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ANALYSIS OF ADHERENCE TO HIPPOCRATIC OATH IN PRACTICE VIS-À-VIS STRIKE ACTION BY MEDICAL PRACTITIONERS IN NIGERIA

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Abstract

Strike by medical practitioners is a global challenge, potentially having a negative impact on human lives. Striking doctors have a moral and legal dilemma between adherence to the Hippocratic Oaths of their profession and their constitutional right to embark on strikes when necessary, like other employees. However, the right to life is an omnibus right that encompasses other basic rights, but the Nigerian judiciary has not made a pronouncement on this, such as making right to health care a component of the right to life. Mostly, the contradiction is that the exercise of one right (such as the right to strike) may have a direct negative impact on the attainment of another (such as the right to life). The right to life is supreme, paramount, sacrosanct, and indispensable. Therefore, any other right which is inconsistent with the right to life should be declared null and void to the extent of the inconsistency. The writer adopts the doctrinal (conceptual/library-based) research method in this paper by extensively consulting statutes, treaties, case law, journals, books, international agreements, the internet, and so on. The paper argues that as much as medical practitioners are legally entitled to embark on strike to press home their demands, this right should be abrogated concerning them because of the essential and peculiar nature of their job. To compensate doctors for this 'denial' of their right to strike, the paper suggests that the government must ensure that all necessary conditions that will make the health sector attractive to them are in place, and thereafter, outrightly ban strike by medical doctors. In other words, because of the essential nature of their job, just like the Police

and Army, medical doctors should be incapable of embarking on strike action. The paper concludes that the improved condition of service of medical practitioners will prevent strike action and discourage brain drain, by which the government would be seen to have performed their primary duty of protecting the constitutionally guaranteed right to life of the citizens.

Keywords: Right to life; Right to strike; Medical Practitioners; Hippocratic Oath; 1999 Constitution.

1.0 Introduction

Strikes by medical practitioners are the legal means of breaking deadlock when negotiations based on collective bargaining have reached an impasse. Such strikes seem to be an ethical conflict with the doctors' Hippocratic Oath and obligation to satisfy the best interest of patients as the fundamental moral consideration in medical practice. However, the rise of consumerism in healthcare, and loss of power by doctors, many of whom now work as employees, subject to regulations imposed by different stakeholders, including governments, health-maintenance organizations, and healthcare insurers, has impacted on modern medical practice. Therefore, doctors, like other employees, may occasionally resort to strikes to extract concessions from their employers.

It appears, therefore that strikes are not uncommon events in the history of medicine. This seems contradictory when one considers the proximity of life and death. This proximity of life and death vis-à-vis the contractual obligations of doctors are the reasons why medical doctors should be adjudged by standards higher than other professionals. It is also the reason for the doctors to be exempted from their legal right, as employees, to embark on strike. This denial, however, should be compensated for by robust salaries and allowances as well as good conditions of services obtainable in other developed nations of the world. In Nigeria, the status of public health care reveals a state of gross inefficiency, ineffectiveness, and formidable operational obstacles. In his speech, when he took over in 1983 as the Military Head of State of Nigeria, the then Major-General Muhammadu Buhari said Nigerian hospitals had been reduced to mere consulting clinics, with no health care facilities and other conditions conducive for efficient health care delivery and medical practice. The situation in 2020, some 37 years after, under the same Muhammadu Buhari as the executive president of Nigeria, is not too different from his 1983 pronouncements in terms of qualitative health care delivery. Even though many teaching and national hospitals have

been established between 1983 and 2020, some of their services have been commercialised beyond the reach of ordinary citizens. Many indigent people died cheaply because they could not afford the fees they are charged for medical services. The ratio of doctors to patients is also inadequate. In a country of nearly 200 million citizens, it is grossly inadequate to expect that 40,000 doctors are enough to cater for their health needs. Specifically, Nigeria is far behind the recommendations of the World Health Organization (WHO) on the required number of doctors to adequately cater for its teeming population. The Nigerian government has said the ratio of doctor to patient is 1: 2753, which translates to 37 medical doctors per 100,000 persons.[1]

Generally, the conditions of work of medical doctors and their welfare are as critical as health care infrastructure, the state of intra-health professionals' relations, issues of capacity, and access to the citizens. All of these are essential in determining the quality of care rendered to the people and system efficiency. The habit of doctors going on strike repeatedly breaches the Hippocratic Oath and imperils the peoples' health. Among doctors, it is a sign of unresolved labour grievances, as well as the existence of the gap between work and life expectations and reality. The factors associated with strike must be addressed so that the norms of the Oath could become the infrastructure of doctors' professional conduct and practice, which, at the moment, is characterised by normative contradiction. The crisis between the Oath and doctors' strike, among other factors, is dissatisfaction with pay and allowances, status inconsistency, relative deprivation, blocked ascendancy, perceived status insecurity, unsatisfactory working conditions, unimplemented collective agreements, intra-sector rivalry, and official policy inconsistency. The content of the Oath only takes care of the health of the patients without balancing it with the interest and working conditions of the doctors. This is a gap that must be filled. However, discussion in this paper is restricted to how the right to strike by medical doctors negatively impacts on the right to life, a situation that calls for the prohibition of the right to strike by medical doctors if the right to life is to be realised.

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[1]. Godsgift Onyedinefu, 'Ratio of Nigerian Doctors to Population is 1:2753' <https://businessday.ng/uncategorized/article/ratio-of-nigerian-doctors-to-population-is-1-2753-fg/> accessed 29 September 2020.

While the Nigerian constitution expressly provides for right to life, it fails to recognise the fact that right to health care, for instance, is an embodiment of right to life. This is perhaps, why the Nigerian judiciary, unlike what obtains in other climes,[2] has not made any pronouncement on the fact that right to health care is a component part of the right to life.

For medical doctors to effectively attend to the citizens' health care, it goes without saying that their own health and conditions of service must be taken care of as well. Some doctors, for instance, during the COVID-19 pandemic, lost their lives while attending to COVID-19 patients.[3] This is one of the many examples of similar health hazards that medical practitioners are exposed to. The hazard allowance they are being paid is grossly inadequate compare with the enormity of the risks they face.[4] These and many other reasons are responsible for the incessant strike actions in the health sector. There should be a balance between adherence to the tenets of the Hippocratic Oath and the working conditions of medical practitioners. Majorly, this paper discusses how to achieve this balance, among other related factors, and what obtains in other jurisdictions which Nigeria can borrow from in order to strike a balance between adherence to the Oath and

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[2] See *Paschim Banag Khet Samity v State of West Bengal*, [1986] 4 SCC 37, where the Indian Supreme Court held that the right to emergency medical care was enforceable as a right to life under Article 21 of the Constitution of India. The court reasoned that the right to emergency medical care formed a core component of the right to health, which in turn was recognised as forming an integral part of the right to life.

[3] As at April 30 2020, the total number of health workers infected with the novel coronavirus in Nigeria has reached 113 according to the Nigeria's Health Minister, Dr Osagie Ehanirein, at a press conference in Abuja. He said medical practitioners make up 6 percent of COVID-19 cases in the country. See also Ishioma Emi, 'Nigeria records a rise in COVID-19 infections among doctors' <http://venturesafrica.com/nigeria-records-a-rise-in-covid-19-infections-among-doctors/> accessed 30 September 2020.

[4] Medical doctors in Nigeria earn a miserable N5, 000 or $12.95 as monthly hazard allowances, *PUNCH HealthWise* reports. When compared with doctors' hazard allowances in countries such as Ghana, Sierra Leone and Liberia— all in West Africa—the monthly hazard allowances earned by Nigerian doctors pale into insignificance. Health workers had called for increase in their hazard allowance from N5,000 ($12.95) to "a proportion" of their salaries, alleging that they were vulnerable to adverse outcomes of infections. Doctors say their condition of service becomes more worrisome as they risk their lives as front-line workers in the management of the global COVID-19 pandemic, without commensurate financial and moral incentives as enjoyed by their counterparts in some West African countries. See Lara Adejoro, *'Compared to Ghana, others, Nigerian doctors fighting COVID-19 earn peanuts as hazard allowances'* in PUNCH Health Wise, 7 August 2020. See also <https://healthwise.punchng.com/compared-to-ghana-others-nigerian-doctors-fighting-covid-19-earn-peanuts-as-hazard-allowances/>accessed *7 October 2020.*

improved conditions of service of doctors to avert incessant strike actions.

