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THE HISTORY AND SOURCES OF NIGERIAN LABOUR LAWS – AN OVERVIEW

By

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Abstract

Labour Law essentially covers a body of laws which regulates the relationship between workers, employers, trade unions and the State. It has been defined as 'The body of laws, administrative rulings, and precedents which addresses the legal rights of, and the restrictions on, working people and their organisations'[1] *With the emergence of Nigeria as a nation there was need for the express codification of laws guiding the relationship between workers and employers. Over the years, there has been an attempt to meet this need by the codification of laws designed to regulate labour relations. Where these laws are silent, the rules of common law as well as the guidelines provided by certain international conventions have (or should) apply. This paper traces the history of labour law in Nigeria as well as gives an outline of the sources of labour law.*

1. Introduction

Nigerian labour law is an amalgam of statutory enactments and the rules of common law. The codified rules governing labour law in Nigeria as obtainable today are a direct result of our colonial heritage. This is not to say however that there was no form of labour relations prior to the colonial era. There were undoubtedly labour relations even at that time.[2] Indeed it has strongly been argued that the trade and artisan guilds of the Edo, Nupe, Igalla, and Yoruba nation states were diversified and complex forms of labour relations covering different family groups and spanning several generations[3].

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[1] *Labour Law*, from Wikipedia, the Free Encyclopedia, *available at* http://en.wikipedia.org/wiki/Labour_and_employment_law, at p.1 accessed on June 4, 2013.

[2] A. Emiola, *Nigerian Labour Law* (Ogbomosho: Emiola Publishers Nigeria Ltd., 2000) at p. 1

[3] E. E. Uvieghara, *Trade Union Law in Nigeria* 1st ed. (Benin City: Ethiope Publishers, 1976) at p. 18

The colonial era came with the codification of laws of convenience by the visiting foreigners which laws were for the sole purpose of ensuring the construction of structures that would ensure the smooth running of the colonial administration. This gave rise to growing dissatisfaction amongst the emerging Nigerian "working class". The legislation, the product of the resultant outburst is examined in this paper.

2. The History of Labour Law in Nigeria

For purposes of convenience this part of the paper shall be divided into the pre-colonial and colonial periods.

i *The Pre-Colonial Era*

A notable feature of the labour relations of pre-colonial Nigeria was the absence of a structured set of rules guiding the relationship between the employers of labour and the providers of labour. This was in part due to the nature of employment in that era where the input providers in terms of labour were members of one's family, usually comprised of the wives, children, relatives living within the family circle, and slaves. This was perhaps occasioned by the absence of money in modern form resulting in exchange of labour by those without the resources to employ slave labour.[4] Roper opined that:

> Generally, the family farm is worked by the farmer and wife or wives and family. Communal labour still survives in many parts for subsidiary farming activities such as bush clearing, making forest paths or village roads. Chiefs still retain some customary powers under native law to regulate aspects of life and labour.[5]

Emiola's contends that the nature of the Nigerian societies then did not accommodate labour relations except in a rudimentary manner[6] ostensibly supports the expression. Oguniyi argues that due to the absence of structured labour relations, there was in place a co-operative labour system where members were paid in service instead of with money.[7]

From the foregoing, it can be inferred that at best the labour relations of the pre-colonial era was characterised by the existence of a convenient and expendable work force comprised mainly of family input and slave labour. The residual power was vested in the heads of these communities who had the power to make laws for the purposes of the well being of the different societies. From the village

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[4] Emiola, *Ibid.*, at p. 2.

[5] *Ibid.*

[6] Emiola, *Ibid.*, at p. 2

[7] O. Oguniyi, *Nigerian Labour and Employment Law in Perspective* (Lagos: Folio Publishers Ltd., 1991) at p. 1.

democracies of the Ibos to the monarchies of the Yoruba, Fulani and Edo kingdoms, labour conformed to the existing structures of each society.

ii The Colonial Era

The arrival of the colonial masters to Nigeria brought a new phase to the concept of labour and labour relations in the sense that with the arrival of the European merchants and missionaries, employment for wages became increasingly applied in Nigeria. In Otobo's view[8], the colonial administration had a labour policy which was geared at providing a workforce for construction of the infrastructure necessary for the smooth running of the administration. The main thrust of colonial labour relations was to acquire wage labour in public works and infrastructural development, the result being the recruitment of men by colonial recruitment agencies which supplied labour for the construction of roads, bridges, railway tracks, sea ports, administrative offices , residential quarters, mines, cutting down of palm fruits, *etcetera*.[9] These *Colonial Recruitment Agencies* were usually the colonial administrators, who capitalised on the customary system of labour of the Nigerian communities as regulated by community leaders to recruit cheap labour to meet their selfish ends. In this regard employment was sporadic in nature and was cheaply available where required to be used in construction.

As such there was really little or no regulation by the instrumentality of the law to regularise the relationship between these *workers* and their masters. However, with the introduction of investments into Nigeria by a number of multinational companies like the Royal Niger Company, the United African Company amoung others, there was growing need for a Nigerian work force to complement the activities of the European workers on ground. Given the efforts of the missionaries in providing a clerical education for Nigerians, it became inevitable that Nigerians be recruited to man offices in both private and public sectors. The earliest labour legislation in Nigeria was the Master and Servant Ordinance No. 16 of I867.[10] It was an "ordinance for regulating the relations between the employers and the employed under contracts."[11] The scope of application of this ordinance was however limited as it applied only to Lagos, which was at that time an extension of the then Gold Coast, and did not extend to the rest of the entity now known as Nigeria. The Master and Servant Ordinance No. 1 of 1895

[8] D. Otobo, *The State and Industrial Relations in Nigeria* (Malthouse Press, 1988) at pp. 28-29, quoted by Emiola *Ibid.*, at p. 3.

