



EXAMINATION OF INTERNATIONAL LABOUR STANDARDS AND THE ROLE OF SUPERVISORY BODIES

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Abstract

The International Labour Organization (ILO) is the major international labour agency with the mandate of ensuring that the world of work or employment is humane and decent. In seeking to achieve this herculean task, the ILO has a system of international labour law, better known as International Labour Standards, which comprise of Conventions, Protocols, Recommendations and Declarations, with varying degree of binding effect. Its memberstates are obligated to enforce ratified International Labour Standards. In evaluating and assessing member-states' compliance, the ILO has two major supervisory bodies saddled with this task: the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA). The work found that though the CEACR requires member-states to submit periodic reports on the application of ratified International Labour Standards, there are no sanction regimes for non-compliance. The work also found that though the CFA is specifically charged with evaluating the compliance of member-states with regards to freedom of association, the right to organize and collective bargaining, there is no procedure for sanctioning erring member-states who violate extant International Labour Standards. The work adopted the doctrinal method of legal research by analyzing, examining and evaluating existing literature and statutes; both primary and secondary sources of law. It is recommended that proper sanction and enforceable measures be adopted by the ILO in the event of breach or non-compliance with ratified international labour standards. Also, the current supervisory bodies should be overhauled as they are ineffective in their approach and strategies.

Keywords: International labour standards, Committee of Experts, Committee on Freedom of Association.

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Introduction

The efficacy of any legal regime is in its application and enforcement. A legal regime is not measured by its sound language, intention or even the legal authority making it; it is judged and assessed by its applicability and enforceability. Since laws are made to achieve set objectives, it is only where such set objectives are achieved that such laws are termed effective. Recognizing this, every legal regime creates a mechanism or mechanisms for the enforcement of laws in order for the laws to be effective. Thus, in any given Legal Framework, we find being created bodies or persons like Commissions, Councils, Agencies, and Bureaus, which

are tasked with the administration, management and enforcement of the laws. This is true even in international law. the United Nations Organization (UN) carries out its functions through its seventeen bodies or agencies saddled with specific responsibilities: for instance the United Nations Children Fund (UNICEF). The United Nations Food and Agricultural Organization, the United Nations International Civil Aviation Organization, the United Nations International Monetary Fund, the World Health Organization, World Bank Group and others.

One such important UN agency is the International Labour Organization (ILO), which is responsible for setting the global labour, employment and industrial relations agenda. The ILO seeks to achieve this by prescribing minimum or baseline standards of labour law and practice which its member-states are to ratify and comply with in their domestic law and practice. These standards are also called International Labour Standards and they are used to assess and evaluate member-states. International Labour Standards comprise of Conventions, Recommendations, Protocols and Declarations, which member-states have ratified and are obligated by the ILO Constitution to apply and enforce at domestic levels. To ensure compliance, the ILO has two supervisory bodies: the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Committee on Freedom of Association (CFA). The issue now arises when member-states refuse, fail or neglect to apply ratified International Labour Standards. Being supervisory bodies of the ILO, the CEACR and the CFA has adopted procedures and strategies of ensuring that ratified International Labour Standards are complied with at the domestic level. This work examines the ILO, its Constitution, Organs, International Labour Standards and Supervisory Bodies. In doing so, the work adopts the doctrinal method of legal research, which involves examining, analyzing and evaluating both primary and secondary sources. The work has a conclusion and some recommendations.

The International Labour Organization (ILO) The Objectives of the ILO

To fulfill its mandate, the ILO has some set objectives, which can be sourced from the Preamble to its Constitution.¹ These objectives are:

¹ Adopted first as part of the Treaty of Versailles in 1919 (Part XIII). Published on 1st April, 1919 and entered force on the 28th June, 1919. The ILO Constitution has undergone some modifications through amendment in 1922, which entered force on 4 June 1934; the amendment of 1946, which entered into force on 20 April 1948; the

1. Universal and lasting peace can be established only if it is based upon social justice.
2. Labour is not a commodity.
3. Freedom of expression and association are essential to sustained progress.
4. All human beings, irrespective of race, creed or sex have the right to pursue both their material well-being and their spiritual development in conditions of equal opportunities.

The learned authors, Oji and Amucheazi, state that the aims and objectives of the ILO are to promote right at work, encourage decent employment opportunities, enhance social protection and strengthen dialogue on work-related issues.² Upon these objectives, the ILO drives its global agenda of regulating labour and employment among member states. In our view, though these objectives are laudable, they are aspirational and idealistic. Whether or not they are achievable, is another different issue altogether. As the work will demonstrate, the ILO system does not have the capacity to ensure these objectives are met at domestic levels within memberstates.

An Overview of the Constitution of the International Labour Organization

The ILO Constitution, consists of five Chapters: Chapter I deals with the Organisation³; Chapter II lays down procedure at the International Labour Conference⁴; Chapter III discusses general matters like application of Conventions to non-metropolitan territories, amendment of the Constitution, interpretation of the Constitution and Conventions and Regional Conferences⁵; in Chapter IV, Miscellaneous matters like the Legal status of the ILO and Privileges and Immunities are provided for.⁶ There is an annexure attached to the ILO Constitution which reproduces the Philadelphia Declaration of 1944 at the 26th Session of the ILC. Also attached to the ILO Constitution is the General Standing Orders applicable to its Conferences.⁷ The United Nations and ILO Agreement, is another annexure to the ILO Constitution.⁸

The Major Organs and Structure of the International Labour Organisation

The work examines the three (3) organs of the ILO, which also give the ILO its structure.⁹

² Oji Elizabeth and Amucheazi Offornze *Employment and Labour Law in Nigeria* (Mbeyi & Associates (Nig.) Ltd., 2015) 430.

