

**BALANCING MEDICAL DOCTORS HIPPOCRATIC OATH AND
FREEDOM OF ASSOCIATION UNDER NIGERIAN LABOUR LAW***

Abstract

For centuries the basis of what morality should be in clinical practice has been the responsibility of protecting and promoting the interests of patients. Previous academic studies had dedicated significant attention on studies with respect to the medico-legal aspects of medical practice whereas, scanty literatures exist in issues relating with the strict adherence to the wordings the Hippocratic Oath particularly on the issue of strikes actions. The Code of Medical Ethics in Nigeria provides in its preamble and general guidelines a declaration by a prospective medical or dental practitioner to consecrate his life to the service of humanity and they are encouraged to abide by the dictates of the oath. The Act further provides in its Section 9 (d) that doctors are encouraged to obey the laws of the land but may participate individually or collectively in accordance with their rights as citizens to bring pressure to bear on the government or authorities to change or modify the laws or actions inequitable or inimical to the interest of the profession or the society. This article through desk review based research examines medical doctors' compliance with the Hippocratic Oath and their rights as Nigerian citizens to freedom of association by forming/joining trade union and participating in trade union activities vide strike actions and others. This paper found that compliance with the sacred oath is not a reality in Nigeria as at today, in view of the challenges addressed. The Government is admonished to live up to its social responsibilities to reduce the occurrence of strike actions by doctors.

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1. Introduction

Under the International¹ and Regional Laws², a conglomerate of workers or their unions are permitted to engage in solidarity actions in order to make their demands known. This makes the right to strike an integral part of the freedom of every citizen to associate with others particularly to form or join a trade union of his choice to protect his interests³. A denial of this right will amount to forced labour and this violates Section 34(1) (c) of the Constitution⁴. One of the main reasons for establishing and joining trade union is to foster mutual aid whenever the need arises⁵. Besides these statutory provisions⁶, academic and judicial opinions now appear to accept the right of the worker to strike⁷. In *Crofter Hand Woven Tweed Co. Ltd v. Veitch*⁸, Lord Wright stated inter alia that the right of the workman to strike is an essential element in the principle of collective bargaining. Section 48 (1) of the Trade Disputes Act also defines strike thus:

“The cessation of work by a body of persons employed acting in combination, or a concerted refusal under a common understanding of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any

¹ The earliest and foremost laws on labour were the 1948 International Labour Organisation's Convention which provides for the right to organize and bargain collectively, a British Labour Government was the first to ratify. There was also the Council of Europe's Social Charter of 1961. There was also the United Nations International Covenant on Economic, Social and Cultural Rights of 1966.

² See section 40 of the 1999 CFRN. “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”. The Trade Unions Amendment Act, 2005 stipulates that a strike or lockout may take place [if] the strike or lockout concerns a labour dispute that constitutes a dispute of right; See Sections 30(6)(b). Section 30(9) defines a dispute of right as “any labour dispute arising from application, interpretation or implementation of a contract of employment or collective agreement under this or any other law enacted or law governing matters relating to terms and conditions of employment.

³ See Section 40 CFRN, 1999.

⁴ No person shall be required to perform forced or compulsory labour. Section 43 (1)(c) 1999 CFRN.

⁵ GG Otuturu., “Trade Unions (Amendment) Act 2005 and the Right to Strike in Nigeria: An International Perspective”. Labour Law Review NJLIR 8(4) 33-46.

⁶ See Section 48(1) Trade Disputes Act 2005 (TDA) recognizes the right to strike and defines it as “ the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a refusal under a common undertaking of any number of persons employed to continue to work for an employer in consequence of a dispute, done as a means of compelling their employer or any other person or body of persons employed , or to ais other workers in compelling their employer or any person or body of persons employed to accept or not to accept terms of employment and physical conditions of work.”

⁷ A. Emiola; 2008. Nigerian Labour Law. AMFITOP, Benin. Ed. P. 507

⁸ [1942] A.C, 435, 463; [1942] 1 All E.R. 142, 158-9.

person or body of persons employed, to accept or not to accept terms of employment and physical conditions of work. Cessation of work includes deliberately working at less than usual speed or with less than usual efficiency. Refusal to continue to work includes a refusal to work at usual speed or with usual efficiency⁹”

However Section 31(6) (a) of the Trade Unions Act¹⁰ as amended provides thus; “...as one of the conditions for a lawful strike that the workers and their union must not be engaged in the provision of essential services¹¹. The first Schedule of the TDA, 2005 describes essential services to services in connection with, the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following health matters, namely sanitation¹²...”

In *Union Bank of Nigeria Plc v. Edet*¹³ Uwaifo JCA recognized the right to strike and describes it as a collective weapon for enforcing collective agreements when he said:

“It appears that whenever an employer ignores or breaches a term of that agreement resort could only be had, if at all, to negotiation between the union and the employer and ultimately to a strike action should the need arise and it be appropriate¹⁴”.

⁹ Section 48(1)(a)(b) Trade Dispute Act, Cap, T8, L.F.N, 2004

¹⁰ 2005.

¹¹ The literal interpretation of this is that workers engaged in essential services are restrained from participating in strikes and lockouts.

¹² Section 31 (6) (a) (2) (d) TDA 2005.

¹³ [1993] 4NWLR 9pt.387) 288.

¹⁴ *Ibid* at. P. 298. See also, *New Nigerian Bank Plc v. Egun* [2001] 7 NWLR (Pt. 711) 18-19.

