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Global Perspectives on Freedom of Association: Nigeria

Femi Amao

Societās
Exploring the Value of Freedom of Association

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Project Lead
Professor Maria Cahill
School of Law
University College Cork
Cork, Ireland
www.associationalfreedom.org

Editors of the Global Perspectives on Freedom of Association collection
Professor Maria Cahill, School of Law, University College Cork
Dr. Seán Ó Conaill, School of Law, University College Cork
Professor Dwight Newman, School of Law, University of Saskatchewan
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Freedom of Association in Nigeria: A Cacophony of Contestations

Femi Amao[*]

I. Introduction

The right to freedom of association in Nigeria has a history that is intertwined with the country's political evolution, agitation for the rule of law, and democracy. In the pre-colonial era, the various tribes and communities that make up modern Nigeria had distinct governance structures with community norms and practices that allowed for some form of association. The advent of British colonial rule saw a severe erosion of freedom of association with the colonial administration implementing laws that restricted public gatherings and associations aimed at suppressing anti-colonial movements and nationalist activities. However, after gaining independence in 1960, Nigeria became a federal republic, and the constitution provided for fundamental human rights, including freedom of association.[1] Independence and the constitutional framework facilitated the establishment of political parties, trade unions, and various civic groups. Military interventions in periods from 1966 reversed the trend with military regimes bringing in strict restrictions on rights including freedom of association. The return to a relatively stable civilian rule in 1999 and the introduction of the 1999 Constitution revived the framework for protecting rights including freedom of association in Nigeria. The introduction of the African Charter on Human and Peoples' Rights, a significant component of African Union law, also influenced the protection of the rights in the country. As this article shows, the protection and exercise of the right to freedom of association in Nigeria have been impacted by history, politics, constitutional development, regional dynamics, case law and, interestingly, customary law.

[*] Professor of Law, School of Law, University College Cork, Ireland.

[1] See Section 26(1) of the Constitution of the Federal Republic of Nigeria, 1963 which provided that, '[e]very person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to trade unions and other associations for the protection of his interests.'

This article starts by briefly explaining the rationale for the protection of the right in Nigeria, it thereafter discusses the statutory framework for the protection of the right, highlighting its scope. The paper then moves on to consider the content of the rights, its positive and negative dimension, and how the courts interpret and apply the right. The article discusses an important dimension in Nigeria, the nexus between the right and customary law. The article further discusses the application of the right in the context of Trade Unions and Civil Society Organisations (CSO). The article ends with a conclusion of the main themes that have emerged in the Nigerian context.

II. Rationale for the Protecting Freedom of Association in Nigeria

Freedom of association has been a topical issue in Nigeria right from the country's independence in 1960. As the first Prime Minister of Nigeria stated at the opening of the first International Labour Organization African Regional Conference in 1960: '[f]reedom of association is one of the foundations on which we build our free nations.'[2] The emphasis on freedom of association in the early days of the country could be explained by its colonial history and the restriction on freedom of association by the colonialists. The intervention by the military at various times in governance and the tendency for military governments to place restrictions on the freedom further buttress the need to protect the freedom. It is also pertinent to note that Nigeria operates a federal republic with a democratic system of governance. The concept of freedom of association is the cornerstone of democratic principles in a functioning democracy facilitating civic participation. In addition, Nigeria comprises a multitude of ethnicities, languages, cultures and minority groups and the concept is crucial to the ability to engage the various groups. Furthermore, Nigeria is a signatory to various international treaties and conventions, which emphasize the protection of freedom of association.

III. Statutory Protection of Freedom of Association

There is a constitutional right to freedom of association in Nigeria. The right is included as one of the fundamental rights in Chapter IV of the Constitution of the Federal Republic of Nigeria of 1999 (as amended). It is important to underscore that the right is not only shaped by domestic law in Nigeria but also by development at the regional level that has been described as part of

[2] GA Johnston, *The International* Labour Organisation (London: Europa Publications, 1970) 150.

the corpus of African Union Law.[3] Primarily, the Constitution, which is the *Grundnorm* in Nigeria, guarantees the freedom of association. Section 40 of the Constitution provides as follows:

> 'Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:
>
> Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.'