[9] D. P, Sha, "Gender Issues In The Nigerian Trade Union Movement" in B. Atilola (ed.), *Labour Law Review* Volume1, No. 2 (Lagos: Hybrid Consult, 2007) 108 at p. 110.

[10] This Ordinance was enacted for the Gold Coast and it applied to the Colony of Lagos

[11] S. 2 of Ordinance No. 16

amended Ordinance No. 16 of 1877 by the application of the former solely to the Colony of Lagos and not as an adjunct to the Gold Coast.[12]

The creation of the Northern and Southern Protectorates of Nigeria in 1900 brought about the enactment of the Master and Servant Proclamation of 1900 which applied separately to the Northern and southern Protectorates of Nigeria. These laws were essentially re-enactments of Ordinance No. 16 of 1877. When the Colony of Lagos was merged with the Southern protectorate in 1906, the Master and Servant Proclamation of the Southern Protectorate was repealed.[13] The 1914 amalgamation of the Northern and Southern Protectorates of Nigeria was characterised by a review of the existing laws regulating labour. The Master and Servant the Ordinance No. 16 of 1917 was enacted and it applied to the whole country. An important feature of this enactment and indeed all the enactments previously mentioned in this study was the absence of stipulations enhancing the rights of workers in the work environment. Instead the reasoning behind these legislations was the direct control of employers over workers of whatever nomenclature within any kind of employment activity.[14]

The Ordinance applied only to a special class of employees. Its application was limited to employees under contracts of service and not employees at common law.[15] The Ordinance was repealed by the Labour Ordinance of 1929 due to the growing discontent expressed by trade unions on the state of workers' welfare in Nigeria. Following the 1945 General Strike, the Labour Ordinance was repealed and the Labour Code ordinance was enacted in1945. The Labour Code Ordinance was described as "an ordinance to amend and consolidate the law relating to labour and to constitute a labour code for Nigeria".[16] This ordinance did not apply to employees at common law[17]. It was in force until it was repealed in 1974 and was replaced with the Labour Act[18]. This Act will be analysed subsequently in this study.

3. The Role of Trade Unions in the Evolution of Nigerian Labour Law

Trade Unions have also played significant roles in the evolution of the Nigerian labour laws. General discontent about the status of Nigerian workers and their living standards when compared to their expatriate counterparts led to unrests in

[12] E. E. Uvieghara, *Labour Law in Nigeria* (Lagos: Malthouse Press Ltd., 2001) at p. 101.
[13] *Op cit.*, at pg 102
[14] B. Aturu, *Nigerian Labour Laws; Principles, Cases, Commentaries and Materials* (Lagos: Frankard Publishers, 2005) at p. 6.
[15] S. 2 of Ordinance No. 16 of 1917
[16] Short title of the Labour Code Ordinance
[17] Uvieghara, *Labour Law in Nigeria, ibid,* at pp. 101 to102.
[18] Formerly Decree No. 21 of 1974 and now Cap 198 LFN 2004

trade unions from 1931 to 1945.[19] The Trade Union Ordinance, which was directed at controlling the emerging trade unions and frustrating the growth of these unions was enacted 1938. In the view of Aturu, this ordinance was targeted at maintaining effective control on the emergent unions rather than codifying a set of common law rights and obligations for the unions.[20] This ordinance codified the pre-requisite of mandatory registration of trade unions which has been duplicated in all subsequent trade union legislation.

These measures adopted by the colonial government hardly eased the growing tensions amongst the unions in the country. The unions were the Railway Workers Union, the Civil Service Union and the Nigerian Union of Teachers. In 1945, the government having been served notice of the workers' intention to embark on a massive strike if *Cost of Living Allowance* (COLA) was not increased and faced with the usual dilatory tactics of government with regards to the demands of the unions, the workers in Nigeria went on a general strike in which 34,000 workers participated. Other workers in the private sector also joined in the strike action by embarking on sympathy strikes.[21] The strike lasted from June 1945 to August 1945[22]. In 1949, 21 striking coal mine workers were killed in Iva Valley, Enugu and this led to the emergence of the Nigerian Labour Congress in 1950.[23]

The driving force behind the above mentioned enactments was not the setting up of legislation to deal with trade dispute resolutions, the establishment of minimum standards in factories or compensation for injuries arising from the workplace. In Aturu's view, the enactments were rather promulgated to ensure that the colonial government and its agencies maintained a firm grip on the labour relations of that period.[24] The effect of these enactments was the exacerbation of the peculiar problems of the workers which gave rise to agitation for self rule which, it was believed, would bring an end to the problems faced by the Nigerian worker. As people living in the fourth decade after independence, it is quite unfortunate that this has not proven true. Nigerian worker appears to be faced the threefold dilemma of industrial strife, political agitation and racial discrimination.[25]

It appears that labour laws in Nigeria were at this period manipulated by the colonialists to ensure their firm grip on the workers of this country. Aturu further argues that a study of Nigerian labour law would be bewildering except there is an

[19] Uvieghara, *Trade Union Law in Nigeria, op cit.*, at p. 20.
[20] Aturu, *op cit,* at p. 2.
[21] Uvieghara, *Trade Union Law in Nigeria, op cit.*, at pp. 22-25
[22] *Ibid,* at pg 25.
[23] R. A. Danesi, "The Trade Union (Amendment) Act, 2005 and Labour Reform in Nigeria: Legal Implications and Challenges" (2006) Volume 1 No. 1 *Nigerian Journal of Labour and Industrial Relations,* p. 1.
[24] Aturu, *op cit.*, at p. 2.
[25] Uvieghara, *Trade Union Law in Nigeria, op cit.*, at p. 23

understanding of the forces that shaped the making of these laws.[26] These enactments were geared at political and economic dominance and not the welfare of the worker.