³ See Articles 1 to 13 of the ILO Constitution.

⁴ See Articles 14 to 34 of the ILO Constitution.

⁵ See Articles 35 to 38 of the ILO Constitution.

⁶ See Articles 39 and 40 of the ILO Constitution.

⁷ It consists of 76 Articles, covering matters of voting, quorum, procedure etc. at the International Labour Conference (ILC).

⁸ This consists of 20 (twenty) Articles which provides for Reciprocal representation, exchange of information and documents, assistance to the Security Council and Relations with the ICJ.

amendment of 1953, which entered into force on 20 May 1954; the amendment of 1962, which entered into force on 22 May 1963; and the amendment of 1972, which entered into force on 1 November 1974.

⁹ See Article 2 of the ILO Constitution.

¹⁰ Article 3.1 of the ILO Constitution.

They are the International Labour Conference (also called the General Conference), the Governing Body and the International Labour Office.

233

i. The International Labour Conference (ILC)

This is the decision-making organ of the ILO which is made up of the representatives of Members. The meeting which is held from time to time as occasion may require, and at least once every year, has four representatives from each Member State; two shall be Government delegates and the other two shall be delegates representing employers and employees respectively.¹⁰ Perhaps to ensure and enhance proper decision making, each delegate may be accompanied by advisers who shall not exceed two in number for each item on the agenda of the meeting and at least one of the advisers should be a woman.¹⁰ The names and the credentials of the prospective delegates are sent to the International Labour Office by each Member State and the ILC reserves the right by two-thirds of votes cast to refuse to admit any delegate or adviser who was not properly nominated according to the Article.¹¹ At the ILC, every delegate is entitled to vote individually on all matters.¹² If any Member State refuses to nominate one of the non-government delegates whom it is entitled to nominate, the other nonGovernment delegate shall be allowed to sit and speak but shall not vote.¹³ The place or venue of the ILC meeting is within the prerogative of the Governing Body and same shall be announced or declared at the previous meeting.¹⁴ The ILC is responsible for the adoption of proposals drawn up and recommended by the Governing Body in the form of Conventions or Recommendations, depending on the nature of the subject matter. It is at the ILC, that spent Conventions are abrogated or obsolete Recommendations are withdrawn.¹⁵ The procedure and mechanism for the abrogation of a Convention, has not been ratified by the ILO, because it has not received the necessary ratifications from Member States when it was first mooted in 1997.¹⁶

ii. The Governing Body

Article 7.1 of the ILO Constitution establishes a Governing Body, which is composed of fifty-six (56) persons. Of the latter number, twenty-eight (28) represent Governments of Member States, fourteen (14) represent employers and fourteen (14) represent employees. The Government contingent of 28 persons is further broken down as follows: ten (10) shall be appointed by the Members of chief industrial importance¹⁷ while the remaining eighteen (18) shall be selected by the Government delegates to the Conference, excluding the ten (10)

¹⁰ Article 3.2 of the ILO Constitution.

¹¹ See Article 3.8 and 3.9 of the ILO Constitution.

¹² Article 4.1 of the ILO Constitution.

¹³ See Article 4.2 of the ILO Constitution.

¹⁴ See Article 5 of the ILO Constitution.

¹⁵ Erugo Sam *Introduction to Nigerian Labour Law, Contract of Employment and Labour Practice* (Princeton & Associates, 2019) 436-437

¹⁶ Servais Jean-Michel *International Labour Law* 3rd revised edn (Kluwer Law International, 2011) 49

¹⁷ Members of chief industrial importance are determined from time to time by the Governing Body assisted by an impartial selection committee as provided by Article 7.3 of the ILO Constitution.

delegates appointed by the Government.¹⁸ The Governing Body shall serve for a period of three years in office but if for any reason elections into the office are not held on the expiration of that period, the Governing Body shall remain in office until such elections are held.¹⁹ It is our view that the number of Government representatives, is too much. It gives more powers to them to control and/or influence the decisions of the Governing Body. This arrangement does not favour developing nations because their governments are responsible for sponsoring the delegates and the delegation to the ILC and it may become a case of “he who pays the piper, dictates the tune.” An important function of the Governing Body is the appointment of the Director General of the ILO. The Director-General, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.²⁰ The Director-General or his Deputy shall attend all meetings of the Governing Body.²¹ The current Director-General of the ILO is Gilbert F.

Houngbo from Togo, the first African to hold that office.

iii. The International Labour Office

This is controlled by the Governing Body. The staff of the International Labour Office (the Office), is appointed by the Director-General of the ILO under regulations approved by the Governing Body who are to be from different nationalities and a certain number should be women.²² The functions of the Office include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, examination of subjects proposed to be brought before the Conference for the conclusion of international Conventions and the conduct of special investigations as may be ordered by the Conference or the Governing Body.²⁴ The Office may, subject to the directions of the Governing Body, prepare the documents on the various items of the agenda for the meetings of the Conference; accord to governments at their request all appropriate assistance within its powers in connection with the framing of laws and regulations on the basis of the decisions of the Conference and the improvement of administrative practices and systems of inspection; carry out the duties required of it by the Constitution in connection with the effective observance of Conventions and edit and issue, in such languages as the Governing Body may think desirable, publications dealing with problems of industry and employment of international interest.²³

Notwithstanding the enumerated functions and duties of the Office, it shall have such other powers and duties as may be assigned to it by the Conference or by the Governing Body.²⁴

These three organs of the ILO, make up the structure through which the ILO operates and carries out its functions of regulating international labour law. What stands the ILO out is it's

¹⁸ See Article 7.2 of the ILO Constitution.

¹⁹ See Article 7.5 of the ILO Constitution.

