



A CRITICAL APPRAISAL OF THE ILO'S SUPERVISORY PROCEDURES FOR INTERNATIONAL LABOUR STANDARDS REGARDING FREEDOM OF ASSOCIATION^{1*}

Abstract

Over the years, the ILO supervisory system has been criticised for various reasons ranging from lack of sanctions to strains in its tripartite structure. In the midst of these criticisms, this paper takes the view that the ILO's supervisory procedures have had also positive influence part of which forms the focus of this paper. Using the instance of Nigeria, the influence of the ILO's supervisory procedures led to the repeal or amendment of the military decrees of the 1990s which violated freedom of association. The paper critically appraises the International Labour Organization's (ILO's) supervisory procedures for International Labour Standards (ILSs) focusing on freedom of association. The doctrinal method was used in this research. The materials analysed includes: the ILO Constitution; ILO Conventions relating to freedom of association, Nigerian military decrees of the 1990s which violated freedom of association and relevant textbooks. The analysis showed that some provisions of the Nigerian military decrees violated freedom of association but the influence of the ILO's supervisory procedures led to either their repeal or amendment. The ILO's supervisory procedure is still relevant, important and necessary and should continue to be.

Keywords: International Labour Standards, ILO, Conventions, Recommendations, Supervisory Procedures, Freedom of Association Violation, Nigerian Military Decrees

1. Introduction

The International Labour Organization (ILO) was established by Part XIII of the Versailles Peace Treaty of 1919 as an intergovernmental organization of universal vocation, with the objective of promoting social justice and improving living and working conditions throughout the world.² The ILO is characterized by three basic features: the adoption of international treaties (Conventions and Recommendations); a unique tripartite structure (of government, labour, and employer representatives); and detailed supervisory procedures.³ The ILO has set up different means of controlling the application of Conventions and Recommendations after their adoption in the International Labour Conference (ILC) and their ratification or approval by sovereign states.⁴ The supervisory system of the ILO is essentially based on two types of procedures: firstly, there are the reporting obligations on governments. These reports form the basis for dialogue to improve compliance with ILSs.⁵ And secondly, there are the 'special procedures' the most important being the complaint procedure for infringements of freedom of association. Over the years, the ILO supervisory system has been criticised for various reasons ranging from lack of sanctions to strains in its tripartite structure. In international law, freedom of association is accorded a special status. Aspects of the right are protected in a range of ILO Conventions, chief amongst these are: Conventions 87 & 98, which set out in detail the international standards on freedom of association. In addition, all ILO Members are regarded simply by virtue of their membership of the ILO and acceptance of the ILO Constitution as being bound to respect, to promote and to realize, freedom of association. The 1998 Declaration require states to respect and promote (in accordance or in line

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² ILO, *Employers Organizations and the ILO Supervisory Machinery*, (ILO 2006), 1

³ N Valticos, "Les commissions d'enqu"ete de l'Organisation internationale du travail", [1987] *Revue ge'ne'rale de droit international public*, 91(3) 847 at p. 848. See also C P R Romano, *The ILO System of Supervision and Compliance Control: A Review and Lessons for Multilateral Environmental Agreements*, (1996 St. Gabriel, M'odling, Austria),3

⁴ ILO, "ILO Supervisory System Mechanism", < <http://ilo.ch/global/about-the-ilo/how-the-ilo-works/ilo-supervisory-system-mechanism/lang--en/index.htm>> accessed 21st March, 2023

⁵ Bob Hepple, *Labour Laws and Global Trade* (Hart Publishing 2005) ,48



with the ILO Constitution), the fundamental rights in the conventions, namely: freedom of association and collective bargaining.⁶ And states have to fulfil this obligation even though they did not approve or ratify the conventions in question (that is by virtue of their membership of the ILO)

The ILO's positive influence herein is limited to Nigeria, ILSs regarding freedom of association and the military decrees of the 1990s which violated freedom of association.

Meaning and Essential Elements of Freedom of Association: Conventions 87 and 98 in focus

The meaning of freedom of association as a labour right can be understood from the broad interpretation given to it by the ILO. The broadness of the interpretation is to give room for diverse situations as much as possible. It has also been interpreted to include the right to strike and collective bargaining. The general principles of freedom of association in Conventions 87 and 98 'are normally considered integrally'⁷ and have since been followed up by other ILO Conventions dealing with specific aspects of freedom of association,⁸ however the focus herein lies with Conventions 87 and 98. In analysing the meaning given to freedom of association in Conventions 87 and 98, attention must be given to not only the wordings of the Conventions but also the interpretations thereof by the supervisory bodies of the ILO-Committee on Freedom of Association (CFA) and the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

For instance, in examining the interpretations given to Article 2 of Convention 87, which provides that workers and employers without distinction have the right to set up (subject to the rules of the concerned organisation,) or become a member of any organisations of their choice without prior permission. Both the CFA and the CEACR have explained the phrase "without distinction" to mean essentially that freedom of association should be guaranteed without discrimination of any kind based on occupation, sex, colour, race, beliefs, nationality, political opinion, etc, not only to workers in the private sector of the economy, but also to civil servants and public employees in general.⁹ Both the CFA and the CEACR have also affirmed that all public service employees (except the armed forces and the police as indicated in article 9 of Convention 87) should like workers in the private sector be able to establish organizations of their own choosing to defend their interest.¹⁰

Article 9 paragraph 1, of Convention 87 is the only authorized exception from the scope of the application of the Convention. And this concerns members of the police and the armed forces. The CEACR has emphasized that these exceptions are justified on the basis of the responsibility of these two categories of workers for the external and internal security of the State.¹¹ It however noted that these exceptions must be construed in a restrictive manner to exclude workers who do not fall into those two categories.¹²

⁶ ILO, *ILO Declaration on Fundamental Principles and Rights at Work*, (ILO 1998) para, 2.

⁷ Harold Dunning, 'The Origins of Convention No. 87 on Freedom of Association and the Right to Organise' [1998] *International Labour Review* (137) (2) 149, 163

⁸ It is also true that the Right of Association (Agriculture) Convention (No. 11) and the Right of Association (Non-Metropolitan Territories) Convention (No. 84) had been adopted in 1921 and 1947 respectively. Furthermore, over the past ten years the International Labour Conference has adopted four new Conventions in this field, namely the Workers Representatives Convention, 1971 (No. 135); the Rural Workers' Organisation Convention 1975 (No. 141); the Labour Relations (Public Service) Convention 1978 (No. 151); and the Collective Bargaining Convention, 1981 (No. 154). See A J Pouyat, 'The ILO's Freedom of Association Standards and Machinery: A Summing up' [(1982) *International Labour Review* (121) (3)287

⁹ ILO, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, (fifth revised edition International Labour Office Geneva 2006), Para, 209, see also ILO, 'International Labour Conference 101st Session 2012, General Survey on the fundamental Conventions concerning rights at work Report of the Committee of Experts on the Application of Conventions and Recommendations Report III (Part1B) Para 63, <[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(2012-101-1B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(2012-101-1B).pdf)> accessed 12th April 2023