4. Sources of Labour Law in Nigeria

For the purpose of this study, the sources of Labour Law shall be divided into principal sources and auxiliary sources. The primary sources include the Constitution of the Federal Republic of Nigeria (1999), statutory enactments which include the Labour Act,[27] the Employees Compensation Act 2010, the Factories Act,[28] the Trade Union's Act,[29] the Trade Disputes Act,[30] the Pension Reform Act (2004), etc. Some of these statutes will be examined subsequently. Auxiliary sources of labour law include the principles of common law, case law, international conventions, *etcetera*. Not all these legislation emanated from the National Assembly. The influence of the military regimes on our labour law is clearly seen upon a perusal of the number of our laws which started life as military decrees[31] and are now deemed to be Acts of the National Assembly. This, in Aturu's view, explains the largely draconian tone of these laws.[32] These decrees have now been absorbed into the bloodstream of our laws and effected without amendment.[33] A further example of this is the Trade Union Act which came into existence as the Trade Union Decree of 1973 and was amended by the Trade Union (Amendment) Decree of 1996.

It is germane at this point to examine the influence of statutes of general application on Nigerian Labour law. Without belabouring Section 45 (1) of the Law (Miscellaneous Provisions) Act[34] which provides for the reception into Nigeria of the laws in force in England on January 1st 1900, and without prejudice to the reception of common law rules and the equitable doctrines, it is instructive to note that not all labour laws which originated in England fall into the statute of general application category.[35] These laws are used in Nigeria especially where there is lacuna in Nigerian law. Emiola's rationalises this by

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[26] Aturu, *op cit.,* at p. 2.
[27] Cap L1 LFN 2004.
[28] Cap F1 LFN 2004.
[29] Cap T14 LFN 2004.
[30] Cap T8 LFN 2004
[31] Examples of such decrees include the Nigerian Social Insurance Trust Fund Decree (1993), National Salaries Incomes and Wages Commission Decree (1993), Nigerians with Disability Decree (1993), etc.
[32] Aturu, *op cit.,* at Pg 2.
[33] For instance, the Nigerians with Disability Decree of 1993.
[34] Cap LFN 2004.
[35] For instance, the Factories Act (1987),the Docks (Safety of Labour) Regulations (1958), the Quarries Act (1963), etc.

stating that Nigerian legislature has relied heavily on British legislation and that this has influenced judicial pronouncements in this regard. In view of the legislative gap between Nigeria and Britain in social legislation, English legislation on labour relations are stop gap measures designed to regularize the most confusing judicial pronouncements in the field.[36] Furthermore, it is humbly submitted, that in addition to this, the persuasive precedential nature of English pronouncements made after the reception laws came into force has also influenced our reliance on the admittedly more advanced legislative expressions of English law.

i. The Consiitution of the Federal Republic of Nigeria (CFRN) (1999)

It is contented that the Nigerian Constitution as a primary source of labour law is largely due to its position as the grundnorm upon which other laws derive their validity. This is because the Constitution in not a proactive document when it comes to labour matters. Section 17 (3)(a) to (f) of the 1999 Constitution as amended charts a policy directive and course for the state to follow on labour issues. The state is to direct its policy towards ensuring that every Nigerian is without discrimination given an opportunity to work,[37] conditions of work are to be just and humane with adequate facilities for leisure, socio cultural and religious life,[38] safeguarding the health, safety and welfare of workers,[39] ensuring adequate health and welfare facilities for the workers,[40] and ensuring equal pay for equal work without discrimination.[41] Also, children, young persons and the aged are protected from exploitation.[42] However, the section is made non-justiciable by the provisions of section 6 (6)(c) of the Constitution. These writers find it difficult to support this position.

In Aturu's view a better approach to this would have been to set up a constitutional mechanism to ensure that the State is acting in line with these policy directives.[43] He draws inspiration from the South African Progressive Realisation Clause where the Executive in the event of not being able to immediately guarantee some rights, is mandated to give periodic reports to the Parliament on how far it has gone to give effect to these rights. He reasons further that the government policy on privatisation is in conflict with section 16 (1)(c)(d) of the Constitution, which vests the government with power to manage and

[36] Emiola, *op cit.*, at pp. 5 & 6
[37] S. 17 (3)(a) CFRN 1999
[38] S. 17 (3)(b)
[39] S. 17 (3)(c)
[40] S. !7 (3)(d)
[41] S. 17 (3)(e)
[42] S. 17 (3)(f)
[43] Aturu, *op cit.*, at p. 7.

operate the major sectors of the economy, while the people participate in the minor sectors of the economy. In view of this disparity, the scope of application of the inconsistency clause as entrenched in section 1 (3) of the Constitution remains to be seen.

