# 1NC

## Framework

#### I NEGATE the resolution Resolved: A just government ought to recognize the unconditional right of workers to strike.

#### For clarity I offer the following definition of unconditional right to strike

**Gwisai et al, 09**

​​Munyaradzi Gwisai et al., Rogers Matsikidze, Shingirai Ushewekunze, Kiven Ushewekunze. 2009. “An outline of fundamental labour rights under international laws, national constitutions and Zimbabwean constitutional norms.” ZIMBABWE LABOUR CENTRE AND KEMPTON MAKAMURE LABOUR LECTURE SERIES BOARD. ISBN 978 0 797437 791. <https://opendocs.ids.ac.uk/opendocs/handle/20.500.12413/7045> (lectures in Labour Law and Labour Relations at the University of Zimbabwe and Briggs Zano Working Peoples College) Footnote(s) may be inserted at end, empty line(s) may be removed, and bracket(s) may be used to change offensive language. This material may be behind a paywall.  Please email jacksondeconcini@gmail.com for information about access.  // JAD 2021/07/10

♦ The NCA Draft Constitution Section 28 (3) **provides an explicit and unconditional right to strike** providing - “Every worker has the right to strike, sit-in or stayaway, or such other concerted action.”

**Now, I have ONE observation about the resolution.**

**The resolution specifies an UNCONDITIONAL right to strike.  This means that negative’s burden is to prove that ANY restriction on the right is justified.**

#### Because the resolution is question of just governance, the value for the round is government legitimacy.

#### The constitutive obligation of a just government is protecting security. This is a prior concern to their framework since violence hinders ethical decision making. For example, in the state of nature, what is “moral” is not determined through ethical deliberation, but rather through power and subjugation. Thus, framework should be a question of how we prevent the state of nature, i.e. ensure security.

#### Therefore, the criterion is ensuring security. If the government doesn’t ensure security we lose reason to follow it. This means the government is no longer legitimate. Philosopher Thomas Hobbes further explains:

Thomas Hobbes, “Leviathan,” 1651

**The only way to erect** such a **Common Power**, as may be able to defend them from the invasion of Forraigners, and the injuries of one another, and thereby to secure them in such sort, as that by their owne industrie, and by the fruites of the Earth, they may nourish themselves and live contentedly; is, to conferre alltheir **power and strength upon one [government.]**Man, or upon one Assembly of men, that may reduce all their Wills, by plurality of voices, unto one Will: which is as much as to say, to appoint one man, or Assembly of men, to beare their Person; and every one to owne, and acknowledge himselfe to be Author of whatsoever he that so beareth their Person, shall Act, or cause to be Acted, in those things which concerne the Common Peace and Safetie; and therein to submit their Wills, every one to his Will, and their Judgements, to his Judgment. This is more than Consent, or Concord; it is a reall Unitie of them all, in one and the same Person, made by Covenant of every man with every man, in such manner, as if **every[one]** man **should say to [each other]** every man, **"I Authorise and give up my Right of Governing my selfe**, to this Man, or to this Assembly of men, **on this condition, that thou** give up thy Right to him, and **Authorise all his Actions in like manner.”** This done, the Multitude so **United in one** Person, is called a **Commonwealth**, in latine CIVITAS. This is the Generation of that great LEVIATHAN, or rather (to speake more reverently) of that Mortall God, to which **we [gain]** owe under the Immortall God, our **peace and defence**. For by this Authoritie, given him by every particular man in the Common-Wealth, he hath the use of so much Power and Strength conferred on him, that by terror thereof, he is inabled to forme the wills of them all, to Peace at home, and mutuall ayd against their enemies abroad. ... And **because the [Goal]** End **of [Government]** this Institution, **is the Peace and Defence of** them **all**; and whosoever has right to the End, has right to the Means; it belongeth of Right, to whatsoever Man, or Assembly that hath the Soveraignty, to be Judge both of the meanes of Peace and Defence; and also of the hindrances, and disturbances of the same; and to do whatsoever he shall think necessary to be done, both beforehand, for the preserving of Peace and Security, by prevention of discord at home and Hostility from abroad; and, when Peace and Security are lost, for the recovery of the same.