Ahmed is of the opinion that pursuant to the provisions of Section 48 TDA, as stated above, a strike action must consist of the elements clearly provided for by the TDA. These elements includes a concerted action which indicates a prior agreement which was accepted by, settled between the parties and acting together pursuant to some design or scheme¹⁵. Lord Denning defined strike as “ a concerted stoppage of work by men done with a view to improving their wages and conditions of employment or giving vent or grievance or making a protest about something¹⁶...” In Nigeria, the medical professionals are not left out of this mode of demanding attention from the relevant authorities. One of the oldest professions in the world is the medical profession and it is regarded as noble and humanitarian¹⁷. Doctors are specially trained in the science of life and emphasis in their training lies on selfless and dedicated service to humanity¹⁸. Just like it exists in other professions, there is a Code of Conduct which is referred to as the Hippocratic Oath for doctors and medical practitioners¹⁹. They are bound by this oath, asides this, the 1948 Geneva Declaration by the World Medical Association and The Code of Medical Ethics in Nigeria also provide for a consecration of life and service to humanity. Section 9(d) of the Nigerian Code of Medical Ethics makes provisions for medical doctors to take reasonable steps either for individual or collective interests. In evaluating the duties of the medical doctor to humanity and the persistent strikes by medical practitioners when making critical demands, it appears that strike actions run contrary to the oath taken by doctors. This paper examined the wordings of the Hippocratic Oath, the duties of the medical practitioner, the possible causes of persistent strike actions and the possibility of breaching the rights of those who need their attention.

¹⁵ Ahmed A.B., “A Critical Appraisal of the Right to Strike in Nigeria” [2014]

¹⁶ *Tramp Shipping Corp v. Greenwich Marine Inc.* [1975] 2 All ER 989, 990.

¹⁷ S. Soumen, „Medical Negligence and the Law, in *Medicolegal Aspects in Obstetrics and Gynecology*. (ed) JAYPEE Brothers Medical Publishers (2008) (P) LTD. New Delhi.p.20.

¹⁸ *Ibid* p. 2.

¹⁹ Hippocrates is considered the father of medicine 463-377 BC).

There have been reported cases of death of patients due to neglect by doctors when engaged in strike actions. This paper is not aimed at condemning the action by doctors to drive home their demands but it is aimed at juxtaposing the exercise of this right by doctors and the wordings of the sacred oath they had sworn to.

This paper consists of five parts which are; the general introduction, examination of the Hippocratic Oath; the right to strike in Nigerian Law; Synthesizing the Hippocratic Oath and Strike and the conclusion/recommendation.

Medical Doctors Hippocratic Oath and Matters Arising

The basis of medical ethics is embedded in the moral obligation to act for the patients good, and to help in an active way. Doctor's character, duties, responsibilities, relationship with their patients, colleagues and the State are all embedded in the medical oaths and relevant regulations²⁰. By implication the medical doctor is expected to be dedicated to his duties and see to the welfare of his patients. According to Osime, medical ethics is basically the study of moral values and the ability to make the right decision as the practice of medicine requires²¹. It is expected that the medical practitioner keeps in mind these four cardinal rules which are; the sanctity of life, which invariably means the right to preserve life; to effect the cure of the illness. Prevention of diseases and the advancement of medical knowledge also forms part of the cardinal rules of a medical doctors'. Johnson and Seigler are of the opinion that the medical practitioner should be humble enough to identify his limits of curative power and the harm he unintentionally causes²². Section 1 (2) (c) of the Medical and Dental Practitioners Act²³ provides for the statutory

²⁰ CO Osime., Understanding Medical Ethics in a Contemporary Society. 2008Source . Retrieved 10th July, 2018.

²¹ *Ibid.*p.2.

²² AR Johnson & M. Siegler et al., Clinical Ethics. 2nd (ed), New York, N.Y. Oxford University Press. 2001

²³ CAP 221 LFN (Decree N0. 23 of 1988). One of statutory functions of the Medical and Dental Council of Nigeria as contained in Section 1 (2) (c)is "Reviewing and preparing from time to time a statement as to the Code of Conduct which the Council considers desirable for the practice of the professions in Nigeria.

functions of this body as the revision and preparation as at when necessary a statement as to the Code of Conduct which the Council considers appropriate for the practice of medicine in Nigeria²⁴. The Introductory paragraphs of the Code of Medical ethics in Nigeria, provides that all members of the profession are expected to acquaint themselves with the provisions of this Code and carry out the duties of a medical practitioner with conscience and dignity there by limiting the occurrence of ethical breaches to the barest minimum²⁵. Part A of this code²⁶ prescribes the Physicians Oath which is quoted below in its exact wordings for the purpose of emphasis.

“I SOLEMENLY PLEDGE to consecrate my life to the service of humanity:

I WILL GIVE to my teachers the respect and gratitude which are their due;

I WILL PRACTISE my profession with conscience, and dignity;

THE HEALTH OF MY PATIENT WILL BE my first consideration;

I WILL RESPECT the secrets which are confided in me, even after the patient has died;

I WILL MAINTAIN by all means in my power the honour and the noble traditions of the medical (dental) profession;

MY COLLEGUES Will be my brothers and sisters;

I WILL NOT PERMIT considerations of religion, nationality, race, party politics or social standing to intervene between my duty and my patient; I WILL MAINTAIN the utmost respect for human life of conception;

Even under threat, I WILL NOT USE my medical knowledge contrary to the laws of humanity²⁷;...”

²⁴ Section 1 (2) (c) Medical and Dental Practitioners Act CAP 221. Also in Decree No, 23 of 1988.

²⁵ Introduction page 3, Code of Medical Ethics in Nigeria.

²⁶ Part A, Code of Medical Ethics in Nigeria.

²⁷ The Medical Practitioners Hippocratic Oath.

I MAKE THESE PROMISES solemnly, freely and upon my honour²⁸.

All members of this noble body are expected to abide by the rules and to foster its adherence. There are in place two arms of this corporate body²⁹. The first being the Statutory arm which is represented by Medical and Dental Association of Nigeria and the regulatory body which is established by statute and the Nigerian medical association.

a. Principles of Medical Ethics

Principles of medical ethics were formulated as a basis for addressing practical solutions for problems in medical ethics³⁰. They are also referred to as the standard of conduct between a medical doctor and his patients. They consist of beneficence, non-maleficence, autonomy, justice, truth telling, confidentiality and preservation of life. Each of these principles is designed to address a value that could possibly arise during interactions with doctors and patients³¹. Only four of these principles were examined in this paper.

i. The Principle of Beneficence

In the practice of medicine, the ethical principle of beneficence dictates that the medical practitioner has a moral obligation to act for the patients good and in an active way. The doctor is expected to carry out his duties in a manner which is reliably expected to produce a greater balance of benefits over harms for the patient³².

