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

by
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**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**

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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.)

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ABBREVIATIONS

<i>AA</i>	<i>Apostolicam actuositatem</i> , Vatican Council II, Decree on the Apostolate of the Laity
<i>AAS</i>	<i>Acta Apostolicae Sedis</i>
<i>AFER</i>	<i>African Ecclesial Review</i>
<i>ASS</i>	<i>Acta Sanctae Sedis</i>
<i>CA</i>	<i>Centesimus annus</i> , John Paul II, On the One Hundredth Anniversary of <i>Rerum novarum</i> (1991)
<i>CD</i>	<i>Christus Dominus</i> , Vatican Council II, Decree on the Pastoral Office of Bishops
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium</i>
<i>CIC/17</i>	<i>Codex iuris canonici</i> (1917)
<i>CIC/83</i>	<i>Codex iuris canonici</i> (1983)
<i>CLD</i>	Canon Law Digest
<i>CLSA</i>	Canon Law Society of America
<i>DH</i>	<i>Dignitatis humanae</i> , Vatican Council II, Declaration on Religious Liberty
<i>DR</i>	<i>Divini Redemptoris</i> : Pius XI, On Atheistic Communism (1937)
<i>EN</i>	<i>Evangelii nuntiandi</i> : Paul VI, Evangelization in the Modern World (1975)
<i>GS</i>	<i>Gaudium et spes</i> , Vatican Council II, Pastoral Constitution on the Church in the Modern World
<i>LE</i>	<i>Laborem exercens</i> : John Paul II, On Human Work (1981)
<i>LG</i>	<i>Lumen gentium</i> , Vatican Council II, Dogmatic Constitution on the Church
<i>MM</i>	<i>Mater et magistra</i> , John XXIII, Christianity and Social Progress (1961)
<i>OA</i>	<i>Octogesimo adveniens</i> , Paul VI, On the Eightieth Anniversary of <i>Rerum novarum</i> (1971)
<i>ORE</i>	<i>L'Osservatore romano</i> , English language edition
<i>PP</i>	<i>Populorum progressio</i> , Paul VI, On the Development of Peoples (1967)
<i>PT</i>	<i>Pacem in terris</i> , John XXIII, Peace on Earth (1963)
<i>QA</i>	<i>Quadragesimo anno</i> , Pius XI, On the Reconstruction of the Social Order (1931)
<i>RH</i>	<i>Redemptor hominis</i> : John Paul II, On Human Redemption (1979)
<i>RN</i>	<i>Rerum novarum</i> : Leo XIII, On the Condition of Workers (1891)
<i>SECAM</i>	Symposium of Episcopal Conferences of Africa and Madagascar
<i>SRS</i>	<i>Sollicitudo rei socialis</i> : John Paul II, The Social Concerns of the Church (1987)

CIVIL LAW ABBREVIATIONS

A.C	Appeal Cases
All E.R	All England Reports
All N.L.R	All Nigeria Law Reports
CAP	Chapter
CCHCJ	Cyclostyled Copy of High Court Judgements
C.D	Chancery Division, Law Reports
East	East King's Bench Reports
E.N.L.R	Eastern Nigeria Law Reports
E.R	English Reports
K.B	King's Bench, Law Reports
LFN	Laws of the Federation of Nigeria
L.L.R	Lagos Law Reports
N.L.R	Nigeria Law Reports
N.C.L.R	Nigeria Commercial Law Reports
N.M.L.R	Nigeria Monthly Law Reports
N.W.L.R	Nigeria Weekly Law Reports
Q.B	Queen's Bench, Law Reports
Q.B.D	Queen's Bench Division, Law Reports
S.C	Judgements of the Supreme Court
S	Section
W.A.C.A	Selected Judgements of the West Africa Court of Appeal
W.N.L.R	Western Nigeria Law Reports
W.L.R	Western Law Reports
T.L.R	Times Law Reports

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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

¹SECOND VATICAN COUNCIL, Decree on the Apostolate of Lay People *Apostolicam actuositatem* (= AA), 18 November 1965, in AAS, 58 (1966), pp. 837. English translation in A. FLANNERY (gen. ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, (= Flannery), Dublin, Dominican Publications, 1981, p. 788.

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.

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 Law¹ 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 teaching² 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

¹*Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus*, Vatican City, Libreria editrice Vaticana, 1983 (= CIC). English translation *The Code of Canon Law, New Revised English Translation*, Prepared by The Canon Law Society of Great Britain and Ireland in association with The Canon Law Society of Australia and New Zealand and The Canadian Canon Law Society, London, Harper Collins Publishers, 1997.

²It 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.”

³CONGREGATION FOR THE DOCTRINE OF THE FAITH, Instruction on Christian Freedom and Liberation *Libertatis conscientia*, March 22, 1986, p. 72, in *AAS*, 79 (1987), p. 586.

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.

⁵SECOND VATICAN COUNCIL, Pastoral Constitution on the Church in the Modern World *Gaudium et spes* (= GS), December 7, 1965, in *AAS*, 58 (1966), pp. 1025-1120. English translation in Flannery, p. 985.

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.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.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.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.¹⁰ For this reason, the Church

⁷LEO XIII, Encyclical Letter *Rerum novarum*, (= *RN*) May 15, 1891, in *Acta Sanctae Sedis* (= *ASS*), 23 (1890-1891), pp. 641-670. English translation in, DAUGHTERS OF ST. PAUL, (eds), *Encyclical Letter of Leo XIII On the Condition of the Working Classes*, Boston, St. Paul's Books and Media, pp. 5-54.

⁸JOHN PAUL II, "Homily in Havana's Plaza of Revolution", in *Origins*, 27 (1997-1998), p. 547.

⁹Genesis 1: 26.

¹⁰See G. FILIBECK, *Human Rights in the Teaching of the Church: From John XXIII to John Paul II*, Vatican, Libreria editrice Vaticana, 1994; this work contains a collection of major magisterial teachings on the dignity of the human person, pp. 43-52. W. KASPER, "The Theological Foundations of Human Rights", in *The Catholic Lawyer*, 34 (1988), pp. 260-262.

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.”¹¹ 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.”¹² 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*’¹³ [...] 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

¹¹PAUL VI, “Message to the United Nations Secretary General”, in *AAS*, 64 (1972), p. 215; *L’Osservatore romano*, English language edition, February 17, 1972, p. 5.

¹²JOHN PAUL II, Encyclical letter *Redemptor hominis*, (= *RH*), March 4, 1979, in *AAS*, 71 (1979), pp. 257-324, English translation in J.M. MILLER, (ed.), *The Encyclicals of John Paul II*, Huntington, IN, Our Sunday Visitor, 1996, p. 65, no.13.

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.'¹⁴

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."¹⁵ This obligation falls on all the members of the Church including the laity who are called to "animate the world with a Christian spirit."¹⁶

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

¹⁴RH, 13, 14.

¹⁵PAUL VI, Apostolic Exhortation *Evangelii nuntiandi*, (= EN), December 8, 1975, in AAS, 68 (1976), pp. 5-76. English translation in FILIBECK, *Human Rights in the Teaching of the Church*, p. 28.

¹⁶See SECOND VATICAN COUNCIL, Declaration on Religious Liberty *Dignitatis humanae*, (= DH), December 7, 1965, in AAS, 58 (1966), pp. 929-941. English translation in FLANNERY, pp. 810-811, no. 14.

community in which they live.”¹⁷ The Gospel which Christ entrusted to the Church is a powerful tool with which the Church can safeguard human dignity and freedom.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.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.²⁰ Pius XII, expounding the natural law argument for the Church’s right to teach, wrote:

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

¹⁷PAUL VI, Encyclical Letter *Populorum progressio*, (= *PP*), March 26, 1967, in *AAS*, 59 (1967), pp. 257-299. English translation in J. GREMILLION, *The Gospel of Peace and Justice*, Maryknoll, NY, Orbis Books, 1975, p. 411, no. 18.

¹⁸*GS*, 41.

¹⁹The teaching on natural law culminated in John XXIII’s *Pacem in terris*, (= *PT*), April 11, 1963, in *AAS*, 55 (1963), pp. 257-304. English translation in DAUGHTERS OF ST. PAUL (ed.), *Encyclical Letter of Pope John XXIII, Peace on Earth*, Boston, St. Paul Books and Media, pp. 7-52.

²⁰See C. CURRAN, “Catholic Social Teaching and Human Morality”, in J.A. COLEMAN, (ed.) *One Hundred Years of Catholic Social Thought*, Maryknoll, NY, Orbis Books, 1991, pp.72-74.

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.²¹

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.²² 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.²³ 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.²⁴

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.

²¹PIUS XII, Allocution *Magnificate Dominum*, November 2, 1954, in *AAS*, 46 (1954), p. 671. English translation in *The Pope Speaks*, 1 (1954), p. 380.

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

²³See CONGREGATION FOR CATHOLIC EDUCATION, "Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests", (= Congregation for Catholic Education Guidelines), in *Origins*, 19 (1989-1990), p. 174, no. 11.

²⁴*SRS*, 3.

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

²⁵The 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.

²⁷RN, 13.

²⁸See 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.

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.

³⁰SECOND VATICAN COUNCIL, Dogmatic Constitution on The Church *Lumen gentium*, (= *LG*), November 21, 1964, in *AAS*, 57 (1965), pp. 1-75. English translation in A. FLANNERY, pp. 320-397.

Church.³¹

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.”³² 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:

³¹Y. CONGAR, “The Role of the Church in the Modern World”, in H. VORGRIMLER (gen. ed.) *Commentary on the Documents of Vatican II*, vol. 5, Freiburg, Herder and Herder, 1967-1969, p. 210.

³²See HEHIR, “The Right and Competence of the Church in the American Case”, p. 58.

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

³³JOHN PAUL II, “Homily at Mass in Onitsha”, in *L'Osservatore romano*, English language edition, March 25, 1998, p. 2.

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.

competence of the Church to speak and act is less contested than a century ago.”³⁷

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

³⁷See HEHIR, “The Right and Competence of the Church in The American Case”, p. 62.

³⁸J. NYERERE, *Man and Development*, Dar es Salaam, Oxford University Press, 1974, p. 85; quoted in T. AGOSTONI, *Every Citizen's Handbook*, Nairobi, Pauline Publications Africa, 1997, pp. 44-45.

³⁹Note the response of various conferences of bishops, such as the statement of the Catholic Bishop's Conference of England and Wales entitled “The Common Good and the Catholic Social Teaching,” London, Catholic Bishops' Conference of England and Wales, 1996. Catholic Bishop's Conference of Nigeria, Joint pastoral letter, *The Church and Nigerian Social Problems*, Lagos, Catholic Secretariat of Nigeria, Claverianum Press, 1972. Liberation theology is also an attempt to respond to social issues in Latin America.

Code.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.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.⁴² However,

⁴⁰Especially 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.

⁴¹PIUS XI, Encyclical Letter on Social Reconstruction, *Quadragesimo anno* (= *QA*), May 15, 1931, in *AAS*, 23 (1931), pp.177-228. English translation in DAUGHTERS OF ST. PAUL (ed.), *Encyclical Letter of Pius XI, on Social Reconstruction*, Boston, St. Paul Editions, p. 21.

⁴²CONGREGATION FOR THE DOCTRINE OF THE FAITH, "Commentary on Profession of Faith's Concluding Paragraphs", June 30, 1998, in *Origins*, 28 (1998-1999), p. 118.

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.⁴³

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.⁴⁴ 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.⁴⁵

⁴³CATHOLIC BISHOPS' CONFERENCE OF ENGLAND & WALES, *The Common Good and Catholic Social Teaching, A Statement*, London, Catholic Bishops' Conference of England and Wales, 1996, p. 9, no. 26.

⁴⁴For 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.

⁴⁵See 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

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

⁴⁷CONGREGATION FOR THE DOCTRINE OF THE FAITH, “Commentary on Profession of Faith’s Concluding paragraphs,” p. 119.

⁴⁸ “The Challenge of Peace: God’s Promise and Our Response”, 1983, no. 9, in D.J. O’BRIEN and T. SHANNON, *Catholic Social Thought: The Documentary Heritage*, p. 494.

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

⁴⁹CONGREGATION FOR THE DOCTRINE OF THE FAITH, "Commentary on Profession of Faith's Concluding paragraphs", p. 118.

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

⁵¹CATHOLIC 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

⁵²F. SULLIVAN, "The Doctrinal Weight of *Evangelium Vitae*", in *Theological Studies*, 56 (1995), p. 563.

⁵³CONGREGATION FOR CATHOLIC EDUCATION, "Guidelines", p.179, no. 35.

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,

⁵⁴JOHN PAUL II, Encyclical Letter *Laborem exercens*, September 15, 1981, in *AAS*, 73 (1981), pp. 577- 647. English translation, DAUGHTERS OF ST. PAUL (ed.), *Encyclical Letter of John Paul II On Human Work*, Boston, St. Paul Books and Media, p. 10.

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.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 teaching⁵⁷ 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.”⁵⁸

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

⁵⁶Such 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.

⁵⁷QA, 39.

⁵⁸S. POPE, “*Rerum novarum*”, in J. DWYER AND E. MONTGOMERY (eds.), *The New Dictionary of Catholic Social Thought*, Collegeville, MN, The Liturgical Press, 1994, p. 843. It may be necessary to note that *Rerum novarum* was the Christian response to the world of work known as Christian socialism. A reformist approach by the English Protestant denominations also developed. These were Christian responses to the transformation of society caused by the industrial revolution. See, P. SEDGWICK, “Christian Teaching on Work and The Economy”, in COUNCIL OF CHURCHES FOR BRITAIN AND IRELAND, *Unemployment and The Future of Work*, London, Delta Press, 1997, pp. 223-228.

a *corpus* of social teachings of the Church on work emerged.⁵⁹ 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.⁶⁰ 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

⁵⁹Obviously 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.

⁶⁰Most of the magisterial themes on work refer to this: for example see *RN*, 31; *QA*, 109; *LE*, 7; JOHN XXIII, Encyclical Letter *Mater et magistra*, (= *MM*), May 15, 1961, in *AAS*, 53 (1963), pp. 401-464. English translation in J. GREMILLION, *The Gospel of Peace and Justice*, p.147 - 148, no. 18.

combined for the attainment of some object other than recreation or amusement.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.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.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

⁶¹H. C. BLACK, *Black's Law Dictionary*, 6th ed., Publisher's Editorial Staff & Contributing Editors, St. Paul, MN, West Publishing Co., 1990, p. 1605.

⁶²Preface, *LE*.

⁶³It 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 *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.⁶⁴ 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.⁶⁵ According to Chenu, "[...] work has the paradoxical connotations of inexorable constraint and joyful expressiveness, unremitting compulsion and liberating self fulfilment."⁶⁶ 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.⁶⁷ However, the importance of the creativity of work is maintained even after the exile of Cain when he finds a city,⁶⁸ thereby fulfilling the promise made to Adam to "till and keep it." This

⁶⁴See W. MAY, "Work, Theology of", in J. DWYER and E. MONTGOMERY (eds.), *The New Dictionary of Catholic Social Thought*, p. 991.

⁶⁵In 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.

⁶⁶See M- D. CHENU, "Work", in *Sacramentum mundi*, NY, Herder and Herder, 1970, p. 369.

⁶⁷Genesis 3: 17-19.