#### Additionally, prefer this framework because upholding security is a prerequisite to pursuing other values like happiness or democracy.

## C1 - Medical Strikes

#### Healthcare strikes stifle public support and don’t help workers – this decreases the likelihood of future strikes to make a difference

Li et al. 15 [Su-Ting T. Li, MD, MPH Department of Pediatrics, University of California Davis, School of Medicine, Malathi Srinivasan, MD Department of Internal Medicine, University of California Davis, School of Medicine, Richard L. Kravitz, MD, MSPH Department of Internal Medicine, University of California Davis, School of Medicine, and Michael S. Wilkes, MD, MPH, PhD Department of Internal Medicine, University of California Davis, School of Medicine, 2015, “Ethics of Physician Strikes in Health Care,” INTERNATIONAL ANESTHESIOLOGY CLINICS, https://sci-hub.se/10.1097/AIA.0000000000000054]

Modern History of Physician Strikes—Have Physician Strikes Been Successful? Withdrawal or cessation of clinical services (striking) is the most extreme form of collective action. Physician strikes over the past 20 years have varied in purpose and success (Table 1). Health care provider strikes may have a negativeimpact on health care providers overall, if the public does not support the rationale surrounding the strike or if patient harm results from the strike. This negative public view increases if the strike is considered primarily physician welfare–centered rather than patient welfare-centered.2,25,36 Physicians, even when employed, are usually high wage earners, relative to the average wage earner. Yet, the practice of medicine is tightly regulated. Professionals in less tightly regulated fields have the ability to increase or decrease their professional fees more easily**.** A strong negative reaction was seen during the Ontario, Canada strike in 1986. In this strike, physicians went on a 23-day strike to try to prevent a federal ban on “extra-billing” (charging more than the amount payable by the Ontario Health Insurance Plan for providing an insured service). The strike failed to prevent the ban from going into law, and it also alienated the public.25 Looking Toward the Future of Strike

**Medical strikes increased child mortality by 75% and resulted in preventable deaths for the poor on a massive scale. The strikes didn’t change the system – the only response was dealing with its direct results**

**Waithaka et al. 20** [Dennis Waithaka is currently doing a Postgraduate Diploma in Research Methodology at KEMRI-Wellcome Trust, Published: 2/10/20, “Prolonged health worker strikes in Kenya- perspectives and experiences of frontline health managers and local communities in Kilifi County” International Journal for Equity in Health, https://link.springer.com/article/10.1186/s12939-020-1131-y ]