The doctor while attending to a patient is expected to treat patient in a manner that involves respecting the patients decisions, protecting him from harm and a

²⁸ The Declaration of GENEVA (PHYSICIAN'S OATH DECLARATION) Adopted by the General Assembly of the World Medical Association at Geneva, Switzerland, September, 1948 and amended by the 22nd World Medical Assembly at Sydney, Australia in August 1994.

²⁹ No 3 Part A, Code of Medical Ethics, Nigeria.

³⁰ SN Tripathy, & A.K Sarkar supra p.11.

³¹ Runzheimer J; Larsen L.J; Basic Principles in Medical Ethics. Available, ... [2008] accessed 26th August, 2018.

³² TL Beuchamp & J.F Chldress, 2001. Principles of Biomedical Ethics 5th (ed). New York University Press. In Tripathy S.N and Sarkar Ajit Kumar, 2008. Ethics, In Medical Practice, in Medico legal Aspects in Obstetrics and Gynecology. Supra p.11.

mandatory requirement to making effort to secure his wellbeing. Claude is of the opinion that the patient should be protected from harm, irrespective of the fact that such harm could possibly be of benefit to others³³. Medical personnel are expected to go beyond the minimum standard of care and take into consideration the patients feelings and needs and communicate compassionately during treatments.

ii. The Principle of Autonomy

This principle requires that the medical practitioner respects the free choice of their patients even if such decision is inappropriate or could endanger life. This right is not absolute and cannot be exercised by a minor, or a person of unsound mind (patients lacking the requisite mental capacity).

iii. The Principle of Non-Maleficance

This is commonly known as *Primum non nocere*³⁴ and it implies a moral obligation not to harm others and at the same time remove and prevent potential harm³⁵. Kitchener in his definition of non-maleficance defines harm as the procedure of engaging in activities that possibly possess the probability of hurting others, violating their rights, and deliberately inflicting psychological and/or physical pain on others. This principle takes precedence over the ethical principle of autonomy but paternalism should always be avoided in the practice of medicine³⁶.

iv. The Principle of Confidentiality

This principle is the basis of trust between a doctor and a patient³⁷.

³³ B Claude, *A Return to Fundamentals*. New York City press. [1979] 71-92 p.75.

³⁴ Which means "first do no harm, then seek to prevent it".

³⁵ WK Frankena, 1973. *Ethics*. 2nd (ed), Englewood Cliffs, 1973.

³⁶ Paternalism is the treatment of people in a fatherly way which could possibly involve being stern with them and at the same time being caring.

³⁷ British Medical Association Ethics Department, *confidentiality, Medical Ethics Today*. 2nd (ed) London, BMJ Books, 2004; 165-79.

Section 44 of the Code of Medical Ethics Nigeria takes seriously the ethics of professional secrecy and provides that such information provided by a patient should in no way be divulged to a third party. Disclosure of a patient's information can only be made to a third party after securing a written consent from the patient. The Code further provides for nine situations where strict adherence to the ethics of confidentiality is expected³⁸. The intention of a patient to commit a crime is not protected by this act and the medical doctor is expected to make such disclosure.³⁹ A doctor's responsibility to his patient is sometimes overtaken by the greater responsibility to the community and confidentiality on this ground may be broken⁴⁰.

Right to Strike under the Nigerian Law and International Best Practices

The rights of a medical doctor to undertake or join a strike are derived from two legislations which are his professional rights and the basic fundamental human rights. The rights of a medical doctor to undertake or engage in a strike action will be examined from these perspectives.

a. Professional Rights of Medical Doctors

One of the rights enjoyed and guaranteed by Statute a medical doctor

³⁸ Examples include (a) Protection of patient's medical records. (b) Release of information only following the granting of informed consent by the patient, except where disease notification is required by Statute. (c) Cryptic utilization of anonymised clinical material for teaching or publication in professional journals. (d) Maintenance of confidentiality in the process of further consultation, etc.

³⁹ See the famous case of *Tarasoft v. Board of Regents of the University of California* [1976] 17 Cal. 3d 425, 551 p. 2d 334, 131 Cal. Raptr. 14. Where it was held by the Supreme Court of California that psychotherapists owed a duty of care to third parties when they believe patients possess an imminent threat. Source ... accessed 11th July, 2018.

⁴⁰ Samsuzzoha M.M et al., 2008. Doctor's Rights and Responsibilities. JAYPEE, India. 28-35:34. See also section 9 (b) of the General Principles of Ethics of medical and Dental Practices in Nigeria which provides that practitioners in promoting not only their individual health but also the general health of the community and in pressing for an equitable allocation of health resources. See also Section 9 (f) of the same Act which provides that all communications between a patient and the practitioner made in the course of treatment shall be treated in strict confidence and shall not be divulged unless compelled by law or overriding common good or with the consent of the patient.

enjoys is the right to join the membership of the medical society for the advancement of their profession. Section 9 (a) Code of Medical Ethics in Nigeria provides thus:

“The principal objective of the medical or dental practitioner shall be the promotion of the health of the patient. In doing so, the practitioner shall also be concerned for the common good while at the same time according full respect to the human dignity of the individual”.

Section 9(d) provides that practitioners shall always strive to observe the laws of the land but may participate, individually or collectively, in accordance with citizenship rights to bringing pressure to bear on governments or authorities, to change or modify laws or actions considered inequitable or inimical to the interest of the profession or the society⁴¹.

b. The Rights of a Doctor Under the Nigerian Constitution⁴² (Basic Fundamental Human Rights)

The rights to strike in Nigeria can only be appreciated by outlining the historical evolution of strikes in Nigeria though, this paper does not intend to give this study a historical colouration. Under the common law, a servant was bound to obey all his masters' orders and had no right to strike. Workers who indulged in strike actions were held to be in breach the contract of employment⁴³. Under the Common law, the servant had no protection from these possible liabilities. However the TDA of 1906 was enacted to confer immunities on the organizers of strikes and possible torts committed in the cause of the strike action⁴⁴.

⁴¹ Code of Medical Ethics in Nigeria.

⁴² 1999 CFRN.

