AFRICAN THEOLOGICAL STUDIES 4

Paulinus Chibuike Nwaigwe

Canonical Marriage Preparation in the Igbo Tradition in the Light of Canon 1063 of the 1983 Code of Canon Law

Canonical Norms and Inculturation

PETER LANG
EDITION

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AFRICAN THEOLOGICAL STUDIES

Etudes Théologiques Africaines

Edited by Gerhard Droesser and Chibueze Udeani

KIRCHENRECHT

VOLUME 4

Zur Qualitätssicherung und Peer Review der vorliegenden Publikation

Die Qualität der in dieser Reihe erscheinenden Arbeiten wird vor der Publikation durch einen Herausgeber der Reihe geprüft.

Notes on the quality assurance and peer review of this publication

Prior to publication, the quality of the work published in this series is reviewed by one of the editors of the series.

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Bibliographic Information published by the Deutsche Nationalbibliothek
The Deutsche Nationalbibliothek lists this publication in the
Deutsche Nationalbibliografie; detailed bibliographic data is
available in the internet at http://dnb.d-nb.de.

Zugl.: Würzburg, Univ., Diss., 2012

Library of Congress Cataloging-in-Publication Data

Nwaigwe, Paulinus Chibuike, 1975- author.
Canonical marriage preparation in the Igbo tradition in the light of Canon 1063 of the 1983 Code of Canon Law : canonical norms and inculturation / Paulinus Chibuike Nwaigwe.
pages cm. — (African theological studies ; v. 4)
"Würzburg, Univ., Diss., 2012."
ISBN 978-3-631-64778-3 — ISBN 3-631-64778-6 1. Marriage (Canon law) 2. Igbo (African people)—Rites and ceremonies. 3. Marriage—Religious aspects—Catholic Church. 4. Marriage customs and rites—Nigeria. 5. Catholic Church. Codex Juris Canonici (1983). Canon 1063. 6. Christianity and culture—Nigeria. I. Title.
KBU3110.N93 2013
262.944008996332—dc23

2013038186

D 20
ISSN 2196-0615
ISBN 978-3-631-64778-3 (Print)
E-ISBN 978-3-653-03573-5 (E-Book)
DOI 10.3726/978-3-653-03573-5

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Internationaler Verlag der Wissenschaften
Frankfurt am Main 2013
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This book is part of the Peter Lang Edition list
and was peer reviewed prior to publication.

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Dedication

To my beloved and cherished parents
Mr. Festus Nwaigwe (late) and Mrs. Catherine Nwaigwe
Towards adequate and effective marriage preparation in Igboland.

Acknowledgements

Human life is a gift which is realised most in love and mutual understanding since man is a being for others. Hence, I am grateful to God for his manifold blessings on me. My profound gratitude goes to my former Superior General, Very Rev. Fr. Dr. James Michael Okpalaonwuka whose permission to further my studies abroad, made the realization of this work possible. My present Superior General, Very Rev. Fr. Dr. George Okorie is worthy of mention for his paternal care, unflinching support and encouragement in the pursuit of my studies.

My unalloyed appreciation goes to my chief supervisor Prof. Dr. Heribert Hallermann who handed me a lot from his scholarly insight and erudition with his simplicity and humility. His painstaking effort, diligent moderation, and steadfastness in correcting this work notwithstanding his other tight schedules inside and outside the University campus cannot be equated with anything. I cannot thank him enough for his guidance and dedication not only during this doctoral thesis but more also for his continued interest in me and support for my future endeavours. The ideas he imparted in me will ever remain indelible and evergreen. He is simply a friend to me.

I equally thank Prof. Dr. Ottmar Meuffels, my second supervisor for his constructive criticisms and useful corrections. My appreciation goes also to Rev. Fr. Dr. Fintan Garvin, a priest from the Archdiocese of Dublin, Ireland, who not only made some insights into this work but also gave me some useful materials that guided me throughout my writing of this dissertation. I sincerely thank Mrs Birgit Liebler for organizing and formatting the manuscript of this work. I thank also Fr. Godswill Agbagwa for the materials he provided me. I am also indebted to the entire members of Staff most especially of the theology faculty of the University of Würzburg, Germany.

