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ECCLESIAL AND NIGERIAN LEGAL PERSPECTIVES
ON EMPLOYMENT OF WORKERS:
APPLICATION OF CANON 1286, 1°

by

Anne Marie Ezewwa, E.H.J.

A dissertation submitted to the Faculty of Canon
Law, Saint Paul University, Ottawa, Canada, in par-
tial fulfillment of the requirements for the degree of
Doctor of Canon Law

Ottawa, Canada
Saint Paul University
1999
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0-612-48201-4
ABSTRACT

Ecclesial and Nigerian Perspectives on Employment of Workers, Application of C. 1286, 1°

In the book of Genesis we read that God created man in his own image, in the image of God he created him: male and female he created them. It is the teaching of the Church based on this biblical fact that all human persons since they share in divine nature acquire a special dignity as children of God. This special dignity makes all human persons equal and endows them with certain inalienable fundamental rights which must be respected by all persons including civil authorities. For the Church these fundamental rights are not concessions to be “given” but innate rights which belong to all persons. Among these fundamental rights are the right to work.

The Church teaches that the basis for determining the value of work is not primarily the kind of work being done but the fact that the one who is doing it is a human person. In other words, for the Church, work proceeds from the human person, provides them with the necessities of life, dignifies them, and enables them participate in God’s creation and Christ’s redemption. For this reason, the Church insists that the rights and dignity of workers must be respected in the workplace, so that workers must not be meant to feel that they are mere commodity to be bought and paid for (in terms of remuneration) at the whims of employers without regard to their dignity and self fulfilment.

In c. 1286, 1° the Church seeks to apply its teaching on human dignity and right of workers, by requiring administrators of temporal goods in the employment of workers to apply meticulously the civil laws on labour and social life according to the principles taught by the Church. In the light of this study, the Nigerian civil laws on labour and social life become normative. We evaluated how effectively c. 1286, 1° can be applied in the Nigerian situation by examining the social teachings of the Church on labour, how this social teachings have been actualized in c. 1286, 1°, the Nigerian civil law on labour and social life and the application of c. 1286, 1° in the Nigerian Church.

We arrived at the conclusion that the law as it presently stands in c. 1286, 1° and the values which it seeks to implement cannot be fully applied in the concrete Nigerian situation, due to some internal and external factors, such as Nigeria’s peculiar socio-economic factors and inability of the law of contract to protect adequately the rights of workers. The dissertation came to end with some practical suggestions such as the need to recognize a contract of employment as a sui generis contract because the ordinary contract is inadequate in protecting the dignity of the worker.

(Sr. Anne Marie Ezenwa, EHJ.)
TABLE OF CONTENTS

ABBREVIATIONS ........................................................................................................ iv

INTRODUCTION .......................................................................................................... vii

CHAPTER ONE: THE SOCIAL TEACHING OF THE CHURCH ...................................... 1
  1.1 - The Right and Duty of the Church to Teach on Moral Principles .................... 2
  1.2 - The Major Magisterial Teachings on Work and Labour ................................... 19
      1.2.1 - The Notion of Work, Its Theology and the Magisterial Teaching ............ 21
      1.2.2 - Human Dignity and Work ..................................................................... 27
      1.2.3 - Contracts and Works ............................................................................. 30
      1.2.4 - The Rights and Duties of Workers and Employees ................................. 32
      1.2.5 - Right to Just Wage ............................................................................... 34
      1.2.6 - Right of Association ............................................................................ 36
      1.2.7 - Conflict Between Labour and Capital ..................................................... 38
      1.2.8 - The Role of the State ........................................................................... 40
      1.2.9 - Analysis and Conclusion ..................................................................... 41
  1.3 - The African Church and Social Justice: Labour and the Rights of Workers ... 45
  1.4 - The Nigerian Church and Social Justice: Labour and Rights of Workers .... 55
  1.5 - Principles Derived from the Social Teaching on Work and Labour ............ 65

CHAPTER TWO: CANON LAW ON EMPLOYMENT OF WORKERS:
CANON 1286, 1° ....................................................................................................... 71
  2.1 - The Background of Canon 1286, 1° ................................................................. 72
     2.1.1 - Canon 1524 of CIC 1917 ...................................................................... 72
     2.1.2 - Quadragesimo anno ............................................................................... 76
     2.1.3 - Divini redemptoris .............................................................................. 78
     2.1.4 - Mater et magistra ............................................................................... 79
     2.1.5 - Apostolicam actuositatem ................................................................... 80
     2.1.6 - Gaudium et spes ............................................................................... 82
  2.2 - The Drafting Process ..................................................................................... 84
  2.3 - The Meaning and Content of c. 1286, 1° ....................................................... 89
     2.3.1 - Canon 1286, 1° in the Context of Administration of Temporal Goods .... 89
CHAPTER THREE: NIGERIAN CIVIL LAW ON EMPLOYMENT OF WORKERS

3.1 - The Nigerian Labour Law Context .................................. 127
3.2 - The Sources and Development of Nigerian Labour Law .... 130
  3.2.1 - English Laws .................................. 130
  3.2.2 - Nigerian Legislation .................................. 133
  3.2.3 - Selected Constitutional Provisions on Labour .......... 135
  3.2.4 - Nigerian Case Law .................................. 136
3.3 - Legal Aspects of Contracts of Employment ................. 139
  3.3.1 - The Relationship Between Employer and Employee .... 140
  3.3.2 - Formation and Types of Contracts of Employment .... 144
  3.3.3 - Capacity to Contract .................................. 147
  3.3.4 - Content of a Contract: Terms and Conditions of Service 149
    3.3.4.1 - Remuneration .................................. 150
    3.3.4.2 - Job Description .................................. 152
    3.3.4.3 - Working Hours and Holidays ...................... 152
    3.3.4.4 - Duties of the Employer .......................... 154
    3.3.4.5 - Duties of the Employee .......................... 157
    3.3.4.6 - Safety and Welfare at Work ...................... 158
  3.3.5 - Vicarious Liability to Third Parties ..................... 160
  3.3.6 - Termination of Contract of Employment ................. 163
    3.3.6.1 - Operation of the Law ............................ 164
    3.3.6.2 - Intention of Parties ............................ 164
    3.3.6.3 - Summary Dismissal .................................. 167
    3.3.6.4 - Remedies in a Contract of Employment .......... 168
3.4 - Trade Unions .................................. 169
3.5 - Social Security .................................. 173
3.6 - Assessment and Conclusion ................................. 176
CHAPTER FOUR: APPLICATION OF C. 1286, 1° IN NIGERIA .......... 182
   4.1 - The Church as Employer ................................................. 183
   4.2 - The Employees of the Church ........................................... 191
       4.2.1 - The Laity ............................................................. 192
       4.2.2 - The Religious ...................................................... 194
       4.2.3 - Priests ............................................................... 195
   4.3 - Some Internal and External Factors which Affect the Application of C. 1286, 1° .................................................... 198
       4.3.1 - Internal Factors .................................................... 198
           4.3.1.1 - Christian Faith .............................................. 198
           4.3.1.2 - Inadequate Human and Material Resources .............. 200
           4.3.1.3 - The Mode of Operation ..................................... 201
       4.3.2 - External Factors ................................................... 204
           4.3.2.1 - Dual Legal System ........................................... 204
           4.3.2.2 - Foreign Legal Concepts .................................... 206
           4.3.2.3 - Failure of Contracts to Protect Workers’ Rights and Social Principles ........................................ 209
           4.3.2.4 - High Cost of Litigation .................................... 213
           4.3.2.5 - Non Justiciiable Constitutional Provisions on Labour ................................................ 214
           4.3.2.6 - Failure of the State to Generate Employment .......... 219

Conclusion ................................................................. 220

GENERAL CONCLUSION .................................................... 223

BIBLIOGRAPHY .......................................................... 230
# ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>AA</td>
<td><em>Apostolicam actuositatem</em>, Vatican Council II, Decree on the Apostolate of the Laity</td>
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<td>AAS</td>
<td><em>Acta Apostolicae Sedis</em></td>
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<td>AFER</td>
<td><em>African Ecclesiastical Review</em></td>
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<td>ASS</td>
<td><em>Acta Sanctae Sedis</em></td>
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<td>CD</td>
<td><em>Christus Dominus</em>, Vatican Council II, Decree on the Pastoral Office of Bishops</td>
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<td>CCEO</td>
<td><em>Codex canonum Ecclesiarchum orientalium</em></td>
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<td>DH</td>
<td><em>Dignitatis humanae</em>, Vatican Council II, Declaration on Religious Liberty</td>
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<td>EN</td>
<td><em>Evangelii nuntiandi</em>: Paul VI, Evangelization in the Modern World (1975)</td>
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<td><em>Lumen gentium</em>, Vatican Council II, Dogmatic Constitution on the Church</td>
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<td>RN</td>
<td><em>Rerum novarum</em>: Leo XIII, On the Condition of Workers (1891)</td>
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<tr>
<td>SECAM</td>
<td>Symposium of Episcopal Conferences of Africa and Madagascar</td>
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CIVIL LAW ABBREVIATIONS

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ACKNOWLEDGMENTS

I would like to express my gratitude to all those who have contributed in many ways to the commencement and completion of this studies.

In particular I wish to thank the community of the Sisters of Eucharistic Heart of Jesus, the then Superior General Sr. Mary Anthonia Adebowale, EHJ, who availed me of the opportunity to undertake these studies and the present Superior General, Sr. Mary Kizito Iyamabo. My gratitude also extends to the Archbishop of Lagos, His Grace A.O. Okogie for his fatherly support and encouragement.

My special thanks to Rev. Roch Pagé, the Dean, and to all the members of the Faculty of canon law for their unflinching assistance and support during the period of my studies. I am indebted to Rev. F.G. Morrisey, O.M.I., who directed this thesis, for his kindness, generosity and tenacity which were indispensable to the successful completion of this study. I remain immensely grateful to him. My sincere appreciation also to Rev. A. Mendonça who brought to my awareness a potential for a study of this nature and his useful comments on this dissertation.

My heartfelt gratitude extends to all my colleagues in the legal profession, especially Professor Mrs. J. Akande, and Chief A.C. Tagbo who made available to me their Civil Law materials and books.

To all my friends and family who supported me during these years of study I extend my gratitude. I remember with sincere appreciation Rev. Joseph Nwannedinamba Wamala for his support and friendship during the period of my studies at Saint Paul University.

My studies were made possible through a grant from Missio Institute Aachen, Germany. To them I remain grateful and to Saint Paul University, especially Rev. Colin Lévangie, O.M.I., for his financial support and encouragement.
INTRODUCTION

The Church has a right and duty to teach on social issues whenever fundamental human rights and the salvation of souls require it. The purpose of the teaching is to promote and protect the dignity of the human person created in the image and likeness of God. This dignity confers on the human person inalienable fundamental rights. Among these rights is man's right to work. In order to ensure the protection of social justice and rights of workers, the Church has enunciated various social principles, many of which are embodied in the Code of Canon Law. In the temporal order, the Church frequently makes adaptations to existing civil laws, in a bid to protect more securely its interests and those of its members. This has become possible due to a new understanding in Church-State relationships following the Second Vatican Council.

Furthermore, the Council highlighted the role of the laity in the Church and the equality of all Christ's faithful; hence, it requested the Pastors of the Church to ensure that condition of life of all the lay people who serve the Church are satisfied as perfectly as possible following the requirements of justice, equity and charity with due regard for their respective families (AA, 22).¹ For this reason, canon 1286, 1° obliges administrators of temporal goods in the employment of workers to apply meticulously the civil laws on

INTRODUCTION

labour and social life according to the principles taught by the Church. This means that
Civil Law and the social teachings of the Church are relevant for any authentic
realization of values which this canon seeks to implement.

In this study we shall discuss the practical application of c. 1286, 1° from the
ecclesial and Nigerian Civil Law perspectives. Chapter One will be an exposition of the
social teaching of the Church relating to work and labour. We shall begin by examining
the bases of the Church’s right to teach on moral principles and the major magisterial
teachings on work and labour. This will help us to analyze how the African Church in
general and the Nigerian Church in particular have responded to this social teaching in
their socio-economic contexts. We shall conclude the chapter by summarizing the
principles derived from the Church’s social teaching on work and labour.

Chapter Two will analyze how these principles have been embodied into Canon
Law, with particular reference to c. 1286, 1° We shall achieve this by discussing the
sources of the canon, its development during the drafting process, and the promulgated
text. This discussion will enable us to explore the content and scope of c. 1286, 1° The
examination of the content and scope will include a review of the implications of
canonization of Civil Law, which is to be applied in the light of the principles mentioned
in the law (c. 22). This discussion will also take note of the relationship of c. 1286, 1°
with other foundational canons such as c. 231§2 with the aim of reflecting on their
interconnectedness.
INTRODUCTION

Following the requirement of c. 1286, 1° that administrators of the temporal goods of the Church in entering into contracts of employment with workers are to observe the civil laws on labour and social life, we shall discuss in Chapter Three the pertinent provisions of the Nigerian civil laws on labour and social life. In doing this, we shall begin by briefly looking at the Nigerian labour law context with the aim of laying a foundation for our discussion. This will be followed by a review of the sources and development of Nigerian labour law. We shall then discuss the legal dynamics involved in a contract of employment according to the Nigerian Civil Law such as the relationship between employer and employee, formation and types of contracts, terms and conditions of service. A brief discussion on trade unions will assist us in examining the extent workers' rights to collective bargaining and strikes are respected in Nigeria. Finally, we shall look at Nigerian provisions on social security followed by an assessment and conclusion to the chapter.

Chapter Four will examine the application of c. 1286, 1° in Nigeria, with the aim of evaluating its applicability. In doing this, we shall examine the role of the Nigerian Church as employer, its relationship with employees who include laity, religious, and priests. A discussion on some internal and external factors which affect the application of the canon, such as, inability to integrate Christian faith into the ethos of the people, lack of human and material resources, will follow. The thesis will be concluded with some suggestions.
CHAPTER ONE
THE SOCIAL TEACHING OF THE CHURCH
RELATING TO WORK AND LABOUR

INTRODUCTION

Canon 1286,1° of the 1983 Code of Canon Law\(^1\) requires administrators of temporal goods in making contracts of employments to observe the social principles laid down by the Church and the provisions of civil laws relating to labour and social life. These principles are embodied in the social teaching\(^2\) of the Church which draw their origin from the encounter of the evangelical message and its ethical requirements with the problems that arise in society.\(^3\) The principles are based on scientific research, moral reflection and the experience of the Christian community against the background of its


\(^2\)It is important to note the difference in the terminology “social doctrine” and “social teaching.” Though both refer to the same reality, “social doctrine” stresses the theoretical aspect while “social teaching” emphasizes the historical and practical aspect. The two terms are often used interchangeably in official magisterial documents. See, for example, JOHN PAUL II, Encyclical Letter Sollicitudo rei socialis, (= SRS), December 30, 1987, in Acta Apostolicae Sedis (= AAS), 80 (1988), pp. 513-586. English translation D. O’BRIEN and T. SHANNON (eds.), Catholic Social Thought: The Documentary Heritage, Maryknoll, NY, Orbis Books, 1992, p. 396. In this study, we prefer to use the expression “social teaching.”

THE SOCIAL TEACHING OF THE CHURCH

socio-economic system and other related social issues, such as those related to work and labour.⁴

When the Catholic Church teaches on social affairs, it is often criticized for meddling in realms considered alien to its religious mission. For this reason, we shall discuss in this chapter the basis of the Church’s right to teach on social issues. Furthermore, we shall examine the major magisterial teachings relating to work and labour, and the way in which both the African Church in general and the Church in Nigeria in particular have applied these teachings in their own concrete socio-economic situations. Finally, we shall spell out a number of principles derived from these social teachings.

1.1 - THE RIGHT AND DUTY OF THE CHURCH TO TEACH

ON MORAL PRINCIPLES

The Church teaches that, at all times and in all places, it should be genuinely free to preach the faith, to proclaim its teaching about society, to carry out its task among peoples without hindrance, and to pass moral judgements, even in matters relating to politics, whenever fundamental human rights or the salvation of souls require it.⁵ This

⁴The difference between work and labour shall be explained later.

THE SOCIAL TEACHING OF THE CHURCH

affirmation, which came out of historical experience and theological reflection on the relationship between the Church and State, has become the foundation of the Church’s social teachings.

The likelihood of tensions between the Church and the State was present from the early days of Christianity as the Church organized itself side by side with secular governments. The conversion of the Emperor Constantine in the fourth century and the recognition of Christianity as the official religion of the Roman Empire changed the whole situation. The Fathers of the Church and the popes tried to work out a balance between the Church and the temporal order. Among those who addressed these issues, St. Ambrose of Milan and St. Augustine in the time of the Roman Empire, Popes Gregory III, Innocent III, and Boniface VIII in the medieval commonwealth6 and more recently Pope Leo XIII and the present Pontiff John Paul II are noteworthy.

Even though the social teachings have been generally consistent, the style and response of popes to social issues have been distinctive. For example, Pope Leo XIII reshaped the Church-State question and inaugurated the “social teaching” by shifting papal attention away from the politics of Church and State to the socio-economic

6See B. TIERNEY, The Crisis of Church and State 1050-1300, NJ, Prentice Hall, 1964, pp.1-15, 45-84, 127-138, 172-192. Tierney says that the ideas provoked by the controversy of relationship between Church and State were not primarily concerned with the investiture controversy but with “a constant preoccupation with the essentially theological problem of defining the right relationship between spiritual power and temporal order.”
questions of Church and society.\textsuperscript{7} On the other hand, Pope John Paul II leads a non-political but socially engaged Church as he enlightens the world with his message of peace and hope. Delivering a homily in Havana during his 1998 trip to Cuba, he said:

The Church is a teacher in humanity [...]. On various occasions I have spoken on social themes. It is necessary to keep speaking on these themes as long as any injustice, however small, is present in the world; otherwise the Church would not be faithful to the mission entrusted to her by Christ. At stake here is man, the concrete human person. While times and situations may change, there are always people who need the voice of the Church so that their difficulties, their sufferings and their distress may be known.\textsuperscript{8}

The Church insists on its right to speak out on social issues because from the beginning God created the human person in his own image and likeness.\textsuperscript{9} Being a creature of God, the human person acquires a special dignity as a child of God, and fundamental human rights derive from the transcendental value of this God-given dignity. The fundamental human rights become innate rights arising from a share in God’s divinity and not a concession of a society or a State.\textsuperscript{10} For this reason, the Church

\begin{footnotes}


\end{footnotes}
feels obliged to intervene in secular affairs whenever human rights are violated. According to Paul VI, "the Church, concerned above all with the rights of God, can never dissociate herself from the rights of man, created in the image and likeness of his Creator. She feels injured when the rights of a man whoever he may be, and wherever he may be, are ignored and violated." Even though this created image was impaired by original sin, it was not completely destroyed by sin, for a "sinner" still has a right to his or her dignity. The human person, therefore, an intelligent and free being possessing rights and duties, is the primary goal or the heart and soul of the social teaching of the Church. Pope John Paul II also says: "we are not dealing with the abstract man, but the real, concrete historical man." The bond between the Church and the world is the person.

Furthermore, the Church considers a person in all the fullness of the mystery in which he or she has become a sharer in Jesus Christ. Pope John Paul II, in his first Encyclical, Redemptor hominis, wrote:

Christ the Lord indicated this way especially when, as the Council teaches ‘by his incarnation, he the son of God in a certain way united himself with each man’ [...] This man is the way for the Church, a way that, in a sense, is the basis of all the other ways that the Church must walk because man [...] has

---


\[13\] GS, 22.
been redeemed by Christ, [...] and because with each man, without any exception whatever, Christ is united [...]. The Church of today must always be aware in an always new manner of man’s ‘situation.’

The christological foundation for the defense of human rights has brought this question of rights intrinsically to the very heart of the Church’s mission. The Church has not only the right but also the obligation to defend human rights. According to Paul VI, “the Church, as the bishops repeated, has the duty to proclaim the liberation of millions of human beings, many of whom are her own children, the duty of assisting the birth of this liberation, of giving witness to it, of ensuring that it is complete. This is not foreign to evangelization.” This obligation falls on all the members of the Church including the laity who are called to “animate the world with a Christian spirit.”

In the words of Paul VI, “if the role of the hierarchy is to teach and to interpret authentically the norms of morality to be followed in this matter, it belongs to the laymen, without waiting passively for orders and directives, to take the initiative freely and to infuse a Christian spirit into the mentality, customs, laws and structures of the

\[14\] RH, 13, 14.


community in which they live.\textsuperscript{17} The Gospel which Christ entrusted to the Church is a powerful tool with which the Church can safeguard human dignity and freedom.\textsuperscript{18}

After Vatican II, the Church advanced these theological reasons to justify its right to teach on social issues. This was a change from the pre-conciliar period when its teachings on social issues were based more on natural law.\textsuperscript{19} According to this natural law approach, human dignity is derived from the nature of a person endowed with reason and free will. Human reason, reflecting on human nature, can discover God's plan and the course of action which would be in accord with the plan and work of the creator. Natural law which is based on reason illuminated by faith, is the participation of the eternal law in the rational creature.\textsuperscript{20} Pius XII, expounding the natural law argument for the Church's right to teach, wrote:

\begin{quote}
The Power of the Church is not bound by the limits of 'matters strictly religious', as they say, but the whole matter of the natural law, its foundation, its interpretation, its application, so far as their moral aspect extends, are within the Church's power. For the keeping of the natural law by God's appointment
\end{quote}


\textsuperscript{18}GS, 41.


has reference to the road by which man has to approach his supernatural end [...]. The apostles observed this in times past and afterwards from the earliest centuries the Church has kept to this manner of acting and keeps to it today, not indeed like some private guide or adviser but by virtue of the Lord’s command.  

The theological foundation of the Church’s social thought in the post - conciliar era does not abolish the natural law approach; rather it supplements it. Indeed the natural law approach was present in the conciliar texts. Differences in style and methodological procedure in the various papal documents on social teaching do not compromise the substantial identity and unity of the whole corpus of Catholic social teaching. In the words of John Paul II:

Continuity and renewal are a proof of the perennial value of the teaching of the Church. This twofold dimension is typical of her teaching in the social sphere. On the one hand it is constant, for it remains identical in its fundamental inspiration, in its “principles of reflection” in its “criteria for judgement”, [...] and above all in its link with the Gospel of the Lord. On the other hand, it is ever new, because it is subject to the necessary and opportune adaptations suggested by the changes in historical conditions.

This shows an openness on the part of the Church to adapt to new situations according to the social circumstances of the time, including ways of raising the very issues themselves.

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22Among others, GS 14-15; DH, 2-3.


24SRS, 3.
THE SOCIAL TEACHING OF THE CHURCH

The factors which have influenced changes in approach are rooted in the Church's vision of itself in relationship with the world and in the social malaise present at any given point in time. A new understanding in moral theology and ecclesiology has played a major role in bringing about the change in approach. 25 During the era of Pope Leo XIII, for instance, the understanding of the Church was that of societas perfecta. 26 Pope Leo XIII wrote in Rerum novarum: "We approach the subject with confidence and in the exercise of the rights which belong to us. For no practical solution of this question will ever be found without the assistance of religion and the Church." 27 The "right which belongs to us" was considered to be based in the concept of the Church as a societas perfecta. This model stressed the equality of the Church with civil society and took independent ground from which the Church could confront and limit the power of the State, but in the background always lay the concept of the Church as a societas perfecta. 28 Pope Leo XIII, therefore, reshaped the Church-State question in the

25 The natural-supernatural dichotomy in moral theology was deplored by the Council Fathers who called for moral theology to be nourished by the scriptures. They further mentioned the split between faith and daily life in the attitude of many Catholics. See P. HENRIOT, "Social Sin and Conversion: A Theology of the Church's Social Involvement", in R.P. HAMEL and K.R. HIMES (eds.), Christian Ethics: A Reader, New York, Paulist Press, pp. 217-219. Henriot says that some Catholics presume that it is not possible to be holy and involved in worldly affairs at the same time; for them the worldly and spiritual do not go together.

26 Societas perfecta means that the Church possesses all the power and capacities needed for it to achieve its specific objectives as a faith community.

27 RN, 13.

28 See J. B. HEHIR, "The Right and Competence of the Church in the American Case", in J.A. COLEMAN (ed.), One Hundred Years of Catholic Social Thought, pp. 56-71.
THE SOCIAL TEACHING OF THE CHURCH

understanding of the Church as a *societas perfecta*.

The initial focus of the social teaching was the so-called “social question” concerning socio-economic problems in Europe and America arising after the industrial revolution. The first social encyclical, *Rerum novarum*, was a response to some of these problems. But with the Church having taken root in different cultures, coupled with complex technological developments, the scope of the Church’s social teaching has now widened tremendously.²⁹

Similarly, Vatican II provided the ecclesiological foundation in *Lumen gentium* for an understanding of the social role of the Church as noted in *Gaudium et spes*. *Lumen gentium* sees the Church, among other images, “like a sacrament or sign and instrument of a closely knit union with God and of the whole human race.”³⁰ Yves Congar, writing on the role of the Church from the perspective of *Gaudium et spes*, is of the view that

the question has moved from the plane of relations between authority and authority, constitution and constitution, to that of relations between Christian faith professed by the Ecclesia [...] and the human society, the family of mankind or mankind. The problem of the spiritual and temporal is here the problem of the relations between faith and history, gospel and civilization. In this much wider frame, the special question of the relations between the Church and the political community is taken up later in Art. 76, in an atmosphere of respect for the autonomy of the two spheres and of the apostolic freedom of the

²⁹See *PP*, 3; *LE*, 2; *SRS*, 9.

This new image provides a different understanding of the Church in its relationship to the world. The change in perspective mentioned by Congar can best be seen in the language shift, which B. Hehir describes as the "unity model." According to him, "the medieval conception spoke of the "Church and the world", but the Council’s conception in both the sacrament of unity and in the title of the Pastoral Constitution is "the Church in the world." In other words, the Church no longer addresses the world across a boundary, as in the medieval era, but now it does so from within and in solidarity with it.

Pope John Paul II emphasizes the spiritual transcendence of the Church by insisting on non-identification with political parties, institutions or ideologies. He articulates and defends the public role of the Church in terms of its transcendence and spiritual freedom. Likewise, he defends the right of the Church as a socially engaged Church and does not hesitate to intervene in any secular affair which violates human dignity. On his 1998 visit to Nigeria, amidst speculation that he would speak in defence of human rights, notwithstanding the fine reception organized by the federal military government of Nigeria, he said:

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32See HEHIR, "The Right and Competence of the Church in the American Case", p. 58.
THE SOCIAL TEACHING OF THE CHURCH

All Nigerians must work to rid society of everything that offends the dignity of the human person or violates human rights. This means reconciling differences, overcoming ethnic rivalries, and injecting honesty, efficiency and competence into the art of governing [...]. There can be no place for intimidation and domination of the poor and the weak, for arbitrary exclusion of individuals and groups from political life for the misuse of authority or the abuse of power. In fact, the key to resolving economic, political, cultural and ideological conflicts is justice, and justice is not complete without love of neighbour, without an attitude of humble generous service.33

Furthermore, he submitted to the government a list of names of political prisoners he would like to see released.34

The exercise of the right of the Church on social issues has shifted its focus from competence to modalities of intervention.35 This shift in emphasis is due partly to the teaching of Vatican II on the role of the Church in the modern world and to the constant intervention of the Church in social issues, especially since the pontificate of John Paul II.36 As Hehir puts it, "in the last decade of the twentieth century the right and


34Even though the names on the list were not made public, the press reported it contained names of some prisoners who were detained because of political conflicts. He made the intervention because their human rights and dignity were at stake. See The Nigerian Vanguard, March 25, 1998, p. 2.

35Note the on-going debate on Pope Pius XII’s role during the Nazi persecution of the Jews. He is being attacked for failure to speak out against the Nazis. The Vatican document “We Remember : A Reflection on the Shoah,” (L'Osservatore romano, English language edition, March 11-12, 1998, pp. 6-7), strongly defended his role. There are mixed reactions. See The Ottawa Citizen, March 17, 1998. The whole debate indicates an acknowledgment of the right of the Church to speak out on moral issues. It is an accepted norm that the Church has this right, with due regard to its situation in those countries where it is persecuted.

36This may not hold in predominantly Moslem countries or in the states where the Church has little or any freedom to function.
THE SOCIAL TEACHING OF THE CHURCH

competence of the Church to speak and act is less contested than a century ago.”

Nevertheless, the moral principles which the Church invokes and the conclusions drawn from them are often contested. Julius Nyerere, speaking to Church leaders on this issue, said:

Unless we participate actively in the rebellion against those social structures and economic organizations which condemn people to poverty, humiliation and degradation, the Church will become irrelevant to people [...]. Unless the Church, its members and its organization, express God’s love for people by involvement and leadership in constructive protest against the present conditions of humankind, then it will become identified with injustice and persecution. If this happens, it will die and humanly speaking deserve to die.\(^{38}\)

It is important to note that the conciliar and papal social teachings addressed to the universal Church which are sometimes quite general in scope do not preclude the local church’s intervention in social issues within their own countries. The local churches are encouraged to respond to their own social problems in the light of the gospel and the social teaching of the Church.\(^{39}\)

Some of the principles enumerated above have been incorporated into the 1983

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THE SOCIAL TEACHING OF THE CHURCH

Code.\textsuperscript{40} For instance, c. 747 is consistent with the theological reasons already enumerated for the Church's defence of human rights. The canon does not affirm that the Church is competent in political issues or the right of intervention in every political human situation, but only to the extent in which human rights require it. According to Pius XI:

We lay down the principle, long since clearly established by Leo XIII, that it is our right and our duty to deal authoritatively with social and economic problems. [...] indeed the Church believes that it would be wrong for her to interfere without just cause in such earthly concerns. But she never can relinquish her God-given task of interposing her authority, not indeed in technical matters, for which she has neither the equipment nor the mission, but in all those that have a bearing on moral conduct.\textsuperscript{41}

The pope exercises his ordinary magisterium in a non definitive way, among other ways, by the publication of documents such as encyclical letters. The social principles are enunciated in order to arrive at a deeper understanding of revelation, or to recall the conformity of a teaching with the truths of faith, or to warn against ideas incompatible with the truth of faith or against dangerous opinions that can lead to error.\textsuperscript{42} However,

\textsuperscript{40}Especially the introductory canons on Book III of the Teaching Office of the Church in the 1983 code of canon law. In particular, c. 747, §2, reiterates the right and duty of the Church to teach on moral principles and to make judgements on any human matter when the fundamental right and salvation of souls require it. GS 76 is the source of this canon.


the practical teachings of the Church on moral principles offer guidance to the faithful for the formation of conscience on moral issues. According to the Catholic Bishops’ Conference of England and Wales:

The general purpose of the Church’s social teaching is to contribute to the formation of conscience as a basis for specific action [...]. There will not always be agreement. Debate will often be necessary, controversy inevitable. There are some elements in this teaching, however, with direct applications of moral law and therefore strictly binding on conscience. Examples would be the Church’s condemnation of genocide or the deliberate encouragement of racial hatred. They are not debatable.  

Theologians attribute greater authority to the enunciation of moral principles than to the making of specific judgments, especially when these involve issues such as economics or similar disciplines. The Congregation for Catholic Education notes the differentiation in degrees of authority attached to some social issues questions. The formulation of moral judgements about social situations, structures and systems does not bear the same degree of authority which is proper to the magisterium of the Church, as when pronouncements are made about fundamental principles. Nonetheless, among the various judgements, those concerning abuses against human dignity have greater authority because they are linked to principles and values founded on divine law itself.

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44 For discussion on the whole question and opinion of theologians on the Church’s teaching on moral issues, see, F.A. SULLIVAN, Magisterium: Teaching Authority in the Catholic Church, Dublin, Gill and Macmillan, 1983.

45 See CONGREGATION FOR CATHOLIC EDUCATION, “Guidelines”, p. 181, no. 49.
J. Ratzinger, in a document from the Congregation for the Doctrine of the Faith, on teachings enunciated by the authentic ordinary Magisterium in a non definitive way,46 maintained that there are different degrees of authority attached to these teachings according to the mind of the teaching authority from which the teaching emanates. According to him, these teachings "require degrees of adherence differentiated according to the mind and the will manifested, this is shown especially by the nature of the documents, by the frequent repetition of the same doctrine or by the tenor of the verbal expression."47

The pastoral letters of some conferences of bishops on social issues acknowledge distinctions in levels of moral authority according to the subject matter. For example, the National Catholic Conference of Bishops in the United States, in its pastoral letter on war and peace, said:

We do not intend that our treatment of each of these issues carry the same moral authority as our statement of universal moral principles and formal Church teaching. Indeed, we stress here at the beginning that not every statement in this letter has the same moral authority (e.g., noncombatant immunity and proportionality). At still other times we reaffirm statements of recent popes and the teaching of Vatican II. Again at other times we apply moral principles to specific cases.48

46 This category of teaching is provided for in c. 752.


THE SOCIAL TEACHING OF THE CHURCH

As to the obedience owed to non definitive teachings of the magisterium in the encyclicals, c. 752 provides that a religious submission of both intellect and will should be given to such teachings. The Congregation for the Doctrine of the Faith, reiterating this, said that such teachings being an authentic expression of the ordinary magisterium of the Roman pontiff or of the college of bishops require religious submission of will and intellect. A proposition contrary to these doctrines can be qualified as erroneous or in the case of teachings of the prudential order as rash or dangerous and therefore tuto doceri non potest.49

Pope John Paul II, speaking to the bishops of United States, made it clear that discussions should be respectful of the position of the official teaching and of its particular importance even if not given in a definitive way.50 Furthermore, the Catholic Bishops of England and Wales pointed out: "All who preach and teach in the Church must as far as possible avoid giving the impression that observance of this teaching is optional for Catholics or somehow less important than other aspects of the Church's moral guidance."51 However, while no theological or canonical reason would prevent the pope from making an ex cathedra pronouncement in an encyclical, no pope has as yet


50 JOHN PAUL II, “Address to United States Bishops on ad limina visit”, in The Tablet, November 5, 1988, p. 1284.

51 CATHOLIC BISHOPS CONFERENCE OF ENGLAND AND WALES, in Common Good., p. 11, no. 42.
formally claimed infallibility for his ordinary teaching in the encyclicals.\(^{52}\)

Finally, the principles contained in the Church’s social teaching are based on the
dignity, rights and sociality of the person. It is important to note that the human person
is not an island unto himself. The Church protects human rights not in isolation but in
the context of society. Human society is the object of the social teaching of the Church
because the Church exists neither outside nor over and above society, but in it and,
therefore, for it.\(^{53}\) Common good, solidarity, participation, the organic concept of social
life and the destination of goods, the right to work are also principles which the
magisterium has treated in depth. The Church’s interventions are geared to specific
problems in the world, provided they affect the dignity and rights of the person.

Labour issues and the rights of workers are very important subjects in the social
teaching because of their relationship to the dignity and rights of man. The magisterium
has consistently expounded on their significance. The first social encyclical, *Rerum
novarum*, dealt extensively with the rights of workers. Nearly a century later, Pope John
Paul II in *Laborem exercens* said:

> From the beginning it was part of the Church’s teaching, her concept of
man and life in society and especially, the social morality which she worked out
according to the needs of the different ages. This traditional patrimony was then
inherited and developed by the teaching of the popes on the modern “social
question,” beginning with the encyclical *Rerum novarum* [...]. It is rather in

\(^{52}\)F. SULLIVAN, “The Doctrinal Weight of *Evangelium Vitae*”, in *Theological Studies*,

\(^{53}\)CONGREGATION FOR CATHOLIC EDUCATION, “Guidelines”, p.179, no. 35.
THE SOCIAL TEACHING OF THE CHURCH

order to highlight — more than has been done before — the fact that human work is a key, probably the essential key, to the whole social question, if we try to see that question really from the point of view of man's good.54

In the following section, we shall examine the major magisterial teachings on labour and the rights of workers.