⁴³ *Daily Mirror Newspaper v. Garden* (1964) 2 All E.R. 167; *Rookes v. Barnard* (1964) A.C. 1129. (1964) 1 ALL E.R. 367.

⁴⁴ Trade Disputes Act, 1906 (UK).

(i) Section 40 of the Constitution provides thus “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 interests⁴⁵”. This section of the Constitution cloths every citizen of Nigeria with the right to join associations and to assemble freely.

It is pertinent at this point, to emphasize the definition of rights. Rights strictly so called can be defined as an advantage conferred on a person or a group of persons by a rule of law, whereby an aggrieved person or group can bring an action or claim against any person who violates this right⁴⁶. Garner defines a right as a legally enforceable claim of one person against another, that the other shall do a given act, or shall not do a given act⁴⁷.

(ii) Doctors right to strike is also embedded in the Trade Disputes Amendment Act recognizes the fact that disputes are inevitable in an employer/employee relationship and thus makes adequate provisions for trade disputes⁴⁸. This dispute must be connected with the employment or non-employment of any person, or

⁴⁵ Section 40 CFRN, 1990.

⁴⁶ DT Eyongndi “The Right to strike under Nigerian Labour Law”. supra p. 103

⁴⁷MA Black, Blacks Law Dictionary, 6th ed. (New York, 1990) 1324. See also Educational v. Fizpatrik (N0 2) [1961] IR. 345 where the Irish Supreme Court held that the right to strike could be implied from the Constitutional Freedom of Association.

⁴⁸ Section 48, Trade Dispute Act, L.F.N Cap. T18.

connected with the terms and conditions of employment or physical conditions of work of any person⁴⁹.

(iii) The Labour Acts Sections 9(6) (a) (b) (i) (ii) provides thus:

(6) No contract shall-

(a) Make a condition of employment that a worker shall not join a trade union or shall not relinquish membership of a trade union; or

(b) Cause the dismissal or, or otherwise prejudice, a worker

(i) by reason of trade union membership, or

(ii) because of trade union activities outside working hours, or with the consent of the employer, within working hours, or⁵⁰...

The implication of this Act⁵¹ is that employees are protected from dismissal as a result of membership of trade unions. However scholarly texts are silent on the attitude of employees who have persistently obeyed this provision more in its breach⁵². Chianu is of the opinion that the possible reason why this subject is yet to be subject of judicial discussion is the ignorance of the existence of this provision⁵³.

⁴⁹ CF Anyim., O.C Chidi, *et al* , “Trade Disputes and Settlement Mechanisms in Nigeria: A Critical Analysis” [2012] (2)(2) *Interdisciplinary Journal of Research in Business* p.1-6 at 2-3

⁵⁰ Labour At, CAP 196 LFN 1990.

⁵¹ *Ibid.*

⁵² For example see Idubor, R, employment and Trade Dispute Law in Nigeria, Benin City, Sylva Publishers, 1999 only states the sections without analyzing and discussing them.

⁵³ Chianu, E., Employment Law. Bemcov Publishers, 2004 Lagos p. 283.

He further suggests that the judicial system should be disposed to further protecting workers from vengeful dismissal prior to or after a strike and hold such strikes justified under certain conditions⁵⁴.

(iv) The Trade Unions Act 1973.

This Act provides for the meaning of trade union as “any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms and combination in question would or would not, apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint, and whether its purposes do or do not include the provision of benefits for its members⁵⁵.”

The provisions of the TUC, 1973 could be implied to further confer the right on any aggrieved group of employers to drive home their demands through lawful means. Section 43 (1) (1A)⁵⁶ of the same Act also provides for peaceful picketing. Sections 42 (2) provides that in doing out anything prescribed in Sections (42) (1) and (1A) such actions shall not constitute an offence under the law in force in Nigeria or any part thereof, and in particular will not constitute an offence under Section 366 of the criminal Code or any corresponding enactment in force any part of Nigeria⁵⁷.

⁵⁴ *Ibid.*p. 286. Some of the suggested conditions are; where the right is declared or connected either with an unfair labour practice on the part of an employer, or against employer's act of discharge of union officials.

⁵⁵ Part I, section 1 Trade Unions Act, 1973. Commencement date, 1st November 1973.

⁵⁶ Section 43 TUC 1973.

⁵⁷ Section 43 (1),(2) TUA, 1973.

(v) The International Labour Organization(ILO). The rights and the freedom to join International Associations is an unavoidable and a basic human right⁵⁸. The New ILO's Declaration on Fundamental Principles and Rights at Work adopted by the International Labour Congress in 1998, provides that “all 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 include the freedom of association⁵⁹.

It has been argued that the freedom of association which should be autonomous, representative independent and clothed with the appropriate rights which should be applied to further and defend the rights of their members⁶⁰. The right to strike had been declared in 1952 by the Committee on Freedom of Association and established the basic principles underlying the right. One of the principal means through which the employees could legitimately advance their interest is through strike⁶¹.

⁵⁸ Article 9 of convention no. 87 provides that the National laws or regulations of a State shall be left to determine the extent to which these law apply to the armed forces and the police. (ILO, 196a, p.528. it has been stated by the Committee of experts that where e legislation deprives a particular class of civil servants freedom of association, such employees should be afforded appropriate compensatory guarantees to compensate for this restriction. See ILO, 1996d, para. 546.

⁵⁹The New ILO's Declaration on Fundamental principles and Rights at work. It was adopted by the International Labour Congress in 1998. The same principles are stated in The International Covenant on Civil and Political Rights (ICCPR) 1966 Article 22 (1) and The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Articles 8(1) (a)-(c).

⁶⁰ B Gernigon etal 2000. “ILO Principles Concerning the Right to Strike”. International Labour Law Review. Vol, 137(1998), No. 4. 1-64:

⁶¹See ILO, 1996d, paras 473-475. See also Section 42(1) Trade Unions Act, 1943 which legalises peaceful picketing. it can be argued that employees do work conscientiously while picketing.

1.1. A Brief Overview the Causes of Doctors Strike

Kahn Freund stated in his book “... people do not go on strike without a grievance, real or imaginary...sometimes they have ample justification... .The important thing is to find out why strikes occur⁶²”. On this note it is pertinent to find out the reasons for the persistent strike actions by doctors'.