My profound appreciation goes to my congregation; Sons of Mary Mother of Mercy, through whose foundation, this work was made possible. I am equally indebted to the entire members of this religious family. My deepest gratitude goes to Rev. Fr. Dr. Christopher Agoha, whose contribution has helped in shaping my life and personality in this my noble congregation. His scholarly insights, love, care, support and encouragement are not to be left out. I thank members of the German region of my congregation, especially those with whom I have lived very closely here in Germany – Frs. Christogonus Keke, Basil Ezechukwu, Mcdonald Nwandu, Uche Iheke and Vitalis Emesi for their brotherly care and support.

This work would not have seen the light of the day without the support of the diocese of Würzburg, Germany, who offered me scholarship to study in the University of Würzburg and also incorporated me into the pastoral activities of the diocese. I am sincerely grateful.

I am ever grateful to the entire Egenhausen community, Germany, who not only sheltered me but provided me support financially and encouraged me. I am indebted to you all. I thank in a especial way the families of Mr and Mrs Horst and Anita Conze, Norbert Dedat, Mrs Ruth Schulwitz (late), and Mrs Brigitte Neuwirth, for their support and encouragement.

To be mentioned are my good friends who stood by me with words of encouragement – Frs. Bede Nwadinobi, Matthew Anyanwu, Augustine Nzekwe, Rowland Onyenali, Tony Chimaka and Damian Ikejiama. I sincerely thank my bossom friend Johnson Nani, for his support and assistance in this very work. You are a good friend. I thank in a special way my Anty Queen O. for her support, care and encouragement in seeing to the realisation of this work. I also thank immensely Dr and Mrs Kevin Anyanwu, Mr and Mrs Ralph Obiyo for their care and support in my academic pursuit.

To my parents, Mr. Festus Nwaigwe (late) and Mrs Catherine Nwaigwe who made me what I am today, I remain ever grateful and indebted to them for their care, support, and encouragement all these years. I equally express my profound gratitude to my brothers and sisters, relations, benefactors and benefactresses for their care and support. To all those who have always supported and encouraged me in my field of academics, I say thank you and God bless you all.

Vorwort

P. Nwaigwe Paulinus Chibuike SMMM, der als Priester einer nigerianischen Ordensgemeinschaft angehört, geht aus von der pastoralen Situation, die in seinem Heimatland im Blick auf die Ehe festzustellen ist, und zielt auf die Verbesserung der Ehepastoral und namentlich der Ehevorbereitung bzw. Ehebegleitung. Zu diesem Zweck untersucht er sowohl die traditionelle institutionalisierte Ehevorbereitung bei den Igbo als auch die diesbezüglichen kanonischen Normen und lehramtlichen Weisungen mit der Absicht, beide im Sinne der Inkulturation christlicher Lebenspraxis in eine fruchtbare Beziehung zu bringen.

Die Untersuchung, die am 22.10.2012 von der Katholisch-Theologischen Fakultät der Julius-Maximilians-Universität Würzburg als Inauguraldissertation angenommen wurde, wird in fünf Hauptkapiteln entfaltet:

Kapitel eins untersucht die kanonisch vorgeschriebene Ehevorbereitung während der Geltungsdauer des CIC/1917 und erstreckt sich insofern zeitlich auch über die Zeit des II. Vatikanischen Konzils und die Nachkonzilszeit, die – kirchenrechtlich gesehen – mit der Promulgation des CIC/1983 endet. Im CIC/1917 stand die Frage nach der Gültigkeit und der Erlaubtheit der Eheschließung im Mittelpunkt. Auch wenn dieser Codex noch keine systematische Norm zur Ehevorbereitung enthält, bietet er diesbezügliche Anknüpfungspunkte in den Verpflichtungen, die der zuständige Pfarrer im Blick auf die Brautleute hatte: Belehrung über die Heiligkeit des Ehesakraments, die gegenseitigen Rechte und Pflichten der Eheleute sowie die Aufgaben der christlichen Eltern. Ebenso sollte der Pfarrer die Brautleute in kluger Weise über die Ehehindernisse belehren und ganz allgemein für deren christliche Unterweisung sorgen. Die Enzyklika „Casti Connubii“ P. Pius XI. legt mit der Unterscheidung zwischen der entfernten und der unmittelbaren Ehevorbereitung in gewisser Weise das Fundament für die weitere Entwicklung in diesem Bereich. P. Pius XII. hat sich in einer ganzen Reihe von Ansprachen mit der Vorbereitung junger Menschen auf die Ehe befasst und bezeichnete eine sorgfältige Ehevorbereitung als Schlüssel für eine gelungene Ehe. P. Johannes XXIII. wünschte eine entsprechende Katechese schon von Kindheit an. Das II. Vatikanische Konzil erneuert zum einen die Theologie des Ehesakraments, zum anderen sieht es die Ehevorbereitung nicht mehr nur als Aufgabe der Pfarrer an, sondern verpflichtet die gesamte kirchliche Gemeinschaft, an dieser wichtigen Aufgabe mitzuwirken. Das Instrumentum Laboris für die Bischofssynode von 1980 enthält fünf Paragraphen, die sich ausdrücklich mit der

entfernteren und der unmittelbaren Ehevorbereitung befassen. In diesem Zusammenhang wird wertschätzend darauf verwiesen, dass in manchen Teilen der Welt Familien mittels überlieferten Brauchtums junge Menschen auf die Ehe und das Familienleben vorbereiten; dies ist in gewisser Weise ein Anknüpfungspunkt für die weiteren Ausführungen des Verfassers zur Situation in seinem Heimatland. Als Frucht der Bischofssynode wurde von P. Johannes Paul II. das Apostolische Schreiben „Familiaris Consortio" veröffentlicht, in dem die Ehevorbereitung als ein von Kindheit an dauernder Prozess konzipiert wird, der die entfernte, die nähere und die unmittelbare Ehevorbereitung umfasst.

Kapitel zwei legt das kanonische Eheverständnis des geltenden CIC/1983 dar, das erkennbar das durch das Konzil erneuerte theologische Konzept der Ehe entfaltet. So wird beispielsweise die hierarchische Ordnung der Ehezwecke überwunden und die Ehe als eine umfassende Lebensgemeinschaft verstanden, die auf das Wohl der Ehegatten sowie die Zeugung und Erziehung von Nachkommenschaft hingeordnet ist. Das Verständnis der Ehe als Bund schließt deren Charakter als Vertrag ein und nicht aus. Die Lehre von der Sakramentalität der Ehe erhält einen ekklesiologischen Akzent, indem die christlich gelebte Ehe als ein wichtiges Aufbauelement der Kirche verstanden wird. Als Wesenseigenschaften der Ehe normiert der CIC/1983 die Einheit und die Unauflöslichkeit, was sich im Hinblick auf das Eheverständnis der Igbo insbesondere bei kinderlos bleibenden Ehen als besonderes Problem erweist. Auch der ehestiftende Konsens, der ausschließlich von den beiden Partnern zu leisten ist, kann unter Umständen in Konflikt zum traditionellen Konsens bei den Igbo geraten, der auch eine Zustimmung der Familie und des Stammes umfasst, jedoch keine Ehe ohne den Konsens der Brautleute kennt.