1.2 - THE MAJOR MAGISTERIAL TEACHINGS ON WORK AND LABOUR

In order to put the major magisterial teachings on work and labour in their proper perspective, it is important to discuss, albeit briefly, the circumstances surrounding the first encyclical on the condition of labour, Rerum novarum. Many commentators regard this encyclical as critically important for shifting the papacy away from the social detachment that extended from the French Revolution of 1789 until the death of Pope Pius IX in 1879.55

After the French Revolution, workers were deprived of the traditional guidance of the Church and the protection of medieval guilds. As a result, they fell prey to the greed of employers and unchecked competition; they were treated as commodities, useful for profit and production. The power of production, hiring of labour, conduct of trade,


55The Holy See at the time unequivocally denounced the modern ideals of liberty and social progress brought about by French Revolution. Pope Pius IX's Syllabus of Errors (1864) condemned what were considered to be intellectual agents of movements such as naturalism and socialism mostly because of their defiance of constituted authority.
were concentrated in the hands of a few powerful men who exploited the workers. This practice was supported by capitalist schools which taught that social progress can be achieved by unfettered operations of the free market. There were powerful exponents who also spoke against the misery caused by industrial capitalism.\textsuperscript{56}

In the light of the pervasive struggle between socialist and liberal accounts of economic justice on the one hand and growing Catholic social action in Europe and North America on the other, Pope Leo wrote Rerum novarum to stem the tide and to formulate the official Catholic position. This encyclical marked a watershed in Catholic social thought; it has been called rightly the Magna Charta of Catholic social teaching\textsuperscript{57} for it set a precedent for authoritative magisterial reflection on the cause of the poor and the oppressed of the world and has earned for Pope Leo the reputation of "champion of labour," and "Pope of the Workers."\textsuperscript{58}

Following the intervention of the Pope on the needs and problems of the times,

\textsuperscript{56}Such as the Fribourg Union, Bl. Frederic Ozanam, Bishop Emmanuel Ketteler of Mainz. For further reading, see J. MOODY (ed.), Church and Society: Catholic Social and Political Thought and Movements, 1798-1950, NY, Arts. Inc., 1953, pp. 21-904.

\textsuperscript{57}QA, 39.

a corpus of social teachings of the Church on work emerged. The core of this teaching has been that work, in as much as it is an expression of the human person, can by no means be regarded as a mere commodity. Work is not to be thought of in terms of merchandise whereby the worker, especially the industrial one, sells his work to the employer, who is the possessor of the capital and the tools that make the production possible, but rather it is to be considered according to the laws of justice and equity. The Church, in response to the exploitation and devaluation of the human dignity of the worker and his work, expounds its other principles around this theme of justice and equity in order to restore to man once more his God-given dignity. We shall now discuss the notions of work and labour drawn from these social teachings.

1.2.1 - The Notion of Work, Its Theology and the Magisterial Teaching

According to Black’s Law Dictionary, work is to exert one’s self for a purpose; to put forth effort for the attainment of an object; to be engaged in the performance of a task, duty or the like. It covers all forms of physical or mental exertions or both

59 Obviously this does not mean that there was no Catholic social concern until the publication of Rerum novarum. Rather, this encyclical was the first magisterial systematic analysis of social issues adapted to the needs of the times. The Catholic social concerns have deep roots in the Scriptures and in Christian tradition.

combined for the attainment of some object other than recreation or amusement.\textsuperscript{61}

Following this definition, work can be considered as an analogous concept applicable to a wide variety of human activities. In fact Pope John Paul II defined work as

any activity by man, whether manual or intellectual, whatever its nature or circumstances; it means any human activity that can and must be recognized as work, in the midst of all the many activities of which man is capable and to which he is predisposed by his very nature, by virtue of humanity itself.\textsuperscript{62}

In other words, work means any activity human beings do as free and responsible subjects, and recognized as such. The term applies to a wide range of activities, and it is typical of human beings, since animals cannot work.

Labour is seen as the toil necessary to obtain the biological necessities of life, a tiring activity such as cultivating a field, which involves pain and toil.\textsuperscript{63} Used in a narrow sense, work denotes a more creative and pleasant kind of activity which can be described as “work of our hands.” The work of our hands and minds is valued more than the labour


\textsuperscript{62} Preface, \textit{LE}.

\textsuperscript{63} It is not within the scope of this study to delve into the theological meanings of how far the terms “work,” “labour,” “employment,” and “job” coincide, overlap, conflict or contradict one another. The meaning of the words as given in \textit{Black's Dictionary} shall be used without compromising the context of their use in the social teaching. This probably explains why a “white collar” job which entails less tedious activity is valued more than tedious and menial work. A “labourer” in the Nigerian parlance implies one who is unskilled, who carries out tedious jobs such as cleaning and maintaining public roads.
of our bodies. This distinction between work and labour, which can be traced to the Bible, makes work paradoxical in terms of man’s share in the creative power of God and in the pain involved. According to Chenu, “[...] work has the paradoxical connotations of inexorable constraint and joyful expressiveness, unremitting compulsion and liberating self fulfilment.” Hence work evokes different reactions in human beings. Some look for work because it is the only way to earn one’s livelihood and to succeed in life. Others avoid the pain of work and seek painless ways of securing a living, such as gambling and cheating. Still others would seek solely the fulfilment involved in work which can become an idol captivating man’s attention.

Examining the reality of work in the Old Testament, the Genesis episode speaks of the sweat of brow as bread is produced and consumed, while the necessity of toil throughout life exists because the ground is cursed due to the fall of man. However, the importance of the creativity of work is maintained even after the exile of Cain when he finds a city, thereby fulfilling the promise made to Adam to “till and keep it.”


65 In Genesis 2:15, God settled man in paradise to care for it; in Genesis 1:27-28, God gave man power of dominion over the earth. Then, in Genesis 3:17, 19, God cursed the earth, which indirectly affects human work.


68 Genesis 4:17.
creativity finds expression in the Book of Job.\textsuperscript{69} If work is a share in the creativity of God, then we can conclude that it predates man’s sinfulness in the Garden of Eden.

The contemporary theology relating to work focuses attention on its significance from the perspective of creation and eschatology. Work is understood as a participation in God’s creative activity, especially as transformed by Christ at the incarnation when He assumed all the dimensions of human existence, including work.\textsuperscript{70} Christians therefore acquire the special vocation of sharing in Christ’s redemptive work. The eschatological understanding of work sees it as related to the Christian task of preparing for Christ’s glorious coming.

The Fathers of the Second Vatican Council summarized thus the theological meaning and significance of work:

\begin{quote}
Human work, whether exercised independently or in subordination to another, proceeds from the human person who, as it were, impresses his seal on the things of nature and reduces them to his will. By his work a man ordinarily provides for himself and his family [...] he can exercise genuine charity and be a partner in the work of bringing divine creation to perfection. Moreover, we believe by faith that through the homage of work offered to God, man is associated with the redemptive work of Jesus Christ, whose labour with his hands at Nazareth greatly ennobled the dignity of work. This is the source of every man’s duty to work loyally as well as his right to work.\textsuperscript{71}
\end{quote}

From this conciliar teaching, we can identify three constitutive elements of work: it proceeds from man, it provides man with the necessities of life, and it dignifies man

\textsuperscript{69}Job 28:1-12.

\textsuperscript{70}Mark 6:3.

\textsuperscript{71}GS, 76.
because it enables him to participate in God's creation and in Christ's redemption. These three elements, origin, purpose, and dignity of work, are at the centre of the magisterial social teaching on work and labour.

Human work is also a means whereby human persons grow in Christ and in holiness. In this context, the indispensable role of the lay people was emphasised by the Council fathers, when they said: "By their competence in secular disciplines and by their activity, interiorly raised by grace, let them work earnestly in order that created goods may, through human labour, technical skill, and civil culture serve the good of all men according to the plan of our Creator and the light of the word."

Pope Leo XIII, writing on the purpose of work, stated: "To work is to expend one's energy for the purpose of securing the things necessary for the various needs of life and especially for its preservation." Labour, he went on to say, has personal and necessary ends. The personal ends belong to the worker to expend his energy as he wishes, while the necessary ends are directed towards using the fruits of his labour in order to preserve his life. The personal end is analogous to the creative part of work.

Pope John Paul II further developed the conciliar themes on work. He

\[72\text{LG, 4, 5.}\]

\[73\text{LG, 36.}\]

\[74\text{RN, 62.}\]
differentiates between the "objective"\textsuperscript{75} sense of work in terms of its productive part, and
the "subjective"\textsuperscript{76} sense of work as a free, self determining activity which must manifest
a deeper appreciation for the fact that "labour" implies toil. He maintains that work, even
human toil, has intrinsic value in the subjective sense because of the inherent dignity of
the person performing it. He insists that a true spirituality and understanding of the value
of work is found in the light of the cross. It is only by associating the toil of work with
Christ crucified that man collaborates in redemption; and this all makes sense in the
resurrection of Christ.\textsuperscript{77}

In spite of the above mentioned positive qualities of work, one cannot be
unmindful of its pernicious aspects especially because of materialism and
dehumanization. Pope Paul VI warned that work can have contrary effects for it promises
money, pleasure and power; it invites some to selfishness, others to revolt. He went on
to say that, even though it develops professional awareness, sense of duty and charity to
one's neighbour, the risk exists of dehumanizing those who perform it by making them
servants, especially when it is more scientific and better organized. Work, he concluded,
is human only if it remains free and \textit{intelligent}.\textsuperscript{78}

\textsuperscript{75}LE, 5.

\textsuperscript{76}LE, 6.

\textsuperscript{77}LE, 27.

\textsuperscript{78}PP, 28.
1.2.2 - Human Dignity and Work

The dignity of the human person is one of the fundamental reasons why the Church condemns any exploitation or dehumanization of the worker. The magisterium teaches that labour is not merely a factor of production to be determined by the vagaries of market forces. The dignity of man in relation to work arises from a partnership with God as co-creator, following the mandate which God gave man to subdue the earth. According to John Paul II:

When man, who had been made in the image of God [...] male and female, hears the words Be fruitful and multiply, and fill the earth and subdue it, even though these words do not refer directly and explicitly to work, beyond any doubt they indirectly indicate it as an activity for man to carry out in the world. Man is the image of God partly through the mandate received from his creator to subdue, to dominate, the earth. In carrying out this mandate, man, every human being, reflects the very action of the Creator of the universe.\(^{79}\)

Pope Leo XIII, using the natural law deductive approach, insists on the dignity of the human person and his right to work and possess the fruits of his labour. What stands out and excels in us, what makes man and distinguishes him generically from the brute, is the mind or reason.\(^{80}\) Since man expends his mental energy and his bodily strength in procuring the goods of nature, by this very act he appropriates that part of physical nature to himself which he has cultivated. On it he leaves impressed, as it were, a kind of image of his person, so that it must be altogether just that he should possess that part as his very

\(^{79}\text{LE}, 12.\)

\(^{80}\text{RN}, 12.\)
own and that no one in any way should be permitted to violate his right.  

Work has an intrinsic value not only because of its usefulness, but also because of the human dignity of the person doing the work. For this reason, all kinds of work must be treated with dignity and adequately remunerated. In the words of John Paul II, the basis for determining the value of human work is not primarily the kind of work being done but the fact that the one doing it is a person. The sources of the dignity of work are to be sought primarily in the subjective dimension and not in the objective one. In fact in the final analysis it is always man who is the purpose of the work, whatever work it is that is done by man — even if the common scale of value rates it as the merest ‘service’ as the most monotonous, even the most alienating work.  

In view of the dignity of man, all human persons are equal irrespective of their role in society. They equally possess corresponding rights and duties which must be respected by all. The economy is for all people and the resources of the earth are to be equally shared. That is why Pope Leo said that the command to “fill the earth and subdue it, and rule over the fishes of the sea and fowls of the air and all living creatures that move upon the earth” was given to all humanity. In this respect, all men are equal, and there is no difference between the rich and poor, between masters and servants, between

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81RN, 15.

82LE, 6.

83JOHN XIII, in Pacem in terris, 11-30, outlines a list of rights and duties including economic rights.

84Genesis, 1:28.
THE SOCIAL TEACHING OF THE CHURCH

rulers and subjects, for there is the same Lord of all.\textsuperscript{85}

In reality, the rich and powerful feel themselves superior and, therefore, could oppress the weak. Pope John XXIII expressed this sentiment when he said: "Our heart is filled with profound sadness when we observe, as it were, with our own eyes a wretched spectacle, indeed great masses, of workers who [...] receive too little while the consumption of the rich stands out."\textsuperscript{86} The social teaching of the Church has continued to address this inequality which has moved from a class distinction between the rich and the poor, to structural inequality between nations and even to ideological differences.\textsuperscript{87} The Church teaches that the goods of the earth belong to all; even though man has a right to private property, this right must be subordinated to the right of common use. The worker therefore has a right to a just wage which is a means of sharing in the common good.

As a result of equality of all persons, the social teachings further provide that workers should participate in decision-making and ownership of the enterprise in which they work.\textsuperscript{88} It proposes this as a mid way approach between individualistic capitalism and collectivist socialism. In the words of Pope John XXIII,

\begin{itemize}
\item \textsuperscript{85}Romans, 10:12; \textit{RN}, 57.
\item \textsuperscript{86}\textit{MM}, 68, 69.
\item \textsuperscript{87}For instance, \textit{Sollicitudo rei socialis} 14-17 and 41-44 dealt with the gap between poor and rich nations, and ideological differences between nations.
\item \textsuperscript{88}\textit{MM}, 75; \textit{LE}, 14.
\end{itemize}
following the line of thought drawn by our predecessors, We also hold it as justifiable the desire of the employees to participate in the activity of the enterprise to which they belong as workers [...] at any rate, every effort should be made that the enterprise become a community of persons in the dealings, activities and standing of all its members. This demands that the relations between the employers and directors on the one hand, and the employees on the other, be marked by appreciation, understanding, a loyal and active cooperation [...] that the work be considered and effected by all the members of the enterprise, not merely as a source of income but also as the fulfilment of a duty and the rendering of service.89

This teaching reinforces the principle that workers should be made to feel that they are in essence working for themselves as free and responsible citizens. Incentives to creativity and responsibility should be provided by the employers so that the workers will have a sense of belonging. Their dignity and productivity will be enhanced in the interest of the common good.

1. 2. 3 - Contracts and Work

The question of the efficacy of contracts with employers arose from socio-economic circumstances and the detrimental position of the worker in bargaining for his rights. One of the important principles about work contracts is that the employer and the employee should have a proper attitude which recognizes their respective dignity and the need for justice. In other words, the emphasis is on the proper attitude rather than on an exhaustive list of rights and duties.

Following the natural principles of justice, the Church deplores unjust contracts

89MM, 91.
between two unequal parties. In the words of Pope Paul VI: "Contract negotiators should remember the teaching of *Rerum novarum*, as always valid: if the positions of the contracting parties are too unequal, their consent does not suffice to guarantee justice and the rule of free agreement remains subject to natural law."90 However, a few people misunderstood the teaching of Pope Leo XIII, and argued that wage contracts are essentially unjust. They maintained that only partnership agreements are acceptable. Pope Pius XI condemned this opinion as incorrect and a misrepresentation of the teaching of Pope Leo XIII. However, he suggested that, where possible, wage contracts should be modified by a contract of partnership to the advantage of both the employers and the workers.91

Notwithstanding the position of the Church, there are many *unjust* contracts between workers and employers. Pope John Paul II mentioned this in *Centesimus annus*:

Unfortunately, even today one finds instances of contracts between employers and employees which lack reference to the most elementary justice regarding the employment of children or women, working hours, the hygienic condition of the work-place and fair pay; and this is the case despite the *International Declarations and Conventions* on the subject and the *internal law* of the states.92

The existence of these *unjust* contracts seems to indicate that agreements do not

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90 *PP*, 59.

91 *QA*, 64-65.

necessarily safeguard the workers' interest. Sometimes they can become a tool for exploitation in the hands of greedy employers. Some authors, such as M.-D. Chenu, think that formal contracts are imposed on workers by economic principles, and that as labour becomes less dehumanized and more socialized, they should shake off the yoke of contracts and become free men conscious of their responsibilities and work towards the achievement of their own development. In the optimum situation labour should be dignified and allowed to participate in the socio-economic factors that determine personal rights and interests.

1. 2. 4 - The Rights and Duties of Workers and Employees

Work, in as much as it is a duty and a necessity for man, also becomes a source of rights on the part of the worker. These rights are considered in the broad context of human rights as a whole. Pope John XXIII enshrined socio-economic rights alongside civic and political ones. The basic principle is that every human person endowed with intelligence and free will is inviolable. Economic rights apply to the economic well being of the human person including the right to work, and to receive just wages. These

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94 LE, 16.

95 PT, 18-23. This is similar to what we find listed in the United Nation's International Covenant on Economic, Social and Cultural Rights, United Nations General Assembly Resolution, 2200 (XXI), December 16, 1966.
rights actualized in the community are essential for justice and good order in society. John Paul II is of the view that the rights and obligations of the worker must be discussed in the context of the relationship between the direct and indirect employer and the worker.\textsuperscript{96}

Developing the theme of direct and indirect employer, John Paul II states that the indirect employer includes persons and institutions, collective labour contracts and principles of conduct laid down by those persons and institutions which determine the whole socio-economic system. These factors control the conduct of direct employers in the concrete determination of work contracts and eventually influence ethical labour policy, which, in order to be acceptable, must respect the objective rights of the worker. However, the attainment of the worker’s rights cannot be deemed to be merely a result of economic systems which on a larger or smaller scale are guided chiefly by the criterion of maximum profit. Indirect employers, he continued, influence economic institutions and policies which determine unemployment growth in society. John Paul II condemned unemployment as a social evil and called on the agents included under the title of indirect employer to act against unemployment profit.\textsuperscript{97}

In the Church’s commitment to a just world economic order, it maintains its duty to defend the defenceless worker and at the same time to protect the rights of employers.

\textsuperscript{96}LE, 16.

\textsuperscript{97}LE, 17-18, speaks specifically against unemployment; RN, 6; QA, 109.
Among the duties of the worker is the ability to carry out entirely and conscientiously whatever work has been voluntarily and equitably agreed upon between himself and the employer. He must not in any way injure the property or person of the employer. In protecting their interests, workers should refrain from violence and rioting and avoid the association of crafty men who hold exaggerated hopes which could lead to destruction of property.\(^{98}\) Though not absolute, the employer has a right to private property that must be exercised subject to the common good.\(^{99}\) He should not be subjected to crushing taxes. He has a right to form private associations and the principle of subsidiarity should be observed.\(^{100}\)

1.2.5 - Right to Just Wage

The Church’s social teachings have insisted that one of the best ways of recognising the dignity of labour is to pay a just wage. Wages are practical means through which the worker can have access to the goods meant for common use. Indeed, the right to just wage is considered the most important duty of the employer. According to Pope Leo XIII:

> To defraud anyone of the wage due him is a great crime that calls down avenging wrath from Heaven. “Behold, the wages of the labourers... which have

\(^{98}\text{RN, 30.}\)

\(^{99}\text{PP, 23-24.}\)

\(^{100}\text{QA, 84.}\)
been kept back by you unjustly, cry out: and their cry has entered into the ears of the Lord of Hosts.” Finally the rich must religiously avoid harming in any way the savings of the workers either by coercion, or by fraud or by the arts of usury.\textsuperscript{101}

The Church further teaches that the fact that the worker freely accepts a low wage does not exonerate the employer from the duty of paying a just wage. Pope Leo XIII maintains that the worker can freely accept a low wage as far as labour is considered personal, since he is free to spend his energy at his own will. The necessary aspect of labour which is responsible for preservation of life does not give him any option since it is a crime to neglect life. However, if moved by fear or a worse evil, a worker accepts a harder condition, even though against his will because the employer imposes it, it is an injustice.\textsuperscript{102} In other words, in such circumstances the worker is dehumanized and treated like a chattel. It is worthy of note that the standard of a living wage is not absolute but relative to the resources and economic situation in a given country. Pope Pius XI mentioned three factors which must be considered in determining wages: (1) the support of the worker and his family; (2) the condition of the particular business; and (3) the demands of the common good.\textsuperscript{103}

Other conditions of work are equally significant because they ensure that the dignity of workers is not just “bought” as it were by payment of a high wage. Workers

\textsuperscript{101}RN, 32. Other sources on the same subject, MM, 68; LE, 19.

\textsuperscript{102}RN, 63.

\textsuperscript{103}QA, 71.
are not to be treated as slaves; justice demands that the dignity of the human person be respected. In other words, working conditions which weaken the worker physically, dull him mentally, disrupt his family life, stunt him spiritually, detract from the proper education of children, and deprive women of their natural dignity, not only infringe on the rights of the individual, but also injure the common good and cause social upheavals.\textsuperscript{104} Likewise, it is enjoined that the religious interests and the spiritual well-being of workers receive proper consideration. It is the duty of employers to see that workers are free to attend to their religious obligations; and are not exposed to corrupting influences. The workers must be given a day of rest and hours of work must not be extended beyond what human strength can endure. Other social benefits which the employer must provide are adequate health care for workers and their family, right to leisure, pension and accident insurance, decent work environment.\textsuperscript{105}

1. 2. 6 - Right of Association

The Church gives the right of workers to associate a pride of place as it is one of the powerful means through which workers propagate their interests. They have a natural right to associate with fellow workers in advocating their interests with employers and the State. Pope Leo XIII summarized the position of the Church:


\textsuperscript{105} RN, 30-32; QA, 60-63; PT, 18-23; LE, 19-20.
THE SOCIAL TEACHING OF THE CHURCH

For man is permitted by a right of nature to form private societies; the State, on the other hand, has been instituted to protect and not to destroy natural right, and if it should forbid its citizens to enter into associations, it would clearly do something contradictory to itself because both the State itself and private association are begotten of one and the same principle namely that men by nature are inclined to associate. Occasionally there are times when it is proper for the laws to oppose associations of this kind, that is, if they professedly seek after any objective which is clearly at variance with good morals, with justice or welfare of the State. Indeed, in these cases the public power shall justly prevent such associations from forming and shall justly dissolve those already formed. 106

The Second Vatican Council gave unqualified recognition to the right of workers to form labour unions. The Council Fathers were of the opinion that the right of freely founding labour unions is among the basic rights of the human person and these unions should be truly able to represent the workers and contribute to the proper arrangement of economic life. They further added that workers should freely participate in the activity of these unions without risk of reprisal. 107 However, in extraordinary circumstances workers can engage in strikes, but other political aims should be avoided. 108

The social teaching of the Church on women and work seems to be written from the strong presumption that the place of women is in the home. There is a call for the support of women as they raise their children. 109 The rights of women who work side by side

106 RN, 72.
107 GS, 68.
108 LE, 20.
109 For example, Pope Paul VI, while advocating the recognition of the rights of women said, "[...] We do not have in mind that false equality which would deny the distinctions laid down by the Creator himself and which would be in contradiction with woman's proper role,
side with men and are sometimes faced with difficult situations seem not yet to have been addressed adequately. This is of special importance in view of the changing nature of work. The enquiry of the British Council of Churches' on unemployment and the future of work discovered that male participation in the labour force is falling while female participation is growing. According to their findings, among others, many of the traditional male jobs in mining and manufacturing are disappearing while the traditionally female service jobs have increased. This phenomenon, the inquiry maintained, poses a challenge and is of immense significance to society.\textsuperscript{110}

1.2.7 -Conflict Between Labour and Capital

The rights and duties of workers and employees cannot be adequately discussed without reference to the conflict between the owners of means of production known as \textit{capital} and those who share in the process of production by their work known as \textit{labour}. Historically, this problem started as a result of the exploitation of the suppliers of labour by the rich entrepreneurs who maximized profits and paid the lowest wages, while often subjecting the workers to unhealthy working conditions. This conflict was turned into

class struggle which found expression in the ideological philosophy of Liberalism and Marxism.

The Marxist ideology of scientific socialism or communism sees the class conflict between labour and capital as natural, and considers class struggle as the only way of eliminating class injustice. It proposes that the means of production should be concentrated in the society (State) thereby abnegating the right of private ownership. This is the only way that the impoverished working masses could meet up with the rich entrepreneurs. Liberalism, which follows capitalism, relies on the market system to solve fundamental economic problems. It requires private property and a voluntary exchange system for what it calls a free market. It encourages materialism and gives priority to profit above and over all other factors, including man.\footnote{The discussion of the theories of Marxism and Capitalism lies outside the scope of this study.}

The Church, however, teaches that labour takes priority over capital; as a result, capital should be at the service of labour. As John Paul II puts it:

\begin{quote}
It remains clear that every human being sharing in the production process, even if he or she is only doing the kind of work for which no special training or qualifications are required, is the real efficient subject in this production process, while the whole collection of instruments, no matter how perfect they may be in themselves, is only a mere instrument subordinate to human labour.\footnote{\textit{LE}, 12.}
\end{quote}

The contribution of labour to the growth of any state or society is indispensable.
THE SOCIAL TEACHING OF THE CHURCH

In recent times, advances in technology have facilitated man's work, and technology has become his ally. However, technology can become an enemy when it supplants labour, taking away human initiative and personal responsibility.\textsuperscript{113} This happens when capital, which includes technology, is given priority over the human person.

The Church further teaches that labour and capital need each other and, therefore, they must find a way of working together in the interest of the common good.\textsuperscript{114} There is need to develop a system that will reconcile labour and capital. Catholic social teaching differs from Capitalism and Marxism as it condemns exclusive private ownership and collectivization. The Church proposes a joint ownership between capital and labour that will be of service to labour.\textsuperscript{115}

1. 2. 8 - The Role of the State

On the relationship with public authority, the Church maintains that the wealth of the State originates from the labour of workers. Therefore the State is bound to show concern for the plight of workers and to ensure that their interest is protected for public good and order. The State is especially called to assist its citizens in upholding and protecting their right to employment. Pope John XXIII summarized the basic teaching

\textsuperscript{113} LE, 5.

\textsuperscript{114} RN, 15.

\textsuperscript{115} LE, 13.
on the role of the State:

The state, whose purpose is the realization of the common good in the temporal order, can by no means disregard the economic activities of its citizens. Indeed, it should be present to promote in a suitable manner the production of a sufficient supply of material goods, [...] safeguard the rights of all citizens, but especially the weaker [...] contribute actively to the betterment of the living condition of workers, [...] see to it that labour agreements are entered into according to the norms of justice and equity, and that in the environment of work the dignity of the human being is not violated either in body or spirit.\textsuperscript{116}

In other words, here the State is being called to arbitrate in the conflict between labour and capital. Among other roles, the right of association of citizens, especially of workers, must be protected. Some of these roles make the State an indirect employer, and as a result, it has the onerous responsibility of influencing the direct employer and ensuring that the economic order serves the common good.

\textbf{1. 2. 9 - Analysis and Conclusion}

The first synodal social document, \textit{Justitia in mundo}, expresses the post Vatican II episcopal collegiality and is a realistic refinement of the social teachings of the Church. It reflects the consensus of bishops representing the diverse social, cultural, economic and political concerns of Africa, Asia, Eastern and Western Europe, Latin and North America. This document is very germane to this study because the Church, in addition to speaking to the world, turned inwards to challenge its own structures and attitude,

\textsuperscript{116}MM, 20-21.
THE SOCIAL TEACHING OF THE CHURCH

when it said:

While the Church is bound to give witness to justice, she recognizes that anyone who ventures to speak to people about justice must first be just in their eyes. Hence, we must undertake an examination of the mode of acting and of the possessions and lifestyle found within the Church herself [...]. No one should be deprived of his ordinary rights because he is associated with the Church in one way or another. Those who serve the Church by their labour, including priests and religious, should receive a sufficient livelihood and enjoy that social security which is customary in their region. Lay people should be given fair wages and a system of promotion.\textsuperscript{117}

It is not possible to discuss the ramifications of all the issues relating to Catholic social teaching on work and labour; we have discussed simply the salient ones. One however observes that the nature of work continues to change from the period of the industrial revolution to the present time. The inquiry by the Churches in Britain and Ireland on unemployment and the future of work referred to earlier, identified three main social factors contributing to the changing nature of work. These factors are: (1) the introduction of new technology especially in communications and information processing; (2) the changing participation of the labour force, with male participation falling and female participation growing; (3) the liberalization or deregulation of markets resulting in greater intensity of competition internationally and nationally within

Britain.\footnote{118} Even though these findings should not be given universal application, they indicate the trend in developed nations which eventually determines the fate of the worker in the developing world. Pope John Paul II, reacting to some of these changes, endorsed the positive role of the free market system. However, while applauding the fall of real socialism, he cautioned that it would not be a victory for capitalism which encourages a free market economy and in the process fails to satisfy human needs.\footnote{119}

The social teachings of the Church before Pope John XXIII’s \textit{Mater et magistra} dealt with workers’ issues from the concept of industrialized factory workers in developed nations. Pope John XXIII, however, widened the scope of Catholic social teaching by focussing on developing countries which were not fully industrialized. He treats of the problem of workers in the agricultural sector and of urban migration, emphasizing the need for developed nations to help developing ones.\footnote{120} Pope John Paul II further discussed the plight of agricultural workers, when he said:

\begin{quote}
Agricultural work involves considerable difficulties, including unremitting and sometimes exhausting physical effort and a lack of appreciation on the part of society, to the point of making agricultural workers feel that they are social outcasts and of speeding up the phenomenon of their mass exodus from the country side to the cities and unfortunately to still more dehumanizing living conditions. [...] Thus, it is necessary to proclaim and promote the dignity of work, of all work, but especially of agricultural work in which man so eloquently “subdues” the earth as a gift from God and affirms his “dominion”
\end{quote}


\footnote{119}CA, 33-35, 63.

\footnote{120}MM, “New Aspects of the Social Question”, nos. 122-211.
in the visible world.\textsuperscript{121} This is the plight of many agricultural workers in developing countries where farming is not mechanized. There is an exodus of farmers to the cities, and as Pope John Paul II mentioned, to more dehumanizing conditions such as unemployment, and the lack of basic necessities of life in the cities, among others.

For this reason, the problem of emigration of workers in search of work is a fundamental one in developing countries with numerous skilled workers migrating to developed countries in search of work, especially in view of the unstable political systems and poor economy in some developing countries. The Church teaches that man has a right to leave his native land for various motives, but points out that it is a necessary social evil which should not be permitted to cause more "moral" harm.\textsuperscript{122} Some of these issues are very pertinent to developing countries at this time.

Paul VI, in his apostolic letter of 1971, challenged local Churches to respond to specific situations by applying the social teachings to their own concrete socio-economic systems.

In the face of such widely varying situations it is difficult for us to utter a unified message and to put forward a solution which has universal validity. Such is not our ambition, nor is it our mission. It is up to the Christian communities to analyse with objectivity the situation which is proper to their own country, to shed on it the light of the Gospel's unalterable words and to draw principles of reflection, norms of judgement and directives for action from

\textsuperscript{121}LE, 21.

\textsuperscript{122}LE, 23.
THE SOCIAL TEACHING OF THE CHURCH

the social teaching of the Church.\textsuperscript{123}

This challenge recalls to mind the address of Pope Paul VI to the symposium of Episcopal Conferences of Africa and Madagascar,\textsuperscript{124} at the end of their meeting, during his first visit to Africa in 1969. He encouraged the African bishops to remain sincerely African even in the interpretation of Christian life.\textsuperscript{125} In the next section, we shall examine how the African Church in general and the Nigerian Church in particular, have responded to social issues, especially to the rights of workers and labour.

1.3 - THE AFRICAN CHURCH AND SOCIAL JUSTICE:

LABOUR AND THE RIGHTS OF WORKERS

In order to assess the magnitude of the social problems facing the worker in the African Church, we shall first consider, albeit briefly, the political and social situations of Africa.

\textsuperscript{123}OA, 4.

\textsuperscript{124}SYMPOSIUM OF EPISCOPAL CONFERENCES OF AFRICA AND MADAGASCAR ( = SECAM) is composed of 34 episcopal conferences made up of 9 regional groups: ACEAC (Association of Episcopal Conferences of Central Africa), ACECCT (Association of Episcopal Conferences of Congo, Central Africa, Cameroon, Chad, Equatorial Guinea), AECAWA (Association of Episcopal Conferences of Anglophone West Africa), AMECEA (Association of Member Episcopal Conferences of Eastern Africa), CERNA (Conference of Bishops of the Region of Northern Africa, Libya, Morocco, Algeria, Tunisia), CERAO (Regional Episcopal Conferences of Francophone West Africa), IMBISA (Inter Regional Meeting of the Bishops of Southern Africa, the Episcopal Conference of Madagascar and the Patriarchal Coptic Synod, Egypt), in L'Osservatore Romano, English Language edition, April 20, 1994, p. 5.

Many African countries were colonized by the major European powers. With colonization, the Western way of life with its positive and negative values (language, politics, economics, education, religious and cultural values) was introduced into Africa, a fact that altered the African traditional system of life. Raw materials were taken from Africa and used to manufacture goods abroad which were resold in Africa. In the 1960s, many African countries sought and obtained independence, thus achieving some form of political, economic and social freedom.\(^{126}\)

Many of the African politicians who took over from the colonial rulers were unable to lead their people to true autonomy and, as a result, the experience of freedom was short lived. Most African leaders amassed wealth for themselves at the expense of their people, importing both capitalism and socialism to suit their political exploit. According to Bishop J. Onaiyekan,

\begin{quote}
our leaders tend to put together the worst of both worlds: from the Socialist East, they import the instruments of state control and coercion, e.g. one-party states, press control [...]. With these instruments, they try to stay permanently in power [...]. From the Capitalist West, they import the tricks of amassing personal wealth: foreign bank accounts, international investments, luxurious life style, etc.\(^{127}\)
\end{quote}

\(^{126}\)P. Henriot refers to this period as the \textit{First independence}, while the period following independence, marked with moves for a change to democracy, he called \textit{Second independence}, see P. HENRIOT, "The Context of the AMECEA Countries on the Eve of the African Synod," in \textit{African Ecclesial Review}, 34 (1992), p. 341.

Notwithstanding the above findings, in recent times, many African countries, have been pushing for reforms towards political democracy, freedom of the press and economic autonomy. Reflecting on the African approach to social issues, E. Uzukwu observed that when the Africans and the Europeans speak of human rights, they don’t usually mean one and the same thing:

For the western capitalist world, the focus is the individual person who must remain unfettered to act, speak, worship, associate or accumulate wealth; for the erstwhile socialist republics, rights are about satisfying social and economic needs (mainly work and material security like housing, education, health); but for the brutalized nations of the Third World, the focus is on the right to human survival and liberation in a world where they are manipulated by the first and second worlds. ¹²⁸

The Symposium of Episcopal Conferences of Africa and Madagascar (SECAM) at its General Assembly on “Justice and Evangelization in Africa,” examined the external and internal factors contributing to social injustice in Africa. It drew attention to international political, social, and cultural domination. It observed that the so-called “liberating” foreign military interventions have, in reality, created dependency and a whole train of misery, physical and moral violence, and religious oppression. It further remarked that unjust distribution of the earth’s resources between the poor and the rich, the pillage of raw materials from the “Third World,” and the evils of international debt have brought misery to the poor nations. Speaking further on the internal causes among

others, SECAM identified the rampant violation of human rights in different ways at
different levels by those who hold economic and political power, corruption and
embezzlement of public funds, and the intimidation of political opponents. It went on to
conclude, that because of these factors, “the human person becomes the mere plaything
of an unbridled power which bears down with all its weight on both minds and bodies,
and the common good gives way to the interests of individuals or of particular
groups.”

The African problems were examined at the Special Assembly for Africa of the
Synod of Bishops. For many Synod Fathers, contemporary Africa can be compared to the
man who went down from Jerusalem to Jericho; he fell among robbers who stripped him,
beat him and departed, leaving him half dead. The Synod fathers further added that
Africa is a continent where countless human beings – men and women, children and
young people – are lying, as it were, on the edge of the road, sick, injured, disabled,
marginalised and abandoned. They are in dire need of good Samaritans who will come
to their aid. This explains the fact that the themes of justice and peace, human rights,

Africa. This thesis does not intend to go into the social analysis of problems causing
underdevelopment in Africa.