⁶⁸Genesis 4:17.

creativity finds expression in the Book of Job.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.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:

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.⁷¹

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

⁶⁹Job 28:1-12.

⁷⁰Mark 6:3.

⁷¹GS, 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.⁷² 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."⁷³

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."⁷⁴ 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

⁷²LG, 4, 5.

⁷³LG, 36.

⁷⁴RN, 62.

differentiates between the “objective”⁷⁵ sense of work in terms of its productive part, and the “subjective”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.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 *intelligent*.⁷⁸

⁷⁵LE, 5.

⁷⁶LE, 6.

⁷⁷LE, 27.

⁷⁸PP, 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

⁷⁹LE, 12.

⁸⁰RN, 12.

own and that no one in any way should be permitted to violate his right.⁸¹

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.⁸²

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.⁸³ 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”⁸⁴ 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

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.

rulers and subjects, for there is the same Lord of all.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."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.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.⁸⁸ It proposes this as a mid way approach between individualistic capitalism and collectivist socialism. In the words of Pope John XXIII,

⁸⁵Romans, 10:12; *RN*, 57.

⁸⁶*MM*, 68, 69.

⁸⁷For instance, *Sollicitudo rei socialis* 14 -17 and 41- 44 dealt with the gap between poor and rich nations, and ideological differences between nations.

⁸⁸*MM*, 75; *LE*, 14.

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

⁸⁹*MM*, 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

⁹⁰*PP*, 59.

⁹¹*QA*, 64-65.

⁹²JOHN PAUL II, Encyclical letter *Centesimus annus*, (= *CA*), May 1, 1991, in *AAS*, 3(1991), pp. 793-867. English translation in J.M. MILLER, ed., *The Encyclicals of John Paul II*, Huntington, IN, Our Sunday Visitor, 1996, p. 596, no. 8.

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.⁹³ 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.⁹⁴ 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.⁹⁵ These

⁹³M.-D. CHENU, *The Theology of Work*, translated by L. Soirion, Dublin, Gill and Son, 1963, p. 36.

⁹⁴LE, 16.

⁹⁵PT, 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.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.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.

⁹⁶LE, 16.

⁹⁷LE, 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*RN*, 30.

⁹⁹*PP*, 23-24.

¹⁰⁰*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.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.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.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

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

¹⁰²RN, 63.

¹⁰³QA, 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.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.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:

¹⁰⁴E. REISSNER, *Canonical Employer-Employee Relationship: Canon 1524*, Washington D.C., Catholic University of America Press, 1964, p. 76.

¹⁰⁵RN, 30-32; QA, 60-63; PT, 18-23; LE, 19-20.

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

¹⁰⁶*RN*, 72.

¹⁰⁷*GS*, 68.

¹⁰⁸*LE*, 20.

¹⁰⁹For 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.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 *capital* and those who share in the process of production by their work known as *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

which is of such capital importance, at the heart of the family as well as the society." For similar provisions, *LE*, 19. PAUL VI, Apostolic Letter *Octogesima adveniens*, (= *OA*), May 14, 1971, in *AAS*, 58 (1971), pp. 401-441. English translation in G. GREMILLION, *The Gospel of Peace and Justice*, p. 491, no. 13.

¹¹⁰COUNCIL OF CHURCHES FOR BRITAIN AND IRELAND, *Unemployment and the Future of Work, An Enquiry for the Churches*, pp.13,17-21.

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.¹¹¹

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:

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.¹¹²

The contribution of labour to the growth of any state or society is indispensable.

¹¹¹The discussion of the theories of Marxism and Capitalism lies outside the scope of this study.

¹¹²LE, 12.

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.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.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.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

¹¹³*LE*, 5.

¹¹⁴*RN*, 15.

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.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.

1. 2. 9 - Analysis and Conclusion

The first synodal social document, *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,

¹¹⁶MM, 20-21.

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 life style 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.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

¹¹⁷SYNOD OF BISHOPS, Document, *De Justitia in mundo*, September 30, 1971, in *AAS*, 63 (1971), pp. 923-942. English translation *Justice in the World*, in J. GREMILLION, *The Gospel of Peace and Justice*, p. 522, no. 41. In speaking out for just wages for Church workers, it could be asked whether the Church workers share anything in common with the proletariat workers, and those that the Church has defended in society, especially vis-à-vis the gap between employers and their workers.

Britain.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.¹¹⁹

The social teachings of the Church before Pope John XXIII's *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.¹²⁰ Pope John Paul II further discussed the plight of agricultural workers, when he said:

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"

¹¹⁸COUNCIL OF CHURCHES FOR BRITAIN AND IRELAND, *Unemployment and the Future of Work: An Enquiry for the Churches*, p.14.

¹¹⁹CA, 33-35, 63.

¹²⁰MM, "New Aspects of the Social Question", nos. 122-211.

in the visible world.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.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

¹²¹LE, 21.

¹²²LE, 23.

the social teaching of the Church.¹²³

This challenge recalls to mind the address of Pope Paul VI to the symposium of Episcopal Conferences of Africa and Madagascar,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.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.

¹²³OA, 4.

¹²⁴SYMPOSIUM 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.

¹²⁵Allocution To the Bishops of Africa, 31 July 1969, AAS, 61 (1969), p. 577.

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,

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

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

¹²⁷J. ONAIYEKAN, "Rerum novarum: Its Message for the Church in Africa Today – Reflections of A Nigerian Bishop", in R. DUSKA (ed.), *Rerum novarum: A Symposium Celebrating 100 Years of Catholic Social Thought*, Lewiston, Edwin Mellen Press, 1991, p. 128.

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

¹²⁸E. UZUKWU, "Human Rights in Africa: Contextual Theological Reflection", in O. IKE and U. IGBOAJA (eds.), *Human Rights, Human Dignity and Catholic Social Teachings: Lessons for the Church in Nigeria*, Enugu, CIDJAP Publications, 1992, p. 128.

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.”¹²⁹

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.¹³⁰ 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.¹³¹ This explains the fact that the themes of justice and peace, human rights,

¹²⁹SECAM, Exhortations on “Justice and Evangelization in Africa,” in *Spearhead*, Kenya, Gaba Publications, December 1981, p. 11. There are numerous causes of poverty in Africa. This thesis does not intend to go into the social analysis of problems causing underdevelopment in Africa.

¹³⁰Luke 10:30-37.

¹³¹JOHN PAUL II, Post Synodal Exhortation *Ecclesia in Africa*, (= *Ecclesia in Africa*), Canadian Conference of Catholic Bishops, Concacan Inc., 1995, no. 41.

democratization and stability in Africa were the most reiterated topics during the Synod.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:

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.¹³³

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

¹³²This 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 *Au coeur de l'Afrique*, November 4, 1994, p. 261.

¹³³*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

¹³⁴P. HENRIOT, "The Social Context of the AMECEA Countries", p. 342.

¹³⁵Towards the African Synod: *Lineamenta*, Nairobi Publications Africa, no.85.

¹³⁶SECAM, Exhortations on "Justice and Evangelization in Africa," no.18.

¹³⁷AFRICA FAITH AND JUSTICE NETWORK, *The African Synod: Documents, Reflections, Perspective*, "Propositions", Maryknoll, NY, Orbis Books, 1996, pp. 105-106.

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.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.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.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

¹³⁸J. WALIGGO, “The Synod of Hope” at a Time of Crisis in Africa”, in AFRICA FAITH AND JUSTICE NETWORK, *The African Synod: Documents, Reflections, Perspective*, p. 207.

¹³⁹*Ecclesia in Africa*, no. 44.

¹⁴⁰GS, 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.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.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.¹⁴³

¹⁴¹SECAM, Exhortations on "Justice and Evangelization in Africa", no. 28.

¹⁴²PAN AFRICAN JUSTICE & PEACE SEMINAR, *Communiqué*, Roma, Lesotho, 29 May - June 3 1988, in *African Ecclesial Review*, 30 (1988), pp. 219-220.

¹⁴³*Ecclesia in Africa*, no.106.

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

¹⁴⁶G. MPUNDU, "Commitment and Witness for Justice and Peace", Third General Congregation, Special Assembly of the African Synod of Bishops, in *L'Osservatore romano*, English Language edition, April 27, 1994, p. 5.

¹⁴⁷"Message of the African Synod: Examination of Conscience of the Churches of Africa", in *L'Osservatore romano*, English Language edition, May 11, 1994, p. 8.

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.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.¹⁴⁹ For this

¹⁴⁸*Ecclesia in Africa*, no. 106.

¹⁴⁹The 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.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,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.¹⁵² The country was amalgamated without due attention to the need of the people to live together as a nation.¹⁵³ This amalgamation ushered in effective administration in the political, economic, social and cultural life of the Nigerian society.

Countries. This issue is not within the scope of this thesis.

¹⁵⁰M. CROWDER, *The Story of Nigeria*, London, Faber and Faber, 1978, p. 86.

¹⁵¹*Our Sunday Visitor's Catholic Almanac 1999*, p. 362.

¹⁵²R. OLANIYAN, (ed.), *Nigerian History and Culture*, Hong Kong, Longman, 1985, p. 10.

¹⁵³This 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.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."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.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."¹⁵⁷

¹⁵⁴CROWDER, *The Story of Nigeria*, p. 190.

¹⁵⁵CROWDER, *The Story of Nigeria*, p. 192.

¹⁵⁶H. FRENCH, "Nigeria, in Free Fall, Seethes Under General," in *New York Times*, April 4, 1998, p. A5.

¹⁵⁷J. ONAIYEKAN, "The Church in Africa Today: Reflections on the African Synod", in AFRICA FAITH AND JUSTICE NETWORK, *African Synod: Documents, Reflections, Perspectives*, Maryknoll, NY, Orbis Books, 1996, p. 211.

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

¹⁵⁸H. FRENCH, "Nigeria, in Free Fall, Seethes Under General", p. A5.

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 deeply corrupted – police, army, judiciary, ministries, political institutions. Crookedness in business matters (419), theft, robbery and insecurity are part of the poison in the air we breath[...] 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

¹⁵⁹J. ADELAKUN, "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.

¹⁶⁰According to the Vatican Press release on the Internet, March 4, 1998, in preparation 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.

¹⁶¹Cnn 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,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.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.¹⁶⁴ However, the Catholic Church was criticized for not speaking up enough against the oppression of the

¹⁶²D-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.

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

¹⁶⁴See A. MAKOZI and A. AFOLABI, (eds.), *The History of the Catholic Church in Nigeria*, Lagos, Macmillan, 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.

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.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.¹⁶⁶

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

¹⁶⁵*The West African Pilot*, October 28, 1948, p. 2.

¹⁶⁶J. 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.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.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 hopelessness 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

¹⁶⁷CATHOLICS BISHOPS' CONFERENCE OF NIGERIA, Communiqué, second plenary meeting, Uyo, Nigeria, 1997, pp. 33-34.

¹⁶⁸CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, Pastoral Letter, *The Church and Nigerian Social Problems*, Lagos, Claverianum Press, 1972, pp. 27-29.

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

¹⁶⁹J. ADELAKUN, "Offering the Continent Hope for the Future", Eleventh General Congregation, Special Assembly of the African Synod of Bishops, in *L'Ossevatore romano*, English language edition, May 4, 1994, p. 17.

¹⁷⁰J. 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.¹⁷¹

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

¹⁷¹A. 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.

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

¹⁷²Genesis 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.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

¹⁷³GS, 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

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, 1°

2.1. 1- Canon 1524 of CIC 1917

To understand the prescriptions of canon 1286, 1°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

²The 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.

³The sources of c.1286 are: c. 1524 of 1917 Code, papal encyclicals *Quadragesimo anno*, *Divini redemptoris*, *Mater et Magistra*; Christmas Message of PIUS XII 1942, his Speech of June 13, 1943, and Second Vatican Council's documents: *AA*, 22 and *GS*, 67.

⁴*Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV promulgatus, praefatione fontium annotatione et indice analytico-alphabetico ab E.mo Petro Gasparri auctus*, Roma, Typis polyglottis Vaticanis, 1918, (=CIC/17). English translation taken from the CLSA, "Canonical Standards in Labour-Management Relations: A Report," in *The Jurist*, 47 (1987), p. 551.

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

⁵PIUS X, Motu proprio, *Fin dalla prima*, December 18, 1903, in ASS, 36 (1903-1904), pp. 341-342.

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 Church⁸ are bound by the norm, since the Church directly legislates only for its members.⁹ 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.¹⁰ 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

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

⁹E. REISSNER, *Canonical employer*, pp. 14-15.

¹⁰E. REISSNER, *Canonical employer*, p. 16.

employers.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, 1° now supplies by requesting administrators to observe civil legislation on labour and social life according to the social principles taught by the Church.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, 2°.

¹¹E. REISSNER, *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.

¹²CLSA, "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.¹³

2.1.2 - *Quadragesimo anno*

Another source of c. 1286 is Pius XI's encyclical *Quadragesimo anno*,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

¹³See, among others, cc. 231§2, 1274, 222§ 2.

¹⁴*QA*, in *AAS*, pp. 200-201. English translation in DAUGHTERS OF ST. PAUL (eds.), *Encyclical Letter of Pius XI, On Social Reconstruction*, Boston, St. Paul Editions, pp. 36-38.

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.¹⁵ 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.¹⁶

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

¹⁶One 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

¹⁷PIUS XI, Encyclical Letter *Divini Redemptoris*, (= *DR*), 19 March 1937, in *AAS*, 29 (1937), p. 92. English translation in C. CARLEN, *The Papal Encyclicals: 1740 -1981*, vol. 3, Wilmington, N C, Consortium Book, McGrath Publ., 1981, pp. 547-548, nos. 50-52.

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

¹⁸JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, January 25, 1983, in *AAS*, 75 (1983), Part II, p. vii; see also *CLSA Commentary*, p. xxvi.

¹⁹*MM*, in *AAS*, 53 (1961), p. 419. English translation in J. GREMILLION, *The Gospel of Peace and Justice*, pp.158-159, no. 71-73.

by the economy of the state and in the interest of the poor, is called to influence those who control the economy.²⁰ 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 goods²¹ 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*²² 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,

²⁰For 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.

²¹See c. 1254, §2.

²²SECOND VATICAN COUNCIL, Decree on the Apostolate of Lay People, *Apostolicam actuositatem*, (= AA), 18 November 1965, in *AAS*, 58 (1966), pp. 837. English translation in Flannery, pp. 766- 798.

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.²³

Canon 1286²⁴ 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.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

²³AA 22.

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

²⁵See 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.

(c. 281, §1).²⁶

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*,²⁷ 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

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

²⁷GS 67.

sources offer a comprehensive view of the background of c. 1286.²⁸ 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 *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

²⁸One 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 consultants preferred to recall the general principles of social justice.

²⁹PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Acta commissionis, “De bonis Ecclesiae temporalibus”, in *Communicationes*, 5 (1973), p. 99.

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

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 [...]”.³¹ 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

³⁰PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema canonum libri V: de iure patrimoniali Ecclesiae*, (= 1977 schema), Vatican City, Typis polyglottis Vaticanis, 1977, c. 30, 1.° “Administratores bonorum: 1° in operarum locatione leges etiam civiles, quibus labor et vita socialis dirigitur, adamussum servant, iuxta principia ab Ecclesia tradita; 2° iis, qui operam ex conducto praestant, iustam et honestam mercedem tribuant ita ut eisdem facultates praebeantur suam suorumque vitam religiosam, familiarem, socialem, culturalem adequate colendi.”