2.0 The Right To Strike

Strike is a lawful means of breaking deadlock when labour negotiations have reached an impasse during collective bargaining. Thus, the right to strike is inevitable in any modern, industrial, and democratic society. The issue of whether employees have a right to strike has been the object of academic debate. It is also the platform on which judicial decisions in this field have continually been expressed. Employees throughout the world, including medical doctors, are alike in their expectations. They desire fair wages and salaries, job security, recognition, satisfaction, redress of wrongs, and good conditions of service. On the other hand, the employer and the union (representing workers) are on a different pedestal. In most cases, such disagreement is the root cause of strikes. The right is a potent weapon in the armoury of organised labour, which is a result of many years of struggle by the working class. The right is now an indispensable component of a democratic society.[5] It is an essential tool of trade unions all over the world for the defence and promotion of the interests[6] and rights of their members. The right plays the same role in labour negotiations that warfare plays in diplomatic negotiations.[7] Take away the right, and workers and their trade unions will lose their relevance and benefits. The purpose of the strike is to protect the legitimate rights and interests of the workers. The International Labour Organisation (ILO) attaches great importance to the need to secure and protect the right to strike throughout the whole world and has demonstrated its concern to all workers by insisting that this right must be protected at all times and can only be denied in very exceptional circumstances in the overall interest of the community. This writer is of the view that one of such exceptional circumstances is the services rendered by medical doctors. It is exceptional because allowing doctors to embark on strike action is

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[5] O. Kahn-Freund and B.A. Hepple, 'Laws against Strikes, Fabians Research Series' (1972), p. 4. See also R. Ben-Israel, International Labour Standards: The Case of the Freedom to Strike, Kluwer (1988), pp. 13; V.A. Leary, The Paradox of Workers Rights as Human Rights, in L.A. Compa, and S.F Diamond (eds.), Human Rights, Labour Rights and International Trade (1996); J. Gross, (ed.) Workers' Rights as Human Rights, Cornell University Press (2003); R .J. Adams, "Labour Rights as Human Rights: Implications of the International Consensus", (1999) <http:// www.hartford-hwp.com/archives/26/094.html> accessed 12 February 2007; cited in B. Barber, "The Future of Trade Unionism"<www.tuc.org.uk> now accessed 10 May 2020.

[6] Kahn-Freund refers to these interests as "platitudinous confrontation of expectations and interests". See O. Kahn-Freund, Labour and the Law (1977), pp. 48–49.

[7] J. G. Getman and F. R. Marshall, 'The Continuing Assault on the Right to Strike', 79(3) Texas Law Review (2000- 2001) 703- 735, at 703–704.

another way of depriving the citizens of their right to life. While the right to strike is clearly recognised in international law and the laws and constitutions of many countries of the world from Europe to the USA, Africa, and elsewhere, it is a right that should not apply to medical doctors because of the peculiar nature of their jobs. How will it look if an accident victim, almost on the point of death, is rushed to a hospital, only to discover that the doctors are on strike? If and when such a patient dies for lack of medical attention, what will be the essence of right to life provided for in the constitution? Strike action by medical doctors has multiple effects. It is a breach of the constitutionally guaranteed right to life as well as a breach of the Hippocratic Oath sworn to by doctors at induction. It renders the essence of having a government in place useless, as the major obligation of any government in any country of the world is, first and foremost, the protection of lives and properties. When lives are wasted due to strike action by medical doctors, the essence of having a government is defeated.

2.1 The Right To Life

Right to life is the most precious and the most important of all human rights, and it is only when a right to life is ensured that all other rights can be obtained and effectively enjoyed. The right to life presupposes that a human being has an essential right to live, and so has the right not to be killed unjustifiably. The right to life is an omnibus right that encompasses other related rights, such as right to health care, for instance. Accordingly, the African Commission on Human and Peoples Rights observed in *Forum of Conscience V. Sierra Leone* that the right to life is the fulcrum or pillar of all other rights; it is the fountain through which all other rights flow.[8] It is only when there is life that all other right components to life can be meaningful. This is why most national constitutions and many international instruments make provision for the right to life. In Nigeria, 'Every person has a right to life, and no one shall be deprived intentionally of his life, save in the execution of a sentence of a court of competent jurisdiction in respect of a criminal offence of which he has been found guilty.'[9] The African Charter on Human and People's Rights (ACHPR) also provides that: "Every person has a right to life, and no one shall be deprived of his life intentionally."[10] Another

[8] Forum of Conscience v. Sierra Leone, African Commission on Human and Peoples' Rights, Comm. No. 223/98 (2000). See also <http://hrlibrary.umn.edu/africa/comcases/223-98.html>, accessed 29 September 2020.

[9] Section 33, Constitution of the Federal Republic of Nigeria, (CFRN) 1999 (as amended).

[10] Article 4 of the African Charter on Human and People's Rights (ACHPR).

international instrument also provides that "Everyone has a right to life, liberty, and security of person."[11]

2.2 What is a Strike?

Generally, a strike is a deliberate stoppage of work by workers for the purpose of putting pressure on their employers to yield to their demands.[12] There are so many definitions of a strike.[13] Different legal systems have defined strike by legislation. Each definition reflects the position in the respective jurisdiction. In *Tram Shipping Corporation v Greenwich Marine Incorp.*,[14] Lord Denning defined strike as "a concerted stoppage of work by men, done with a view to improving their wages or conditions of employment, or giving vent to a grievance or making a protest about something or sympathising with other workmen in

such endeavour. It is different from the stoppage brought by an external event such as a bomb scare or by an apprehension of danger."[15] In Nigeria, Section 48 of the Trade Disputes Act states that: Strike means the cessation of work by a body of persons employed acting in combination, or a concerted refusal or a 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 persons or body of persons employed, to accept or not to accept terms of employment and physical conditions of work; and in this definition:- (a) "cessation of work" includes deliberately working at less than usual speed or with less than usual efficiency, and (b) "refusal to continue to work" includes a refusal to work at usual speed or with usual efficiency.[16]

From this definition, three elements can be deduced. They are "concerted action," "stoppage of work," and that "the cessation must be connected with the terms of employment and physical conditions

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[11] Article 2 of the Universal Declaration of Human Rights (UDHR).

[12] K.G.J.C. Knowles, Strikes- A Study in Industrial Conflict (1952), p. 1.

[13] K.G.J.C. Knowles, Ibid, defines a strike as "a collective stoppage of work undertaken in order to bring pressure to bear on those who depend on the sale or use of the products of that work. The strike must involve a group of employed workers that, is there must be a definite employer-employee relationship between the parties involved in the dispute". See also E. T. Hiller, The Strike: A Study in Collective Action (1982), p. 12; H. Collins, K.D. Ewing, and A. McColgan, Labour Law: Text and Materials (2001); O. Kahn-Freund, Labour and The Law (1983), p. 291.

[14] (1975) ICR 261, at 276. See also *Miles v Wakefield Metropolitan District Council* [1987] 2 ALL ER 1081, at 1097.

[15] Ibid, p. 276. See also section 235 of the Employment Rights Act 1996, and section 246 of the Trade Unions and Labour Relations (Consolidation) Act 1992.

[16] Section 48, Trade Disputes Act, Cap T8 LFN, 2004. See also *Oshimohole v Federal Government of Nigeria* [2005], NWLR. (Pt.0907) 414. See also, <https://www.pmnewsnigeria.com/2015/06/09/the-legal-framework-regarding-strikes-in-nigeria/> accessed 22 May 2020.

of work." These three elements must be complete before a strike could be said to have taken place.