Labour law matters lie within the exclusive legislative list. The import of this is that only the National Assembly may make laws regarding labour and labour issues.[44] There is need for the National Assembly to enact laws which are relevant to present day realities and challenges facing the Nigerian worker. Under Chapter IV of the Constitution, constitutionally guaranteed rights may be extended by implication to cover labour law issues; these are the freedom of association[45] which includes the freedom to form and be part of trade unions and freedom from discrimination.[46] These rights appear to be inhibited by the absence of proactive judicial interpretation. This inhibition shall be discussed later in this study. For the purpose of this paper, four main legislation, to wit; the Labour Act, the Employees Compensation Act, the Factories Act and the Trade Union Act are discussed as sources of labour law in Nigeria.

ii. The Labour Act

The Labour Act is divided into four parts. Generally it deals with the relationship between the employer and the employee in a contract of service. Part 1 of the Act applies only to an employee who is a worker as defined in the interpretation section of the Act. Part II covers recruitment of labour and punitive sanctions when recruitment is not done in the manner provided for by the Act.[47] Part III deals with different matters including apprenticeships[48], employment of women particularly relating maternity guidelines, prohibition of night work and underground work.[49] It must be stated that the provisions relating to women are made ludicrous by Section 58 (1) and (2) of the Act which stipulates fines of N200 and N100 for contravention of the relevant sections. Part III also deals with employment of young persons and domestic servants, labour health areas and the prohibition of forced labour. Generally, the Labour act is a restatement of the common law labour rules with modifications. The irony lies in the fact that these modifications do not really address the needs of modern day employment realities.[50] Uvieghara blames this on the fact that the Labour Act is outdated and

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[44] Part I of Schedule 2 to CFRN (1999), Items 34 and 44.
[45] S. 40 CFRN
[46] S. 42 CFRN
[47] Ss. 45, 46 and 47 of the Labour Act
[48] S. 49
[49] Ss. 54, 55 and 56
[50] S. 1 (1) - (3) provides for the protection of wages and the duties of the employer in relation to the employee. These rules only provide for where a worker may not be paid

calls for its modification to suit the modern day realities.[51] However, the Labour Act has abolished the common law doctrine of common employment.[52] Even though the Labour Act leaves much to be desired in regulating worker and employer relationship, it provides the statutory framework which is opened for development and modification. Such modifications it is hoped would include the rights of workers living with HIV/AIDS, gender rights in the workplaces and such other rules that would reflect modern trends in labour rights.

iii. The Employees Compensation Act 2010

As the name suggests, this Act make provision for the types of compensation payable to workers upon injury during the course of their employment. It applies generally to all workers in the sectors of the economy. It is designed to provide for the safety and security of workmen and provides for compensation in the event of injury. It however doesn't apply to members of the armed forces except for those who work there in a civilian capacity, and non Nigerians working in the Nigerian public sector.[53] The Act provides for different kinds of compensation which include compensation in cases of permanent partial incapacity, permanent total incapacity, temporary incapacity, and fatal accident cases where death results from the injury or accident[54]. The qualification for such compensation is that the workman must have suffered the incapacity for three consecutive days or more and the injury should not have resulted from the serious or willful misconduct of the workman[55].

In Oguniyi's opinion,[56] the major feature of the Act is that it alters the definition of a workman by excluding certain classes of people.[57] One of the pitfalls of the Act is that the quantum of compensation is not fixed but subject to computation of the earnings of the workman over a period of time. While this statutory stipulation may not cause much concern for the high or middle income worker who could earn a considerable sum on incapacitation, it does not do much for the low income earner or his family for whom computation of his income over a period may result in a sum that would defeat the intent behind the enactment of the Act. The court is however enjoined to look beyond the Act and fix reasonable compensation if those provided for by the Act is inadequate given the nature of the worker's

[51] Uvieghara (2001) ibid at pgs 101-102
[52] S. 12
[53] S. 2 (1)-(3) of the Employees Compensation Act 2010
[54] Ss. 4, 5, 7 and 9 of the Employees Compensation Act.
[55] S. 3 of the Employees Compensation Act
[56] Oguniyi, *op cit.*, at p 2.
[57] S. 1(2)(a)-(f) of the Employees Compensation Act

incapacitation. [58] This is to my mind not satisfactory because the test of reasonableness is in this case the subjective.

Emiola, states that the duration for payment of compensation which is statutorily limited to four and a half years would pose a problem if the incapacitation is of a permanent nature.[59] A question also arises as to the import of Section 1(2) e of the Act which excludes persons employed in agricultural or handicraft work by an employer who normally employs less than 12 workmen. In these days of advanced technology where labour is more mechanical than manual, a recalcitrant employer can slip through the wide loophole provided by the act upon proof of the stipulations laid down by that section. It is my humble view that this part of Section 1 (2) be removed from the Act. The other classes of people excluded from the Act may find legal remedy in tort in the event of incapacitation by in the course of their employment. This is inadequate. There should be an expansion of the meaning of the workman to include classes of people not hitherto covered by the Act.

iv. The Factories Act

The Factories Act provides for the protection, health and welfare of the worker at work.[60] The compelling feature of the Act is that it fundamentally alters the definition of a factory to include even the most basic manufacturing premises.[61] It is however not clear whether the Act extends to premises where the occupation is more clerical than manufacturing.[62] It would appear that the provisions of the Act are restrictive in scope in the sense that they do not extend to workers whose place of work is outside the factory environment. The apparent narrow scope of the Act makes it exclusive in nature and does not accommodate all classes of workers. There is need therefore for an expansion of the provisions of the Act to include the classes of workers hitherto excluded by the Act.