¹⁰ ILO, *Freedom of Association: Digest of Decisions* (n9) Para, 220; see also ILO, General Survey (n9) Paras. 63-66

¹¹ ILO, General Survey (n9) Para, 67

¹² *ibid*



Other elements of the right to associate freely contained in the Conventions (87 & 98) include: the right of employees, without distinction whatsoever, to establish and subject only to the rules of the organisation concerned, to join organisations of their own choosing without prior authorisation,¹³ the right of organisations to function independently without control or interference (e.g. by drafting their own constitutions, electing their representatives freely, organising their activities and formulating their programmes),¹⁴ no dissolution or suspension by governmental authorities¹⁵ the right to form and join either federations or confederations or both which affiliate with international organisations',¹⁶ the acquisition of legal character in such a way as to enable the organisations to exercise the other enumerated rights effectively.¹⁷

Also measures should be taken, where required, to promote the growth and operation of machinery or measures for voluntary negotiation or bargaining between employers and employees or between employers' organisations and employees' organisations, with a view of regulating the terms or conditions of work by means of collective agreements.¹⁸ Also, adequate protection afforded to employees against anti-union discrimination at the time of hiring, during employment, and in relation to termination,¹⁹ adequate protection against interference by other organisations and by employers in their establishment, functioning or administration,²⁰ the establishment of appropriate national machinery to ensure respect for the rights relating to protection against anti-union discrimination and no external interference.²¹ These rights, which also allow for certain exceptions, must however not be seen as exhaustive. They do not, for example, refer to the right to strike, the right not to associate, inviolability of trade union or work premises, and the right to reasonable access to the employer's premises. Internationally most of these rights mentioned last are regarded as necessary ingredients of freedom of association and as constituting part of its essential nature. This is the view taken by the supervisory bodies of the ILO.²²

2. ILO's Supervisory Procedures for ILSs including the Special Complaint Procedure for Infringement of Freedom of Association

The ILO has several procedures for supervising application of ILSs These fall into two major categories:

- (i) there are the reporting obligations on governments. These reports form the basis for dialogue to improve compliance with ILS²³ and
- (ii) there are the 'special procedures' the most important being the complaint procedure for infringements of freedom of association.

Contrary to traditional international law, non-governmental organisations, in particular workers' or employers' organisation as well as other Member States are able to set these procedures in motion.²⁴

¹³ Convention 87 Article 2

¹⁴ Convention 87 Article 3(1) and (2)

¹⁵ Convention 87 Article 4

¹⁶ Convention 87 Articles 5 and 6

¹⁷ Convention 87 Article 7

¹⁸ Convention 98 Article 4

¹⁹ Convention 98 Article 1

²⁰ Convention 98, Article 2

²¹ Convention 98 Article 3

²² ILO, *Digest of Decisions* (n9) Paras, 520-525 (right to strike), Para 367 (right not to be compelled to join or not to join a trade union does not in itself infringe Conventions Nos. 87 and 98), Paras 178-192 (inviolability of trade union premises), see also M. P Olivier and O. Potgieter, 'The Right to Associate Freely and the Closed shop', [1994] *Journal of South African Law*, 291-292

²³ Bob Hepple, *Labour laws and Global Trade* (n5) 48

²⁴ *ibid*



i. Reporting Obligations on Governments

The first reporting requirement, under Article 19 of the ILO Constitution sets a time limit (of not less than 18 months after the ILC have submitted a Convention or Recommendation to the ‘competent authority’ (the legislatures of Member States) and to report to the International Labour Office²⁵. This is aimed at not only publicising ILS but also for enactment. The CEACR examines the report and where appropriate reminds Member States of the possibility of obtaining technical assistance from the ILO²⁶. Secondly, also under Article 19, the Governing Body may request a member state to report on ‘the position of its law and practice in the Convention or Recommendation showing the extent to which effect has been given or is proposed to be given, to any provision or article of the Convention or Recommendation and ‘stating the difficulties which prevent or delay the ratification.’²⁷Thirdly, ratification places a member state under the obligation, by virtue of Article 22 of the ILO Constitution, to submit annual report on the application of the ratified Convention.

ii. Special Procedures

There are several special procedures. First, representation may be made through Article 24 of Constitution of the ILO to the Governing Body by workers’ or employers’ organisations. And secondly under Article 26 of the ILO Constitution, which provides for a complaint procedure, reserved for the most serious cases of failure to observe ratified Conventions. It may be worthwhile to set out in detail the complaint procedures herein.

Representations under Article 24 of the ILO Constitution

Substantive requirements: Article 24 of the Constitution of the ILO stipulates that a representation may be made if a state failed to observe any convention which it has ratified.²⁸ A representation thus can only be made against a country that has ratified or approved the relevant convention. The country is required to be an ILO member. if it has withdrawn, it is still bound by the convention it ratified. Representations on freedom of association issues will normally be referred to the CFA.²⁹ A representation can be submitted by an association of either employers or of employees.³⁰ There is no limit on associations that can make representations and the ILO determines what constitutes an association. The associations may be at any level whether local, national, regional or international. And the associations need not have any link with the matter of the complaint. However, when the Governing Body of the ILO is considering a representation, the representation can be given more weight if it is from an international association or has a link with the matter of the complaint.³¹

Formal requirement: The representation should be submitted to the Director-General of the Labour Office in Geneva. The only limitations to form are that the complaints should be in writing and specifically refer to article 24 of the Constitution of the ILO and also to a ratified convention of the ILO.³² Although not officially required, a representation should contain available information to prove the alleged violation. A bare allegation can initiate the procedure, but it will be decelerated except the Governing Body has sufficient facts to substantiate the allegation of violation. It may even declare a representation inadmissible if there is no substantiation.³³

²⁵ ILO: Constitution, Articles 19(5) and (6).

²⁶ Bob Hepple, *Labour Laws and Global Trade* (n5) 48

²⁷ ILO Constitution, Articles 19(5)(e) and 19(6)(d).