3.0 Legal Sources of the Right to Strike in Nigeria

Under the Nigerian legal system, there is no guaranteed positive constitutional or statutory right to strike. The right to strike in Nigeria emanates from the immunities which were granted to workers and trade unions against civil and criminal liabilities for embarking on strike.[17] Although there was no direct provision on the right to strike before 1968, the British-flavoured amalgamation of common law and legislation which immunes trade unions and workers from civil and criminal liabilities attendant whenever they engage in strike actions had become part of Nigerian legal system.[18] These immunities are now enshrined in sections 23 and 43 of the Trade Unions Act.[19] There are other sources of the right to strike. For example, a conjunctive reading of section 4 (1) and first paragraph of the first schedule of the Trade Unions Act impliedly recognises the right to strike in Nigeria. First, section 4 (1) of the Act provides that every trade union must have registered rules which must contain provisions with respect to matters mentioned in the first schedule of the Act.[20] The Trade Disputes Act does not expressly refer to a right to strike, but some of

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[17] O.V.C.Okene, 'The Status of the Right to Strike in Nigeria: A perspective From International and Comparative Law' in African Journal of International and Comparative Law, March 2007, p.40.

[18] The year 1968 marked the beginning of legislations affecting the right to strike in Nigeria with the promulgation of the Trade Disputes Emergency Provisions Act of 1968 banning the right to strike during the war in order to sustain the war efforts. Although there was no express provision on the matter, before 1968 the British-flavoured amalgam of common law and legislation which immune's trade unions and workers from criminal and civil liabilities attendant upon strike actions had become part of our legal system. See A.A. Adeogun, *From Contract to Status in Quest for Security*, University of Lagos Press (1986), p. 4.

[19] Section 23 provides that "an action against a trade union (whether of workers or employers) in respect of any tortuous act alleged to have been committed by or on behalf of the trade union in contemplation of or in furtherance An action of a trade dispute shall not be entertained by any court in Nigeria.
Section 43(1) of the Trade Unions Act provides that "an act done by a person in contemplation or furtherance of a trade dispute shall not be actionable in tort on anyone or more of the following grounds only, (a) That it induces some other person to break a contract of employment; or (b) That it is an interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wishes; or (c) That it consists in his threatening that a contract of employment (whether one to which he is a party or not) will be broken; or (d) That it consists in his threatening that he will induce some other person to break a contract of employment to which that other person is a party.

[20] Paragraph 14 of the first schedule provides that the Rules Book of trade unions must contain a provision that no member of a trade union shall take part in a strike unless a majority of the members has in a secret ballot voted in favour of the strike. This provision is useless if workers have no right to strike.

its provisions recognise the existence of the right to strike. It also defines the meaning of strike in Nigeria. It also makes provisions dealing with the procedures for strike action.[21] The same goes for provisions of the Trade Union (Amendment) Act which prohibits employees or any other person to "take part in a strike or engage in any conduct in furtherance or contemplation of a strike.[22] Section 42 (1) of the Trade Unions Act also provides for peaceful picketing. In the case of *Union Bank of Nigeria Plc v. Edet,*[23] Uwaifo, JCA declared that 'the failure to act in strict compliance with collective labour agreement is not justiciable. Its enforcement lies in negotiations between the union and the employer, and ultimately, in strike action should the need arise and it be appropriate.'[24] As it is often the case in Nigeria, one of the possible inferences from this statement is that doctors can embark on strike when the collective labour agreements they reach with the government are not complied with. Thus, it can be argued that Nigerian government has failed to protect the life of the citizens by allowing doctors to embark on strike as a result of government's non-compliance with the collective agreements reached with the medical practitioners.

The provisions of the Trade Unions Act cited above, and Justice Uwaifo's declaration in this case infer the judicial recognition of the right to strike. It is therefore, obvious that the right to strike exists in Nigeria. Nigerian trade unions have made ample use of the right to strike at several points in time. For example, between 1949 and 1950, there were 46 strikes affecting 50,000 workers, including the tragic Enugu Coal-Miners strike, which claimed 23 lives.[25] The question of whether this protection of the right to strike is sufficient or not is a different matter altogether. Obviously, there is no fundamental right to strike in Nigeria. As we have seen, the liberty of industrial action in Nigeria is subject to what is commonly known as the "golden formula"- acts done in contemplation or furtherance of a trade dispute. This is not what obtains in other jurisdictions where the fundamental right to strike is positively and expressly provided for either in the constitution or in a labour statute.

Nigeria clearly infringes its obligations under international law by failing to ensure a right to strike. Not only does Nigerian law not

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[21] See sections 17, 42 and 47 of the Trade Disputes Act, Cap 432, Laws of the Federation of Nigeria, (LFN) 1990.

[22] Section 6, Trade Union (Amendment) Act, 2005.

[23] [1993] 4NWLR (Pt.287) p. 288.

[24] Ibid.

[25] A. Emiola, 'Nigerian Labour Law' (1982), p. 152. See also C. K. Agomo, Federal Republic of Nigeria, in R. Blanpain, (ed.) International Encyclopaedia for Labour Law and Industrial Relations (2000), para. 265.

contain a positive expression of the right to strike, but it also subjects participants to severe penal sanctions and other liabilities. The existence of the vast array of legal constraints to the taking of strike action in Nigeria indicates that no one can speak truly of a right to strike. Furthermore, what is patently unfair is the fact that workers lose their seniority while on strike, and are denied other benefits such as pension schemes, co-partnership schemes, and promotion structures on account of lack of continuity due to industrial action. An example was when the Federal Government in late 2014 terminated the appointment of striking resident doctors but later reversed the termination.[26] In Lagos State, the strongest state branch of NMA, doctors went on strike four times from 2010 to 2012. The 2012 industrial action lasted one month from the first day of May. The state government without any hesitation sacked the then 788 doctors in its employ claiming to have engaged 303 new doctors in their place. The matter was however, amicably resolved.[27] Also, the sanction provided in section 43 of Trade Disputes Act is loss of wages for the period of strike: Notwithstanding anything contained in this Act or in any other law, where any worker takes part in a strike, he shall not be entitled to any wages or other remuneration for the period of the strike, and any such period shall not count for the purpose of reckoning the period of continuous employment and all rights dependent on continuity of employment shall be prejudicially affected accordingly.[28]

The section also states that locked-out workers shall not be paid during the period of lockout.[29] Again, the broad definition of essential services deprives a sizeable ratio of Nigerian workers of this basic human right at work. Another issue in industrial relations in Nigeria is that, in contrast with what obtains in most other countries of the world, workers in Nigeria can be sacked without redress for taking part in lawful industrial action.[30]

To permit the dismissal of those who participate in lawful strikes is destructive and inconsistent with the policy of promoting collective bargaining. The situation would be different where there is a positive guaranteed right to strike. Nigeria has ratified the entire core ILO

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[26] K. D. Mefubara, 'Law and Ethics of Strikes in the Nigerian Health System' in Global Journal of Social Sciences ISSN 1596-6216. Vol 14, 2015: Lagos: Bachudo Science Co. Ltd. ISSN 1596-6216, p.64.

[27] Ndukaeze Nwabueze, *Strike by State-Sector Doctors, the Dual Mandate and Inherent Contradictions in Public Health Management* in International Journal of Humanities Social Sciences and Education (IJHSSE) Volume 1, Issue 11, November 2014, p.14.

[28] Section 43(1) (a), Trade Disputes Act, Cap T8 LFN, 2004.

[29] Ibid, Section 43 (1) (b).

[30] See note 27.

Conventions, in particular, numbers 87 and 98, and the African Charter on Human and Peoples' Rights. Nigeria is also a signatory to the International Covenant of Economic, Social and Cultural Rights. Thus, she is bound by Article 2(1) to make provision for the right to strike as enshrined in Article 8 (1) (d), through legislative and other appropriate means. Nigeria's important role and status as a member of the Governing Body of the ILO is enough to make her show very positive examples in all spheres of respect of global standards, especially the right to strike.

In reality, the Nigerian worker does not possess the "right to strike." Though free to strike, the law only protects him or his trade union against action in certain torts.[31] In other words, whoever is affected by a strike is free to take legal action against the striker in contract or in tort not protected by trade union legislation. The missing point in Nigeria is this: there is an overburdened long list of essential services of those that cannot legally embark on strike. This list includes health services providers, the number one of which is medical doctors. However, strike actions by medical doctors have become a recurring decimal, with no punitive measure *per se,* which affects lives.