131JOHN PAUL II, Post Synodal Exhortation Ecclesia in Africa, (= Ecclesia in Africa),
democratization and stability in Africa were the most reiterated topics during the Synod.\textsuperscript{132} There was a consensus among the Fathers of the African Synod that Africa is full of problems. As John Paul II would put it in the Exhortation:

\begin{quote}
In almost all our nations there is abject poverty, tragic mismanagement of available scarce resources, political instability and social disorientation. The results stare us in the face: misery, wars, despair. In a world controlled by rich and powerful nations, Africa has practically become an irrelevant appendix, often forgotten and neglected.\textsuperscript{133}
\end{quote}

Examining the role of the Church in the context of these social problems, one observes that the early missionaries to Africa, following Church tradition, combined the works of mercy with evangelization in providing various forms of social welfare services and vocational centres to curb unemployment and provide skilled labour. These activities went a long way in alleviating the pains and austerity of the marginalised in society. They were, however, complaisant to the oppressive regimes of the colonial masters during the struggle for independence. According to P. Henriot, two factors were responsible for this attitude: (1) the officials of the Church were largely expatriates, frequently associated by origin and occasionally by attitude with the colonial masters; (2) this was the period prior to the Second Vatican Council without the theological premise

\textsuperscript{132}This was accentuated by the tragedy in Rwanda which started before the synod and continued throughout the period of the Synod. The table of interventions indicates that Justice and Peace was the highest: justice, 40, inculturation, 35 laity, 30, small basic Christian communities, 27, religious, 9, missionaries, 11, family 11, signs of the times, 3, youth, 4, Schools, 4, catechetics, 2, dialogue, 18, priests, 9, communications 13, Church, 15: See "Synode Africain: Panorama thématique," in \textit{Au coeur de l' Afrique}, November 4, 1994, p. 261.

\textsuperscript{133}\textit{Ecclesia in Africa}, no. 40.
and pastoral practice which emphasize active engagement in the *social context* of the day ushered in by *Gaudium et spes*.\(^{134}\)

Over the years, the role of the African Church has improved with the increase in the number of the African indigenous clergy and religious, a new understanding of ecclesiology introduced by the Second Vatican Council, and the social teachings of the Church. During the preparation for the African Synod there was a general agreement that the credibility of the Gospel in Africa rests on how African Christians participate in working for the promotion of humanity, justice and peace.\(^{135}\) SECAM at its previous meetings had affirmed this role and commitment in the African struggle for justice and peace, when it said:

> Within the universal communion of different Churches, we must be able to act without being subject to pressure if we are to find evangelical solutions to the African problems which face us today. Our credibility is at stake. There is still a tremendous and urgent task to be accomplished. Africa expects it from us and we wish to be able to undertake this task in a climate of trust and healthy freedom.\(^{136}\)

In proposition 54,\(^{137}\) the African bishops called on industrialized countries to promote real growth on the continent by paying fair and stable prices for its raw materials. They further called on African governments to adopt appropriate economic


\(^{136}\)SECAM, Exhortations on “Justice and Evangelization in Africa,” no.18.

policies in order to increase growth, productivity and job creation. J. Waliggo, in commending the bishops, said:

The Synod clearly rejected the inferiority complex that has been forced on the African black people, the injustice of the North to the South, the northern world view that maintains a structural inequality, unjust terms of trade [...] unjust external debt that oppresses Africa and its people. This was a powerful message indeed, especially coming from the African Bishops who in the past have been known to be timid in their condemnation of the North.\textsuperscript{138}

Pope John Paul II, commenting on the positive role of the African bishops said:

The “winds of change” are blowing strongly in many parts of Africa, and people are demanding ever more insistently the recognition and promotion of human rights and freedoms. In this regard I note with satisfaction that the Church in Africa, faithful to its vocation, stands resolutely on the side of the oppressed and of voiceless and marginalised peoples. I strongly encourage it to continue to bear this witness.\textsuperscript{139}

As to practical means of promoting human rights and justice in Africa, the Church has put into practice the recommendation of the Second Vatican Council that an organization be set up to arouse the Catholic community to promote progress and social justice between nations.\textsuperscript{140} In 1967, Pope Paul VI, adhering to this recommendation, set up the Pontifical Commission for Justice and Peace. The Church in Africa, in like manner, considers the setting up of Justice and Peace Commissions as a response to the problems of injustice. In 1981, SECAM recommended that an inventory of the forms of


\textsuperscript{139}\textit{Ecclesia in Africa}, no. 44.

\textsuperscript{140}GS, 90.
oppression and of the causes of corruption be taken at the grassroots level. The participation of Christians in groups was seen as an excellent opportunity for reflection on the situation of justice and peace.\textsuperscript{141}

At the Pan African Justice and Peace seminar organised by SECAM, the participants remarked that a major role for the Church in Africa is the promotion of peace and justice among the poorest of the poor. In their view, the preferential option for the poor, the marginalised and the outcast of society, is not a matter of choice, but of obligation. However, while acknowledging the complexity of the problems in Africa they suggested the establishment of Justice and Peace Commissions at the national and regional levels.\textsuperscript{142}

The setting up of Justice and Peace Commissions at all levels of the Churches in Africa was also recommended by Pope John Paul II as one of the ways of responding to Africa’s numerous social problems:

In what concerns the promotion of justice and especially the defence of fundamental human rights, the Church’s apostolate cannot be improvised. Aware that in many African countries gross violations of human dignity and rights are being perpetrated, I ask the Episcopal Conferences to establish, where they do not yet exist, Justice and Peace Commissions at various levels. These will awaken Christian communities to their evangelical responsibilities in the defence of human rights.\textsuperscript{143}

\textsuperscript{141}SECAM, Exhortations on “Justice and Evangelization in Africa”, no. 28.


\textsuperscript{143}Ecclesia in Africa, no.106.
THE SOCIAL TEACHING OF THE CHURCH

On the correlation of the social problems to the rights of the worker in Africa and labour issues, one notices that the official teaching of the African Church at the continental level is preoccupied with the huge unjust structures which have dehumanized the dignity of the human person, such that issues affecting the rights of the workers cannot be singled out for specific teaching. Since work is very central to social questions, it however, remains a major part of the problem.

Some prevalent social problems in Africa are political instability characterized by unbridled use of power, the international debt, tribal wars which have caused many to become refugees, weak economic systems resulting in poverty and unemployment, corruption, AIDS, loss of truly African values and a penchant for materialistic values. All these elements have reduced the dignity of the African person to the biblical man that was attacked, stripped, and left half dead. When the dignity of man is violated, the right of the worker is equally in jeopardy since the right of the worker is very central to the social question. For example, because of weak economic systems there are no jobs and those who are privileged to find work often operate under very inhuman conditions with very low wages; corruption and materialism encourage many to avoid work, seeking the easy means of survival; refugees having been displaced from their homes depend on charity for daily sustenance. Abuse of political power results in many becoming victims in prison, or in exile, and sometimes confused and in a state of despair.

The Church, in witnessing to justice in Africa, realises that it should be just in its
actions in order to play an effective role in society. When it looks within itself for structures of injustice, it discovers at the top of the list, the manner it treats its own workers. For this reason, although the African Church approaches the social issues differently — from the perspective of justice and peace — the problem of the rights of workers within the Church is central. At the African Synod of bishops, one bishop said in his intervention:

We know that the commitment to justice and peace as integral to evangelization requires not only word but also witness. The clear and courageous witness of Church officials and Church institutions is essential in the promotion of justice. The wages we pay to Church workers, our honest accountability in the use of money, our respect to dialogue and consultation of our priority option for the poor: these are few of the justice issues upon which we will be judged and our credibility assessed.\[146\]

In other words, the payment of a just wage is one of the areas where the Church must give witness of its commitment to justice.

The African bishops, in their message at the closing of the Synod Assembly, reiterated that if the Church is to give witness to justice, it must recognize that whoever dares to speak to others about justice must also strive to be just in their eyes. It is necessary therefore to examine with care the procedures, the possessions and lifestyle of the Church.\[147\] Pope John Paul II mentioned the same point in the post-synodal


apostolic exhortation, when he said that the Church in Africa is also aware that, in so far as its own internal affairs are concerned, justice is not always respected with regard to those men and women who are at its service.\textsuperscript{148}

By way of conclusion, the call of Pope Paul VI for local churches to respond to particular situations in the light of the gospel and the social teaching of the Church is being observed slowly by the African Church. Even though the approach is different, the emphasis on formation of justice and peace commissions from the national to the parish levels is pertinent. The Church also challenges itself to be a Church of the poor, witnessing in its actions to justice and the promotion of human dignity. In a critical evaluation of the Church’s internal need for social justice, it discovers at the top of the list the unjust treatment of its own workers.

1. 4 - THE NIGERIAN CHURCH AND SOCIAL JUSTICE:

LABOUR AND RIGHTS OF WORKERS

Africa is a continent of wide variety and a diversity of situations in both Church and society. Because of this diversity, it is important to beware of generalizations both in the diagnosis of problems and issues and in the suggestion of solutions.\textsuperscript{149} For this

\textsuperscript{148} Ecclesia in Africa, no. 106.

\textsuperscript{149} The fact that there is no specific teaching dedicated to workers at the continental level does not imply that none exists at the level of conferences of bishops of different African
reason, we shall now examine the peculiar situation of Nigeria to see how the local Church has responded to social problems. In order to give a proper perspective to the responses of the Nigerian conference of bishops, we shall give a brief analysis of Nigeria and its socio-economic climate.

Nigeria, a former British colony, came into being as a nation in 1914 when the northern and southern parts of the country were amalgamated into one nation.\textsuperscript{150} It became independent on October 1, 1960, and a republic in 1963. It is situated on Africa's west coast, on the south Atlantic Ocean bordered by Benin, Niger, Chad and Cameroon. It covers an area of about 923,773 square kilometres with an estimated population of 105 million,\textsuperscript{151} the most populous country in Africa and the fifth largest in the world. Nigeria has about four hundred ethnic groups with distinct languages, cultures and beliefs.\textsuperscript{152} The country was amalgamated without due attention to the need of the people to live together as a nation.\textsuperscript{153} This amalgamation ushered in effective administration in the political, economic, social and cultural life of the Nigerian society.

\underline{Countries. This issue is not within the scope of this thesis.}


\textsuperscript{151}\textit{Our Sunday Visitor's Catholic Almanac 1999}, p. 362.


\textsuperscript{153}This explains why 38 years after independence it is still very difficult for the different tribes to "look beyond" their geographical boundaries in the interest of the nation. Some of the political problems arise from these differences.
It subjected society to Western influences which were to have a lasting impact in the next half century.\textsuperscript{154} The policies were not made specifically to disrupt the traditional social life of the people but to ensure a minimum of interference with the peoples' traditional society known as "native society."\textsuperscript{155}

After independence, Nigeria plunged into a thirty month civil war in 1967. It rebounded from the war to claim its rightful place as "the world's largest black nation." In the oil boom days of the 1970s, Nigeria had the 33rd highest per capita income in the world.\textsuperscript{156} The national currency at that time was worth twice as much as the US dollar. Nigeria was experimenting with one of the freest versions of democracy in modern Africa. It was the giant of Africa playing a very leading role in the international scene on apartheid in South Africa. It was still embarking on gigantic projects towards industrialization when suddenly, in the mid eighties, the economy went downhill. As J. Onaiyekan would put it, "one after the other many hopes of the previous decades were postponed and eventually abandoned, thanks to a tragic collision between mismanagement and corruption at home and a hostile economic atmosphere abroad."\textsuperscript{157}

\textsuperscript{154}CROWDER, \textit{The Story of Nigeria}, p. 190.

\textsuperscript{155}CROWDER, \textit{The Story of Nigeria}, p. 192.


THE SOCIAL TEACHING OF THE CHURCH

With decadence prevalent in most aspects of Nigerian life, it now identifies with most of Africa’s social problems enumerated above. Until very recently (1999), the military continued to rule Nigeria and has done so for 28 years out of the 38 years of independence. The government cracks down on freedom of speech, association and rule of law, in a bid to secure national security. The currency is now worth one cent US, and the country has fallen to the 13th poorest nation in the world.\(^{158}\) The introduction of the Structural Adjustment Program has incurred more international debt with devaluation of the Nigerian currency, in spite of the oil wealth. This has put the economy in shambles, generating mass urban migration, to the abandonment of the subsistence agriculture, and consequently to increasing unemployment, poor salaries and inhuman conditions of work. Inflation has reduced the purchasing power of most Nigerians; many of them lack the basic necessities of life, such as food, health facilities, pipe borne water, and housing. Nigeria is now running short of gasoline in spite of its oil wealth, further worsening the plight of the citizens. In addition to these social problems, it continues to battle its complex ethnic, religious and heterogenous makeup.

Other social ills plaguing the country are: tribalism, poor attitude to work, growing gap between the rich and the poor, the penchant for money at all costs, materialism, armed robbery, violence, bribery and corruption. In fact, modern trends in social relations have broken down the values of honesty, hard work, and equilibrium in

the extended family system, which held the society together. The Chairman of the
Episcopal Commission for Justice and Peace in Nigeria summarised the situation when
he said:

> We must work more than ever to build up the awareness among the
> ordinary and victimised people that public officials are to be servants, not
> masters and exploiters. It is more than ever a fact that our institutions have been
deployed - police, army, judiciary, ministries, political institutions.
Crookedness in business matters (419), theft, robbery and insecurity are part of
the poison in the air we breathe[...] We must not lose sight of our vision, as we
look around at the pain, the hunger, the unemployment, the desolation in our
world, [...]. The task is indeed gigantic, and, many would say, hopeless. ¹⁵⁹

On the religious front, ever since the Catholic religion came to Nigeria in the late
19th century, the church has grown tremendously in numbers witnessing a transition in
its leadership from expatriate clergy to indigenous ones. ¹⁶⁰ It is estimated that Catholics
form 11% of the 40% population of Christians, Muslims about 50% and the rest follow
African traditional religions. ¹⁶¹ The different religious groups at best tolerate each other.
From time to time there are outbreaks of religious violence between the Christians and

¹⁵⁹ J. ADELA KUN, “Short Address To the National Justice and Peace Workshop”,
Enugu, April 14-18, 1997, in Workshop Proceedings, Faith and Justice – A Witnessing Church,
Enugu, Justice and Peace Commission, 1997, p. 8. “419” is a common Nigerian parlance for
fraud and those who engage in fraudulent business.

for Pope John Paul II’s visit to Nigeria, (March 21-23), there were 48 bishops, 1,298 parishes,
2,998 priests, and 3,417 religious in Nigeria.

¹⁶¹ CNN Story page news “Nigeria — giant African melting pot of religions”, on the
Internet, 21 March 1998 (http://www.cnn.com/WORLD/africa/). The last census organized in
1992 was stifled by political problems and the result was never released. Both Christians and
Moslems claim higher figures.
Muslims especially in the Northern part of the country. Nigeria is a secular state but recently the government joined the D-8 countries,\(^\text{162}\) associating with other countries which adopt Islam as the official religion. The conference of bishops continues to battle religious problems in addition to the socio-economic and political ones. It spoke out against the federal government for taking such a step in violation of the secular status of the country.\(^\text{163}\)

The Catholic Church, even though it forms a small percentage of the population, commands respect and continues to lead the other Christian Churches in presenting a unified and coherent response to Nigeria's multi-religious and social problems. However, this does not eliminate the feud which exists between other Christian denominations and the Catholic Church. Apart from evangelization and building of schools, the early missionaries to Nigeria did a lot in terms of providing other social services such as hospitals, clinics, orphanages, vocational centres in service of the poor.\(^\text{164}\) However, the Catholic Church was criticized for not speaking up enough against the oppression of the

\(^\text{162}\)D-8 is a group of eight developing Muslim nations (Turkey, Bangladesh, Egypt, Indonesia, Iran, Malaysia, Nigeria, Pakistan), formed at a meeting at Ankara, Turkey in June 1997 to discuss common approaches to development issues.

\(^\text{163}\)CATHOLICS BISHOPS' CONFERENCE OF NIGERIA, Communique, second plenary meeting, Uyo, Nigeria, September 9-12, 1997, in Briefing, 27 (1997), p. 34.

\(^\text{164}\)See A. MAKOZI and A. AFOLABI, (eds.), The History of the Catholic Church in Nigeria, Lagos, Macmillian, 1982, pp.1-15. According to the statistics released by the Vatican Press release on March 4, 1998 in preparation for Pope John Paul II's visit to Nigeria, the Catholic Church runs 827 welfare institutions, 122 hospitals, 75 special centers for social education or re-education, 183 related institutions, 23 homes for the aged, 158 dispensaries, 188 marriage counseling centers. The missionaries started the pioneering work in this field.
THE SOCIAL TEACHING OF THE CHURCH

colonial masters during the struggle for independence. According to the editorial of a local newspaper at the time:

Not Rome, but Nigeria burns, and it burns fast from arson which the leaders of our people have committed. Yet the Christian Church, the spearhead of the urge for peace and concord stands aloof, demanding fees from the persecuted masses, singing Hallelujah, crying Lord, Lord, when those whom Christ placed in their charge are in tears... This is the hour when those who lead us spiritually should have come up and saved the nation... If the Church stands aloof when the country is in danger, how can it when peace comes, as it must, remain and enjoy the labour it has not done? Let the Church of Christ arise.\textsuperscript{165}

While this editorial may not be accepted completely it does indicate that the Church was not vocal enough in social and political issues at the time even though it was actively involved in serving the poor through social welfare services. The ecclesiology at the time and the fact that most of the clergy were expatriates could be responsible. The Church maintained this attitude for quite some time as acknowledged by the Chairman of the Nigerian Episcopal Commission for Justice and Peace when he talked about the Church taking a conservative stand:

What is true is that during the last years our Church has been changing from a conservative stance, in which it frequently supported the existing structures of power, towards a prophetic stance. The prophetic voice is challenging the Christian community to become deeply involved in the struggle for a total liberation transformation, which includes the economic and social, the political and cultural levels of life [...] We are evolving slowly into a Church of the people and a Church of the poor.\textsuperscript{166}

As the social problems worsened, the activity of the Nigerian conference of

\textsuperscript{165} The West African Pilot, October 28, 1948, p. 2.

\textsuperscript{166} J. ADELAKUN, “Short Address To the National Justice and Peace Workshop”, p. 8.
bishops on social issues has improved over the years, in light of the social teaching of the Church and a new understanding in ecclesiology. At its plenary meetings, the Nigerian Conference of Bishops continues to issue communiques in reaction to Nigerian social problems. The Conference, rising from its second plenary meeting in 1997, said among other things:

> Over the years through our communiques, we have called attention to the acute distress in our land manifested in the moral, economic, political and social lives of our people. Notwithstanding the attempts that have been made in official circles the distress has continued to worsen because those efforts have, by and large, turned out to be sporadic [...]. The social ills of armed robbery, violent crimes, unemployment, official corruption, deteriorating infra structure, incessant fuel scarcity, falling standard of education and health care have continued unabated to such an extent that the quality of life of most Nigerians has degenerated to a level that is below human dignity.\(^\text{167}\)

The Conference addressed the problem of work in the context of Nigerian social problems in 1972 at the time when the economy was still booming. It stressed the importance of work, its dignity and the need for Nigerians to cultivate proper attitudes to the dignity of work and labour.\(^\text{168}\) With deterioration in the socio-economic life of the country, the conference concentrated on numerous social problems such as violence, armed robbery, religious bigotry, poverty, sense of hopeless on the part of youth, political instability. However, it continued to mention unemployment, poor working conditions among other problems, while concentrating on numerous ills in the wider Nigerian

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\(^{167}\) CATHOLICS BISHOPS’ CONFERENCE OF NIGERIA, Communiqué, second plenary meeting, Uyo, Nigeria, 1997, pp. 33-34.

society which dehumanize the human person.

The Nigerian bishops, like their other African counterparts, have considered the formation of Justice and Peace commissions as a panacea to the problems. The intervention of a Nigerian bishop at the African Synod illustrates this:

The Catholic Bishop’s Conference of Nigeria has tried to respond to this situation committing itself and the Nigerian Church by word and action [...]. Our Conference has become a widely respected mouthpiece of the demand of God and as a defender of the rights for the people. The Church has tried through its Justice and Peace Commission to put the social teachings of the universal Church at the centre of pastoral planning and strategies.169

As pointed out earlier in reference to the African Church, the Nigerian Church, in working for justice and peace, realises that there is need for self-examination. At the National Workshop on Justice, Development and Peace organized by the Episcopal Commission for Justice, Development and Peace, entitled: “Faith and Justice, A Witnessing Church,” the Chairman of the Episcopal Commission commenting on the Church’s own way of being just to others, said that negatively the Church accepts that it is obliged to eliminate structural injustice that may have crept into its institutional life. Positively, the Church is obliged to establish ways of acting with other institutions that respect the dignity of the person and foster participation at all levels of the Church.170


170 J. ADELAKUN, “A Short address: To the National Justice and Peace Workshop”, p. 9.
The keynote speaker at the same workshop, examining some of the structures of injustice that have crept into the Church, mentioned as being top on the list, unjust wages paid to Church workers. According to him,

my mind goes to the Catechists. These are major teachers of the doctrine of the Catholic Church. They are the upholders of the faith in the Church and yet we know their condition of service. What shall we say of our cooks, drivers, gardeners, housekeepers, and other employees in the Church? All of us know how sufficiently these people receive their means of livelihood and the extent of their social security. Priests especially curates are not better off when it comes to security. Here too the diocesan priests are worse off. [...] Once you become sick or capitulated, you are forgotten and pushed to the background.\footnote{A. ECHEMA, “Justice in the Church”, in JUSTICE, DEVELOPMENT AND PEACE COMMISSION NIGERIA, Workshop Proceedings, Faith and Justice – A witnessing Church, Enugu, 14-18 April 1997, p. 18.}

In other words, the Church workers such as catechists, cooks, gardeners, drivers, religious, even priests work under poor conditions of service with poor salaries. The theme of the workshop and the issues discussed manifest the commitment of the church towards fighting injustice within the Church and the wider society, by addressing the plight of its own workers.

Without diminishing the strategies and plans of the Nigerian Church on social issues, it is important to note that the heterogenous nature of the Nigerian society makes mass mobilization of the people difficult. The teaching of the Bishops’ Conference in Nigeria does not have moral authority on non Christians, and therefore it is not as effective as it would be in Europe or North America which have experienced Christianity
and where the Christian ethos has sunk deep into the values of society. *Rerum novarum* was effective in Europe at the time because the Church was speaking to Christians who dared listen. In Nigeria where the Muslims, African traditional religion adherents, Christians and Catholics squabble with each other over authority, how dare any one of them claim a monopoly of authority. Even though the role of the Catholic bishops is respected, their task remains a Herculean one. In conclusion to this chapter, we shall now summarise the principles derived from these social teachings.

**1.5 - Principles Derived from the Social Teaching on Work and Labour**

1. The basis of the Church’s social teachings is the human person created in the image and likeness of God.\(^{172}\) Because man shares in the image of God, he attains a special dignity as a child of God. This affinity with God acquires distinctive significance in the incarnation of Christ who took on human nature and became man. This basic dignity confers on the human person inalienable fundamental rights which transcend political entities and, therefore, cannot be arbitrarily limited. Among these rights is man’s right to work.

2. The Church insists on its right to intervene in social issues whenever the fundamental rights of the human person are violated or abused in any form. In other

\(^{172}\) Genesis 1:26
words, man becomes the object of the social teachings of the Church which defends him as part of its evangelising mission. In defending man’s fundamental rights, the Church continues to fine tune its teaching, according to the “signs of the times.” In doing this it has shifted its method from the deductive to the inductive historical method, relying more on scripture than on natural law ethics. The reason for this shift is that, the foundation for the earlier social teachings has been replaced by the primacy of love as exemplified by Christ.

3. Work, an analogous concept which applies to ample activities other than leisure, is key to the whole social question; it is central to the human person because it makes man participate in God’s creative activity. For this reason, work dignifies man since it is an expression of his humanity; the worker should not be treated like a chattel, to be bought at the whim of the employer. In the narrow sense, labour is the toil necessary to obtain the biological necessities of life.

4. The emerging theology of work is based on creation and eschatology. The human person through work participates in God’s creative activity in the world. Work proceeds from man, provides him with the necessities of life, dignifies him and sanctifies him as he participates in Christ’s salvific plan. For a proper appropriation of the value of toil associated with labour, it must be identified with Christ crucified.

5. Furthermore, individual rights (including work), which are rooted in human dignity, are to be realized within the context of the common good. The common good is
the sum total of all those conditions of social living – economic, political, cultural – which make it possible for women and men to achieve readily and fully the perfection of their humanity.\textsuperscript{173} The importance of the principle of common good becomes relevant in the light of advances in technology and communication which have made the world a global village.

6. The development of economic activity and growth in production provide for the needs of human beings. Economic life is not meant solely to multiply goods produced and increase profit; rather, it is ordered to the service of persons, of the whole man, and of the entire human activity.

7. The principles of equality, participation and subsidiarity have emerged in the work place. All human persons are equal, irrespective of their different roles – whether they are poor or rich, employers or employees. In view of this equality, everybody should be treated with dignity and nobody should be discriminated against on the basis of class, race or sex. Workers ought to have the right to participate in decision making and ownership of the enterprise; they should be made to feel that they are working for themselves as free and responsible persons. Furthermore, functions which can be performed and provided by lesser and subordinate bodies should not be transferred to higher bodies.

8. Employers should enter into contracts with workers to ensure that their interests

\textsuperscript{173}GS, 26
are protected. Natural justice must be observed in the making and application of these contracts. The employer, since he has a higher bargaining power, should not hide under the cloak of contracts in order to perpetuate injustice. Partnership contracts are the ideal.

9. Work is the source of rights and duties on the part of employers and workers within the broad context of fundamental human rights. The concept of direct and indirect employer determines issues of rights and duties. The indirect employer comprises all persons, institutions, and principles of contracts that influence the whole socio-economic system. All these factors affect the direct employer in laying down ethical labour policy. In other words, the whole socio-economic system plays a vital role in determining the relationship between employers and workers.

10. While workers should be treated with dignity, employers as well have rights which should be observed by the worker, such as ensuring that the work agreed upon is performed, and that the property of the employer is protected. The employer further has a right to private property and should not be subjected to crushing taxes.

11. All persons, both workers and employers, have a natural right to assembly and to form associations for legitimate purposes. Association of workers are powerful means of vindicating their rights and collective bargaining with employers should be safeguarded by all, especially the state.

12. Payment of a just wage is the most important duty of the employer which arises from the law of natural justice. It is the legitimate fruit of work which enables
workers to have access to the goods meant for common use. The familial responsibility of the worker, the state of the enterprise and the common good should be taken into consideration in fixing just wages. Though a just wage is relative to the particular socio-economic system, it has to guarantee man the opportunity for a dignified livelihood for himself and his family on the material, social, cultural and spiritual level.

13. Besides wages, working conditions and other social benefits must be such as to respect the dignity of the human person by providing for the present and future needs of the worker and family. Also included in the workers' rights are the rights to safe and healthy working conditions, health care, pension funds, old age insurance, rest and vacation from work. The job must be proportionate to the health of the worker.

14. In the conflict between labour and capital, labour has precedence over capital and means of production. Communism distorts human freedom and dignity as it propagates class struggle and the eradication of private ownership. On the other hand, Capitalism should not be idolized as it encourages individualism and free operation of market forces (maximization of profits) at the expense of labour. The right of private ownership should be exercised for the common good. Labour and capital ought to work together in harmony for the common good.

15. The power of the State is the instrument by which the common good is achieved. It should therefore be neutral in society, using its power to maintain peace, good order and harmony. The State should settle all class conflicts and ensure that the
THE SOCIAL TEACHING OF THE CHURCH

interests of the poor and marginalised in society are protected. It can regulate and maintain good order through laws.

16. In preaching justice, the Church must be seen to be just in its own actions by treating justly those who are employed by the Church. Priests, religious, and lay people should be paid a just wage and given fair conditions of service. The local Churches are called to apply the social teachings within their own cultural and socio-economic milieu.

17. Within the African and Nigerian contexts, the Church still has a number of unjust situations which violate the fundamental rights and dignity of human persons. These make the application of the above principles on work difficult and have to be addressed before the plight of workers can be adequately resolved. For this reason, Justice and Peace Commissions are means of tackling the problems. In the next chapter we shall examine how these principles have been embodied into canon law.
CHAPTER TWO

CANON LAW ON EMPLOYMENT OF WORKERS: CANON 1286, 1°

INTRODUCTION

To ensure that social justice and the rights of workers are protected, canon law makes certain provisions for the implementation of the relevant social principles mentioned in Chapter one. These principles are intertwined and appear in different books of the Code under various headings. For instance, all the Christ’s faithful are obliged to promote social justice and help the poor from their resources (c. 222 §2). Likewise, the Church acknowledges that it is bound to offer just wages and good working conditions to priests and deacons (c. 281), to Church employees (c. 1286), to lay persons in professional services (c. 231 §2) and to religious (c. 681 §2). Other provisions which concern social justice and the rights of workers are found in cc. 528 §1, 747 §2, and 768 §2.¹ Although it is beyond the scope of this study to discuss these canons, the relevant ones will be mentioned in passing while discussing c. 1286, 1°, the focus of this chapter.

Indeed, in this chapter, we shall examine in greater detail how the social principles on work have been incorporated into the canonical provisions on employment in c. 1286, 1°. We shall also analyse the background of this canon, its drafting process, and the promulgated text, noting its content and scope, as well as relationship with other

¹Some other provisions which refer to justice and related issues are: cc. 191 §2; 263; 418 §2, 2°; 528§1; 531; 695 §1; 797; 1148 §3.
foundational canons. This will enable us to recognize the canonical implications of the social teachings of the Church.

2.1 - THE BACKGROUND OF CANON 1286, 1º

2.1.1 - Canon 1524 of CIC 1917

To understand the prescriptions of canon 1286, 1º 2 a study of its principal sources, 3 especially c. 1524 of the 1917 Code of Canon Law is necessary:

All, and especially clerics, religious and administrators of ecclesiastical goods must, in hiring workers, give them respectable and just compensation; employers must also see to it that they are free to perform their religious duties at a convenient hour; they shall make no arrangement that will interfere with the worker's duties to their families and practice of thrift, and shall not impose on them work which is heavier than their strength can bear, or which is not suited to their age or sex. 4

Canon 1524 of CIC/17 is similar in content to our c.1286. It refers to a social duty incumbent on all, especially priests, religious, and administrators of Church property, to pay their workers just and adequate wages, allow them a convenient time for fulfilling

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2 The listed sources of numbers one and two of c. 1286 are the same, so the numbers will be discussed either together or separately whenever it becomes expedient.


their religious duties, to ensure that they are not kept from their domestic duties or impose upon them more work than their strength, age or sex can endure. CIC/17 c.1524 summarizes many of the principles found in the encyclical of Pope Leo XIII *Rerum novarum* and in Pius X's motu proprio *Fin dalla prima* which treated of the obligations of employers.⁵

Canon 1524 is found in title XXIII Book III of the 1917 Code, titled *De bonis ecclesiasticis administrandis*. This context shows that the Church holds its administrators, especially employers, to be as conscientious as the head of a household would be, to be wise and loving caretakers.⁶ It is not, therefore, out of place for the legislator to insert here a reference to the duties of employers towards workers. However, the question has often arisen whether this canon applies only to Church employers or to all employers. E. Reissner thinks it applies to all:

> It is more likely, however, that the legislator directly chose to include in ecclesiastical law the general obligation of all employers. If this is so, there is no better place in the Code to insert a reference to this obligation than in canon 1524. This canon is the only one in the Code which directly treats of the labour relationship. Whatever the reason for the current arrangement may be, it is certain that the canon refers to all employers, not only church related employers.⁷

He concluded, however, by saying that even though the word "all"(omnes) used in

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⁶*Diligentia boni patrisfamilias*, used in CIC/17 c. 1523.

⁷E. REISSNER, *Canonical Employer*, p. 14
CIC/17 c.1524 refers to all employers who are also bound by natural law to honour the dignity of workers, when viewed as ecclesiastical law only those subject to the law of the Church are bound by the norm, since the Church directly legislates only for its members. In addition to the clergy, religious, and lay people who are administrators, it applies also to all the baptized who are obliged to observe the laws of the Church. In other words, according to him, three categories of employers are referred to: first, all employers, even those who are not necessarily bound by the canon; second, employers subject to the laws of the Church; third, those clerics, religious and administrators specifically mentioned in the canon. The Church wants to show the world that it is opposed to slavish drudgery, and stands on the side of the poor and of oppressed workers to ensure that they have decent working conditions.

In speaking of the clerics and religious mentioned in CIC/17 c. 1524, E. Reissner considers that the canon refers to them, as such, distinct from administrators of property. According to him, they may well be administrators but even if they are not, they are nevertheless bound by a special obligation arising from the status of those called to a high degree of holiness, which in turn gives a special character to their duties as

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8Obligation under Church law arises by virtue of baptism, CIC/17 c.12.


10E. REISSNER, *Canonical employer*, p. 16.
employers.\textsuperscript{11} It is important to note that CIC/17 c. 1524 spells out the standards and conditions which employers should observe, such as allowing sufficient time for spiritual activities, and respecting the workers’ duties to their families. The legislator took this step because the civil law concerning working conditions was in many instances grossly inadequate. However, given the development of civil legislation on working conditions in many countries since the first world war, c. 1286, \textsuperscript{1} now supplies by requesting administrators to observe civil legislation on labour and social life according to the social principles taught by the Church.\textsuperscript{12} The adoption of civil legislation is a new development which “canonizes” civil laws. It expresses a new understanding in Church-State relationships. In spite of these changes, it is evident, following canonical tradition, that c. 1286 still retains the core content of CIC/17 1524 in terms of the obligation to treat workers justly through the payment of just wages and the providing of good conditions of service. Canon 1286 is now phrased differently, being split into two numbers, with provision for the just payment of workers mentioned in c.1286, \textsuperscript{2}\textsuperscript{o}.

\textsuperscript{11} E. REISSNER, \textit{Canonical Employer}, pp.17-18. This opinion may no longer be tenable in view of new understanding in the equality of Christ’s faithful through common baptism and the call of all to holiness through various states of life in the Church.

\textsuperscript{12} CLSA, “Canonical Standard,” note 20, p. 553. Most civil laws contain the standards enumerated in CIC/17 c. 1524 and more. Even though developing countries like Nigeria have adopted the laws of countries that colonized them, one wonders if this civil legislation on working standards has been integrated into the governance and ethos of the people so as to dispense with enumerating the standards, as might be warranted in the case of the Western countries.
Furthermore, reference to social principles taught by the Church has broadened the scope of c. 1286, 1° when compared with its 1917 counterpart. From 1983, when the revised Code came into effect, administrators of temporal goods have to take into account the consistent and constantly evolving social teachings of the Church on work and labour. In other words, the current social teachings on labour and work continue to be normative. Finally, it could be noted that the 1983 code treats of labour issues in more than one canon, unlike the 1917 Code.\textsuperscript{13}

2.1.2 - \textit{Quadragesimo anno}

Another source of c. 1286 is Pius XI's encyclical \textit{Quadragesimo anno},\textsuperscript{14} in which he condemned the practice of mothers abandoning their duties in the home and the education of their children in order to work, because of the insufficiency of the husband's salary. He cautioned that the tender years of children and the weakness of women should not be abused. At the same time, though, he praised various systems whereby an increased wage is paid according to increased family burdens, and special provision made for particular needs. He also called for cooperation between workers and employers.

In the application of c. 1286, 1°, when determining conditions of service in a

\textsuperscript{13}See, among others, cc. 231§2, 1274, 222§ 2.

contract of employment, administrators should take into consideration the situation of women and children, the domestic responsibilities of the worker (who here is presumed to be the man as head of the family), the state of the enterprise and the economic welfare of the society as a whole. The emphasis here is on payment of a just wage and on other important factors which employers must consider. Fixing of wages, which is not outside the purport of c. 1286, 1°, is one of the most important duties of administrators. This explains why c. 1286, 1° may not be discussed in complete isolation from c. 1286, 2°.

Furthermore, employers and workers are called to cooperate in mutual understanding and Christian harmony. Within the context of c. 1286, this acquires special significance because administrators and workers are joined together in a common purpose of working for the Church’s supernatural end which is the salvation of souls. The gap between workers and employers in the secular sphere should not exist amongst administrators and workers in the Church because both, by virtue of baptism, are equal members of Christ’s faithful committed to the same purpose. Finally, we could note that Quadragesimo anno sounds a very patriarchal note by prescribing that only a man as head of the family would work. This was reinforced by the use of the term “working men” throughout the text.

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15 Canon 208. Should inequality exist when non Catholics work for the Church? It need not exist, since human dignity binds all people together.