²⁸ Lee Swepston, ‘Human Rights at Work Supervisory Mechanisms of the International Labor Organization,’ <http://www.leeswepston.net/supersys.htm>> accessed 29th March 2023

²⁹ibid

³⁰ ILO Constitution, Article 24

³¹Lee Swepston, ‘Human Rights at Work Supervisory Mechanisms of the International Labor Organization’ (n28)

³²ibid

³³ibid



Means of investigation: Once a representation complies with the required form and has been received a tripartite committee selected by the ILO's Governing Body investigates the contents of the representation (apart from representations concerning freedom of association, that are transferred to the CFA. The committee get in contact with the filing organization, requesting for any other information it may want to hand in, and also with the state concerned. The state is requested to make comments on the allegations and to 'make such comments on the subject as it thinks fit. When all particulars from both parties have been received, or if no response is received within time set, the committee delivers its recommendations to the ILO's Governing Body.³⁴ The Governing Body of the ILO decides whether to accept the explanation of the state concerning the allegations. If the decision of the Governing Body of the ILO favours the state the proceedings are closed, and the decision may be published. If the decision of the Governing Body was that the state's explanations were unsatisfactory, it may circulate the representation and the state's response together with its own decision on the case³⁵

Implementation of the decision: Whatever is the Governing Body's decision on the representation it is usually followed up or implemented by the CEACR.³⁶

Complaints Procedure in Article 26 of the Constitution of the ILO

Important requirements: Just as in representations, a complaint is founded or predicated on the obligations in an ILO Convention a state has ratified or signed. A complaint can be filed against every state or country which has ratified the concerned Convention. Actually, even though a state has withdrawn or retreated from the ILO yet has obligations in a Convention it signed or ratified when it was an ILO member, a complaint can still be filed against it. Complaints on freedom of association are usually submitted to the special or distinct procedures created.³⁷ In Article 26 of the Constitution of the ILO, the complaint procedure can be instituted by states that have ratified or endorsed the same Convention, in a classic inter-state procedure. They can also be filed or initiated by delegates or representatives to the ILC, in the course of the conference. That is, the delegates or representatives can file or initiate a complaint against a country which has ratified or signed a convention. Finally, the complaint procedure can be initiated by the ILO Governing Body by itself.³⁸

Official requirements: A complaint has to be submitted or presented to the ILO Director-General. There are no requirements as to language or form, except for the important requirements provided in the ILO Constitution. The complaint has to begin from a state, the Governing Body; or conference delegate. The complaint has to refer to a former or present ILO member and also mention a convention ratified or signed by the state which the allegation is directed at. Also, the complaint should also mention that a state did not effectively observe a Convention it ratified.³⁹

Method of investigation or Inquiry: The Governing Body commences investigation of a complaint by forwarding it to the state for its comments. It will then delegate a Commission of Inquiry, composed of three independent persons. The Commissions of Inquiry will now set its rules and methods. Written submissions are demanded from both parties at various stages of the procedure. The submissions from one party will usually be served on the other for reply. The Commission of Inquiry can also request for further information from other states⁴⁰ or non-governmental

³⁴ibid

³⁵ibid

³⁶ibid

³⁷ibid

³⁸ibid

³⁹ ibid

⁴⁰ ILO Constitution, Article 27



organizations. The Commissions of Inquiry also hear representatives or delegates of the parties and their witnesses. It also conducts on-site visits to the states concerned.⁴¹

Kind of verdict reached: Once evidence has been taken the Commission makes recommendations.⁴² A report of the matter is sent to the Governing Body of the ILO and also published. A decision will explain whether or not a given state has complied with the convention. A recommendation can for instance, suggest changes in state legislation or measures or action to comply with the convention. A recommendation may report wider and detailed questions, such as the need of ending a state of crisis in order to encourage civil liberties.⁴³

Implementation of the decision: A verdict of a Commission of Inquiry is usually sent to the Governing Body of the ILO and to each of the concerned state and published or issued in the official bulletin of the ILO. In most situations, the CEACR continues to examine or inspect implementation of the concerned convention, with reference to the decisions of the Commission of Inquiry, as is done in the case of representations.⁴⁴ This procedure was to be used in the 1990s against Nigeria in respect of violations of the right of association but was later suspended when the ILO later decided to send a direct contact mission to Nigeria.⁴⁵

When in any situation, a commission is set up; the step in Article 33 of the Constitution of the ILO follows. It provides that in the situation of any member failing to carry out within the time specified the recommendations if any, contained in the decision of the Commission of Inquiry, or in the judgment of the International Court of Justice (ICJ) as the case may be, the Governing Body may recommend such measures fit and necessary to secure compliance.⁴⁶ Unlike the observations of the CEACR, the complaint procedure under Article 26 and the decision of a Commission of Inquiry is the only way in which a legally binding determination can be made that a Member has breached its obligations under a Convention⁴⁷. Most observations of CEACR are either a general restatement of principles or requests to governments to conform to principles of right of association.

The decision of the Commission of Inquiry become binding when the Member State agrees explicitly to accept them or abstains from referring the matter to the ICJ under article 29 of the ILO Constitution⁴⁸. Failure to appeal means that the findings cannot be re-opened; the only issue is how to implement them⁴⁹. Although Article 33 stipulates that the Governing Body can recommend such measures necessary to secure compliance, there is only one recorded case of such action taken by the ILO to 'secure compliance' in its almost 100 years of existence⁵⁰. Another special procedure is the complaints procedure for violation of freedom of association.

Special Method for Complaints on Freedom of Association

The most popularly used ILO petition method is the special method established or set up for complaints regarding violations of right of association. This method was not specifically stipulated in the Constitution of the ILO but was established in the early part of the 1950s by agreement or understanding between or betwixt the ILO and the United Nations Economic and Social Council (UNESCO)⁵¹. There are the two bodies that deliberate on complaints in this sector: the CFA's

⁴¹ *ibid*

⁴² ILO Constitution, Article 28

⁴³ Lee Swepston, 'Human Rights at Work Supervisory Mechanisms of the International Labor Organization' (m28)

⁴⁴ *ibid*

⁴⁵ The mission took place from 17th to 21st August 1998

⁴⁶ ILO Constitution, Article 33.

⁴⁷ Bob Hepple, *Labour laws and Global Trade* (n5) 50

⁴⁸ *ibid*

⁴⁹ *ibid*

⁵⁰ Except in the case of Myanmar (Burma) where action was taken to eliminate forced labour

⁵¹ Lee Swepston, 'Human Rights at Work Supervisory Mechanisms of the International Labor Organization', (n28)



Governing Body and the Fact-Finding & Conciliation Commission on the Freedom of Association (FFCC).⁵²

The CFA

Substantive requirements or Prerequisites: Special complaint method was created to secure the right of association, which is codified by some ILO Conventions like the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), and also a number of others relating to specific questions. Nevertheless, there is no condition that a state or country must have ratified or signed anyone of the conventions for a complaint or petition to be filed. The reason being that the primary authority for the investigation of complaints or petitions resides in the Constitution of the ILO which emphasized freedom of association. A complaint may be made therefore against any member state of the ILO.⁵³ A state can submit complaints or petitions to the CFA claiming violations by another state, but no state has ever done that. The following types of workers' and employers' organizations can complaints. Firstly, national organizations directly connected with the matter, secondly, international organizations which hold consultative position with the ILO; and thirdly, other international organizations without consultative position, if the claims concern matters directly impacting their affiliated organizations.⁵⁴

The CFA have every right to decide whether an organization commencing a complaint is an organization of workers or employers indeed. It has, for example, decided or determined that a complaint can be submitted even if a state has dissolved or suspended the complainant organization, or the complainant organization had not been enrolled or known by the state concerned. Nevertheless, a complaint cannot be accepted from institutions with which it is not possible to correspond, either for the reason that they have only an impermanent address or for reason that the complaint has no address.⁵⁵

Formal requirements: Complaints is sent to the ILO's Director-General in writing. It is signed by a delegate of an institution entitled to submit them and must contain the address or the complainant organization's place of operation. A complaint can be received if it is sent by an organization of workers or employers relating to an ILO state member that claims a violation of the right of association. The confirmation of the organization's status or rank must be included together with the available the evidence of the violations alleged.⁵⁶

Means of investigation: Once the complaint has been received, the Director-General can permit the complainant sometime to provide additional evidence to prove the allegations. The complaint is also sent to the state concerned and also requested to comment on the complaint. The CFA normally makes its decisions⁵⁷based on the documents received from both parties.