4.0 General and Absolute Prohibition of the Right to Strike

Limitations and restrictions on the right to strike in Nigeria are of two kinds, conditional or general prohibitions, and absolute prohibitions.[32] This is the general trend in most countries in Africa.[33] From the year 1968, the legal status of strikes in Nigeria received serious statutory attention. There are now severe limitations and restrictions on the right to strike under Nigerian law.[34]

While upholding the principle of the right to strike, the ILO has agreed that it is permissible for certain temporary restrictions to be placed upon its exercise. For the first time in the history of Nigerian labour relations, the Nigerian government, in 1968, made a bold attempt to curb the hitherto presumed right to strike by placing an outright ban on strikes through the promulgation of the Trade Disputes (Emergency Provisions) Act.[35] In 1969, the government reinforced the earlier Act by promulgating the Trade Disputes

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[31] O.V.C.Okene, *The Status of the Right to Strike in Nigeria: A perspective From International and Comparative Law* in African Journal of International and Comparative Law, March 2007, p.43.

[32] B. O. Nwabueze, 'Presidentialism in Commonwealth Africa' (1974), p. 37.

[33] B. O. Nwabueze, ibid.

[34] Ibid.

[35] Act No. 21 of 1968. This was during the Nigerian Civil War. It was done apparently to sustain production of goods and services and to ensure industrial peace to reinforce the war effort.

(Emergency Provisions) (Amendment No.2) Act, 1969[36] due to continuous strike actions after the first Act. These laws were decreed in the wake of the Nigerian civil war (1967–1970), apparently to sustain the production of goods and services to ensure industrial peace while the war lasted. However, what appeared like a temporary wartime measure became part of the law by virtue of the Trade Disputes Act. The Act severely circumscribed the workers' right to strike by introducing both voluntary and mandatory settlement of disputes. Therefore, before workers can embark on strike in Nigeria, they are required to have fully exhausted all the elaborate statutory procedures for the settlement of trade disputes.[37] Nigerian workers, therefore, cannot embark on a lawful strike unless they firstly adhere to the procedures stipulated by law.

The ILO has accepted that in specified cases, legislation can prohibit recourse to strike action permanently. For example, the ILO allows national laws or regulations to determine the extent to which the Armed Forces and the Police are to be covered by the guarantees stipulated in Convention No. 87.[38] Following this, the ILO has refused to object to legislation banning strikes by such personnel.[39] Our stand in this paper is that medical doctors ought to have been on the top list of 'such personnel.' They ought to have been accorded the same ILO standard in this respect. No service could have been more essential than the one which directly deals with life. While the Armed forces and the Police are for the safety of lives both outside and within Nigeria's borders, respectively, the medical doctors are directly in charge of saving lives and preventing deaths. We can only talk of security for the living, as it is a futile effort to be securing the dead. This is why strike action by medical doctors is a disservice to

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[36] Act No. 53 of 1969.

[37] If the attempt to settle the dispute by the internal grievance machinery fails, the parties are expected to resort to mediation by coming together under a mediator mutually agreed upon by them. If there is failure to reach an agreement, the matter is reported to the Minister of Employment, Labour and Productivity, who appoints a conciliator, and when conciliation fails, the Minister is required to refer the matter within 14 days to the Industrial Arbitration Panel. Where the award of the Industrial Arbitration Panel is objected to, the Minister must refer the dispute to the National Industrial Court, whose award shall be final and binding on the parties to whom it relates. To give force to these provisions, Section 17 (1) of the Trade Disputes Act further prevents workers from going on strike and employers from imposing a lock-out while negotiations or arbitral proceedings are in progress; neither can any industrial action be taken or initiated after the tribunal might have finally determined the issue to be in controversy. It is an offence to do otherwise.

[38] See Article 9(1) of the Convention.

[39] ILO Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee 3rd edition (Geneva: International Labour Office, 1985), para. 221.

humanity and a breach of the Hippocratic Oath they have sworn to. We shall, therefore, examine the right to strike by those offering essential services and see whether it is justifiable for them to have the right to strike.

5.0 The Right to Strike and Essential Services

It is common to find absolute restrictions on the right to industrial action when it comes to the issue of essential services. The concept of the "essential service" connotes that certain activities are of fundamental importance to society and that their disruption will have some harmful consequences.[40] The Freedom of Association Committee of the ILO defined essential services as those whose interruption may cause public hardship[41] or serious hardship to the people. This definition was later modified to read:

Essential services are only those the interruption of which would endanger the life, personal safety, or health of the whole or part of the population.[42]

It is important to note two phrases in this definition: 'endanger the life'; health of the whole or part of the population.' The only professionals fitted into preventing 'endangering of life' and promoting the 'health of the whole or part of the population' are health workers, and most especially, the medical doctors. While the personnel of the Armed Forces are trained to kill, and those of the Police are trained to combat crimes, medical doctors are trained to preserve lives and prevent deaths where possible. The irony of this is that if any member of the Armed Forces or the Police is wounded at war front or shut by armed robbers, it is still the medical doctors that will attend to them. The right to strike by employees or anybody at all is only meaningful when those that will help them to enjoy that right are themselves not on strike.

Nigerian law prohibits workers in essential services from going on strike[43] and adopts the definition of essential service under the Trade Disputes Act.[44] Also, the Teaching (Essential Services) Decree 1993[45]

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[40] G.S. Morris, *The Regulation of Industrial Action in Essential Services* in Industrial Law Journal (1983) 69; See also G.S. Morris, Strikes in Essential Services (1986), p. 7.

[41] Official Bulletin Vol. XLIV No. 3, 54th Report, Case No. 179 (1961), para 55.

[42] Freedom of Association and Collective Bargaining: 1994 Report Part 4B para 159; See also B. Gernigon, A. Odero, and H. Gudo, 'ILO Principles Concerning the Right to Strike' 137(4) International Labour Review (1998) 437–481, p. 443.

[43] Section 6 (a) of the Trade Union (Amendment) Act, 2005.

[44] According to Section 9(1) of the Act, "essential service" signifies (a) the public service of the Federation or of a State which shall for the purposes of this Act include service, in a civil capacity, of persons employed in the armed forces of the Federation or any part thereof and also, of persons employed in an industry or undertaking (corporate or unincorporated) which deals or is connected with the manufacture or production of materials for use in the armed forces of the Federation or any part

that came into existence following the disagreement between the Academic Staff Union of Nigerian Universities (ASUU) and the Federal Government added teaching to the list of essential services.[46] One should not be deceived that the government loves the profession of teaching so much to have classified it as essential, but the Decree was promulgated just to prevent University lecturers from embarking on strike. Notwithstanding this Decree, lecturers are always embarking on strikes. They are even on strike even before the Covid-19 lockdown in March 2020 and the strike continues as at the time of writing this paper in June 2020. Obviously, the list of essential services comprises a whole gamut of services that could legitimately come under the law. It is quite surprising that as long as the list of those captured to be rendering essential services is, medical doctors are conspicuously omitted. This is a great disservice to the citizens and a gross violation of section 33 of the 1999 constitution that guarantees their right to life. This is the missing point. The legislation should be urgently amended by making health workers and, in particular, medical doctors to top the list of those providing essential services, by virtue of which they should be prohibited from exercising the right to strike.

What the Nigerian law classified as essential services must be criticised not only as being unrealistic and vague but also makes nonsense of the basic concept of essential services. Essential service connotes a service whose disruption would endanger human life, public health or safety or cause serious bodily injury or expose any

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thereof; (b) any service established, provided or maintained by the Government of the Federation or of a State, by a local government council or any municipal or statutory, or by private enterprise – (i) for, or in connection with, the supply of electricity, power or water, or fuel of any kind, (ii) for, or in connection with, sound broadcasting or postal, telegraphic, cable, wireless or telephonic communications, (iii) for maintaining ports, harbours, docks or aerodromes, or for, or in connection with, transportation of persons, goods or livestock by road, rail sea, river or air, (iv) for, or in connection with, the 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-cleansing and the disposal of night-soil and rubbish, (v) for dealing with outbreaks of fire; (c) Service in any capacity in any of the following organisations – (i) the Central Bank of Nigeria, (ii) the Nigeria Security Printing and Minting Company Limited, (iii) any corporate body licensed to carry on banking business under the Banking Act.

[45] No. 30 1993.