16 One wonders if this approach has changed greatly, even at this time when women work side by side with men. Has the social teaching on women and work changed from this position?
2.1. 3 - *Divini Redemptoris*

A third source *Divini Redemptoris*\(^{17}\) considers the proper relationship of employers and workers to be a requirement of social justice. Pius XI maintains that besides commutative justice, there is also social justice with its own set of obligations, from which neither employers nor workers can escape. According to him, it is the very essence of social justice to demand from each individual all that is necessary for the common good, since it is impossible to provide for the whole unless each single part and each individual is given what is needed for the exercise of its proper functions. If social justice is satisfied, he maintained, the result will be an intense activity in economic life as a whole, pursued in tranquillity and order. However, he concluded by saying that this cannot be ensured as long as workers are denied good working conditions and adequate salary.

The teaching of Pius XI reinforces the fact that the principles now enumerated in c. 1286 even though contained within the canons treating of administration of temporal goods of the Church, hinge on the principles of social justice, which demand from each individual all that is necessary for the common good. In other words, to pursue just order in society, every individual should be treated justly in the interest of the common good. The Church as an external institution requires that just order be maintained. John Paul

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II reiterated this in the Apostolic Constitution *Sacrae disciplinae leges* when he said that since the Church is organized as a social and visible structure, it must have norms so that the mutual relations of the faithful are regulated according to justice based upon charity, with the rights of individuals guaranteed and well-defined. He also stressed that common initiatives undertaken to live a Christian life be ever perfectly sustained and strengthened.\(^{18}\)

### 2.1.4 - *Mater et magistra*

John XXIII, in *Mater et magistra*,\(^ {19}\) reaffirms that just as remuneration for work cannot be left entirely to unregulated competition, neither can it be decided arbitrarily at the will of the more powerful. He suggests that in light of the evolving growth in economies of various countries, attention must be paid to the demands of social justice which require that there occur a corresponding social development.

In light of these principles, a new perspective has been added to the understanding of c. 1286 by the extension of the horizon from the relations between employers and workers to the economies of nations within the overall context of the common good. Even though the Church is not a profit-making organization, it is nevertheless affected

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by the economy of the state and in the interest of the poor, is called to influence those who control the economy. Administrators are called to consider these factors in fixing wages and are implicitly expected to take actions that will favour social development in the interest of their workers. The objectives for which the Church acquires goods should always be kept in mind so that the amassing of wealth which could influence the market economy in places where the Church is very influential is avoided.

2.1. 5- *Apostolicam actuositatem*

The conciliar decree on the apostolate of lay people *Apostolicam actuositatem* praised the laity, single or married, who, in a definitive way, put their professional competence at the service of institutions and their activities. While acknowledging an increase in the number of lay people who offer their services to the Church, the document enjoined on pastors to welcome these lay persons with joy and gratitude. They will see to it that their condition of life satisfies as perfectly as possible the requirements of justice,

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20 For example, Cardinal Basil Hume and the Archbishop of Canterbury met the Chancellor of the Exchequer on December 17 1997, to discuss the ‘Mauritius Mandate’ on third world debt. This debt reduction will improve in the long run the standard of living of the people and the working condition of workers in third world countries. The Christian leaders as administrators are playing an important role in seeing that their state economy assists that of the poorer nations. See “Tackling Third World Debt” in *Briefing*, 28 (1998), pp. 3-7.

21 See c. 1254, §2.

equity and charity, chiefly in the matter of resources necessary for the maintenance of themselves and their families. They should too be provided with the necessary training and with spiritual comfort and encouragement.\textsuperscript{23}

Canon 1286\textsuperscript{24} has broadened the scope of Apostolicam actuositatem in terms of a new understanding of the vocation of the laity in the Church ushered in by the Second Vatican Council. This understanding is based on the fact that within the people of God there is a fundamental equality among all individual Christians which arises from common baptism.\textsuperscript{25} Each Christian is sacramentally mandated to carry out the royal, prophetic and priestly missions of Christ. The laity, since they share in this mission by virtue of their baptism and confirmation, have the right to engage in the apostolate of the Church. Some of their rights and obligations are specifically recognised in cc. 224 - 231. Pastors who are also administrators in the context of c. 1286 are called upon to ensure that the laity in professional service within the Church are given good conditions of life in addition to proper training and spiritual encouragement. The need for good conditions of service becomes pertinent where the worker has family dependents. This explains why in c. 231, §2, wages and benefits are characterized as rights. Some might consider these rights to be even stronger than the claim clergy have to honest remuneration

\textsuperscript{23} AA 22.

\textsuperscript{24} Since c. 231 §2 derives also from this source, it will be interesting to see how it differs from c. 1286.

\textsuperscript{25} See LG 11, AA 2-4; cc. 204, 225, 759. This common baptism does not preclude the ministry of sacred ministers who belong to the hierarchical structure of the Church as clerics. See c. 207.
2.1.6 - *Gaudium et spes*

The Fathers of the Second Vatican Council, in the Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, summarized the social teachings of the Church on work and labour, giving it a theological backing. In addition to adequate remuneration, the Council Fathers also spoke of good working conditions for workers, such as opportunity to develop one’s talents, time for leisure and religious activities. In other words, it is not enough just to pay high wages, good working conditions are equally expedient.

Unlike CIC\17 1524 which was based on natural law principles, the Council teaching has given a theological background to the meaning of work and a personalistic approach in the interpretation and application of c.1286, which insists on the dignity of the human person. However, in laying down the conditions of work and wages, the administrator should consider the material, cultural, spiritual, and social aspects of the life of the worker, whose dignity as a child of God remains normative.

In conclusion, from the points discussed above, one can see a gradual development in the social principles which form the principal sources of c. 1286. These

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26 J. PROVOST, in *CLSA Commentary*, p. 170.

27 *GS* 67.
sources offer a comprehensive view of the background of c. 1286.\textsuperscript{28} It is important to note that following the "signs of the times" the social teachings of the Church continue to evolve and so do the social principles, with each successive Pontiff 'building' on already developed ones. This explains the fact that the legislator in c. 1286 adopts the social teachings of the Church as a standard measure for the application of civil laws. This canon will continue to be applied in the light of the social teachings of the Church, even those formulated after 1983, such as \textit{Laborem exercens} principles regarding direct and indirect employers which are now relevant.

Furthermore, with the incorporation of civil laws, according to the social teachings of the Church, into the internal governance of the Church, a new challenge is addressed to the Christian faithful, as workers and administrators in the Church. They are called while applying or observing civil laws, to keep in perspective the supernatural aims of the Church as a faith community, which is ultimately the salvation of souls. This goal should always form a basis for employer-employee relationships even in the application of civil laws, without losing sight of the importance of temporalities since the Church exists in the world. This in turn should direct attention to material recompense and the just treatment of workers.

These sources have contributed to the conception of c. 1286, 1° as it presently

\textsuperscript{28}One observes that the sources do not indicate the theological grounds for the Church's canonization of civil laws. Does it mean that none exist?
exists in the Code. An examination of its drafting process will illuminate “its birthing process.”

2.2 - THE DRAFTING PROCESS

The legislative history of c. 1286, 1° is simple since the canon did not undergo substantial changes from the earliest draft. The first report by the Study Commission for the Revision of the Code on Patrimonial Law came out in 1973. Canon 27 of that text was not subdivided into numbers as we now have in c. 1286. The Commission explained its position as follows:

In order to avoid the somewhat paternalistic formula used in c. 1524, the coetus preferred to recall the general principles of social justice. Certainly, in making contracts of employment, administrators are accurately to observe, according to the principles taught by the Church, the laws by which labour and social life are regulated. They are to pay to those who work for the Church under contract a just and honest wage so that they may be able to foster adequately their own religious, familial, social and cultural life and that of their dependants. 29

From the above text it is obvious that the coetus had a new mindset different from that of the old law, when it said that in order to avoid the somewhat paternalistic formula used in c. 1524, the consultors preferred to recall the general principles of social justice.

This draft emerged in the 1977 schema as c. 30 in two numbers.  

Administrators of goods:

1° in making contracts of employment, are to observe meticulously also, according to the principles taught by the Church, the civil laws by which labour and social life are regulated.

2° are to pay to those who work under contract a just and honest wage so that they are given the means of appropriately fostering their own religious, familial, social and cultural life and that of their dependents.

In another meeting of the consultors in November 1979, after official consultative bodies worldwide had submitted their comments, a suggestion was made that there be added after “Administrators [...] are to observe meticulously” the words “[...] let them observe exactly or even do better [...].” This suggestion was made so that administrators would be encouraged to follow civil laws, even when those laws were not considered as binding upon the Church. The consultors did not think such an addition necessary since, within the context of the canon, those who have the will can freely and laudably offer


31In Latin “adamussim servent vel ad melius trahent.” This has been translated in different ways, such as “or let them more fully assume”, “accurately observe.” PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECONOSCENDO, Acta commissionis, “De bonis Ecclesiae temporalibus”, in Communications, 12 (1980), p. 420.
better conditions of employment, without the code having to make extra provisions.

In the 1980 schema the norm appeared as c.1237, 1° with minor amendments.\footnote{PONTIFICIA COMMISSIONE CODICI IURIS CANONICI RECOGNOSCENDO, Codex iuris canonici: schema Patribus commissionis reservatum, Libreria editrice Vaticana, 1980, p. 276.} The verb attinet ("relate to") replaced the verb dirigitur ("regulate") which had been used in the 1977 schema with reference to "labour and social life." The canon now states "relating to labour and social life." After this amendment, the canon remained unchanged and became c. 1286 of the 1983 code.

One can see from the drafting process that the consultors had a new insight and clear ideas of the values which this canon seeks to implement. This was probably the reason that the canon did not undergo substantial changes during the drafting process and was eventually promulgated without amendments. However, it is appropriate to comment on some of the observations made by the consultors themselves.

The first was that there was need to avoid the paternalistic formula used in CIC/17 1524. It may be necessary to examine the meaning of this word in order to analyse properly what the consultors meant. According to Webster’s dictionary, the word paternalism means the control of subordinates (as by a government or employer) in a fatherly manner, especially the principles or practices of a government that undertake to supply needs or regulate conduct of the governed in matters affecting them as individuals as well as in their relations to the State and to each other. Paternalistic is described as
the adjective of relating to or practising paternalism.\textsuperscript{33}

Even though the Code Commission did not indicate those paternalistic ideas or formulae, when read in the context of the CIC/17 1524, it is obvious that the canon "in a fatherly manner" outlines the duties which employers must carry out. This paternalistic approach could well be a reflection of the understanding of the Church as a \textit{perfect society} whose legal system is similar to any other civil system, such that the law became somewhat legalistic, devoid of theology and pastoral orientation. This explains the fact that the consultors wanted to change the paternalistic tone of CIC\textbackslash17 1524. The 1983 Code aims at implementing the promotion of pastoral renewal and reform initiated by the Second Vatican Council.

Some of these reforms are: (1) the reliance on the image of the Church as the people of God; (2) a new understanding in the relationship between Church and State; (3) the recognition of the fundamental equality of individual Christians and the rights and responsibilities which flow from baptism and confirmation; (4) the enhanced role of the lay persons in the Church; (5) the promotion of accountability in regard to temporalities; (6) the shift from an emphasis on authority to juridically recognised functions of service; and (7) the implementation of structures of consultation at all levels of the Church.

CANON LAW ON EMPLOYMENT OF WORKERS

Some of these elements such as the reference to "administrators of temporal goods" rather than "All, clerics, religious[...] can be identified in c.1286,1." Furthermore, the general tone of the canon requiring administrators to implement the civil law trustingly gives them discretion, hence the consultors rejected the addition of the extra demand on administrators "to obey exactly" the civil laws. This approach indicates that the law giver intends to rely on the good will of administrators to obey the law as members of faith community.

There was no reason given for dividing c. 1286 into two numbers. Two plausible explanations could be advanced: first, for the sake of clarity and emphasis; secondly, the need to separate the injunction to obey the civil laws in the employment of workers and the payment of a just wage. This separation makes sense because even though both are guided by the principles of social justice, application of civil law demands a whole set of principles which may differ from one country to the other. However, the injunction to pay a just wage remains an important element in a contract of employment.

The verb *attinent* (to relate) replaced the verb *dirigitur* (to regulate) with reference to labour and social life. The word *regulate* means to control an activity or process usually by means of laws, whereas if something *relates* to a particular subject it concerns that subject. In the context of this canon, then, the word *regulate* would have meant all the civil laws which govern labour and social life. The verb *relate*, on the other hand, covers a wider scope and conveys a moderate attitude. In other words, the change
broadened the canon and toned down any sense of rigidity or paternalism which the consultors wanted to avoid. Finally, the promulgated text came out as:

Administrators of temporal goods:

1° in making contracts of employment, are to observe meticulously also, according to the principles taught by the Church, the civil laws by which labour and social life are regulated. 34

Having looked at the drafting process we shall now examine the contents and implication of this part of the canon.

2.3 - THE MEANING AND CONTENT OF c. 1286, 1°

Under this section, we shall look at the placement of the canon in book V within the context of the principles of administration of temporal goods in general, and of the functions of administrators more specifically. From there we shall examine the actual meaning of the canon together with its scope, and relationship to other foundational norms. The section will conclude by looking at the implications of the canonization of certain portions of civil laws.

2.3.1 - Canon 1286, 1° in the Context of Administration of Temporal Goods

Even though c. 1286, 1° concerns principles of social justice and civil law, it is

34Latin version “Administratores bonorum: 1° in operarum locatione leges etiam civiles, quae ad laborem et vitam socialem attinent, adamussim servent, iuxta principia ab Ecclesia tradita.”
located under title II on administration of temporal goods within the context of book V.

This book is concerned with all those non spiritual things which possess an economic value such as real property, intangible rights and assets.\textsuperscript{35} In other words, it involves the personnel and resources necessary for the proclamation of the Gospel and the celebration of the sacraments.

Canon 1254 §1 states that the Church has an inherent right to acquire, retain, administer and alienate temporal goods in pursuit of its proper objectives. Canon 1254 §2 goes on to enumerate these objectives which are, primarily, the regulation of divine worship, the provision of fitting support for the clergy and other ministers and the carrying out of works of the sacred apostolate and of charity, especially for the needy.\textsuperscript{36}

Since c. 1286, 1° falls under the right of the Church to administer its property, it follows that the Church, independently of civil authorities, has the right for the stated objectives mentioned in c. 1254 §2, to regulate the employment of workers who run its affairs. In other words, it is within the exercise of the right to administer temporal goods, that c. 1286, 1° is conceptualized.

The right to administer these goods can simply be described as the right to carry


\textsuperscript{36}Property held for purposes other than the above may not be properly held by the Church. See A. MAIDA and N. CAFARDI, \textit{Church property, Church Finances, and Church-related Corporations: A Canon Law Handbook}, St. Louis, Mo, Catholic Health Association of the United States, 1984, p.10.
out acts of managing the personnel and resources of the Church for the attainment of the objectives mentioned in c. 1254 §2. Strictly speaking it does not refer to administrative acts such as formulating policies, or running an office, even though these could be related to it.\textsuperscript{37} It also includes keeping accurate records and properly reporting income and expenditures.

The following principles are relevant in the application of the norms on administration of temporal goods: (a) the need for consultation and co-operation at every level of administration, that is, the application of the principle of subsidiarity especially in light of varied local conditions, and the ability to distinguish the three levels of administration (ordinary, acts of major importance and extraordinary administration); (b) the acknowledged importance of accountability both to superiors and to Christ’s faithful in general; (c) the more explicit concern expressed for justice and protection of the rights of persons;\textsuperscript{38} (d) the adoption of civil laws in certain cases.

Canons 1282-1289 spell out different duties expected of administrators in the

\textsuperscript{37}According to T. Bouscaren, administration of property may be compared to the government of persons. Just as the proper function of government is the preservation of the well-being of persons in order to help them attain their proper end in life, so the administration of property consists in preserving all temporal things which have been acquired and using them for their destined end. Administration of property comprises three things: (1) the preservation and improvement of property which has been acquired; (2) the natural or artificial production of fruits or income from such property; (3) the useful application of such fruits or income to the proper persons. (T. BOUSCAREN, \textit{Canon Law: A Text and Commentary}, p. 802).

performance of their tasks. Administrators occupy fiduciary positions and therefore are expected to carry out their functions as conscientious and wise servants. This accentuates the principle of accountability which administrators owe, first and foremost, to the Lord, as a faith community; secondly, to the Church through hierarchical superiors; thirdly, to the faithful and, finally, to one's conscience. Furthermore, in pursing the proper objectives enumerated in c.1254 §2, administrators are expected to carry out works of charity especially for the needy (c. 1285). The law expects the Church to have competent and trained administrators, in view of the onerous duties which it places on them.  

For this reason it is important to remember that the administrators themselves who perform functions in the name of the Church have rights to a just remuneration and good working conditions.  

2.3.2 - The Scope of c. 1286, 1°

Given the context in which c. 1286, 1° will be treated, that is, administration of temporal goods, an analysis of the scope of this canon requires a detailed examination of each of the major words used therein.

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39 For instance it requires skill and training to apply cc. 1284, §§1-3, 1286.

40 Whether clerics, lay persons, or religious.
2.3.2.1- Administrators

Administrators of Temporal Goods. The word 'administrator' comes from the Latin word administrare, which means to govern, to manage, to serve. Black's Law Dictionary gives the following meanings to the term: as a person legally vested by a probate court with the right of administration of an estate; secondly, an officer appointed to govern a colony; thirdly, a priest appointed to administer temporarily a diocese, parish; and lastly, an officer who directs or superintends affairs of a business, school, or government agency. The most appropriate definition in this context will be that of one who directs the affairs of an institution, in this case the affairs of a church. An administrator of temporal goods is therefore, one who is mandated to preserve the temporal goods which have been acquired by the Church and uses them for the destined purpose, or one who directs the care and use of the property of the Church.

In Canon Law, there are various categories of administrators of Church property. In the first category are those administrators who, having obtained power from the law, could be called immediate and proper administrators. For instance, the pope is the supreme administrator and steward of all ecclesiastical goods by virtue of his primacy of governance. He regulates the administration of temporal goods through general laws

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41 The third definition falls within the category of diocesan administrator cc. 421, 424-430, parish administrator, cc. 539-540.

42 See Black's Law Dictionary, p. 44.

43 Canon 1273
and oversees some acts of administration through the various offices of the Roman Curia.\textsuperscript{44} Notwithstanding that, c.1279 §1 provides that the responsibility for the administration of ecclesiastical goods pertains to the one who governs the person to whom the goods belong, unless custom or particular law state otherwise. In this case, the diocesan bishop becomes the proper administrator of the temporal goods of a diocese, the parish priest the proper administrator of those of a parish, while a superior general (with the council) is the administrator of the temporal goods of a religious institute.\textsuperscript{45} At this level, the primary functions of administrators are supervision and coordination.

In the second category, we find financial administrators who, having derived their office also from the law, could be regarded as intermediate administrators. The law requires that financial administrators be appointed to take charge of the daily management of temporal goods, for instance, c. 494 §§1 - 4 in the case of a diocese; c. 1279 § 2 for public juridic persons; c. 636 §1 for religious institutes, and c. 532, for parishes.\textsuperscript{46} In the case of private juridic persons, even though book V does not directly apply to them, it is implied that the office of financial administrator would be included

\textsuperscript{44}Such an office would be the Apostolic Camera, The Prefecture for the Economic Affairs of the Holy See, The administrator of the Patrimony of the Apostolic See. These administrators will fall under the second category or third depending on their functions.

\textsuperscript{45}This is not an exhaustive lists of immediate administrators of all those who head public juridic persons. In case of parishes without a parish priest the one to whom the administration of the parish is entrusted by competent authority would be the administrator.

\textsuperscript{46}The pastor can appoint a financial administrator according to circumstances. He is to supervise and ensure that parish goods are properly administered.
in the statutes of the association (cc. 304, 325 §1).

In the third category we find collaborative administrators who are those financial consultative bodies provided for by the law. Canon 1280 states that each juridic person is to have its own finance committee or two experts to assist the administrator. In the case of a diocese, a financial council should be established\(^{47}\) and c. 537 provides that every parish should have a finance committee. For religious institutes, the financial administrator shall have a finance council. Boards of directors will also fall within this category. By virtue of their position and expertise, these administrators help the immediate and intermediate administrators in the performance of their onerous duties.

In the fourth category are those subordinate and dependent administrators who have been delegated or hired according to the norms of law to perform the duties of an administrator, even if not provided for under the law. These administrators are to act within the terms of the appointment. Many fall into this category in the face of the increasing bureaucracy involved in modern financial administration, especially in large establishments such as hospitals, schools, major dioceses, etc. In fact the term “administration” applies to all those who in one way or another share in the duty of administering the temporal goods of the Church in the attainment of the objectives mentioned in 1254 § 2. Even administrators of unincorporated bodies within the Church falls under this category.

\(^{47}\)See c. 492.
Notwithstanding this wide spectrum, the law places responsibility on local ordinaries to supervise the administration of Church property, issue instructions on proper administration and enforce the law.\textsuperscript{48} Even for institutions outside his direct control, the ordinary’s duty of vigilance makes him responsible to ensure that the goods of the Church are not subject to harm.\textsuperscript{49}

Looking at the scope of administrators within the context of c. 1286, 1°, one observes that since these administrators perform the special role of employing Church workers, they can also be called employers (however, on behalf of the Church). An employer can be defined as any physical or juridic person, agency or institution which retains the services of another for the purpose of carrying out its stated purpose, or for the general services of benefit to the employer.\textsuperscript{50} In other words, employers are also involved in the administration of temporal goods.

Canon 1286, 1° can be given a broad interpretation, in order to extend the benefits which the canon grants, to the extent that an honest interpretation allows. A broad interpretation of c. 1286, 1° would consider those who employ workers in the Church outside official Church circles, to fall within the focus of the canon.\textsuperscript{51} This canon

\textsuperscript{48}Canons 325, 392, §2, 1276, 1279, §1.

\textsuperscript{49}One wonders in practice if the emphasis is not sometimes concentrated on the protection of material goods as against the observance of the principles of social justice especially where Church workers do not have good working conditions.

\textsuperscript{50}CLSA, “Canonical Standard,” p. 547.

\textsuperscript{51}This is outside the scope of c. 1258.
could also apply to private juridic persons or unincorporated persons involved in the
mission of the Church, who administer temporal goods according to their own statutes.

A broad interpretation of the canon makes sense when one considers the mind
of the legislator as spelled out in the social teachings of the Church, which forms a major
part of c. 1286,1.° The social teaching of the Church and the principles of social justice
have been enunciated for all persons in society irrespective of their religious affiliations
and, when the Church applies it to its own structures, it will tend to be as inclusive as
possible. The best illustration of this approach is John Paul II's principles of direct and
indirect employer, which cannot be interpreted strictly to apply only to official employers
in the Church. According to him, the direct employer is the person or institution with
whom the worker enters directly into a work contract in accordance with definite
conditions.52 In this case, the employer could be a private juridic person in the Church
and the institution could be the Church or any other civil institution. One can safely
conclude that the administrator who directly interviews, sets conditions and hires the
worker is a direct employer on behalf of a particular juridic entity within the Church. The
situation may differ according to the status of the direct employer; in the case of the
diocese, the diocesan bishop may sometimes become the direct employer, in the parish
it could be the parish priest and in the religious institute, it could be the major superior,
the local superior, or the administrator of an apostolic work. It also depends on the

52LE 16.3.
financial policies and constitutions of various structures in the Church setting up the powers and offices of the administrator; especially in the case of private juridic persons who also have the power to employ within the Church.\(^ {53} \)

Indirect employers, on the other hand, involve both persons and institutions of various kinds, collective labour contracts and principles of conduct, laid down by these persons and institutions, which determine the whole socio-economic system or are its result.\(^ {54} \) These principles actually determine the actions of the direct employer in laying down contract conditions. Immediate administrators who play a supervisory role over the temporal goods of the juridic person qualify more aptly as indirect employers.

Conceding that the whole socio-economic structure operative in the state plays a major role in setting labour policies, Church administrators who set down employment policies play a very important role as indirect employers, especially in situations where the Church has huge assets. In particular, the role of the local ordinary who is required to supervise the administration of goods and regulate the whole matter of administration of goods by issuing special instructions within the limits of universal and particular law becomes very pertinent.\(^ {55} \)

In the special context of the 1983 code, however, this broad interpretation cannot

\(^ {53} \)What about various unincorporated agencies in the Church who must employ, such as Justice and Peace Commissions?

\(^ {54} \)LE 17.

\(^ {55} \)See c. 1276.
be stretched to include individual baptized Catholics when they employ workers in their private enterprise, because c. 222 § 2 obliges all the Christian faithful to promote social justice, mindful of the precept of the Lord to assist the poor from their own resources. Since it obliges all of Christ's faithful in their everyday life, these persons are bound to apply the principles of social justice when they employ workers and they are to treat them with justice and equity.

In conclusion c. 1286, 1°, refers to all administrators of temporal goods in the Church who, while working towards the objectives mentioned in c. 1254, find themselves in a position to employ workers in the Church. In the ordinary interpretation of the canon, only administrators strictly so called in Church law are referred to in c. 1286,1° However, in view of the social teachings of the Church, canonical tradition, and the spirit of the principles enunciated in the Second Vatican Council, it is our opinion that a broad interpretation, which involves all those who are employers in the Church, either through ordinary or delegated power, including the administrators of private juridic persons and unincorporated persons, fall within the meaning of administrators mentioned in the canon, provided they are Church agencies operating within the law and working towards the objectives stated in c. 1254.56

56 However, administrators act invalidly when they exceed the limits of ordinary administration without a mandate, c.1281, §1. Private juridic persons must follow the norms of their Statutes.
2.3.2.2. Temporal Goods

Temporal goods may be described as those material things of a corporeal nature, whether movable or immovable, as well as incorporeal things of a monetary value, whether real or personal, such as legal rights and obligations, titles, annuities, and offices. Spiritual things are not included in the category of temporal goods even if they constitute part of the patrimony of the Church, e.g. divine worship, sacraments, etc. The term "patrimonial goods" has sometimes been used for temporal goods but this was rejected during the revision process, since it is much wider in scope than just temporal goods. Money is treated as a temporal good in the broad sense, but it is not strictly taken as such under the law; rather it is a means of exchange. The goods or values symbolized by money are considered temporal goods. Even though c. 1286, 1° concerns principles of social justice, the hiring of services falls within the definition of temporal goods as it involves incorporeal interests such as legal rights, titles, offices and obligations.

Canon 1257 provides that all temporal goods which belong to the Church universal, the Apostolic See, or to other public juridic persons within the Church are ecclesiastical goods and are regulated by the canons of book V, while the temporal goods of a private juridic person are regulated by their own statutes, unless express provisions

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are made to the contrary. The notion of temporal goods is more inclusive and broader while the term “ecclesiastical goods” is used whenever the canons are dealing with the goods of a public juridic person.

Furthermore, even though c. 1257 §2 expressly excludes private juridic persons, except where otherwise provided, a careful reading of the canons on book V shows that the use of the terms “ecclesiastical goods” and “temporal goods” is somewhat nuanced. Sometimes, when the law directly addresses public juridic persons, it refers to “ecclesiastical goods.” For instance, c. 1273 speaks of the pope being the steward of all ecclesiastical goods; c. 1279 defines who are the administrators of ecclesiastical goods; c. 1282 insists that administrators of ecclesiastical goods must fulfil their duties in the name of the Church. On the other hand, c. 1254 §1 speaks of the right of the Church to acquire, administer, alienate, retain temporal goods, and c. 1286 also mentions temporal goods. The use of the term “temporal goods” indicates a wider scope than goods which belong to public juridic persons, otherwise the Code could have used “ecclesiastical goods” in c. 1254 §1, and there would be no need for the distinction in c. 1279. Furthermore, c. 1255 indicates that public and private juridic persons are capable of acquiring, administering, alienating and retaining temporal goods. One can come to the conclusion that, notwithstanding c. 1257, the use of the term “administrators of temporal goods” in c. 1286, 1° includes those who administer private juridic persons, if the canon

59The CLSA Commentary uses the term “Goods.” Does this belong to a different category? It seems synonymous with temporal goods.
is given a broad interpretation.

2.3.2.3. - Contracts of employment

We shall now examine the words of c. 1286, 1°, in making contracts of employment. The Latin text reads in operarum locatione. The Latin word locatio in English means: a placing, locating, a disposition, arrangement: a contract of letting or hiring, a lease.60 According to Black's Law Dictionary to hire means to purchase the temporary use of a thing or to arrange for the labor or services of another for a stipulated compensation.61 A contract of employment is defined as an agreement or contract between employer and employee in which the terms and conditions of one’s employment are provided.62 If this definition is applied literally to c. 1286, 1°, it means that administrators in making contracts with employees in which the terms and conditions of employment are provided, are accurately to observe civil laws relating to labour and social life.

Does this definition reflect all the aspects of contract intended by the legislator, within the context of c. 1286, 1°? Two possible interpretations can be considered: firstly, the legal aspect which has to do with the actual preparation and signing of the contract;


62Black’s Law Dictionary, p. 525.
secondly, the moral aspect which involves the whole process of employment.

The distinction in the use of the words *locatio* and *contractus* in the Code indicates a difference in the terms. The word *locatio* is used only once in the 1983 Code, in c. 1286, 1° referring to employment of workers, while in all other places the Code either mentions a written agreement or contract (*contractus* or *conventione scripta*).\(^{63}\) The dictionary meaning of *contractus* is "an agreement between two or more persons which creates an obligation to do or not to do a particular thing [...] for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty."\(^{64}\) While conceding that a contract of employment is a form of contract, in the context of c. 1286, 1°, it has a wider meaning, otherwise the same word would have been used throughout the Code. This difference is reflected in various translations. The CLSA translation says *in the employment of workers*,\(^{65}\) exactly the same as c.1030 §1, of *the Code of Canon Law of the Eastern Churches*.\(^{66}\) The translation of Canon Law Society of Great Britain and Ireland says ...*in making contracts of*

\(^{63}\)Such as cc. 639, 1284 § 2, 1°, 1290, 681 §2, 520 §2.

\(^{64}\)Black's Law Dictionary, p. 322.

\(^{65}\)CLSA Commentary, p. 876.

employment, while the French translation states dans l'engagement du personnel employé.

The British translation could be misleading and suggestive of the fact that what is involved is strictly the process of drawing up the agreement or the legal document. Even though the Church recognizes the need for contracts in the employment of workers, its social teaching on contracts may not justify the emphasis depicted by this translation. Recalling the teaching of the Church on contracts and work, it seems to be the mind of the Church that contracts or agreements do not necessarily safeguard the rights of workers and can sometimes become a tool for exploitation in the hands of greedy employers, especially as the consent of workers does not suffice to guarantee justice. Some authors like Chenu thinks that formal contracts are imposed on workers by economic principles. Employers enjoy a stronger position and a higher bargaining power and sometimes may have the power to make the contracts as they wish. In other words, the Church does not rely solely on written contracts as a means of ensuring workers' rights.

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Following the translation of the CLSA, the word employment can be substituted for hiring, which is similar to the French translation. The use of the words in the employment or hiring of workers broadens the meaning of the canon to indicate the whole process of hiring workers, which does not necessarily exclude making of contracts; but all that is involved in the hiring of workers using the civil law, according to the principles taught by the Church. In making contracts, is indicative of a relationship between the administrator and the contract, while employment of workers involves the administrator and workers about to be employed. The hiring process will involve the application of employment ethics such as respecting rights of privacy at interviews, taking into consideration some special traits of the employee, such as work situations for various people like women and young persons; all other factors necessitated by social justice, especially in deciding whether to employ or not. The objectives of c.1254 §2, which are ultimately geared towards the salvation of souls should be kept in mind, particularly in respect for the dignity of the prospective employee. When these principles have been observed, the last stage will naturally follow which is the drawing up of a

69 If one were to pursue this matter further does it mean, that unless a contract of employment is involved, that administrators need not apply this canon? What, for instance about a situation where the civil law does not provide for contracts of employment? It is obvious that a broader interpretation will provide for unforeseen circumstances.

70 Sometimes administrators may be swayed to employ, among other reasons, for charitable purposes. Some other administrators may be taken up by the urge to run the Church as a profit-making organization, where capital is placed before labour. There is need to maintain a sound balance and discernment.
contract of employment. Archbishop J. Périsset holds the view that there are two aspects to the making of contracts:

The connotation implied here in making contracts of employment involves legal responsibility and moral responsibility. The legal responsibility pertains to the civil norms for contracts of work, while the moral responsibility concerns the need for a just and honest salary, relating not only to the work assigned, but also to the workers’ social working conditions. These two aspects are not separable.\(^\text{71}\)

The moral responsibility, in addition to the observance of the good working conditions required by c. 1286 includes observance of employment ethics.

Since contract is one of the processes in the employment of workers, it is necessary to examine its implications. The canon law on contracts adopts the civil law as it exists in each particular state. Before the 1917 Code, the Church used the Roman law on matters of contracts. Due to the reform following the 1917 Code, the Church discarded much of the obsolete and repetitious elements of contracts in Roman law, resulting in the adoption of civil laws of each territory on contracts.\(^\text{72}\) This adoption took effect in CIC/17 1529, where the Church, while recognizing the civil legislation concerning contract as part of canon law, made an exception that civil law must not be contrary to divine law or to provisions in the Code. The 1983 Code retained this canon as c. 1290 with due regard for c. 1547 which states that in Canon Law witnesses are a


means of judicial proof in any case. In other words, witnesses to a contract could establish proof of a contract in the absence of a written document, even if the civil law would not accept such evidence. This is one example of such a provision where the Code provides otherwise. The Church does not have one universal application or provision for contracts; rather, it adopts the civil laws of each particular State.

*Agreement*, is used as a synonym for contract to show a meeting of minds between the parties involved in a contract. However, agreement conveys a broader term, as sometimes it might lack an essential element of a contract.\(^{73}\) Some authors are of the view that when the word agreement is used, canon law envisages a legal document which involves contractual obligations but not with all the legal effects as in civil court. Disputes about such an agreement should be resolved within the Church’s administrative or judicial system.\(^{74}\)

### 2.3.2.4 - Workers

A brief discussion on the scope of workers contemplated by c. 1286, 1° will be relevant at this point. Just as an administrator or employer can be a lay person, cleric or religious, so too an employee or worker implied in c. 1286, 1° can also be a lay person,

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\(^{73}\) *Black’s Law Dictionary*, p. 67.

cleric or religious. An employee is a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the details of how the work is to be performed.\textsuperscript{75} Employees exclude volunteers who freely offer their services to the Church without the intention of making a living through their services.\textsuperscript{76}

In respect of lay people, such as catechists,\textsuperscript{77} c. 231 § 2 recognizes their right to a just remuneration suited to their state of life and good working conditions. It states that lay persons have a right to decent remuneration and social security without stipulating how these rights are to be applied. The Council Fathers, in article 22 of Apostolicam actuositatem, directed “pastors” to ensure that these rights are met. Since pastors have been interpreted to mean bishops and priests who have responsibility to oversee pastoral activity,\textsuperscript{78} they are also administrators of temporal goods within the meaning of c 1286, 1\textdegree, and therefore in a position to fulfil this right.

The common opinion is that c. 1286 is an attempt to ensure that the rights of the lay people to just working conditions are applied by administrators who are possessed

\textsuperscript{75}Black’s Law Dictionary, p. 525.


\textsuperscript{77}Canon 785.

with the resources necessary for fulfilling these conditions. Canon 1286 is seen as a corollary of the rights enshrined in c.231 § 2.\textsuperscript{79} The connection is further justified by the fact that both canons have the same source in article 22 of \textit{Apostolicam actuositatem}. J. Hermann, commenting on c. 231 §2, says that "lay workers have a right to just remuneration and good working conditions and that in order to ensure the fulfilment of the right of lay employees to claims to compensation and welfare, the Code places an obligation on administrators of temporal goods of the Church to provide contractually for payment of such claims."\textsuperscript{80}

Lay workers can be full or part time workers. It is important to note that not all the lay persons who perform some special service in the Church are entitled to remuneration and good working conditions, for example acolytes and lectors.\textsuperscript{81} If a lay person happens to be a member of the seminary staff, he or she falls under c. 1286, 1° by virtue of c. 263 which requires among other things that the diocesan bishop in whose care the seminary is situated should pay just remuneration to its professors. One need not repeat here the great need for lay people to be given good working conditions which will enable them to fulfil their religious and family responsibilities. Their need is quite different from that of clerics and religious who do not have direct family responsibilities in the strict sense

\textsuperscript{79}See \textit{Letter & Spirit}, p. 729.