³¹In Latin “*adamussum servant 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 RECOGNOSCENDO, *Acta commissionis, “De bonis Ecclesiae temporalibus”*, in *Communicationes*, 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.³² The verb *attinent* (“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

³²PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex iuris canonici: schema Patribus commissionis reservatum*, Libreria editrice Vaticana, 1980, p. 276.

the adjective of relating to or practising paternalism.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 *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\17 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.

³³P. GOVE et al., *Websters Third New International Dictionary of the English Language Unabridged*, Springfield, MA, G & C Merriam Company Publishers, 1981, p. 1654. See also *Black's Law Dictionary*, p. 1126.

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.º ” Furthermore, the general tone of the canon requiring administrators to implement the civil law trustingly gives them discretion, hence the consultants 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 servant, 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.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.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

³⁵T. L. BOUSCAREN, A.O. ELLIS and F. N. KORTH, *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Co., 1966, p. 805.

³⁶Property held for purposes other than the above may not be properly held by the Church. See A. MAIDA and N. CAFARDI, *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.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;³⁸ (d) the adoption of civil laws in certain cases.

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

³⁷According 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, *Canon Law: A Text and Commentary*, p. 802).

³⁸See C. GALLAGHER, "Temporal Administration in the New Code of Canon Law", in *The Way Supplement*, 50 (1984), p. 72.

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 pursuing 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.³⁹ 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.⁴⁰

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.

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

⁴⁰Whether 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;⁴¹ and lastly, an officer who directs or superintends affairs of a business, school, or government agency.⁴² 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.⁴³ He regulates the administration of temporal goods through general laws

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

⁴²See. *Black’s Law Dictionary*, p. 44.

⁴³Canon 1273

and oversees some acts of administration through the various offices of the Roman Curia.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.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.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

⁴⁴Such 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.

⁴⁵This 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.

⁴⁶The 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 established⁴⁷ 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.

⁴⁷See 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.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.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.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.⁵¹ This canon

⁴⁸Canons 325, 392, §2, 1276, 1279, §1.

⁴⁹One 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.

⁵⁰CLSA, "Canonical Standard," p. 547.

⁵¹This 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.^o 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

⁵³What about various unincorporated agencies in the Church who must employ, such as Justice and Peace Commissions?

⁵⁴LE 17.

⁵⁵See 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

⁵⁶However, 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.⁵⁷ 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.⁵⁸ 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

⁵⁷J. LEONARD, “Temporal Goods c. 634-640 ”, in J. HITE et al., *A Handbook on Canons 573-746*, Collegeville, MN, The Liturgical Press, 1985, p. 99.

⁵⁸*Communicationes*, 12 (1980), p. 394.

are made to the contrary. The notion of temporal goods is more inclusive and broader⁵⁹ 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;

⁶⁰J. WHITE, *A Concise Latin-English Dictionary*, London, Longmans, Green and Co., 1880, pp. 564-565.

⁶¹*Black's Law Dictionary*, p. 729.

⁶²*Black'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 *conventionem scriptam*).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*

⁶³Such as cc. 639, 1284 § 2, 1°, 1290, 681 §2, 520 §2.

⁶⁴*Black's Law Dictionary*, p. 322.

⁶⁵*CLSA Commentary*, p. 876.

⁶⁶*Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus*, Typis polyglottis Vaticanis, 1990, English translation, *Code of Canons of the Eastern Churches, Latin-English Edition*, translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1992.

employment,⁶⁷ while the French translation states *dans l'engagement du personnel employé*.⁶⁸

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 think 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'

⁶⁷Canon Law Society of Great Britain and Ireland, in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, *The Code of Canon Law*, New Revised English Translation, London, HarperCollins, 1997.

⁶⁸*Codex Iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Typis polyglottis Vaticanis, 1983. *Code de Droit Canonique*, texte officiel, la Société internationale de droit canonique et de Législations religieuses comparées avec le concours des Facultés de droit canonique de l'Université Saint Paul d'Ottawa, Faculté de droit canonique de l'Institut Catholique de Paris, Paris, Editions Centurion, Cerf, Tardy, 1984.

rights.⁶⁹

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,⁷⁰ 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

⁶⁹If 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.

⁷⁰Sometimes 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.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.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

⁷¹J. C. PÉRISSET, *Les biens temporels de l'Église*, Fribourg, Éditions Tardy, 1996, p. 183.

⁷²T. LYNCH, *Contracts Between Bishops and Religious Congregations*, Washington DC, Catholic University of America Press, 1946, p. 52.

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,

⁷³*Black's Law Dictionary*, p. 67.

⁷⁴See c. 639 and R. J. AUSTIN, "Temporal Goods Within the Church: Some Canonical Reflections", in *The Australasian Catholic Record*, 69 (1992), p. 156.

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.⁷⁵ Employees exclude volunteers who freely offer their services to the Church without the intention of making a living through their services.⁷⁶

In respect of lay people, such as catechists,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,⁷⁸ they are also administrators of temporal goods within the meaning of c 1286, 1°, 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

⁷⁵*Black's Law Dictionary*, p. 525.

⁷⁶NATIONAL CONFERENCE OF CATHOLIC BISHOPS, “Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the US Economy”, in *Origins*, 16 (1986-1987), p. 446, no. 352.

⁷⁷Canon 785.

⁷⁸F. KLOSTERMANN “The Various Methods of the Apostolate,” in H. VORGRIMLER, (gen. ed.), *Commentary on the Documents of Vatican II*, Freiburg, Herder and Herder, 1967-1969, vol. 3, p. 367.

with the resources necessary for fulfilling these conditions. Canon 1286 is seen as a corollary of the rights enshrined in c.231 § 2.⁷⁹ The connection is further justified by the fact that both canons have the same source in article 22 of *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.”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.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

⁷⁹See *Letter & Spirit*, p. 729.

⁸⁰D.H. HERMANN, “The Code of Canon Law Provisions On Labour Relations”, in *The Jurist*, 44 (1984), p. 179.

⁸¹Canon 230 §1.

of the term,⁸² 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.⁸³

Among the employees implied in c. 1286, 1° are clerics who are part of Christ's faithful, called sacred ministers.⁸⁴ 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

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

⁸³E. REISSNER, *Canonical Employer*, p. 70

⁸⁴Canon 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

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

⁸⁶CONGREGATION FOR CATHOLIC EDUCATION AND CONGREGATION FOR THE CLERGY, *Basic Norms for the Formation of Permanent Deacons*, 22 February, 1998, Sherbrooke, Canada, Médiaspaul, 1998, p. 34, no. 20.

⁸⁷Note 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.”⁸⁸

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

⁸⁸NATIONAL CONFERENCE OF CATHOLIC BISHOPS, “Economic Justice for All”, p. 446, no. 351.

are probably the most difficult to cover adequately and they also occasion the most difficult and serious disagreements.”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.⁹⁰ It is important to note, however, that contracts between an individual religious and the diocese are covered by c. 1286, 1.° Procedures for arbitration and termination of the contracts will usually be determined in the contracts themselves.⁹¹

To consider if an independent contractor is a worker under c. 1286, 1°, 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.⁹² Such a person is not a worker within the meaning of c. 1286, 1°. 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.⁹³ Indeed, an administrator

⁸⁹R. HILL, “The Apostolate of Institutes”, in J. HITE et al., *A Handbook on Canons* 573-746, p. 212.

⁹⁰This 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.

⁹¹It 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.

⁹²*Black's Law Dictionary*, p. 770.

⁹³E. REISSNER, *Canonical Employer*, p. 16.

in entering into any contract for independent work has to apply the principles and values of c. 1286, 1.º 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.⁹⁴

In consideration of the category of workers implied in c. 1286, 1º, a distinction seems to exist between professional workers and those in special service of the Church.⁹⁵ Professional workers are no less directly committed to the mission of the Church than those in its special service and c. 1286, 1º applies to both cadre of worker. Canon 1286, 1º 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.⁹⁶

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

⁹⁵A. MARZOA et al (eds.), *Commentario exegetico al Código de derecho canónico*, Pamplona, Spain, Ediciones Universidad de Navarra, 1997, vol. IV/1, p. 141.

⁹⁶See 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.

⁹⁸J. HUELS, “General Norms: Titiles 1-II ”, in *a New Commentary on the Code of Canon Law*, J. BEAL, J. CORRIDEN, and T.J. GREEN (eds.), NY/Mahwah, Paulist Press, 2000, pp. 85. Pre-publication page proofs were furnished by the author.

⁹⁹T. MOLLOY, “ The Canonization of Civil Law, in *CLSA Proceedings*, 46 (1984), p. 44.

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.¹⁰⁰ We are inclined to the opinion that c. 1286, 1° 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° 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;¹⁰¹ while others think that administrators should obey all civil laws which have been canonized.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° admonishes administrators to apply the civil laws on labour and social

¹⁰⁰See CLSA “Canonical Standard”, p. 549.

¹⁰¹See CLSA, “Canonical Standard”, p. 549; T. GRANT, “Social Justice in the 1983 Code of Canon Law: An Examination of Selected Canons”, in *The Jurist*, 49 (1989), p. 133; J. MYERS, in *CLSA Commentary*, p. 877. The narrow interpretation is more agreeable to us.

¹⁰²See T. GRANT, “Social Justice in the 1983 Code of Canon Law: An Examination of Selected Canons,” p. 135.

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.¹⁰³

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.¹⁰⁴

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

¹⁰³ 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).

¹⁰⁴ 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.

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

¹⁰⁵Pope Paul VI, Address to the Sacred Roman Rota, "Juridical Structures in the Life of the Church", in *The Pope Speaks*, 22 (1977), p. 175.

the name Catholic.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.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.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

¹⁰⁶Canon 300.

¹⁰⁷See CLSA, "Canonical Standards", p. 559.

¹⁰⁸For 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.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.”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.¹¹¹ The pertinent issue here is that the

¹⁰⁹GS, 29.

¹¹⁰NATIONAL 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.

¹¹¹See, commentary on c.1286 in *Letter & Spirit*, p. 730.

administrator should observe civil laws according to the principles taught by the Church.

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

¹¹²L. ÖRSY, in *CLSA Commentary*, p. 38

State¹¹³ 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.

¹¹³GS 74.

We shall now look at the implications of this canonization in reference to 1286, 1.^o 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.^o 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.^o 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 non-existent during the pre-colonial era. Generally, the family farm was cultivated by the farmer and his wife (wives) and children.¹ 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

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

²Every profession had its dignity such as hunters, palm wine tappers, fortune tellers.

a worker who helps out.³ 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

³F. ARINZE, "The Encyclical *Laborem exercens* in the Context of Africa", Paper at Symposium "From 'Rerum novarum' to *Laborem exercens*' - Towards the Year 2000", Rome, 3-5 April 1982, Vatican City, Pontifical Council for Justice and Peace, 1983, p. 209.

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

⁴F. ARINZE, "The Encyclical *Laborem exercens* in the Context of Africa", p. 210. However, employed workers still form a small percentage of the Nigerian work force. Many Nigerians work towards setting up their own enterprise.

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

⁶F. ARINZE, "The Encyclical *Laborem exercens* in the Context of Africa", p. 210.

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 1876.⁷ After Lagos was merged with the southern protectorate in 1906,⁸ 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

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

⁸The 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.”⁹ According to s. 45 of The Interpretation Act,¹⁰

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 construction of the Nigerian courts. In *Attorney General v. John Holt & Co.*, Chief 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*,¹¹ *The Infant Relief Act*,¹² and *The Fatal Accidents Acts of 1846 and 1864*¹³ 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

⁹For further reading, see G. EZEJIOFOR, “Sources of Nigerian Law”, in C.O. OKONKWO (ed.), *Introduction to Nigerian Law*, London, Sweet & Maxwell, 1980, pp.1- 8.

¹⁰Chapter (= Cap.) 89 of 1958 Laws of Nigeria, now s. 32 Interpretation Act Cap. 192 Laws of the Federation of Nigeria (= LFN) 1990.

¹¹See *Malomo v. Olusola* (1954) 21 Nigeria Law Report (= N. L. R) 1.

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

¹³*Lawal v. Younan* (1961) All Nigeria Law Report (= All N. L. R) 245.

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.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. Waddernburn 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.”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

¹⁴The 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.

¹⁵K. W. WADDERBURN, *The Worker and the Law*, Harmondsworth, Penguin Books, 1965, p. 11.

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.¹⁶

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

3.2.2 - Nigerian Legislation

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

*The Labour Act*¹⁸ came into operation on 1st August 1974, repealing the *Labour Code Act of 1942*.¹⁹ It regulates the employment of workers and consolidates activities relating to labour in Nigeria. S. 90 of the *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, *inter alia*, with the

¹⁶Labour Supervision in the Colonial Empire 1937-1943, Colonial Office No. 185 para. 1, in A. ADEOGUN, *From Contract to Status in Quest for Security*, Lagos, Lagos University Press, 1986, p. 6.

¹⁷Laws of Nigeria 1958, Cap. 222.

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

¹⁹Cap. 91, Laws of Nigeria 1958, whose genesis can be traced back to the first *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 1987,²⁰ 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*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*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

²⁰LFN Cap. 470 1990.

²¹Cap. 437 LFN 1990 replaced *The Trade Union Act of 1938*.

²²Cap. 432 LFN 1990.

disputes.

*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 Decrees²⁵ 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

²³Cap. 126 LFN1990, replaced The Factories Act of 1956.

²⁴A ADEOGUN, *From Contract to Status in Quest for Status*, p. 6.

²⁵R. AKINDELE, “The Constituent Assembly and the 1989 Constitution”, in L. DIAMOND et al., (eds.), *Transition Without End, Nigerian Politics and Civil Society Under Babangida*, London, Lynne Rienner Publishers, 1997, p. 121.

29th May 1999 to usher in a democratically elected government.²⁶

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.

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, *stare decisis*,

²⁶*The Constitution of the Federal Republic Of Nigeria*, 1999, issued in Abuja May 5, 1999, Lagos, Ministry of Information and Culture Press, 1999.

²⁷Some of these provisions have been given statutory recognition making them justiciable. For instance, *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.²⁸

In the case of *Priestly v. Fowler*,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 *Wilson & Clyde Coal Co. Ltd. v. English*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 *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 *Olaniyan and Others v. University of Lagos*³¹ the Supreme Court held that whenever

²⁸The 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.

²⁹(1837) 150 English Report (= E.R.) 1130.

³⁰(1938) Appeal Cases (= A.C.) 57.

³¹(1985) 2 Nigeria Weekly Law Report (= N.W.L.R) 599.

misconduct is alleged against a public servant³² 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:

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 with 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.³³

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 *Labour Act* which excludes some classes of workers, and the role of the Nigerian government in labour issues, have all

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, *The Nigerian Labour Law*, Ibadan, University of Ibadan Press, 1982, p. 13.

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 Employee³⁵

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

³⁴A. EMIOLA, *Nigerian Labour Law*, p. 26.

³⁵Employer 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.