[46] Section 2 of the Decree provides that "no member of staff, whether teaching or non-teaching, employed in any primary, secondary or tertiary educational institution in Nigeria shall embark on an industrial action in the form of strike, sit-down-strike, work-to-rule or any other kind of individual action calculated to disrupt the smooth running of teaching or educational services in any of those educational institutions." See also, A.B.Ahmed 'A Critical appraisal of the right to strike in Nigeria' <http://www.ijhssnet.com/journals/Vol_4_No_11_1_September_2014/32.pdf> accessed 20 May, 2020.

valuable property to destruction or serious damage.[47] The problem with the list of essential services in Nigeria is that it is over-inclusive of the not-so-essential-services to the exclusion of the most-important-and-real-essential-services, like the medical and health services. This is an anomaly. The essentiality of life is paramount over and above all other essentials listed in the so-called 'essential services.'

The right to life is supreme, above and beyond, which no other right exists. The right to strike, as crucial as indispensable as it is in democratic societies, cannot supersede the right to life. To this extent, therefore, strike actions by medical doctors should be number one among the list of employees prohibited from embarking on strike. Equally, strike actions by medical doctors is not only illegal, it is also unethical, unprofessional, and demonstrates a high degree of insensitivity and disrespect to the preservation of life which forms the bulk of the contents of the Hippocratic Oath sworn to by medical doctors at the point of entering the profession.

6.0 The Hippocratic Oath

At this juncture, it is pertinent to know what the Hippocratic Oath is all about. The Hippocratic Oath is one of the ancient binding documents in human history. Written by Hippocrates, the Oath is still held sacred by medical doctors: to treat the sick to the best of their ability; to preserve the privacy of a patient; to teach the next generation the secrets of medicine; and so on. Historically, it is an Oath of ethics taken by physicians. Originally, it requires a new medical doctor to swear, by a number of healing gods, to uphold specific ethical standards. The Oath is also the earliest expression of medical ethics in the Western world, establishing several principles of medical ethics which remain significantly relevant even as of today. These principles include medical confidentiality and non-maleficence. As societies change and advance, especially in the medical field, the Oath is modernised to keep abreast of modern trends. The rite of passage for medical graduates in many countries is the swearing to a modified version of the Oath. The oldest partial pieces of the Oath dates back to AD 275.[48] The oldest extant version, which dates to between the 10th and 11th centuries, was held in the Vatican Library.[49] A version that is usually cited, which dates back to

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[47] Femi Bamisile, 'Right to strike and Essential Services' <https://www.pmnewsnigeria.com/2015/06/23/right-to-strike-and-essential-services/> accessed 21 May 2020.

[48] *Norman, Jeremy. "Perhaps the Earliest Surviving Text of the Hippocratic Oath". History of Information.com. Accessed 7 May 2020.*

[49] *"Codices urbinates graeci Bibliothecae Vaticanae: Folio 64(Urb.gr.64)". Vatican Library: DigiVatLib. 900–1100. p. folio:116 microfilm: 121.*

1595, appears in Koine Greek with a Latin translation.[50] The Hippocratic Oath, from the 1923 Loeb edition, which was translated by W.H.S. Jones from Greek to English language, read thus:

> I swear by Apollo Physician, by Asclepius, by Hygieia, by Panacea, and by all the gods and goddesses, making them my witnesses, that I will carry out, according to my ability and judgment, this oath and this indenture. To hold my teacher in this art equal to my own parents; to make him partner in my livelihood; when he is in need of money to share mine with him; to consider his family as my own brothers, and to teach them this art, if they want to learn it, without fee or indenture; to impart precept, oral instruction, and all other instruction to my own sons, the sons of my teacher, and to indentured pupils who have taken the physician's oath, but to nobody else. I will use treatment to help the sick according to my ability and judgment, but never with a view to injury and wrong-doing. Neither will I administer a poison to anybody when asked to do so, nor will I suggest such a course. Similarly, I will not give to a woman a pessary to cause abortion. But I will keep pure and holy both my life and my art. I will not use the knife, not even, verily, on sufferers from stone, but I will give place to such as are craftsmen therein. Into whatsoever houses I enter, I will enter to help the sick, and I will abstain from all intentional wrong-doing and harm, especially from abusing the bodies of man or woman, bond or free. And whatsoever I shall see or hear in the course of my profession, as well as outside my profession in my intercourse with men, if it be what should not be published abroad, I will never divulge, holding such things to be holy secrets. Now if I carry out this oath, and break it not, may I gain for ever reputation among all men for my life and for my art; but if I break it and forswear myself, may the opposite befall me.[51]

The latest revised version of the Hippocratic Oath is the Declaration of Geneva, which was adopted on October 14, 2017, in Chicago by the World Medical Association (WMA) General Assembly. As the

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[50] *North, Michael (2002). "Greek Medicine: "I Swear by Apollo Physician...": Green Medicine from the Gods to Galen". National Institute of Health; National Library of Medicine; History of Medicine Division; Wecheli, Andreae (1595). "Hippocrates. Τα ενρισκομενα Opera omnia". Frankfurt: National Institute of Health; National Library of Medicine; History of Medicine Division).*

[51] *Hippocrates of Cos (1923).* "The Oath". *Loeb Classical Library. 147: 298–299.* doi:10.4159/DLCL.hippocrates_cos-oath.1923. accessed 7 May 2020.

most recent successor to the 2500-year-old Hippocratic Oath, the Declaration of Geneva, adopted by the WMA at its second General Assembly in 1948,[52] outlines in concise terms, the professional duties of medical doctors and affirms the ethical principles of the global medical profession. The recent edition of the Declaration, which had, up till now, been slightly amended in the nearly 70 years of its adoption, addresses some vital ethical parameters relating to the patient-doctor relationship, medical confidentiality, respect for teachers and colleagues, and other issues.[53] It is the standard practice for the WMA to circulate its policy papers for review every ten years to re-evaluate the accuracy, essentiality, and relevance of the documents. The Geneva Declaration is no exception. The most significant difference between the Geneva Declaration and other key ethical documents, (such as the WMA's Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects[54] and the Taipei Declaration on Ethical Considerations Regarding Health Databases and Biobanks),[55] was the absence of overt recognition of patient's autonomy, despite references to the physician's obligation to exercise respect, beneficence, and medical confidentiality toward his or her patient(s).[56]

A re-evaluation of how the professional obligations of physicians are represented in the Declaration of Geneva would be incomplete without considering the increasing workload, occupational stress, and the potential adverse effects these factors can have on medical doctors, their health, and their ability to provide the highest standard

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[52]World Medical Association Declaration of Geneva. <https://www.wma.net/policies-post/wma-declaration-of-geneva/>. Published May 2006, accessed 29 May 2020.

[53] A newly revised version adopted by the WMA General Assembly on October 14, 2017, includes several important changes and additions.

[54] World Medical Association Declaration of Helsinki: Ethical Principles for Medical Research involving human subjects. *JAMA*. 2013; 310(20):2191-2194.

[55] World Medical Association Declaration of Taipei on Ethical Considerations Regarding Health Databases and Biobanks.<https://www.wma.net/policies-post/wma-declaration-of-taipei-on-ethical-considerations-regarding-health-databases-and-biobanks/>. Published October 2016, accessed 29 May 2020.

[56] To reconcile this difference, the workgroup, considering other members of the WMA, other experts and ethical advisors, recommended the adding of the following clause: "I WILL RESPECT the autonomy and dignity of my patient." Furthermore, in order to highlight the importance of patient self-determination as one of the key cornerstones of medical ethics, the workgroup also recommended shifting all new and existing paragraphs focused on patients' rights to the beginning of the document, followed by clauses relating to other professional obligations. To more explicitly invoke the standards of ethical and professional conduct expected of physicians by their patients and peers, the clause "I WILL PRACTISE my profession with conscience and dignity" was augmented to include the wording "and in accordance with good medical practice."

of care. On the strength of the feedback received in the survey of WMA members, together with the recommendations enshrined in the recently adopted WMA Statement on Physician well-being,[57] workgroup members added the concept of physician well-being into the revised Declaration thus: "I WILL ATTEND TO my own health, well-being, and abilities so as to provide care of the highest standard." This clause indicates not only the humanity of physicians, but also the role physician self-care can play in improving patient care. Regarding professional relationships, previous versions of the Declaration called on students to respect their teachers, but departed from the Hippocratic Oath, which calls for mutual respect between teachers and students. The workgroup agreed to incorporate this idea of reciprocity of respect and to include a reference to respect for colleagues—"I WILL GIVE to my teachers, colleagues, and students the respect and gratitude that is their due"—to replace the line "MY COLLEAGUES will be my sisters and brothers," which has been removed in the current draft because the tone was considered outdated. To complement this principle, the workgroup equally added a clause which explicitly refers more to the obligation of teaching and forwarding knowledge to future generations of physicians. These and other editorial amendments, together with the addition of a subtitle identifying the Declaration as a "Physician's Pledge," have made this vital document to reflect more accurately the challenges and needs of the modern medical profession.