\textsuperscript{81}Canon 230 §1.
of the term, even though in many countries they are expected to come to the aid of their extended family. Sometimes when administrators are clergy or religious they tend to be unrealistic. According to E. Reissner,

possible danger exists, however, when the employer is a priest or a religious. This is almost always the case among administrators of Church property. By reason of their state of life, priests and religious are most often more removed from the economic pressures which are felt by other employers, and indeed, by their employees. Priests and sisters do not have the direct and personal experiences of family responsibility[...]. For these reasons, it is necessary that they take special care to guarantee that their wage policy is not antiquated and unrealistic.

Among the employees implied in c. 1286, 1° are clerics who are part of Christ’s faithful, called sacred ministers. However, a cleric is not considered an employee in the particular Church of his incardination; he is a member of the diocesan “family.” Clerics are already provided for in the Code whenever they work in their diocese of incardination (c. 281, §§1-2.c.1274, §1). Canon 1286, 1° however would apply where they seek employment outside their diocese, or work in an institution which, even though within their diocese, is run by a separate juridic person, such as a priest on a full-time teaching job, in a school that belongs to a religious institute.

The law further provides that married permanent deacons who minister full time and who do not receive income from any other source are to be remunerated, while those

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82 The remuneration of a religious can be used for the benefit of the entire religious community, especially to maintain retired members.

83 E. REISSNER, Canonical Employer, p. 70

84 Canon 207, §1.
who minister full time or part time but receive remuneration from a secular profession are to provide for themselves and their families from such income. 85 Social benefits seem not to have been adequately addressed by the law. The Basic Norms on Permanent Deacons suggest that particular law may determine the obligations devolving on the diocese when a deacon, through no fault of his own, becomes unemployed, and also in regard to the widows and orphans of deceased deacons. 86 The application of this particular norm may bring into play c. 1286, 1°, as the permanent deacon may have to enter into a contract with the diocese in realization of these social benefits. 87

As regards religious, this canon is inapplicable when they work in their own institute since religious cannot be employees within the institute where they made their religious profession. Canon 670 provides that institutes must supply the members with everything necessary in accordance with the constitutions to fulfill their vocation. Canon 1286, 1° comes into play when the religious takes up employment outside the institute of profession. This is very common for religious institutes who over the years have been a source of great labour force for the Church. Many religious congregations, especially of women, have worked under poor conditions in many dioceses, without contracts of

85 Canon 281, § 3. Celibate permanent deacons will fall under c. 281, §1.


87 Note that the permanent deacon is not strictly an employee within the meaning of c.1286, 1°. But he becomes one outside his diocese of incardination.
service. In a recent pastoral letter, the US bishops maintained “that dedicated religious women and men have not always asked for or received stipends and pensions that would have assured their future.”

In consideration of employment of religious, one cannot lose sight of c. 681, §2, which provides that in work entrusted to religious by the diocesan bishop, a written agreement is to be drawn up between the diocesan bishop and the competent superior of the institute which among other things, expressly and accurately defines what pertains to the work to be carried out, the members to be devoted to this work and economic matters. The contract mentioned here in relation to the members to be devoted to this work includes, among other things, personnel issues such as vacations, the number of religious who will do the work, appointment and dismissal procedures. The financial arrangements include salary, working conditions, health and retirement benefits, transportation and other allowances. The contract is usually between the representatives of both juridic entities involved in the work.

Even though c. 681 § 2 deals with works entrusted to a religious institute, as long as the employment of the religious involved in the apostolate is concerned, c. 1286, 1° is relevant. Issues which concern the working conditions of religious such as hours of service, vacations and periods of retreat, retirement benefits, health insurance are related to c. 1286, 1.° Commenting on c. 681 § 2, R. Hill observes that “these personnel issues

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are probably the most difficult to cover adequately and they also occasion the most difficult and serious disagreements.\textsuperscript{89} In view of this, there may be need for two types of contracts, the first will concern the work and relevant details, and the second will be a contract of service.\textsuperscript{90} It is important to note, however, that contracts between an individual religious and the diocese are covered by c.1286, 1.\textsuperscript{o} Procedures for arbitration and termination of the contracts will usually be determined in the contracts themselves.\textsuperscript{91}

To consider if an independent contractor is a worker under c. 1286, 1\textsuperscript{o}, we shall examine who this contractor is. An independent contractor is one who, in the exercise of an independent employment, contracts to do a piece of work according to his or her own methods and is subject to the employers control only as to end product or final result of the work.\textsuperscript{92} Such a person is not a worker within the meaning of c. 1286, 1\textsuperscript{o}. However, it is the opinion of some authors, that the obligation of this canon will generally extend to all work which is contracted to another.\textsuperscript{93} Indeed, an administrator

\textsuperscript{89}R. HILL, "The Apostolate of Institutes", in J. HITE et al., \textit{A Handbook on Canons 573-746}, p. 212.

\textsuperscript{90}This second contract of employment will help in defining all the details of the conditions of service and also promote the dignity of the individual religious who may sometimes be lost in the shadow of the "work" being entrusted.

\textsuperscript{91}It could be binding in civil law or subject to arbitration by the persons chosen by both. In some parts of developing countries, the bishops are very reluctant to enter into these contracts and when they do so it is usually not binding in civil law. In other words, any disputes cannot be settled in law courts.

\textsuperscript{92}\textit{Black's Law Dictionary}, p. 770.

\textsuperscript{93}F. REISSNER, \textit{Canonical Employer}, p. 16.
in entering into any contract for independent work has to apply the principles and values of c. 1286, 1°. The administrator should take into consideration the activities of the contractor. If the enterprise deals with matters contrary to principles taught by the Church, the administrator should disassociate himself or herself from such an institution.  

In consideration of the category of workers implied in c. 1286, 1°, a distinction seems to exist between professional workers and those in special service of the Church. Professional workers are no less directly committed to the mission of the Church than those in its special service and c. 1286, 1° applies to both cadre of worker. Canon 1286, 1° comes into play whenever administrators employ a worker, provided they are properly mandated and guided by the objectives of c. 1254 §2; it is immaterial whether the worker is in professional or special service of the Church. The fact that employees have entered into a contract should not in any way negate their commitment and dedication to the mission of the Church. The Church, by recognizing the rights of the laity in full time service, implements the virtue of justice, which should not in any way jeopardize the spirit of volunteering for service in the Church. 

\[94\] For instance, the Church may not enter into a contract with a corporation that profits from abortions.


\[96\] See J. PROVOST, in *CLSA Commentary*, p.170.
2.3.2.5 - Observance of Civil Law

Canon 1286, 1° requires administrators to observe accurately or meticulously the civil laws relating to labour and social life of the state. To “observe” means to follow, abide by, keep, respect or honour. Administrators are not just expected to follow civil laws if they want to, but the canon insists they must do so meticulously or accurately.97

Opinion of authors differ on the canonical implication of this requirement. Some authors are of the opinion that the code does not intend a canonization of civil laws on labour but a recognition. In other words, the applicability and effects of civil laws are recognized without being incorporated into the canonical system. Commenting on c. 22, J. Huels includes c. 1286, 1° amongst those laws which recognize the legal effects of civil law without canonizing them.98 For some other authors, like T. Molloy, the civil laws on labour are incorporated into canon law.

A strong argument can be made that this canonizes civil labour laws and that the civil law of the place regarding labor relations is now incorporated into and has become part of Canon Law. An equally strong argument can be made that since the law is incorporated “iisdem cum effectibus” that, in the United States, the jurisprudence which elaborates and develops the meaning of statutory labor law is also canonized.99

97“Meticulously” indicates that they be particular about the details of Civil Law. Accurate means exact, correct without errors.


Commenting on c. 22 in relation to labour issues, the CLSA maintains that the extent to which the current law of the Church "canonizes" the civil law on labor-management relations, to that extent the norms from civil legislation have become church legislation.\textsuperscript{100} We are inclined to the opinion that c. 1286, 1\textsuperscript{o} canonizes civil law, in view of the wording of the canon which requires that the civil laws on labour and social life be "observed meticulously."

Canon 1284 §2, 3\textsuperscript{o} further provides that administrators must especially be on guard lest the Church be harmed through non observance of civil laws. Does this imply that all civil laws relating to employment must be obeyed, even when the Church is exempted from following them? It is a disputed question, but some authors are of the opinion that administrators are not required to obey civil laws from which the state exempts them, because such laws are not applicable,\textsuperscript{101} while others think that administrators should obey all civil laws which have been canonized.\textsuperscript{102} Whenever the Code adopts civil laws, it does not intend a sweeping observance but subject to the conditions mentioned in c. 22 and according to the social teachings of the Church.

Canon 1286, 1\textsuperscript{o} admonishes administrators to apply the civil laws on labour and social

\textsuperscript{100}See CLSA "Canonical Standard", p. 549.


life because of the need to protect the rights of employees.

Even though this "canonization" was made in recognition of changes in State legislation which had adopted these standards, it is the opinion of some authors that the Church has left out some religious obligations of the employee. According to Archbishop J. Périsset,

this correction suppresses—unfortunately!—the enumeration of the proper needs of the employee, in order to respond better to the economic situation of ecclesiastical institutions, which are more often than not thriving. In this way, disappeared any trace of the aims of the 1917 Code detailing even the "church employer's" obligation of favoring the religious life of its employees, and this was to favour a more directly manifested pastoral dimension.\footnote{Cette correction supprime — hélas! — toute énumération des besoins propres de l'employé, afin de mieux répondre à la situation économique, pourtant le plus souvent prospère, des institutions ecclésiastiques. Ainsi disparaissait toute trace de la visée du Code de 1917 qui détaillait même le devoir de l'"employeur Église" de favoriser la vie religieuse de ses employés, et qui avait, partant, une dimension directement pastorale plus manifeste (see J.C PÉRISSET, Les biens temporels de l'Église, pp. 181-184).}

John Paul II in his recent apostolic letter confirmed that the observance of Sunday as a holy day of obligation is losing its importance in many civil law provisions.

[...] Even in the organization of civil society, Sunday rest was considered a fixed part of the work schedule. Today, however, even in those countries which give legal sanction to the festive character of Sunday, changes in socio-economic conditions have often led to profound modifications of social behavior and hence of the character of Sunday.\footnote{JOHN PAUL II, Apostolic Letter Dies Domini, October 2, 1998, in AAS, 90 (1998), pp. 713-766. English translation, in Origins, 28 (1998-1999), p. 135.}

The civil laws relating to employment vary from one country to another according to the legal system which operates in various states, but in many countries would include employment insurance, health insurance, retirement benefits, contractual implications
and obligations in a contract of employment, personnel issues such as vacation, workdays, salary, social security, workers’ compensation, and other specification which the civil law provides according to socio-economic needs, etc. In Chapter Three we shall analyse in greater detail civil law provisions of Nigeria in the context of this topic.

2.3.2.6 - Principles Taught by the Church

The expression *according to the principles taught by the Church*, sets limits on administrators and civil laws which they can apply. Administrators are not allowed to follow civil laws which violate Christian moral principles. The Church wishes to emphasize its supernatural mission which is not limited to merely secular issues, but is extended to higher values and norms. In other words, the Church manifests its ecclesial juridic nature, which is unique because it shares in the sacramental nature of the Church.\(^{105}\) Hence the adopted civil laws on employment must not be contrary to the principles taught by the Church.

The right of association is very central to the employer-employee relationship and any civil law which negates or abrogates this right may not be acceptable. This is one of the fundamental or natural rights recognized by the Church, and, under the Church law, Church employees do not need prior approval of authorities in order to form an association. The Church’s intervention is required only if the association intends to bear

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the name Catholic.\textsuperscript{106} As we saw in chapter one, the Magisterium in its social teaching recognizes the rights of workers to form their own associations and to have autonomous governance over them. It is through the exercise of this right that goals of social justice and realization of workers’ rights can be achieved.

Even though the 1983 Code does not deal directly with the formation of labour unions by Church employees, it explicitly applies the social teaching of the Church on formation of associations and applies it internally to the Church. For instance c. 215 recognizes the right of Christ’s faithful to form associations and hold meetings, while promoting the Christian vocation in the world.\textsuperscript{107} In addition to the general right to form associations noted in c. 215, c. 298 §1 acknowledges the right of Christ’s faithful to establish associations which seek justice in the economic sphere by animating the temporal order with the Christian spirit. Notwithstanding these provisions, the application and realization of the rights of trade unions in the Church have not always been easy.\textsuperscript{108} One wonders how effectively it can implement the civil law provisions in this area or fight for those whose rights are oppressed in this regard. Contracts in civil law which negate the principles of natural justice, such as the right of the employee to

\textsuperscript{106}Canon 300.

\textsuperscript{107}See CLSA, “Canonical Standards”, p. 559.

\textsuperscript{108}For instance, Bishop J. Jukes commenting on the manner in which Gabriel Communications, a Church associated company, downsized staff, said: “It is very very unfortunate that an enterprise which publishes Catholic titles seems to have difficulty with union recognition.” It was in The Tablet, 8 August, 1998, p. 1047.
understand the contents and principles of the contract will certainly not be according to the social teaching of the Church; however, such civil laws may be rare.

The social teaching emphasizes the basic equality of all persons.\textsuperscript{109} Any civil law provisions which discriminates against others on grounds of sex, race, creed, will be against the principles taught by the Church. The Catholic bishops of USA touched on this issue when they said, "in seeking greater justice in wages, we recognize the need to be particularly alert to the continuing discrimination against women throughout the Church and society, especially reflected in both the inequities of salaries between women and men and in the concentration of jobs at the lower end of the wage scale."\textsuperscript{110}

What is interesting in practice is how the Church will operate within the state without applying those laws, which are contrary to its principles. It will be easy if the civil law raises concerns relating to private contracts when the Church negotiates with the employees involved but the matter will be different when it involves public issues such as a policy on non employment of certain immigrants who may be stranded where the principles of charity and justice are at stake.\textsuperscript{111} The pertinent issue here is that the

\textsuperscript{109}GS, 29.

\textsuperscript{110}NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Economic Justice for all", p. 446, no. 353. It is interesting to see how the Church in practice neglects its own canonical provision in the way it treats women as noted above by the US bishops, how much will it observe the civil laws when it contradicts this principles. Worthy of note are also those situations where some states refuse employment opportunities to qualified personnel because of their immigrant status.

\textsuperscript{111}See, commentary on c.1286 in Letter & Spirit, p. 730.
2.4 - Canonization of Civil Law

We shall now consider the implication of canonization of the civil laws in this particular canon, with emphasis on c. 22. What are the implications of this adoption? Canon 22 provides that civil laws to which the law of the Church defers should be observed with the same effects in so far as they are not contrary to divine law and unless it is provided otherwise in canon law. What is referred to here is not just mere recognition but adoption of civil laws into canon law. It is traditionally called "canonization" of civil law. As Örsy puts it, "it is civil law made into canon law."\(^{112}\) This implies that all the civil law effects are incorporated into canon law. For instance, in the Common Law legal system, the effects of civil law are determined through judicial interpretation of the law, so that in addition to the actual text of the law, judicial interpretation (jurisprudence) will equally be incorporated into canon law.

The relationship between canon and civil law can be traced to the relationship between Church and State. Canonization of civil law is not a new institution in the Church. Sometimes the Church canonizes civil law in order to fill up a lacuna in canon law. Civil law equally borrowed some principles from canon law. The Church, by adopting civil laws, recognizes the individual as both a Christian and as a member of a

\(^{112}\) L. ÖRSY, in CLSA Commentary, p. 38
State and therefore subject to two legal systems. In order to procure advantages for its members under the secular State, in certain situations it canonizes certain civil law so that it has the same juridic effects in canon law.

The adoption of civil law is however qualified by two restrictions: first, that the civil law is not against divine law; secondly, if canon law makes an explicit provision which is contrary to civil law such as instances of prescription where canon law requires possession in good faith.

The practice of the Church in this sphere is regulated by the subject matter involved. (1) As to res spirituales, sacraments, vows, missionary activities, the Church strictly follows the canon law. (2) In matters in which the State and the Church both have legitimate interests such as marriage, education, health, both institutions make their own laws. In practice, the Church works out the details that will represent its values according to local circumstances. The civil law usually claims precedence. (3) In purely temporal matters not containing a ratio peccati the Church follows or incorporates the civil laws, such as contracts, wills, wages, pension plans and employment issues. The Church remits to civil law or according to local circumstances, reaches an understanding with civil authorities, on most of the issues involved in categories two and three above. The “canonization” in c. 1286, 1° falls under the third category; hence the Church provides that administrators should follow strictly the civil laws on labour.

\(^{113}GS\ 74\).
We shall now look at the implications of this canonization in reference to 1286, 1°. Looking at the references to civil law at least in book V on the duties of administrators, one discovers that administrators in most cases are expected to perform certain acts in order to ensure that the interests of the Church are protected in civil law. In c. 1274 § 5, the administrator is urged to ensure that pension plans for the clergy and those who work for the Church are secure in civil law. Canon 1284 § 2, 3° requires administrators to ensure that title to property is secured in civil law. Furthermore, they should see that formalities of civil law are used in drawing up wills in favour of the Church. 114 Canon 1290 requires contracts to be made according to the prescriptions of civil law.

The adoption of civil laws in c. 1286, 1° is peculiar because it states that “administrators are to observe strictly the civil laws pertaining to labour and social life.” In other words, it is much more than applying certain civil law provisions or performing some civil law acts. In this case, it expressly adopts the whole body of civil laws relating to labour and social life of any given society. By this canonization, the Church acknowledges the paucity of its own laws in this area. Even though it does not adopt the force of the civil law, it makes the labour laws its own. As already mentioned above, this adoption in our opinion does not include those laws which the civil law does not intend to apply to the Church. Furthermore, under a Common Law system it includes

114Canon 1299.
jurisprudence in the area of labour laws. The whole corpus of the law, in addition to the statute law, includes the judicial interpretation of the application of the law, provided the jurisprudence is not contrary to divine law or principles taught by the Church.

Conclusion

The social principles on work and labour are partly embodied in c. 1286, 1°, the focus of this chapter. We began the chapter by looking at the text of the canon, its background, drafting process and the promulgated text. We went on to examine the meaning and scope of the canon and finally to study the implication of the “canonization” of civil law. We discovered a certain number of things.

Canon 1524 of CIC/17 is very similar in content to our c. 1286. A difference however exists in the adoption of civil laws according to the social principles by the Church. This explains why c. 1286, 1° is very much rooted in the social teaching of the Church especially on work and labour (which continue to be normative), and have in fact broadened the scope of the 1917 canon.

Even though c. 1286, 1° concerns principles of social justice and civil law, it is within the exercise of the right to administer temporal goods, that c.1286, 1° is conceptualized. Notwithstanding c. 1257, “administrators of temporal goods” in c. 1286,1°, if given a broad interpretation, includes those who administer private juridic persons. The “employment or hiring of workers” as against “in making contract”
broadens the meaning of the canon to indicate the whole process of hiring workers, which does not necessarily exclude making of contracts; according to the principles taught by the Church.

Canonization of civil law does not intend a sweeping observance but subject to the conditions mentioned in the law (c. 22). The canonization in 1286, 1° falls under purely temporal matters not containing a ratio peccati. Under the Common Law system it includes jurisprudence, statute and case law. This adoption however does not include those laws which the civil law does not intend to apply to the Church.

Administrators ought not to follow civil laws which violate Christian moral principles thereby emphasizing the Church’s supernatural mission which is not limited to merely secular issues, but extended to higher values and norms. Some of these principles are the right of association, application of the principles of natural justice in the employment of workers and observance of basic equality of all persons in this regard. In practice, the Church experiences difficulty with the State in realizing some of these principles.

Finally, the Christian faithful, as workers and administrators in the Church are called to keep in perspective the supernatural aims of the Church — salvation of souls — in the application of the law, especially civil law. In the next chapter, we shall look at the Nigerian civil laws on labour and social life in order to discover what would be the dynamics and scope of c. 1286, 1° in the civil law context.
CHAPTER THREE

NIGERIAN CIVIL LAW ON EMPLOYMENT OF WORKERS

INTRODUCTION

Canon 22 states that when the law of the Church remits some issue to civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law. Furthermore, c. 1286,1° requires administrators of temporal goods in entering into contracts of employment with workers to follow exactly the civil laws relating to labour and social life according to the principles taught by the Church. In view of these provisions, the Nigerian civil laws on labour and social life are of some importance to canon law. What these laws are and the extent to which they can be embodied into canon law, shall be the focus of this chapter and the next.

The Nigerian civil laws on labour and social life are based on a legal system which is rather vast. In this chapter we shall discuss only the principles pertinent to our study. We shall first examine the Nigerian labour law context, followed by a review of the sources and development of its labour law, with the aim of laying a foundation for the discussion of certain aspects of contracts of employment. We shall then discuss in detail the relationship between employer and employee, formation and types of contract, terms and conditions of service, termination of employment, and protective legislation together with remedies available to the parties. From there, we shall briefly examine
trade unions and provisions on social life. Finally the chapter will end with an assessment and conclusion.

3.1 - THE NIGERIAN LABOUR LAW CONTEXT

In this section we shall examine the concept of work in the traditional Nigerian setting, the introduction of Western civilization and the changes that it brought into the Nigerian value system. This will establish a proper context for our study.

Paid employment as it exists in present day Nigerian society was nonexistent during the pre-colonial era. Generally, the family farm was cultivated by the farmer and his wife (wives) and children. Work had a communal, human and religious value. The community recognized work as a value in itself emanating from the dignity of the human person and therefore it could not be adequately compensated in monetary or any other terms.\(^2\)

Emphasizing the African concept of dignity of labour, Cardinal F. Arinze maintains that in the African society workers are not regarded as a mere ‘labour force’ or a ‘pairs of hands’ who are ‘hired’. For him, work had no price tag so that the owner of a farm would freely share active interest about the farm (including its proceeds) with

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\(^1\)This system encouraged polygamy as men married many wives to help on the farm.

\(^2\)Every profession had its dignity such as hunters, palm wine tappers, fortune tellers.
a worker who helps out. In fact, to work on another's farm is an expression of some form of good will, since a person is not expected to work on an enemy's farm. Whatever is left he shares with the extended family members, especially the sick and infirm. Wealth was counted in terms of barns and wives, and the divide between the poor and rich was not very wide.

The subsistence mode of rural life did not, however, encourage the development of the person in terms of professional life as we have in Nigeria today. Women and children faced the danger of abuse, as mothers cultivated the farm in addition to their traditional role of mothering. Too much value was attached to land, as most people were unwilling to sell family lands.

It was with the advent of the European traders and missionaries in the eighteenth and nineteenth centuries that foreign currency and investment began to be introduced in Nigeria. This required the employment of European know-how and an African labour force, which eventually formed the nucleus of a modern industrial structure and economy. Nigerians were hired to work in industries, churches, schools, and government agencies. These services acquired an economic value which led work to lose its traditional values. Cardinal F. Arinze, reflecting on this change says that

the phenomenon of the worker who has no farm of his own, who is just paid a salary and who can suddenly lose his employment and become jobless is now

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common. [...] Many of them work for the government which, even though it has changed into African hands, is still unconsciously regarded as a symbol of the colonial oppressor which should not normally expect an honest deal, since government business is often regarded as nobody’s business. Other workers sell their labour to individuals or groups of entrepreneurs who replace the exploitative merchants of the colonial times and who may in some cases have formed a partnership with them.⁴

As a result, many Nigerians today stake a great and high price on the acquisition of material values at all costs as against values of honesty, hard work, and fair play. Farming has become the occupation of the uneducated, reserved to the rural villages; a person’s worth is now measured in terms of education and professional status.⁵

Gradually, Nigerian society inherited enormous social, economic and political problems resulting in poverty, mass urban drift to the cities, unemployment, corruption, poor attitude to work.

This “seemingly confused” state of affairs is partly due to the fact that the changes that took place in Europe over the pre-industrial, industrial and post-industrial eras are now witnessed by a person within a single lifetime in Africa. The problem is further compounded by the fact that in the same community some people may be living a simple traditional life while others live an affluent Western lifestyle.⁶ There is a growing


⁵This could explain why many Nigerians insist on being addressed by their appellations such as “Doctor”, “Chief”, “Engineer”, “Barrister”.

division between the haves and the have-nots. It is within the context of these issues that we shall now look at the Nigerian civil laws on labour and social life.

3.2 - THE SOURCES AND DEVELOPMENT OF NIGERIAN LABOUR LAW

This section shall discuss briefly the development of labour law and how the British introduced the English laws into Nigeria; these have become the basis of the laws on labour and are supplemented by other Nigerian sources of labour law such as Nigerian legislation, constitutional provisions and case law.

3.2.1 - English laws

In 1861, Lagos was ceded to the British Crown and in 1862 it became a British colony. Thereafter, British laws were applied to the colony (Ordinance No. 3 of 1863). The English Common Law, doctrines of equity and statutes of general application were received into the colony by virtue of the Courts Ordinance 1876. After Lagos was merged with the southern protectorate in 1906, most of the laws were extended to the southern protectorate. After the amalgamation of the north and south into one territory in 1914, all the pre-existing enactments in the respective units were brought together and

7 See also High Court Law, Eastern Nigeria, s. 15(1); High Court Law, Northern Nigeria, s. 28.

8 The northern and southern protectorates were created in 1900. The former encompasses the northern region of Nigeria including the middle belt region, while the latter includes the southern region which is made up of Lagos, mid west, west, east and south eastern regions. These areas have now been split up into thirty one states.
re-enacted into "ordinances." According to s. 45 of The Interpretation Act,

subject to the provisions of this section and except in so far as other provisions
are made by any federal law, the Common Law of England and the doctrines of
equity, together with the statutes of general application that were in force in
England on the 1st of January, 1900, shall be in force in Lagos and, in so far as
they relate to any matter within the legislative competence of the Federal
legislature, shall be in force elsewhere in the Federation.

The rules of Common Law and doctrines of equity applied without condition while the
Statutes of General Application that were in force on January 1, 1900 depended on the
Justice Osborne made a strenuous effort to set out guidelines, determining the grade of
courts which applied the law in England and the classes of people subject to it. The
Statute of Fraud 1677, The Infant Relief Act, and The Fatal Accidents Acts of 1846
and 1864 are examples of such statutes. These are related to the principles of contract
and labour law. However, English statutes of general application will per se apply in
Nigeria in so far as they have not been replaced by local enactments.

With the advent of British rule, formal education was organized and with time
a number of Nigerians began to take up paid employment, the need then arose for

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10Chapter ( = Cap.) 89 of 1958 Laws of Nigeria, now s. 32 Interpretation Act Cap. 192


12Labinjoh v. Abake (1924) 5 N. L. R 33.

regulation of work and labour issues. Employment law based on the law of contract which is founded on the Common Law and principles of equity began to be applied in Nigeria.\textsuperscript{14} The law of contract envisages the general proposition of the sanctity and voluntariness of contracts, whereby the employer and the employee voluntarily agree to enter into a contract of employment. This is why Professor K. W. Wadderburn maintains that the "English lawyer does not look first at the relations between the workers and their employers. His primary concern is this individual contract between employers and employees."\textsuperscript{15} In other words, the emphasis is on 'the contract of work' rather than on 'the worker' and other implied terms surrounding their relationship.

The emphasis on contract of work, however, tends to ignore other social and economic considerations which may make this contract and its underlying freedom fictitious and hollow, since in practice it is often a contract between unequals, especially in societies such as Nigeria where there are more workers than jobs. Worst still, even after the job has been offered and accepted, the employer may for maximization of profits fail to see the need to improve the welfare of the employees.

The British government, through the Colonial Office at the time, intervened by legislation to remedy these situations and in that vein laid the foundation for Nigerian

\textsuperscript{14}The courts usually apply the Common Law principles as implied terms in the absence of express terms (or statutory provision) in a contract of employment. Other Common Law principles in tort and agency are also related to contracts of employment.

legislation on labour. According to the Colonial Office in 1943,

one of the most striking developments which has taken place in the history of the colonial empire is the remarkable progress which has been made [...] to ensure the more adequate and efficient supervision of government of the conditions under which labour is employed in the various territories all over the world [...] namely (1) the appointment of special whole time staff in the shape of separate labour departments [...] (2) the enactment of often much needed protective legislation.\textsuperscript{16}

Legislation such as \textit{The Master and Servant Ordinance No. 16 of 1877}, or \textit{The Workmen's Compensation Ordinance of 1942}\textsuperscript{17} come to mind.

\textbf{3.2.2 - Nigerian Legislation}

After English laws, Nigerian legislation itself influenced the development of Nigerian labour law.

\textit{The Labour Act}\textsuperscript{18} came into operation on 1\textsuperscript{st} August 1974, repealing the \textit{Labour Code Act of 1942}.\textsuperscript{19} It regulates the employment of workers and consolidates activities relating to labour in Nigeria. S. 90 of the \textit{Labour Act} excludes certain classes of workers, such as persons exercising executive, technical and professional functions. It seems the Act is intended to protect the lowest cadre of workers. It deals, \textit{inter alia}, with the


\textsuperscript{17}Laws of Nigeria 1958, Cap. 222.

\textsuperscript{18}Labour Act (as amended) Cap 198, LFN 1990, hereinafter called The Labour Act.

\textsuperscript{19}Cap. 91, Laws of Nigeria 1958, whose genesis can be traced back to the first \textit{Master and Servant Ordinance No. 16 of 1877}.}
formation of the contract, the terms of contract, wages, recruitment of workers within
and outside Nigeria, special classes of workers such as women, apprentices, and
domestic servants.

The Workmen's Compensation Decree 1987,\textsuperscript{20} repealed the Workmen's
Compensation Ordinance of 1942, which was enacted to complement the Common Law
right of an injured workman to damages. It aims at providing an inexpensive and simple
method for recovery of compensation for personal injury, loss, death or disablement
suffered by a worker in the course of employment. The Workmen's Compensation
Decree of 1987 sought to upgrade the cadre of workers who could make a claim under
the law.

The Trade Union Act 1973\textsuperscript{21} is the principal law that regulates trade unions in
Nigeria. It provides for the formation, registration and organization of trade unions. It
defines a trade union and outlines those excluded from membership, such as members
of the armed forces. The government has tinkered many times with this Act in a bid to
direct and control trade unions.

The Trade Disputes Act 1976\textsuperscript{22} provides for the settlement of trade disputes
between employers and workers connected with employment or its terms and the
physical conditions of work of any person. It also outlines procedures for settling

\textsuperscript{20}LFN Cap. 470 1990.

\textsuperscript{21}Cap. 437 LFN 1990 replaced The Trade Union Act of 1938.

\textsuperscript{22}Cap. 432 LFN 1990.
The Factories Act 1987\(^{23}\) provides for the registration of factories and imposes duties on factory owners to ensure the protection and safety of the workers in view of the hazards of factory work.

There are other Acts but the few mentioned above suffice for the purposes of this study. Finally, in the field of legislation, Nigerian labour law is founded on British labour law both as regards its application and interpretation. In fact, there is an almost complete reliance on English law and its institutional model. In the opinion of A. Adeogun the "the transplantation seems total."\(^{24}\)

3.2.3 - Selected Constitutional Provisions on Labour

A remarkable feature of the Nigerian Constitution is that most of the post-independence Constitutions (1979, 1989) were promulgated into law by Military Decrees\(^{25}\) and they have been suspended many times in the twenty nine years of military rule. The 1999 Nigerian Constitution was promulgated by General Abubakar on

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\(^{24}\) A ADEOGUN, *From Contract to Status in Quest for Status*, p. 6.

Chapters Two and Four of the Constitution make various provisions on labour related rights, dignity of the human person and social security. Even though Chapter Two deals with fundamental objectives and directive principles of State policy which are non justiciable, it contains specific provisions on social security and suitable employment. Section 17 (2) (b) provides that the sanctity of the human person shall be recognized and human dignity shall be maintained and enhanced. Section 17 (3) (a-g) provides that the State shall give equal opportunity to all citizens for securing adequate means of livelihood, suitable employment, just and humane conditions of work, adequate facilities for leisure and for social, religious and cultural life. The health, safety and welfare of all employees are to be safeguarded and not endangered or abused.\(^{27}\) Chapter Four deals with fundamental human rights which protect the dignity of the human person.

\section*{3.2.4 - Nigerian Case Law}

The decisions of the courts in the application of the law also form an important source of labour law, especially in light of the doctrine of precedent, \textit{stare decisis},


\(^{27}\text{Some of these provisions have been given statutory recognition making them justiciable. For instance, \textit{The Factories Decree 1987} is designed for the safety and security of a worker.}\)
(standing by past decisions), where inferior courts are bound by the decision of superior courts.\textsuperscript{28}

In the case of \textit{Priestly v. Fowler},\textsuperscript{29} where a servant brought an action against a master for failure to use proper care to ensure his safety, the court, applying Common Law principles, held that the servant must fail in his action for compensation for injury sustained, because to allow the action would encourage the servant to omit that diligence and caution which he is duty bound to exercise on behalf of his master. This pronouncement was a reflection of the status of the servant at that time, only a little better than a serf. The master had all the rights, while the servant had all the obligations. However, in 1938 Lord Wright in the case of \textit{Wilson & Clyde Coal Co. Ltd. v. English}\textsuperscript{30} held that an employer is under obligation to see that the employee is safe at his place of work. This decision changed the condition of an employee which was later given statutory recognition in \textit{The Workmen's Compensation Act}.

Through case law, the Nigerian courts contribute to the development of the law and also apply the law to the Nigerian socio-economic context. For instance, in the case of \textit{Olaniyan and Others v. University of Lagos}\textsuperscript{31} the Supreme Court held that whenever

\textsuperscript{28}The Supreme Court of Nigeria is the highest court of appellate jurisdiction, while the lowest level of the courts is made up of a network of customary and magistrates courts.

\textsuperscript{29}(1837) 150 English Report (= E.R). 1130.

\textsuperscript{30}(1938) Appeal Cases (= A.C.) 57.

misconduct is alleged against a public servant\textsuperscript{32} the principle of fair hearing must be applied before the party is dismissed and where he has been wrongfully dismissed he should be reinstated, as damages are always inadequate. This marks a clear departure from established Common Law principles, which did not grant equitable remedies in contracts of personal service. In arriving at the decision Justice Eso said:

\begin{quote}
Probably for a university professor to go from university to university like a traveling Habeas corpus could be feasible in independent structures of Oxford, Cambridge. […] Sadly one cannot compare our universities in Nigeria in terms of independence of these universities. What hangs on a public officer in Nigeria hunts him through life and through the length and breath of the country. This is the society for which our laws are made and within which the laws must be interpreted. And so be it.\textsuperscript{33}
\end{quote}

In conclusion, in view of some points mentioned in this section, it is obvious that Nigerian labour law has some distinctive features worthy of mention in discussing labour law. For instance, the effect of the traditional concept of work mixed up with the Western values, Nigeria’s peculiar socio-economic system characterized by mass unemployment and few jobs, the interplay of the ordinary rules of contract in a contract of employment involving the dignity of the human person, the role of the courts and practical effects of some labour legislation such as the \textit{Labour Act} which excludes some classes of workers, and the role of the Nigerian government in labour issues, have all

\textsuperscript{32}“Public servants” means persons employed in one of the services promoted or supported wholly or substantially by funds from the State treasury. Public service includes the civil service, the teaching service, public corporations, State owned companies, the police, judiciary and State owned university staff. See A. EMIOLA, \textit{The Nigerian Labour Law}, Ibadan, University of Ibadan Press, 1982, p. 13.

\textsuperscript{33}(1985) 2 N.W.L.R at 646.
exerted their influence. Having laid the foundation, we are now able to discuss certain legal aspects governing contracts of employment and how they come into being.

3.3 - LEGAL ASPECTS OF CONTRACTS OF EMPLOYMENT

This section is concerned with the legal dynamics involved in a contract of employment. It shall examine the meaning of a contract of employment, which includes the relationship between employer and employee. This will be followed by examining principles governing the formation of a contract, types of contract, capacity to contract, terms and conditions of service, liability to third parties and, finally, termination of contracts.

*Black’s Law Dictionary* defines a contract of employment as an agreement or contract between an employer and an employee in which the terms and conditions of one’s employment are provided. S. 90 (1) (c) of the *Labour Act*, on the other hand, defines a contract of employment as any agreement, whether oral or written, express or implied, whereby one person agrees to employ another as a worker and that other person agrees to serve the employer as a worker. These definitions, although couched in different words, basically contain the same basic elements: a contract or agreement, between an employer and employee (or a worker), involving some work or employment, according to some terms and conditions. Under the Common Law there is, however, no comprehensive definition of a contract of employment; decided cases merely indicate
a number of *indicia* or factors which the courts consider in reaching a decision on whether a contract of employment exists between the parties.\(^{34}\) Hence, we shall briefly examine who are the parties under the contract.