There are two points to note preliminarily from the provision itself. The first point is that the Constitution envisages a correlation between freedom of association and freedom to assemble by placing them in the same provision. The second point is that section 40 includes a limitation with regard to the powers of the national electoral body, the Independent National Electoral Commission, in the exercise of its constitutional power regarding the recognition of political parties.

The correlation between freedom of association and freedom of assembly was apparent in the Supreme Court's decision in *Inspector-General of Police v All Nigeria Peoples Party and Others*.[4] In that case, the claimants were registered political parties, and the defendant was the head of the Nigeria Police Force. The claimant requested the Defendant to issue Police Permits as required by the Public Order Act[5] to their members to hold rallies throughout the country to protest the alleged rigging of the 2003 elections. The defendant refused the request. Nonetheless, the claimant decided to hold the rallies. The first rally which was held in the city of Kano on the 22nd of September 2003 was violently disrupted by the police on the ground that the organisers had not obtained a police permit as required in the Public Order Act. The claimant sued the police for the violent intervention but more significantly they also challenged

[3] See generally O Amao, *African Union Law: the emergence of a sui generis legal order* (London & New York: Routledge, 2018); O Amao, KD Magliveras and M Olivier (eds), *The Emergent African Union Law: Conceptualization, Delimitation, and Application* (Oxford: Oxford University Press, 2021).
[4] *Inspector-General of Police v All Nigeria Peoples Party and Others* (2007) AHRLR 179.
[5] Public Order Act, (Cap 382) Laws of the Federation of Nigeria, 1990.

the constitutionality of the need for police permits for rallies in the country. They argued that the requirement for a police permit for rallies was inconsistent with the freedoms guaranteed in the Constitution, especially freedom of assembly and association. (They also argued that the requirement was inconsistent with Article 11 of the African Charter on Human and Peoples' Rights Act. The regional dimension is discussed later in the article).

In ruling in favour of the claimant and declaring some of the provisions of the Public Order Act to be unconstitutional, the court held as follows:

> 'In my view, the provision in section 40 of the Constitution is clear, direct and unambiguous. It is formulated and designed to confer on every person the right to assemble freely and associate with other persons. I am therefore persuaded by the argument of Mr Falana that by the combined effect of sections 39 and 40 of the 1999 Constitution as well as Article 11 of the African Charter on Human and Peoples' Rights, the right to assemble freely cannot be violated without violating the fundamental right to peaceful assembly and association.'

In addition to the constitutional provision, two significant pieces of domestic legislation are also relevant to the right. However, the legislation is directly relevant to trade union and labour activities. These are the Trade Unions Act and the Labour Act.[6] Section 9 of the Labour Act provides that a contract of employment cannot include a condition that a worker shall or shall not join a trade union or shall or shall not relinquish membership of a trade union. The section also forbids an employer to dismiss or discriminate against an employee on account of trade union activities.[7] Furthermore, Section 12 of the Trade Unions Act makes it an offence to deny membership of a trade union on discriminatory grounds where the applicant is otherwise eligible.[8] The provisions thus affirm the right of association in the trade union and employment contexts consistent with the provision of the constitution.

[6] Trade Unions Act, Chapter T14, LFN 2004 as amended by the Trade Union (Amendment) Act 2005; Labour Act, Chapter L1, Laws of the Federation of Nigeria 2004.
[7] In *National Union of Food, Beverage and Tobacco Employees v Cocoa Industries Ltd*, NIC (2010) 9 LLER 1, Ikeja, the Court ordered the reinstatement of an employee who was dismissed due to trade union activities. See also *Udoh v OHMB* (1990) 4 NWLR (Pt 142) 52.
[8] This is consistent with section 42 of the 1999 Constitution which prohibits all forms of discrimination.

IV. Navigation of the Contents of Freedom of Association and Interpretation by the Courts

Nigeria has a relatively vibrant judiciary, though beset with the perception of corruption and logistical challenges. The vibrancy of the judiciary is also reflected in the frequency of cases before the court relating to fundamental rights including the right of association.[9] It is pertinent to look briefly at the approach of the courts to the interpretation of constitutional provisions and other statutes. This would provide insights into the approach of the courts in cases discussed in this article, especially with regard to cases implicating freedom of association. This also shows the importance of the role of judicial precedent in the Nigerian legal system. Decisions of the higher courts play a significant role on how other courts interpret and apply statutory provisions. This may explain what would appear to be a formulaic approach by the courts to the interpretation and application of the statutory provisions in this sphere.