A recent study on the possible causes of doctors' strike revealed that, Demand for higher salaries and wages constitutes 82% of the causes of doctor's strike while issues that bothered on Infrastructural failure were also identified. Other notable causes of strike by doctors are; failure to implement Collective Agreements as was the case in 2018⁶³.

It is worthy of mention that strike actions by medical doctors/practitioners is not limited to Nigeria alone but cuts across the globe. It has become a common global phenomenon not limited or peculiar with developing countries⁶⁴. In the history of medicine, strikes were quite rare⁶⁵ the few occurrences recorded were initiated by junior medical doctors⁶⁶. In many countries, doctors' are not satisfied with their remuneration and with other factors that concern their welfare such as; issues relating to their security, healthcare policy, safety, better working conditions and the administrative and physical hospital infrastructure⁶⁷. The peculiar reason given by these category of practitioners when involved in strike ranges from infrastructural issues to demanding for higher pay.

⁶² O. Khan-Freund, *Labour and the Law* (Stevens and sons, London, 1972) 227.

⁶³ Health Crises: Nigerian Doctors Threaten Fresh Strike. Published May 31, 2018. Premium Times.

⁶⁴ PA Ramesh, “Medical Doctors Strike: An Ethical Overview with Reference to the Indian Context”. *Journal of Clinical Research & Bioethics*. ISSN. 2155-9627. 2016. Source: <https://www.omiconline.org/c> Retrieved, 12th July, 2018.

⁶⁵ GA Ogunbanjo, 2009. “Doctors and Strike Action: can this be morally justifiable”? *SA Family Practice*, 51 (4) 306-306.

⁶⁶ R Braeher, “Striking Responsibilities” 1985. . *J. od Med Eth* 11: 66-69; Naik A., 1996. “Resident Doctors on Strike Issues”. *Med Eths*. 4(2) 46-47.

⁶⁷ M. Tahir, *Medical Ethics in India*. 2006. *Lancet* 368:634. Cahtterjee P. 2006. Thomas G., 2006. “Junior Doctors, strike and Patient Care in Public Hospitals”. *Indian J Med Ethics*. 3: 44-45.

In Nigeria for example in the year 2014, during the National Medical Association (NMA) doctors' strike, they had a 24 point reason for the strike, but only one of the 24 points made reference to adequate trust funds to facilitate the upgrade of medical facilities in the country⁶⁸. Health care leadership and management were cited as the most common and most important cause of strike in study conducted in 2016⁶⁹.

It has been stated by an author⁷⁰ that in the last twenty years countries like Canada, Australia, Belgium, Chile, Finland, France, Germany, Korea, Malta, UK, USA, Zambia, Romania, Peru, Ireland, Zimbabwe, new Zealand, Israel, Spain, Sri Lanka had experienced strike actions by medical doctors'. The consequences of these strike actions have been most felt and harmful to patients which most often leads to increased morbidity and mortality⁷¹.

A brief investigation of strike actions by medical doctors in three African Countries was examined to ascertain the prevalence and causes of strike.

(i) The Kenyan Experience

As recent as 2016 the medical doctors in Kenya's public hospitals for example put down their tools for over 90 days in demand for a higher pay and honour of agreements reached earlier⁷². Several patients were abandoned in the hospitals and left without care. The reasons given by the health workers stemmed from the fact that the government refused to implement a collective bargaining agreement which was signed in June 2013. This agreement was reached as a result of intensive negotiations between the doctor's union and the government when they went on strike in December, 2011.

⁶⁸ OO Obinna *et al.*, Human Resources for Health Industrial Action by Health Workers in Nigeria, 2013-2015. An Enquiry into Causes, Consequences and Control. A Cross Sectional study. 2016. Available online at, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4962455>.

⁶⁹ OO Obinna *supra*.

⁷⁰ PJ Reitemeir, "Collective Protests Actions by Licensed Health Professionals". 2000. *Camb Q Health Ethics* 9: 449-459; Grosskopf I. Buckman G., "Ethical Dilemmas of the Doctors Strike in Israel". 1985. *J. Med Ethics* 11:70- 71.

⁷¹ P J Reitemeir 2000. *supra*; Park J.J et al., 2014. "Should Doctors Strike? *L. Med Ethics* 40: 341-342.

⁷² Interview with Joe Wanja Muraya , December 14, 2016. Source: theconversation.com>why ken... source

Kenya experienced over 24 strike actions by health care providers since 2013. After the horridly decentralization of health services from the central government to the county governments, the unprepared county governments were faced with the responsibility of providing adequate health care services without the availability of proper and appropriate structures⁷³.

(ii) The Situation in Ghana

The most recent strike action by doctors in Ghana is the 2015 strike although; there was an earlier strike in 2011. The doctors embarked on an indefinite strike with the sole reason that the government had failed to give them any condition of service despite repeated demands and endless promises on the part of the government. They had no option than to adopt this mode of pressing home their demands after giving the government a period of nine months to meet their demands. Critics of the strike action condemned the doctor's strike and its timing and hinged it on being politically motivated in order to make the government unpopular ahead of the general elections. Some labour experts described the strike action as illegal and condemned it in its entirety. In the course of the strike the doctors maintained that all patients already admitted into the hospitals will be given adequate care as demanded but fresh patients were turned down⁷⁴.

(iii) The South African Experience

South Africa public hospitals are not devoid of strike actions by doctors. In 2009, after the government failed to implement the “occupation specific dispensation (OSD) the doctors went on strike. This increase in salary was meant to be commensurate and increased in line with international standards. The effect of this strike was deeply felt by the medical doctors and society.

⁷³ *Ibid.*

⁷⁴ Interview with Dr. Justice Yankson, Dept General Secretary of Ghana medical Association (GMA) August 8th, 2015. Source voanews.com. Source; <https://www.google.com.ng/an> .