²⁰ See Article 8.1 of the ILO Constitution.

²¹ See Article 8.2 of the ILO Constitution.

²² See Article 9.1, 9.2 and 9.3 of the ILO Constitution.

²⁴ See Article 10.1 of the ILO Constitution.

²³ See Article 10.2(a)-(d) of the ILO Constitution.

²⁴ See Article 10.3 of the ILO Constitution.

unique system of tripartism i.e. leadership is shared by the government of Member States, representatives of both employers and employees. This helps to give a voice to the employees whose issues are also important during the ILC. However, the number of Government representatives on the Governing Body poses a great challenge to objectivity especially to developing countries, where governments wield so much power.

International Labour Standards

International Labour Standards, consists of ILO instruments which cumulatively and complementarily set the benchmarks for the law and practice of global labour, employment and industrial relations. As far as the ILO is concerned, these instruments comprise of Conventions, Treaties, Protocols, Recommendations and Declarations. The terms Treaty, Convention, Charter and Protocol, are used interchangeably according to Article 2(1)(a) of the Vienna Convention on the Law of Treaties 1969. So, Erugo states that the terms Treaty, Convention, Charter and Protocol, are used interchangeably here, citing Article 2(1)(a) of the Vienna Convention on the Law of Treaties 1969, which defines a “Treaty” as “an international agreement concluded between States in

237

written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.”²⁵In this work, we will discuss them separately.

Conventions

A Convention is defined as a form of agreement between groups, especially under international law.²⁶ The emphasis in this definition is that a Convention governs relationships between groups in international law. Conventions are also instruments that create international obligations for States that ratify them.²⁷ The International Labour Office of the ILO, states that Conventions are instruments which on ratification create legal obligations.³⁰ Abugu opines that Conventions are legally binding instruments which create international obligations for the States which ratify them, hence they are open to ratification.²⁸ Along the line of Erugo, Amucheazi and Abba posit that Conventions, also known as treaties, are designed to create international obligations for the states that ratify them.³¹From these definitions, two things are worthy of note: first, that a Convention is a legally binding agreement between States or groups in international law. This agreement creates legal obligation which require adherence by parties thereto. Second, a Convention must be ratified in order have binding effect on the States thereto. The need for ratification is special with regard to international labour law in that, when a Convention is made by the ILO same has binding effect irrespective of the ratification or not

²⁵ Erugo Sam (n.17) 418, especially footnote 1.

²⁶ Oji and Amucheazi, (n.3) 433.

²⁷ Swepston Lee “International Labour Law” in Blanpain, R. (eds.) *Comparative Labour Law and Industrial Relations in Industrialized Market Economies* (Wolters Kluwer, 2010) 143. ³⁰

International Labour Office, *Handbook of Procedures relating to International Labour Conventions and Recommendations*, 2019, pg. 3.

²⁸ Abugu Joseph A *Treatise on the Application of ILO Conventions in Nigeria* (University of Lagos Press: 2009) 6.

³¹ Amucheazi Offornze and Abba Paul *The National Industrial Court of Nigeria, Law, Practice and Procedure* (Top Design: 2013) 288.

of member States.²⁹ Ratification is only a formal act which is to bring the Convention in line with domestic practices.

The ILO process of making Conventions, is worthy of note. The Governing Body sets the agenda for the Conference by considering any proposal by a government, an organization representing employers or workers or even an organization of international public law.³⁰ Any government of a Member State, can object to the inclusion of one or more items on the Conference agenda but the Conference can go ahead with any item if two-thirds of the delegates present so agree.³⁴ Draft instruments are in principle, subject to the double-discussion procedure by the Conference before they are adopted. The double-discussion procedure, starts with a report in which the International Labour Office, provides detailed information on national legislation and practice and any other useful information. A questionnaire is drawn up by the Office to which the governments are invited to respond, including reasons for their replies, after they have consulted with their most representatives employers' and workers' associations. These documents must reach the Office at least 18 months before the opening of the Conference session and the governments have in principle seven months in which to react. The Office uses the replies to draw up a further report indicating the main segments requiring consideration and submits it to the Conference, where the matter is usually considered by one of the technical committees. This is discussed at the full sitting of the Conference (known as the first discussion). Based on the first discussion by the Conference, essentially from the replies received from the questionnaires, the Office prepares one or more draft conventions or recommendations and communicates them to the governments, which must state within three months, after consulting the most representative organizations of employers and workers, whether they have amendments or suggestions to make. A final draft report is then made by the Office and transmits it to the governments not less than three months before the opening of the session of the Conference.³¹ The second discussion sees a technical committee examining the report and submits same to the Conference. A drafting committee then prepares the final text of the convention or recommendation for adoption by the Conference by two-thirds majority of the delegates present. If the convention obtains only a simple majority on the final vote, the Conference immediately decides whether to refer it to the drafting committee for drafting as a recommendation. The draft can also be the object of a special convention between Member States wishing to adopt it.³² Two copies of the convention or recommendation are signed exclusively by the President of the Conference and the DirectorGeneral of the ILO. After this signing, one copy is sent to the ILO's archives and the other is forwarded to the United Nations Secretary-General. The ILO Director-General sends a certified copy to each of the Member States.³³

²⁹ Anisha Edlyne. "Linking Social Protection to Labour Standards: Policy Issues in Nigeria" in Adewumi, F. (eds.) *Furthering Social Protection in Nigeria: Issues and Perspectives* (Michael Imuodu National Institute for Labour Studies (MINILS), 2011) 108.

³⁰ Servais Jean-Michel (n.18) 68.

³⁴ Ibid.

³¹ Article 39, paras. 7 and 8 of the ILC Standing Orders.