The Nigerian judiciary has in most cases taken the literal approach to interpretation. The courts have consistently held the view that the duty of a judge is to interpret and not to make law. In a long line of cases, the courts have prioritised giving the natural, ordinary or literal meaning to the provisions of the statute where the words are clear and unambiguous.[10] The courts have also favoured an approach that avoids reading provisions of the law in isolation. The courts have emphasised that when interpreting the provision of the constitution or a statute, it would read together related provisions in order to discover the true meaning of the provisions.[11] It is only in rare and exceptional circumstances that the courts may depart from the literal approach.[12] The implication of this approach is that the interpretation of provisions relevant to freedom of association had been formulaic and as the cases show there is constant reference to literal interpretation as applied by the higher courts. The approach of the Nigerian courts is first to affirm the constitutionality of the right, second to relate the constitutional provision to other relevant law in the particular context, third to interpret statutory provision based on the literal

[9] There is a plethora of cases that has been adjudicated upon with regard to freedom of association. Examples that examine the interpretation of section 40 (or equivalent) include: *Osawe v Registrar of Trade Unions* (1985) 1 NWLR (Pt 4) 755; *Registered Trustees of National Association of Community Health Practitioners of Nigeria and Ors v Medical and Health Workers Union of Nigeria & Ors* [2008] 3 MJSC 121; and *Basil Ositadinma Mbanefo & ors v Judicial Service Commission, Anambra State* [2011] 26 NLLR (Pt 73) 122 NIC.

[10] See *Dapialong & ors v Dariye & Anor* (2007) ALL FWLR (Pt 373) 81; *Fawehinmi v IGP* (2002) FWLR (Pt 108) 1355; *Gafar v The Government of Kwara State* (2007) ALL FWLR (Pt 360) 1415.

[11] See *Amaechi v INEC* (2008) 5 NWLR (Pt 1080) 227; *Buhari V Obasanjo* (2005) 13 NWLR (Pt 941) 1; *Adesanya v The President of the Federal Republic of Nigeria & Anor* (1981) 5 SC 112; Udoh v OHMB (1990) 4 NWLR (Pt 142) 52.

[12] See *Amaechi v INEC* (ibid).

approach and finally apply the law to the facts. This approach may have limited the depth of the analysis of the right by the judiciary, however the approach shows a general trend to protect the exercise of the rights to freedom of association.

Positive and Negative Rights and Freedom of Association

As expressed in the legal framework, the positive aspect of the right is enjoyed by both individuals and groups. However, while the Constitution protects the right to freely associate, it implicitly also provides for the freedom to opt not to associate. Individuals may therefore decide not to join any association or trade union if they do not wish to. This is considered as the negative aspect of the right. The negative right is reiterated in Section 12 (4) of the Trade Unions (Amendment) Act, 2005 which provides that the right of freedom of association includes the right not to associate. The implication of the negative aspect of the right is that individuals cannot be compelled to join an association. The Nigerian courts have affirmed this position. For instance, in *Elesie Agbai & Ors v Samuel I Okogbue,*[13] (discussed in detail in the next section) the Nigerian Supreme Court considers the ramification of the negative right. The defendants tried to make the claimant join their association, but he refused. The defendant thereafter vandalised the appellant's equipment in an effort to pressure him to join the association. In its judgment, the Supreme Court held that the defendants' actions were a violation of the claimant's right not to associate with the appellants. The Supreme Court has also held in the context of political party activities that it will be illegal and unconstitutional to refuse or deny a citizen the right to opt-out, join, belong to any political party, trade union or any other association for the protection of his interest…'[14]

Similar to other jurisdictions, in Nigeria freedom of association is not an absolute right. The government may impose restrictions on the right under specific circumstances.[15] In section 45 of the Constitution, the right may be restricted 'on grounds of national security, public safety, public order, public morality, or public health' or 'for the purpose of protecting the rights and

[13] *Elesie Agbai & Ors v Samuel I Okogbue* (1991) 9–10 SCNJ 49

[14] See *AG Federation v Abubakar* (2007) 10 NWLR (Pt 1041) 1; In *Corporate Affairs Commission v Amalgamated Union of Public Corporation, Civil Service Technical and Recreational Service Employee* (2004) 1 NLLR (Pt 1) 32, the National Industrial Court of Nigeria held that 'the freedom to associate under section 40 of the constitution certainly, includes freedom to disassociate or not to associate'.