³⁶The Labour Act s. 90(1).

contractor in a 'contract for services'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 *Atedoghu v. Sanni Alade*³⁸ it was held that a contract of service exists between the proprietor and a taxi driver. The proprietor paid 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 *Short v. Henderson Ltd*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 *Stevenson Jordan & Harrison*

³⁷For instance estate agents, plumbers, surveyors, etc.

³⁸(1957) Western Nigerian Law Report 184 at 185.

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,

⁴⁰(1952) 1 T.L.R 101 at 111.

⁴¹For instance a consultant surgeon or an airline pilot.

⁴²The 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.⁴³

In the case of *David Olaja v. Kaduna Textile Mills Ltd.*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.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.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.

⁴³ The Labour Act s. 90 (1)(a) - (e).

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

⁴⁵In 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, *Nigerian Labour Law*, pp. 12 - 18.

⁴⁶A. EMIOLA, *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.

⁴⁷I. E. SAGAY, *Nigerian Law of Contract*, Kaduna, Spectrum Law Publishers, 1989, p. 1.

⁴⁸It 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

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,⁵³ 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.⁵⁴

In practice, however, the organized private sector⁵⁵ 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.

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 infant⁵⁶ 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 necessities.⁵⁷ An infant who owns or inherits a business enterprise would not be liable to his employee except

⁵⁶An 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.

⁵⁷S. 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.

if the business is for necessities. However, an infant may ratify a contract entered on his behalf on attainment of majority age.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.⁵⁹

Under the old Common Law system, a married woman lacked contractual capacity, but this has been altered by the law⁶⁰ 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.⁶¹

A corporation enjoys legal personality under the *Company and Allied Matters Decree of 1990*,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

⁵⁸*Rawley v. Rawley* (1876) 1 Queens Bench Division (= Q. B. D.) 460.

⁵⁹S. 58 - 63 of the Labour Act.

⁶⁰Such as *Married Women Property Act 1882*.

⁶¹See ss. 53 -54 of *the Labour Act* for detailed provision.

⁶²S. 36 (5), Cap. 59 LFN 1990.

constitutions and powers of the trustees.⁶³

Generally, those illiterate in letters have contractual capacity. However, in Nigeria where many people are not lettered, *the Illiterates 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.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

⁶³Legal 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.

⁶⁴S. 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,⁶⁵ housing or housing allowance, transport allowance,⁶⁶ leave allowance, overtime,⁶⁷ sick pay.⁶⁸ The right to wages cannot be excluded in a contract; otherwise it shall be void.⁶⁹ 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.*⁷⁰ 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.⁷¹

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.⁷² Whenever an express provision to suspend without pay exists, any procedure laid down must be strictly followed.⁷³ General Abubakar on assumption of office as Nigerian head of State in 1999, increased the minimum wage to five thousand two hundred naira⁷⁴ 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

⁷⁰1960 1 Weekly Law Report (= W.L.R) 1055.

⁷¹S. 15.

⁷²See *Okunoren v. U. A. C Ltd.* (1958) 20 N. L. R 25.

⁷³See *George Nicole v. E. C. N* (1965) Lagos Law Report (= L. L. R) 261.

⁷⁴The Nigerian currency is the naira and currently the official exchange rate is 90 naira to 1\$ 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 manoeuvre 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.⁷⁵ 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.⁷⁶ The Labour Act stops short of deliberately fixing a standard

⁷⁵O. OGUNNIYI, *Nigerian Labour and Employment Law in Perspective*, Lagos, Folio Publishers Ltd., 1991, p. 39.

⁷⁶In 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.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.”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.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.⁸⁰ Many female employees, due to reduction in their salaries, delay the period of confinement to the minimum period.

⁷⁷S. 12 (1-3) of *the Labour Act*.

⁷⁸*The Ottawa Citizen*, January 5, 1999, p. A12; Major religious feasts such as Christmas, *Idel Fitri* are observed as public holidays in Nigeria.

⁷⁹The 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.

⁸⁰S. 53 *the Labour Act*. See also A.K UBEKU, *Personnel Management in Nigeria*, Benin City, Ethiope Pub. Co., 1975, p. 66.

Implied terms are presumed very often for business efficacy to form part of the contract even though they are not expressed.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 Labour Act*. Some of these rights and duties are briefly discussed below.

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.⁸² If for some reason the contract is invalid, services already rendered will be paid on *quantum meruit*, “so much as he shall deserve.” In *Craven Ellis v. Cannons Ltd.*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 *quantum meruit* for services rendered. However, the court will refuse to order payment if the contract is illegal.⁸⁴ Nowadays, remuneration is an express term

⁸¹*Shirlaw v. Southern Foundries Ltd.* (1939) 2 All E. R. 113.

⁸²*George Erabor v. Incar Nigeria Ltd.* (1975) 4 S.C. 1.

⁸³(1936) 2 K. B 403.

⁸⁴*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.⁸⁵ 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.⁸⁶ Reasonable care includes provision of safe tools or machinery in an environment conducive for a safe system of work.

⁸⁵*Devenald v. Rosser & Sons* (1906) 2 KB 728, *Langston v. Allen* (1974) 1 A.E.R. 980.

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,⁸⁷ *volenti non fit injuria* (consent to suffer the risk of injury), and contributory negligence.⁸⁸

(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.⁸⁹

(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

⁸⁷An 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*.

⁸⁸There 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.

⁸⁹London Times Law Report, February 19, 1987. See also *Bradford v. Robinson Rentals* (1967) 1 All E. R 267.

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. Webb*⁹¹, 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 The

⁹⁰*Gulf v. Great Northern Rly. Co.* (1861) 121 E. R. 594.

⁹¹(1969) 2 All E. R. 216.

⁹²(1965) 1 All N. L. R. 244.

⁹³See, O. OGUNNIYI, *Nigerian Labour and Employment Law in Perspective*, pp. 69-88.

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.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.⁹⁵

Section one of the Workmen's Decree of 1987⁹⁶ 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

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

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.

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.

facts of the case. In *Western Nigeria Trading Co. Ltd. v. Busari Ajao*,⁹⁹ 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*¹⁰⁰ 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,

⁹⁹(1965) Nigeria Monthly Law Report (= N.M.L.R) 178.

¹⁰⁰(1941) 2 All E.R. p. 539 at 553.

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

¹⁰¹See *Halbot v. Lens* (1901) 1 Chancery Division 344.

¹⁰²*G.K.O Ajayi v. Lagos City Council* (1968) N.M.L.R.125.

¹⁰³A. EMIOLA, *Nigerian Labour Law*, p. 168.

Law ¹⁰⁴ and statute. ¹⁰⁵

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*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*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.¹⁰⁸

¹⁰⁴*Lloyd v. Grace, Smith & Co* (1912) A.C 716.

¹⁰⁵For 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.

¹⁰⁶(1961)W.N.L. R. 173.

¹⁰⁷(1963) 1 All NLR 180.

¹⁰⁸This 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 Mbukwu*,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.

¹⁰⁹(1962) Eastern Nigeria Law Report (= E.N.L.R)142.

¹¹⁰For 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.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.¹¹²

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

¹¹¹*Southern Foundries v. Shirlaw* (1940) A. C. 701 at p. 721.

¹¹²A. 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.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 *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.¹¹⁴ S. 11 of *the Labour Act* provides for termination by notice.

¹¹³*Nwokolo v. Sapele U.D.C.* (1965) 1 ALL NLR 244.

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 9th 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

effective on May 31st and not May 8th. 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.

¹¹⁵(1976) 11 S.C. 211.

¹¹⁶This 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

¹¹⁷For 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) 1 All 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.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 Nigerian

¹²⁰For historical development of trade unions in Nigeria, see A. EMIOLA, *Nigerian Labour Law*, p. 190; according to O. OGUNNIYI, *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.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 v. Registrar of Trade Unions*,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

¹²¹See *Trade Unions (Central Labour Organization) (Special Provisions) Act 1976 & Trade Unions (Amendment) Act 1978*.

¹²²(1985) 1 N.W.L.R (part 4) 755.

persuading the minister to register a new union.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.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.¹²⁵ The effectiveness is also hampered by State

¹²³A.A. ADEOGUN, *From Contract To Status in Quest for Security*, pp. 39 - 40.

¹²⁴S. 90 of *The Labour Act 1974*.

¹²⁵Except 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.¹²⁶ The government further has the power to proscribe any association or union of persons in essential services, which engages in a strike.¹²⁷ It further reserves the right to detain any person who engages in such strikes.¹²⁸ Since essential services are involved, the Government seeks to maintain order and protect the community.¹²⁹

incorporated into the individual contracts of employment.

¹²⁶S.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>).

¹²⁷See *Trade Disputes (Essential Services) Act* no. 23 of 1976 as amended by no. 69 of 1977. This law extends to private enterprise.

¹²⁸For instance the Nigeria medical association and the Association of Resident Doctors were proscribed in 1985 and the officers were detained.

¹²⁹In 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."¹³⁰ 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

¹³⁰O. LAKEMFA, *New Chains, Nigerian Workers and Decree 26 of 1996*, Lagos, Tnt Newspapers, 1997, p. 33.

¹³¹B. 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,¹³² 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,¹³³ 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 1961¹³⁴ 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

¹³²S. 14(2)(b) of *The 1979 Constitution of The Federal Republic of Nigeria*, Lagos, Government Press, provides that security and welfare of the people shall be the primary purpose of the Government.

¹³³Pension 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.

¹³⁴*National Provident Fund Act 1961*.

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.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

¹³⁵B. NWABUEZE, *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.¹³⁶

Even where damages are awarded for wrongful termination, the remedies in damages are limited to the notice period (S. 11 of *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 *Olaniyan & Ors v. University of Lagos*.¹³⁷ 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.”¹³⁸ 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

¹³⁶O. OGUNNIYL, *Nigerian Labour and Employment Law in Perspective*, p. 330.

¹³⁷1985 2 N.W.L.R 599

¹³⁸1985 2 N.W.L.R at 685.

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. Ogunniyi,

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

¹³⁹O. 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*.

¹⁴⁰G.O.S. AMADI, "Security of Employment of Public Officers and *The Public Officers (Special Provisions)*" Decree No. 17, 1984, in *Nigerian Juridical Review*, 3 (1978-1988), p. 108.

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.¹⁴¹ 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.¹⁴²

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

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

¹⁴²N.N. NWORAH, *Labour Disputes in Nigeria*, Doctoral Dissertation, Roma, Pontificia Universita Lateranense, 1996, p. 79.

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.

4.1. THE CHURCH AS EMPLOYER

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.

²H. ADIGWE, "Issues of Personnel in The Nigerian Church", Paper presented at the Canon Law Conference of Nigeria, May 22-25, 1990, Awka, Nigeria, in *Canon Law Society of Nigeria Proceedings File*, 1990, p.1.

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.° 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.

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 so 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”.⁸ 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

⁸H. ADIGWE, “Issues of Personnel in The Nigerian Church”, p. 11.

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

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.”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.”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

¹⁰H. ADIGWE, “Issues of Personnel in The Nigerian Church” , p. 2.

¹¹H. ADIGWE, “Issues of Personnel in the Nigerian Church”, p. 12.

to a Christian burial.”¹² 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.¹³ 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

¹²A. ECHEMA, “Justice in the Church,” in *Workshop Proceedings, Faith and Justice: A Witnessing Church*, p.16.

¹³This 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.”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

¹⁴H. 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

¹⁵Evaluation Report of *The Justice, Development and Peace Program of the Catholic Church of Nigeria*, Conducted for Catholic Secretariat of Nigeria, by IRED, Lagos, December 1998, p. 45.

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."¹⁶

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

¹⁶H. ADIGWE, "Issues of Personnel in The Nigerian Church", p. 12.

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

home among your people.¹⁷

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.¹⁸ In other words, few Nigerian Catholics have been able to bring the same notion of God into their work place, 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.”¹⁹

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’

¹⁷JOHN PAUL II, “Address to the Bishops’ Conference of Nigeria”, in *L’Osservatore romano*, English language edition, March 25, 1998, p. 4.

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

¹⁹J. ONAIYKAN, “The Laity and the Priesthood in the Church”, in B. ETAFO & H. OKEKE, (eds.), *Lay People in the Church and in the World*, Onitsha, Veritas Press, p. 12.

may no longer be tolerated as non-culpable.”²⁰ 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

²⁰N.C. OBIAGBA, “Canon Law in the Nigerian Civil Society: Areas of Convergences and Conflicts”, A paper delivered At The Canon Law Conference, at Sacred Heart Pastoral Center, Jos, April 26, 1989, p. 22.

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.²²

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

²²This 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.º

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, 1º 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

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,

²³H. ADIGWE, "Issues of Personnel in The Nigerian Church", p. 13.

appropriate remuneration etc.”²⁴ 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

²⁴*Evaluation Report of The Justice, Development and Peace Program of The Catholic Church of Nigeria*, p. 60.

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.”²⁵

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.²⁶ 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.²⁷

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.

²⁵A. O. CHUKWURA, “Law and Society”, in C. O. OKONKWO (ed.), *Introduction to Nigerian Law*, p. 411.

²⁶It 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.), *Introduction to Nigerian Law*, pp. 41- 53.

²⁷The customary laws are now applied in customary courts.

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

²⁸T. AGUDA, *Nigeria in Search of Social Justice Through the Law*, Lagos, Institute of Advanced Legal Studies, 1986, p. 8.

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.”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.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.

²⁹F. S. FIORENZA, “Religious Beliefs and Praxis: Reflections on Catholic Theological Views of Work”, in G. BAUM, (ed.), *Work and Religion*, New York, Seabury, 1980, p. 98.

³⁰A. EMIOLA, *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.

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.

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

³²O. ACHIKE, *Nigerian Law of Contract*, Enugu, Nwamife Publishers, 1982, p. 9.

³³F.D. ALMADE, *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".³⁴

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

³⁴T. A. AGUDA, *Nigeria in Search of Social Justice Through the Law*, p. 16.

³⁵A. ADEOGUN, *From Contract to Status in Quest for Security*, p. 4.

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 *Olaniyan & 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), Olaniyan v. University of Lagos (supra).*

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.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 (*qua*) to a contract of its own kind (*sui generis*), the difference in translation of the word *locatio* to *contract* (in English) seems to find some ground here. Taking into consideration that the contract of employment as *sui generis* highlights the protection of the rights of the worker, one can infer that since the Church seeks the protection of workers' rights, *locatio* implies all that upholds the workers' rights rather than *contractus* which is geared towards the agreement itself, just as a contract of employment *qua* contract.

The applicability of the principles of c. 1286, 1° 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

³⁹A. ADEOGUN, *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,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:

⁴⁰The 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

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

⁴¹T. AGUDA, "Poverty, Law and Justice", in T. O. ELIAS and M. I. JEGEDE (eds.) *Nigerian Essays in Jurisprudence*, Lagos, MIJ Publishers Ltd., 1993, p. 441.

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 policies. They are not justiciable rights which a citizen can vindicate in a court of law.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.”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:

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

⁴²It is arguable whether their adoption into Nigerian Municipal law, and the *African Charter on Human And Peoples Rights* has not made these rights enforceable in Nigeria, even if only as charter rights. See *Ogugu v. State* (1994) 9 NWLR (Part 36) 1 at 26 where Justice Bello said that the African Charter has become part of our domestic laws as it falls within the judiciary powers of the Nigerian courts.