Kapitel drei stellt vor diesem Hintergrund ausführlich die Ehevorbereitung und die Ehebegleitung vor, die in c. 1063 CIC/1983 normiert ist. Die ausführliche Darlegung der Redaktionsgeschichte lässt erkennen, wie die diesbezüglichen Weisungen des Konzils konsequent in geltendes Recht umgesetzt wurden. Gestützt wird die in c. 1063 CIC/1983 ausgesprochene Verpflichtung der Pfarrer durch die diesbezügliche Ordnungs- und Aufsichtspflicht des Ordinarius (c. 1064 CIC/1983) sowie durch die in c. 1067 CIC/1983 ausgesprochene Verpflichtung der nationalen Bischofskonferenzen, Normen für das so genannte Brautexamen, das Aufgebot usw. zu erlassen. Im Interesse, dass Ehen gültig geschlossen werden, ist in spezifischen pastoralen Situationen eine besondere Erlaubnis des zuständigen Ortsordinarius erforderlich. Vor diesem Hintergrund wird schließlich der c. 1063 CIC/1983 selbst ausführlich erörtert, der die gesamte christliche Gemeinde zur vorbereitenden und begleitenden Hilfe für die Braut- und Eheleute verpflichtet und dabei dem zuständigen Seelsorger eine besondere Verantwortung zuweist. Auch den christlichen Eheleuten kommt in diesem Zusammenhang eine besonde-

re Rolle zu. Im Sinne eines Prozesses umfasst die Ehevorbereitung die entfernte und allgemeine Vorbereitung der Kinder und Jugendlichen durch Erziehung und Katechese, die unmittelbare und persönliche Vorbereitung der Brautleute, die fruchtbringende liturgische Feier der Eheschließung sowie die dauernde Begleitung der Eheleute. Im Anschluss an diese gründlichen und ausführlichen Darlegungen weist der Verfasser auf besondere Problemfälle bei der Ehevorbereitung hin.

Kapitel vier präsentiert das Eheverständnis und das traditionelle System der Ehevorbereitung bei den Igbo. Nach einigen grundlegenden Informationen ethnographischer und sozio-politischer Art werden Grundzüge der Religion der Igbo sowie ihrer religiösen und moralischen Werte erläutert. Die Ehe ist stark auf die Zeugung von Nachkommenschaft, insbesondere von männlichen Nachkommen ausgerichtet und stellt nicht nur eine Verbindung zwischen zwei Individuen, sondern zwischen zwei Familien oder Gemeinschaften dar. Die Ehe gilt aufgrund göttlicher Stiftung als heilig. Polygamie wird aus sozialen Statusgründen toleriert und ist ebenso ein Mittel, um die als Schande empfundene Kinderlosigkeit zu heilen. Eine große Kinderzahl wird angestrebt, Kinder werden wertgeschätzt und eine Frau wird erst als Mutter zum vollwertigen Glied der Familie. Dem traditionellen Eheverständnis der Igbo sind auch eine Reihe von Ehehindernissen bekannt wie das Fehlen des Mindestalters, Blutsverwandtschaft, Schwägerschaft, Impotenz, öffentlich bekannte Kriminalität, die Zugehörigkeit zur Kaste der Osu (Sklaven, Unreine) sowie chronische Krankheiten wie beispielsweise AIDS. Während der Ehevorbereitung werden diese Faktoren durch die jeweiligen Familienclans einer eingehenden Prüfung unterzogen. Schon von Kindheit an werden Jungen und Mädchen von Eltern und Familien auf ihre jeweilige künftige Rolle in Ehe und Familie hin erzogen. Zu den Initiationsriten gehört die Beschneidung von Mädchen und Jungen, die in der Regel acht Tage nach der Geburt stattfindet. Weitere Initiationsriten sind für Mädchen die Fattening Ceremony und für Jungen die Wearing Cloth Ceremony. Für die Eheschließung selbst kommt dem Konsens hohe Bedeutung zu: Der Konsens der Partner konstituiert die Ehe; er wird allerdings umfasst von der Zustimmung der Eltern. Die vorausgehende Partnerwahl und die Nachforschung bezüglich möglicher Ehehindernisse und des sozialen Status der Partnerfamilie liegen in der Verantwortung der beiden Großfamilien. Auf den obligatorischen Besuch bei der Familie der Braut folgt ein erster längerer Aufenthalt der Braut in der Familie des Bräutigams. Die formale Übergabe der Braut und der Mitgift bildet den Abschluss der zahlreichen Etappen der Eheschließung. Vor diesem Hintergrund stellt der Verfasser ein Dokument der Westafrikanischen Bischofskonferenzen zur Ehevorbereitung und Familienpastoral vor, das jedoch zum einen in der Praxis wenig bekannt ist oder zumindest wenig Beachtung findet, und das zum anderen viel zu allgemein gehalten ist.