[15] See *Rimi & Another v PRP & Others*, [1981] 2 NCLR 763; Aniekwe v Okereke (1996) 6 NWLR (Pt 452) 60; *Registered Trustees of The Association of Community Health Practitioners of Nigeria v Medical and Health Workers of Nigeria* [2008] 2 NWLR [Pt 1072] 575.

freedom or other persons.' It has been held that where there is an investigation regarding national security the right may not be exercisable.[16]

In *FGN v Oshiomhole,*[17] the Court of Appeal observed that the right to peaceful assembly and association under section 40 of the 1999 Constitution is not an absolute right but limited by the provisions of the Constitution and other laws. Similarly, in *Medical Health Workers Union of Nigeria v Ministry of Labour and Productivity,*[18] the Court of Appeal held that employees have a right to form trade unions of their choice in the exercise of their freedom of association, but the exercise of the right is subject to the provision of section 45 of the Constitution.

V. Customary Law and Freedom of Association

A very interesting dimension in the Nigerian context is that the right to freedom of association sometimes comes into conflict with customary law.[19] A case in point is the Supreme Court decision in Elesie *Agbai & Ors v. Samuel I Okogbue* mentioned earlier.[20] A brief background to the customary context of this case is provided in the footnote. [21]

In this case, the claimant was a tailor by trade. The defendants are members of a customary group called the Aba Branch of the Umunkalu Age Group of the village of Alayi. Since the claimant was from the same village as the defendant and fell within the age group, the defendant believed that he was an automatic member of the group and should participate in the activities of the group. The age group decided to build a health centre for their village and placed a levy on all its members for the project. The claimant was asked to pay the levy as a "member", but he refused. On 22 April 1988, the defendants broke into the claimant's workshop and seized his Butterfly Sewing Machine.

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[16] *AG Federation & Ors v Chief Sunday Adeyemo*, Appeal No: CA/IB/373/2021.
[17] *Oshiomhole & anor v FGN & anor* (2006) LPELR-7570 (CA).
[18] (2005) 17 NWLR (Pt 953) 120.
[19] Customary law in Nigeria broadly refers to the traditional legal system and practices indigenous to the various ethnic groups in Nigeria.
[20] (2011) LPELR-8239 (SC).
[21] In the Igbo community of Southern Nigerian, people are traditionally grouped into "age groups" also known as "age grades". The grouping has built-in flexibility as an individual may opt to join a different age group on the condition that he or she is accepted into the group by the existing members. Age groups often take on responsibilities for the provision of community amenities needed in the community but not provided by the authorities.

When the case was brought to court, the defendants argued that the grouping of persons into age groups was a custom of their village applicable to all indigenes. It was also contended that compulsory membership of an age grade was a custom of their village. They further argued that the practice of the age group placing a levy on its members for financial contributions to development projects was also a custom. They therefore contended that the claimant has an obligation to pay the levy. The claimant argued that he had in the past voluntarily contributed to community development projects. However, regarding the Umunkalu age group, he acknowledged that he would be grouped under the Umunkalu age grade by custom, but he had expressly refused to join the association of the age group. He produced evidence that showed that in 1975 he received a letter inviting him to attend the inauguration of the group, but he declined the invitation. According to the claimant, his refusal to associate with the group was based on his religious principles. Regarding the levy imposed by the Umunkalu age group, he argued that as he was not a member of the age group and did not wish to associate with the group, he had no obligation to pay.