### 3.3.1 - The Relationship Between Employer and Employee\(^{35}\)

An employer is any person (physical or legal) who has entered into a contract of employment to employ any other person as a worker, either for himself or for the services of any other person, and the term includes an agent, the managers of that person and personal representatives of a deceased employer.\(^{36}\) The scope is wide since persons can employ on behalf of themselves or for agents, provided the employer is expressly or equivalently mandated to employ. The employer can also be a physical person or a legal personality, in which latter case an agent can act on its behalf.

An understanding of the role of an employer does not pose difficulty, unlike that of an employee whose role is often confused with other legal roles such as those of agent, partner, bailee and independent contractor. For instance, an independent


\(^{35}\) Employer is commonly called “Master” while employee is referred to as “Servant,” hence the employment law is also called “law of master and servant.” The use of these terms is becoming obsolete because of the improved status of the worker. The terms “employer” or “master,” “servant” or “employee” are however used interchangeably in Statute books. In this thesis, we shall use “employer” and “employee” or “worker” in most of the cases.

\(^{36}\) The Labour Act s. 90(1).
contractor in a ‘contract for services’\textsuperscript{37} is under a duty to produce a given result for the employer, but uses discretion in the actual execution of the task; on the other hand, an employee in ‘a contract of services’ operates under the control of the employer.

Under the Common Law system, the courts have devised some measures for determining the difference between the two types of contracts; through the “control” “multiple” and “integration” tests. Using the control test, a contract of service exists where the employee is subject to the command, control and dictates of the employer as to the manner and time the work will be done. In \textit{Atedoghu v. Sanni Alade} \textsuperscript{38} it was held that a contract of service exists between the proprietor and a taxi driver. The proprietor payed wages to the taxi driver, controlled the manner in which he did his work, and collected the earnings.

However, the concept of multiple test in which the employer has the power to select, fix wages and discipline the worker, was developed later in the case of \textit{Short v. Henderson Ltd}\textsuperscript{39} to make up for the inadequacies of the control test, which remains the most significant.

The “integration test” is the determination of the legal status of a worker in relation to the role he plays in the organization’s set up. In \textit{Stevenson Jordan & Harrison}

\textsuperscript{37}For instance estate agents, plumbers, surveyors, etc.

\textsuperscript{38}(1957) Western Nigerian Law Report 184 at 185.

\textsuperscript{39}(1946) 62 Times Law Report 4267.
LTD. v. MacDonald and Evans\(^{40}\) it was held that "under a contract of service" the worker is employed as part of the enterprise and does his work as an integral part of business,\(^{41}\) whereas under a "contract for service" the worker is not integrated in the enterprise but his work is only accessory to it.

The three tests can be applied to a case, depending on the facts. The importance of the distinction between "contract for services" and "contract of services" is that in the latter case, an employer would be vicariously liable for the tort of an employee committed in the course of employment, while in the former, apart from any statutory provision, the employer would not be liable.\(^{42}\) Furthermore, unless it is a contract of services, most of the claims of an employee under labour law will fail.

The Nigerian statutes have given various definitions of "a worker" which are used within the scope of each particular statute. For instance, the Labour Act defines a worker as any person who has entered into or works under a contract with an employer, whether for manual labour or clerical work, it is expressed or implied, oral or written, and may be a contract of service or a contract personally to execute any work or labour. This definition is wide enough to include independent contractors, but it excludes some categories of workers such as the armed forces, police, administrative, administrative.

\(^{40}\)(1952) 1 T.L.R 101 at 111.

\(^{41}\)For instance a consultant surgeon or an airline pilot.

\(^{42}\)The employer will be liable for the acts of the independent contractor where he is negligent in instructing the contractor as to the work or in case of statutory provision such as in The Factories Act.
executive, technical or professional workers.\textsuperscript{43}

In the case of \textit{David Olaja v. Kaduna Textile Mills Ltd.}\textsuperscript{44} concerning wrongful dismissal, it was argued that the plaintiff who was described as ‘an arm of the management’ was a worker under the Labour Act and, therefore, entitled to one month’s notice. The court, in rejecting this argument, held that he was not a worker under the Act and was therefore entitled to reasonable notice, under the Common Law. The Nigerian law on labour therefore rests on two arms, statutory regulations and the Common Law.\textsuperscript{45}

Finally, it is important to note the difference between a contract of apprenticeship and a contract of employment. In the former a person binds himself to serve and learn for a definite time from a master who in turn covenants to teach him the trade or calling to the apprenticeship.\textsuperscript{46} Learning rather than serving is the hallmark of a contract of apprenticeship. Having looked at the parties and what a contract of employment means, we shall now examine how it is formed.

\textsuperscript{43} The Labour Act s. 90 (1)(a) - (e).

\textsuperscript{44}(1971) 2 Nigerian Commercial law Report (= N.C.L.R) 431.

\textsuperscript{45}In Nigeria there are some special categories of servants such as domestic servants, public servants, company executives, dock workers, residual office holders who do not fall strictly within the definitions of Common Law and statute. These are solely regulated by the Federal or State civil service commission. In case of a dock worker, even though he works directly under a dock contractor, there is no real master-servant relationship because he is under the Dock Labour Board which has the power to discipline and revoke its license. For a full discussion of these categories of workers, see A. EMIOLA, \textit{Nigerian Labour Law}, pp. 12 - 18.

\textsuperscript{46}A. EMIOLA, \textit{Nigerian Labour Law}, p. 58.
3.3.2 - Formation and Types of Contract of Employment

As noted above, a contract of employment is generally governed by the Common Law principles of ordinary contract, and can be defined as an agreement which the law will enforce or recognize as affecting the legal rights and duties of the parties.\(^{47}\) For the law to recognize this agreement, there must be a voluntary offer and acceptance, consideration, intention to enter into legal relations, certainty of terms, legality of objects, consensus ad idem and the other checks and balances of a simple Common Law contract.\(^{48}\) We shall briefly examine some of these elements.

For a contract of service to arise, there must be a definite offer of appointment and a definite acceptance. In the case of Ajayi - Obe v. The Executive Secretary of Family Planning Council of Nigeria,\(^{49}\) the chairman of the council wrote a letter to the secretary directing him to make an offer of appointment to the plaintiff. A copy of the letter was sent to the plaintiff, who in turn wrote to the chairman accepting the appointment. When the plaintiff saw an advertisement for the same post, he brought an action for breach of contract. The Supreme Court held that there was no definite offer and acceptance as required by law since the chairman had no power to communicate the decision.


\(^{48}\)It is outside the scope of this thesis to discuss these terms in detail. For a detailed discussion, see I. E. SAGAY, *Nigerian Law of Contract*, pp. 1- 91.

\(^{49}\)(1975) 3 Supreme Court ( = S.C) 1.
Consideration is the price for which the promise of the other is bought and the promise thus given is enforceable. In a contract of service the consideration is usually the remuneration together with benefits associated with the job. ⁵⁰

In addition to these elements, the parties have to intend that their contract would be enforceable in a court of law. Instances of this arise in domestic or social engagement or even in commercial contracts where a clause excludes the intention to enforce it in a court of law. ⁵¹ Further, there must be a meeting of minds between the parties, *consensus ad idem*, so that there would be no misrepresentations, fraud, duress or undue interference. A contract of service would also be vitiated due to illegality of object: for example, a contract which employs people for the purpose of sexual immorality.

A contract of employment may be written, oral, implied, or express, except in the case of a seaman or apprenticeship which must be in writing. ⁵² When the contract is written and authenticated by signatures of both parties, it constitutes irrefutable evidence of agreed terms, and may not be contradicted by parole evidence, except for fraud or mistake.

A written agreement of service might not contain all the essential elements of the

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⁵⁰Sir Frederick Pollock adopted in *Dunlop v. Selfridge* (1915) A. C. 847 at 855. A contract under seal or deed does not need proof of consideration. It derives validity from its form. By Statutory requirements, certain contracts have to be under seal, such as conveyance of real estate or contracts made by companies (ss. 32 & 34 of the Companies Act 1978).

⁵¹*Balfour v. Balfour* (1919) 2 Kings Bench (= K.B) 571. Parties to a contract can under this title exclude recourse to the courts.

⁵²*Merchant Shipping Act 1962*, ss.18 (1), 22 (1), *Labour Act* s. 49 (1).
terms and conditions of employment, so that one may have to look outside the contract
given by the employer at the commencement of employment, such as to collective
agreements, rule books, handbooks or employment manuals. When compared with oral
contracts, the interest of the employee may be best served in written contracts, as oral
ones are more precarious and human memory may sometimes fail, leading to
misunderstanding on the exact terms. This was probably why s. 7 of the Labour Act
provides that where a contract is not written, its particulars must be delivered by the
employer to the employee within three months of the commencement of the employment.
Changes in the terms of an oral contract have to be communicated to the worker either
orally or through notice board or general circular.

In practice, however, the organized private sector and companies have standard
conditions of service for employees, which most of the time are the result of individual
and collective negotiations with appropriate industrial unions or associations. Civil
servants are given the civil service regulations. The Church has sporadic arrangements,
some dioceses have conditions of service for certain workers while others have nothing.

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53This means an agreement in writing regarding working conditions and terms of
employment concluded between an organization of workers or its representatives and an
organization of employers.

54Sometimes general conditions of service and collective agreements get incorporated
into the terms of the worker's contract of service in this manner. See Petrie v. Mac Fisheries
Ltd. (1940) 1 K. B. 258.

55Private sector is used here to denote all those persons employed in a profit and non
profit set up, other than government owned enterprises. This would include one man business,
partnerships, corporate and unincorporated entities.
Some have individual contracts with the workers while others simply have oral
contracts. The average unskilled worker in small one-man businesses most often does
not have a written contract; such workers are hired and fired at will. An employee
usually goes through a probationary period when the employer retains the right to
confirm or not to confirm the appointment on grounds of performance.

3.3.3 - Capacity to Contract

To form a valid contract of employment, the parties must have the contractual
capacity required for ordinary contracts. The capacity of some persons such as infants,
married women, corporations, illiterates and persons of unsound mind is limited under
the law.

An infant\footnote{An infant or minor is a natural person under the age of 21. An infant who has attained 18 years of age has the right to vote. Under the Criminal law a minor under 7 years of age is incapable of committing an offence. An infant is generally liable for offences of tort. An infant sues by his next friend and defends by guardian ad litem. Customary Law is less rigid, under the customary law of different States in Nigeria a person is regarded as coming of age when the person attains the age of puberty. B.O. OKERE, “The Concept of Legal Personality”, in C. O. OKONKWO (ed.), Introduction to Nigerian Law, pp. 397 - 398. This is not the same as the concept of “infant” under the canon law, see c. 97.} may void a contract of employment unless it is for his benefit, since
under the Common Law an infant is bound only by contracts of necessaries.\footnote{S. 1, Infants Relief Act 1874. Necessaries are goods and services suitable for the condition of life of the infants and actually required of them at the time such as food, clothing, etc. Contracts for service or apprenticeship are enforceable against an infant.} An infant who owns or inherits a business enterprise would not be liable to his employee except
if the business is for necessaries. However, an infant may ratify a contract entered on his behalf on attainment of majority age.\textsuperscript{58} The Labour Act makes various provisions to protect the young, for example a person under sixteen years of age is not capable of entering into a contract of employment.\textsuperscript{59}

Under the old Common Law system, a married woman lacked contractual capacity, but this has been altered by the law\textsuperscript{60} so that she now has full contractual capacity. However, s. 54 of the Labour Act provides that no woman shall be employed on night work, in a public or private industrial or agricultural undertaking except nurses or women who do not necessarily perform manual labour.\textsuperscript{61}

A corporation enjoys legal personality under the \textit{Company and Allied Matters Decree of 1990},\textsuperscript{62} while some do so by virtue of the law. Contractual capacity is usually determined by the articles of association. Unincorporated persons, such as trade unions, social clubs and charitable organizations, may not enter into contracts of employment in their own name, since their rights and duties are synonymous with those of the members; the individual members may sue and be sued on behalf of the association. However, registered bodies can enter into contracts through incorporated trustees, following the

\textsuperscript{58} Rawley v. Rawley (1876) 1 Queens Bench Division ( = Q. B. D.) 460.

\textsuperscript{59} S. 58 - 63 of the Labour Act.

\textsuperscript{60} Such as \textit{Married Women Property Act 1882}.

\textsuperscript{61} See ss. 53 -54 of \textit{the Labour Act} for detailed provision.

\textsuperscript{62} S. 36 (5), Cap. 59 LFN 1990.
constitutions and powers of the trustees.\textsuperscript{63}

Generally, those illiterate in letters have contractual capacity. However, in Nigeria where many people are not lettered, the Illiterate Protection Act seeks to protect them from fraud, so that whenever they sign a document the maker has to prepare a jurat (an attestation) that the contents of the documents were explained to the illiterate person before the document was signed. The document is also voidable at the instance of the illiterate person.\textsuperscript{64} We shall now proceed into the body of the contract to examine its contents.

3.3.4 - Content of a Contract: Terms and Conditions of Service

A contract of employment which usually contains details concerning the rights of the parties, varies from one organization to another. These details are the terms and conditions of service which may include remuneration, job description, duties of the parties, working hours and holidays, security at work, duration, discipline, termination. These terms could be expressed when the conditions of service are spelled out orally, or put in writing, or implied through custom, statute or the courts. The implied terms are used in the absence of express ones. We shall now discuss some of these details which

\textsuperscript{63}Legal personality under canon law is quite different and the civil law does not recognize it. There may be need to incorporate canonical personalities under the civil law, otherwise in some instances the courts may turn to the sole incorporation, i.e., the diocese.

\textsuperscript{64}S. 3 of The Illiterates Protection Act.
can form the terms and conditions of service in a contract of employment, after which we shall examine briefly the implied terms under Common Law.

3.3.4.1 - Remuneration

One of the most important terms in a contract of employment is the provision for payment of wages or remuneration, known as the compensation and benefits package, which includes among other things, basic salary, housing or housing allowance, transport allowance, leave allowance, overtime, sick pay. The right to wages cannot be excluded in a contract; otherwise it shall be void. S. 5 (2) of the Labour Act further provides that an employer can deduct from the wages of his employee any contributions to the Provident Fund or pension plan, provided the worker consents.

The terms of a contract usually provide for payment during absence due to

65S. 1 (1) - (3) of The Labour Act insists that wages must be paid in legal tender, otherwise the contract is void.

66S. 13 (1) of The Labour Act provides that if a worker is required to travel sixteen kilometers or more from his work place to another, he shall be entitled to free transport or allowance in lieu.

67S. 12 (2) of The Labour Act defines overtime.

68It is a settled principle of law that illness does not necessarily terminate a contract of employment (Morrison v. Bell [1939] 2 K.B 187). S. 15 of The Labour Act provides that a worker shall be entitled to be paid wages up to twelve days in one year for absence from work due to temporary illness. In practice, much depends on the circumstances of each case and the agreement between the parties. In the absence of any contractual term, the Labour Act applies, but where a senior officer is involved, the sick pay will be regulated by the custom and practice in the organization and the contract.

69S. 1 of The Labour Act.
sickness. Where no provisions are made, a term is implied under the Common Law. In
*Orman v. Saville Sportswear Ltd.* the court, in granting the plaintiff's claim to ten
weeks bonus pay during illness, held that where the written contract of service is silent
on the right of an employee to pay during absence due to illness, the employer remains
liable to continue to pay as long as the contract is not determined by proper notice.
Under the Labour Act a worker is entitled to absence of twelve working days in any
calendar year because of temporary illness.

An employer has no implied contractual right to suspend an employee without
pay on disciplinary grounds. There must be an express or implied term in the particular
contract justifying this encroachment upon the employer’s normal obligations to the
employee. Whenever an express provision to suspend without pay exists, any
procedure laid down must be strictly followed. General Abubakar on assumption of
office as Nigerian head of State in 1999, increased the minimum wage to five thousand
two hundred naira per month, for all federal and state civil servants. After much uproar
from the States, the Government reduced it to three thousand Naira: however, it is still

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71S. 15.


74The Nigerian currency is the naira and currently the official exchange rate is 90 naira
to 1S US.
causing problems as some States still insist they cannot pay.

3.3.4.2 - Job Description

A job description, sometimes called job content, is mostly based on collective agreements entered into with the union, especially in a large business enterprise or institution. A job description helps to define work obligations so that the employee is protected from arbitrary maneuver of job content and risk of constant transfer from one job to another. The interest of the employer is equally protected where the obligation and authority of the employee is properly defined and delimited. Periodic evaluation of the job content helps both parties assess their respective roles within the organization, taking cognizance of the need for changes according to performance of the organization. In Nigeria, many companies do not have job descriptions, while others do not bother to review outdated ones.\(^7^5\) Hence, few litigations (if any) have taken place because of arbitrary alteration of job description.

3.3.4.3 - Working Hours and Holidays

Working hours and holidays are usually fixed by the employer while it is up to the employee to negotiate.\(^7^6\) The Labour Act stops short of deliberately fixing a standard


\(^7^6\)In practice, the employee does not have much option, especially in the Nigerian situation where there are more workers than jobs.
roster of working hours; it leaves the issue to mutual agreements or collective bargaining.\textsuperscript{77} In reaching agreements on this matter, the good of the society and the welfare of the worker must be kept in mind. British Church leaders recently spoke out against companies who make their employees work on Christmas and new year day as "obeying the unstoppable force of capitalism."\textsuperscript{78} As a general rule, an employee who is qualified to go on leave, is entitled to wages during the period; however, a worker paid by the hour or on a daily basis will not be entitled to pay.\textsuperscript{79} Employees in the private sector, because of profit orientation, often put in more working hours than those in the public service who work forty hours per week. Any hours worked in excess of these should constitute overtime.

A woman is entitled to six weeks leave before and after confinement, provided a qualified medical practitioner certifies to her confinement. A woman who has put in at least six months in an establishment is entitled to not less than half of her normal wages.\textsuperscript{80} Many female employees, due to reduction in their salaries, delay the period of confinement to the minimum period.

\textsuperscript{77}S. 12 (1-3) of the Labour Act.

\textsuperscript{78}The Ottawa Citizen, January 5, 1999, p. A12; Major religious feasts such as Christmas, \textit{Idel Fitr} are observed as public holidays in Nigeria.

\textsuperscript{79}The daily paid system has since 1979 been abolished in the public service. See also s. 17 of the Labour Act which insists that an employee is entitled to leave with pay after 12 months of employment.

Implied terms are presumed very often for business efficacy to form part of the contract even though they are not expressed.\textsuperscript{81} The basic Common Law rights and duties between parties, implied by the courts in a contract of employment, remain significant in Nigeria, because of the limited scope of the \textit{Labour Act}. Some of these rights and duties are briefly discussed below.

\textbf{3.3.4.4 - Duties of the Employer}

(1) The duty to pay remuneration is one of the most significant duties of an employer. Where no amount is agreed upon between the parties, the court will imply a reasonable sum basing its decision on the circumstances of the case.\textsuperscript{82} If for some reason the contract is invalid, services already rendered will be paid on \textit{quantum meruit}, "so much as he shall deserve." In \textit{Craven Ellis v. Cannons Ltd.}\textsuperscript{83} the contract of a director was found to be invalid because he failed to take up some shares according to the Articles of Association: the court held that although he worked under an invalid contract he was entitled to \textit{quantum meruit} for services rendered. However, the court will refuse to order payment if the contract is illegal.\textsuperscript{84} Nowadays, remuneration is an express term

\textsuperscript{81}\textit{Shirlaw v. Southern Foundries Ltd.} (1939) 2 All E. R. 113.

\textsuperscript{82}\textit{George Erabor v. Incar Nigeria Ltd.} (1975) 4 S.C. 1.

\textsuperscript{83}(1936) 2 K. B 403.

\textsuperscript{84}\textit{Union Trading company v. Hauri} (1940) 6 West African Court of Appeal (=W.A.C.A ) 148.
in a contract or is regulated by statute, such as the National Minimum Wage Act 1980.

(2) It is an established rule under Common Law, that an employer is not under any legal duty to provide an employee with work, except if the contract involves payment of commissions or improvement of skills. In other words, the employer can decide to keep an employee idle, provided wages are paid. The emphasis remains on the work rather than the dignity of the employee; this explains why s.16 of the Labour Act seeks to revise the situation by providing that an employer is under a duty to provide work.

(3) An employer is under no duty to give a testimonial or a reference to an employee or former employee, even though in practice many do so. A false reference may render an employer liable to damages for defamation.

(4) A significant duty of the employer, both at Common Law and by statute, is to take reasonable care for the safety of his employee. The Common Law was at first hesitant in recognizing this, as we already saw in the case of Priestly v. Fowler. However, it is now well established that an employer owes a duty to each employee to take such care as the circumstances of the work and the employee himself demand to see that he is reasonably safe at work. Reasonable care includes provision of safe tools or machinery in an environment conducive for a safe system of work.

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86 Wilsons & Clyde Coal Co. v. English (1938) A.C. 57.
There were still some shortcomings, since liability was based solely on negligence, which excluded injury arising from the inherent risk of the job. Moreover, the Common Law action was open to formidable defenses of common employment, volenti non fit injuria (consent to suffer the risk of injury), and contributory negligence.

(5) The employer has a duty to provide the employee a safe system and place of work. To realize this, the employer is bound to supervise and provide safety precautions in the workplace. The employer is also liable for any injury suffered by the employee within the scope of his duty. In Bryce v. Swan Hunter Group Plc and Others, employers were held liable for the death of an employee when, through their negligence and breach of statutory duty, they failed to take precautions against exposure to asbestos dust.

(6) The employer has a duty to indemnify the employee for all liabilities and losses properly incurred in the course of duty, provided there was no negligence on the part of the employee. For instance, if an employee in obedience to a lawful order injured

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87 An employer was absolved from liability for injury suffered by a workman as a result of the conduct of fellow-worker. This doctrine was abolished in the Southern States in 1961, by virtue of Law Reform (Torts) Law 1961 (Lagos State); see also Western Nigeria Torts Law 1961, and Eastern Nigeria Torts law 1961. Eventually it was abolished in the whole country in 1988 by Labour (Amendment) Decree 1988.

88 There is no provision for apportioning the loss between the plaintiff and defendant where the plaintiff contributed to the negligence. Butterfield v. Forrester (1809) 11 East 60.

a third party, the employee is entitled to be relieved of all liability for such injury. 90

3.3.4.5 - Duties of the Employee

(1) The employee is under obligation to obey the lawful and reasonable orders of the employer. An isolated act of disobedience may not automatically warrant a dismissal unless such act amounts to a repudiation of a fundamental term of the contract or it is of a grave nature. In Pepper v. Webb91, a single act of gross disobedience and insolence was held to justify the dismissal of a gardener. It depends on the circumstances of each case.

(2) It is the duty of the employee to take reasonable care and to exercise due diligence in the performance of his duties. An employee who presents himself as possessing a certain skill implicitly warrants that he possesses reasonable skills to perform the work. In E. R. Usen v. Bank of West Africa Ltd., 92 it was held that the defendants were entitled to dismiss the plaintiff, a bank clerk, for negligence leading to loss of money by the defendant bank.

(3) The employee is under obligation to serve the employer with good faith and fidelity. This includes a duty not to make secret profit, to work only for the employer during the employer’s time, and to protect the employer’s confidential information. 93


92(1965) 1 All N. L. R. 244.

employee fails in duty if he allows his personal interest to jeopardize his work. This
principle was later enlarged to include the fact that the employee must discharge his
duties in such a way as not to frustrate the business objectives of the employer.\footnote{94}

(4) The employee also has a duty to protect the employer’s property.

3.3.4.6 - Safety and Welfare at Work

Apart from shortcomings in those duties which an employer owes to the employee
concerning safety at work, under the Common Law, growing industrialization and the
need to protect workers have necessitated the enactment of some statutory laws by the
State in this regard. For instance, The Workmen’s Compensation Act, The Factories Act,
and The Fatal Accidents laws of the States are important statutory provisions.\footnote{95}

Section one of the Workmen’s Decree of 1987\footnote{96} widened the scope of workmen
to include workers in all sectors of the economy with a few exceptions, such as
handicraft or agricultural employees working for an employer with less than ten workers,
and members of the armed forces.

To protect the employee, the liability for compensation is placed solely and

\footnote{94}{Secretary of State for Employment v. A.S.L.E.F. (1972) 2 Q. B. 455.}

\footnote{95}{There are other special safety regulations for mining, petroleum refining, shipping and
building among others, but this study does not intend to go into these.}

\footnote{96}{This Decree widened the scope of workmen, much wider than the previous Act, which
unduly restricted the category of workmen to those whose earnings did not exceed 1, 600 Naira
per annum.}
entirely on the employer, without any contribution or subsidy from the government. The employer's duties extend far beyond his Common Law duties, some of which have been embodied in the statutes. Unlike under the Common Law where the employee has to prove negligence, it is enough if the employee can show that the statute imposes a duty on the employer, that the duty is owed to him, that a breach of it has been committed, and that the breach has resulted in damages. Such injury must result in death or seriously incapacitate the worker for a period of not less than three days and this injury should not be attributable to serious misconduct on the part of the worker.97 The employer is required to insure himself against the liability and must do so if he belongs to a prescribed category of employers for whom, in accordance with the regulations made by the minister, insurance is compulsory. A worker's right to compensation under the Decree cannot be repudiated and any agreement purporting to contract out this liability is null and void.

Ordinarily, under the Common Law, the death of a person cannot give rise to a civil action and an action commenced during a person's life is extinguished by his death,98 but s. 4 of the Decree gives dependants of deceased persons the right to institute an action to recover compensation or damages under specified guidelines.

These claims can be made under the Common Law or statute, depending on the

97S. 3 of Workmen's Compensation Decree.

98Based on the ancient legal maxim actio personalis moritur cum persona, which means that an action dies with the person.
NIGERIAN CIVIL LAW ON EMPLOYMENT OF WORKERS

facts of the case. In *Western Nigeria Trading Co. Ltd. v. Busari Ajao*,\(^9\) the court decided that even where the statutory provisions were applicable, the Common Law duty could still be invoked. In other words, the plaintiff may bring an action for breach of duty under the Common Law as well as a statute.

*The Factories Act* has as one of its purposes to bring safety legislation in line with requirements of modern industrial settings. Penalties are prescribed in cases of death of a worker or injury arising from non compliance with the law.

S. 87 (1), in defining a factory, excludes a place that is not used for purposes of gain or trade and, therefore, is outside the scope of the Act. In the case *Wood v. London County Council*\(^10\) where the claim centered on the process of mincing meat by an electrical machine in the kitchen of a municipal hospital, it was held that the kitchen was not a factory, since the work was not carried on for the purposes of trade or gain. Since most of the Church enterprises are not run for profit, it follows that this Act will not in most cases apply to the Church except under special circumstances.

3.3.5 - Vicarious Liability to Third Parties

Since we are looking at issues of injury and compensation in the master and servant relationship, it will be appropriate to examine briefly liabilities to third parties,


\(^10\)(1941) 2 All E.R. p. 539 at 553.
NGERIAN CIVIL LAW ON EMPLOYMENT OF WORKERS

in contracts, criminal matters, torts and for acts of independent contractors.

When an employee enters into a contract on behalf of the employer, an agency relationship is created and, as a general rule, the employee is not liable except in the following circumstances: (a) when he acts without his principal’s or employer’s authority, in which case he will be liable on a warranty of authority, unless he expressly excludes such warranty or the third party knows that he has no such authority;\(^{101}\) (b) where the employer is not identified; (c) where the employee executes a deed in his own name; (d) where the employee signs a bill of exchange. It is important to stress that the mere relationship of employer and employee does not of itself give the employee any power to act as an agent of the employer.\(^ {102}\) In situations of emergency where the employee may not be able to communicate with the employer, the law protects any reasonable step the former takes under the doctrine of “agency of necessity.”\(^ {103}\)

A person is generally not liable for the criminal act or omission of another unless it can be shown that the employee committed the crime in the execution of the orders of the employer or the master knows that his servant is committing a crime in the course of his employment and fails to restrain him. This duty can arise both under the Common

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\(^{101}\)See *Halbot v. Lens* (1901) 1 Chancery Division 344.

\(^{102}\)G. K. O Ajayi v. Lagos City Council (1968) N.M.L.R. 125.

An employer is vicariously liable for the tortuous acts of the employee committed within the course of employment which cause injury to a third party, without any fault on the part of the employer. Thus in the case of *Igbokwe v. U.C.H Board of Management*\(^\text{106}\) where a patient of the hospital fell to his death from the fourth floor of the hospital, the court held that the board of management of the hospital was liable for the negligence of the medical staff on duty. The general principle is that an employer will not necessarily or automatically be discharged from liability simply because he has prohibited the act in question. However, if the act does not fall within the normal scope of acts which the employee is authorized to perform, it would appear that the employer will escape liability as decided by the Supreme Court, in the case of *Jamarkani Transport v. Wulemotu Abeke*\(^\text{107}\) when the master specifically prohibits a servant from engaging in a course of action, he cannot be held vicariously liable unless his acquiescence in the breach of the order can be established.\(^\text{108}\)


\(^{105}\) For instance under the *Factories Decree* (s. 69) an employer will be guilty of an offence if he fails to abide by safety provisions provided for under the Decree.


\(^{107}\)(1963) 1 All NLR 180.

\(^{108}\) This doctrine has some relevance for the cases in canon law regarding the liability of a diocese for the acts of its priests. It is outside the scope of this study to discuss this issue.
An employer is not generally liable for the tort of an independent contractor or the employee of such a contractor. An employer is more commonly held liable for the acts of his independent contractor where some statute imposes a personal duty on him which he subsequently delegates to the independent contractor. For instance, in the case of *Okafor v. Mathew Mbuchu*, 109 an occupier was ordered under a health regulation by the town council to prune some dangerous trees which duty he delegated to an independent contractor; the occupier was held liable for the resulting injury to a third party.

3.3.6 - Termination of Contract of Employment

Just as parties agree on the terms and conditions of a contract of employment, so too do they determine the manner of termination of the contract, subject, however to any statutory provisions. 110 This intention is discerned from the express or implied terms of the contract or inferred from the circumstances of each case. A contract can, therefore, be terminated in three principal ways: by operation of the law (unforeseen circumstances), the intention of the parties and by summary dismissal.


110 For instance s. 11 of *The Labour Act 1974* provides for termination of contract of employment by notice.
3.3.6.1 - Operation of the Law

Occasions arise when an employment comes to an end, through no fault of the employer. The law regards such contracts as determined due to a supervening external event which renders a contract impossible of performance. If the event or change of circumstance is so fundamental to be regarded by law as striking at the root of the contract as a whole and beyond what is contemplated by the parties, the contract is said to be frustrated. Such occurs in the case of serious and protracted illness, death of one of the parties, liquidation (merger) of a business, bankruptcy, and so forth.\textsuperscript{111}

3.3.6.2 - Intention of Parties

The parties in a contract of employment can decide how the contract will come to an end, for instance, through notice or payment in lieu of notice. From the praxis of the courts three conditions are required for a valid termination of a contract of employment except when the contract states otherwise. First, the termination must be for one or all of the reasons stipulated or implied in the contract. Second, proper notice must be given by the party intending to terminate the contract. Third, the agreed or normal method must be used in terminating the contract.\textsuperscript{112}

Where an employer terminates a contract it is not necessary for him to prove

\textsuperscript{111}Southern Foundries v. Shirlaw (1940) A. C. 701 at p. 721.

\textsuperscript{112}A. Emiola, Nigerian Labour Law, p. 66.
incompetence or to give reasons; it is sufficient that the notice be in accordance with the terms of the contract. Even where the employer gives reasons, the court will not examine their cogency or otherwise.\textsuperscript{113} However, the motive for the termination becomes relevant where the termination is in breach of the terms of the contract, of principles of natural justice or a statute. For instance, the right of the employer to terminate at will is restricted by s. 19 of the Labour Act, which among other things requires the employer in a redundancy situation to give reasons for terminating the worker’s employment and that such reasons must be fair.

Furthermore, whenever either party intends to terminate the contract, a formal notice must be given by one party to the other that the contract is to be brought to an end at a specified time. In \textit{O. A. Martins v. Braithwaite (Insurance Brokers) & Co Ltd.}, the defendant company had reserved to itself the right to terminate the plaintiff’s appointment “at any time without notice.” Relying on this power, the defendants terminated the plaintiff’s appointment without informing him. The court held that the reservation of the right to terminate without notice does not mean that the worker is not to be told in clear words that his services are no longer required. Notice must be unequivocal and clear and the specifications as to length and form must be carefully followed.\textsuperscript{114} S. 11 of the Labour Act provides for termination by notice.

\textsuperscript{113}Nwokolo v. Sapele U.D.C. (1965) 1 ALL NLR 244.

\textsuperscript{114}(1972) 11 CCHCJ/52. Justice Fakayode in the case of Adeyemo v. Oyo State Public Service Commission (1979) 1 O.Y.S.H.C 83, decided that a notice given on April 9\textsuperscript{th} was
It has become more expedient for employers to terminate contracts of employment by paying salary in lieu of notice, thereby relieving the worker of the obligation of working for his pay. Hiding under the cloak of the principle that the employer is not bound to give reasons in giving notice, it has, therefore, become the practice for employers to terminate contracts of employment by giving the required notice or in cases where they consider it inexpedient, by paying salary in lieu of notice, thereby putting an immediate end to the contract.

Whether the termination arises out of the normal course of business or as a disciplinary measure, the procedure for termination must be strictly followed. For instance, the power to terminate must be exercised by the appropriate authority vested with the power according to the agreement or a written law. In Hart v. Military Governor of Rivers State\(^{115}\) the Supreme Court declared the termination of the appointment of the plaintiff null because the Governor assumed the power vested in the State civil service commission.\(^{116}\) However, when an employer does not intend to pay

\(^{115}\)This decision was based on a Supreme Court decision, in Oyekoya v. G. B. Olivant (1969) 1 All N.L.R 80. The view of O. OGUNNIYI in Nigerian Labour and Employment Law in Perspective, p. 177, that there is no higher court ruling on this matter is no longer tenable. See O. OROJO, Nigerian Commercial Law and Practice, vol.1, Sweet and Maxwell, London, 1983, p. 514. In practice most employers just calculate 30 days notice; it appears many employers are not aware of the position under the law.

\(^{116}\)This is particularly relevant in the case of public servants where the courts have held that a civil servant must be terminated according to the civil service regulations. See Shitta-Bey v. Federal Public Service Commission (1981) 1 S.C. 40 This is similar to canon 124 on conditions and requirements for placing a valid juridical act.
salary in lieu of notice or keep the employee during the period of notice, he has no option but to dismiss, in which case he has to prove some wrongdoing justifying the dismissal.

3.3.6.3 - Summary Dismissal

Summary dismissal is the right of the employer to terminate the contract of service of an employee on account of gross misconduct on the part of the employee which strikes at the root of the contract, such as wilful disobedience to lawful and reasonable orders, misconduct of the employer’s business, incompetence and other actions incompatible with or prejudicial to the employer’s business.\(^{117}\) The right to dismiss is always implied in a contract of employment, but must be substantiated with reasons for the dismissal. In *Moeller v. Monier Construction Company (Nigeria) Ltd*\(^{118}\) the contract reserved to the defendants the right to dismiss the plaintiff summarily if the employee commits any act which in the opinion of the company is likely to bring it into disrepute with any other persons, or the public. The court held that it was not necessary for the defendants to show that the act of the plaintiff actually brought the company into disrepute, it was enough if they were of the opinion that such disrepute would flow from his act. In view of the freedom of either party to end the contract, we shall examine some

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\(^{117}\)For application of this principle by the courts in different cases, see J.O. OROJO, *Nigerian Commercial Law and Practice*, pp. 526 - 531.

\(^{118}\)(1961) 1 ALL NLR. 167.
of the options open to them in terms of remedies.