In Kapitel fünf entwickelt der Verfasser ein eigenes Programm der Ehevorbereitung und der Ehebegleitung, das auf diözesaner Ebene angesiedelt und durchgeführt werden soll. Es soll von einer diözesanen Kommission getragen werden, der unter Leitung eines Priesters sachverständige Laien und insbesondere erfahrene Ehepaare angehören sollen, um die gestufte Ehevorbereitung und die Ehebegleitung im Sinne des c. 1063 CIC zu gestalten. Das Ehevorbereitungsprogramm soll einen hohen Grad an Verbindlichkeit für die Brautleute besitzen, die Nichtteilnahme kann aber kein kirchliches Ehehindernis konstituieren. Im Folgenden wird das Programm differenzierter nach den einzelnen Stufen der kanonischen Ehevorbereitung entwickelt mit dem Anspruch, diese Stufen im Sinne einer Inkulturation des christlichen Eheverständnisses in der Igbo-Kultur zu gestalten. In diesem Zusammenhang werden mehrere Workshops mit den Verlobten durchgeführt, bei denen u.a. auch eine Unterweisung in den Formen der natürlichen Familienplanung stattfindet. Bei der unmittelbaren Ehevorbereitung wird großer Wert auf eine fruchtbare Gestaltung der liturgischen Feier gelegt und es soll auch Raum sein für ein Besinnungswochenende, das insbesondere der Feier der Versöhnung dient. Die Begleitung der Ehepaare durch verschiedene Gruppen wird ebenfalls als wichtige Aufgabe thematisiert. In einem weiteren Abschnitt werden einzelne Umstände angesprochen, die eine besondere pastorale Aufmerksamkeit beanspruchen: Frühe Eheschließungen, Hochzeiten älterer Paare, konfessions- und religionsverschiedene Eheschließungen, voreheliche Schwangerschaft, Gültigmachung einer Ehe, unverheiratetes Zusammenleben, schwere Krankheiten wie vor allem AIDS. Abschließend präsentiert der Verfasser Überlegungen, wie die Ehevorbereitung und Eheschließung und somit das christliche Eheverständnis in die Kultur der Igbo inkulturiert werden könnte und schlägt im Wesentlichen eine Synchronisierung der traditionellen Ehevorbereitung der Igbo mit der kanonischen Ehevorbereitung vor. Letztere könnte notwendige Korrekturen am traditionellen Eheverständnis erreichen und gleichzeitig die erforderliche Rechtssicherheit herstellen, die in der traditionellen Form nicht in dem Maße gegeben ist.

Auch wenn es sich primär um eine kirchenrechtliche Arbeit handelt, hat P. Nwaigwe Paulinus Chibuike SMMM auch weitere, übergreifende Perspektiven entwickelt und sich mit einer grundlegend pastoralen Haltung, die auf einem sicheren theologischen und kirchenrechtlichen Fundament ruht, den praktischen Fragen der Kirche seines Heimatlandes gestellt. Die Beschäftigung mit den Fragen der Ehevorbereitung und Ehebegleitung lässt ein hohes Maß an Wertschätzung gegenüber der eigenen Herkunftskultur erkennen, ohne dass diese verklärt wird; das vom Verfasser überzeugend und ausgewogen dargelegte sakramententheologische und kanonische Eheverständnis auf der Grundlage des II. Vatikanischen Konzils entfaltet diesbezüglich ein kritisches und heilendes Potential. Der

vom Verfasser entwickelte eigenständige Lösungsvorschlag zur Ehevorbereitung und Ehebegleitung ist sehr überzeugend, auch wenn er der Bewährung und der eventuell daraus resultierenden Verbesserung in der Praxis bedarf.