About three hundred (300) medical doctors were dismissed while about 16 faced disciplinary actions after it was alleged that they deliberately ignored life threatening emergencies⁷⁵. The doctors' only returned back to work after the government promised to negotiate with them. As recent as February, 2018, the doctors affiliated with the South African Medical Association (SAMA) went on strike on the ground that the Limpopo Health Department had not paid their January salaries. The strike did not affect the emergency unit of the hospital⁷⁶.

The Effect of Strike Actions

The effect of strike could breach the contractual relationship between a doctor and a patient which is a fundamental one and appreciated as same globally⁷⁷. This fiduciary relationship that exists between a doctor and a patient can be said to be, immediately the doctor accepts to treat the patient, hence the rules of the law of contract are present. A patient subjects himself to a medical doctor for treatment because of the trust he has in the doctor and this trust is important as it is linked to the patients' health and recovery. A patient who presents himself for treatment before a medical doctor must be treated with a good measure of dignity, sensitivity and respect⁷⁸.

The rights of doctors to abandon patients during strike actions is however questioned and its moral and legal validity on the ground that it runs contrary to the contractual relationship and ethical obligations a doctor owes to his patient. Death is also a possible outcome of strike as the patients are neglected and those who are financially challenged seek the assistance of alternative healers. There is an increase morbidity and mortality among the poor. The in-patients loose the privileged to have a follow-up by doctors and there is usually a high rate of referrals to private hospitals, this in turn increases financial burden on the poor.

⁷⁵ New Report by the Daily Vox, [thedailyvox.co.za](https://www.dailyvox.co.za). \ [Source](https://www.google.ng/amp/s/www.thedailyvox.co.za/amp/five-);
<https://www.google.ng/amp/s/www.thedailyvox.co.za/amp/five-> Retrieved 12th July, 2018.

⁷⁶ *Ibid.*

⁷⁷ S. Almas. *et al* , 2015, p.1.

⁷⁸ *Ibid.* p.3.

The consequences of strike actions by doctors' certainly outweighs its consequences on the innocent third parties.

2. Synthesizing the Hippocratic Oath and Medical Practitioners Strike

Ethical issues with respect to the strike actions by doctors have no doubt become important in recent academic papers and press headlines⁷⁹. The consequences of this action which usually affects other parties has brought to challenge, the ethical issues of strike actions. The right of doctors to join trade unions is guaranteed and protected under the Nigerian Constitution⁸⁰, and other legislations⁸¹. This right is equally and unequivocally provided for in the Nigerian Code of Medical Ethics, which provides that doctors could individually or collectively join trade unions to press home their points. The right to strike is synonymous with a democratic society and scholars have posited that the option of collective bargaining amounts to nothing more than collective begging when the option to strike is not available to employees⁸².

⁷⁹ Examples of Press headlines and scholarly articles: (1). Banjo, T., Doctors Begin Nationwide Strike Today. 2008. Where the President of the NMA, Dr. Kayode Obembe during a press briefing stated that the strike was a result of Governments failure to address their demands. (2). Ukwu J., Resolution of Unpaid Arrears of Salaries and Four other Major Demands of Nigerian Doctors, 2017. The Doctors' strike, 3rd September, 2017. Source, ... The Guardian. (3). David, T., Why We Shelved Proposed Strike-Resident Doctors. Source: sunewsonline.com (4). Health Crises: Nigerian Doctors Threaten Fresh Strike. May 31, 2018. Agency Report, Premium Times. (5). Onyeji. E., Nigerian Doctors Threaten Strike if Government Implements JOHESU Demands. May, 10, 2018. (6). Ezea, S., Effects of lingering Workers' Strike on Nigerians. 19th May, 2018. The Guardian Newspaper. (8). Federal Government Warns Health Workers against Strike, Harassment of Doctors, This Day Newspapers 3rd June, 2018. (9). Warami, U., No Respite as Doctors' Strike Persists. 2017. Source Vanguard News. Vanguardngr.com. (10). Alubo, S.O., The Political Economy of Doctors' Strike in Nigeria: A Marxist Interpretation. 1986. Available: ... (All accessed 27th August, 2018).

⁸⁰ See Section 40, 1999 CFRN.

⁸¹ See Labour Act, Section 9(6)(a)(b)(i)(ii) CAP 196 LFN, 1990; Trade Unions Act 1976 Part 1 Section 1; Trade Disputes (Amendment) Act Section 48.

⁸² . David Metcalfe, 2015. What Are the Consequences When doctors Strike? Source; <https://bmj.com/content> . Accessed 12th July, 2018.

Strike actions by medical doctors appears to have become an accepted norm and an effective instrument for attaining intended benefits from the authorities concerned⁸³. However the frequency of these strikes have become very alarming as it usually results in the closure of government health care institutions thereby denying patients access to affordable and reliable medical services. In a study conducted in 2015, a cross-sectional descriptive survey was utilized to identify the real causes of strikes, the effect on the common man and to identify a possible solution to reducing industrial actions to its barest minimum. Selected hospitals in Abuja were investigated with about 150 healthcare providers as participants. The result from the field revealed that besides the usual demand for higher wages as a cause for strike actions, and demand for upgrade of medical facilities, there were much more pressing issues which could address the root cause of strike actions⁸⁴. It was found that inadequate healthcare leadership/management had to be addressed and the fact that medical doctors in managerial positions lacked the requisite skills in management and leadership responsibilities⁸⁵.

It can be argued that doctors rights to strike is at variance and inconsistent with the duty of doctors to advocate for their patients and most importantly to the sacred Oath taken publicly at their induction into the medical society. The two important wording's of the sacred Oath this paper addresses are "I WILL PRACTISE my profession with conscience, and dignity; THE HEALTH OF MY PATIENT WILL BE my first consideration". The tradition and practice of medicine constitute an important source of morality for doctors as medical ethics since the 18th century and is secular and do not make reference to God or revealed tradition. The wordings of the Hippocratic Oath can be applied in global cultures⁸⁶.

⁸³ B. Isiaka, "The Continued Relevance of Strike as a Form of Industrial Action in Nigeria" (2001)3(2) *Humanity Jos Journal of Gender Studies*, 38-47 at 41. See also, Adeogun, A.A., "The Legal Framework of Industrial Relations in Nigeria" (1969)3(3) *Nigerian Law Journal* 11-23 at 13.