3.3.6.4 - Remedies in a Contract of Employment

As we can see from the points already discussed, the employer’s remedies in cases of breach of contract lie in termination of the employee’s appointment either by dismissal, suspension or claim for damages arising from the breach. In most cases of breach of contract of employment, the employee suffers loss of employment and means of livelihood much more than an employer, especially in situations where few jobs exist; as a result the employee has more remedies. These include: (1) a claim for damages which is an important remedy under the Common Law or equity for protection of the interests of the employee. In Agbaje v. National Motors Ltd,\(^{119}\) the court held that no other form of general damages will be awarded apart from the average amount the employee previously earned if he had not been dismissed. (2) The employee is also entitled to compensation for injury or death in the course of employment under Common Law or the statute. (3) The employee can repudiate the contract where the employer is in breach of the contract or because of substantial changes in the condition of service. The employee, however, loses the right to enforce any of the covenants against the employer but he can claim damages. (4) The employee is entitled to recover wages due and unpaid. (5) Equitable remedies such as reinstatement, specific performance, in

\(^{119}\)(1970) 1All N.L.R.21.
special cases involving public servants, according to Supreme Court decisions.

In this section we have analyzed in a skeletal form the content of a contract of employment, that is, the terms and conditions of service, protective legislation concerning social security and processes for termination, including remedies open to the parties. The tapestry of this section would be incomplete, without a discussion, albeit briefly, on trade unions and collective bargaining in balancing interests as regards terms and conditions of employment.

3.4 - TRADE UNIONS

An employee, because of his inferior position in a contract of employment, needs to pool resources with other employees in order to galvanize greater bargaining power. This has given rise to trade unions which engage in collective bargaining for better working conditions and the welfare of workers.

Trade unionism developed in Britain as a by-product of the industrial revolution in the 18th and 19th centuries and came into Nigeria with the colonial rule.\textsuperscript{120} The Trade Union Act of 1973 which regulates activities of trade unions in Nigeria was amended to provide for one central labour organization in response to the multiplicity and to conflicts which characterized trade unionism for some time. Eventually the

\textsuperscript{120} For historical development of trade unions in Nigeria, see A. EMIOILA, \textit{Nigerian Labour Law}, p. 190; according to O. OGUNNIYI, \textit{Nigerian Labour and Employment law in Perspective}, pp. 224-240, modern trade unionism was introduced in Nigeria in 1912, with the formation of the Nigerian civil service union.
Labour Congress was to be registered as the only central labour congress and all trade unions, other than associations of senior staff or employees, were deemed to be members.\textsuperscript{121}

Section (1) of the Trade Union Decree in defining a trade union states that it must be a combination of workers or employers for the established purpose of regulating terms and conditions of employment of workers. Section 55 of the Decree expanded the scope of definition of workers much wider than the narrow definition of the Labour Act. S. 11 which prohibits certain classes of workers from joining or forming trade unions, such as the Nigerian police, prisons, the central bank, army, and such other establishments as the Commissioner may from time to time order.

The State acknowledges the right of association in s. 40 of the 1999 Nigerian Constitution and s. 12(2) of the Trade Union Act makes it an offence for anyone to refuse an eligible person membership. However, s. 3(2) of the Act gives the minister the power to regulate registration; the constitutionality of this provision was tested in the case of Osawe \textit{v. Registrar of Trade Unions,}\textsuperscript{122} whereby the Supreme Court held that the law is in the interest of public order and, therefore, constitutional. This may occasion obvious hardships as one author thinks that junior employees stand very little chance of


\textsuperscript{122}(1985) 1 N.W.L.R (part 4) 755.
persuading the minister to register a new union.\textsuperscript{123}

In addition to their principal function, the regulation of the relationship between employers and employees, the trade unions seek to maintain proper internal administration and discipline among their members, and act as pressure groups in political and economic issues which may affect members and wider society. They adopt various methods in achieving their goals and objectives such as negotiation, lobbying, strikes, picketing, work-to-rule. We shall examine how the Nigerian trade union is involved in collective bargaining and strike action.

Collective bargaining is the process of arriving or attempting to arrive at a collective agreement.\textsuperscript{124} A collective agreement is an agreement in writing for the settlement of disputes and relating to terms of employment and physical conditions of work concluded between an employer, and a trade union representing the workers.

There is a growing acceptance of the process of collective bargaining because of the protective authority it offers the individual worker. Nevertheless, growth is still hampered in Nigeria because many workers do not belong to trade unions or the one to which they belong is weak or ineffectual.\textsuperscript{125} The effectiveness is also hampered by State

\textsuperscript{123} A.A. ADEOGUN, From Contract To Status in Quest for Security, pp. 39 - 40.

\textsuperscript{124} S. 90 of The Labour Act 1974.

\textsuperscript{125} Except where statutory regulations say so, collective agreements are not usually enforceable because of lack of privity of contract between the worker and employer. Privity is the relationship that exists between parties to a contract whereby a person who is not a party to a contract cannot enjoy the benefits nor suffer the burdens of that contract. In other words a stranger to a contract cannot sue or be sued on it. In practice the terms are usually
laws which abolish strikes and seek to imprison trade union leaders.

Section 37 (1) of the Trade Disputes Act gives an elaborate definition of a strike which, among other things, is one of the essential means through which workers promote their occupational interests. It is also an essential tool for a voluntary and free collective bargaining.

In Nigeria, workers cannot go on strike at will, as it is illegal to embark on a strike before a dispute has been subjected to arbitration. The government further has the power to proscribe any association or union of persons in essential services, which engages in a strike. It further reserves the right to detain any person who engages in such strikes. Since essential services are involved, the Government seeks to maintain order and protect the community.

\[\text{Incorporated into the individual contracts of employment.}\]

\[126\text{S.13 of Trade Disputes Act. Strikes were totally forbidden between 1967-1970 and the Government sometime banned them totally, even though it did not deter some trade unions from embarking on strikes. See A. ADEOGUN, From Contract to Status in Quest for Security, pp. 43- 45. Presently the Nigerian Labour Congress is threatening to go on strike in 28 States of the Federation because of non payment of the new salary raise granted by the federal Government. See Post Express, Tuesday, April 13, 1999, “Workers in 28 States Begin Strike”, posted on the Internet (http://www.postexpresswired.com/po).}\]

\[127\text{See Trade Disputes (Essential Services) Act no. 23 of 1976 as amended by no. 69 of 1977. This law extends to private enterprise.}\]

\[128\text{For instance the Nigeria medical association and the Association of Resident Doctors were proscribed in 1985 and the officers were detained.}\]

\[129\text{In 1996 the Government issued Trade Unions (Amendment) Decree no. 26, stating that there shall be a “No Strike” clause in all collective bargaining agreements between workers and employers. It further forbade full time trade union leaders. This raises questions as to the genuine intention of the Government to protect public interest.}\]
In conclusion, the Nigerian trade union has experienced much repression from the State through military Decrees, commenting in 1996, on the relationship of the Government with the Nigerian Labor Congress (NLC), O. Lakemfa said: “The military Government since its return in 1983 has banned numerous unions, twice sacked the NLC and imposed its hand picked sole administrator on the congress, and enacted a string of anti labour laws. Given this picture, it is not surprising that every Government move is viewed with suspicion.” There seems to be a new awakening for the Nigerian Labour Congress as it recently organized a free and fair election to choose its leaders, without interference from the Government and seems free to embark on strikes without the leaders facing detention. Having looked at the provisions on labor we shall now examine briefly the provisions on social life.

3.5 - SOCIAL SECURITY

Social security in our context is concerned with social protection, organized collective protection of the individual against some economic consequences such as loss or suspension of income, poverty, and destitution, arising from certain social risks such as unemployment, maternity, old age, occupational injury or death.131

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131 B. NWABUEZE, Social Security in Nigeria, Lagos, Nigeria Institute of Advanced Legal Studies, 1989, p. 2-3. Social security should be differentiated from social welfare services, which are amenities which the state provides free of charge.
The application of social security is hazy especially in the area of employment, which we examined under Workmen's Compensation Act. In Nigeria, the threat of danger that faces society stems from the absence of economic security, arising from mass unemployment, death and old age. However, the most crucial threat arises from risks of death and old age.

The special cash benefit scheme for public servants in old age, retirement, invalidity or death was instituted under the Pensions Act of 1979. The benefit is in form of gratuity and pension financed entirely by the Government, which is available only to confirmed permanent public servants. The shortcomings of this scheme arise from galloping inflation which reduces daily the purchasing power of money and the long delay involved in receiving the funds.

The provident fund was established by The National Provident Fund Act in 1961 to regulate pensions and gratuities in the private sector. It is at the discretion of the employer to adopt the scheme which is financed by compulsory contributions from the worker (deductible from his salary) and the employer. The scheme has been found unfavorable to the worker, in view of very low interest and the bureaucracy involved in

\[\text{References:}\]


133 Pension is paid after retirement at 60 years of age or 35 years of service, and one is entitled to gratuity after 10 years of service. The amount payable is related to salary level.

getting paid.

Most of the protection for old age and death for those employed in the private sector is based on voluntary private schemes arising from collective agreements which depend on the benevolence of an employer and the financial standing of the enterprise where they exist. The schemes vary from one enterprise to another as there is no law prescribing a uniform standard. However, employers are advised to insure the schemes in case of insolvency of business.

Furthermore, there is no law in Nigeria giving an individual the right to medical care, housing, or unemployment cash benefit. It depends on the conditions of service offered by an employer; otherwise, one depends on the extended family, social clubs and charitable organizations. Some individuals take out life insurance for themselves and their families, but not everyone can afford this. In Africa, Asia, and other developing countries, the extent to which social security is able to fulfill the objective of relieving poverty is limited by many constraints, especially financial ones.

From our discussion we can conclude that social security does not exist in Nigeria, but some protection in cases of old age, death, invalidity, sickness, maternity and employment injury does exist for certain classes of employees, but not for the self-employed. It is obvious that the existing schemes do not measure up to the minimum international standard to enable Nigeria to be qualified as a country that provides social
security.\textsuperscript{135} Having completed the analysis of the Nigerian labour law and social life, we shall now summarize some pertinent points which arise from these discussions.

3. 6 - ASSESSMENT AND CONCLUSION

We began this chapter by looking at the traditional Nigerian concept of work and saw that the dignity of labour was held in high esteem and that the concept of paid employment was foreign to pre-colonial Nigerian society. This helps explain the poor attitude to work, and the low regard for paid employment.

The mixed blessings brought by Western culture influenced the Nigerian traditional set up resulting in positive and negative dynamics operative in the socio-economic sphere. With the transplantation of the English laws into the Nigerian superstructure, the ethos and values which led to the development of the laws in England may not all have been considered in the application of the laws in Nigerian society.

Furthermore, we noted that the contract of employment exists within the sphere of the general law of contract. Following the principles governing employee and employer contracts, the parties are free to mold the relationship as they deem fit, subject however to rules against public policy and illegality. We saw, however, that the law loses sight of economic and social conditions which make this freedom fictitious and somewhat hallow. Lack of freedom creates inequality so that the employee is constrained

\textsuperscript{135}B. NWABUEZE, \textit{Social Security in Nigeria}, p. 34.
to accept some unfavorable conditions in order to maintain a livelihood, especially in Nigerian society where there are so many workers (with a large number unskilled) to fill the few available jobs.

The application of the ordinary rules of contract to a contract of employment sometimes negates the exceptional nature of the latter which involves the dignity of the employee who offers his services in return for wages. This is, for instance, reflected in the Common Law defenses in compensation claims for injury, termination of employment, lack of duty on the part of employer to provide work for the employee provided wages are paid, and the inability of the courts to grant equitable remedies such as reinstatement to protect job security. These situations challenge the law to go beyond the ordinary rules of contract to consider the dignity of the human employee. This has resulted in inadequacies in the Nigerian labour law to protect the right of the employee adequately.

The security or loss of an employee’s job, among other factors, depends on the process of termination of employment. Following the ordinary rules of contract, an employer can terminate the appointment of any employee, provided the contracted notice period is adhered to. The law grants only a remedy for an action for wrongful dismissal regardless of the unfairness of the circumstances surrounding the termination. The power of termination can easily be abused or manipulated by an unscrupulous employer who may be tempted to use any pretext to end the employment relationship, such as
giving the employee the wrong job to do, or withdrawing his responsibilities, giving him nothing to do but still paying him, in order to frustrate him to the point of resignation.\footnote{O. OGUNNIYI, \textit{Nigerian Labour and Employment Law in Perspective}, p. 330.}

Even where damages are awarded for wrongful termination, the remedies in damages are limited to the notice period (S. 11 of \textit{the Labour Act}), which is a very paltry sum that may not cover even the costs of litigation. For senior officers outside the scope of the Labour Act, the courts award a reasonable sum which is sometimes the equivalent of a three to six months notice period. In view of the meager sum of damages awarded, coupled with the long period of time involved in litigation in Nigeria, many employees are unwilling to vindicate their rights in court, thereby exposing them all the more to ruthless employers.

The Supreme Court of Nigeria, aware of the predicament of employees, has taken bold decisions in favor of public servants. It made an equitable order for reinstatement of university staff whose services were terminated in the case of \textit{Olaniyan \\& Ors v. University of Lagos}.\footnote{1985 2 N.W.L.R 599} Delivering judgement in the case Justice Karibi Whyte said that “the law has arrived at the stage where the principle should be adopted that the right to a job is analogous to right of property.”\footnote{1985 2 N.W.L.R at 685.} The court held that where damages are inadequate to compensate for this right, an order for reinstatement should be made. In the future, the Court may extend this principle to employees in the private sector, until
then they remain unprotected. The Labour Act provisions on termination merely adopt the ordinary rules of contract. Suggestions have been made on how to remedy this situation. According to O. Ogguniyi,

considering the state of our laws at the present time and the ease with which employment may be terminated, (thus rendering job security an illusory thing) there is need to provide adequate remedy for unfair dismissal in circumstances where, though, the dismissal is not necessarily wrongful in the legal sense, the facts and circumstances contain all the ingredients of unfairness.\(^{139}\)

The State has intervened through legislation sometimes to raise the status of the employer, and at other times to protect its own interest. For instance, in 1984 the Federal Military Government issued a Decree which gives the appropriate authority *inter alia* the power to dismiss, remove, or compulsorily retire public officers. The same Decree bars courts from entertaining any proceedings or acts purported to be done under the Act. Under this Decree, the security of employment of a public officer seems to have been given a death blow and was seen as a reaction to the Supreme Court decisions in *Olaniyan & Ors v. University of Lagos*.\(^{140}\)

*The Workmen’s Compensation Act* was a bid to relieve the obstacles in the way of an injured employee receiving compensation. Despite the reviewed graduated sum of benefits payable, it is still grossly inadequate and many court orders do not seem to

\(^{139}\)O. OGUNNIYI, *Nigerian Labour and Employment Law in Perspective*, p. 333. For instance in the UK remedies for unfair dismissal are provided for in Part V of the Employment Protection Consolidation Act 1978.

take cognisance of spiraling inflation in Nigeria. Furthermore, the narrow scope of the *Labour Act of 1974* poses a problem, as it circumscribes the application of the Act in its narrow definition of a "worker." It has led to inconsistencies in judicial decisions on criteria for benefits for executive employees, since many employees seek protection under the Common Law or individual contracts of employment and some others remain unprotected by statute.

The State has been very concerned with protecting "public interest," yet it does not allow the dynamics which will facilitate collective bargaining. The government consistently intervenes with collective bargaining (even though it supports it in theory) by setting up commissions to review conditions of employment for public officers. Recently, the minimum wage of public servants was raised, this periodic intervention continues to inhibit and disrupt the effective functioning of collective bargaining machinery, especially in the private sector. On the role of the State, N. Nworah writes:

> The government no longer serves as a watchdog of industrial relations but has become a major actor committed to ensuring that the growth and development programs of the nation are not negated by class action. [...] public policy must be directed towards cautious government regulation which promotes collective bargaining.

Unfortunately, the government does not have a unified policy for the private sector and yet it has a direct bearing on the private sector which sometimes uses the

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141 This was a reaction to the Supreme Court decisions protecting public servants.

government standard to measure the manner it treats its own workers. Whenever the
wages of public servants are increased, the employees in private sector clamor for an
increase also. Since the private sector is primarily geared towards maximization of profit,
the condition is very much dependent on the viability of the enterprise and the
benevolence of the employer. Since the Government does not intervene, the employee
is at the peril of the employer especially where fewer jobs exist than workers.

As to social security, there is no adequate State protection in cases of old age,
unemployment, injury or death. The present arrangement in Nigeria cannot satisfy the
standard of the International Labour Organization. Social security is still very much
dependent on the extended family value system.

In addition to the shortcomings in the law and attitude of the State, the general
attitude to paid employment is poor, as many workers are interested in the wage without
a corresponding commitment to duty, worsened by the penchant for material wealth. It
is obvious that the Nigerian civil laws on employment have been influenced by the
socio-economic, political and cultural milieu of those who make and apply the law.
There seems to be a dichotomy between the application of the law as it stands in the
statute book and the dynamics of socio-economic problems of daily living. Since the
Church has adopted these laws, to what extent does it uphold the dignity of the worker
and its other social principles? We shall examine these issues in the next chapter.
CHAPTER FOUR
APPLICATION OF C. 1286, 1° IN NIGERIA

INTRODUCTION

In order to achieve the values which the Church intends to promote in c. 1286, 1° administrators of temporal goods must merge together relevant principles arising from both the Civil Law and the social teachings of the Church in a concrete societal context. In other words, the social teaching of the Church, and the civil laws relating to labour and social life of any particular State are normative.

Within the overall context of c. 1286, 1° we analysed, in the previous chapters, the relevant principles concerning the social teaching of the Church, the scope of c. 1286, 1°, and the Nigerian civil laws on labour and social life. Since administrators of temporal goods are charged with the application of this canon, this chapter will focus on how c. 1286, 1° can be applied within the Nigerian socio-economic context. In other words, the Nigerian Church has an important role to play towards the realization of the values which the canon seeks to implement. We shall, therefore, examine the role of the Church as an employer; followed by a discussion on employees of the Church which includes the laity, religious and priests. An examination of some internal and external causes which affect the application of 1286, 1° will conclude the chapter.
Administrators of temporal goods as part of their duties employ workers within the Church. This explains the reason for the mandate given specifically to them in c. 1286, 1.° These administrators act on behalf of various public juridical persons which they represent and in fact apply the law in concrete life situations. In this section, we shall examine how the Church in Nigeria seeks to implement the requirements of this canon, and its relationships with its employees, laity, religious and priests.

There are few publications and studies concerning this topic, so one must often rely on unpublished sources.¹ In presenting a paper on issues of personnel in the Nigerian Church, Monsignor H. Adigwe noted the same problem: “I have not had the advantage of previous seriously relevant studies and publications. A lot of primary investigations and research were therefore necessary in order to put down any practical thing that is not mere speculative. The issue is both sensitive and unexplored.”²

Administrators of temporal goods as Church employers are expected to perform their office as good and responsible stewards by giving equitable and just working conditions to Church employees. These are achieved within an administrative system which, according to F. Almade,

¹For this study, we conducted personal interviews with Church employers and workers in the chancery offices of the Archdioceses, of Lagos, Onitsha and Kaduna, the Catholic Secretariat of Nigeria, Justice and Peace Commissions and some religious institutes.

determines the salary scale, benefits package, responsibilities and duties of all parties, grievance procedure and processes of evaluation and promotion. Setting such a scale includes the participation of employers, employees and those whose funds pay for the ministries and their personal costs. This is concluded with a signed agreement between employer and employee. ³

A Church employer in Nigeria is required to set up an administrative system similar to the above in applying the Nigerian civil law on employment. A general overview of employment within the Nigerian Church indicates three categories of employers.

The first category of Church employers⁴ would be those institutions (mostly dioceses, parishes and few religious institutes) that employ a rather large number of staff, as in hospitals, clinics, chanceries, and schools. Most of these employers issue letters of appointment to workers, enumerating such terms as hours of work, basic salary and conditions of service. The conditions of service⁵ have various provisions such as eligibility for appointment, promotions, grounds for termination/dismissal of appointment, resignation, leave and holiday periods, gratuity, family allowance, and salary.

Some of these provisions, however, at first sight do not reflect the principles contained in the social teaching of the Church and the spirit of c.1286,1.⁶ For instance,

³F. ALMADE, Just Wages for Church Employees, p. 142.

⁴The employers at this category are administrators in charge of public juridic persons such as diocesan bishops and superior generals. Sometimes this function is delegated to others. Many religious, priests and a few lay people could fall into this category.

⁵The conditions of service for teachers in Catholic schools, chancery personnel, catechists, secretarial staff were used.
the conditions of service for teachers in Catholic schools in one archdiocese provide that
"new teachers or staff shall be on temporary appointment for a period of one year during
which they shall be on probation. [...] While on probation the teacher’s appointment may
be terminated by either the proprietor or anyone acting on his behalf without any notice
or salary in lieu."

In another archdiocese, "teachers are deemed to have forfeited their salaries and
other remunerations on dismissal, termination of appointment, resignation or refusal to
accept appointment or transfer." For dismissal, the teacher after being given two series
of warnings in writing and oral would be given opportunity to "exculpate himself."

Teachers within the institution shall be eligible for gratuity after five years of service.
On maternity leave, the same conditions provide for a period of 6 weeks and go on to
state, "Persons with twelve months continuous service as teachers previous to
confinement are eligible for leave with full pay. Persons pregnant without proper Church
marriage or dispensation by the authority will be granted maternity leave without pay for
the period of confinement not exceeding eight weeks."

In light of the above provisions, a teacher is expected to be on probation for a
period of one year and could be dismissed without notice or salary in lieu within the
period of service, regardless of the social consequences on family and society. In another
vein, teachers could lose all their entitlements and salary in cases of dismissal,
termination or resignation, even where the person has served for more than five years.
APPLICATION OF C. 1286, 1o IN NIGERIA

In other words, the teacher may not be free to resign the appointment. A teacher is expected to "exculpate himself"; one wonders if this would be done before the one who accused the teacher. Persons in proper marriage are granted six months maternity leave with full pay, while unwed mothers are granted eight weeks without pay. The unwed mother has lost her right to pay during maternity leave because of her moral standing, without regard to any surrounding circumstances and the welfare of the baby. Respect for dignity and rights of persons may be in danger of neglect in these situations.

In addition to observance of civil law, many Church employers use the government salary scale. For instance, "teachers shall be paid salary and allowances for school work according to [...] State salary scale as laid down by the ministry. Leave grant to be included in the month's salary before the long vacation, according to the percentage of [...] State ministry."

The scale for salary and other fringe benefits, where they exist, is based on the government standard which, as we saw earlier, is not adequate. The principles for setting just wages such as the needs of the worker, common good, employer's ability to pay, may be overlooked especially in cases where the Church could afford to pay more than the government. Certain dioceses give a bonus to their workers to augment the rate paid according to the government standard.

None of the conditions of service under review had adequate provisions on fringe benefits such as transport, house rent. One document had provision for a monthly
family allowance of fifty naira. Since the amount of fringe benefits is small and fixed, it becomes insignificant with time because of inflation. There were no provisions on health insurance, safety and welfare at work, grievance procedure in case of abuse of office by the employer. On membership and formation of trade unions, the Church as employer discourages its workers from forming trade unions. During a personal interview, we were informed that workers are not allowed to form unions, but that they can meet to discuss their welfare. A certain condition provides that “no leave of absence should be granted to teachers who are members of local council to attend any meeting during school hours.” This provision could bring conflict with the State.

The second category of Church employers would include those institutions that employ fewer numbers of staff, such as some parishes, health clinics, religious institutes (within their institutes). The employer enters into a written agreement with the workers on basic issues such as salary and job description. Sometimes, if the numerical strength of workers increases, the employer would issue a condition of service which may not be as extended as in the first case. However, the majority of staff under this category would be mostly cooks, drivers, cleaners, secretaries, artisans. The relationship between employer and workers is immediate. They are mostly hired and fired at the pleasure of the employer who, in this case, may be the one in charge of the project run by the juridic person. The employer usually offers employees accommodation and board, which reduces further their salary. The employer assists financially in times of family needs
such as bereavement and sickness.

In the third category, the Church employs qualified highly skilled labour. Here, it takes steps to enter into contracts with the staff, sometimes through the services of a lawyer, and seeks to pay all the fringe benefits and an adequate salary.

The interviews conducted during our studies covered the first and second category of employment on the general condition of workers and their treatment. Although Church employers as responsible and good stewards are aware of their duty towards workers they report that they are forced to act otherwise because of circumstances. For instance, an administrator of a Church agency who is a priest noted: “I would like to see every staff earn a living wage, live in decent houses, etc. This can only happen if the present wages are doubled.” Commenting on just wage, F. Almade says that a just wage is the minimum needed to permit the worker to receive all that is needed for the full and integral development of the human person.6

Many Church employers observed that the present condition of their workers is far from being just, as many of them are underpaid in terms of salary and there are no social benefits, or where they exist they are inadequate. A bishop, commenting on the same point, observed that “there are many jobless people and so they are satisfied with anything; it is cheating but what can you do under the circumstance?” In the words of G. Ehusani,

6F. ALMADE, *Just Wages for Church Employees*, p. 142.
one of the most striking instances of injustice within the Church is the widespread exploitation of Church workers, especially women religious, catechists, clerks, cooks, stewards and drivers. There are no pension schemes for workers in many dioceses, parishes and mission institutions, yet unlike other private organizations which lack pension schemes, the salaries and allowances paid to workers in many Church institutions do not compensate for lack of a pension arrangement. Instead the salaries are outrageously low. How can the Church talk about just wages to employers or help secure better conditions of service for government workers when some of her most faithful employees are literally starving to death.7

Most employers complain that they have no money to pay a just wage and social benefits to their workers since the Church is a non-profit organization. Even when they fix the wages, there is no general uniform standard for setting up conditions of service. A worker complained of “tribal assessment or classification among workers with equal qualifications, which results in different salary scales.” One priest thinks that “in spite of prevailing circumstances, the social teaching of the Church could still be implemented in large measure.”

Most employers within the Church are not investing enough money towards employment, something that affects the caliber of staff it employs. Professionalism is rather low in the Church service, since many of those employed are not efficient. A priest lamented that “many times workers are employed in the Church out of sympathy. On the long run this works against discipline, efficiency and productivity. The Church often is unable or unwilling to invest enough resources into projects so as to employ qualified staff and pay them well.”

7G. EHUSANI, A Prophetic Church, p. 130.
In the same vein, the attitude of most Church employers in setting down conditions of service is sporadic. For instance, on the manner of employment, most workers complained that there are no written terms of employment. In large established Church institutions, conditions of service and personal letters of employment are given to the staff and a letter of acceptance serves as acceptance of the terms of the contract. However, some chanceries have no letter of appointment for most staff like secretaries, typists and messengers. Conditions of service are often not spelled out or are done orally.

The word "contract" seems to present a red flag to most of the Church leaders in Nigeria, especially in relationship to religious congregations. One bishop who is a canon lawyer advised us while conducting this study not to use the word "contract" but rather "agreement", as the word "contract" puts most Church leaders on their guard. Monsignor Adigwe seems to confirm the same attitude: "It appears that some bishops and some superiors are not yet quite at ease with such written agreements. The reason may be sought in the fact that for a good number of our people, such agreements seem to indicate a high degree of lack of trust". Another bishop says that contracts curtail freedom in the employment relationship as they do not give much room for changes and negate the faith dimension in the relationship. There is also a general understanding that those agreements would not be the subject of litigation in court. In cases of breach of the

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terms of employment within the Church, the parties most times decide to settle amicably or the Church pays the worker off to avoid scandal. Sometimes, the worker does not have the means to go to court. In most cases an aggrieved worker brings the faith dimension into the relationship. Some workers complain that there is no proper job description, something that reduces productivity, creates confusion among workers, and discourages initiative and proficiency for skilled workers.

4.2 - EMPLOYEES OF THE CHURCH

Employees within the Nigerian Church are those who are in the service of the Church under any contract — oral, written or implied — and the Church has the right to give directions on how the work is to be done. Volunteers, even though there are many in the Nigerian Church, are not workers. Among the Church workers we find non Catholics and non Christians⁹, although the majority are priests, religious and laity.

Different policies seem to apply in the Church for the employment of lay people, religious and priests. As Monsignor Adigwe noted: “The first thing that strikes one on looking at personnel administration in the Nigerian Church is that completely different principles are applied for priests, religious and laity. These three arms of Church

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⁹For instance non Catholics (not the fundamentalists) are employed as teachers in Catholic schools. Non Christians such as Moslems are employed as drivers, security guards, sometimes as cooks, but usually in specialized areas.
personnel are living in three different worlds.\textsuperscript{10}

4.2.1 - The Laity

The Church in Nigeria operates on a hierarchical model of the Church so much so that the laity regard it as father's Church or the priest's Church ("Uka Fada" in the Ibo language). The Church is viewed from the perspective of the pope, bishops, priests and sometimes religious. The immediate reaction on mention of "Church workers" is to think of lay people who work for the Church. Unfortunately, they are the bulk of the Church workers with the least foreseen conditions of service. According to Monsignor Adigwe, "lay people may have a lot to complain about in the areas of training, equal treatment in employment opportunities and adequate wages."\textsuperscript{11} The majority of lay people do not view themselves as members of the Church with rights and responsibilities, they gratuitously receive from the clergy whatever the priests are willing to offer. Only very few lay people occupy a position of administrator in the Church.

Speaking on the rights of lay people in the Church, A. Echema noted that "indeed, Roman Catholics in general are often well aware of their responsibilities, but they are woefully unaware of their correlative rights. Of course, to many people it is going to come as a great surprise that they have any Christian rights other than the right

\textsuperscript{10}H. ADIGWE, "Issues of Personnel in The Nigerian Church", p. 2.

\textsuperscript{11}H. ADIGWE, "Issues of Personnel in the Nigerian Church", p. 12.
to a Christian burial.” A lay worker complained that “material and intellectual poverty is the bane of the Nigerian employees. Employers take advantage of this.” Another worker also complained, “no motivation to work, poor salary, no medical or transport allowances.”

Some of the workers seem to take consolation in the spiritual benefits that accrue to them from working in the Church. As one of them put it: “yes, but my reward is in heaven.” This is the category of the staff of the Church who see working for the Church as part of their being Church. They consider it as part of their faith life to work in the Church, so that work is not reduced to material ends. A priest who works in a Church agency confirms this: “Yes. Our staff are not just staff. We have a pastoral responsibility towards them.”

In spite of these observations, there is a general feeling among employers within the Church that the attitude of the lay people to work is poor. Many of them are more interested in what they will get than in what they will give; one bishop noted that “the workers are interested in money, and they waste office materials.” This could contribute to some of the reasons why the Church is slow at training and entrusting lay people with important jobs, since most of them have not acquired the same level of commitment


\[13\] This is with respect to many catechists and dedicated lay people who serve the Church tirelessly in many outstations and different capacities in the parishes and other ministries. The poor attitude is plausible because the situation in the wider society affects the Church since the workers form part of the society. Lack of good conditions of service also affects productivity.
characteristic of priests, religious and members of lay institutes.

4.2.2 - Religious

Religious often offer many voluntary services in the Church without remuneration; in fact, they offer a cheap labour force to the Church. A good number of the laity regard female religious as “the female arm of the hierarchy.” However, in terms of remuneration and conditions of service, they are very poorly treated without basic conditions. There is a general unwillingness on the part of Church leaders to apply the prescriptions of c. 681 §2 whenever they entrust projects to religious congregations. According to H. Adigwe, “it often happens that Christian communities entrust some projects like schools and hospitals to religious institutes without any written agreement and guarantee for funds.”\textsuperscript{14} If the rights of religious institutes are not protected in this regard, how much more would the interest of an individual religious employed by the Church be safeguarded. Most times there are no fixed wages, no health insurance, and other social benefits. At most, in times of crisis on the part of the individual religious, the employer gives some donation to her/his religious congregation.

Due to lack of written agreements and dynamics in the exercise of authority within the Church, a religious employee in a diocesan project, is sometimes caught between an order from her religious superior and one from the diocesan bishop. The

\textsuperscript{14}H. ADIGWE, “Issues of Personnel in the Nigerian Church”, p. 11.
Nigerian Church is still very much dependent on religious institutes for the running of major projects such as schools, hospitals, orphanages. Religious institutes are just beginning to establish their own projects.

4.2.3 - Priests

Priests who are employees outside their diocese of incardination are provided for by the diocese or the agency for which they work. The remuneration for the priests in terms of cash may not be much, but it is sufficient since they are usually provided basic needs such as food, accommodation, fringe benefits for medical care, transport. The cash given to him is more pocket money than salary. There is a general complaint that many of the priests are far removed from the economic reality of the suffering masses and sometimes tend to be unrealistic in setting down conditions of service for their employees. In fact, the Nigerian Church is dominated by clericalism, as noted by the Evaluation Report on Justice, Development and Peace Program which has this to say: "The team found it necessary to note that the issues of injustice within the Church keep recurring. In fact, majority of religious (male and female) complained of undue marginalization by the priests. The lay people on their part had a catalogue of complaints on issues of honesty, equity and distributive justice within the Church."15

H. Adigwe thus summarizes the attitude of the Church on employment: "The order of employment generally is that if a priest is available he gets the job, next will be the religious, and then the lay person. It is not uncommon to see where a priest or religious with only a few years of experience is placed in charge of Church institution even though a qualified competent lay person with longer years of experience is available."  

From our discussion some salient points can be noted. The fixing of terms of employment depends on the benevolence of the employer within the context of the available resources. Because of the high rate of unemployment, employees within the Church do not have much say in determining conditions or terms of service. Most times, employees are not treated as part of the agency in which they work; their input is not asked for in taking decisions which affect them. In some cases there are oral contracts in others the government standard is used, which is not usually adequate.

In fixing the terms of employment the personal interest and dignity of the worker is not always respected. The procedures for dismissal and termination of employment do not always consider the social conditions and circumstances surrounding the employee. The procedure most frequently used is payment in lieu of notice. In matters of allowances and benefits, the moral standing of the worker may be put into consideration.

In spite of its limited financial resources, the Church as employer offers job

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APPLICATION OF C. 1286, 1º IN NIGERIA

opportunities to many unskilled workers who would otherwise be unemployed. However, many employees are not dedicated to their duties and sometimes are more interested in the pay rather than in the work, which could explain why we find some stringent terms concerning the latter’s commitment to duty.

The Church as employer in the Nigerian society experiences tensions posed by the socio-economic situation. For instance, between employing many unskilled workers with poor working conditions, or a few skilled ones with proper conditions. Church employers hold various views. According to the chancellor of an archdiocese, “The archdiocesan secretariat tries to strike a balance between the need for skilled staff and helping people.” Another priest said, “employ the few at a good salary and appropriate conditions of service. Employ the unskilled ones and train them.” While a religious responded that “many unskilled ones should be employed rather than leave them without a means of livelihood. The Church must not forget the command of the Lord to help the poor.” Furthermore, the Church employer is called to maintain a balance between the laws of the State and the principles taught by the Church in a heterogenous society such as Nigeria, without compromising the latter. For instance, a law which contravenes the right of association (trade unions) or discriminates against women comes to mind. The judgement and discretion of the employer is pertinent in these concrete situations.

Following our analysis, there is a consensus among employers and employees within the Church that the treatment of Church workers is not sufficiently just and
equitable. The social teaching of the Church and canon law on employment are not always specifically considered in employment relations, where contracts are made. We shall now consider some of the internal and external factors responsible for this situation.

4.3 - SOME INTERNAL AND EXTERNAL FACTORS

WHICH AFFECT THE APPLICATION OF C. 1286, 1°

4.3.1 - Internal Factors

Among the internal factors, that is, the causes which are found within the Nigerian Church, we shall discuss the Christian faith, inadequate human and material resources, and mode of operation.

4.3.1.1 - Christian Faith

The Christian God revealed in Jesus is yet to find deep roots in the lifestyle and ethos of the people. The Catholic Church in Nigeria, its manner of administration, its laws and liturgy, remain largely foreign. This is why John Paul II in his 1998 visit to Nigeria called for inculturation:

The Synod Fathers also called the Church in Africa to be actively involved in the process of inculturation [...]. I encourage you therefore to do all that you can — liturgically, theologically, administratively — so that your people would feel more and more at home in the Church and the Church more and more at
Many Catholics do not deeply understand the Catholic faith. For many, the practice of faith is reduced to fulfilling Sunday obligations. God is yet to be incorporated into their daily lifestyle. This is unlike what we found in the African traditional setting where God lived and moved among his people; for fishermen, he lived by the sea, for hunters he dwelt in the woods and for farmers his abode is the land. In other words, few Nigerian Catholics have been able to bring the same notion of God into their workplace, either as employers or employees, where fair play and justice will prevail.