⁴³E. ONYEKPERE, “Human Rights and the Nigerian Constitution”, in *Journal of Human Rights Law and Practice*, vol. 5, January 1, 1995, p. 20.

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:

⁴⁴O. AGBAKOBA, "The Role of Lawyers and the Observance of Human Rights", in *Journal of Human Rights Law & Practice*, vol. 5, January 1, 1995, p. 126.

⁴⁵T. A. AGUDA, *Nigeria in Search of Social Justice Through the Law*, p. 15.

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

⁴⁶*Post Express*, Daily Nigerian Newspaper, 9th June, 1999, Posted on the Internet Nigerian Website ([http:// www .postexpresswired.com](http://www.postexpresswired.com))10th June 1999.

⁴⁷*Pacem in terris*, no. 18-21.

the case with Africa both then and now.”⁴⁸ 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.”⁴⁹

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.”⁵⁰ 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.

⁴⁸J. ONAIYEKAN, “*Rerum novarum*: Its Message for the Church in Africa Today - Reflections of A Nigerian Bishop”, in R. DUSKA (ed.), *Rerum novarum: A Symposium Celebrating 100 Years of Catholic Social Thought*, p. 125.

⁴⁹O. AGBAKOBA, “The Role of Lawyers and the Observance of Human Rights”, p. 120.

⁵⁰CATHOLICS BISHOPS’ CONFERENCE OF NIGERIA, Communiqué, 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

⁵¹T. AGUDA, "Poverty, Law and Justice", in T. O. ELIAS and M. I. JEGEDE (eds.) *Nigerian Essays in Jurisprudence*, Lagos, MIJ Publishers, p. 444.

often very bad employers. Minimum wages are atrociously low with generous helpings which the ruling elite take for themselves.”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.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.”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° 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

⁵²J. ONAIYEKAN, “*Rerum novarum*: Its Message for the Church in Africa Today - Reflections of A Nigerian Bishop”, in R. DUSKA (ed.), *Rerum novarum: A Symposium Celebrating 100 Years of Catholic Social Thought*, p.127.

⁵³While conceding that States need each other for trade and economic growth.

⁵⁴The *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.° 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.

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^o 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.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

⁵⁵H. O. OKEKE, "Church-as-God's Family: From African Ecclesiology to African Canon Law", in *Studia canonica*, 32 (1998), p. 397 - 414.

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.^o 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.

BIBLIOGRAPHY

1- CANON LAW

1. SOURCES

Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV promulgatus, praefatione fontium annotatione et indice analytico-alphabetico ab E.mo Petro Gasparri auctus, Roma, Typis polyglottis Vaticanis, 1918, 786 p.

Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, Libreria editrice Vaticana, 1983. English translation, *The Code of Canon Law*, prepared by the Canon Law Society of Great Britain and Ireland, in association with the Canon Law Society of Australia and New Zealand and the Canadian Canon Law Society, New Revised English Translation, London, HarperCollins, 1997, 509 p.

Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico alphabetico auctus, Città del Vaticano, Libreria editrice Vaticana, 1989, xxxii, 669 p.

Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, Typis polyglottis Vaticanis, 1990. English translation, *Code of Canons of the Eastern Churches, Latin-English Edition*, translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1992, 785 p.

LEO XIII, Encyclical Letter *Rerum novarum*, 15 May 1891, in *ASS*, 23 (1890-1891), pp. 641-670. English translation, in DAUGHTERS OF ST. PAUL, *Leo XIII On the Condition of The Working Classes*, Boston, St. Paul Book and Media, 54 p.

———, Encyclical Letter *Libertas praestantissimum*, in *Acta Leonis XIII*, 8 (1888), pp. 212-246.

LEO XIII, *Pontificis maximi acta*, Romae, Ex Typographia Vaticana, 1881-1905, 23 v.

PIUS X, Motu proprio, *Fin dalla prima*, 18 December 1903, in *ASS*, 36 (1903-1904), pp. 339-345.

PIUS XI, Encyclical Letter *Quadragesimo anno*, 15 May 1931, in *AAS*, 23 (1931), pp. 177-228. English translation in DAUGHTERS OF ST. PAUL, *Pius XI On Social Reconstruction*, Boston, St. Paul Books and Media, 75 p.

PIUS XI, Encyclical Letter *Divini redemptoris*, 19 March 1937, in *AAS*, 29 (1937), pp. 65-106.

PIUS XII, Radio Message *Il Santo Natale e la umanità dolorante*, 24 December 1942, in *AAS*, 35 (1943), pp. 9-24.

———, *Discorso*, 13 June 1943, in *AAS*, 35 (1943), pp. 171-179.

———, Allocution *Magnificate Dominum mecum*, 2 November 1954, in *AAS*, 46 (1954), pp. 666 - 677.

JOHN XXIII, Encyclical Letter *Mater et magistra*, 15 May 1961, in *AAS*, 53 (1961), pp. 401- 464.

———, Encyclical Letter *Pacem in terris*, 11 April 1963, in *AAS*, 55 (1963), pp. 257-304.

PAUL VI, Encyclical Letter *Populorum progressio*, 26 March 1967, in *AAS*, 59 (1967), pp. 257-299.

———, Allocution To the Bishops of Africa, 31 July 1969, in *AAS*, 61 (1969), pp. 573-578.

———, Apostolic Letter *Octogesima adveniens*, 14 May 1971, in *AAS*, 63 (1971), pp. 401- 441.

———, Message to the United Nations Secretary General, in *AAS*, 64 (1972), pp. 214 - 215.

———, Apostolic Exhortation *Evangelii nuntiandi*, 8 December 1975, in *AAS*, 68 (1976), pp. 5-76.

———, Address to the Sacred Roman Rota, "Judicial Structures in the life of the Church", in *The Pope Speaks*, 22 (1977), p. 175.

JOHN PAUL II, Address to Workers at Jalisco Stadium, Guadalajara, Mexico, 30 January 1979, in *AAS*, 71 (1979), pp. 217-220. English translation in *L'Osservatore romano*, English edition, 12 February 1979, no. 7, p. 7.

JOHN PAUL II, Encyclical Letter *Redemptor hominis*, 4 March 1979, in *AAS*, 71 (1979), pp. 257 - 324.

———, Encyclical Letter *Laborem exercens*, 15 September 1981, in *AAS*, 73 (1981), pp. 577- 647. English translation in DAUGHTERS OF ST. PAUL, *Encyclical Letter of John Paul II On Human Work*, Boston, St. Paul Book and Media, 66 p.

———, Papal Message to Nigeria, (Collected Speeches), on the occasion of his visit to Nigeria, 12-17 February 1982, Lagos, Federal Government Press, 1982, 28 p.

———, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, 75 (1983), Part II, pp. vii-xiv.

———, Encyclical Letter *Sollicitudo rei socialis*, 30 December 1987, in *AAS*, 80 (1988), pp. 513- 586.

———, Address to United States Bishops on *ad limina* visit, in *Tablet*, 5 November, 1988, p.1284.

———, Encyclical Letter *Centesimus annus*, 1 May 1991, in *AAS*, 83 (1991), pp. 793-867.

———, Post Synodal Apostolic Exhortation *Ecclesia in Africa*, 14 September 1995, in *AAS*, 88 (1996), pp. 5 - 82.

———, Address at a Special Synod Session in Johannesburg South Africa, “Solidarity with an Africa Exploited”, in *Origins*, 25 (1995-1996), pp. 237-239.

———, Address to the United Nations General Assembly, on the occasion of the 50th Anniversary of the founding of UNO, 19 October 1995, in *Origins*, 25 (1995-1996), pp. 293-299.

———, Homily during Mass at Legnica Airport, South Western Poland, “The Necessity of Jobs and the Meaning of Work”, 2 June 1997, in *Origins*, 27 (1997-1998), pp. 86-89.

———, Homily During Mass in Havana’s Plaza of Revolution, in *Origins*, 27 (1997-1998), pp. 545-548.

JOHN PAUL II, Homily at Mass in Onitsha on 22 March 1998, in *L'Osservatore romano*, English Language edition, 25 March 1998, p. 2.

———, Homily at Mass in Abuja on 22 March 1998, in *L'Osservatore romano*, English Language edition, 25 March 1998, p. 5.

———, Address to the Bishops' Conference of Nigeria, in *L'Osservatore romano*, English Language edition, 25 March 1998, p. 4.

———, Apostolic Letter, *Dies Domini*, 7 July 1998, in *Origins*, 28 (1998-1999), pp. 133-151.

CATHOLIC BISHOPS' CONFERENCE OF ENGLAND & WALES, *The Common Good and Catholic Social Teaching*, A Statement, London, Catholic Bishops' Conference of England & Wales, 1996, 35 p.

Catechism of the Catholic Church, English Translation, Nairobi, Pauline Publications Africa, 1994, 736 p.

CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, Pastoral letter *The Church and Nigerian Social Problems*, Lagos, Catholic Secretariat of Nigeria, Claverianum Press, 1972, 32 p.

———, *Particular Complementary Norms to the Revised Code*, Onitsha, Nigeria, Vicalex Nig. Ltd, 1985, 58 p.

———, Communique *In the Light of Distress of the Nation*, Second Plenary Meeting, Uyo, Nigeria, 9-12 September 1997, in *Briefing*, 27 (1997), pp. 33-35.

———, Communique *Corruption in Nigeria: Implications for Nation Building*, First Plenary Meeting, Lagos, 22-26 February 1999, 4 p.

CONGREGATION FOR CATHOLIC EDUCATION, "Guidelines for the Study and Teaching of the Church's Social Doctrine in the Formation of Priests", 30 December 1988, in *Origins*, 19 (1989-1990), pp. 171-192.

———, AND CONGREGATION FOR THE CLERGY, *Basic Norms for the Formation of Permanent Deacons*, 22 February 1998, Sherbrooke, Canada, Médiaspaul, 1998, 147 p.

CONGREGATION FOR THE DOCTRINE OF THE FAITH, "Instruction on Christian Freedom and Liberation", *Libertatis conscientia*, 22 March 1986, in *AAS*, 79 (1987), pp. 554-599.

———, "Commentary on Profession of Faith's Concluding Paragraphs", 30 June 1998, in *Origins*, 28 (1998-1999), pp. 116-119.

CONGREGATION FOR RELIGIOUS AND SECULAR INSTITUTES AND CONGREGATION FOR BISHOPS, Directives for the Mutual Relations Between Bishops and Religious in the Church, *Mutuae relationes*, 14 May 1978, in *AAS*, 70 (1978), pp. 473-506.

DIOCESE OF SYRACUSE, Employment Guidelines, "The Church as Employer", in *The Jurist*, 43 (1983), pp. 253-257.

NATIONAL CONFERENCE OF CATHOLIC BISHOPS, "Economic Justice for All: Pastoral Letter on Catholic Social Teaching and the U.S. Economy", in *Origins*, 16 (1986-1987), pp. 409-455.

———, "Socially Responsible Investment Guidelines", in *Origins*, 21 (1991-1992), pp. 405-408.

———, "The Challenge of Peace: God's Promise and Our Response", 1983 in D.J., O'BRIEN, and T. SHANNON (eds.), *Catholic Social Thought: The Documentary Heritage*, Maryknoll, New York, Orbis Books, 1992, pp. 492-571.

PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, Acta commissionis, "De bonis Ecclesiae temporalibus", in *Communicationes*, 5 (1973), pp. 94-103.

———, "Coetus studiorum 'De bonis Ecclesiae temporalibus'", in *Communicationes*, 12 (1980), pp. 388-435; 16 (1984), pp. 27-37.

———, *Schema canonum libri V de iure patrimoniali ecclesiae*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1977, 24 p.

PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *The Church and Human Rights*, Working Paper No. 1, Vatican City, Pontifical Commission for Justice and Peace, 1978, 71 p.

PONTIFICAL COUNCIL FOR JUSTICE AND PEACE, *Human Rights and The Church, Historical and Theological Reflections*, Conferences Presented at an International Colloquium Organized by the Pontifical Council for Justice and Peace, Vatican City, Pontifical Council for Justice and Peace, 1990, 74 p.

SECAM (Symposium of Episcopal Conferences of Africa and Madagascar), Sixth General Assembly, Cameroon, 1981, "Justice and Evangelization in Africa", in *Spearhead*, 69 (1981), pp. 5-28.

———, (Pan African Justice & Peace Seminar), *Communique*, Roma, Lesotho, 29 May - June 3 1988, in *African Ecclesial Review*, 30 (1988), pp. 219-220.

SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church *Lumen gentium*, 21 November 1964, in *AAS*, 57 (1965), pp. 1- 75.

———, Decree on the Apostolate of Lay People *Apostolicam actuositatem*, 18 November 1965, in *AAS*, 58 (1966) pp. 837-864.

———, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December 1965, in *AAS*, 58 (1966), pp. 1025-1120.

———, Declaration on Religious Liberty *Dignitatis humanae*, 7 December 1965, in *AAS*, 58 (1966), pp. 929-941.

SYNOD OF BISHOPS, Document, *De iustitia in mundo*, 30 September 1971, in *AAS*, 63 (1971), pp. 923-942.

THE ARCHBISHOPS & BISHOPS OF THE PROVINCE OF QUEBEC, Joint Pastoral Letter *Problems of the Worker in the Light of the Social Doctrine of the Church*, Authorized translation, Montreal, Palm Publisher, 1950, 83p.

The New Jerusalem Bible, Garden City, New York, Doubleday, 1999, viii, 1463 p.

2. BOOKS

- AFRICA FAITH AND JUSTICE NETWORK, *The African Synod: Documents, Reflections, Perspective*, Maryknoll, New York, Orbis Books, 1996, 286 p.
- AKPUNKU, H.C.I., *Fundamental Human Rights and the Moral Responsibility of the Church in Nigeria*, Doctoral Dissertation, Roma, Academia Alfonsiana, 1989, xxvi, 390 p.
- ALESSANDRO, J.A., *Draft Canons on Book Five: The Law Regarding Church Possessions*, Washington DC, National Conference of Catholic Bishops, 1978, 37 p.
- ALMADE, F.D., *Just Wages for Church Employees*, New York, Peter Lang Publishing, 1993, 201 p.
- BALVO, C.D., *Towards More Effective Administration of Ecclesiastical Goods: A Study of the Diocesan Finance Council and the Diocesan Finance Officer*, [J.C.L thesis], Washington DC., Catholic University of America, 1984, 98 p.
- BAUM, G., *The Priority of Labor: A Commentary on Laborem exercens*, New Jersey, Paulist Press, 1982, 152 p.
- , (ed.) *Work and Religion*, New York, Seabury, 1980, viii, 140 p.
- BECKLEY, H., *Passion for Justice, Retrieving the Legacies of Walter Rauchenbusch, John Ryan & Reinhold Niebuhr*, Westminster, John Knox Press, 1992, 391 p.
- BIGO, P., *The Church and the Third World Revolution*, Maryknoll, New York, Orbis Books, 1977, 316 p.
- BLACK, H.C., *Black's Law Dictionary*, 6th ed., Publisher's Editorial Staff & Contributing Editors, J. NOLAN et al., St. Paul MN, West Publishing Co., 1990, 1657 p.
- BOUSCAREN, T.L. et.al., *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Co., 1966, xviii, 980 p.
- BROWNE, M. (ed.), *The African Synod: Documents, Reflections, Perspectives*, Maryknoll, New York Orbis, Books, 1996, ix, 286 p.