6.1 The Most Recent version of the Oath

Historically, this was first adopted by the 2nd General Assembly of the WMA, Geneva, Switzerland, September 1948, and later amended by the 22nd World Medical Assembly, Sydney, Australia, August 1968. The 35th World Medical Assembly further amended it, in Venice, Italy, around October 1983. Subsequently, the 46th WMA General Assembly, which was held in Stockholm, Sweden, in September 1999, was editorially modified by the 170th WMA Council Session, Divonne-les-Bains, France, by May 2005. It was also amended by the 173rd WMA Council Session, Divonne-les-Bains, France, in May 2006, and lately amended by the WMA General Assembly, Chicago, United States, in October 2017. A member of the medical profession will read the Pledge as follows:

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[57] World Medical Association Statement on Physician Well-Being. <https://www.wma.net/policies-post/wma-statement-on-physicians-well-being/>. Published October 2015, accessed 29 May 2020.

I SOLEMNLY PLEDGE to dedicate my life to the service of humanity; THE HEALTH AND WELL-BEING OF MY PATIENT will be my first consideration; I WILL RESPECT the autonomy and dignity of my patient; I WILL MAINTAIN the utmost respect for human life;[58] *I WILL NOT PERMIT considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing, or any other factor to intervene between my duty and my patient; I WILL RESPECT the secrets that are confided in me, even after the patient has died; I WILL PRACTISE my profession with conscience and dignity and in accordance with good medical practice; I WILL FOSTER the honour and noble traditions of the medical profession; I WILL GIVE to my teachers, colleagues, and students the respect and gratitude that is their due; I WILL SHARE my medical knowledge for the benefit of the patient and the advancement of healthcare; I WILL ATTEND TO my own health, well-being, and abilities in order to provide care of the highest standard; I WILL NOT USE my medical knowledge to violate human rights*[59] *and civil liberties, even under threat; I MAKE THESE PROMISES solemnly, freely, and upon my honour.*[60]

6.2 The Co-Relationship of the Hippocratic Oath and the Right to Strike

It is inconceivable, after swearing to this type of Oath, for a medical doctor to embark on strike, with the full awareness of the implications on human lives. It is reasonable to avoid everything that will put a medical doctor in a position where he will see people dying around him and ignore them, all on the excuse that he is on strike. Doctors know more than any professional that once life is gone, it is

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[58] If medical doctors were allowed to embark on strike action, the utmost respect for human life will only remain in the content of the pledge and non-existing in reality.

[59] This is the crux of the matter. The fundamental human right of the right to life can only be realized by annulling the right to strike by medical doctors, otherwise, the right to strike will not worth more than the pages on which it appears in the 1999 CFRN. This is why we even deem it fit to quote this Pledge verbatim for ease of reference.

[60] Ramin Walter Parsa-Parsi, 'The Revised Declaration of Geneva: A modern-day Physician's Pledge' <https://jamanetwork.com/journals/jama/fullarticle/2658261> accessed May 29, 2020.

irrecoverable. While the effect of a strike action by other professionals may be corrected, that of medical doctors will not. When teachers or lecturers are on strike, for instance, by the time the strike is called off, the students can still be taught what they have missed during the strike. However, in the case of strike by medical doctors, lives that are lost during that period are lost forever. Those lives cannot be revived after the strikes have been called off. This is the more reason why it is not only illegal but unethical for medical doctors to embark on strike. If the military personnel, the Police, the fire officers cannot go on strike because their services have been classified as essential, then medical practitioners top the list because we cannot conceive any other service that is more sacrosanct than the service of saving and preserving lives. While other professionals deal with lives remotely, medical doctors deal with lives directly.

In order not to appear one-sided, we are not canvassing in this paper that doctors should be enslaved or sacrifice their welfare and overall well-being on the altar of saving the lives of others. Far from it, and this brings in the constitutional duty of government to secure lives. Security of lives should be seen as a generic obligation, the constituent part of which must be adequate welfare of medical doctors. We believe that a doctor who is not in a right frame of mind or impoverished is prone to medical error, to the detriment of human lives. The nature of the job of medical doctors is not only sacrificial but highly demanding. A doctor who just closes for the day, preparing to go home, might be called almost immediately if there is an emergency that will require his field of specialisation. Besides, a doctor is exposed to various health hazards. The case of doctor Adadevoh, who contracted Ebola disease in the course of treating an Ebola patient and she died subsequently, is still fresh in our minds.[61] It should not be a case of compensation for the deceased family after death but a case of ensuring adequate equipment to protect the doctors, in addition to the payment of hazard allowance and similar allowances.

The outbreak of COVID-19 has further revealed the state of the Nigerian health sector. It is one thing for the constitution to guarantee the right to life; it is another thing for the government to put it in place, especially conditions that will ensure the guarantee of lives. Doctors' welfare is paramount and non-negotiable. In other

[61] Dr. Ameyo Stella Adadevoh was the Lead Consultant Physician and Endocrinologist at a private hospital in Lagos, Nigeria where she worked for 21 years. She died on 19 August 2014 after contracting the Ebola virus from Mr. Sawyer who flew in from Monrovia in Liberia.

jurisdictions such as America and Europe, they are the highest-paid.[62] Their services are more than essential; they are indispensable. As long as doctors' welfare is neglected, the claim of government to the safety of lives is unattainable. If the government does the needful, it can then enact a law to ban strike action by medical doctors. The Nigerian Medical Association should not function as a trade union for the purpose of embarking on strike, among others, but should be used as a platform to further enhance professionalism and efficiency in medical practice.

Generally speaking, there is no direct legal consequence for breaking the Hippocratic Oath. In modern times, however, an arguable equivalent is medical malpractice, which carries varying degrees of punishments, ranging from legal action to civil penalties.[63] In the US, there have been judicial decisions on the classical Hippocratic Oath. Such decisions either uphold or dismiss its bounds for medical ethics.[64] In antiquity, the sanction for breaking the Hippocratic Oath could range from a penalty to losing the right to practice medicine. We can still recollect the seizure of practice licence of the personal physician to the late global Pop singer, Michael Jackson, in the person of Conrad Murray. The physician was also imprisoned for medical negligence.[65]

As noted earlier, the right to strike is not anywhere expressly provided for in the Nigerian Constitution or labour laws. In the first instance, the right stems from series of protection and immunities granted to the actions of strikers, and secondly, it is a derivative of the

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[62] Nigerian doctors earn $320 per month compared with their counterparts in Luxembourg that earns $352,300 and USA that earns $350,300 per month. See <https://guardian.ng/news/nigerian-medical-doctors-among-least-paid-globally/> accessed 8 October 2020 and <https://medicfootprints.org/10-highest-paying-countries-for-doctors/> accessed 8 October 2020.

[63] *Groner M.D., Johnathan (2008). "The Hippocratic Paradox: The Role of the Medical Profession in Capital Punishment in the United States". Fordham Urban Law.*

[64] *Hasday, Lisa (23 February 2013). "The Hippocratic Oath as Literary Text: A Dialogue". Yale Journal of Health Policy, Law, and Ethics. 2 (2): Article 4. Retrieved 6 October 2015.See the cases of Roe v Wade, Washington v Harper, Compassion in Dying v State of Washington* (1996), and *Thorburn v Department of Corrections* (1998).