Beyond impoverishment, interviewees talked in dramatic terms about negative health-outcomes linked to the strikes, including deaths, with the poor again being the worst affected. A recent analysis of the effects of six previous nation-wide Kenyan strikes on mortality data in Kilifi County (before the 100 days doctors and the 150 days nurses strike) found a 75% increase in mortality among children aged 12–59months during the strike period, but no change in overall mortality [24]. The authors noted that the lack of change in overall mortality could have been because the strikes between 2010 and 2016 were relatively short, with only one lasting for more than a month (42 days). Evidence from other settings suggests that the effects of strikes on health outcomes are increased where emergency services are not available or the affected populations are not able to access viable (available and affordable) alternate healthcare services [1, 3, 19, 67, 68]. In Kenya, the Irimu et al (2018) study reviewing admissions in 13 public hospitals during the 2017 doctors’ and nurses strikes noted that ‘preventable deaths likely occurred on a massive scale’, particularly for the poor [27]. We identified similar perceptions in our study, but this may be in contrast with the more modest effects reported for prior strikes [24] . Given that the Kenyan public health system has faced a series of shocks and stressors over the decades, additional research that can provide more detailed data on the impact of the prolonged strikes on mortality over time is important. An ‘everyday resilience’ lens is relevant for analyzing the strategies adopted by managers in response to strikes, and for considering the impact of the prolonged strikes on the Kenyan health system. Everyday resilience can be defined as the ability of the system to maintain positive adjustment in the context of chronic shocks and stressors in ways that allow the organization to emerge from those conditions strengthened and more resourceful [43]. Whether everyday resilience is observed and built in the face of chronic and acute stressors depends on the nature of the strategies enacted by health system actors, and the capacities that they can draw upon. Absorptive strategies buffer the system from shocks and return the system to its state with little or no change in structure; adaptive strategies result in some limited adjustments in the system structure or processes; while transformative strategies result in significant functional or structural changes [43, 69]. During the nurses’ strike in Kenya, we observed that middle level managers enacted a range of absorptive strategies in their efforts to keep services open, including mobilizing financial, infrastructural and human resources to support continuity of some essential services. Adaptive strategies included some reorganization of staff and services offered, but more significant functional or structural changes - transformative strategies - were not observed during the strike. Across all the strategies observed, managers drew on their social networks and alliances to persuade and negotiate with various actors across the public health system to assist. They also demonstrated creativity in ways of working with others such as the local private facilities and NGOs. To keep key services running, managers drew on a long history of working together and coping with diverse everyday stressors in health service delivery [28, 41, 43]. Their relationships – or the ‘intangible resources’ they were able to draw upon were sometimes invaluable in helping them cope with the shock of the strike. However, there was little to suggest that the broader system was undergoing positive adjustment to minimise the likelihood of future strikes or build preparedness in the event of any such strikes. Thus, there is little evidence that everyday resilience was being built over the course of the strike. Indeed, tensions between health system actors, including conflicts between striking and non-striking nurses (as also observed in South Africa [7], may have lasting negative implications for health system preparedness for and prevention of strikes. Our study did not include views from private facility health managers, but private facilities were frequently mentioned by community members and health managers as places where the public sought alternative care. A potential future research question might therefore be to examine if and how private providers can contribute to building resilience capacities that the health system can draw on in response to future strikes.

#### Some conditions on a right to strike are necessary to ensure societal welfare – remember that NO RIGHT is unconditional, and that currently, all rights are conditioned on their benefit to society. Thus, a just government shouldn’t recognize an unconditional right to strike, but rather some form of a conditional right to strike to ensure that all citizens will not be without essential services,

## C2 – Military Right to Strike

#### Armed forces can’t strike now

LII 6 [Cornell Legal Information Institute, 2006, "10 U.S. Code § 976," Cornell Legal Information Institute, https://www.law.cornell.edu/uscode/text/10/976]