- BYERS, D.M., *Justice in the Market Place: Collected Statements of the Vatican and the United States Catholic Bishops' on Economic Policy, 1891-1984*, Washington DC., United States Catholic Conference, 1985, 521 p.
- CALLAHAN, J., *The Catholic Attitude Toward a Familial Minimum Wage*, Washington DC, The Catholic University of America Press, 1936, 137 p.
- CALVEZ, J.Y. and P. JACQUES, *The Church and Social Justice*, London, Burn and Oates, 1961, 466 p.
- CAPARROS, E., M. THÉRIAULT, and J. THORN (eds), *Code of Canon Law Annotated*, Latin-English edition of the Code of Canon Law and English translation of the 5th Spanish language edition of the commentary prepared under the auspices of the Instituto Martín de Azpilcueta, Montréal, Wilson & Lafleur Limitée, 1993, 1631p.
- CARLEN, C., *The Papal Encyclicals: 1740-1981*, vol. 3, Wilmington, NC, Consortium Book, McGrath Publishers, 1981, 5 v.
- CHARLES, R. and D. MACAREN, *The Social Teaching of Vatican II*, Oxford, Plater Publications, 1982, 569 p.
- CHENU, M.D., *The Theology of Work*, English translation, L., SOIRION, Dublin, Gill and Son, 1963, 81 p.
- COLEMAN, J.A. (ed.), *One Hundred Years of Catholic Social Thought*, Maryknoll, New York, Orbis Books, 1991, 364 p.
- CORIDEN, J.A., T.J. GREEN, and D.E. HEINTSCHEL (eds), *The Code of Canon Law: A Text and Commentary*, New York, Paulist Press, 1985, xxvi-1152 p.
- CRONIN, J.F., *The Social Teaching of Pope John XXIII*, Milwaukee, Bruce, 1964, 38p.
- COUNCIL OF CHURCHES FOR BRITAIN AND IRELAND, *Unemployment and The Future of Work*, London, Delta Press, 1997, 298 p.
- DEVLIN, J.W., *Canonical Origins of Contract Principles in Anglo and American Law*, JCD Dissertation, Romae, Pontificia Universitas Lateranensis, 1959, 72 p.

DORR, D., *Option for the Poor: A Hundred Years of Vatican Social Teaching*, Dublin, Gill & Macmillan, 1992, 433 p.

———, *The Social Justice Agenda: Justice, Ecology, Power and the Church*, Dublin, Gill & MacMillan, 1991, 201 p.

DULLES, A., *Models of The Church*, Dublin, Gill & Macmillan, 1988, 256 p.

DUSKA, R. (ed.), *Rerum novarum: A Symposium Celebrating 100 Years of Catholic Social Thought*, Lewiston, Edwin Mellen Press, 1991, 241 p.

DWYER, J.A. and E. MONTGOMERY (eds.), *The New Dictionary of Catholic Social Thought*, Collegeville, MN, Liturgical Press, 1994, xxxi-1019 p.

EHUSANI, G., *The Social Gospel: An Outline of the Church's Current Teaching on Human Development*, Iperu Remo, Nigeria, Ambassador Publications, 1992, 66 p.

———, *A Prophetic Church*, Ede, Provincial Pastoral Institute Publications Ede, 1996, 133 p.

ETAFO, B., and H. OKEKE (eds.), *Lay People in the Church and in the World*, Onitsha, Veritas Press, 147 p.

FILIBECK, G., *Human Rights in the Teaching of the Church: From John XXIII to John Paul II*, Rome, Libreria editrice Vaticana, 1994, 494 p.

FULLER, J. and P. VAUGHAN (eds.), *Working for the Kingdom: The Story of Ministers in Secular Employment*, London, S. P.C. K., 1986, 238 p.

GANNON, T.M., *The Catholic Challenge to the American Economy: Reflections on the U.S. Bishops' Pastoral Letter on Catholic Social Teachings and the U.S. Economy*, New York, Macmillan; London, Collier Macmillan, 1987, 296 p.

GARRETT, J.R., *The Poor in the Code of Canon Law and "the Options for the Poor" in The Teaching of John Paul II*, JCD Dissertation, Romae, Pontificia Universitas Gregoriana, 1993, 187 p.

GEOGHEGAN, A.T., *The Attitude Towards Labor in Early Christianity and Ancient Culture*, Washington DC, Catholic University of America Press, 1945, 250 p.

- GREMILLION, J., *The Gospel of Peace and Justice*, Maryknoll, New York, Orbis Books, 1979, 623 p.
- HEALY, J., *The Just Wage, 1750-1890: A Study of Moralists from St. Alphonsus to Leo XIII*, The Hague, Nijhoff, 1966, 514 p.
- HENRIOT, P.J. et al., *Catholic Social Teaching Our Best Kept Secret*, Maryknoll, New York, Orbis Books, 1988, 133 p.
- HIGGINS, G.G. and W. BOLE, *Organized Labor and the Church: Reflections of a Labor Priest*, New York, Paulist Press, 1993, 245 p.
- HITE, J. et al., *A Handbook on Canons 573-746*, Collegeville, MN, The Liturgical Press, 1985, 400 p.
- HOLLENBACH, D., *Claims in Conflict: Retrieving and Renewing the Catholic Rights Tradition*, New York, Paulist Press, 1979, 219 p.
- HURST, A., *Rendering Unto Caesar: Towards a Framework for Integrating Paid Employment With Christian Belief*, Worthing, West Sussex, Churchman Publishing Ltd., 1986, 135 p.
- JUSTICE, DEVELOPMENT AND PEACE COMMISSION, Ibadan Ecclesiastical Province, Workshop Proceedings, *Issues of Justice*, Ede, 5-10 July 1998, 159 p.
- JUSTICE, DEVELOPMENT AND PEACE COMMISSION NIGERIA, Workshop Proceedings, *Faith and Justice – A Witnessing Church*, Enugu, 14-18 April 1997, 88 p.
- , Evaluation Report: *The Justice, Development and Peace Program of the Catholic Church of Nigeria*, Conducted for Catholic Secretariat of Nigeria, by IRED, Lagos, December 1998, 74 p.
- KIRATU, G., *The Church and Her Workers in Kenya: Contract of Employment in Accordance with Canon 1286*, JCD Dissertation, Roma, Pontificia Universitas Lateranensis, 1989, xvii, 225 p.
- KLOPPENBURG, B., *Ecclesiology of Vatican II*, Chicago, Franciscan Herald Press, 1974, xv-373 p.

- LAND, P., *Catholic Social Teaching: As I Have Lived, Loathed and Loved It*, Chicago, Loyola University Press, 1994, 288 p.
- LEONARD, S. and H. O'BRIEN (eds), *A Catholic Bill of Rights*, Kansas City, Sheed and Ward, 1988, x, 187 p.
- LIBERATOR, M. and P. H. SCHERVISCH (eds), *National Project on Just Wages and Benefits for Lay and Religious Church Employees*, Washington DC, National Conference of Diocesan Directors of Religious Education, 1990, 94 p.
- LYNCH, T., *Contracts Between Bishops and Religious: A Historical Synopsis and Commentary*, Washington DC, Catholic University of America, 1946, xiii, 232 p.
- MADU, O.K., *The Nigerian Church in the Cause of Justice and Peace in the Light of the Social Teaching of The Church*, Doctoral Dissertation, Roma, Pontificia Universitas Lateranensis, 1987, xxv, 268 p.
- MAIDA, J.A. (ed.), *Issues in the Labour Management Dialogue Church Perspectives*, St. Louis, The Catholic Health Association of the United States, 1982, 273 p.
- MAIDA, J.A. and P.N. CAFARDI, *Church Property, Church Finances and Church Related Corporations*, St. Louis, The Catholic Health Association of the United States, 1984, xxii, 339 p.
- MAINELLI, V.P. (ed.), *Official Catholic Teachings: Social Justice*, North Carolina, Consortium Press, 1978, xxvi, 496 p.
- MAKOZI, A.O. and G.A. OJO (eds), *The History of the Catholic Church in Nigeria*, Ibadan, Macmillan, 1982, x, 115 p.
- MARZOA, A et al (eds), *Commentario exegetico al Código de derecho canónico*, Pamplona, Spain, Ediciones Universidad de Navarra, S. A., (EUNSA), 1997, 6 v.
- MATEJKO, A.J., *A Christian Approach to Work and Industry*, Lewistown, New York, Edwin Mellen Press, 1989, xii, 447 p.

- MILLER, J.M. (ed.), *The Encyclicals of John Paul II*, Huntington, IN, Our Sunday Visitor, 1996, 1008 p.
- MOODY, J., (ed.), *Church and Society: Catholic Social and Political Thought and Movements, 1798-1950*, New York, Arts. Inc., 1953, 914 p.
- NATIONAL ASSOCIATION OF CHURCH PERSONNEL ADMINISTRATORS (NACPA), *Working in the Catholic Church*, Kansas City, MO, Sheed and Ward, 1993, 164 p.
- NATIONAL PASTORAL LIFE CENTER, *New Parish Ministers*, New York, National Pastoral Life Center, 1992, vii, 131 p.
- NITSCH, T.O., J. PHILIPS, and E.L. FITZSIMMONS, *On the Condition of Labour and Social Questions One Hundred Years Later: Commemorating the 100th Anniversary of Rerum novarum.[...] and the Fiftieth Anniversary of the Association for Social Economics*, Lewiston, New York, Queenston, Ontario, E. Mellen Press, 1994, 600 p.
- OBIORA, I.F., *Value Meaning and Social Structure of Human Work, With Reference to "Laborem exercens" and Its Relevance for a Post-Colonial African Society*, Frankfurt am Main, Willhelms University Bonn, 1986, 561 p.
- , *Catholic Social Teachings en route in Africa*, Catholic Institute for Development, Justice & Peace, Enugu, Nigeria 1991, 380 p.
- , and U. IGBOAJA, *Human Rights, Human Dignity and Catholic Social Teaching: Lessons for the Church in Nigeria*, Catholic Institute For Development, Justice & Peace, Enugu, Nigeria, 1992, 148 p.
- O'BRIEN, D. and T. SHANNON (eds.), *Catholic Social Thought: The Documentary Heritage*, Maryknoll, New York, Orbis Books, 688 p.
- OKEREKE, G., *The Laity and the Law: A Survey of the Legal Status of the Laity in the Nigerian Church [...]*, Frankfurt am Main, P. Lang, 1989, 267 p.
- OKOH, I.E., *The Equitable Sustenance of Diocesan Priests in the Light of the Code of Canon Law and the Norms of the Catholic Bishops' Conference of Nigeria*, J.C.D dissertation, Roma, Pontificia Universitas Urbaniana, 1991, ixx, 261 p.

- OKOLO, C.B., *The Liberating Role of the Church in Africa Today*, Kenya, AMECEA Gaba Publications, 1991, 83 p.
- OKONKWO, A., *Towards a Self Supporting Catholic Church in Nigeria*, Roma, Pontificia Universitas Lateranensis, 1993, 101 p.
- ONYEWUEKE, E.S., *Church State Relations in Nigeria: A Juridical Survey of The Church-State Relationship from 1960-1983*, JCD Dissertation, Roma, Pontificia Universitas Urbaniana, 1984, xxvi, 256 p.
- Our Sunday Visitor's Catholic Almanac 1999*, Huntington, Our Sunday Visitor, 1998, 600 p.
- PÉRISSET, J.C., *Les biens temporels de l'Église*, Fribourg, Éditions Tardy, 1996, 294 p.
- PIERINO, M., *The Fundamental Individual Rights of the Human Person in the Teachings of Pope Paul VI*, Doctoral Dissertation, Roma, Pontificia Universitas Lateranensis, 1983, 78 p.
- REISSNER, E.A., *Canonical Employer-Employee Relations, Canon 1524*, JCD Dissertation, Washington DC, Catholic University of America, 1964, xi, 113 p.
- RICCARDO, A., translation M.J. O'CONNELL, *Christians in the Face of Injustice: Latin-American Reading of Catholic Social Teaching*, Maryknoll, New York, Orbis Books, 1987, 181 p.
- RIGA, P., *Peace on Earth: A Commentary on Pope John's Encyclical*, New York, Herder & Herder, 1964, 254 p.
- SCHUCK, M.J., *That They Be One: The Social Teaching of the Papal Encyclicals 1740-1989*, Washington DC, Georgetown University Press, 1991, 224 p.
- SCHULTHEIS, M.J., *Catholic Social Teaching and the Church in Africa*, Gweru, Mambo Press, 1984, 56 p.
- SHEEHY, G. et al. (eds), *The Canon Law: Letter and Spirit*, Collegeville, MN, Liturgical Press, 1995, xxv, 1060 p.

- SHIELDS, L., *The History and Meaning of the Term Social Justice*, Indiana, Notre Dame Press, 1941, 81 p.
- SULLIVAN, F.J., *Magisterum: Teaching Authority in the Catholic Church*, New York, Paulist Press, 1983, 234 p.
- TIERNEY, B., *The Crisis of Church and State 1050-1300*, New Jersey, Prentice Hall, 1964, xi, 210 p.
- VORGRIMLER, H. (ed.), *Commentary on the Documents of Vatican II*, Freiburg, Herder and Herder, 1967-1969, 5 v.
- WIGGINS, C., *Property Laws of the State of Ohio Affecting the Church*, JCD Dissertation, Washington DC, Catholic University of America, 1956, xi, 140 p.
- WHITE, J., *A Concise Latin-English Dictionary*, London, Longmans, Green and Co., 1880, 1037 p.

3. ARTICLES

- ADELAkun, J., "Offering the Continent Hope for the Future", Eleventh General Congregation, Special Assembly of the African Synod of Bishops, in *L'Osservatore romano*, English Language edition, 4 May 1994, p. 17.
- ADIGWE, H., "Issues in Personnel in the Nigerian Church", Paper Presented at The Canon Law Conference of The Canon Law Society of Nigeria, May 22-25 1990, in *The Proceedings of the Canon Law Society of Nigeria File*, May 1990, pp. 2-13.
- AUSTIN, R.J., "Temporal Goods Within the Church: Some Canonical Reflections", in *The Australasian Catholic Record*, 69 (1992), pp.145-160.
- ARINZE, A.F., "The Encyclical *Laborem exercens* in the Context of Africa", Paper at Symposium from "*Rerum novarum* to *Laborem exercens* - Towards the Year 2000", Rome 3-5 April 1982, Vatican City, Pontifical Council for Justice and Peace, 1983, pp. 208 - 225.
- BASSETT, W., "Christian Rights in Civil Litigation: Translating Religion into Justiciable Categories", in *The Jurist*, 46 (1986), pp. 229-288.