Kind of decision reached: If the CFA discovers that no breach has been made or that the allegation of violation has stopped, it will discontinue further examination. But if it finds violations, it will ask the parties to rectify the situation. It can for instance, ask the state concerned to institute or desist from some specific actions or they amend current legislation. It can also request the organization that filed the complaint to find out whether its activities or actions contributed to the problem.⁵⁸ If the CFA discovers that there are disputes or problems that hinders protection of freedom of association, it can ask the state concerned to continually report it, or refer the matter to the CEACR to ascertain

⁵² *ibid*

⁵³ *ibid*

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ *ibid*

⁵⁷ *ibid*

⁵⁸ *ibid*



if there is compliance of the concerned Conventions that have been ratified. In rare cases, the CFA can refer the matter to the FFCC.⁵⁹

The Fact-Finding and Conciliation Commission (FFCC)

The FFCC is a body of independent or specialist appointed by the ILO Governing Body to investigate violations of freedom of association. Although it has been convened only rarely, it has also been engaged in specific cases of political delicacy.⁶⁰

Important requirements: Just as in complaints that come to the CFA, matters before the FFCC concern freedom or right of association. A complaint can be brought against any state, irrespective of whether it has ratified or endorsed the conventions on freedom of association or is a member state of the ILO. If a country is not an ILO member but a United Nations (UN) member, a petition or complaint regarding it can be forwarded to the FFCC by the Economic and Social Council of the United Nations (ECOSOC). In all matters, however, the country concerned must agree with the referral of the matter to the FFCC. The only exception or exemption is when a petition or complaint relates to a ratified convention on freedom of association and is referred to the superior or special procedures on this subject.⁶¹ Matters can be referred or forwarded to the FFCC in the following four ways. Each of them requires the involvement of a state or international body; by the Governing Body of the ILO, on the CFA recommendation; by the Governing Body of the ILO on the ILC recommendation and at the application of the state concerned; by the UNESC: With the approval of the state concerned, ECOSOC can refer or forward complaints against states that are members of the UN but not that of the ILO.⁶²

Method of investigation: FFCCs is free to follow its own procedures, but usually based its investigations on United Nations recorded evidence provided by the parties, the statements of witnesses, and visits to states concerned. Representatives or delegates of the complainant establishment. The state against which the complaints are made can be represented in the proceedings or deliberations before the FFCC.⁶³

Kind of decision reached: Once a decision is taken it is published in a special report on the case.⁶⁴ The decisions of the FFCC usually include: a trade union of state nation should develop, applications, encouraged to ratify ILO conventions, encouraged to allow civil liberties for the exercise of trade union activities.

Implementation of the verdict: Like all complaint methods, the FFCC's recommendation or decision cannot be enforced by itself. Usually, other ILO bodies monitor compliance with its verdict or recommendation. If the state concerned has ratified or signed the ILO Freedom of Association Conventions, the usual supervisory bodies consistently examine the implementation of FFCC recommendation or verdict and can refer to the FFCC's decisions in subsequent implementation or enforcement of the convention in question. The precedent can be followed by the Conference Committee on the Application of Standards in full session, and by the ILO Governing Body. If the Convention concerned has not been ratified or approved, the FFCC recommendation or verdict is followed on by the CFA⁶⁵

⁵⁹ *ibid*

⁶⁰ *ibid*

⁶¹ ILO Constitution, Article 26. See also Lee Swepston, 'Human Rights at Work Supervisory Mechanisms of the International Labor Organization' (n28)

⁶² Lee Swepston, 'Human Rights at Work Supervisory Mechanisms of the International Labor Organization' (n28)

⁶³ *ibid*

⁶⁴ *ibid*

⁶⁵ *ibid*



3. Critique of the ILO's Supervisory Procedures

The ILO's supervisory system has been criticised for the following reasons: (i) lack of sanctions and (ii) strains on the tripartite structure.

i. Lack of Sanctions

Bob Hepple has argued that the ILO's supervisory mechanism relies mostly on a reporting mechanism not on sanctions⁶⁶ that is why it is referred to as having 'no teeth'⁶⁷. Thus, there is no real enforcement or sanctions as it were except the procedure prescribed under Article 33 of the ILO Constitution which is hardly used⁶⁸. In fact, it has been invoked only once since the establishment of the ILO in 1919⁶⁹. According to Bob Hepple, the crucial reason why article 33 has been invoked on only one occasion is the general hostility to trade sanctions as a means of enforcing ILSs.⁷⁰ Bob Hepple further noted that neither CEACR nor the CFA adopt adversarial procedures and their conclusions do not have legally binding force⁷¹. Nevertheless, the CEACR holds the view that its interpretations should be regarded as 'valid and generally recognised'⁷² unless contradicted by the ICJ.⁷³ The jurisdiction of the ICJ has not been invoked since the 1930s, and this forum (ICJ) lacks specialist knowledge and experience of labour matters⁷⁴. However, Article 37(2) of the ILO Constitution provide for the appointment of a tribunal for the 'expeditious determination of any dispute or question relating to the interpretation of a Convention.'⁷⁵ Although there are some legal doubts as to the precise scope of this provision,⁷⁶ Bob Hepple has however emphasised that the establishment of a specialist labour tribunal could help to resolve disputes between states and the supervisory bodies and clarify the meaning of ILO instruments⁷⁷. While this is important, the absence of sanctions on the part of the ILO still makes it difficult to enforce the decisions of such tribunals. Paul O'Higgins on his part has suggested 'some overall supervisory body preferably a court where authoritative interpretations can be given resolving any potential conflicts'⁷⁸. On the other hand, E. A. Landy has opined that it is illusory to expect sanctions⁷⁹ to be part of implementation of labour standards at the ILO level being an international organisation and does not have the machinery to employ sanctions.⁸⁰

ii. Strains on the Tripartite Structure

The tripartite structure which has a role to play in the ILO's supervisory system is 'under increasing strains'⁸¹. Originally tripartism is an attempt to reconcile the interest of workers and employers and

⁶⁶ Bob Hepple, *Labour Laws and Global Trade* (n5) 60

⁶⁷ *ibid*

⁶⁸ Brian Langille, 'Core Labour Rights- the true story (reply to Alston)' [2005] *European Journal of International Law* 16(3) 409 – 437. Article 33 empowers the ILO to take such necessary action that will secure member states' compliance to labour standards. Since the establishment of the ILO in 1919, this procedure was only invoked in 2000 against Myanmar (Burma) which engaged in forced labour then.