At the Magistrate Court, where the case started, the Chief Magistrate considered the question '(1) whether there was a custom that compels a citizen to join an age group whether he likes or not, and if there is such a custom in Amankalu Alayi, whether such a custom is lawful or has acquired the force of law'.[22] In answer to that question, the judge considered the constitutional implication of the question and held that 'a custom which deprives a citizen a free choice of association runs contrary to … the Constitution of the Federal Republic of Nigeria and therefore cannot acquire the force of law'.[23] The Court therefore found a violation of the right of association and ruled in favour of the claimant. The case was appealed, and it eventually reached the apex court, the Supreme Court. The Supreme Court agreed with the judgment of the lower court, ruled in the favour of the claimant, and found a violation of the constitutional right to freedom of association. According to the Supreme Court:

> 'From the above, it is quite clear that the plaintiff/respondent was not bound to join the Umunkalu age group in particular. He could, if he had wanted, have opted for another. It is also quite clear that his objection is based on religious grounds. It is obvious that the defendants are, as if it were, forcibly inducting him to their

[22] See a summary of the decision of the Magistrate Court in the decision of the Supreme Court (ibid).
[23] ibid.

> age group association. There was abundant evidence to show that the plaintiff/respondent was not a member of the association, did not desire to be a member and that his presumed membership was forced on him by the defendants.'[24]

The decision is significant in the context of the legal pluralism in Nigeria. The decision showed that the courts will uphold the supremacy of the constitutional provision on freedom of association when the provision conflicts with other legal systems existing in the country such as the customary legal system. This is important if considered against the background of strong attachment to customary norms among a large proportion of the citizenry.

Another important case on the tension between customary law and the right to freedom of association is *Egri v Uperi*[25] decided in 1973. The case originated from the customary court where the claimant claimed against the defendant as follows: '[r]eturn of plaintiff's wife called Lucky Onumerulu Ukperi detained at Emede by the defendant since December, 1968, despite demands for her return.' The wife (Lucky Onumerulu Ukperi also known as Lucky) was the daughter of the defendant and the claimant contended that he married Lucky under Isoko general custom. Lucky had returned to her father after a dispute between her and the claimant. The claimant contended that he paid the required "bride price" and is entitled under customary law to get his wife back. His claim failed at the lower courts, and he appealed to the High Court. The High Court ruled in favour of the complainant on the basis of its interpretation of the applicable customary law but acknowledged that:'[t]he court cannot compel a wife to return to her husband as any attempt to do so will be an infringement of her fundamental rights under the Constitution of this country.'[26] However, the High Court judge inexplicably ordered that Lucky should return to the husband but failing to do that, she was ordered to refund the bride price as assessed by the Court. The case was subsequently appealed to the Supreme Court. The Supreme Court reversed the decision of the lower Court. Even though the Supreme Court was of the opinion that the constitutional issue of the freedom of association was not properly canvassed before the court by the parties, the court observed as follows:

[24] ibid.
[25] (1973) 1 SC 299.
[26] ibid.

> 'For our part, all we can say, and we will put it no higher than that, is that it is arguable whether any order, whether made by a customary court or by any other court, that a wife should return, against her will, to her husband would not be inconsistent with her freedom of association as guaranteed by the provisions of section 26 (1) of the Constitution of the Federation. It is also arguable whether such an order would not be contrary to the principles of natural justice, equity and good conscience.'[27]

It is safe to conclude that had the constitutional issue been properly addressed at the Supreme Court, the Court would have found the order made for a wife to return to her husband a violation of the constitutionally guaranteed freedom of association.

VI. Regional International Instrument and Freedom of Association

As stated previously, the development at the regional level plays a significant role in the protection of the right in the Nigerian context. Nigeria is a signatory to the African Charter on Human and Peoples' Rights.[28] Nigeria can be classified as a dualist State because, in section 12 of the Nigerian Constitution, a treaty is required to be domesticated or incorporated into domestic law by legislation before it can have legal effect in the country. The African Charter was incorporated into the domestic law of Nigeria in 1983 through the African Charter on Human and Peoples' Rights (Enforcement and Ratification) Act.[29]

In a landmark decision, *Abacha v Fawehinmi,*[30] the Nigerian Supreme Court clarified the status and implication of the African Charter under Nigerian law. The Court concluded that the African Charter having been incorporated into the Nigerian domestic legal system is binding in the country. The court further held that if there is a conflict between the Charter and another domestic statute, its provisions would prevail over those other statutes because it is presumed that the legislature does not intend to breach an international obligation.