The factory occupier is mandated by the Act to keep the factory clean[63] and to make provisions for securing fresh air and ventilation of the factory room.[64] Section 45 of the Act makes it obligatory for factory occupiers to take all possible measures to protect persons employed in the factory from dust inhalation. Section 71 of the Act imposes a sum of N5000 or imprisonment for a term not exceeding two years in the event of death of the a worker from the occupier's failure to abide

[58] S. 7 of the Factory Act.
[59] Emiola, *op cit.*, at p. 413
[60] C. K. Agomo, "Protection, Liability, and Compensation Laws Relating to Occupational Diseases" Volume 2 No. 13 *Business Law and Property Journal*, p.65
[61] Oguniyi, *op cit,* at p 2
[62] B. Bankole: *Employment Law* (Lagos: Libre Services Ltd., 2003) p. 13
[63] S. 7
[64] S. 9

by the provisions of the Act. Even though Section 71 is without prejudice to any other claim which may arise from such failure to abide by the provisions of the Act, the sanction it imposes is mild compared to the wrong it seeks to punish. It is necessary that stricter measures be applied to discourage factory occupiers from flouting the provisions of the Act.

v. The Trade Union Act

In this part of the study the Trade Union Act, its amendment and the impact of the amendment shall be examined. Essentially, this Act defines what a trade union is and lays down guidelines for the registration, formation and administration of Trade Unions in Nigeria. The Act also regulates the formation of trade union groups, their roles, functions and powers as well as outlining their interactions with their members and employers[65]. Section 1(1) of the Act defines a trade union as

> Any combination of workers or employers, whether temporary or permanent, the purpose of which is to regulate the terms of employment of workers, whether the combination in question would or would not apart from this Act, be an unlawful combination by reason of any of its purposes being in restraint of trade and whether its purpose do or do not include provisions for the benefit of its members.

The main defect of this Act lies in the fact that it is perceived as a tool of the state created to monitor the activities of workers.[66] Certain classes of public servants are prohibited from being members of trade union.[67] As a matter of fact, the Act makes it unlawful for these ones to be members of a trade union. These classes of public servants include members of the police force, prison services, armed forces, members of the customs and excise, certain members of the security section of the Central Bank of Nigeria and people authorised to bear arms. However these groups of people are allowed to set up consultative committees with their employers to iron out issues relating to them.

Dalhatu argues that this is in contravention of their fundamental human right of freedom of association as enshrined in Section 40 of the 1999 Constitution[68]. His position is notwithstanding Section 45 of the Constitution which affirms the validity of any law made for the governance of a democratic society. I respectfully

[65] Danesi, *op cit.*, at p 96.
[66] *Ibid.*
[67] S. 11 (1) of the Act
[68] M. B. Dalhatu, "Public Servants, Trade Unions and Industrial Relations in Nigeria", Labour Law Review Volume 1 No. 2, Bimbo Atilola (Ed) pg 74

differ with his view in the light of the definition of a trade union as quoted above. It does appear that the definition of the trade union has been statutorily widened it include these persons in the above mentioned categories of public service.

Having been defined as "a combination of workers and employers, whether temporary or permanent ...", it seems that this would include the statutorily allowed "consultative bodies." Excluding these public servants from joining a trade union and yet allowing them to be part of a consultative body with their employers appears not to be a total exclusion due to the fact that the purpose for which the person was part of the union could still be achieved via such consultative bodies.

a. Trends in the Trade Union (Amendment) Act

This Act amends the principal Act in some essential respects. In the first instance, it vests the decision to join or not to join a trade union solely in the worker[69]. The import of this is that the worker is free to decide whether or not he wants to join a trade union. In addition to this, the amended Act makes provision for the preliminaries that must be observed before a strike or lockout action can be embarked upon. The import of that subsection[70] is that before workers can go on strike, the must not be in essential services, the strike must be over a labour dispute which should be a dispute of right, the strike should arise from a dispute concerning a fundamental breach of contract or collective agreement, the arbitration provisions of the Trade Disputes Act[71] have been complied with and in the case of an employee or trade union, a ballot has been conducted where the members by simple majority agree to go on strike. Also section 30 (7) of the amended Act makes contravention of the preceding provision punishable with a fine of N10,000 or six months imprisonment or both. The implication of this subsection is the severe curtailment of the freedom of workers to embark on a strike or a lock out. The amendment also gives employers powers to deduct from the salaries of employees to pay union dues only with the express permission of the employees. Section30 (1) a-b gives the Minister power to approve the formation of federated trade unions.