³² See Article 21 of the ILO Constitution and Article 40 of the ILC Standing Orders.

³³ Servais Jean-Michel(n.18) pp.69-70.

However, in special instances, e.g. in emergencies, the Governing

Body, may opt for the simplified single-discussion procedure³⁴, which is the first discussion stage of the discussion. The participatory process of Convention making is seen in the fact that Conventions are drawn up by representatives of governments, employers and workers, and are adopted at the ILO's annual International Labour Conference. Once a standard is adopted, member states are required under the ILO Constitution to submit them to their competent authority (normally the parliament) for consideration. In the case of conventions, this means consideration for ratification. If ratified, the convention generally comes into force for that country, one year after the date of ratification. Ratifying countries commit themselves to applying the convention in national law and practice and reporting on its application at regular intervals.³⁹ Given its tripartism nature of operations, the ILO seeks to create a robust method and process of adoption of its instruments to foster wider participation and ensure seamless application. However, we note that despite the participatory process of Convention making and the post-Convention making step of ratification, the application of such Conventions is usually difficult to come by.

Conventions may be revised, withdrawn or abrogated. The process for revision is like those used in the double-discussion for the adoption of a Convention.³⁵ When a Convention has been revised, the Conference adopts an entirely new convention that contains both new or amended provisions and others from the original convention. The earlier convention continues to be binding on the States that ratified it, but the final clauses of each convention specify the effect of any revision.³⁶ The procedures for withdrawal and abrogation are the same as those of adoption of the Convention, if the constitutional amendments to that end, are ratified.³⁷ The latter accords with the *acte contraire*³⁸ principle.³⁹

Regarding ratification, Article 19 of the ILO Constitution, imposes an obligation on a Member State to take such action as may be necessary to make effective the provisions of the convention. Such necessary actions vary from Convention to Convention but may be legal, involve training, or information. For ILO fundamental standards, it may require simply that a State refrains from acting in a certain way, impose some form of positive action to promote freedom of association and the right to collective bargaining, the elimination of forced labour and the abolition of child labour, the equality of opportunity and treatment.⁴⁰ The ILO Governing Body has identified eight (8) Conventions as fundamental, which cover subjects that are considered paramount in the world of work: principles and rights at work. The range from freedom of association and the effective recognition of the right to collective bargaining,

³⁴ See Article 38 of the ILC Standing Orders for detailed discussion of the stages of such procedure.

³⁹ Erugo Sam(n. 17) 441-442.

³⁵ Article 44 of the ILO Standing Orders.

³⁶ Servais Jean-Michel (n.18) 70.

³⁷ Ibid.

³⁸ That is an act contrary to, an action in violation or an act that would defeat the spirit and purpose of the adoption of the Convention.

³⁹ See Article 45b of the ILC Standing Orders.

⁴⁰ Servais Jean-Michel (n.18) 76.

the elimination of all forms of forced or compulsory labour, the effective abolition of child labour and the elimination of discrimination in respect of employment and occupation. These principles are also covered on the ILO's Declaration on Fundamental Principles and Rights at Work 1998.⁴¹ The fundamental conventions are: Freedom of Association and Protection of the Right to Organise Convention, (No. 87) of 1948, Right to Organise and Collective Bargaining Convention, (No. 98) of 1949, Forced Labour Convention, (No. 29) of 1930, Abolition of Forced Labour Convention, (No. 105) of 1957, Minimum Age Convention, (No. 138) of 1973, Worst Forms of Child Labour Convention, (No. 182) of 1999, Equal Remuneration Convention, (No. 100) of 1951 and Discrimination (Employment and Occupation) Convention, (No. 111) of 1958. Added to the above are four (4) Conventions which the Governing Body has designated as "priority conventions." Since 2008, these four Conventions are referred to as the Governance Conventions as they are identified by the ILO Declaration on Social Justice for a Fair Globalisation.⁴⁷ These four Conventions are: Labour Inspection Convention, (No. 81) of 1947, Employment Policy Convention (No. 122) of 1964, Labour Inspection (Agriculture) Convention, (No. 129) of 1969 and Tripartite Consultation (International Labour Standards) Convention, (No. 144) of 1976. Nigeria has ratified the eight fundamental Conventions and two of the four Governance Conventions (Labour Inspection Convention, (No. 81) of 1947 and Tripartite Consultation (International Labour Standards) Convention, (No. 144) of 1976).⁴² It is clear and evident that Conventions are a major source of international labour standards. They are more elaborate, comprehensive and impose obligations on Member States. Being a product of the process of tripartism, member-states are supposed to apply them without hitches or reservations. The latter is not the case for different reasons.

Treaties

It has been stated that a Treaty is an international agreement, especially between States, which is under international law.⁴³ A judicial definition buttresses this point and was held in the case of *Fawehinmi v. Abacha*⁴⁴, as follows:

243

The term treaty has been variously identified. Suffice it to say that a treaty is a compact, an agreement or a contract—bilateral or multilateral— between sovereign states whereby they establish or seek to establish a relationship between themselves governed by international law. A treaty, therefore, in a broad sense, is similar to an agreement under the civil law. The difference between an ordinary civil contract and a treaty is that while the former is an arrangement between individuals and derives its bindingness from municipal

⁴¹ Oji Elizabeth and Amucheazi Offornze(n.3) 434.

⁴⁷ Ibid, p.435.

⁴² Abugu Joseph(n.34) 61.

⁴³ Oji Elizabeth and Amucheazi Offornze (n.3) 434.

⁴⁴ (2000) 4 SC (Part II) 1 or (2000) 6 NWLR (Part 660) 228, pp.314-315, paras. B-D, per Achike, JSC (as he then was).

or domestic law of a state, a treaty on the other hand derives its binding force and effect from international law.