[65] <https://www.google.com/search=what+is+the+state+of+conrad+murray%27s+medical+licence> accessed 29 May 2020. Conrad Murray, Michael Jackson's personal physician, was convicted of involuntary manslaughter for improperly administering the anesthetic drug that led to Jackson's death and served two years of a four-year prison sentence. On September 27, 2011, Murray went on trial in Los Angeles and was convicted of involuntary manslaughter on November 29, 2011. He received the maximum penalty of four years in prison. His Texas medical license was revoked, and his California and Nevada licenses were suspended.

constitutional right to peaceful assembly and association. That unionists have never at any point before or after the ban imposed during the 1970's civil strife complained of being barred from exercising the right is a good indication that the right exists. These are in addition to myriads of judicial pronouncements and international conventions in that respect. Obviously, providers of essential and non-essential service in Nigeria have the right to strike to press home their demands. However, it is not the same with takers of the Hippocratic Oath, otherwise called the physicians' Oath.[66] The Oath is fundamental because whenever doctors embark on strike, the unfolding events that follow will range from severe sufferings to avoidable deaths. Patients that need urgent and special care will queue endlessly, at times leading to postponements of appointments with the doctors. Relations of poor patients would be traumatised because they would have no option than to watch their sick people dying slowly or resort to an ineffective local cure.

We submit that a medical doctor who abandoned the health of his patients or prematurely discharged them because he is on strike should be held liable to the patients according to the content of the Oath, for foreseeable aggravations and excruciating pains caused to that patient. Therefore, the legal effect of the Hippocratic Oath is that it still stands as the root of the code of conduct of medical doctors. It appears there is no direct consequence for its breach because it covers a lot of values, behaviour, and ethics expected to be observed by medical practitioners. As previously observed, the extant labour relation laws (especially the Trades Dispute Act) contain a series of protections and immunities to striking unions regardless of whether they have sworn to Hippocratic Oath. This is quite unfortunate as it even appears that medical practitioners are at the forefront of industrial conflict in this country. The Oath ought to have imposed some kind of restraint on the medical practitioners.

7.0 Legality or Otherwise of Strike by Medical Doctors

From the wordings of the various versions of the Hippocratic Oath, it is evident that the medical profession is the type that must be done

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[66] See <https://www.dailytrust.com.ng/medical-doctors-between-hippocratic-oath-and-right-to-strike.html> accessed 10 May 2020. The Oath is adopted by the Medical and Dental Council of Nigeria from the General Assembly of the World Medical Association (WMA) of Geneva, 1948. Before being issued with a practice license, the Oath requires prospective medical practitioners to voluntarily but solemnly swear to consecrate their lives to the service of humanity; to "make the health of their patients their first consideration;" and to maintain the utmost respect for human life. This simply implies that any action whatsoever calculated to infer that medical practitioners give priority to anything else other the health of their patients amounts to a breach of the sacred Oath.

wholeheartedly, with one's mind, soul, and spirit. There should be no looking back after entering into it, no matter the challenges inherent in it. This is our understanding of the Oath. Most of the services or industries included under essential services do not seem to merit the special distinction of being treated as such. For example, while the prohibition on the armed forces, electricity, water, and telecommunications sectors appear justified, it is difficult to agree that other services such as ports, petroleum, and private companies undertaking banking business constitute essential services. It is expected that a practical and more useful categorization would be the one that looks at the indispensability nature of service being performed or provided in order to determine its essentiality.[67] Obviously medical services are indispensable and so, are fundamentally essential.

Nigerian law has classified as essential services, such undertakings as electricity, water supply, health care delivery including the burial of the dead, hospitals, the treatment of the sick, the prevention of disease, or other public health issues, such as road-cleansing and the disposal of night-soil and rubbish, dealing with outbreaks of fire and the armed forces. It would be agreed that strike actions in these sectors would endanger public health and safety of the community, and it appears reasonable to prohibit strikes in these services. It leaves one to wonder why medical doctors are still able to embark on strike if health care delivery, hospitals, the treatment of the sick, and the prevention of disease are among the list of essential services. The simple inference from this is that medical doctors are committing illegal acts each time they embark on strike action. In as much as workers in the electricity, water supply, the Armed Forces and the Police cannot embark on strike as they render 'essential services,' the medical doctors whose duties are equally included in the list and whose jobs impact directly on human lives should be among the professionals that cannot legally embark on strike and should, therefore, be prohibited from strike actions. Otobo has condemned the Nigerian list of essential services as being excessively fake and politicized.[68] It is the 'more sensible compensation and employment

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[67] Femi Bamisile, 'Right to strike and Essential Services' <https://www.pmnewsnigeria.com/2015/06/23/right-to-strike-and-essential-services> accessed 21 May 2020.

[68] D.Otobo, "The Generals, NLC and Trade Union Bill" <http://www.nigerdeltacongress.com/ articles/generals_n/c_trade_union_bill.htm > cited in O.V.C. Okene: 2007 'The status of the right to strike in Nigeria: A perspective from International and Comparative Law', available at <http://works.bepress.com/ovunda> accessed 12 May 2020. Otobo said Nigeria has the widest definition of essential services in the world because of its politicisation by

policies' that brings the necessity of advocating for medical doctors in Nigeria in order to dissuade them from embarking on strike actions. If the Trade Union Act completely outlaws the right of workers in education sectors, the health sector, and all other sectors categorised as essential services, it keeps one wondering why medical doctors are still embarking on strike as they do.

8.0 Right to Life as Implied in Other Rights

Many jurisdictions do not view the right to life in isolation. While not abandoning its negative connotation of not intentionally depriving one of his life, in case of death, the courts rely much on the positive components of the right by conjunctively reading it together with the positive duties of the State, often declared non-justiciable in constitutional texts. Examples of such positive duties are contained in Chapter II of the Nigerian 1999 Constitution of the Federal Republic of Nigeria (CFRN). It covers such components of the right to life as healthcare, a healthy environment, food, shelter, and so on. These provisions, being non-justiciable,[69] are not enforceable on their own force.[70] What courts in some jurisdictions have done is to enforce those essential components, not as autonomous constitutional provisions but as in-excludable components of the right to life.[71] Two of the components of the right to life which courts in some jurisdictions interpret and apply as rights imposing a positive duty on the State to protect a dignified life can be analysed as thus:

a) Positive Duty to Provide Conditions that Guarantee Dignified Life

What this means is that the right to life is not just a bare negative duty on the State not to arbitrarily take life; it emphasises that the right to life, has at its core, the positive duty on the State to create the essentials that would allow for a dignified life. The government will breach the right to life if it does not channel the commonwealth towards the common good by pursuing policies and programs towards a society that guarantees the basic necessities of life to the people. Part of the essentials in this wise is the provision of adequate health facilities at all nooks and crannies of the country. Nigeria can

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successive military regimes, which, since the mid-1970s, expected the classification itself to be a sufficient anti-strike medicine instead of a more sensible compensation and employment policies.

[69] See section 6 (6) (c) of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

[70] Ibid.

[71] *Villagran-Morales et al v Guatamela, 1999 Inter-Am. Ct. H.R. (Ser. C) No. 63. 144 (Nov. 19, 1999).*

borrow from the *Street Children* case,[72] where the Inter-American Court of Human Rights, declared:

> The right to life is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning. In essence, the fundamental right to life includes not only the right of every human being not to be deprived of his life arbitrarily, but also the right that he will not be prevented from having access to the conditions that guarantee a dignified existence. States have an obligation to guarantee the creation of the conditions required in order that violations of this basic right do not occur.[73]

Thus, part of the conditions that guarantee a dignified existence, which Nigeria should emulate, is the prohibition of the right of medical doctors to embark on strike. It is in recognition of this reality that states (governments) have been called upon to create conditions that will not lead to deprivation of lives.[74]

b) The Right To Health Care

The right to healthcare is in itself quite encompassing; it covers everything that would adversely affect health when deprived, and thus, ultimately threatens life. It encompasses safe drinking water; a healthy environment, medical care, among others. This is why the services of medical doctors become indispensable to the right to life. In *Paschim Banag Khet Samity v State of West Bengal,*[75] the Indian Supreme Court held that the right to emergency medical care was

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[72] *Villagran-Morales et al v Guatamela, 1999 Inter-Am. Ct. H.R. (Ser. C) No. 63, 144 (Nov. 19, 1999).* Applauding the approach of the Court, Steven R. Keener & Javier Vasquez, 'A Life Worth Living: Enforcement of the Right to Health Through the Right to Life in the Inter-American Court of Human Rights', (2008-2009) 40 Colum. Hum. Rts Rev, 595, 597, opined that "the court took the idea that the right to life must be a right to a dignified life and began to enforce many elements of the right to health, finding violations even when the victims did not die and requiring government provision of food, water, sanitation, medicine and adequate medical care."