It is the view of Danesi that in spite of the government protestations that this amendment of the Act is to bring trade unions in line with the specifications of the International Labour Organisation, the trade unions should be allowed to develop at its own pace and in accordance with Convention 87,[72] which states that workers should be left alone to form trade union without prior government

[69] S. 12 (4) of the amended Act
[70] S. 30 (6)(a)-(e)
[71] *Ibid*
[72] Article 2, ILO Convention on the Right to Organize and Collective Bargaining

authorization.[73]The amendment also abolished picketing[74]It is a source of concern that the amended Act as it stands has severely curtailed the independence of trade unions, their financing and their impact in improving the lot of the workers.

vi. The Pensions Reform Act (2004) as a Source of Labour Law in Nigeria

It is prudent to briefly outline role of the Pension Reform Act (2004) due to the fact of its being the chief social security legislation affecting workers upon cessation of their employment by reason of old age. Prior to the year 2004 when the Pension Reform Act was enacted, the 1979 Pensions Act provided for a non contributory pensions scheme funded by the Federal Government and expressly charged to the Consolidated Revenue Account of the Federation. The problems arising from the Pension scheme regime under the 1979 Act[75] led to the enactment of the extant Act in 2004. The Pensions Reform Act (2004) mainly establishes a compulsory contributory pension scheme for workers in the public service and the organised private sector.[76] The features of the pension scheme as outlined by Ajuyah,[77] are that the scheme is compulsory, contributory, fully funded and private sector managed by the Pension Fund Administrator and the Pension Fund Custodian[78]. While the rate of contribution as between the employee and the employer in the public and private sector generally is 7.5% each,[79] employees in military service contribute 2.5% of their salary while their employer (that is, the government) shoulders 12.5%[80]. In the view of Ajuyah, the attempt by the Federal Government to legislate on private sector pension initiatives is of doubtful legal foundation given the fact that the National Assembly lacks the requisite constitutional locus to legislate on private sector pension funds since these are not fund chargeable to the Consolidated Revenue Account.[81] While agreeing with Ajuah, it is reasoned that the Act by leaving the management of the funds to unsupervised administrators and custodians causes grave concern as it does appear that the Pensions Commission established by the Act[82] is a mere clerical administrative as opposed to, supervisory and regulatory ombudsman. The Act

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[73] Danesi, *op cit,* at p. 112

[74] S. 42 (1)(a)(b)

[75] The Federal Government could not fund the scheme due to lack of fiscal, administrative and data keeping facilities. This led to a great deal of suffering on the parts of retirees who were owed up to trillions of naira in arrears.

[76] S. 1 of the Act

[77] G. Ajuyah, "Strengthening the Legal Framework for Social Security in Nigeria- A Perspective on the Pensions Reform Act", being an unpublished LL. M Seminar Paper presented at the University of Lagos on May 6, 2008.

[78] *ibid* at p. 14

[79] S. 9 (a) (i)and (ii) and (c) (i) and (ii) of the Act

[80] S. 9 (b) (i) and (ii)

[81] Ajuyah, *op cit op* at p. 16

[82] S. 14 of the Act

has however abolished the payment of gratuity and left has ignored self employed workers. The employee upon attainment of retirement age is only entitled to withdraw part of his pension savings under the Act.[83] Also an employee who had less than three years to retire and who was already part of a pension scheme at the commencement of the act is entitled to be issued redeemable bonds which could constitute a charge on the income of the employer.[84] The attendant insecurity in Nigeria has raised doubts as to the sustainability of the system.

In rounding up this section, it should be emphasized that as regards the social security plan of Nigerian labour law, there is no composite legislation. What exists is a piece meal approach where statutory provisions which have social security implications are used as stop gap measures.[85] It is therefore necessary that legislative pro-activism should address this shortcoming.

vii Auxiliary Sources of Labour Law

These include the principles of Common law, judicial precedents and international conventions. These will be analysed in the following section of this study

a. Principles of Common Law as a source of Labour Law in Nigeria

Due to the existence of the statutory provisions regarding labour and labour relationships as a whole, the role of common law is complementary to these statutes. That is to say that common law only applies where these statutes are silent. The common law in contemplation as regards labour relationships is the general principles of the law of contract. When the statutes are silent as to any aspect of labour, the common law principle of freedom of contract and its counterpart sanctity of contract are resurrected. At common law the employer is called the 'master' while the worker is called the 'servant'. The basic rules governing master servant relationships still apply. Classes of workers governed by common law would include domestic servants, labourers, artisans and other people in permanent or temporary employment not governed by the Labour Act except by a special order of the minister.[86]

Law of contract operates on the pre-supposition of a level playing field where both the worker and the employer fashion out the terms of their agreement which must not be altered by any party. As regards labour law, this reasoning is fundamentally flawed because there is nothing level about the negotiating field. The bargaining power is unequal, the worker therefore accepts the terms imposed by the employer whether they are to his liking or not. It is only when the statutes

[83] S. 4 of the Act

[84] S. 12 of the Act

[85] For instance Section 54 of the Labour Act which deals with maternity leave entitlements of female employees.

[86] S. 65 of the Labour Act

are silent and the employment is not one of statutory flavour that the master can fire his servant for 'a good reason, a bad reason or for no reason at all'. While the United Kingdom has moved away from the obsolete common law rules by the enactment of proactive legislation, Nigeria still clings to these rules. For instance, Nigerian law is still unwilling to "foist a willing employee on an unwilling employer" which in Aturu's view is completely unrealistic in the light of present day business organisations where it is difficult to judge the willingness of the employer who does not have full grasp of some of the aspects of his business organisation.[87] Only the express provisions of a statute can override the operation of common law.[88] Bankole suggests that the common law rules regarding labour are still useful to our legal system in the light of common law protections as laid down in the law of Negligence and Occupiers liability.[89] While not undermining the usefulness of this common law protection of the worker, I am of the opinion that statutory codification of these rules with modern day realities in mind would immensely benefit our labour law. Proactive legislation is therefore necessary in order to mitigate the hardship caused by the strict application of the principles of common law to certain categories of contracts of employment.

b. *Judicial Precedent*

Judicial precedents are a source of labour law in Nigeria due to the interpretative role of the courts with regards to statutory enactments and the rules of common law. The Nigerian courts have in interpreting labour laws concerning the employers' right to hire and fire at will, clung tenaciously to the common law rules except with regards to contracts of employment which "have statutory flavour." The import of this is that where an employment was created by statute an employer can only terminate that employment in accordance with the laid down provisions of that statute.[90] While this judicial view may gladden the hearts of public servants, there is however no precise yardstick for the determination of whom a public servant really is[91].