⁸⁴ OO Obinna etal, 2016, *supra*.

⁸⁵ *Ibid*

⁸⁶ SN Tripathy, & A.K. Sarkar , *supra* p.5.

The principles of ethics such as beneficence, autonomy, non-maleficence and preservation of life all run contrary to strike actions. These principles forms the core ethics of the medical practice and it emphasizes the fact that doctors are expected to act in the best interest of their patients and to effect the cure of illness. The act of collectively abandoning the work place during a strike action sometimes leads to avoidable deaths. This action runs contrary to non-maleficence as doctors are demanded by the oath to prevent causing harm. It is expected that the tradition of medicine should constitute an important and enduring source for doctors'⁸⁷.

It can also be argued that in spite of the provision section 40 of the Constitution that allows for freedom of association, this right is not absolute. Section 45 (1) of the same Constitution places some restriction on this fundamental right and provides thus:

“Nothing in sections 37 38, 39, 40⁸⁸ and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-

- (a) In the interest of defence, public safety, public order, public morality or public health⁸⁹; or
- (b) For the purpose of protecting the rights and freedom of other persons.

Workers Engaged to Work in Essential Services

Under the ILO Convention, the Committee on Freedom of Association provides that workers and the organizations they represent have the right to express their distaste with respect to social and economic issues which affect their interests⁹⁰. The strikes at the national level are legitimate if they do not possess a political undertone. Strikes can only be prohibited and acceptable as such where the participants involve public servants and workers in essential services in the strict sense of the term.

⁸⁷ *Ibid* p.5.

⁸⁸ This section gives validity to doctors' collective strike actions.

⁸⁹ Public health is deliberately highlighted for emphasis. Section 17 (1) (3) (d) provides that; “The State shall direct its policy towards ensuring that there are adequate medical and health facilities for all persons.

⁹⁰ GG Otuturu, “The Right of Workers to Strike in Nigeria: Critical Appraisal” (2009)3(2) *Nigerian Journal of Labour and Industrial Relations*, 33-6 at 39. Available online at <http://nicn.gov.ng/Archive/The%20right%20workers%20strike.pdf> accessed 20 August, 2018.

These services were categorized to include those whose services are vital to the society and capable of endangering life, affecting the personal safety or health of the part of the population⁹¹.

Under the provisions of the ILO, workers in essential services and other workers considered to be employees under this category may be restricted from engaging in strike actions by their State. The committee of experts defined and were able to categorize such services as those; “the interruption of which would endanger the life, personal safety or health of the whole or part of the population⁹²”. It provides further that those services that could be considered as essential services in a State could be determined as such in view of the particular circumstances prevailing in the state. They further identified that a non-essential service may however become essential where the strike persists for long and begins to extend beyond its ambit thereby threatening the life and safety and possibly endangering the life of the people⁹³. The committees of experts were quite explicit in subsequent clauses where they specifically defined essential services in the strict sense. The rules provide that employees in these categories include those in the hospital sector; water supply services; electricity providers; air traffic control and telephone service providers⁹⁴. A State also has the powers to prohibit a strike action under acute national emergencies⁹⁵.

From the wordings of the ILO Convention it can be argued that the services of doctors are essential to the society and strike actions are allowed to be declared illegal where a State party opts to declare it as such. It is worthy of mention that Nigeria has been a member of the ILO since 1960 and has ratified 40 International Labour Conventions.

Workers Engaged in Essential Services under the Trade Unions Act⁹⁶

The ILO Committee of Experts on Freedom of Association have

⁹¹ See ILO, 1996d, para, 492.

⁹² ILO, 1983b, para. 214.

⁹³ ILO, 1996d, para 541.

⁹⁴ *Ibid.*, para 544.

⁹⁵ ILO, 1996d, para. 527; ILO 1994a, para.152.

⁹⁶ Trade Unions (Amendment) Act 2005.

persistently maintained that the right to strike is one of the essential means which workers and their organizations can exploit in order to promote their economic and social interest⁹⁷, armed with this weapon the Trade Unions (Amendment) Act, 2005 clearly delimits those entitled or qualified to enjoy this right. Section 31(6) of the Act⁹⁸ specifically provides conditions an employer must fulfill before embarking on a lawful strike action. The new provision of Section 6 of the Trade Unions (Amendment) Act amended section 30 of the Principal Act by introducing new Sections (6) (7) (8) and (9). Section 30(6) now reads;

“No person, trade union or employer shall take part in a strike or lockout or engage in any conduct in contemplation or furtherance of a trade dispute unless- the person, trade union or employer is not engaged in the provision of essential services;”

Section 31(6)(a) of the TUA, as amended expressly and unequivocally prohibits workers engaged in essential services to engage in a lawful strike. The consequence and effect of this Act, when strictly interpreted means these category of workers in essential services are restrained by law from participating in strike actions.

Essential Services is defined in The First Schedule of the TDA, as amended to include;

Section 2;

“Any service established, provided or maintained by the Government of the Federation or a State, by a Local Government Council, or any municipal or statutory authority, or by private enterprise’

(c) For, in connection with burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or any of the following public health matters, namely sanitation, road- cleaning and disposal of night-soil and rubbish⁹⁹.

⁹⁷ GG Otuturu, *supra*.

⁹⁸ Trade Unions Act, L.F.N, 2004 as amended by the Trade unions (Amendment Act, 2005) and Sections 4, 18 and 42 of the Trade Disputes Act, L.F.N 2004 as amended.

⁹⁹ TDA, Cap T8 LFN, 2004.

It could be argued in favour of the government that the reason for this exemption is in line with international best practices aimed to put in place public interest first and the desire that the public enjoys uninterrupted service¹⁰⁰. The wordings of this law make specifically includes the services rendered by a medical doctor. The question at this point to ask is this, how does the law expect these aggrieved group of persons seek and get the attention of the Government? Nigeria as a country is bedeviled with hydra-headed problems and industrial actions are quite notorious. The most effective means of seeking government attention appears to be through strike actions. It could be argued that the law had taken with the left hand what it had initially given with the right hand¹⁰¹. The TDA, through its Section 31(6) has held back this right from workers in essential services.