[73] See also< https://www.courschero.com/file/p3rp3do/144-The-right-to-life-is-a-fundamental-human-right-and-the-exercise-of-this/>accessed 26 May 2020.

[74] States must adopt any measures that may be necessary to create an adequate statutory framework to discourage any threat to the right to life; to establish an effective system of administration of justice able to investigate, punish and repair any deprivation of lives by state agents, or by individuals; and to protect the right of not being prevented from access to conditions that may guarantee a decent life, which entails the adoption of positive measures to prevent the breach of such right. See also, The *Indigenous Community of Sawhoyamaxa v Paraguay,* Series C No. 146 [2006] IACHR 2, para 153.

[75] [1986] 4 SCC 37.

enforceable as a right to life under Article 21 of the Constitution of India. The court reasoned that the right to emergency medical care formed a core component of the right to health, which in turn was recognised as forming an integral part of the right to life.[76] Article 21 provides that: "no person shall be deprived of his life or personal liberty except according to the procedure established by law." This component of the right to life imposes a positive duty on the government to channel its policies towards the provision of adequate and affordable healthcare as well as a duty to eliminate situations that are adverse to good health. One of such situations is the neglect of the health sector, which often occasion strikes by medical doctors. How can the government protect the right to life when the people are so isolated, geographically and financially, from medical services, safe drinking water, the security of lives and properties, etc.?[77]

9.0 Summary and Conclusion

In Nigeria, the health sector strike is neither supported by law, virtue, ethics, nor by the codes of professional practice. It is, therefore, unprofessional as it goes contrary to the pledges and Hippocratic Oaths sworn to at induction. Even so, despite the essential nature of health services, it seems that health sector strikes in Nigeria have become institutionalised. This is because the health sector strikes affect every component of the health system. As a result of the sanctity of human life, those to whom public health is entrusted have a duty of care, and they also have an obligation to respect human dignity at all times. While all services classified as essential and non-essential are important, obviously, the essential services take priority over and above the non-essential ones. Among the essential ones still, health services take priority because all other services are only useful when there are lives to be served by those rendering the services. Also, while it is indisputable that the right to strike has now become fundamental in every democratic society, it is not in all cases that the right can be applied as a result of the harm it will cause to humanity. This is the reason why medical practitioners who deal directly with lives should be prohibited by law from embarking on strike. To compensate for this seeming loss of that right, the salaries, allowances, and other perquisites for medical doctors in Nigeria should be greatly enhanced to make them be at par with the global standard.

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[76] How then can the right to life as provided for in the Constitution be guaranteed if the medical doctors are on strike when such medical emergencies occur?

[77] It should be noted that there are other rights that are ancillary to the right to life, such rights are right to means of livelihood and right to clean and healthy environment, among others.

10.0 Recommendations

This article has clearly stated the existing gaps on the right to strike and the right to life in Nigeria and the need to close the gaps in order to protect lives while enhancing the welfare of health service providers. The wrong priority placed on the not-so-essential services over the real essential services needs to be addressed. The services of medical doctors are obviously indispensable to the survival of humanity. Therefore, a re-classification of the list of essential services in Nigeria is hereby suggested, with medical doctors being number one on the list, to differentiate the true essential from the not-so-essential services. We submit, therefore, that the essential services legislation must be made more potent not only in print but also in implementation.

Also, one measure of the health of any society is the extent to which its legal system gives priority to health care facilities and conditions of service of medical doctors. It seems sad that sixty years after independence, these gaps still exist. Worse still, it appears there are mix-ups between the right to life and the right to strike. The right to strike must be modified to promote and enhance the right to life. While not denying the fact that the right to strike is basic, the right to life is more fundamental, and whatever will hinder the enjoyment of that right must be removed. It is on this basis we are recommending robust salaries, hazard and related allowances and good welfare package, in general, to compensate for the 'loss' of right to strike by medical doctors in Nigeria, and make them be at par with their colleagues in developed countries. What the doctors need is not palliative measures but a permanent, virile and robust health care facilities and robust welfare package to motivate them in the performance of their sacred duties and assist them in keeping to the wordings of the Hippocratic Oath that they have sworn to. This will curb strikes and brain drain in this important sector. It is also submitted that a clear provision for a positive right to strike must be balanced with an equally positive provision on the right not to strike by those rendering the real essential services. Denial of this right by those in this category, mainly medical doctors, should not be seen as a denial of their fundamental right to strike but as a sacrifice, they have to pay in line with their professional calling. This sacrifice, as we have said, should be compensated for by avoiding the conditions that trigger strikes by medical doctors. After an enhanced condition of service has been put in place, we submit that the names of striking medical doctors should be struck off from the register of medical practitioners. In severe cases, such doctors should be sentenced to appropriate terms of imprisonment if the breach violates the relevant

penal laws enforced by regular courts. Also, there should be adequate modern medical equipment and facilities for medical doctors to work with. Also, the welfare of doctors must be greatly enhanced to motivate them and never thought of strike. Unless and until these are done, the government will be found wanting in its primary obligation of protecting the lives and properties of the citizens.

Obviously, the outbreak of the pandemic COVID-19 has exposed the state of Nigeria's health sector. A state of emergency should be declared in the health sector by equipping the sector with the state of the earth modern medical equipment comparable to those existing anywhere in the world. This will save many lives and money spent on foreign medical trips by our politicians and money bags can be re-injected to improve the sector. Also, there should be a health education programme and awareness, to be provided *pro bono* by the government as part of its primary obligation of protecting lives.

In addition, the government should make health services free for children under the age of 20 and for adults over the age of 65. Certain minimum standards of medical facilities must be met by owners of private hospitals. The Federal and States Ministries of Health, together with other relevant health agencies and institutions must certify private hospitals fit before they can commence operations. Medical doctors should see their callings not only from the angle of business but also from the perspective of service to humanity. University Teaching Hospitals throughout the country must be adequately and well equipped to enhance the quality of training received by medical students in Nigeria to make them be at par with their counterparts globally. Digital teaching and all modern aids of impacting knowledge must be employed in the training of medical personnel. There should be separate lanes for ambulances on our roads to quickly convey patients in emergencies to their referred destinations. A situation where ambulances carrying patients in critical health conditions are held up in traffic, leading to the deaths of such patients, is a gross violation of the right to life. Nigeria is understaffed in terms of medical personnel. There should be at least one medical doctor to 25 citizens. If Nigeria's population is estimated to be 200 million, the minimum number of medical doctors needed should be conservatively put at 8 million. It is uncertain if the total number of doctors in Nigeria is in any way near this figure. The few doctors available are going abroad for greener pasture (brain drain) as a result of poor conditions of service at home, which frequently occasions strike. This trend should, therefore, be reversed. What this translates to is for the government to immediately recruit more medical doctors to cater for the citizens' health needs instead of

allowing the few available to seek for greener pasture elsewhere as a result of poor remuneration and other conditions of services. A national newspaper recently reported in its front page that Nigerian medical doctors are among the least paid globally.[78]

Lastly, there should be more special medical centres specializing in one area of critical ailment or the other, such as kidney, liver, heart, and other sensitive parts of the body whose impairment can lead to untimely and sudden death. At 60 years after independence, Nigerians should not be going abroad for kidney and heart transfer, or even open heart and brain surgeries. If the government truly wants to protect lives, all these facilities should be in place. Such centres should be funded and staffed by the federal government, and there should be one of such centres in all the senatorial districts of all the 36 states in Nigeria, including the Federal Capital Territory. This brings the total number of such centres to 108, (since we have three senatorial districts in each of the 36 states), which is within the financial capacity of the government. This will reduce the plea for financial assistance by vulnerable and indigent people going to India and other places for kidney or heart transplant, with millions of naira expended. With the right conditions of service and availability of adequate and modern medical facilities in place, Nigerian doctors will be more devoted to their jobs. After this, a law should be specifically and expressly enacted prohibiting strikes by medical doctors so that the citizens can enjoy their constitutionally guaranteed right to life.

[78] Chukwuma Muanya, 'Nigerian Medical Doctors among least paid globally' *The Guardian* (Lagos, 24 September 2020) p.1.