⁶⁹ In Myanmar in 2000 which engaged in forced labour then.

⁷⁰ Bob Hepple, *Labour Laws and Global Trade* (n5) 55.

⁷¹ Bob Hepple, *Labour Laws and Global Trade* (n5) 56.

⁷² The CEACR Report 1990 Para.7& 8. Also quoted in Bob Hepple, *Labour Laws and Global Trade* (n5) at 56

⁷³ *ibid*

⁷⁴ Bob Hepple, *Labour Laws and Global Trade* (n5) 56

⁷⁵ *ibid*

⁷⁶ *ibid*

⁷⁷ *ibid*

⁷⁸ Paul O'Higgins, 'The Interaction of the ILO, the Council of Europe and European Union Standards' in Bob Hepple (editor) *Social and Labour Rights in a Global Context: International and Comparative Perspectives*, (Cambridge University Press 2002) 55 at 68 – 69.

⁷⁹ Sanctions here refer to penalties imposed by a court of law, intended to ensure compliance.

⁸⁰ E. A. Landy: *The Effectiveness of International Supervision: Thirty years of ILO Experience* (Stevens London, 1966), 202.

⁸¹ Bob Hepple, *Labour Laws and Global Trade* (n5), 50



the presence of these groups can force a government which is reluctant to act to implement a particular standard⁸². In modern terms, tripartism is usually described as a ‘social dialogue’ involving governments, employers and workers’ organisation. According to Bob Hepple, the real problem with the social dialogue model is that ‘it becomes a fiction if independent trade unions or employers’ organisations, at national level, are weak or non-existent’⁸³. One other strain on the tripartite structure is the involvement of actors, Non-Governmental Organisations (NGOs) from outside the tripartite community in the work of the ILO⁸⁴. The main spokesperson for workers in some developing countries comes from the international NGOs and these are not ‘representative’ organisations⁸⁵. The ILO itself invites some NGOs to participate (but not to vote) in meetings of various bodies; a practice permitted by Article 12 of the Constitution of the ILO draws some of its technical experts from these organisations⁸⁶. The ILO’s Director-General in defence of this has noted that it ‘has much to gain from the contribution of other relevant actors to its work, and much to lose from adopting- and being seen to adopt- overly defensive or exclusive attitudes to them’⁸⁷.

Resistance to more active involvement of NGO’s in the ILO’s standard setting and supervisory mechanism comes from the employers’ and workers’ groups who are anxious to protect their vested interests⁸⁸. Both groups have been totally opposed to any modification of the ILO’s structure to include NGOs⁸⁹. With respect to NGOs, their effective representation of workers is doubtful since they do not have same interests as workers’. In spite of the criticisms of the supervisory procedures it has positively influenced either the repeal or amendment of the military decrees of the 1990s which violated freedom of association.

4. Positive Influence of the ILO’s Supervisory Procedures in either the Repeal or Amendment of Nigerian Military Decrees of the 1990s which Violated Workers’ Freedom of Association.

The ILO’s supervisory procedures helped to repeal some obnoxious military decrees of the 1990s which violated freedom of association.⁹⁰ Following strike action by oil workers in July 1994, supported by a general strike of the Nigerian Labour Congress (NLC) – an umbrella union with 41 affiliates or trade unions⁹¹ – the then military government⁹² promulgated Decrees which dissolved the national bodies of the NLC, and the respective national and state executive councils of the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Association of Senior Staff of Nigeria (PENGASSAN). Thereafter, administrators were appointed by the government. The offices of the NLC, PENGASSAN and NUPENG were sealed

⁸² This is illustrated in Myanmar (Burma) in which the feeling of moral outrage on the part of the worker and employer delegates overcame any reluctance on the part of the Myanmar government to act, in agreeing to a resolution to stop the practice of forced labour. See also Bob Hepple, *Labour Laws and Global Trade* (n23), 50 - 51

⁸³ Bob Hepple, *Labour Laws and Global Trade* (n5). 53

⁸⁴ ILO, *Towards the ILO Centenary: Realities, renewal and tripartite commitment*. Report of the Director-General, International Labour Conference 102nd Session, 2013 Report 1(A), International labour office, Geneva, <<http://www.ilo.org/wcmsp5/groups/public/>> accessed 7th April, 2023.

⁸⁵ Bob Hepple, *Labour Laws and Global Trade* (n5), 53

⁸⁶ *ibid*

⁸⁷ ILO, *Towards the ILO Centenary* (n84)

⁸⁸ Bob Hepple, *Labour Laws and Global Trade* (n5,) 53

⁸⁹ *ibid*

⁹⁰ A decree is a law promulgated by the head of the Federal Military Government in a military regime. Once a democratically elected government comes into power all military decrees are automatically regarded as Acts of the National Assembly by the effect of section 315(1) of the Constitution.

⁹¹ These workers were calling on the then military government of General Sanni Abacha to return the country to a democratically elected government.

⁹² The military government of General Sanni Abacha.



and their financial accounts in banks were frozen or suspended and check-off dues were also suspended. The military government also promulgated decrees which effectively prohibited the activities of trade unions in academic institutions; regrouped the former 41 registered trade unions into 29 trade unions. I also recognised senior staff unions and extended further ministerial regulation of trade unions' registration and the activities of check-off, while restricting the right to involve in union activities. Three major trade unions complaints were made against the military Decrees which violated freedom of association in the 1990s, resulting in ILO Cases Nos. 1530,⁹³ 1793⁹⁴ and 1935.⁹⁵ The responses of the ILO to trade unions' complaints in Cases Nos: 1530, 1793 and 1935 will now be examined herein.

(i) Case No. 1530

In a Joint Communication of 19 April 1990, the International Trade Secretariats⁹⁶ on behalf of their various affiliates in Nigeria presented a complaint of violations of trade union rights against the government of Nigeria regarding Trade Unions (International Affiliation) Decree No. 35, of 1989. The Decree banned all Nigerian workers' organisations from affiliating with international workers' organisations with the only exception of the Central Labour Organisation being able to affiliate with three permitted bodies.⁹⁷ Any contravention was an offence liable on conviction to a fine of N5, 000 (Five Thousand Naira) or to imprisonment for a term of five years or to both such fine and imprisonment.⁹⁸ And where the offence was committed by a trade union or association, it was liable on conviction to a fine of not less than N10, 000 (Ten Thousand Naira) and also the removal of the name of the trade union or association from the register of trade unions.⁹⁹ The effect of the Decree

⁹³ ILO Case No 1530, "Complaint Against the Government of Nigeria" presented by the International Transport Workers' Federation (ITF) together with several other international workers' organizations and the International Confederation of Free Trade Unions (ICFTU) See ILO, Report of the Committee on Freedom of Association (277th Report) Official Bulletin, 1991 Vol. LXXIV, Series B, No. 1, Para 192-209, <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023

⁹⁴ ILO Case No.1793, "Complaint Against the Government of Nigeria" presented by the International Confederation of Free Trade Unions (ICFTU), the Organisation of African Trade Union Unity (OATUU) and the World Confederation of Labour (WCL) ILO, Report of the Committee on Freedom of Association (292nd and 293rd Reports) Official Bulletin 1994, Vol. LXXVII, Series B, No. 1, paras 567-614. <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023

See also, International Labour Conference, Information and Reports on the Application of Conventions and Recommendations, 82nd Session 1995, III (Parts 1, 2 and 3) pp. 182-183.

