have affected their interest nor are they meant to supplant or even supplement their contract of service.*[39]

Effect of Collective Agreements on Contract of Employment

It is a common law principle that employment contract remains the affairs of the parties-employer and the worker. This means that collective agreement is not capable of creating employment contract but the rights and obligations of the parties may be governed by collective agreements once entered into. Therefore, there may be incorporation of a collective term into the contract of employment of the individual where the parties so desires. Such incorporation must be in clear and unambiguous terms.[40]

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[32] Labour Act 2004, s 3(1).
[33] O V C Okene, *Labour Law in Nigeria: The Law of Work* (3rd edn, Claxton and Derrick Limited, Port Harcourt 2012) 219.
[34] *Ibid*, 220.
[35] S 3 (3).
[36] V Iwunze, 'The General Unenforceability of Collective Agreements under Nigerian Labour Jurisprudence: The Paradox of Agreement without Agreement' [2013] (4) (3) *International Journal of Advanced Legal Studies and Governance*; 4.
[37] *Chukwurah v Shell Petroleum Nigeria Limited* (1993) 4 NWLR (pt 289) 512; *Abalogu v Shell Petroleum Nigeria Limited* (1999) 8 NWLR (pt 613) 12; *New Nigeria Bank Plc v Osoh* (2001) 133 NWLR (pt 729) 232.
[38] (1993) 4 NWLR (pt 287) 288.
[39] *Ibid*, 291.
[40] *Pearson v William Jones Ltd* (1967)2 All E.R 1062.

Collective agreement can still be implied into a contract of employment even where the latter is silent on it, however, implied term cannot be used to vary an expressed term.[41] A collective agreement can be described as a legal code as it is capable of prescribing the contents of existing contract of employment. Collective agreement may also be implied into an individual employment contract by conducts where the employer has been acting on the terms therein by usage or custom.[42]

Challenges to Observance of Collective Agreements in Nigeria

A collective agreement is described as an agreement usually in writing between an employer and a union, on behalf of workers employed by the employer. Collective agreement usually contains provision reflecting terms and conditions of employment of the workers, and conferring to them their rights, privileges and responsibilities.[43] Therefore, challenges to the successful implementation of collective agreement will be discussed in this segment.

i. Absence of Timely Budgetary Provision

It is observed that Nigerian government at all levels is usually forced into collective agreements by employees through their unions. This is usually done by way of threat of strikes or actual strikes. As a result of this, government usually goes to collective bargaining leading to collective agreements being entered into with the labour unions without appropriate preparation by way of adequate financial provisions but only in a hurry to safe the economy by entering into such agreements without putting the financial implications into consideration. This is not peculiar to the public sector alone rather employers in the private sector also do same. As result, the government or employers in the private sector erroneously considered entering into collective agreement with employees through their labour unions as a timely intervention into industrial disputes with the deliberate act of not taking further steps for the implementation of such agreements as they are not captured in the annual budget of the government or the organization concern.[44]

The above serves as a great challenge to observance of collective agreements in Nigeria. The reason for any collective bargaining process is for it to end in collective agreement.

ii. **Absence of Political Will**

The intention of everyone saddled with the responsibility of drafting any legislation relating to trade dispute is the implementation of every collective agreement once executed. The implementation of such duly executed agreement is the duty of the employer. Employer as referred to in this work may be the federal, state or local governments as well as their ministries, departments or agencies (MDAs). It is only when such as agreement is implemented that the employees can be said to have been benefited from the proper representation of the union they belong. Where the agreement is not implemented the employees may begin to lose their confidence in the leaders and members of their unions and begin to suspect that they might have been compromised by the employers during negotiation.[45]

It is very common to observe that employers in Nigeria lack the will and attitudes towards smooth, effective and prompt implementation of concluded collective agreements. This is very common to both private and public sectors.[46] As a result, dearth of political will, lack of transparency and insincerity on

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[41] O V C Okene (n33) 221.

[42] *Daniels v Shell BP Petroleum* (1962) 1 All NLR 19.

[43] R L Morris, *New Issues in Collective bargaining: A Caribbean Workers' Education Guide* (International Labour Organization, Caribbean 2002)13, 14.

[44] M I D Akpan, 'Nature of Collective Agreements in Nigeria: A Panoramic Analysis of Inherent Implementation Challenges' [2017] (5) (6) *Global Journal of Politics and Law Research;*26.