The provisions of the Freedom of Association Committee provides that where there are restrictions on the rights to strike for workers in essential services, it should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which the parties concerned can participate at every stage. The awards' when made must be fully and promptly implemented¹⁰². In South Africa, the situation is similar to what obtains under the ILO requirement but the workers rendering such services are expected to refer their disputes to arbitration¹⁰³. Over the years the medical doctors' grievances had spanned from improved welfare to fulfillment of agreements by the Government and their association, what is then expected of these group or persons'? The TDA, as amendment did not provide for any speedy conciliation and arbitration of disputes in essential services.

¹⁰⁰ Similar restriction exists under ILO Convention 98, with respect to the Right to Organize and Collective bargaining. Civil servants engaged in the administration of a State are excluded.

¹⁰¹ The right to strike and freedom of association is provided for all citizen of Nigeria Sections 40, 1999 CFN, Trade Unions Act 1976 etc. while the Trade Dispute Act, Through its Sections 36 (6) has taken back this rights from a category of people.

¹⁰² See the Digest of the Decisions and the Principles of the Freedom of association Committee of the Governing Body of the ILO's 5th (revised) edition (Geneva: International Labour Office, 2006 at p. 111 paragraph 564.

¹⁰³ Labour Relations Act, 1995, ss. 65(1)(d) and (74(1).

It only provides in its Section 31(8) that recourse shall be made to the procedure for arbitration of disputes in the Trade Disputes Act, (Cap T8 LFN 2004) with respect to workers rendering essential services and the determination of the National Industrial Court in such disputes shall be final.

3. Conclusion

Strike actions by doctors' have become a regular occurrence in Nigeria which negatively impacts on the quality of health care services, the zeal to dedication by doctors and the respect for members of the medical profession. The medical doctors are meant to belong to the noble class of professionals due to the nature of their job which is humanitarian in nature. The rights of the medical doctor to form peaceful associations has been examined in this paper and it found that this right is protected by the Constitution and the Code of Medical Ethics. However it can be argued that health being an exceptionally important and a core human value, the sanctity that should be associated with health related issues should be considered sacrosanct. When doctors go on strike the moral responsibility and the respect for the Hippocratic Oath are in conflict. The ethical principles of justice beneficence, autonomy, non-maleficence and fair play all come into conflict and queries the moral obligations the doctor owe to humanity. Without being too hard on the rights of the medical doctors to engage in strike actions, one can be forced to examine the locality in which they operate. The attitude of the government could be considered nonchalant with regards to honouring collective bargaining agreements. Many of the mutual agreements entered into by the government with the medical doctors are yet to be implemented.

There have been cases of outright denial and rejection of such agreements and delay which leads to distrust and lack of commitment on the part of the doctors. Hence the doctors are faced with the only option left in their opinion to go on strike. The difficult questions at this point are who is to be blamed for these strike actions? Should patients be made to suffer the consequences of these strike actions? Is it the government and those in other relevant authorities or the doctors who breach the Oath which they had sworn to honour? It can be conveniently be concluded

that the outcome and consequences of these strike actions far outweigh the demands of the doctors especially where the cause of the strike is mainly associated with demand for increase in wages though most times tainted with demands for better infrastructure and better working conditions. Some of the reasons given for engaging in strike actions could also be considered selfish and a neglect of the effect such strike will have on the patients¹⁰⁴. The medical practice is a professional one and the doctor has the duty to either work as an employee or work having in mind the moral and ethical obligation the society demands from him. Strike actions run contrary to these obligations as they cause both physical and psychological stress to patients especially the indigent patients and their families. Medical practice remains an integral service to the society and should be sacrosanct. The Federal Government and other relevant authorities have a duty of care to the public¹⁰⁵ and should do all it possibly can within its powers to bring about mutual respect, to itself, the healthcare providers and the patients. This to a large extent will reduce the prevalence of strikes by doctors and other health care providers if not completely, to its barest minimum.

4. Recommendations

Good health is an exceptionally important human value hence a social good. Whenever strike action is launched by doctors, the ethical principles a doctor is expected to uphold come into conflict. The doctors are faced with the challenge to decide on their role to be an ordinary employees or the moral obligation the medical profession prescribes. Since conflict is an inevitable aspect of human life which cannot be totally extinguished but could be managed the following are hereby recommended with the aim of gradually reducing doctor/Government conflict:

¹⁰⁴ The Nigerian doctors have recently (May, 2018) threatened to go on a national strike action if the federal government obliges the demands of other health workers who had been on strike for about 3 weeks. The doctors are opposed to the demands of JOHESU for a salary adjustment and harmonization. The threat to go on a nationwide strike in view of the rivalry between these two bodies is in the opinion of the writer selfish and not in the best interest of the society they took the sacred oath to protect. The use of strike by doctors at the slightest provocation or annoyance in the opinion should be reconsidered as it violates the ethical and moral values of the medical profession.

¹⁰⁵ See 17(1)(3)(b)(d) 1999 CFRN.

1. The Trade Dispute (Amendment) Act, 2005 should be modified to provide for a speedy dispensation of grievances in view of the fact that other jurisdictions which equally prohibits workers in essential services from going on strike, and make available alternative means of addressing such disputes.
2. There is the need for the Government to adopt fair labour practices by engaging unions continuously and not limited to during industrial actions. This engagement should be in the form of mutual respect among the three key participants which are the government, doctors and the unions.
3. The Minister of Labour is encouraged to be more proactive in execution of his duties conferred on him by section 3(1)(3) TDA. Collective agreements involving health workers should be accorded appropriate and fair consideration to align with international best practices.
4. It is appropriate that doctors be offered fair and decent wages, fair working hours and a clear path for career training and progression. The major reason given by doctors who leave the country by the day, is to search for these qualities which do not exist in their home country.
5. The government is expected to make available a conducive working environment where doctors can work safely and in dignity. Collective agreements entered into by the Government with the unions must be respected and preserved to avoid constant disruption of services, bearing in mind that the common man on the streets who is neither a party to the agreement suffers the consequence of strike to a larger extent.