Als Betreuer und Begleiter der vorliegenden Doktordissertation durfte ich in den Jahren gemeinsamer Arbeit nicht nur den wissenschaftlichen Eifer, sondern auch den sympathischen Menschen und glaubwürdigen Priester Nwaigwe Paulinus Chibuike kennenlernen. Ich wünsche der vorliegenden Untersuchung eine breite und wohlwollende Rezeption und verbinde damit die Hoffnung und den Wunsch, dass das Engagement das Verfassers für eine gute Ehevorbereitung in seiner Heimat reiche Frucht trägt.

Würzburg, 11. Juni 2013
Univ.-Prof. Dr. theol. Heribert Hallermann
Inhaber des Lehrstuhls für Kirchenrecht an der Julius-Maximilians-Universität Würzburg

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General Introduction

Background

The institution of marriage as a sacrament is a serious and sacred commitment that unites a man and a woman together in the most profound and permanent way. This bond between a man and a woman serves as the basic unit of human society and of the Church. Their mutual love is a total reminder of the love of Jesus Christ to his bride, the church. In this unique union, they make a solemn commitment to be totally for each other[1]. Hence, this unique relationship between a man and a woman requires the most careful attention and preparation.

Emphasizing the importance of preparation for marriage PCF opines: "The starting point for an itinerary of marriage preparation is the awareness that the marriage covenant was taken up and raised to a sacrament of the New Covenant by the Lord Jesus Christ, through the power of the Holy Spirit. The sacrament joins the spouses to the self-giving love of Christ the Bridegroom for the Church, his Bride… by making them the image of, and sharers in this love"[2].

Since the Second Vatican Council characterizes the institution of marriage as an "intimate partnership of life and love"[3], it is imperative that adequate and effective marriage preparation for prospective couples expressing the desire to marry in the church be given special attention. This marriage preparation has a wider dimension as it penetrates people's culture. PCF in affirming this asserts: "Marriage preparation must be set within the urgent need to evangelize culture-by permeating it to its roots… – in everything that concerns the institution of marriage: making the Christian Spirit penetrate minds and behaviour, as well as the laws and structures of the community where Christians live…. This preparation, both implicitly and explicitly, constitutes one aspect of evangelization, so much so that it can deepen the strength of the Holy Father's affirmation: "The family is the heart of the New Evangelization"[4]. It is through this culture permeation that we arrived at the topic of this work since Christianity itself has the primary function of meeting and examining the cultures and customs of the

1 Cfr. Diocese of Shreveport, Sacramental Guidelines, p.128.
2 PCF, n.9.
3 GS, 48 §1.
4 PCF, n.20.

people with the intentions of mainly enriching such cultures while at the same time being enriched by such cultures[5].

The Igboman who embraces Christianity wants also to be fully Christian but without rejecting his Igbo identity and culture. The Church itself recognizes and enhances what is most suitable in the cultures of the people, receiving from them "everything that is able to express better the unsearchable riches of Christ. Only with the help of all the cultures will it be possible for those riches to be manifested ever more clearly and for the Church to progress towards a daily more complete and profound awareness of the truth, which has already been given to her in its entirety by the Lord"[6].

In view of this, there is an urgent need to foster and promote marriage preparation in Igboland as a way of rediscovering the Christian and traditional values of marriage as an institution. To be married in the Catholic Church is much more than having the wedding ceremony in a church building. While marriage as a contract is legally binding, so also a covenant is spiritually and morally binding. It means two individuals are joined together in a lasting union of love as God has willed it. The marriage bond between a man and a woman is indissoluble. God who instituted this sacrament has also affirmed it, "what therefore God has joined together, let no man put asunder"[7]. So it should be the primary task of the Church and that of the society to adequately and effectively give unflinching support to prospective couples and young people by instructing and catechizing them in the values and norms of both Christian and traditional marriage. "Besides, it is important to equip and educate prospective couples with the cultural and Christian values necessary to mould their mentality in a positive direction which will in turn give expression to those crucial values of marital life. Such Christian values of marriage may include mutual love and lasting bond, unity and indissolubility, procreation and education of children granting that these will seek to make their marital lives fruitful and acceptable to the church and the society"[8].