It does appear that it is not clear what level an officer of a public institution ought to be at before he is under the public officer category envisioned by the courts and therefore cloaking his employment with statutory flavour. This judicial activism adopted by the Nigerian courts regarding the nature of statutory employment in

[87] Aturu, *op cit.* at p. 3
[88] For example Section 12 of the Labour Act which abolished the common law doctrine of common employment.
[89] Bankole, *op cit,* at p. 13
[90] *Olaniyan and Ors v University of Lagos* (1989) 2 NWLR (Pt 9) @ pg 599, *Garba and Ors v University of Maiduguri* (1986) 1 NWLR (Pt 18) @ pg 550
[91] For instance, the conflicting decisions in *UN Teaching Hospital Board v Hope Nnoli* (1994) 8 NWLR (Pt 363) Pg 376 and *University of Calabar v Inyang* amoung others.

Nigeria has opened up a floodgate of litigation where plaintiffs try by every means possible to establish that they are indeed in statutory public servants. For workers outside the class of statutory employment, they are left with common law remedies and those provided by statutes on issues of compensation and other ancillary remedies which may be available to them. This is a far cry from what obtains in the United Kingdom where judicial activism has protected the worker even in the areas of stress at work and placing the employer of whatever category whether private or public under a duty of care to prevent both physical and mental illness[92]. Our judicial precedents in any case contribute to labour law in Nigeria by providing laid down judicial guidelines which are binding on the lower courts and has helped restructure the Nigerian public service as well as protect the rights of workers in the private sector.

c. *Military Intervention in Labour Law in Nigeria*

The military stamp on Nigeria's labour law is without doubt the result of the long period of military rule which Nigeria went through. This in Aturu's opinion explains the element of control which characterised the laws which first started life as decrees of the Federal Military Government which were conscripted into the body of our laws by virtue of Section 315 of the 1999 Constitution.[93] This, in Aturu's view, explains the largely draconian tone of these laws[94]. These decrees have now been absorbed into the bloodstream of our laws and effected without amendment.[95] A further example of this is the Trade Union Act which came into existence as the Trade Union Decree of 1973 and was amended by the Trade Union (Amendment) Decree of 1996. This statute now resides our law as Cap T14 Laws of the Federation of Nigeria (2004) and has since been amended by the Trade Union (Amendment) Act (2005). The Employees Compensation Act 2010 was formerly the Workmen Compensation Decree (1987).Further examples of such decrees include the Nigerian Social Insurance Trust Fund Decree(1993), National Salaries and Wages Commission Decree (1993), Nigerians with Disability Decree (1993), etc. The largely draconian nature of military rule resulted in the promulgation of decrees which lacked the appropriate structures for enforcement and monitoring. For instance, Section 6 of the Nigerians with Disability Decree stipulates that the government should adopt measures to promote employment for the disabled. In section 6 (2) of the same decree there is a stipulation that the state should reserve not less than 10% of employment posts for disabled people. However there are no statutory or administrative measures put in place to ensure the enforcement of this law. This probably explains why

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[92] *Walker v Northumberland County* (1995) 1 All E. R. 737
[93] Iaturu, *op cit,* at p. 6.
[94] (Ibid) at Pg 2
[95] For instance, the Nigerians with Disability Decree (1993)

there is presently a bill before the National Assembly sponsored by physically challenged Nigerians to provide for the rights of people living with disabilities.

d. The role of the International Labour Organisation as a Source of Labour Law in Nigeria

The International Labour Organisation (ILO) was established in 1919 and its role is to ensure that workers in countries which are signatories to its conventions enjoy certain minimum standards and rights at their places of employment.[96] The organisation has achieved this objective by enjoining its signatory States to comply with the provisions of its conventions and recommendations in the interest of human rights in these countries. The ILO operates by way of tripartism, that is, the conventions are drafted in consultation with governments, employers and workers. Examples of the conventions are Convention 87 on Freedom of Association and Protection of the Right to Work (1948), Convention 98 on the Right to Organise and Collective Bargaining (1949), Labour Inspection Convention 81 (1947), Maternity Protection Convention 103 (1952), Convention 155 on Occupational Safety and Health (1981), Convention 182 on the Worst Forms of Child Labour (1999) *etcetera.*[97]

The absence of enforcement mechanisms in the ILO structure apparently makes it difficult to enforce compliance with the provisions of these conventions, even in relation to countries that are signatories to the conventions. In Nigeria the dualist nature of the country's constitutional structure dictates that before such conventions are incorporated into the fabric of the laws. Such laws must first be domesticated by the National Assembly.[98] Aturu argues that the Labour Act incorporates certain aspects of the ILO conventions in some Section17 which is generally on the duty of the employer to provide work.[99] Clearly the directory role of the ILO in respect of labour matters makes it difficult for its conventions to be given more than the most cursory regards within the prescient of Nigerian law. Furthermore, the Trade Union Act and the Trade Disputes Act seem to be products of the ILO intervention.[100] It should be noted however that there are other international conventions which have relevance to labour law in Nigeria,[101]

[96] *Available at* www.ilo.lex last accessed on June 4, 2013.