⁹⁵ ILO Case No.1935, "Complaint Against the Government of Nigeria", presented by the International Confederation of Free Trade Unions (ICFTU), the Organisation of African Trade Union Unity (OATUU), the World Confederation of Labour (WCL) and the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM) see ILO, Report of the Committee on Freedom of Association (313rd, 314th and 315th Reports) Official Bulletin 1999, Vol. LXXXII Series B, No. 1, pp. 234-237, <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023. See also, ILO Governing Body Report (First Report) (Observance by Nigeria of the Freedom of Association and Protection of the Right to Organise Convention No. 87, 1948. Report on the direct contacts mission to Nigeria, 17 to 21 August, 1998).

GB 273 15/1, 273rd Session, Geneva, November 1998, para 6, <www.ilo.org/public/english/standards/relm/gb/docs/gb273/gb-15-1.htm> accessed 29th April 2023

⁹⁶ The International Transport Workers Federation (ITF), the International Metalworkers' Federation (IMF), the International Textile Garment and Leather Workers Federation (ITGLWF), the International Federation of Chemical, Energy and General Workers' Unions (ICEF), the International Federation of Journalists (IFJ), the Public Services International (PSI), the International Union of Food and Allied Workers' Associations (IUF), the International Federation of Commercial Clerical, Professional and Technical Employees (FIET) and the International Federation of Building and Wood Workers (IFBWW). See also ILO, Report of the Committee on Freedom of Association (277th Report) Official Bulletin, 1991 Vol. LXXIV, Series B, No. 1, Para 192 <[http://www.ilo.org/public/libdoc/ilo/P/09604/09604\(1991-74-series-B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09604/09604(1991-74-series-B).pdf)> accessed 8th April 2023

⁹⁷The permitted bodies were: Organisation of African Trade Union Unity; the Organisation of Trade Unions for West Africa and 'any other International Labour Organisation specifically approved by the Armed Forces Ruling Council'. See section 3(1) of the Trade Unions (International Affiliation) Decree No. 35 of 1989.

⁹⁸ See section 4(1) Trade Unions (International Affiliation) Decree No. 35 of 1989.

⁹⁹ See section 4(2) Trade Union (International Affiliation) Decree (n74)



was that unions were forced against their will to terminate their international affiliations or face draconian sentences in the Decree.¹⁰⁰

Both the CFA¹⁰¹ and the CEACR¹⁰² found that the Decree was a violation of Article 5 of Convention 87 and ILO principles¹⁰³ which guaranteed workers organisations the right to associate with international organisation of workers. And both the CFA and CEACR¹⁰⁴ recommended the repeal of the Decree and also urged government in this regard. The efforts of the ILO yielded a favourable result in that the military government repealed the Decree, a fact noted by the CEACR ‘with satisfaction that Decree No. 35 of 1989 prohibiting the international affiliation of trade unions has been repealed by Decree No. 32 of 1991.’¹⁰⁵

(ii) Case No. 1793

This was a complaint to the ILO by the International Confederation of Free Trade Unions (ICFTU), the Organisation of African Trade Union Unity (OATUU), and the World Confederation of Labour (WCL) against the military government of Nigeria in 1994. Following a strike action by workers in the oil sector, the then Military Head of State (General Sani Abacha) promulgated two decrees dissolving the national executive councils of the NLC, NUPENG and PENGASSAN and replacing them with government-appointed administrators.¹⁰⁶ Furthermore, some of the leaders of NLC, PENGASSAN and NUPENG were arrested and detained without trial. The CEACR found that the government action was a clear violation of Convention 87, particularly Article 4 which enjoined the administrative authority not to dissolve worker organisations and Article 3 which provides for right of organisations to elect freely their representatives.¹⁰⁷ Both the CFA and the CEACR advised the government of Nigeria to repeal the decrees and to allow independently elected officials to exercise their rights to trade union activities once again without interference by the public authorities and to bring the law and practice into conformity with ILO Convention 87.¹⁰⁸ While case No. 1793 was still

¹⁰⁰ILO, Report of the Committee on Freedom of Association (277th Report) Official Bulletin 1991, Para 198 and 199

¹⁰¹ibid

¹⁰² ILO, International Labour Conference, Information and Reports on the Application of Conventions and Recommendations 78th Session, 1991, Report III (Parts 1, 2, 3), 195-196, < [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1991-78\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1991-78).pdf)> accessed 10th April 2023

¹⁰³ The other ILO principles are enshrined in the General Survey on Freedom of Association and Collective Bargaining, International Labour Conference, 69th session 1983 Report of the Committee of Experts on the Application of Conventions and Recommendations (Report III Part 4B) paras.250-251< [http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1983-69-4B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1983-69-4B).pdf)> accessed 10th April 2023 and in the Digest of Decisions and Principles of the Freedom of Association Committee, 3rd edition, 1985, Paras. 518-524 <http://www.ilo.org/public/libdoc/ilo/1985/85B09_118_engl.pdf> accessed 10th April 2023

¹⁰⁴ILO Report of the Committee on Freedom of Association (277th Report) Official Bulletin 1991, para 209 (b), see also International Labour Conference, Information and Reports on the Application of Conventions and Recommendations 78th Session 1991, Report III (Parts 1, 2 and 3), 195-196

¹⁰⁵ILO, International Labour Conference, Information and Reports on the Application of Conventions and Recommendations 79th Session, 1992, Report III (Parts 1, 2 and 3),225 <[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1992-79\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1992-79).pdf)> see also Eric Gravel, Isabelle Duplessis and Benard Gernigon, *The Committee on Freedom of Association: Its impact over 50 years* (ILO, Geneva 2001), 41. The Trade Unions (International Affiliation) Decree No. 35 of 1989 was repealed by the Trade Unions (International Affiliation Repeal) Decree No. 32 of 1991.

¹⁰⁶ILO, Report of the Committee on Freedom of Association (292nd and 293rd Reports) Official Bulletin 1994, Vol. LXXVII, Series B, No. 1, paras 567-614. See also, ILC, Information and Reports on the Application of Conventions and Recommendations, 82nd Session 1995, III (Parts 1, 2 and 3), 182-183.