[45] M J D Akpan (n44) 24.

[46] J Erunke, 'Strike: FG, ASUU Meeting ends in Deadlock' *Vanguard* (Abuja, 22 August 2017) <www.vanguardngr.com/2017/08/strike-fg-asuu-meeting-ends-deadlock/> accessed 4 February 2019.

the part of authorities saddled with the responsibilities of ensuring that collective agreement is implemented is a great challenge to the observance of collective agreement hence, endangering existing peace in the work environment. Political will in the context of this work is the self-decision of an individual, a group of individual or even the sovereign towards effective implementation of agreement(s) by analyzing its benefit and cost for the benefit of employees and employers both present and future in an organization and the society at large.[47]

There is the absence of political will on the part of appropriate authorities saddled with the authority to bargain with labour leaders even from the very point the agreement is being entered into. The authority considered the process as ritual done to control the tension of the trade unions. This insincerity on the part of the parties involved in the negotiation process is very common to both public and private sectors. This has been the reason for incessant strikes by the education and health sectors of Nigeria.[48]

c. Lack of Structure of Governance

The implementation and realization of collective agreements can be possible where there is an undoubted delineated structure of governance to be manned by professionals ready to demonstrate their knowledge for the good of employers and employees in private and public sectors. Where structure of governance is lacking there is the likelihood of hardship to be caused with the employers, employees and cause disharmony in industrial environment and the society.[49]

Lesson from South Africa

Employees' right to collective bargaining in the South Africa is traceable to the Conciliation Act of 1924 of the country. The Conciliation Act established Industrial Councils as institution of collective bargaining. The challenge with the industrial councils was Black workers were denied access or right to centralized collective bargaining. This was made possible by denying Black workers the right to belong or establish a trade union of their own.[50]Black workers were only allowed to register trade unions as a result of democratic Black having strong workplace organization in 1970s hence, increased international pressure against apartheid. This led to registration of Black trade unions and thus allowing Black workers to join the industrial councils.[51]

Any discussion on collective bargaining or right to strike in South Africa can never be complete without reference to the South African constitution being the highest law of the land. South African constitution recognizes the right of South Africans to Strike.[52] On the other hand, the constitution recognizes the right of all trade unions, organization of employers and even employer to engage in the process of collective bargaining. It encourages the enactment of national legislation for the regulation of collective bargaining.[53]

Another major legislation recognizing of the right of South African workers to take part in the process of collective bargaining is the Labour Relations Act 66 of 1995. This Act was enacted for the purpose of advancing economic development, labour peace, workplace democracy and social justice. It was also enacted of recognizing and making the obligations of South Africa being a State Party to the ILO realized, recognition of collective bargaining as a means of determining terms and conditions of work, wages,

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[47] M J D Akpan (n45) 24.

[48] O Oleribe and Others, 'Industrial Action by Healthcare Workers in Nigeria in 2013-2015: An Inquiry into Causes, Consequences and Control, - A Cross Sectoral Descriptive Study' [2016] <https://human-resources-health> accessed 4 February 2019.

[49] M J D Akpan (n44) 25.

[50] I Macon, 'Trade Union Membership and Power' in G Adler and E Webster (eds), *Trade Union and Decentralization in South Africa 1985-1997* (Witwatersrand University Press, Johannesburg 2000) 421.

[51] I Macon, 'Trade Union Membership and Power' in G Adler and E Webster (eds), *Trade Union and Decentralization in South Africa 1985-1997* (Witwatersrand University Press, Johannesburg 2000) 421.

[52] Constitution of the Republic of South Africa 1996, s 23 (2) (c).