[97] F. Adewunmi, "Protecting Workers' Rights in the Export Processing Zones (EPZS): Challenges for the Labour Movement' in B. Atilola (Ed), *Labour Law Review* (Lagos: Hybrid Consult, 2007) at p. 60

[98] Section 12 (1) of CFRN 1999

[99] Aturu,, *op cit,* at p, 3.

[100] (Adewunmi, *op cit,* at p 60

[101] For example, the Universal Declaration of Human Rights (1948) (particularly Articles 8, 23 & 24), United Nations International Covenant on Economic, Social and Cultural Rights (Part III: Articles 6-10), International Covenant on Civil and Political Rights (Article 22), etc.

these are creations of the United Nations and generally suffer the same *directory,* but *not mandatory* and domestication disadvantage of the ILO conventions.

5. Future Trends in Nigerian Labour Law

Nigerian labour law has generally suffered from an over emphasis on trade union legislation at the expense of other equally, if not, more important areas of labour law that are in dire need of reform. The return of democratic governance in Nigeria in 1999 has impacted on every aspect of Nigerian law. since 1999 there has been both private and public sector initiatives aimed at reforming Nigerian labour law. These efforts include the activities of different Committees on Labour in the Senate and the House of Representatives, as well as private sector movement by civil society organisations, all aimed at the reform of labour law, particularly, in the area of unfair dismissals legislation, social security and the implementation of the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW).[102] Apart from efforts at reforming Nigerian labour legislation into a composite whole, there are initiatives by state governments to handle emerging issues in Nigerian labour law. For instance Rivers State has enacted the Rivers State Employees with HIV/AIDS (Non Discrimination) Law.[103] The law seeks to check workplace discrimination and other challenges faced by employees living with HIV/AIDS in Rivers State.[104] The Law also imposes duties and obligations on employers and employees *interse* in the areas of voluntary testing and counselling, healthcare provisions *etcetera.* This law has however been criticised for providing for penal rather than civil sanctions.[105] Ancillary to the penal sanction is the requirement of a higher standard of proof of discrimination in criminal charges as against prove on the prepoderence of evidence in civil matters. It is reasoned that while the law is a bold step in the right direction, civil remedies which would probably provide for monetary compensation and reinstatement of the affected employees would be more beneficial to the employees.

Also a Gender and Equal Opportunities Commission Law of 2007 has been enacted in Anambra State. The law seeks the entrenchment of equal opportunities

[102] For instance, the writer is aware of the activities of Women, Law and Development International a civil society organization which is an umbrella body for women rights advocacy groups in Nigeria currently lobbying for a state by state enactment of anti discrimination laws arising from the delay in the domestication of CEDAW by the National Assembly. One of the founding members of the organization was Prof Jadesola Akande

[103] No. 3 of 2005 as cited by A. Oyewunmi in "Legal Responses to HIV/AIDS Pandemic in the Workplace: Lessons and Challenges for Nigeria" (An unpublished seminar paper presented to the Academic Staff of the University of Lagos on February 7th 2007)

[104] Oyewunmi, *ibid.,* at p. 34.

[105] *Ibid.,* at p. 35.

for women in all facets of life in the state; including labour issues,[106] and also establishes the Gender and Equal Opportunities Commission[107] in the state. While this is commendable, the law seems to lack appropriate enforcement structure. The law rather provides to the effect that any breach of its provisions is to be meted with punishment "in accordance with the provisions of the 1999 Constitution of the Federal Republic of Nigeria." [108] The vagueness of the provisions for punishment in the law leaves much to be desired, as the law may well end up being unenforceable by the mere fact of reference to the Constitution. Be that as it may, it is clear that for the purposes of labour law the focus is gradually shifting from the traditional concerns about the adequacy of the existing body of laws to the various strands which have arisen due to the rise of contemporary developments.

6. Conclusion

The body of labour law presently in force in Nigeria arose from Nigeria's colonial heritage. The laws are seen to be both unwieldy and archaic, and sometimes, products judicial precedents enunciated by an inconsistent judiciary. The shortcomings of the existing body of laws presently obtainable in Nigeria have been examined and the effect of military rule on the body of Nigeria's labour laws has also been analysed.

Even though this study was not exhaustive in its study of all the laws relating to labour and labour issues in Nigeria,[109] these laws suffer from the common feature of lack of modifications to embrace modern realities faced by the Nigerian worker, and in some cases come to terms with existing peculiarities. Areas like constructive dismissal, discrimination, emerging health issues, HIV/AIDS and other vulnerable groups, redundancy and other social security issues are yet to find statutory foundation in Nigeria.

While it is apposite that laws should be enacted with the goal of social engineering for the purpose of mainstreaming Nigeria's labour laws to fall in line with global trends, Nigeria's peculiar environment should also be taken into consideration. Law reform initiatives therefore have the burden of enacting laws which take cognisance of globalisation and the concept of industrial democracy, while having due regard for the Nigerian domestic environment.

[106] S. 15 of the Gender and Equal Opportunities Commission Law of 2007 of Anambra State.
[107] S. 21 of the Gender and Equal Opportunities Commission Law of 2007.
[108] Section 4 (1) of the Gender and Equal Opportunities Commission Law of 2007.
[109] Other statutes include the Pension Reform Act (2004), National Minimum Wage (Amendment) Act (2000), Nigerian Maritime Labour Act (2003), etc.