The right to free association is protected under Article 10 of the African Charter. The Article states as follows:

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[27] ibid.
[28] African Union, 1981.
[29] Chapter A9, Laws of the Federation of Nigeria 1990.
[30] *Abacha v Fawehinmi* (2000) 6 NWLR (Pt. 660) 228, See also: *MHWN v Minister of Health & Productivity* [2005] 17 NWLR (Pt. 953) 120.

'1. Every individual shall have the right to free association provided that he abides by the law.

2. Subject to the obligation of solidarity provided for in Article 29 no one may be compelled to join an association.'

It is notable that Article 10 also precludes compulsion to join an association except where it is required to strengthen social and national solidarity.[31] It is also notable that the Charter does not state expressly the restrictions on the right that are allowed. However, the African Commission on Human and Peoples' Rights has stated that governments should not override constitutional provisions or undermine fundamental rights guaranteed by the Constitution and international standards. [32]

Cases based on the interpretation and application of the Article have emanated from Nigeria and have been considered by the African Commission. One of the important cases in this connection is the case of *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria*.[33] The case involved the Movement for the Survival of Ogoni People (MOSOP), a campaign organisation. The claimants in the case alleged the violation of Article 10(1) by Nigeria because they were tried and convicted for murder based on, *inter alia,* their association through their work with MOSOP. There was no evidence to directly connect the claimants to the alleged murder. However, the domestic Tribunal that convicted the claimants held that by their (the claimants') membership of MOSOP, the convicted persons were responsible for the murder, in other words, they were guilty by association. Furthermore, on the facts presented, it appeared that government officials at different times during the trial before the Tribunal, declared MOSOP and the claimants guilty of the charges, without waiting for the official judgement from the Tribunal. According to the Commission, the facts of the case demonstrate a clear prejudice against the organisation MOSOP and its members, which the government has done nothing to justify. The Commission therefore concluded that the unjustified prejudice that the

[31] MK Mbondeyi, 'Improving the Substance and Content of Civil and Political Rights under the African Human Rights System' (2008) 17(2) Lesotho Law Journal 37, 87.

[32] *Civil Liberties Organization v Nigeria, African Commission on Human and Peoples' Rights*, Communication No 101/93 (1995); see also O Amao, *African Union Law: The Emergence of a Sui Generis Legal Order* (United Kingdom: Taylor & Francis, 2018) 125.

[33] I*nternational Pen and Others v Nigeria,* African Commission on Human and Peoples' Rights, Communication Nos 137/94, 139/94, 154/96 and 161/97 (1998).

government had against the organisation MOSOP, and its members constituted a violation of the freedom of association in Article 10.[34]

The Commission succinctly described its approach to the enforcement of the right to freedom of association in another case involving Nigeria, *Civil Liberties Organization v Nigeria*,[35] where it observed that:

> 'Freedom of association is enunciated as an individual right and is first and foremost a duty for the State to abstain from interfering with the free formation of associations. There must always be a general capacity for citizens to join, without State interference, in associations in order to attain various ends. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom. The competent authorities should not over-ride constitutional provisions or undermine fundamental rights guaranteed by the constitution and international human rights standards.'[36]

Furthermore, the Commission elaborated on the freedoms protected under the article in its Resolution on the Right to Freedom of Association. [37] The resolution expanded on the freedoms in the following terms:

> '1. The competent authorities should not override constitutional provisions or undermine fundamental rights guaranteed by the Constitution and international standards;
> 2. In regulating the use of this right, the competent authorities should not enact provisions which would limit the exercise of this freedom;
> 3. The regulation of the exercise of the right to freedom of association should be consistent with State's obligations under the African Charter on Human and Peoples' Rights.'

VII. Application to Trade Union and Civil Society Organisation (CSO)

[34] *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria*, Communication Nos 137/94-139/94 to 154/96-161/97.
[35] *Civil Liberties Organization v Nigeri*a, Communication No 101/93 (1995).
[36] *ibid*, [15] and [16].
[37] Resolution on the Right to Freedom of Association ACHPR /Res.5(XI)92, (1992).