Erugo and Amucheazi and Abba, view Conventions as equivalent to Treaties given that under the Vienna Convention on the Law of Treaties, 1969, it provides in Article 2 thereof, that such agreements are designed to create international obligations for the states that ratify them and they are international agreements by whatever name called: charter, concordant, convention, covenant, declaration or protocol. Therefore, such agreements concluded between States in written form and governed by international law, whether such agreement is embodied in a single instrument or in two or more related one is a treaty.⁴⁵ Fundamentally, ILO Conventions differ from other international standards because the Conference that adopts them has a tripartite structure, and they are designed to be more effective than normal diplomatic treaties.⁵² While it may appear that a Treaty is between States, and so could be bilateral or multilateral in nature, an ILO Convention has a wider application among Member States who ratify same.

The unique setting of the ILO, especially its tripartism and the processes in which Conventions are adopted, gives it a wider ambit than a Treaty which is bilateral in nature (except for those that are multi-lateral). The rights and duties of such bilateral Treaties are within those two contracting States whereas in ILO Conventions, Member States are bound. Additionally, ILO Conventions, require regular reporting on compliance by Member States unlike other forms of Treaties.

Protocols

In the same Article 2 of the Vienna Convention on the Law of Treaties, 1969, a Protocol is equated with a Treaty. It seems that a Protocol is an addendum to a Convention or a Treaty regarding international labour law or international labour standards. It is submitted that the International Labour Conference, also adopts protocols to existing conventions.⁴⁶ A Protocol is necessary when the aim is to amend but a few provisions and obviates the need to adopt an entirely new convention. It does not close the original convention to the ratification, but in every other respect, it has the same effects as a revising convention.⁴⁷ Erugo, also provides another aspect of a Protocol when he cites the Protocol of 2014 (P029) to the Forced Labour Convention, 1930.⁴⁸ The said Protocol to the Convention came into force on 09 November, 2016, some 86 years after the original Convention. From the Preamble of the said Protocol, the historical background of the Convention was highlighted and then the subsequent Articles of the Protocol clearly and succinctly provide for the purpose of the Protocol, which is a contemporary code against Forced Labour. Therefore, Erugo concludes, and rightly so that:

245

⁴⁵ Amucheazi Offornze and Abba Paul (n.35) 289 and Erugo Sam(n.17) 418.

⁵² Swepston Lee(n.32) 143.

⁴⁶ Servais Michel(n.18) 70.

⁴⁷ Ibid, pp.70-71.

⁴⁸ Convention No. 29.

⁵⁶ At 462.

The Protocol has reasonably taken care of recent developments filling the gap left by the older regime of international labour standards in addressing current issues. The special recognition of the modern dimension in human trafficking, and the obligations to criminalize the atrocities as well as provision of access to justice and compensation to victims of forced and compulsory labour are commendable leaps in the fight.⁵⁶

We can deduce from the above and with particular reference to international labour law, that a Protocol may be considered as a follow-up or back-up instrument to an existing labour Convention. It serves the purposes of revising the existing Convention or to bring the said existing Convention into currency with recent developments. The existing Conventions abide side by side the Protocol and are thus construed and applied by the ILO and its member-states.

Recommendations

A recommendation is a unique and peculiar instrument to the ILO. Unlike a Convention which is binding on Member States, a recommendation aims at providing guidance for policy, legislation, and practice.⁴⁹ It does not have binding force of law like conventions and are not subject to ratification; they however are evidence of the thinking of the international labour community on the issues addressed therein.⁵⁰ They are considered merely advisory and nonbinding on members, legally speaking.⁵⁹ It has been described as an instrument which contains only directions for the Member States.⁵¹ Recommendations are not designed to create obligations but to provide guidelines for government action, hence they are not open to ratification.⁶¹ Also, a recommendation has been held to be a source of explanation and elaboration on the full import of the standards laid down in Conventions.⁵² Finally, it is stated that recommendations are merely declaratory principles by the ILO substantiating on the provisions of ILO Conventions, and are not designed to create international obligations for member states of the ILO, but merely to provide guidelines for government action. They are used to supplement the provisions of a convention that lays down the basic rules, while the recommendation contains the more detailed provisions for the application of the convention and guides governments on how to implement it.⁵³ Recommendations are also considered most appropriate when a subject is not yet ripe for the adoption of a convention. Thus, the adoption of a recommendation, may pave the way for the adoption of a convention on the same subject matter several years later.⁵⁴ Two things are clear from this discussion on recommendations: First, they are directory or advisory and nonbinding. They do not create obligations on Member States like Conventions. At best, they explain the provisions of a convention or guide a Member State on how to implement a convention. Second, they are both made by the ILO during the

⁴⁹ Swebston Lee(n.32) 143.

⁵⁰ Oji Elizabeth and Amucheazi Offornze(n.3) 436.

⁵⁹ Anisha Edlyne(n.36) 108.

⁵¹ Marin Enrique "The Employment Relationship: The Issue at the International Level" in Davidor, G. and Langille, B. (eds) *Boundaries and Frontiers of Labour Law* (Hart Publishing, 2006) 351. ⁶¹ Abugu Joseph(n.34) 6.

⁵² Erugo Sam(n.17) 419, especially footnote 5.

⁵³ Amucheazi Offornze and Abba Paul(n.35) 289.

⁵⁴ Ibid.

