

ATTORNEY-GENERAL OF THE FEDERATION AND MINISTER OF JUSTICE

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MJ/CIV/ABJ/316/23

1st June, 2024

1. **The National President**

Nigerian Labour Congress

Pascal Bafyau Labour House, Central Business District
Abuja.

2. **The National President**

Trade Union Congress

National Headquarters - 338, Ikorodu Road, Idiroko B/Stop, Maryland Lagos.

RE: PROPOSED STRIKE ACTION BY NIGERIAN LABOUR CONGRESS (NLC) AND TRADE UNION CONGRESS (TUC)

My attention has been drawn to statement made on 31st May 2024, by the leadership of the Nigerian Labour Congress ("NLC") and Trade Union Congress ("TUC") declaring an indefinite nation-wide strike action from 3rd June 2024.

2. I wish to note that this latest declaration of strike action by organized labour is premature at a time when the Federal Government and other stakeholders involved in the Tripartite Committee on determination of a new national minimum wage had not declared an end to negotiation. You are aware that the Federal and State Governments are not the only employers to be bound by a new national minimum wage, hence, it is vital to balance the interest and capacity of all employers of labour in the country (inclusive of Organized Private Sector), in order to determine a minimum wage for the generality of the working population.

3. I would like to draw your attention to *Sections 41(1) and 42(1) of the Trade Disputes Act 2004 (as amended)*, which requires both NLC and TUC to issue mandatory strike notices of a minimum of 15 days. For ease of reference, these sections provide thus:

"41. (1) Without prejudice to section 18 of this Act, if any worker employed in any essential service ceases, whether alone or in combination with others, to perform the work which he is employed to perform without giving his employer at least fifteen days' notice of his intention to do so, he shall, unless he proves that at the time when he ceased to perform that work he did not know, or had no cause to believe, that the probable consequences of his or their doing so would be to deprive the community or any part of the

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community either wholly or to a substantial extent of that or any other essential service, be guilty of an offence and be liable on conviction to a fine of N 100 or to imprisonment for six months."

"42(1) Without prejudice to section 17 of this Act, if-

(a) any worker ceases, whether alone or in combination with others, to perform the work which he is employed to perform without giving to his employer at least fifteen days' notice of his intention to do so;"- emphasis added

4. It is pertinent to observe that at no time did either NLC or TUC declare a trade dispute with their employers, or issue any strike notice as required by law for such strike action to be legitimate and lawful. It is not in doubt that the fundamental importance of the 15-day notice is underscored by the fact that *Sections 41 & 42(1)(b)* criminalize non-compliance with this requirement for a valid declaration of strike action.

5. In addition to the foregoing, the legality or legitimacy of the proposed strike action is also strongly called to question by the fact that both NLC and TUC failed to comply with the statutory condition precedents (dispute resolution procedures) provided for under *Section 18(1)(a) of the Trade Disputes Act 2004 (as amended)* thus:

"An employer shall not declare or take part in a lock-out and a worker shall not take part in a strike in connection with any trade dispute where-

(a) the procedure specified in section 4 or 6 of this Act has not been complied with in relation to the dispute"

6. Furthermore, the proposed strike action is also in breach of relevant conditions itemized under *Section 31(6) of the Trade Unions Act (as amended)* as follows:

"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-

(a) the person, trade union or employer is not engaged in the provision of essential services;

(d) the provisions for arbitration in the Trade Disputes Act Cap T8 Laws of the Federation of Nigeria 2004 have first been complied with; and

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(e) in the case of an employee or a trade union, a ballot has been conducted in accordance with the rules and constitution of the trade union at which a simple majority of all registered members voted to go on strike."

7. I wish to further draw your attention to the fact that the conditions outlined by our national legislations for exercising the right to strike are in tandem with the International Labour Organization ("ILO") principles concerning the right to strike. It is the position of the ILO Committee on Freedom of Association that the obligation to give prior notice, obligation to have recourse to conciliation, mediation and (voluntary) arbitration procedures in industrial disputes, etc are prior prerequisites for declaring a strike. Thus, the alleged issuance of an ultimatum to the government by labour for the conclusion of negotiations before 31st May 2024 does not satisfy the requirement of issuing a categorical and unequivocal formal notice of strike action.

8. **Consequent on the foregoing, the call to industrial action is premature, ineffectual and illegal.** The proposed strike action is also at variance with the order of the National Industrial Court and ongoing mediatory/settlement efforts over issues connected with the subject matter of the order.

9. You are further invited to recall the pendency of the interim injunctive order granted on 5th June 2023 in **SUIT NO: NICN/ABJ/158/2023 – FEDERAL GOVERNMENT OF NIGERIA & ANOR V. NIGERIAN LABOUR CONGRESS & ANOR**, which order restrained both Nigeria Labour Congress and Trade Union Congress from embarking on any industrial action/or strike of any nature. This order has neither been stayed or set-aside, therefore it remains binding on the labour unions - See: *OSHIOMHOLE & ANOR V. FGN & ANOR (2004) LPELR-5188(CA) Per IBRAHIM TANKO MUHAMMAD, JCA (AHTW) at (Pp. 23-27, paras. E-C).*

10. It would be recalled that in the aftermath of the removal of fuel subsidy, both the government and labour consented to measures to ameliorate the adverse consequences thereto, by executing a Memorandum of Understanding ("MOU") on 2nd October 2023. The MOU entails provisions for payment of wage award, setting up of the minimum wage committee, provision of CNG buses and conversion kits, tax incentives, etc. It is remarkable to note that in the same MOU, both NLC and TUC committed *"to henceforth abide by the dictates of social dialogue in all our future engagements."*

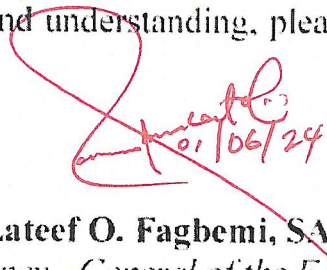
11. While the Government assures that it would continue to adopt a conciliatory approach to resolving matters pertaining to workers and citizens welfare in the spirit of collective bargaining, I would like to urge you to kindly reconsider the declaration



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of strike action and return to the ongoing negotiation meetings, which has been adjourned to a date to be communicated to parties. This would be a more civil and patriotic approach and will enable your Congress pursue its cause within the ambit of the law and avoid foisting avoidable hardships on the generality of Nigerians, which this proposed industrial action is bound to cause.

12. While soliciting your kind understanding, please accept the assurances of my esteemed regards.



Lateef O. Fagbemi, SAN
*Attorney - General of the Federation
and Minister of Justice*

Copy to:

1. Secretary to the Government of the Federation
2. Chief of Staff to the President
3. Hon. Minister of State for Labour and Employment
4. National Security Adviser.
5. Inspector-General of Police.
6. Director-General, State Security Services