(a)In this section: (1)The term “member of the armed forces” means (A) a member of the armed forces who is serving on active duty, (B) a member of the National Guard who is serving on full-time National Guard duty, or (C) a member of a Reserve component while performing inactive-duty training. (2)The term “military labor organization” means any organization that engages in or attempts to engage in— (A)negotiating or bargaining with any civilian officer or employee, or with any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of military service of such members in the armed forces; (B)representing individual members of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of military service of such member in the armed forces; or (C)striking, picketing, marching, demonstrating, or any other similar form of concerted action which is directed against the Government of the United States and which is intended to induce any civilian officer or employee, or any member of the armed forces, to— (i)negotiate or bargain with any person concerning the terms or conditions of military service of any member of the armed forces, (ii)recognize any organization as a representative of individual members of the armed forces in connection with complaints and grievances of such members arising out of the terms or conditions of military service of such members in the armed forces, or (iii)make any change with respect to the terms or conditions of military service of individual members of the armed forces. (3)The term “civilian officer or employee” means an employee, as such term is defined in section 2105 of title 5. (b)It shall be unlawful for a member of the armed forces, knowing of the activities or objectives of a particular military labor organization— (1)to join or maintain membership in such organization; or (2)to attempt to enroll any other member of the armed forces as a member of such organization. (c)It shall be unlawful for any person— (1)to enroll in a military labor organization any member of the armed forces or to solicit or accept dues or fees for such an organization from any member of the armed forces; or (2)to negotiate or bargain, or attempt through any coercive act to negotiate or bargain, with any civilian officer or employee, or any member of the armed forces, on behalf of members of the armed forces, concerning the terms or conditions of service of such members; (3)to organize or attempt to organize, or participate in, any strike, picketing, march, demonstration, or other similar form of concerted action involving members of the armed forces that is directed against the Government of the United States and that is intended to induce any civilian officer or employee, or any member of the armed forces, to— (A)negotiate or bargain with any person concerning the terms or conditions of service of any member of the armed forces, (B)recognize any military labor organization as a representative of individual members of the armed forces in connection with any complaint or grievance of any such member arising out of the terms or conditions of service of such member in the armed forces, or (C)make any change with respect to the terms or conditions of service in the armed forces of individual members of the armed forces; or (4)to use any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity for the purpose of engaging in any activity prohibited by this subsection or by subsection (b) or (d). (d)It shall be unlawful for any military labor organization to represent, or attempt to represent, any member of the armed forces before any civilian officer or employee, or any member of the armed forces, in connection with any grievance or complaint of any such member arising out of the terms or conditions of service of such member in the armed forces. (e)No member of the armed forces, and no civilian officer or employee, may— (1)negotiate or bargain on behalf of the United States concerning the terms or conditions of military service of members of the armed forces with any person who represents or purports to represent members of the armed forces, or (2)permit or authorize the use of any military installation, facility, reservation, vessel, or other property of the United States for any meeting, march, picketing, demonstration, or other similar activity which is for the purpose of engaging in any activity prohibited by subsection (b), (c), or (d). Nothing in this subsection shall prevent commanders or supervisors from giving consideration to the views of any member of the armed forces presented individually or as a result of participation on command-sponsored or authorized advisory councils, committees, or organizations. (f)Whoever violates subsection (b), (c), or (d) shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000. (g)Nothing in this section shall limit the right of any member of the armed forces— (1)to join or maintain membership in any organization or association not constituting a “military labor organization” as defined in subsection (a)(2) of this section; (2)to present complaints or grievances concerning the terms or conditions of the service of such member in the armed forces in accordance with established military procedures; (3)to seek or receive information or counseling from any source; (4)to be represented by counsel in any legal or quasi-legal proceeding, in accordance with applicable laws and regulations; (5)to petition the Congress for redress of grievances; or (6)to take such other administrative action to seek such administrative or judicial relief, as is authorized by applicable laws and regulations.

Amendments 1997—Subsec. (f). Pub. L. 105–85 substituted “shall be fined under title 18 or imprisoned not more than 5 years, or both, except that, in the case of an organization (as defined in section 18 of such title), the fine shall not be less than $25,000.” for “shall, in the case of an individual, be fined not more than $10,000 or imprisoned not more than five years, or both, and in the case of an organization or association, be fined not less than $25,000 and not more than $250,000.” 1987—Subsec. (a)(1) to (3). Pub. L. 100–26 inserted “The term” after each par. designation and struck out uppercase letter of first word after first quotation marks in each paragraph and substituted lowercase letter. 1986—Subsec. (a)(1). Pub. L. 99–661 struck out the second of two commas before “(B)”. 1984—Subsec. (a)(1). Pub. L. 98–525 added cl. (B) and redesignated existing cl. (B) as (C). Findings; Purpose Pub. L. 95–610, § 1, Nov. 8, 1978, 92 Stat. 3085, provided that: “(a)The Congress makes the following findings: “(1)Members of the armed forces of the United States must be prepared to fight and, if necessary, to die to protect the welfare, security, and liberty of the United States and of their fellow citizens. “(2)Discipline and prompt obedience to lawful orders of superior officers are essential and time-honored elements of the American military tradition and have been reinforced from the earliest articles of war by laws and regulations prohibiting conduct detrimental to the military chain of command and lawful military authority. “(3)The processes of conventional collective bargaining and labor-management negotiation cannot and should not be applied to the relationships between members of the armed forces and their military and civilian superiors. “(4)Strikes, slowdowns, picketing, and other traditional forms of job action have no place in the armed forces. “(5)Unionization of the armed forces would be incompatible with the military chain of command, would undermine the role, authority, and position of the commander, and would impair the morale and readiness of the armed forces. “(6)The circumstances which could constitute a threat to the ability of the armed forces to perform their mission are not comparable to the circumstances which could constitute a threat to the ability of Federal civilian agencies to perform their functions and should be viewed in light of the need for effective performance of duty by each member of the armed forces. “(b)The purpose of this Act [enacting this section] is to promote the readiness of the armed forces to defend the United States.”