ILC. In fact, when a recommendation is adopted, it is communicated to Member States, just as a Convention is communicated.⁵⁵

Declarations

In the same Article 2 of the Vienna Convention on the Law of Treaties, 1969, a Declaration is also equated with a Treaty. It is usually used for reference texts issued by the Conference or Governing Body. Their contents vary considerably depending on whether they proclaim fundamental principles or general technical standards.⁶⁶ They cover social policy instruments of widely varying origins.⁶⁷ As it pertains to the ILO, we can safely say that a Declaration is an affirmative pronouncement or statement emphasizing Conventions. The first Declaration was done in 1944, which was known as the Declaration of Philadelphia. It was adopted and incorporated into the ILO Constitution of 1946. This Declaration spells out four (4) fundamental principles: first, that labour is not a commodity. Second, that two human rights, freedom of expression and association, are of vital importance. Third, is the war on poverty and want. Fourth and lastly, the principle of tripartism. The Declaration then sets out a ten-point programme of action, which include full employment and the raising of standards of living etc.⁵⁶

The Declaration on Fundamental Principles and Rights at Work 1998, which essentially and radically elevated the eight (8) Core Labour Conventions and demands that: [A]ll Members , even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the

Organization to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions.

In effect, the said Declaration of 1998, only brought to the fore, the said eight Core Labour Conventions and charged Member States, both those who have ratified all those Core Labour Conventions and those who must ensure that the principles of those Conventions are achieved or met in the States. The Declaration's follow-up procedures, involve annual reports by all States that have not ratified all eight of the fundamental Conventions, and the examination of these reports by a panel of Expert Advisers and the Governing Body. Global Reports are also provided for each of which originally focused on one of the four subjects covered and examined its application around the world.⁵⁷ The 1998 Declaration was amended in 2022 at the 110th Session of the International Labour Conference in Geneva.⁵⁸ In 2008, the ILO adopted the

⁵⁵ Article 19(6) of the ILO Constitution. ⁶⁶ ServaisJean-Michel(n.18) 97. ⁶⁷ Ibid.

⁵⁶ Servais Michel(n.18) 28.

⁵⁷ Swepston Lee(n.32) 146.

⁵⁸ See

<https://www.ilo.org/ilc/ILCSessions/110/reports/texts->

Declaration on Social Justice for a Fair Globalization, which builds on previous Declarations: of Philadelphia 1946 and Fundamental Principles of 1998. The 2008 Declaration, was a contemporary attempt to express ILO's contemporary vision in the era of globalisation.⁵⁹ The 2008 Declaration institutionalizes the Decent Work Agenda of the ILO. At the 2010 International Labour Conference, the 2008 Declaration was followed up by a reorganization of the ILO's reporting on fundamental rights and on other basic subject, with a rotating system of reports now being implemented.⁶⁰

249

Worthy of mention is the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, which was initially adopted by the Governing Body in 1976 but has undergone updates in 2000 and 2006.⁷³ The crux of the latter Declaration, is the independence of trade union movement viz-a-vis multinational corporations. In all, Declarations are ILO's strategy of drawing attention to certain Conventions whether same have been ratified by Member States. It is like an attention-grabber or emphasis-maker to ILO Instruments. When Declarations are made, it affords the ILO, the opportunity of monitoring the implementation of such Conventions which are highlighted or emphasized amongst Member States that have not ratified same. While for states which have ratified same, it serves as a reminder of the obligations imposed therein.

From the foregoing, what we refer to as International Labour Standards or International Labour Law, is the network of ILO Instruments—Conventions, Treaties, Protocols, Recommendations and Declarations, which cover different aspects of the world of work and which member-states are obligated to perform in good faith.

1. Supervisory Bodies

To achieve its laudable objectives contained in its numerous Instruments, the ILO has two major supervisory bodies. These are the Committee of Experts on the Application of Conventions and

Recommendations (CEACR) and the Committee on Freedom of Association (CFA).

The Committee of Experts on the Application of Conventions and Recommendations (CEACR)

This Committee was established in 1926, to serve as a Body to track the application of ILO Conventions and Recommendations. Most supervision takes place based on regular reporting and dialogue. The reports supplied by governments on the application of Conventions and Recommendations, are examined in the first instance by the Committee, which is composed of twenty (20) independent persons⁶¹ appointed by the Governing Body on the proposal of the

[adopted/WCMS_848632/lang--en/index.htm](#). Accessed on 6th March, 2023

⁵⁹ Ibid.

⁶⁰ Swebston Lee(n.32) 146.

⁷³ Ibid.

⁶¹ Swebston Lee(n.32) 163.

Director-General in the light of their professional and moral qualities like confirmed legal authority, and demonstrated impartiality and independence of mind.⁶² The Committee holds office for a term of three years and is renewable. Governments provide information to the Committee on four points: one, the measures taken to bring the conventions and recommendations adopted by the International Labour Conference before the competent national authorities.⁶³ Two, the effect given to ratified conventions.⁶⁴ The latter is achieved by delivering from governments Report forms approved by the Governing Body are filled by the governments. Three, the effect given to ratified conventions in non-metropolitan territories.⁶⁵ Four, the position of national law and practice regarding conventions that have not been ratified and to recommendations.⁶⁶ The Committee makes a report of its findings and submits to the Governing Body. The Report is prepared in hard copy as the Handbook of Procedures relating to International Labour Conventions and Recommendations and also domiciled in the website of the ILO. The Committee's comments take the form of either 'observations' contained in its printed report or of 'direct requests' addressed directly to the government concerned.⁶⁷ The Committee also prepares general surveys each year, on one or several related Conventions and

Recommendations. The reports of the Committee are submitted to a tripartite Committee on the Application of Conventions and Recommendations at each session of the International Labour Conference.⁶⁸

The current Report of the Committee was published in February 2023.⁸³ As it relates to Nigeria, reports on eight (8) Conventions were received and examined. These Conventions are Conventions 026,⁶⁹ 029⁷⁰, 088,⁷¹ 095,⁷² 105,⁷³ 138,⁷⁴ 144⁷⁵ and 182.⁷⁶ Mention will be made of the Committee's report on Convention 144. On Article 1 of the Convention, which deals with consultations with representative organizations, the Committee expressed the firm hope that the pending legislative reforms, particularly the National Labour Institutions Bill still pending before the National Assembly, would be finalized without further delay. It reiterated its request that the Government report on the results of the reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of

⁶² Servais Jean-Michel (n.18) 304.