Nigeria has a long history and tradition of trade unionism. As stated previously, apart from the Constitutional guarantee, the Trade Unions Act and the Labour Act contain various provisions related to the registration and activities of trade unions in Nigeria. Despite the statutory provisions, there have been periods of significant tension between trade unions and employers and also between trade unions and the government. Issues relating to freedom of association in the trade relations context take several dimensions. These include the relationship between employers and employees, recognition of trade unions, and the relationship between trade unions and authorities.

With regard to employers, disputes often arose with regard to the treatment of employees, recognition of trade unions, and disputes between trade unions. For instance, in *NUFBTE v Coca Industries Limited Ikeja*,[38] the court stated that where an employee's contract was terminated because of the employee's involvement in trade union activities, the court would declare the termination unlawful because it infringes on the right of the employee to belong to a union. Similarly, in *Management of Harmony House Furniture Company Limited v National Union of Furniture, Fixtures and Wood Workers*,[39] the National Industrial Court of Nigeria found a violation of the right to freedom of association in a case where the employment of the Chairman of the employee's union was terminated because of his union Activities.

Significantly, the right has been extended to casual workers by the Court in Nigeria. In *Patovilki Industrial Planners Limited v National Union of Hotels and Personal Services Workers*,[40] the Court decided that both permanent and casual employees have the right to join or form a trade union. In that case, a trade union sought to unionise the casual workers at the defendant company. The company opposed the unionization arguing that casual workers are not entitled to be unionized. The trade union took the dispute to the Industrial Arbitration Panel. The Industrial Arbitration Panel ruled in favour of the union and the matter was appealed to the National Industrial Court. In a landmark decision, the Court, while affirming the decision of the arbitration panel held that the definition of workers in section 1 (1) of the Trade Unions Act accommodates both permanent and temporary workers. Casual workers are classified as

[38] [2005] 3 NLLR (Pt 8) 206; see also *Mix and Bake Flow Mill Industries Ltd v National Union of Food, Beverages and Tobacco Employees* [2004] 1 NLLR (Pt 2) 247; *Chemical and Non Metallic Products Senior Staff Association v Benue Cement Co Plc* [2005] 2 NLLR (Pt 6) 446; *Hotel & Personnel Services Senior Staff Association v Owena Hotels Ltd, Akure* [2005] 3 NLLR (Pt 7) 163; *Management of Dangote Industries Ltd, Pasta Plant Ebute Ikorodu, Lagos v National Union of Food, Beverage and Tobacco Employees*, Unreported Suit No NIC/2/2008.
[39] NIC/3/86, Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p 187.
[40] Suit No NIC/12/89, Digest of Judgements of National Industrial Court (1978-2006) p 288.

temporary workers, and they therefore have the statutory and constitutional right to join a trade union of their choice.

With regard to the recognition of trade unions, the law requires employers to recognise a duly registered union and respect the membership of their employees in such a union. Failure to recognise such a union is an offence in law.[41] In *Metallic and Non-Metallic Mines Senior Staff Association v Metallic and Non-Metallic Mines Workers Union and Nigerian Mining Corporation*,[42] for instance, the court compelled an employer to give recognition to a union to which its employees are members. Similarly, the National Industrial Court of Nigeria in *The Austrian-Nigerian Lace Manufacturing Company Ltd v National Union of Textile, Garment and Tailoring Workers of Nigeria*[43] ruled that the right of freedom of association requires every employer to give automatic recognition to duly registered trade unions where its employees are members. In *Anigboro v Sea Trucks Ltd*,[44] the Court of Appeal affirmed that employers cannot impose a trade union on their employees. In that case, the court further held that the dismissal of employees who resisted the imposition of a trade union constituted a violation of their right to freedom of association.

Cases have come up for adjudication based on disputes between trade unions themselves. In *Nigeria Union of Teachers v Conference of Secondary School Tutors*,[45] the court considered a case where members of a union had sought to resign from the union to join another union. The union from which the members sought to resign objected to their resignation. The Court of Appeal held that the members could validly and lawfully resign their position membership of the appellant and join a different union in the exercise of their right of freedom of association.