It is pertinent to note that since the promulgation of the 1917 Code, there has been progress in the meaning and understanding of the institution of marriage as a sacrament both in theology and canon law. Marriage preparation during this period focused on assuring that the institution of marriage was protected against what might make for an invalid and illicit celebration of marriage[9].

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5 Cfr. B.K. Nwakonobi, Igbo System of Kinship: Christian Response, A Study of One of the Important Pastoral Moral Challenges in Africa, A Dissertation, Rome 1997, p.4.

6 FC, 10§1.

7 Mt, 19:6.

8 P.K. Amevor, New Approaches to Marriage Preparation in the 1983 Code of Canon Law: Challenges to the Particular Church in Ghana, Doctoral Dissertation, Regensburg 2009, p.4.

9 Cfr. C.1019 §1 CIC/1917.

While embracing the spirit of the Second Vatican Council, the 1983 Code calls for pastoral care of prospective couples entering into marriage, the involvement of the local ordinary, priests and the ecclesial community in the preparation of marriage to provide adequate and effective assistance to young people and those entering marriage.

In his Apostolic Exhortation, Familiaris Consortio, John Paul II affirms marriage and the family as constituting "one of the most precious of human values"[10]. The Pope examines how "the family in the modern world, as much as and perhaps more than any other institution, has been beset by the many profound and rapid changes that have affected society and culture"[11]. He concludes that "the Church must therefore promote better and more intensive programs of marriage preparation in order to eliminate as far as possible the difficulties that many married couples find themselves in, and even more in order to favour positively the establishing and maturing of successful marriages. Marriage preparation has to be seen and put into practice as a gradual and continuous process"[12].

The Code of 1983 includes a requirement for prospective couples to participate in marriage preparation prior to their wedding by stating that there should be "personal preparation for entering marriage, so that the spouses are disposed to the holiness and the obligations of their new state"[13]

The Pontifical Council for the Family emphasises that "preparation for marriage, for married and family life, is of great importance for the good of the Church. In fact, the sacrament of marriage has great value for the whole Christian community and, in the first place, for the spouses whose decision is such that it cannot be improvised or made hastily"[14]. The PCF goes further to define marriage as that which "implies a real vocation to a particular state and a life of grace. In order to be brought to its maturation, this vocation requires adequate, particular preparation and a specific path of faith and love, all the more so because this vocation is given to a couple for the good of the Church and society"[15].

In this regard, as an implementation to its renewed meaning and understanding of marriage, the Church recognizes the necessity for effective and adequate marriage preparation and pastoral care of marriage. This study attempts to give the influence of theological and canonical enrichments in the meaning and understanding of the matrimonial sacrament upon the legal provisions for marriage preparation in the Igbo dioceses of Nigeria.

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10 FC,1§2.
11 Ibid,1§1.
12 Ibid, 66§2&3.
13 C.1063, 2° CIC/1983.
14 PCF, n. 1.
15 PCF, n. 9.

Statement of the Problem

Christian marriage forms the basis of the family which is adequately identified as the foundation of the society. Such institution requires certain values and principles because marriage is a vocation and a sacrament of the Church[16]. Nowadays, the institution of marriage has become just another way of life for many people in Igboland as well as other parts of the world, and not the Christian calling to holiness and perfection. One notices that we are now living with the reality in our society of today that quite a huge number of prospective couples prepare for the wedding ceremony but not for married life itself[17]. In Igboland today, the high rate of divorce, the common practice of traditional marriage without the church wedding, and a growing lack of healthy attitude toward a firm commitment of couples to each other are on the increase. Affirming this, Burke stresses: "The breakdown of marriages in our society today gives us matter for study and for great sadness. So many couples are in marriage for what they can get from it not for what they can put into it. Husbands and wives look upon one another as objects to be used not as persons to be loved. The great example of this is when a woman has no child, observe the language; it is the woman who is to blame not the couple! For some things the man and the woman are one but not for this"[18].