¹⁰⁷ ILO International Labour Conference Information and Reports on the Application of Conventions and Recommendations 82nd Session 1995, Report 111 (Parts 1, 2 and 3), 183 <[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1995-82\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1995-82).pdf)> accessed 10th April 2023 See also, ILO, International Labour Conference Report of the Committee of Experts on the Application of Conventions and Recommendations, 83rd Session 1996, Report III (Part 4A), 156-157, <[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1996-83\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1996-83).pdf)> accessed 10th April 2023

¹⁰⁸ILO, Report of the Committee on Freedom of Association (306th Report) Official Bulletin, 1997, Vol. LXXX, series B, No. 1, para 45,< [http://www.ilo.org/public/libdoc/ilo/P/09604/09604\(1997-80-series-B\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09604/09604(1997-80-series-B).pdf)> accessed 10th April 2023, see also ILO International Labour Conference, Report of the Committee of Experts on the Application of Conventions and Recommendations,



pending, there was another new complaint against the military government's violation of Conventions Nos. 87 and 98 leading to case No. 1935.¹⁰⁹

(iii) Case No. 1935

The complaint was against the military government's further promulgation of anti-union Decrees and detention of trade unionists.¹¹⁰ The Decrees promulgated proscribed and prohibited participation in any trade union activities of the following unions: Non-Academic Staff Union of Educational and Associated Institutions, the Academic Staff Union of Universities, Teaching Hospitals, Research Institutes and Associated Institutions and also dissolved their national and branch executive councils operating within any University in Nigeria. They also restructured the 41 previously registered trade unions into 29 trade unions affiliated to the Central or main Labour Organisation. They granted the Minister of Labour and Productivity the power to revoke the registration of any trade union in the interest of overriding public interest and also replaced the right of appeal to the appropriate High Court which was previously guaranteed with a right of appeal limited to the Minister. And they specified the international trade union organisations with which the Nigerian Labour Congress (NLC) and any other trade union may affiliate. The Decrees further nullified existing affiliation to unapproved international trade union organisations unless approval had been granted by the Provisional Ruling Council (ruling council of the military government). They also banned future affiliations without the express approval of the government-appointed administrator running the affairs of the NLC. Finally, they provided for a fine of N10, 000 (Ten Thousand Naira) or five years' imprisonment for any contravention, as well as the revocation of the trade union registration certificate.¹¹¹

Following the complaints the ILO decided to institute the procedure in Article 26(4) of its Constitution¹¹² and appointed a Commission of Inquiry to examine the complaints against the Nigerian government in cases Nos. 1793 and 1935.¹¹³ After appointing the members or representatives of the Commission of Inquiry, the ILO Governing Body however decided that the assignment of the Commission be deferred for sixty days in order to send a direct contact mission to Nigeria.¹¹⁴ The mission took place from 17th to 21st August 1998 and was headed by Justice Rajsoomer Lallah, chair designate of the appointed Commission of Inquiry.¹¹⁵

The report of the direct contact mission showed that the mission had great effect as it led to the repeal or abrogation of decrees Nos. 9 & 10¹¹⁶ and in October 1998 the ILO received copies of

86th Session, 1998 Report III (part 1A), 183, <[http://www.ilo.org/public/libdoc/ilo/P/09661/09661\(1998-86\).pdf](http://www.ilo.org/public/libdoc/ilo/P/09661/09661(1998-86).pdf)> accessed 10th April 2023

¹⁰⁹ The new complaints was brought in 1st August 1997 by the following: International Confederation of Free Trade Unions (ICFTU); International Federation of Chemical, Energy, Mine and General Workers Union (ICEM); The International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF); International Textile, Garment and Leather Workers Federation (ITGWLF) and International Federation of Commercial, Clerical Professional and Technical Employees (FIET) associated themselves with this complaint in communication dated 29th August, 24th September and 10th December 1997 respectively.

¹¹⁰ ILO, Report of the Committee on Freedom of Association (313th, 314th and 315th Reports) Official Bulletin 1999, Vol. LXXXII Series B, No. 1, 234-237, <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023 See also, ILO Governing Body Report (First Report) (Observance by Nigeria of the Freedom of Association and Protection of the Right to Organise Convention No. 87, 1948. Report on the direct contacts mission to Nigeria, 17 to 21 August, 1998).

GB 273 15/1, 273rd Session, Geneva, November 1998, para 6, <www.ilo.org/public/english/standards/relm/gb/docs/gb273/gb-15-1.htm> accessed 29th April 2023

¹¹¹ ILO, Report of the Committee on Freedom of Association (313th, 314th and 315th Reports) Official Bulletin 1999, 236-237

¹¹² Article 26(3) and (4) of the ILO's Constitution empowers the Governing Body on its own motion to appoint a Commission of Inquiry to consider a complaint and to report therein.

¹¹³ ILO, Report of the Committee on Freedom of Association (313th, 314th and 315th Reports) Official Bulletin 1999, (n86), 235

¹¹⁴ See ILO Freedom of Association Cases (Case No.1793 concerning Nigeria)

¹¹⁵ *ibid*

¹¹⁶ Nigerian Labour Congress (Dissolution of National Executive Council) Decree No. 9 of 1994, dissolved the national bodies of the NLC; and the NUPENG & PENGASSAN (Dissolution of Executive Councils) Decree No. 10 of 1994 dissolved the respective



the Decrees which repealed Decrees Nos. 9 & 10 (that is Nigerian Labour Congress (Dissolution of National Executive Council) Repeal Decree No.14 1998 and the NUPENG and PENGASSAN (Dissolution of Executive Council) Repeal Decree No.13 1998).¹¹⁷

Following the report or communique of the direct contact mission, the assignment of the Commission of Inquiry was suspended.¹¹⁸ The ILO may have been satisfied with the work of the direct contact mission especially as the obnoxious decrees which violated trade union rights were repealed by the military government. With respect to the Decrees earlier mentioned (in foregoing paragraphs) the position is that while the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree No. 24¹¹⁹ 1996 was repealed,¹²⁰ the Trade Unions (Amendment) Decree No. 4¹²¹ 1996 was amended¹²² and restricting references to only 29 unions was deleted. Also, the Trade Unions (Amendment No.2) Decree No 26¹²³ of 1996 was amended¹²⁴ by inserting the right to appeal to a court court in situations of refusal or cancelled registration of trade union. The Trade Unions (International Affiliation) Decree No. 29 of October 1996 was also amended¹²⁵ to provide for a trade union the right to affiliate with any international labour union or organization.