According to Archbishop J. Onaiyekan, “one of the greatest challenges to the Church in our days is to make the laity aware of the fact that all their legitimate activities in the world can and should be acts of service and worship to God.”

Similarly, canon law is also largely alien to most Catholics even to some administrators responsible for its application. Many of the administrators are not aware of the provisions of c. 1286. Some civil lawyers who are advisers to the Church are not knowledgeable in canon law. According to N. Obiagba, “[...] Canon Law is a living reality in our Nigerian society. Ignorance of this especially on the part of our Catholic lawyers and advisors — ‘we do not know whether there be such a thing as Canon Law’

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18 G. EHUSANI, A Prophetic Church, p. 32.

APPLICATION OF C. 1286, 1° IN NIGERIA

may no longer be tolerated as non-culpable." On the other hand, canon lawyers are few, and those who are priests are often over burdened with pastoral responsibilities. The few religious and lay canonists are insufficient to meet the required needs.

Some of the Nigerian indigenous clergy having stepped into the shoes of early missionaries who were an elite in the pre-independence era, have continued to maintain the status, resulting in a gap between the Church leaders and workers. The comfortable lifestyle of most of the Church leaders does not challenge them enough to make concrete changes in the working conditions of Church personnel. G. Ehusani comments:

The form, organization and structure of our seminaries, convents, parishes [...] are essentially European and often superfluous. These structures not only make an elite group out of the clergy and religious often alienating them from the concrete socio-economic conditions of their people, but they also need continual financial input from foreign agencies. 21

4.3.1.2 - Inadequate Human and Material Resources

The Church is not a profit-making organization as it relies on the financial contributions of the members. In a society experiencing economic hardship such as in Nigeria, the contribution of the members to the Church would be equally affected since nemo dat quod non habet. Hence it lacks adequate human and material resources to facilitate the implementation of c. 1286, 1°, both in terms of a just wage and the training


21G. EHUSANI, A Prophetic Church, p. 71.
of its personnel. In the past, the early missionaries received financial support from their countries and thus put the mission churches on the receiving end. With the transfer of leadership to the indigenous clergy, the Church began to look inwards for financial support, something that has made the resources to be largely insufficient for its many needs.  

Following the adoption in c. 1286,1°, the Church administrator is expected to know the Nigerian civil laws on labour and social life, which include constitutional provisions, statutory laws, by-laws, and case laws. The Church is burdened with such numerous financial needs that the training of its administrators does not seem to be the priority at this moment. The few trained canon lawyers, mostly priests, are overloaded with various other pastoral responsibilities.

4.3.1.3 - The Mode of Operation

In the drafting of c. 1286,1°, the consultors sought to implement the promotion of pastoral renewal and reform initiated by the Second Vatican Council. Some of the pertinent reforms are (1) the reliance on the image of the Church as the people of God; (2) the recognition of the fundamental equality of individual Christians and the rights and responsibilities which flow from baptism and confirmation; (3) the enhanced role of the lay persons in the Church; (4) promotion of accountability in regard to

22 This is not a justification for the present attitude as better conditions of service can still be offered.
temporalities; (5) the implementation of structures of consultation at all levels of the Church; (6) the shift from an emphasis on authority to juridically recognized functions of service. These principles are fundamental for an effective implementation of the principles of c. 1286, 1°.

The mode of operation of the Nigerian Church indicates that the image of the Church has not shifted from the hierarchical model of the Church to that of the People of God. Clericalism on the part of the Church leaders is present in many areas of the Church’s life including employment relations. Most times priests are saddled with too many responsibilities which could well be performed by a religious or a lay person; for instance, the position of coordinator of Justice and Peace Commissions in many dioceses has been assigned to priests, some on a part-time basis because of their numerous other responsibilities, when there are qualified and willing laity and religious who can occupy the position.

The deferential treatment given to the clergy and religious in terms of employment and other aspects of life in the Nigerian Church is against the spirit of the Code, which propagates equality and dignity among all Christ’s faithful (cc. 204, 208, 225). Specifically, AA 22, a major source of c. 1286, 1° and c. 231, seeks to ensure the right of the laity to proper training and adequate remuneration in the Church. In the same vein most lay members of the Nigerian Church do not exhibit the same commitment identified with the clergy and religious, as they do not identify themselves as part of the
APPLICATION OF C. 1286, 1° IN NIGERIA

Church with rights and responsibilities.

The general principles of administration which include consultation, accountability, and respect for the principle of subsidiarity, have not yet been realized in the Nigerian Church. For instance, primary administrators such as bishops and superiors general, who should be involved in supervision and coordination, are often involved in direct daily administration. In most cases, the other administrators such as financial officers, exist on paper without work, so that their potential and gifts remain untapped. As H. Adigwe puts it, “In Church institutions, you find that the head of the institution also performs the function of personnel manager.”23 The role of supervision such as is stipulated in the Code (cc. 325, 392, 1276, 1279), may be jeopardized because the administrator is involved in daily administrative activities.

Without prejudice to c. 1279, which maintains that the administration of temporal goods (which includes hiring of services) belongs to the one directly in charge of the juridic person to whom the goods belong, there is need for consultation and cooperation by administrators in hiring the services of Church workers and also in setting down conditions of service. As the Justice, Development and Peace Evaluation Report, observed, “the Church needs to take seriously its stewardship concept which seems to have been misunderstood by many. This needs to be reexamined in respect of the human resources within the church and attitude towards them, their job/services,

appropriate remuneration etc. Without clearly set goals and policies on labour relations, it will be almost impossible to protect the rights of employers and ensure harmony in the work place.

4.3.2 - External Factors

The external factors which affect the application of c. 1286, 1° are the dual legal system, foreign legal concepts, inability of contract to protect workers' interests and the values of the social teaching of the Church, an affordable high cost of administration of justice, non justiciable constitutional provisions on labour, and failure of the state to create employment.

4.3.2.1 - Dual Legal Systems

The Nigerian civil laws on labour and social life are based on the received English Common Law on employment. The Common Law principles gradually evolved from the practices and ethos of the British and developed to become a body of laws serving the needs of the people. The imposition of the Common Law on Nigerian society upset the values and development of the indigenous Nigerian laws on which it was organized for generations before the advent of the British colonial rule. This has resulted in a rather confused state of affairs in the traditional Nigerian setting and in the Western

APPLICATION OF C. 1286, 1\textsuperscript{o} IN NIGERIA

oriented setting, as on the one hand the average Nigerian is guided by the customary
cultural values and laws, and, on the other, the same person is expected to know and
apply the received English law which is totally foreign.

In the words of A. O. Chukwura, "the traditional Nigerian society of subsistence
economy and the new society of modern industrial and commercial life style have each
its own culture and largely its own law. At the same time, these separate cultures and
legal systems interact and merge in complex and intriguing patterns."

The situation is further complicated by the fact that customary law is largely
unwritten and ought to pass some tests before it can be applied in the Nigerian courts.
For instance, it must not be repugnant to natural justice, equity, and good conscience nor
incompatible either directly or by implication with any law for the time being in force.

This process reduces possible integration of the two systems as the received law is given
priority while the customary laws practiced by the majority remain unrecognized except
for the few which have passed the test.

Much of the English Common Law is divorced from the societal facts of
Nigerian society, which is evidenced in the general apathy shown towards State laws.

\footnote{A. O. CHUKWURA, "Law and Society", in C. O. OKONKWO (ed.), \textit{Introduction to
Nigerian Law}, p. 411.}

\footnote{It is outside the scope of this study to discuss customary law in Nigeria. For further
reading see, G. EZEJIOFOR, "Sources of Nigerian Law", in C. O. OKONKWO, (ed.),
\textit{Introduction to Nigerian Law}, pp. 41- 53.}

\footnote{The customary laws are now applied in customary courts.}
APPLICATION OF C. 1286, 1º IN NIGERIA

This fact explains why there is a general apathy and disenchantment towards most Government legislation. Commenting on this situation, T. Aguda said:

In this regard we come face to face with the tragedy of divorcing legislative programmes from the social facts of the society in which they are expected to operate. [...] true it is that established societal convictions and ways of life could be molded, modified or even changed by the law, but I have no doubt that it requires far more than mere promulgation of legislations, if such laws are to have the expected beneficial effects. The disobedience by the masses to one piece of legislation only, is a great slap on the face of the law [...] and when such disobedience is in respect of a large number of social legislations, the situation is bound to be fraught with danger. [...] One obvious result is mass indiscipline in society, the type of which the Head of State himself was constrained to make reference to in his now famous Jaji declaration. 28

T. Aguda is advocating that the law should arise from the societal needs of the people who should be prepared and instructed in order to ensure obedience to it, otherwise it remains on paper. The apathy towards English laws is partly due to lack of understanding the values which the laws seek to implement and convictions for them. The lack of understanding stems from ignorance of the English language which is the language of the civil law, known only to a few educated persons.

4.3.2.2 - Foreign Legal Concepts

The Common Law concepts are equally foreign. For instance, the concepts of paid employment and of work, are different from the agrarian traditional Nigerian concepts of work which was communal and could not be compensated adequately in

monetary terms. F.S. Fiorenza, reflecting on the secular concept of work, says that "on
the one hand, work is seen as important for the individual’s self concept, sense of
fulfillment, and integration into society. On the other hand, there is an increasingly
instrumentalist attitude toward work: persons work not so much for the sake of work
itself, but for the rewards of work."\textsuperscript{29} The instrumentalist approach to work is in line
with what Pope Leo XIII referred to as the necessary ends of work which are geared
towards the preservation of one’s life.

Due to the agrarian concept of work, many farmers were unwilling to abandon
their farms. According to A. Emiola,

the average Nigerian was, until the end of the last century, reluctant to take up
paid jobs. Those who ventured to explore the uncharted sphere of wage-earning
employment were largely unskilled and hence unstable. The majority of the
labour force consisted of the casual laborers who took time off from their
farming to earn some money from temporary employment to pay their tax or
meet their other family financial commitments.\textsuperscript{30}

Even though there is a remarkable improvement in this regard, the traces have not
completely disappeared. In addition, the egalitarian nature of Africans who always
owned their piece of farmland must be kept in mind. This could explain the desire in
many Nigerians to “own” an enterprise of their own rather than work for paid
employment.

\textsuperscript{29}F. S. FIORENZA, “Religious Beliefs and Praxis: Reflections on Catholic Theological

\textsuperscript{30}A. EMIOLA, \textit{Nigerian Labour Law}, p. 2. The author notes, however, that they have
been some changes in the past fifty years as more people now embrace paid employment.
APPLICATION OF C. 1286, 1° IN NIGERIA

There is a growing divide between employers, who intend to make all the profit, and employees, who have a poor attitude to paid employment, intending to enrich themselves quickly so they too can become employers. The plundering of human and economic resources in Nigeria indicates that many work for self-aggrandizement, which portrays an instrumentalist and poor approach to work, especially in the public sector. The law of contract does not help in bridging the gap between employers who are seen as owners of production and employees as suppliers of labour in the Nigerian context. Unfortunately, both parties seem to use the law to their best economic advantage, with little regard to the common good and other moral considerations. The contrast between employers and workers in Nigeria is so sharp that one commentator once described Nigeria as a country at once in the first (developed) world and equally in the third (least developed) world.31

The function of a contract in a society depends on its societal and economic system so that, for the British, the notion of contract is an agreement which the law recognizes as binding on the parties and is enforceable in a court of law. Under the traditional system (for example among the Ibos), there was no law of contract properly so-called. But the notion of binding agreement pervaded all the economic and commercial transactions of the indigenous community. It is, therefore, erroneous to speak of a customary law of contract since by definition the modern notion of contract

31G. EHUSANI, A Prophetic Church, Ede, p. 1.
APPLICATION OF C. 1286, 1o IN NIGERIA

generally presupposes the element of actionability with the attendant legal remedy when one of the parties causes a breach of it.\(^{32}\)

As a result of this disparity in practice, many Nigerians are generally not enthusiastic about putting agreements into writing because this envisages eventual settlement in a court of law. Some people view committing agreements into writing with suspicion, especially when it is on a one to one basis in a small business enterprise. In such a case, certain employees who insist on putting the terms of employment into writing may jeopardize their chances of getting the job. F. Almade says that "a contract need not undercut the integrity of the relationship between employer and employee. In fact, it can build a foundation for trust by stating principles, clarifying unspoken assumptions and dealing with 'what if?' situations."\(^{33}\) This reality is, however, tenable in a society with a "writing culture", but different in a society like Nigeria where many people are not lettered, and making contracts is not in their ethos.

4.3.2.3 -Failure of Contracts to Protect Workers' Rights and Social Principles

From our discussions, we find that although contracts bring into effect certain employment relationships, they do not necessarily safeguard workers' rights. An ordinary contract presumes equal bargaining power between the parties, but in a contract


\(^{33}\)F.D. ALMADE, \textit{Just Wages for Church Employees}, p. 123.
of employment this equality is non-existent because of the higher bargaining power conferred on the employer by the economic and social conditions, especially in Nigeria with such a high rate of unemployment. In other words, an unscrupulous employer can use a contract to his advantage by binding an employee to unjust economic working conditions. Lack of job security, evidenced in the terms of termination of employment weakens further the rights of the worker. According to Dr. A. Aguda,

the present assumption, that social justice could be achieved through the instrumentality of the law of contract which traditionally assumes the equality of bargaining powers between the parties to the contract [...] is obviously completely misplaced. For there are many millions of workers in this country, who in spite of the present existing laws, are being paid wages, which upon the most liberal view cannot be regarded as capable of bringing them up to what may be regarded as the minimum standard of living within the context of the country. Therefore, many people continue to live below what may be regarded as “starvation level.”

This explains why certain Nigerian authors argue that a contract of employment is a special type of contract and should shift from contract to status. According to Adeogun,

the rules of contract are not apposite to the contract of employment which is the basis of the relationship between an employer and his employee and that the contract of employment qua contract is of diminishing importance and may rightly be regarded as a contract sui generis. Indeed, there appears to be a movement towards status of employment, a realization of which is the true guarantee of the rights of employees and the outmoded conceptual framework embedded in the label “the law of master and servant” will be discarded with.


\[35\] A. ADEOGUN, *From Contract to Status in Quest for Security*, p. 4.
APPLICATION OF C. 1286, 1° IN NIGERIA

The special nature of a contract of employment cannot be over-emphasized, a fact which the law sometimes reluctantly recognizes. For instance, it is an established principle of contract law that repudiation by one party standing alone does not terminate a contract. In *Howard v. Pickford Tool Co. Ltd.*, 36 Lord Justice Asquith said of the rule, "an unaccepted repudiation is a thing writ in water and of no value to anybody as it confers no legal right of any sort or kind." The rule, however, does not apply to contracts of employment as repudiation by one party (most often the employer through dismissal) puts an end to the contract, since a willing servant cannot be forced on an unwilling master (the only option open to the employee is damages). 37 Here the law makes an exception to the detriment of the party who would have had to accept the repudiation, in most cases dismissal.

There have been some moves by the Supreme Court of Nigeria to protect the worker and give recognition to contracts of employment as a special kind of contract. 38 In reaching its decision in one of such cases, it made a distinction between a contract of service and a contract of personal service. The order for specific performance can be made in the former (where there is no personal relationship between the parties) while,

36(1951) 1 K.B. 417 at 421.

37 *Vine v. National Dock Labor Board* (1968)1 Q.B.658. The Supreme Court in *Olantuyan & Others v. University of Lagos (supra)* differed from this principle by holding that the contract of the plaintiffs still persists when they rejected the dismissal immediately. (See JSC Oputa at 631).

38 *Shitta Bey v. Public Service Commission, (supra), Olantuyan v. University of Lagos (supra).*
APPLICATION OF C. 1286, 1º IN NIGERIA

in the latter, where personal relationships exist (personal pride, personal feelings), personal confidence may be all that is involved, making it difficult to compel specific performance of a contract of personal service against an unwilling master.\textsuperscript{39} The court courageously stepped outside the general rules of contract to acknowledge the human factor involved in a contract of employment.

In considering the move from contract of employment as a contract (\textit{qua}) to a contract of its own kind (\textit{sui generis}), the difference in translation of the word \textit{locatio} to \textit{contract} (in English) seems to finds some ground here. Taking into consideration that the contract of employment as \textit{sui generis} highlights the protection of the rights of the worker, one can infer that since the Church seeks the protection of workers’ rights, \textit{locatio} implies all that upholds the workers’ rights rather than \textit{contractus} which is geared towards the agreement itself, just as a contract of employment qua contract.

The applicability of the principles of c. 1286, 1º in terms of civil laws to the Nigerian situation shows that the (civil) law does not uphold adequately some values which the Church teaches. For instance, concerning the notion of work, a holistic approach is necessary in order to ennoble the work and the worker to the dignity befitting the human person made in God’s image and for the common good of society. The law of contract does not promote the dignity of the worker using the ordinary principles of contract and even the contract itself does not protect the weaker interests

\textsuperscript{39}A. ADEOGUN, \textit{From Contract to Status in Quest for Security}, p. 27.
of the worker. The option seems to lie in promoting a contract of employment to a contract *sui generis*.

Furthermore, the civil law notion of work is not holistic; it places emphasis on the material ends of work excluding the creative and supernatural ends, as taught by the Church. What is important for civil law is not the dignity of the worker, but the benefits of their work. In other words, the focus of civil law is on the contract itself and not on the human person whose services are involved in an employment relationship. Hence, some of the major elements for which the Church adopts the civil laws are not being realized.

### 4.3.2.4 - High Cost of Litigation

The purpose of the employment laws is to guarantee the rights of both parties in a contract of employment. However, it is a fact that in Nigeria the administration of justice is unaffordable to many, due to the high cost of litigation, bureaucracy, constant adjournments,\(^\text{40}\) corruption, cumbersome court rules, and so forth, thereby making access to courts prohibitive in terms of time and resources. T. Aguda lamented the plight of the poor in the administration of justice when he said:

\(^\text{40}\)The case of *Lasisi Atanda & Ors v. Salami Ajani* (1989) 3 N.W.L.R. 511, which was for trespass and damages in the sum of #250 was filed in Ibadan, Oyo State in 1977; due to appeals it reached the Supreme Court in 1987. The Supreme Court delivered judgement in 1989 making an order that the case be started de novo on trial in the high court. The delay in trial negated the justice of the case as the purchasing power of the amount being claimed had decreased ten times over the ten year period due to inflation
APPLICATION OF C. 1286, 1° IN NIGERIA

In our country apart from unnecessary unwieldy hierarchy of Courts and cumbersome procedural rules, unpardonable delays in procedure compound the judicial process to such an extent that invariably a poor man dares not even knock at the door which leads to the temple of justice. If he does, he and his family will live to regret their audacity in most cases even if he succeeds [...] he would after the final judgement in the Supreme Court ask himself: would I not have been better off to have foregone this right from the beginning? 41

In cases of litigation, an aggrieved party relies totally and completely on the lawyers since the procedure is cumbersome and known only to the lawyers and the courts. Many litigants suffer untold hardships in the hands of fraudulent lawyers and because the process for disciplining a lawyer is not within their reach, the risk of becoming involved in litigation is increased. There are no legal aid facilities for civil litigation. The civil laws on employment remain alien to the ethos and needs of most Nigerians and, in the face of economic and social problems, many would rather not become involved with litigation. They merely walk away in search of another job. If the means for the vindication of these rights are not accessible to either party, especially an aggrieved dismissed worker, then the purpose of the law is defeated.

4. 3.2.5 -Non Justiciable Constitutional Provisions on Labour

Apart from the principles governing employment laws, the Nigerian constitution makes provisions regarding labour, social life and promotion of human dignity. Chapter Two on Fundamental Objectives and Directive Principles of State Policy, which

APPLICATION OF C. 1286, 1° IN NIGERIA

contain what we may refer to as duties of State. While these provisions are commendable, they are only guiding ideals which the State ought to follow in formulating polices. They are not justiciable rights which a citizen can vindicate in a court of law.\textsuperscript{42} This notwithstanding, it is hardly tenable that they are less human rights than the legally enforceable ones. Both justiciable and non-justiciable rights protect the dignity of the human person. As E. Onyekpere puts it, "what in real terms does the right to privacy of homes mean to a homeless man who lives under a bridge or a destitute exposed to the elements; this right to privacy could have been complemented by an enforceable right to housing commensurate to his station in life. Also what is the reality of the right to life without the security of a means of living."\textsuperscript{43}

Most of the non-justiciable provisions affect more directly the well-being of the average Nigerian citizen than political and civil rights. A leading Nigerian human rights activist, O. Agbakoba, writing on the role of lawyers in protection of human rights, said:

\begin{quote}
We need to press, through the appropriate channels, for the elevation of the socio-economic objectives contained in chapter 2 of the Constitution of Nigeria, 1979 [...] to justiciable rights which, to all intents and purposes, are more meaningful to our people than the class of civil and political rights which make little sense to the man whose lot is starvation or the university graduate
\end{quote}

\textsuperscript{42}It is arguable whether their adoption into Nigerian Municipal law, and the \textit{African Charter on Human And Peoples Rights} has not made these rights enforceable in Nigeria, even if only as charter rights. See \textit{Ogugu v. State} (1994) 9 NWLR (Part 36) 1 at 26 where Justice Bello said that the \textit{African Charter} has become part of our domestic laws as it falls within the judiciary powers of the Nigerian courts.

APPLICATION OF C. 1286, 1o IN NIGERIA

who has become disillusioned and frustrated by fruitlessness of his search for a non existent job.44

In light of economic degradation and the mismanagement of public resources, realization of these objectives has often not been possible. Dr. T. Aguda, commenting on the *Fundamental Objective of State Policy* (1979 Constitution), lamented that these objectives are not justiciable and the citizen is thus left at the mercy of whoever is in the reigns of government; hence, the future remains uncertain.45

Whatever the reasons for the exclusion of these provisions from the courts, it is obvious that the State, and those who make the Constitutions, do not consider yet that the inherent values which these provisions protect are worth safeguarding by the courts. Some may argue that the State would not have enough resources to realize the objectives. While this argument may be true, there could be a way of guaranteeing the rights to some minimum standards. Since no minimum standards have been set, the government has not aspired to meet the basic needs of the people in this area, who now organize themselves to press for their needs. Recently, in Nigeria, a new labour movement for the unemployed, underemployed and destitute, staged a peaceful demonstration before a daily news office singing, "All we are saying, is give us good jobs." According to their spokesperson:


APPLICATION OF C. 1286, 1º IN NIGERIA

Our very mission stems from the fundamental inalienable rights of human beings contained in Article 23 of the Universal Declaration of Human Rights which states that everyone has the right to work, the right to free choice of employment, the right to just and favorable conditions of work and the right to protection against unemployment. As eligible workers of this country, we feel we have the right to be employed and in case there's no employment there should be a form of welfare benefits for the unemployed as it obtains in advanced countries. 46

These Nigerian citizens are making a claim on the State either to provide them with opportunity for employment or some form of social welfare benefit to help alleviate their suffering until they find work. Unfortunately, there are yet no such social benefits in Nigeria.

This resonates with the saying of Pope John XXIII that economic rights apply to the economic well-being of the human person, including the right to work and to receive wages. 47 The fundamental principles contained in the social teaching of the Church are, in theory, of universal application including Nigeria. The problem, however, lies in their application to the real concrete life situation as that of Nigeria with mixed religious and cultural settings. Reflecting on the application of Rerum novarum to Africa, Archbishop Onaiyekan said: “the encyclical addressed itself to a Christian society. Even those who rejected Christianity had been brought up in it and understood its language. This is not

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47 Pacem in terris, no. 18-21.
the case with Africa both then and now. The implementation of the teaching of the Church as regards economic rights and the dignity of the human person in Nigeria is still far from the ideal.

If these rights are not realized, their presence in statute books is meaningless and cannot be justified. Hence, Agbakoba observed that “human rights, no matter the category or generation, are meaningful only to the extent of their enforceability. Though the bedrock of winning protection and observance of human rights is by popular social action, the ultimate guarantee is legislative and judicial action.”

Although there are some constitutional provisions on human rights based on human dignity (justiciable and non justiciable) relating to labour and social life, they have not always been respected. Hence the Bishops’ Conference of Nigeria lamented that “the quality of life of most Nigerians has degenerated to a level beyond human dignity.” This brings to the fore the rationale for provision of human rights in the first place. There are expectations that the observance of human rights will improve with the assumption of power by the new civilian government in Nigeria; however, only time will show if this is so.


49 O. AGBAKOBA, “The Role of Lawyers and the Observance of Human Rights”, p. 120.

50 CATHOLICS BISHOPS’ CONFERENCE OF NIGERIA, Communique, second plenary meeting, Uyo, Nigeria, 1997, pp. 33-34.
4.3.2.6 - Failure of the State to Generate Employment

Pope John Paul II’s principle of indirect employer, in influencing the whole socio-economic order, concerns labour contract and principles of conduct laid down by those persons and institutions (in this case the State) that determine the whole socio-economic order. From our discussions so far, one can see that the Government of Nigeria has not been able to fashion out a sustainable economic policy which will guarantee economic growth and generate employment and better condition of service for its workers.

Some argue that the Government in Nigeria has been taken over by the elite to propagate their interest. For instance, T. Aguda thinks that “one militating factor is that at each stage of our history most members of the ruling class have also belonged to the propertied class.”51 Archbishop J. Onaiyekan is of the opinion that these problems arise whenever the Government becomes an employer: “On the purely economic level, we have seen that where the Government becomes a major employer, it cannot play the role of umpire between employers and workers; especially as Governments in Africa are

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often very bad employers. Minimum wages are atrociously low with generous helpings which the ruling elite take for themselves.\textsuperscript{52}

We also consider Nigeria's colonial history in which the colonial imperialist shaped, as it were, its economic destiny. These factors have made Nigeria's economy to be unduly tied to the strings of external institutions.\textsuperscript{53} At the meeting concluded in June 1999 of the G-7 (the world's wealthiest nations), in Cologne, Germany, the leaders agreed to relieve the poor countries of nearly three quarters of the crushing load of debt which has prevented them from getting out of poverty. President Bill Clinton was quoted as saying that the agreement "is an historic step to help the world's poorest nations achieve sustained growth and independence while targeting new resources for poverty reduction, education and combating AIDS."\textsuperscript{54} In other words, the gesture of these wealthy nations has a direct influence on the socio-economic life of these poor countries.

Conclusion

Examining the application of c. 1286, 1\textsuperscript{o} in Nigeria, we found that there are three categories of employers in the Nigerian Church: those that employ workers and provide them with conditions of service; those that employ workers based on oral contracts; and


\textsuperscript{53}While conceding that States need each other for trade and economic growth.

\textsuperscript{54}The \textit{Ottawa Citizen} Saturday, June 19, 1999, p. A16.
those who employ with legal contracts of service. We saw that the conditions of service do not adequately protect the rights of the worker, nor reflect the values in the social teachings of the Church and the spirit of c. 1286,1.º The working conditions depend to a large extent on the benevolence of the employer. Many employers and employees confirm that the Church is not treating its workers justly; there are no unified employment policies, fringe benefits or job description. The output is low as many unskilled Church workers are employed out of sympathy.

The Church adopts different employment policies for different workers. Preference is given to the priests and religious while the laity receive least attention in terms of training and benefits. Although the religious are actively involved in the affairs of the Church, they too receive very little in terms of remuneration and conditions of service. Priests are relatively better provided for in terms of board, working conditions and fringe benefits.

Among the internal and external factors which could be responsible for the situation in Nigerian Church we identified lack of commitment to the Catholic faith which came in Western culture, the need for inculturation in the Church’s life and structures, alien nature of canon law, the gap between Church leaders (employers) and the laity (employees), inadequate human and material resources, clericalism, lack of clearly set employment goals and policies in many dioceses.
APPLICATION OF C. 1286, 1° IN NIGERIA

The external factors include complex socio-economic system involving two legal systems, civil and customary law. The civil laws regulate modern economic systems including contracts that do not reflect the ethos and practices of many Nigerians. This has resulted in apathy towards law in general. In addition to this, is the inability of the law of contract to protect the interests and rights of workers, lack of literacy in the English language and in civil law concepts by many Nigerians; the inability of the State to foster human dignity and create employment opportunities. These problems constitute obstacles to effective implementation of c. 1286, 1°. Following the above discussions, we can arrive at the conclusion that the law as it presently stands in c. 1286, 1° and the values which it seeks to implement, have not been realized in the concrete Nigerian situation.
GENERAL CONCLUSION

Canon 1286, 1° requires administrators of temporal goods in making contracts of employment to follow the civil laws on labour and social life according to the principles taught by the Church. Following our discussions in this study on the application of the canon from the ecclesial and Nigerian legal perspectives, we arrived at certain conclusions, some of which we intend to recall.

First, we saw that the principles mentioned in the canon are contained in the social teachings of the Church, which draw their origin from the encounter of the gospel message and its ethical requirements with the problems that arise in society. The primary focus of these social teachings is to uphold and protect the dignity of the human person at all times without distinctions. Hence, the Church insists on the right and duty to intervene in societal affairs whenever human dignity or rights are violated. In defense of this dignity, the Church has considered work and labour to be vital components of its social teachings and has enumerated various principles that uphold the dignity of the worker and of work itself. Considering the teachings of the Church concerning work at the African and Nigerian levels, the focus is placed on the promotion of basic resources which pertain to the development of the whole human person. Hence, the emphasis on the establishment of justice and peace commissions at the local Church levels
Second, we saw that c. 1286, 1° finds its deep roots in the social teachings of the Church on work and labour, as the drafting of the canon was guided by the need to implement the principles of social justice. Furthermore, the adoption of civil laws on labour and social life, a major departure from c. 1524 of CIC/17, broadens the scope of c. 1286, 1° which is an expression, on the one hand, of the new understanding in the Church-State relationship, and on the other, of the Church’s right, independently of civil authorities, to regulate its temporal goods for the stated objectives mentioned in c. 1254§2.

Third, we found that with the adoption of civil laws in c. 1286, 1°, the Nigerian civil laws on labour and social life become part of canon law to be observed with the same effects in canon law in so far as they are not contrary to divine law, and provided it is not otherwise stipulated in canon law (canon 22). However, we saw that Nigerian laws on labour and social life are based on the British Common Law, which is somewhat foreign to the Nigerian ethos. The Common Law principles on employment focus on ordinary principles of contract, based on equal bargaining power between the parties, in practical terms, this is of little avail because of the weak bargaining power of the worker in the face of social and economic conditions. This results in inadequate legal protection for the worker in terms of job security, working conditions and social security.
Fourth, merging together relevant principles arising from both civil law and the social teachings of the Church in the context of Nigeria, we saw that the Church as an employer has not been able to apply c. 1286, 1° effectively as many Church employees are not given adequate and just working conditions. Considering some internal and external factors which affect the application, we saw that the dynamics of the Nigerian socio-economic structures indicate that the society operates under two infrastructures with respective laws and values: the traditional Nigerian society and the Western affluent one. Even though the State is organized under modern economic and legal systems based on the Western values, the ethos and values of most Nigerians are guided by traditional values. As a result, most of the principles concerning canon law, social teachings of the Church, civil laws on labour and social life, based as they are on Western values, remain alien to the people. Due to political and economic problems, the fundamental human rights and dignity of the average Nigerian are not respected. Employment laws fail to protect the interests of the Nigerian worker in light of mass unemployment and poor economic conditions.

Finally, taking into consideration the Nigerian socio-economic factors arising from the poor economic situation, the existence of dual and incompatible infrastructures — the modern Western and the traditional setting — the failure of Nigerian civil laws on employment to protect those values which the Church teaches on the dignity of the worker and of work itself, the problems affecting the Nigerian Church arising from both
the country’s socio-economic and political situations, the fact that canon law and other Church structures are foreign to the ethos and values of the people, the lack of resources and the mode of operation in the Nigerian Church, we can conclude that c. 1286.1°, as it presently stands, does not contemplate the Nigerian situation and cannot be fully implemented. Analytically the Nigerian civil laws, dressed as they were in Western “clothes” are being used to clothe a Nigerian!

To address some of the problems impeding the application of c. 1286.1° in the Nigerian situation, we now wish to make the following suggestions:

1. The development and recognition of a contract of employment not as an ordinary civil law contract, but as a contract *sui generis*. In so doing, the Church would safeguard and apply its social teaching in a concrete manner. As a *sui generis* contract, the contract of employment would be holistic in nature, that is, it would take cognizance of the values of work as taught by the Church. Furthermore, this holistic approach would highlight contract as *locatio* which emphasizes employment of workers, as distinct from *contractus* whose focus is on the subject of the agreement, such as work. This is the trend taken by some Nigerian scholars and judges, as indicated in Supreme Court of Nigeria decision in *Olaniyan & Ors v. University of Lagos*.

2. For any law to be effective in a given society, it has to be responsive to needs and arise from the practices and ethos of a given society. Since it is not within the powers of the Church to take steps towards bridging the gap between the civil laws on
employment and the people, it can develop laws and employment policies to respond to
this need. The employment laws would include the traditional concept of work (which
fortunately, shares some values with the Church's teaching on work), and civil law
principles of *sui generis* contracts. Since, for both the Church and Nigerian traditional
concepts, work has moral and communal values, the people would learn that in working
for the Church they participate in their own community work. In this way, the Nigerian
Church would not encounter as many difficulties in applying the Church's concept of
work to its own workers.

3. One way through which the Church can create laws on contract of employment
that take into consideration the local realities is by allowing conferences of bishops to
make laws on employment for their regions; so that there would be no need for them to
make a special request to the competent authority for any exceptions to c. 1286. Such
laws would take cognizance of the social teaching of the Church, local circumstances,
relevant labour laws, socio-economic factors, traditional and cultural values. In Nigeria,
such a particular law would be of assistance whenever the need to have a separate canon
law for Africa arises, as Hillary Okeke is already suggesting.\(^\text{55}\)

4. A Nigerian Church law on employment would be recognized as binding
between the Church and its members. It would serve as a great contribution towards the
development of the law in Nigeria. However, as c. 1286, 1° presently stands, such a move

\(^\text{55}\)H. O. OKEKE, “Church-as-God’s Family: From African Ecclesiology to African
may not be legal since the law may be challenged as *ultra vires* of the parent law (canon law) which adopts the civil laws of Nigeria on labour and social life.

5. In making laws for regions with a peculiar socio-economic system such as Africa, it is necessary that those who are involved in concrete real life situations be involved in the process. Even though the Code of Canon Law tried to address some peculiar situations, it did not succeed completely as can be seen in the present c. 1286, 1.° Cultural differences would influence any one called to draft laws protecting rights.

6. Since it is not within the powers of the Church to change the civil law on employment as it presently stands, the Nigerian Church can commission a compilation of civil laws on labour and social life which form part of the Church’s law on employment. With such a compilation, the Nigerian Church would educate its administrators of temporal goods. This education could be done through the Justice and Peace Commissions of various dioceses. A “translation” of the laws could also be carried out throughout the Nigerian Church, with a view to bringing the law to the level of Christ’s faithful. However, in the concrete application of the civil law the dignity of the human person and protection of their fundamental rights should be given paramount attentions.

7. The Nigerian Church may need to change its mode of operation, especially in dealing with the laity, supporting its workers and doing its best to alleviate their plight.
within the confines of the material and human resources available to it. It may need to adopt employment policies which reflect a commitment to the protection of workers’ rights. Since c. 1286, 1° involves moral and legal aspects, the employment policies of the Nigerian Church should require administrators to be concerned about the spiritual and material welfare of its workers. The conditions of service include putting the terms of the contract into writing, negotiating with the workers, consulting them in the decision-making process so that they feel as human beings fully dignified.

8. Finally, a change of attitude on the part of employers and employees within the Nigerian Church is also important, since both parties are taken to be united in a common purpose, achieving together the objectives mentioned in c. 1254 § 2 and ultimately the salvation of souls (c.1752). If, in the secular world of business, modern management skills recommend that workers be made to feel part of the management of the entire business for greater productivity, how much more in the Church should both parties respect the equality which they share as children of God.
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After her profession, she was involved in various legal and pastoral apostolates and until 1994 was the assistant co-ordinator of the Justice, Peace and Development Commission of the Archdiocese of Lagos. In 1995 she began the study of Canon Law at Saint Paul University, Ottawa, Canada, and obtained a Licentiate Degree in Canon Law from Saint Paul University and Master’s Degree in Canon Law from the University of Ottawa in 1997.