The courts have also considered cases relating to the registration of trade unions. In *Etienam v Registrar of Trade Unions*,[46] five officials of the Customs Preventive Staff Union of Nigeria applied to the Registrar of Trade Unions for the registration of their union. The Registrar,

[41] Labour Act (n 6) section 24(1).
[42] *Metallic and Non-Metallic Mines Senior Staff Association v Metallic and Non-Metallic Mines Workers Union and Nigerian Mining Corporation*, Suit No. NIC/17/85 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p 198.
[43] *The Austrian – Nigerian Lace Manufacturing Company Limited v National Union of Textile, Garment and Tailoring Workers of Nigeria*, Suit No. NIC/1/81 Digest of Judgments of National Industrial Courts (NIC) 1978-2006, p 104.
[44] (1995) 6 NWLR (Pt 399) 35.
[45] (2006) All FWLR (Pt 295) 656.
[46] Unreported Appeal No. LD138A169 (High Court Lagos).

allegedly acting on the instruction of the government, refused to register the union and did not provide any reason for the refusal. The Registrar argued in court that his decision is contained in a classified document with the government and would require a protracted process to gain permission from the government to produce it before the court. The judge rejected the argument and found a violation of the right to freedom of association by the registrar.

Civil Society Organisation (CSO)

Civil society organizations (CSOs) have played a pivotal role in Nigeria's democratic process and human rights promotion over the years. For instance, CSOs were instrumental in the successful collective action that returned Nigeria to democracy in 1999. The framework for the right to freedom of association in theory ensures that these organizations can exist, function, and advocate for diverse issues in the country. However, CSOs frequently face challenges that have implications for the exercise of the right. Such challenges include interference by the government and attempts to stifle their activities, especially when they are critical of government actions or policies. In recent times, the Nigerian government has attempted to restrict the activities of CSOs by introducing laws that are framed in the guise of "national interest", "national security" and the need to ensure "transparency and accountability."

Three key legislative instruments introduced to the parliament that attempted to restrict the right with regard to CSOs are the Protection from Internet Falsehood and Manipulation Bill 2019, the Prohibition of Hate Speeches and For Other Related Matters Bill 2019, and the Civil Society Regulatory Commission Establishment Bill 2020.

Taking the Prohibition of Hate Speeches and For Other Related Matters, or "Hate Speech Bill," as an example, the Bill was purportedly aimed at prohibiting hate speech, discriminatory language, and harassment. The Bill was to be implemented by a proposed "Independent National Commission for the Prohibition of Hate Speeches". Offences were created under the Bill and the Federal High Court was given the jurisdiction to adjudicate on offences created in the Bill. The Bill introduces severe punishment for offences including life imprisonment and death by hanging. The vagueness of the provision and broad generalisation of the offences created alarmed CSOs in the country as to the potential impact of the law for rights. An effective campaign was launched against these attempts by CSOs, the media, and some international organisations, consequently stalling the progress of passing the Bills into law.

In the face of severe opposition, another bill was introduced in the House of Representatives in 2020. The Bill with the title "An Act to Establish the Civil Society Regulatory Commission and For Committed Purposes", also known as the "NGO Bill", was introduced under the guise of strengthening civil society's capacity to promote democracy. The Bill *inter alia* proposed the development of a database of CSOs, the prevention of misuse of donor funds and fraud, the promotion of transparency and accountability, the implementation of effective scrutiny by the legislature and to put in place a Code of Conduct for CSOs. In addition, the Bill gave the Commission to be established under the Bill sweeping powers in the governance of CSOs. The strict regulatory regime proposed in the Bill raised significant concerns about potential government overreach and the stifling of civil society. Concerted opposition to the Bill led to the process of its passage being paused.

Apart from the Bills mentioned above, concerns have also been raised by CSOs regarding amendments included in the Companies and Allied Matters Act (CAMA) 2020. CSOs have alleged that the changes would have a similar effect in some respect as the NGO Bill for instance by granting the government the ability to remove and replace trustees from the board of NGOs. However, a decision of the lower Court in Nigeria has cast some doubt on the potential of the provisions in the CAMA being used to restrict the activities of NGOs.[47]

[47] See *The Board of Incorporated Trustees of Malcolm Omirhobo Foundation v The National Judicial Council of Nigeria & 6 others*, Unreported Suit No: FHC/ABJ/CS/420/2019.