5. Conclusion / Recommendation

The ILO's supervisory system have been criticised over the years for various reasons ranging from lack of sanctions to strains in the tripartite structure or formation of the ILO. While noting the criticisms, the paper took the view that the ILO's supervisory procedures have had also positive influence on member states. Using the experience of Nigeria, it analyses the ILO's supervisory procedures whose influence led to either repeal or amendment of military Decrees of the 1990s which violated workers' freedom of association. In criticism of the ILO's supervisory mechanism, Bob Hepple argued that it relies mostly on a reporting mechanism not on sanctions.¹²⁶ And that, there is no real enforcement or sanctions as it were except the procedure prescribed under Article 33 of the ILO Constitution which is hardly used¹²⁷ and in fact, it has been invoked only once since the establishment of the ILO in 1919.¹²⁸ Also on the tripartite or formation of the ILO, Bob Hepple, noted that the real problem is that 'it becomes a fiction if independent trade unions or employers' organisations, at national level, are weak or non-existent.'¹²⁹ Another strain on the tripartite structure

national and state executive councils of the National Union of Petroleum and Natural Gas Workers (NUPENG) and the Petroleum and Natural Gas Association of Senior Staff of Nigeria (PENGASSAN).

¹¹⁷See ILO, Report of the Governing Body Direct Contact Mission to Nigeria (17 to 21 August 1998) , GB.273/15/1 , 273rd Session Geneva, November 1998, <<http://www.ilo.org/public/ilo/GB/273/>> accessed 10th April 2023

¹¹⁸See ILO, Freedom of Association Cases (Case No. 1793 concerning Nigeria) Report No. 315, March 1999, (n133) here it was clearly stated that on the basis of the direct contact mission the Governing Body decided "to suspend the work of the Commission of Inquiry pending such examination and until such time as the Governing Body may decide otherwise"

¹¹⁹Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree No. 24 1996

¹²⁰ It was repealed by The Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) (Repeal) Decree No. 12, 1998

¹²¹ Trade Unions (Amendment) Decree No. 4, of 1996

¹²² It was amended by the Trade Unions (Amendment) Decree No. 1 of 1999

¹²³ Trade Unions (Amendment No. 2) Decree No. 26, 1996

¹²⁴ It was amended also by the Trade Unions (Amendment) Decree No.1 of 1999

¹²⁵ It was amended by the Trade Unions (International Affiliation) (Amendment) Decree No.2 of 1999

¹²⁶ Bob Hepple, *Labour Laws and Global Trade* (n5) 60

¹²⁷ Brian Langille, 'Core Labour Rights- the true story (reply to Alston) (n68) Article 33 empowers the ILO to take such necessary action that will secure member states' compliance to labour standards. Since the establishment of the ILO in 1919, this procedure was only invoked in 2000 against Myanmar (Burma) which engaged in forced labour then.

¹²⁸ Since the establishment of the ILO in 1919, this procedure was only invoked in 2000 against Myanmar (Burma) which engaged in forced labour then.

¹²⁹ Bob Hepple, *Labour Laws and Global Trade* (n5) 53



is the involvement of actors (NGOs) from outside the tripartite community in the work of the ILO.¹³⁰ Three major trade unions complaints were made against the military Decrees which violated right of association in the 1990s, resulting in ILO Cases Nos. 1530,¹³¹ 1793¹³² and 1935.¹³³ The responses of the ILO to trade unions' complaints in Cases Nos: 1530, 1793 and 1935 were examined.

The influence of the ILO's supervisory procedures led to either repeal or amendment of the following military decrees of the 1990s which violated workers' freedom of association: Decree No. 35 of 1989 prohibiting the international affiliation of trade unions has been repealed by Decree No. 32 of 1991. Decrees Nos. 9 & 10 were repealed and in October 1998 the ILO received copies of the Decrees which repealed Decrees Nos. 9 & 10 (that is Nigerian Labour Congress (Dissolution of National Executive Council) Repeal Decree No.14 1998 and the NUPENG and PENGASSAN (Dissolution of Executive Council) Repeal Decree No.13 1998), the Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) Decree No. 24 1996 was repealed,¹³⁴ the Trade Unions (Amendment) Decree No. 4¹³⁵ 1996 was amended¹³⁶ and restricting references to only 29 unions was deleted. Also, the Trade Unions (Amendment No.2) Decree No 26¹³⁷ of 1996 was amended¹³⁸ by inserting the right to appeal to a court in situations of refusal or cancelled registration of trade union. The Trade Unions (International Affiliation) Decree No. 29 of October 1996 was also amended¹³⁹ to provide a trade union the right to affiliate with any international labour organization.

It is recommended that the ILO's supervisory procedure should continue to be as it is still relevant, important and necessary.

¹³⁰ ILO, Towards the ILO Centenary (n84)

¹³¹ ILO Case No 1530, "Complaint Against the Government of Nigeria" presented by the International Transport Workers' Federation (ITF) together with several other international workers' organizations and the International Confederation of Free Trade Unions (ICFTU) See ILO, Report of the Committee on Freedom of Association (277th Report) Official Bulletin, 1991 Vol. LXXIV, Series B, No. 1, Para 192-209, <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023

¹³² ILO Case No.1793, "Complaint Against the Government of Nigeria" presented by the International Confederation of Free Trade Unions (ICFTU), the Organisation of African Trade Union Unity (OATUU) and the World Confederation of Labour (WCL) ILO, Report of the Committee on Freedom of Association (292nd and 293rd Reports) Official Bulletin 1994, Vol. LXXVII, Series B, No. 1, paras 567-614. <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023

See also, International Labour Conference, Information and Reports on the Application of Conventions and Recommendations, 82nd Session 1995, III (Parts 1, 2 and 3) 182-183.

¹³³ ILO Case No.1935, "Complaint Against the Government of Nigeria", presented by the International Confederation of Free Trade Unions (ICFTU), the Organisation of African Trade Union Unity (OATUU), the World Confederation of Labour (WCL) and the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM) see ILO, Report of the Committee on Freedom of Association (313rd, 314th and 315th Reports) Official Bulletin 1999, Vol. LXXXII Series B, No. 1,234-237, <www.ilo.org/public/libdoc/ilo/> accessed 17th April 2023. See also, ILO Governing Body Report (First Report) (Observance by Nigeria of the Freedom of Association and Protection of the Right to Organise Convention No. 87, 1948. Report on the direct contacts mission to Nigeria, 17 to 21 August, 1998).

GB 273 15/1, 273rd Session, Geneva, November 1998, para 6, <www.ilo.org/public/english/standards/relm/gb/docs/gb273/gb-15-1.htm> accessed 29th April 2023

¹³⁴ It was repealed by The Trade Disputes (Essential Services Deregulation, Proscription and Prohibition from Participation in Trade Union Activities) (Repeal) Decree No. 12, 1998

¹³⁵ Trade Unions (Amendment) Decree No. 4, of 1996

¹³⁶ It was amended by the Trade Unions (Amendment) Decree No. 1 of 1999

¹³⁷ Trade Unions (Amendment No. 2) Decree No. 26, 1996

¹³⁸ It was amended also by the Trade Unions (Amendment) Decree No.1 of 1999

¹³⁹ It was amended by the Trade Unions (International Affiliation) (Amendment) Decree No.2 of 1999