[53] *Ibid*, s 23 (5).

formulation of industrial policy, promotion of collective bargaining and encouragement of the participation of employees in decision making and proper resolution of disputes arising from the workplace.[54]

The Act recognizes the right to strike of employees and gives some of the reasons for the exercise of such right to arise where a trade union is not recognized as an agent of collective bargaining or where such recognition is withdrawn in the bargaining process.[55] The Act established Bargaining Councils saddled with the responsibility of concluding collective agreements, prevention or to resolve trade disputes among others.[56]

The Act was enacted so as to give effect to the provision of the South African constitution on the right to strike.[57] It recognizes right of all employees to strike**.**[58] It defines strike to mean:

> *The partial or complete concerted refusal to work, or the retardation or obstruction of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to 'work' in this definition includes overtime work, whether it is voluntary or compulsory.*[59]

Furthermore, the Act has the aim of providing legal framework for collective bargaining as well as the right to strike.[60] Procedures to be followed by every employee to enjoy the right to strike are spelt out in the Act.[61]There is a kind of similarity between the South African model and Nigeria as persons engaged in essential services are prohibited from taking part in strike.[62]Although, the South African model is better than Nigerian system as the Act spells out what constitute essential services. The relevant section of the Act provides:

> *Essential service means-*
> *(a) a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;*
> *(b) the Parliamentary Service;*
> (c) the South African Police Service.[63]

It is submitted that the South African model tries to meet up international best practice by specifying what constitutes essential services hence, making it easier for employees rendering such service to be identified.

CONCLUSION

Collective bargaining is central to any industrial relations system since it is a tool through which regulated flexibility is achieved. It has been noted to help in the promotion of cooperation and mutual understanding between workers and management by providing a framework for dealing with industrial relations issues without resort to strike and lockouts. There is the absence of an express provision on right

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[54] Labour Relations Act 66 of 1995, s 1 (a) - (d).
[55] *Ibid*, s 64 (2).
[56] *Ibid*, s 28 (1).
[57] *Ibid*, s 23.
[58] *Ibid*, s 64 (1).
[59] *Ibid*, s 213.
[60] *Ibid*, s 1 (c).
[61] *Ibid*, s 64.
[62] *Ibid*, s 65 (1) (d).
[63] Labour Relations Act 66 of 1995, s 213.

to strike and collective bargaining in the Constitution of Nigeria. Nigeria is yet to domesticate various ILO Conventions relevant to collective bargaining and right to strike. Examples of such Conventions are the Freedom of Association and Protection of the Right to Organize Convention (No. 87) of 1948 and the Right to Organize and Collective Bargaining Convention (No. 98) 1949. Convention 1948 (No. 87) recognizes the right of workers and employers to freely establish and join organizations of their own choosing. The Collective Agreements Recommendation (No. 91), 1951 and the Labour Relations (Public Service) Convention (No. 151), 1978.

RECOMMENDATIONS

a. Implementation of Collective Agreements: Stakeholders in the collective bargaining process should work towards the implementation of collective agreement for the promotion of industrial peace so as to discourage incessant strikes in the country.

b. Maintenance of Accurate Data: For the purpose of timely and proper implementation of collective agreements it is needful for the Federal Government of Nigeria to encourage all her ministries, departments or agencies (MDAs) to always have and maintain proper and accurate data even before entering into any collective agreement with labour unions to ensure prompt implementation of such agreements once reached.

c. Creation of State Ministry of Labour and Employment: The Federal Government of Nigeria should encourage every State of the federation to work towards the creation of a separate ministry to be tagged " Ministry of Labour and Employment" so as to prioritize the welfare of employees.

d. **Amendment of the Constitution of the Federal Republic of Nigeria 1999 (as amended):** For effective collective bargaining in Nigeria the CFRN 1999 (as amended) need to be amended making direct provisions recognizing the right to strike and collective bargaining like the South African model where the right to strike and collective bargaining are recognized under section 23 of the constitution of the Republic of South Africa 1996.

e. Enactment of Labour Laws: For proper achievement of industrial peace in Nigeria, more laws should be enacted with provisions directing employers to always recognize trade unions as proper parties to collective bargaining process. For such laws to have deterrence effect and ensure compliance on the part of employer's adequate fines need to be provided. Such laws to be enacted should ensure enforceability of all collective agreements. Such laws are immensely needful as the reason for most strikes in Nigeria has always been as a result of non-compliance on the part of government.

f. Domestication of relevant ILO Conventions: All the relevant ILO Conventions relating to collective bargaining should be domesticated in Nigeria. It is not enough to attend various conferences and ratify instruments without taking further steps to domesticate same so they can be applicable in Nigeria. It is only when these Conventions are domesticated that they can be applicable in Nigeria as required by section 12 of the CFRN 1999 (as amended). Where this is not done it amounts to wastage of tax payers' monies in attending such conferences.