- BASSETT, W., "Relating Canon and Civil Law", in *The Jurist*, 44 (1984), pp. 3-18.
- , "Canon Law and the Common Law", in *Hastings Law Journal*, 29 (1978), pp. 1383-1419.
- BOYLE, J.P., "Church Teaching Authority in the 1983 Code", in *The Jurist*, 45 (1985), pp. 136-170.
- , "The Magisterium and the Natural Law", in *CLSA Proceedings*, 34 (1979), pp. 189-210.
- BRADY, B.V., "An Analysis of the Use of Rights Language in Pre-Modern Catholic Social Thought", in *The Thomist*, 57 (1993), pp. 97-121.
- CALVEZ, J., "Social Justice", in *New Catholic Encyclopedia*, vol. 13, New York, McGraw Hill, 1967, pp. 318-320.
- CANON LAW SOCIETY OF AMERICA, "Canonical Standards in Labor Management Relations: A Report", in *The Jurist*, (1987), pp. 545-575.
- CARLSON, C.T., "Church and State Consistency of the Catholic Church's Social Teaching", in *The Catholic Lawyer*, 35 (1994), pp. 339-369.
- CARNAVAN, K., "Strategic Management Planning in Catholic Organizations: Moving from Dreams to Reality", in *The Australasian Catholic Record*, 70 (1997), pp. 192-198.
- CASTILLO LARA, R., "Some General Reflections on the Rights and Duties of the Christian Faithful", in *Studia canonica*, 20 (1986), pp. 7-32.
- CIPROTTI, P., "Le 'leggi civili' nel nuovo Codice di diritto canonico", in *Apollinaris*, 57 (1984), pp. 281-294.
- CLAVER, F.X., "The Christian Gospel and Human Rights", in *African Ecclesial Review*, 21 (1979), pp. 232-241.
- CORIDEN, J.A., "A Challenge: Making the Rights Real", in *The Jurist*, 45 (1985), pp. 1-23.

- DE PAOLIS, V., "Schema canonum libri V de iure patrimoniali Ecclesiae", in *Periodica*, 68 (1979), pp. 673-713.
- , "De bonis Ecclesiae temporalibus in novo Codice iuris canonici", in *Periodica*, 73 (1984), pp. 113-151.
- , "Temporal Goods of the Church With Particular Reference to Institutes of Consecrated Life", in *The Jurist*, 43 (1983), pp. 343-360.
- DROHAN, M., "The Church and Justice in Africa", in *African Ecclesial Review*, 21 (1979), pp. 69-77.
- FOLMER, J.J., "Promoting and Protecting Rights in the Church", in *The Jurist*, 46 (1986), pp. 1-3.
- GALLAGHER, C., "Temporal Administration in the New Code of Canon Law", in *The Way Supplement*, 50 (1984), pp. 77-79.
- GANGOITI, B., "La dottrina sociale della Chiesa nel Codice di diritto Canonico del 1983", in *Angelicum* 70 (1993), pp. 255-278.
- GARLAND, B., "Setting Just Wages", in *Today's Parish*, 5 (1987), pp. 6-7.
- GONCALVES, J., and P. AGUH, Communiqué, Pan African Conference on Justice and Peace Seminar, Roma, Lesotho, 29 May -3 June 1988, in *African Ecclesial Review*, 30 (1988), pp. 218-232.
- GRANT, T.T., "Social Justice in the 1983 Code of Canon Law: An Examination of Selected Canons", in *The Jurist*, 49 (1989), pp. 112-145.
- HENRIOT, P.J., "The Social Context of the AMECEA Countries on the Eve of the African Synod", in *African Ecclesial Review*, 34 (1992), pp. 341-363.
- HERMANN, D.H.J., "The Code of Canon Law Provisions on Labor Relations", in *The Jurist*, 44 (1984), pp. 153-193.
- HIGGINS, G.G., "Issues of Justice and Peace", in *Chicago Studies*, 20 (1991), pp. 191-206.

- HILLMAN, E., "The Justice and Peace Commitment in Africa", in *African Ecclesial Review*, 22 (1980), pp. 304-310.
- HITE, J., "*Property and Contracts in Church Law*", in *The Catholic Lawyer*, 30 (1986), pp. 256-65.
- HOLLAND, S., "Equality, Dignity and Rights of the Laity", in *The Jurist*, 48 (1988), pp. 175-180.
- HUELS, J., "Interpreting Canon Law in Diverse Cultures", in *The Jurist*, 47 (1987), pp. 249-293.
- JUSTICE AND PEACE COMMISSION OF FRANCE, "New International Economic Order and The Church", in *African Ecclesial Review*, 20 (1978), pp. 186-189.
- KASPER, W., "The Theological Foundations of Human Rights", in *The Catholic Lawyer*, 34 (1988), pp. 253-269.
- KEALY, R. L., "The Just Wage and the Quasi-volunteer", in *America*, 150 (1984), p. 280.
- KENNEDY, R., "McGrath, Maida, Michiels: Introduction to a Study of the Canonical and Civil-Law Status of Church-Related Institutions in the United States", in *The Jurist*, 50 (1990), pp. 541-401.
- KINAST, R., "How Much is Lay Ministry Worth?", in *Origins*, 23 (1993-1994), pp. 287-292.
- KRUKOWSKI, J., "The Juridical Personality of the Church in Relation to the State", in *Studia canonica*, 14 (1980), pp. 377-389.
- LANGAN, J., "Can there be a Human Rights Problem in the Church?", in *The Jurist*, 46 (1986), pp. 14-42.
- , "Human Rights in Roman Catholicism", in *Journal of Ecumenical Studies*, 19 (1982), pp. 25-31.
- , "Violence and Injustice in Society. Recent Catholic Teaching", in *Theological Studies*, 46 (1985), pp. 685-699.

- LEONARD, J., "Temporal Goods c. 634-640", in J. HITE et al., *A Handbook on Canons 573-746*, Collegville, MN, The Liturgical Press, 1985, pp. 99-114.
- MAGESA, L., "Has Africa Reason to Rejoice? Thesis on a Hundred years of Vatican Social thought", in *African Traditional Studies*, 64 (1990), pp. 63-87.
- , "The Expatriate Worker in Africa", in *African Ecclesial Review*, 33 (1991), pp. 92-103.
- MALLET, J.K., "Temporalities Under the Revised Code of Canon Law", in *The Catholic Lawyer*, 29 (1984), pp. 187-194.
- MBOGU, N.I., "Major Social Issues in Africa: A Challenge to the African Synod", in *African Ecclesial Review*, 34 (1992), pp. 224-250.
- MENNA, E.A., "What the Catholic Church in Nigeria Can Do to Ease Youth Unemployment in the Country", in *Catholic Life*, 1 (1986), Lagos, pp. 16-17.
- MOLLOY, T., "The Canonization of Civil Law", in *CLSA Proceedings*, 46 (1984), pp. 43-45.
- MONCION, J., "Should a Religious Congregation Provide a Reserve Fund or Pension Plan for Its Members", in *Studia canonica*, 8 (1974), pp. 183-190.
- MORRISEY, F.G., "New Canon Law on Temporal Goods Reflects Vatican II's Influence", in *The New Canon Law: Perspectives on the Law, Religious Life, and the Laity*, St. Louis, Catholic Health Association, 1983, pp. 49-61.
- , "Canonical Duties, Liabilities of Trustees and Administrators", in *Health Progress*, 65 (1985), pp. 47-51, 71.
- , "The Directory for the Administration of Temporal Goods in Religious Institutes", in *Unico Ecclesiae Servitio*, pp. 267-285.
- , "The Spirit of Canon Law: Teachings of Pope Paul VI", in *Origins*, 8 (1978-1979), pp. 33-40.
- MPUNDU, G., "Commitment and Witness for Justice and Peace", Third General Congregation, Special Assembly of the African Synod of Bishops, in *L'Osservatore romano*, English Language edition, 27 April 1994, p. 5.

- MURPHY, C., "Action for Justice as Constitutive of the Preaching of the Gospel", in *Theological Studies*, 44 (1983), pp. 289-311.
- MYERS, J., "The Temporal Goods of the Church", in *CLSA Commentary*, pp. 859-888.
- , "The Economic Pastoral: Foundations in the Church's life", in *CLSA Proceedings*, 49 (1988), pp. 187-193.
- NATIONAL PASTORAL LIFE CENTRE, "New Parish Ministers, Laity and Religious on Parish Staff", in *Origins*, 22 (1992-1993), pp. 777-780.
- NBECHUKWU, A.U., "The Work for Justice, Social Development and Peace, Challenges to the Nigerian Catholic Clergy", in *The Nigerian Journal of Theology*, 8 (1994) 1, pp. 4-18.
- NWAGWU, G., "The Dynamics of a Cordial Relation Between the Hierarchy and Institutes of Consecrated Life", in *The Journal of Theology*, 10 (1996) 1, pp. 51-59.
- NYERERE, J., "The Church and Socio Economic Development in the Context of African Socialism", in *African Ecclesial Review*, 23 (1981), pp. 221-231.
- OBLAGBA, N.C., "Canon Law in the Nigerian Civil Society: Areas of Convergences and Conflicts", A paper delivered at the Canon Law Conference, Sacred Heart Pastoral Center, Jos, 26 April, 1989, 26p.
- ODCHIMAR, N.P., "Decent Support and Social Security of the Clergy Under the 1983 Code of Canon Law", in *Philippiniana sacra*, 18 (1983), pp. 511-538.
- OKEKE, H.O., "Church-as-God's Family: From African Ecclesiology to African Canon Law", in *Studia canonica*, 32 (1998), pp. 398-414.
- PERCY, T., "Third World Debt and the International Monetary System. A Reflection in Light of the Church's Social Teaching", in *The Australasian Catholic Record*, 70 (1993), pp. 204-220.
- PIETTE, G., "Canonical Considerations in Personnel Relations", in *CLSA Proceedings*, 50 (1988), pp. 198-215.

- REGAN, C., "The Church Lawyer-Advocate for Justice", in *The Jurist*, 44 (1984), pp. 194-208.
- RICCARDO, A., "Liberation Theology and the Social Teaching of the Church", in *Concilium*, 5 (1991), pp. 119-125.
- ROCHE, G.R., "The Poor and the Code of Canon Law: Some Relevant Issues in Book II", in *Studia canonica*, 30 (1996), pp. 177-219.
- , "The Poor and Temporal Goods in Book V of the Code", in *The Jurist*, 55 (1995), pp. 299-348.
- RYAN, P., "The Papal Exhortation: Moving Forward on the Theme of Justice", in *African Christian Studies*, 12 (1996), pp. 46-54.
- SANGU, J.D., "Justice in the African Context", in *African Ecclesial Review*, 18 (1976), pp. 98-105.
- SHANNON, P. M., "Canon and Civil law", Keynote Address to a Workshop sponsored by the National Association of Treasurers, in *The Jurist*, 45 (1985), pp. 618-630.
- SHARKEY, M., (ed.), "Propositions on the Dignity and the Rights of the Human Person", in *International Theological Commission: Texts and Documents*, San Francisco, Ignatius Press, 1989, pp. 251-266.
- SLASINSKI, C.J., "The New International Economic Order: Christian Principles Between Developed and Developing Countries", in *The Catholic Lawyer*, 25 (1979), pp. 154-170.
- SMITH, R., "Lay Persons in the Diocesan Curia: Legal Structures and Practical Issues", in *CLSA Proceedings*, 49 (1987), pp. 35-44.
- SULLIVAN, F., "The Doctrinal Weight of *Evangelium vitae*", in *Theological Studies*, 56 (1995), p. 563.
- TEXEIRA, J.S., "Clergy Personnel: Policy and Canonical Issues", in *The Jurist*, 45 (1985), pp. 502-520.
- TORRE, G.D., "Dottrina sociale della Chiesa e nuova codificazione canonica", in *Il Diritto ecclesiastico*, 102 (1991), pp. 626-652.

WILCKEN, J., "The Teaching on Poverty in *Rerum Novarum*", in *The Australasian Catholic Record*, 69 (1992), pp. 96-104.

WITTBERG, P., "The Dual Labor Market in the Catholic Church", in *Review for Religious Research*, 30 (1989), pp. 287-290.

11 - CIVIL LAW

1. TABLE OF CASES

Adeyemo v. Oyo State Public Service Commission (1979) 1 O.Y.S.H.C 83.

Agbaje v. National Motors Ltd. (1970) 1 All N.L.R.21.

Atedoghu v. Sanni Alade (1957) W.N.L.R 184.

Ajayi -Obe v. The Executive Secretary of Family Planning Council of Nigeria (1975) 3 S.C. 1.

Balfour v. Balfour (1919) 2 K.B 571.

Bradford v. Robinson Rentals (1967) 1 All E. R. 267.

Butterfield v. Forrester (1809)11 East 60.

Craven Ellis v. Cannons Ltd (1936) 2 K B. 403.

David Olaja v. Kaduna Textile Mills Ltd (1971) 2 N.C.L.R 431.

Devenald v. Rosser & Sons (1906) 2 K. B. 728.

Dunlop v. Selfridge (1915) A.C. 847.

E. R. Usen v. Bank of West Africa Ltd (1965) 1 All N. L. R. 244.

G.K.O Ajayi v. Lagos City Council (1968) N. M. L. R. 125.

Gulf v. Great Northern Rly. Co. (1861) 121 E. R. 594.

Halbot v. Lens (1901) 1 CH. D.

Hart v. Military Governor of Rivers State (1976) 11 S.C. 211.

Howard v. Pickford Tool Co. Ltd.,(1951) 1 K.B. 417.

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

- Langston v. Allen* (1974) 1 A.E.R 980.
- Lasisi Atanda & Ors v. Salami Ajani* (1989) 3 N.W.L.R. 511.
- Lawal v. Younan* (1961) 1 All N. L. R. 245.
- L'Estrange v. Graucob Ltd.* (1934) 2 K.B. 394.
- Malomo v. Olusola* (1954) 21 N.L.R 1.
- Morrison v. Bell* (1939) 2 K.B 187.
- Nwokolo v. Sapele U.D.C* (1965) 1 All N.LR 244.
- O. A. Martins v. Braithwaite (Insurance Brokers) & Co Ltd.*(1972) 11 CCHCJ/52.
- Ogugu v. State* (1994) 9 N.W.L.R. (Part 36) 1.
- Okafor v. Mathew Mbukwu* (1962) E. N. L. R 142.
- Olaniyan & Others v. University of Lagos* (1985) 2 N.W.L.R 599.
- Orman v. Saville Sportswear Ltd* (1960) 1 W.K.L. 1055.
- Osawe v. Registrar of Trade Unions* (1985) 1 N. W. L. R. (part 4) 755.
- Oyekoya v. G. B. Oliviant* (1969) 1 All N.L.R 80.
- Petrie v. Mac Fisheries Ltd.* (1940) 1 K B. 258.
- Pepper v. Webb* (1969) 2 All E. R. 216.
- Priestly v. Fowler* (1837) 150 E. R., 1130.
- Rawley v. Rawley* (1876) 1 Q. B 460.
- Secretary of State for Employment v. A.S.L.E.F.* (1972) 2 Q. B. 455.
- Short v. Henderson Ltd* (1946) 62 T.L.R 4267.

Union Trading Company v. Hauri (1940) 6 W.A.C.A 148.

Vine v. National Dock Labor Board (1968) 1Q. B.658.

Wilsons & Clyde Coal Co. v. English (1938) A.C. 57.

Wood v. London County Council (1941) 2 All E. R. 539.

2. TABLE OF STATUTES

Company and Allied Matters Decree Cap. 59 LFN.

Constitution of The Federal Republic of Nigeria 1979.

Constitution of The Federal Republic of Nigeria 1999.

Eastern Nigeria Torts Law 1961.

Factories Act Cap. 126 LFN 1990.