⁶³ Article 19, paras. 5(c), 6(c) and 7(a), (b)(iii) of the ILO Constitution.

⁶⁴ Article 22 of the ILO Constitution.

⁶⁵ Article 35 of the ILO Constitution.

⁶⁶ Article 19, paras. 5(e), 7(a), (b)(iv), 6(d), 7(a)(b)(v) of the ILO Constitution.

⁶⁷ Ibid.

⁶⁸ Ibid. 83

See https://www.ilo.org/global/about-the-ilo-newsroom/news/WCMS_868021/langen/index.htm. Accessed on 11th August, 2023.

⁶⁹ Minimum Wage-Fixing Machinery Convention, 1928, ratified by Nigeria in 1961.

⁷⁰ Forced Labour Convention, 1930, ratified by Nigeria in 1960.

⁷¹ Employment Service Convention, 1948, ratified by Nigeria in 1960.

⁷² Protection of Wages Convention, 1949, ratified by Nigeria in 1960.

⁷³ Abolition of Forced Labour Convention, 1957, ratified by Nigeria in 1960.

⁷⁴ Minimum Age Convention, 1973, ratified by Nigeria in 2002.

⁷⁵ Tripartite Consultation (International Labour Standards) Convention, 1976, ratified by Nigeria in 1994.

⁷⁶ Worst Forms of Child Labour Convention, 1999, ratified by Nigeria in 2002.

association, as required under this Convention. In this context, since 2004, the Committee has also consistently reminded the Government that it is important for employers' and workers' organizations to enjoy the right to freedom of association, without which there could be no effective system of tripartite consultation.⁷⁷ The Committee also requested the Government to indicate the outcome of the meetings held with the stakeholders in April 2018 in relation to the reforms, and to provide a copy of the relevant legislation once adopted. The Committee notes the Government's reference in its report to the inauguration of the National Labour Advisory Council (NLAC) for 2021–25. According to information available on the Federal Ministry of Information and Culture website, during the inauguration, the Government indicated that, from 2nd to 4th March 2020, the Ministry of Labour had collaborated with the Nigeria Labour Congress (NLC), the Trade Union Congress (TUC) and the Nigeria Employers' Consultative Association (NECA) in reviewing the Draft National Labour Bills, which were withdrawn from the National Assembly for review and resubmission. At that time, the Government further indicated that the adoption of the pending legislative reforms would expand the scope and functions of the NLAC. The Committee therefore expressed once again the firm hope that the pending legislative reforms, will be finalized and adopted without further delay.⁷⁸ It also reiterated its request that the Government provide detailed information on the results of the reform and its impact on the improvement of consultations with representative organizations that enjoy freedom of association, as required under the present Tripartite consultation Report of the Committee of Experts on the Application of Conventions and Recommendations Tripartite consultation 709 Convention.

253

Discussing Article 5(1) of the Convention, the Government reported that the social partners are consulted on issues related to international labour standards, particularly regarding the possibility of ratifying ILO Conventions, as well as in relation to reports on ratified Conventions submitted to the ILO pursuant to article 22 of the ILO Constitution.⁷⁹ Furthermore, the Committee noted that the

ILO is currently supporting the development of the first National Industrial Relations Policy and the Decent Work Country Programme (DWCP) III for Nigeria. The Committee requested the Government to continue to provide updated, detailed information on the content, outcome and frequency of tripartite consultations held on all matters concerning international labour standards covered by the Convention, including in relation to: questionnaires on Conference agenda items (Article 5(1)(a)); proposals to be made to the competent authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the ILO Constitution (Article 5(1)(b)); the re-examination at appropriate intervals of unratified Conventions and Recommendations to which effect has not yet been given (Article 5(1)(c)); questions arising out of reports to be presented on the application of ratified Conventions (Article 5(1)(d)); and proposals concerning the possible denunciation of ratified Conventions (Article 5(1)(e)).⁸⁰

⁷⁷ See https://www.ilo.org/global/about-the-ilo-newsroom/news/WCMS_868021/langen/index.htm. Accessed on 11th August, 2023.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

Reviewing Article 6 of the Convention, which deals with operation of the consultative procedures, the Committee noted that the Government did not provide information in this regard. The Committee therefore reiterated its request that the Government indicate whether, in accordance with Article 6, the representative organizations have been consulted in the preparation of an annual report on the working of the consultation procedures provided for in the Convention and, if so, to indicate the content and outcome of these consultations.⁸¹ The above Report on Nigeria, is like a score card with respect to the Tripartite Consultation (International Labour Standards) Convention No. 144 of 1976, which Nigeria ratified in 1994. We find that the CEACR, was dissatisfied with Nigeria's non-passage of the National Labour Institutions Bill into an Act of the National Assembly as well as the withdrawal of the Draft Labour Bills from the National Assembly.