#### Right to strike for military personnel undermines military readiness – Specifically decks United States chain of command around the world by building animosity and decreasing reflexivity

MAURIZIO FALSONE, 02-23-2021 (University of Venice, visiting researcher @ Fordham Law. “Union Freedoms in the Armed Forces: Still a Taboo?” Industrial Law Journal (2021). [https://www.researchgate.net/profile/Maurizio-Falsone/publication/349546094\_Union\_Freedoms\_in\_the\_Armed\_Forces\_Still\_a\_Taboo/links/603e3efba6fdcc9c78087b8c/Union-Freedoms-in-the-Armed-Forces-Still-a-Taboo.pdf Published 2-23-2021](https://www.researchgate.net/profile/Maurizio-Falsone/publication/349546094_Union_Freedoms_in_the_Armed_Forces_Still_a_Taboo/links/603e3efba6fdcc9c78087b8c/Union-Freedoms-in-the-Armed-Forces-Still-a-Taboo.pdf%20Published%202-23-2021); Accessed 10-11-2021 Wally)

Sceptics focus on **preserving the armed forces’ uniqueness, which includes the extraordinary power of lawful violence against possible internal or external attacks**. In fact, this public function **requires the utmost efficiency and soldiers’ utter readiness.** Similarly, the power handled by the ranks requires the total loyalty of both soldiers and officers to safeguard public authorities and defer to political institutions. This uniqueness is secured from a legal standpoint by recognising autonomous and distinct orders at the national level, which allows the deprivation of civil32 and labour rights. 11 Sceptics are concerned about **unions’ typical activities (strikes, work slowdowns, and work stoppages**) but claim that the mere will to form and join military associations to protect collective interests **threatens the military hierarchy**. 33 They argue that the coupling of unions with the chain of command is conducive to a power dualism since the latter is the organisational nexus within which soldiers’ interests are traditionally administered and protected. This would fundamentally undermine the esprit de corps, which is the collective spirit that inspires enthusiasm, devotion, and strong regard for the group’s honour. From this perspective, such duality might provoke officers to abdicate their traditional role in deference to the obligation to handle union leaders’ claims. Similarly, they argue that it would promote a sense of ‘alterity’ among the troops vis-à-vis the military leadership. **These factors could lead to an ‘us-and-them’ attitude that, in principle, conflicts with military unity**. Conversely, others note that such dualism has an opposite effect, which is likewise dangerous: union leaders and the chains of command responsible for handling the soldiers’ interests might favour collaboration over an ‘us–them’ approach. In this light, this **potential partnership may embolden the military leaders’ position before the government and political parties, compromising the institutional subordination to the civilian power and forewarning the of armed forces.** 34 12 Arguments against military unionisation on other grounds have also been voiced. Some indicate the risk of unpredictable labour costs 35 as a consequence of bargaining; others argue that existing military associations (eg families or veterans’ associations) already fulfil many functions fulfilled by unions without threatening the military system. 36 Finally, **in de-unionised countries, such as the United States or Australia, some argue that the positive experiences of North European military unions are irrelevant owing to the crucial differences between American and Scandinavian union frameworks. 37 Additionally, it has been affirmed that such experiences fail to consider the global responsibilities that the US armed forces are required to manage worldwide. 38**

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