High Court Law, Eastern Nigeria Cap. 61 of 1963.

High Court of Northern Nigeria Cap. 49, Laws of Northern Nigeria 1963.

Illiterates Protection Act.

Interpretation Act Cap. 89 1958 Laws of Nigeria (now) Cap. 192 LFN 1990.

Labour Act (as amended) Cap. 198 LFN 1990.

Law Reform (Torts) Law 1961 (Lagos).

Married Women Property Act 1882.

National Minimum Wage Act 1980.

National Provident Fund Act 1961.

Pensions Act of 1979.

Trade Disputes Act Cap. 432 LFN 1990.

Trade Disputes (Essential Services) Act No. 23 of 1976.

Trade Union Act Cap. 437 LFN 1990.

Trade Unions (Amendment) Act 1978.

Trade Unions (Central Labour Organization) (Special Provisions) Act 1976.

Trade Unions (Amendment) Decree no. 26 1996.

Western Nigerian Torts Law 1961.

Workmen's Compensation Decree Cap. 470 LFN 1990.

BRITISH STATUTES

Employment Protection Consolidation Act 1978 (Part v).

Fatal Accidents Act of 1876.

Infant Relief Act 1874.

Master and Servant Ordinance no. 16 of Gold Coast Colony 1877.

INTERNATIONAL COVENANTS

ORGANIZATION OF AFRICAN UNITY(OAU), *African Charter on Human and Peoples' Rights*, Addis Ababa, Press and Information Division, OAU Secretariat, June 1982.

UNITED NATIONS ORGANIZATION, *Universal Declaration of Human Rights*, United Nations General Assembly Resolution, 217 A, 1948.

———, *International Covenant on Economic, Social and Cultural Rights*, United Nations General Assembly Resolution, 2200 (XXI), 16 December 1966.

———, *International Covenant on Civil and Political Rights*, United Nations General Assembly Resolution, 2200 A (XXI), 16 December 1966.

———, *Charter of Economic Rights and the Duties of States*, United Nations General Assembly Resolution, 3281 (XXIX), 12 December 1974.

———, *Implementation of the International Covenant on Economic, Social and Cultural Rights*, Economic and Social Council Resolution 1988 (LX), 9 February 1984.

3. BOOKS

ACHIKE, O., *Nigerian Law of Contract*, Enugu, Nwamife Pub., 1973, 356 p.

ADEOGUN, A.A., *From Contract to Status in Quest for Security*, Lagos, Lagos University Press, 1986, 60 p.

ADEOGUN, A.A., *The Legal Framework of Industrial Relations in Nigeria*, Zaria, Institute of Administration, Ahmadu Bello University, 1969, 38 p.

ADESANYA, M. and E. OLOYEDE, *Business Law in Nigeria*, New York, Africana Pub. Co, 1972, 329 p.

AGOSTONI, T., *Every Citizen's Handbook*, Nairobi, Pauline Publications Africa, 1997, 447 p.

AGUDA, T., *Nigeria in Search of Social Justice Through the Law*, Lagos, Institute of Advanced Legal Studies, 1986, 28 p.

AKANDE, J., *Introduction to the Constitution of the Federal Republic of Nigeria* 1979, London, Sweet and Maxwell, 1982, 300 p.

AMADI, E., *Ethics in Nigerian Culture*, London, Ibadan, Heinemann, 1982, viii, 120p.

ANANABA, W., *The Trade Union Movement in Nigeria*, London, C. Hurst & Company, 1969, xii, 336 p.

ASOMUGHA, E., *Company Law in Nigeria Under the Company and Allied Matters Act*, Lagos, Toma Micro Publishers, 1994, xxviii, 418 p.

BROWNE, O., *The African Labourer*, London, Oxford University Press, 1967, 240 p.

- CHANDER, H., *Contract of Employment and Management Prerogatives*, Noida, India, Vijaya Pub., 1993, 322 p.
- CHESIRE, G.C., C.H.S, FIFOOT, *Law of Contract*, London, Butterworth, 1976, xliv, 694 p.
- CHUKWUDUM, A.M, *Nigeria, The Country in a Hurry*, Ikeja, Lagos, John West Publishers, 1981, 58 p.
- COHEN, R., *Labour and Politics in Nigeria, 1945-71*, London, Heinemann, 1974, xiii, 302 p.
- CROWTHER, M., *The Story of Nigeria*, London, Faber and Faber, 1978, 365 p.
- CUTRUFELLI, R.M., *Women of Africa, broots of Oppression*, London, Zed Press, 1983, 186 p.
- DAVISON, R.B., *Industrial Relations Decrees in Nigeria: Questions and Answers to Explain the Law*, Zaria, Ahmadu Bello University Press, 1977, 83 p.
- DIAMOND, L. et al. (eds) *Transition Without End, Nigerian Politics and Civil Society Under Babangida*, London, Lynne Rienner Publishers, 1997, xi, 515 p.
- DONALD, E.S., (ed.), *Religion, Politics and Social Change in the Third World*, New York, Free Press, 1971, xv, 286 p.
- EKONG, S.G., *The Right to Strike: Fundamental Human and Civil Rights?*, Doctoral Dissertation, Roma, Pontificia Universitas Lateranensis, 1989, xii, 121 p.
- ELIAS, P., K., EWING, *Trade Union Democracy, Member's Rights and the Law*, London, New York, Mansell Pub., 1987, xi, 317 p.
- ELIAS, T.O., *Nigeria: The Development of its Laws and Constitutions*, London, B. Stevens, 1967, xii, 491 p.
- , *Law in a Developing Society*, Benin City, Nigeria, Ethiope Pub. Co., 1973, viii, 208 p.
- , *Law and Social Change in Nigeria*, Lagos, University of Lagos, 1972, viii, 292 p.

- , and M. I. JEGEDE (eds.), *Nigerian Essays in Jurisprudence*, Lagos, MII Publishers Ltd., 1993, 455 p.
- EMIOLA, A., *The Nigerian Labour Law*, Ibadan, Ibadan University Press, 1982, xxiii, 597 p.
- EZE, O., *Human Rights in Africa: Some Selected Problems*, Lagos, The Nigerian Institute of International Affairs with Macmillan Nigerian Pub., 1984, vi, 314 p.
- FASHOYIN, T., *Income and Inflation in Nigeria*, New York, Longam Inc., 1986, x, 246 p.
- FENTON, T.P. and M.J., HEFFRON (eds), *Third World Struggle for Peace with Justice: A Directory of Resources*, Maryknoll, New York, Orbis Books, 1990, xviii, 188 p.
- FREEDLAND, M.R., *The Contract of Employment*, Oxford, Clarendon Press, 1976, xliii, 398 p.
- FREUND, B., *Capital and Labour in the Nigerian Tin Mines*, Atlantic Highlands, NJ, Humanities Press, 1981, ix, 266 p.
- GALENSON, W., (ed.), *Labour in Developing Economy*, Westport, Conn., Greenwood Press, 1976, 299 p.
- GOVE, P., et al., *Websters Third New International Dictionary of the English Language Unabridged*, Springfield, MA, G & C Merriam Company Publishers, 1981, 102,2662 p.
- GUTKIND, P.C.W, et al., (eds.), *African Labour History*, Berverly Hills, Sage Books, 1978, 280 p.
- , *Manpower and Unemployment Research in Africa*, Montreal, McGill University, 1972, ii, 62 p.
- HEPPLE, B.A. and P. O'HIGGINS (eds), *Employment Law, Hepple & O'Higgins*, London, Sweet & Maxwell, 1981, lvii, 430 p.
- ISICHEI, E., *A History of Nigeria*, Nigeria, London, New York, Longman, 1983, xix, 517 p.

- KEENAN, D., *Contract of Employment*, London, Anderson Keenan Pub., 1979, vii, 111 p.
- LAKEMFA, O., *New Chains, Nigerian Workers and Decree 26 of 1996*, Lagos, Tnt Newspapers, 1997, 40 p.
- MAMDANI M., (ed.), *UGANDA Studies in Labour*, Senegal, Codeseria, 1996, x, 359 p.
- MOUTON, P., *Social Security in Africa, Trends, Problems and Prospects*, Geneva, ILO, 1975, ix, 166 p.
- NORTHCOTT, C.H., *African Labour Efficiency Survey*, London, Colonial Research Publication, no.3, H. M. Stationary Office, 1949, 123 p.
- NWABUEZE, B., *Social Security in Nigeria*, Lagos, Nigeria Institute of Advanced Legal Studies, 1989, 67 p.
- NWORAH, N.N., *Labour Disputes in Nigeria: the role of Industrial Court*, Doctoral Dissertation, Roma, Pontificia Università Lateranense, 1996, 91 p.
- OBILADE, A.O., *The Nigerian Legal System*, London, Sweet and Maxwell, 1979, xxxii, 294 p.
- ODAH, J.E., *The Church and Human Rights: A Human Rights Education Training Manual for Churches in Nigeria*, Lagos, Nigeria, Civil Liberties Organization, 1995, xi, 99 p.
- OGUNNIYI, O., *Nigeria Labour and Employment Law in Perspective*, Lagos, Folio Publishers Ltd., 1991, xxxix, 678 p.
- OKONKWO, C. (ed.), *Introduction to Nigerian law*, London, Sweet and Maxwell, 1980, xxxvi, 444 p.
- OLALOKU, F.A., et al. (eds), *Structure of the Nigerian Economy*, London, Macmillan Press, 1979, ix, 270 p.
- OLANIYAN, R. (ed.), *Nigerian History and Culture*, England, New York, Longman, 1985, vii, 360 p.

- OLAYIDE, S. (ed.), *Economic Survey of Nigeria, 1960-1975*, Ibadan, Nigeria, Aromolaran Pub. Co., 1976, xi, 203 p.
- OLUYEDE, P., *Nigerian Conveyancing Practice, Drafting and Precedents*, Ibadan, Nigeria, Heinemann Educational Books, 1994, xxi, 609 p.
- OMOTOLA, J.A. and A.A. ADEOGUN (eds), *Law and Development*, Yaba, Lagos, University of Lagos Press, 1987, xviii, 336 p.
- ONOKERHORAYE, A.G., *Social Services in Nigeria: An Introduction*, London, Boston, Paul International, 1984, xiv, 354 p.
- OROJO, J.O., *Company Law and Practice in Nigeria*, Nigeria, Mbeyi and Associates, 1992, 608 p.
- PANFORD, K., *African Labor Relations and Workers' Rights, Assessing the Role of the International Labor Organization*, Westport, Conn., Greenwood Press, 1994, xviii, 223 p.
- PARK, A.E.W., *The Sources of Nigerian Law*, London, Sweet and Maxwell, 1963, xvii, 161 p.
- RIDEOUT, R.W. and J. DYSON, *Rideout's Principles of Labour Law*, 4th ed., London, Sweet and Maxwell, 1983, xxvi, 658 p.
- ROCK, M.L., *Handbook of Wage and Salary Administration*, New York, Mc-Graw Hill, 1972, v. (various pagings).
- ROPER, J.I., *Labour Problems in West Africa*, London, Penguin Books, 1958, 111 p.
- SAGAY, I.E., *Nigerian Law of Contract*, London, Sweet and Maxwell, 1985, xxxvi, 587 p.
- SOFOLA, J.E., *African Culture and the African Personality: What Makes an African African?*, Ibadan, Nigeria, African Resources Publishing Co., 1973, xvi, 168 p.
- STANDBROOK, R., and J. BARKER, *The Politics of Africa's Economic Stagnation*, Cambridge, Cambridge University Press, 1985, xiii, 180 p.

UBEKU, A.K., *Personnel Management in Nigeria*, Benin City, Ethiope Pub. Co., 1975, xiv, 313 p.

UCHE, U.U., *Contractual Obligations in Ghana and Nigeria*, Doctoral Dissertation, London, University of London, 1971, xi, 366 p.

UVIEGHARA, E.E., *Trade Union Law in Nigeria*, Benin City, Nigeria, Ethiope Pub. Co., 1976, xxxiii, 248 p.

———, *Nigerian Labour Laws - The Past, Present And The Future*, Inaugural Lecture Delivered at University of Lagos, 15 April 1987, Lagos, University of Lagos Press, 1987, 49 p.

VALLEY, P., *Bad Samaritans: First World Ethics and Third World Debt*, Maryknoll, New York, Orbis Books, 1990, ix, 374 p.

WEDDERBURN, K.W., *The Worker and The Law*, Harmondsworth, Penguin Books, 1965, 368 p.

WEILER, P.C., *Governing the Workplace: The Future of Labor and Employment Law*, Cambridge Mass., Harvard University Press, 1990, x, 317 p.

ZISKIND, D., *Labor Provisions in African Constitutions: a Commitment to Social Progress*, Los Angeles, CA, Litlaw Foundation, 1987, 183 p.

4. ARTICLES

ADESINA, J., "The Construction of Social Communities at Work: The Case of a Nigerian Factory", in *Capital and Class*, 40 Spring 1990, pp. 115-147.

AGBAKOKA, O., "The Role of Lawyers and the Observance of Human Rights", in *Journal of Human Rights Law and Practice*, 1 January, 5(1995), pp. 115-150.

AMADI, G.O.S., "Security of Employment of Public Officers and The Public Officers (Special Provisions) Decree no. 17, 1984", in *Nigerian Judicial Review*, 3(1978-1988), pp. 106-115.

DENNIS, C., "Capitalist Development and Women's Work: A Nigerian Case Study", in *Review of African Political Economy*, 27/28 February 1984, pp. 109-119.

- FRENCH, H., "Nigeria, in Free Fall, Seethes Under General", in *New York Times*, 4 April 1998, pp. A1-A5.
- HARRIS, J.R. and M.P.TODARO, "Wages, Industrial Employment and Labour Productivity, The Kenya Experience", in *The Eastern African Economic Review*, 6 (1969), pp. 29-45.
- INTERNATIONAL LABOR ORGANIZATION, International Labor Conference, "The Influence of the International Labor Conventions on Nigerian Labor Legislation", in *International Labor Review*, 82 (1960), pp. 26-43.
- NWABUEZE, R.O., "Trends in Nigerian Labour Legislation 1938-76 ", in *The Indian Journal of Labor Economics*, 18 (1975), pp. 1-22.
- , "Impact of Military Rule on Nigerian Trade Union Movement: 1966-1978", in *Indian Journal of Industrial Relations*, 16 (1981), pp. 571-592.
- NWASE, N., "Why is Much of Africa Starving ", in *Afriscopes*, 11 (1981), pp. 21-22.
- ONIMODE, B., "Nigerian Workers and Vision 2010", in *Nigeria Labour Facts sheet*, 2 (1997), pp. 22-25.
- ONYEKPERE, E., "Human Rights and the Nigerian Constitution", in *Journal of Human Rights and Practice*, 1 January, 5(1995), pp.13 - 48.
- PANFORD, K., "State-Trade Union Relations: The Dilemmas of Single Trade Union Systems in Ghana and Nigeria", in *Labor and Society*, 13 (1988), pp. 37-53.
- PITTIN, R., "Gender and Class in a Nigerian Industrial Setting", in *Review of African Political Economy*, 31 (1984), pp. 71-81.
- ROWE, M. and M. BAKER, "Are You Hearing Enough Employee Concerns?", in *Harvard Business Review*, 5-6 (1984), pp. 127-135.

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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.