The unique thing about the Committee's supervisory role on the application of Conventions and Recommendations is that, it serves as a means of entrenching labour standards among Member States. The Committee follows up with such suggestions or directives to ensure that there is compliance. This follow up mechanism is usually diplomatic and political than legal and sanction related. Thus, the Committee's supervision encompasses both a thorough technical examination of the situation and a discussion that is political in nature, where the willingness to talk and win over clearly takes precedence over the threat of sanctions.⁹⁷ Therefore, the chief role of the Committee of Experts, is to determine whether the rules of a given convention, in particular a convention on freedom of association, are being observed, to ascertain whether or not the convention is being fully applied. Its task is fundamentally legal in nature.⁸²

It has been opined that the ILO monitoring and control system was not created according to some plan that was elaborated in advance, but rather as a reaction to the circumstances and needs of the time.⁸³ It is further alluded that even the Committee of Experts which was created in 1926 was because it was evident that it was impossible to examine all the member states' reports within the duration of the International Labour Conference plenary sessions.⁹⁷ In bid to regularize this position, the ILO Constitution was amended in 1946 in order to reflect reporting obligations for a member state to that state's own authorities that were concerned with the adoption of the ILO Conventions.⁸⁴ Also, it has been observed that the Committee examines between two and three thousand reports from member states each year but the Conference

⁸¹ See pages 708-709 of the Report at https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_868021/lang-en/index.htm. Accessed on 11th August, 2023. ⁹⁷ Servais JeanMichel(n.18) 301.

⁸² Ibid at 310.

⁸³ Lyutov Nikita, "The ILO System of International Labour Standards and Monitoring Procedures: Too Complicated to be Effective?" 2014 at p. 269; available at https://www.researchgate.net/publication/297699071_The_ilo_system_of_international_labour_standards_and_monitoring_procedures_Too_complicated_to_be_effective/ink/58ba8059a6fdcc2d14de5842/download. Accessed on 12th August, 2023. ⁹⁷ Ibid at 269-270.

⁸⁴ See Article 19 para. 5 of the ILO Constitution.

⁹⁹ Ibid at 271.

Committee only accepts about 25 cases for examination at the ILC session based on the Observations made by the Committee of Experts. Most of the cases examined are associated with fundamental or governance Conventions and are determined by the Conference Committee.⁹⁹ This means that worthy reports may be overlooked by the Conference Committee for what it may term as urgent reports on fundamental or governance Conventions. Though saddled with such onerous task, the Committee of Experts does not determine which reports are examined at the ILC. We view the work of the Committee to be important but a wasteful venture if their Reports are incapable of being enforced by the ILO. It is a case of simply highlighting the problems without providing the solutions. Little wonder some comments of the Committee are repeated every time the reviews come, to show that member-states have not done anything to improve their earlier standing.

Committee on Freedom of Association (CFA)

The Committee on Freedom of Association (CFA) was established in 1951 after the adoption of the fundamental Conventions on freedom of association and collective bargaining and the failure of the Fact Finding and Conciliation Commission on Freedom of Association (FFCC)⁸⁵ to provide routine examination of freedom of association cases.⁸⁶ This Committee, from its name is limited and restricted to trade union rights and privileges. The Committee is a tripartite body of nine (9) members appointed by the Governing Body from among its members and presided over by an independent person.⁸⁷ Its task is based on written submissions but sometimes may hear cases from representatives of the parties and also resort to the procedure of direct contacts.⁸⁸ The Committee receives complaints regarding violations of freedom of association from employers and workers organizations against States, regardless of whether the State has ratified the relevant conventions.⁸⁹ Where the Committee finds any infractions under a Convention as complained, it may decide to issue a report of the violation and make recommendations to the Member State.⁹⁰

Thus, it is stated that the Committee on Freedom of Association, has often been asked to consider matters relating to the exercise of trade union rights that are not expressly set down in the conventions on freedom of association.⁹¹ It also formulates conclusions and proposes solutions for the disputes submitted to it, based on ILO standards, according to the merit of each case. We submit that, like the Committee of Experts, the CFA's Reports are not enforced by the ILO against erring member-states, thus rendering such Reports ineffective.

Conclusion

The work set out to discuss the ILO, its International Labour Standards and its supervisory bodies. In the work, it was established that being the foremost international labour agency, the

⁸⁵ A collaborative effort between the ILO and the United Nations Economic and Social Council (ECOSOC) in 1951.

⁸⁶ Lyutov Nikita(n.102) 270.

⁸⁷ Swebston Lee(n.32) 165.

⁸⁸ Ibid.

⁸⁹ Erugo Sam (n.17) 490.

⁹⁰ Ibid.

⁹¹ Servais Jean-Michel (n.18) 310.

ILO benchmarks labour practice through its International Labour Standards. Member-states are obligated to apply them domestically. The work also examined the two supervisory bodies of the ILO, which assess and determine the level of compliance with International Labour Standards. While it was seen that these two supervisory bodies are making some efforts, these efforts are not sufficient in entrenching the objectives of globalized labour and industrial

practice as prescribed by the ILO. These supervisory bodies can be made more effective so that global labour law and practice can be enhanced domestically among member-states. From the work, we put forward some recommendations as follows:

1. It is recommended that proper sanction and enforceable measures be adopted by the ILO in the event of breach or noncompliance with ratified international labour standards. A sanction or penalty clause should be inserted or incorporated in International Labour Standards to ensure that member-states are aware of the consequences of non-compliance and the sanctions that will follow.
2. These two supervisory bodies which were established in 1926 (CEACR) and 1951 (CFA) respectively, need to be made contemporary in outlook. They are old and new to be reworked to meet current demands. Though they comprise of distinguished personalities, their *modus operandi*, needs to be scaled up and brought in tandem with modern labour law challenges. Also, only two supervisory bodies shall be insufficient to supervise the application of International Labour Standards.
3. The supervisory bodies should be overhauled as they are ineffective in their approach and strategies. Both Committees employ the strategy of follow up with suggestions or they merely directives to ensure that there is compliance. This follow up mechanism is usually diplomatic and political than legal and sanction related. This falls short of a normative system.