Today many of our people are unwilling to enter a Church marriage while they are still in their prime of life. Some are reluctant to put themselves in a relationship which they view as demanding, prohibiting and permanent. There are many cases of marital disharmony and rupture and reluctance of so many to wed in the Church. This has resulted to sadness and grave concern about the good of our Catholic young people and the future of the Church and the stability of marriage in Igboland[19]. These problems should alert pastors of souls to the dangers of prospective couples entering marriage without adequate and thorough preparation for marriage. Adequate and effective marriage preparation will assist the prospective couple to appreciate the meaning and understanding of Christian marriage, and to live out their commitment to each other in faith and love in accordance with the example of Christ and the teachings of the Church.

Therefore, as a panacea to these problems, we need a more dynamic, systematic and thoughtfully planned marriage preparation in the Igbo dioceses. "The family urgently needs to be helped and supported…. For her part, the Church

16 Cfr. Diocese of Shreveport, Sacramental Guidelines, p.128.

17 Cfr. J. Burke, The Pre-Marriage Investigation by the Priest, Lagos 1998, p. v.

18 J. Burke, Marriage Today, Lagos 1990, p.3.

19 Cfr. A.O. Gbuji, The Pastoral Care of Marriage and Family Life in Nigeria, St. Paul Press Training School, Ibadan 2006, p.21.

must untiringly promote a plan of pastoral care for families, capable of making every family rediscover and live with joy and courage its mission to further the Gospel of Life"[20].

Aim of the Work

This work studies the canonical marriage preparation in the culture of the Igbo people with its canonical norms and chance for inculturation. The ecclesial community in Igboland need to assist prospective couples prepare for life together, a life that is sacramental in character and attitude. Hence, our primary aim in choosing this topic is to present and evaluate the canonical provisions and its juridical importance for an adequate and effective marriage preparation in Igbo dioceses. By so doing we aim at providing the ambience and opportunity for prospective couples to establish successful marriages and their stability in Igboland.

Through this way, the engaged couples in Igboland will be able to grasp the unique and multi-faceted nature of marriage made holy in Christ which is beyond its purely social or legal demands. Thus it is made evident on the ecclesial community guided by the parish priest, to provide and promote marriage preparation for prospective couples[21].

In response to this need, we will in this study formulate a positive approach to marriage preparation by attempting to show how the Igbo people can better prepare their children and youth for marriage and family life. The guidelines we shall propose will apply to all marriages in the dioceses of Igboland in which a Catholic is taking part. This will no doubt help in making the marriage and the family life more meaningful and acceptable to the Igbo people.

Scope of the Work

The scope of this work is evident from the title. It concerns canonical marriage preparation in the Igbo tradition, canonical norms and inculturation. Hence, we do not intend to study in its entirety the Igbo culture, custom and tradition in their complex and far reaching understanding. This work limits itself to the study of

20 John Paul II, Evangelium Vitae, Libreria Editrice Vaticana, Roma 1995, n.94.

21 Cfr. Diocese of Norwich, Marriage Preparation, 2011. http://www.ccfsn.org/pdffiles/marriage-prep.2011.pdf (Accessed: 7.11.2011).

canonical marriage preparation in Igbo dioceses as contained in the 1983 Code of Canon Law as well as in particular laws and also Igbo traditional marriage preparation as it is practiced in Igbo culture by the Igbo people.

We do not pretend to have an all treatment about this topic. We embarked on this topic of marriage preparation because it will provide for the prospective couples and those already married in Igboland a lasting union where Christ is ever-more present thereby making the couples ministers of Christ's love to one another and to the whole world. Also the outcome of this marriage preparation will determine and enhance the future permanence of marriage and family life in Igboland.

The work is also extended to inculturating the sacrament of marriage with that of the traditional Igbo marriage most especially in the areas of preparation for marriage and rite of marriage celebration. This will make the Church marriage more meaningful to the Igbo people and help promote their cultural values as Christians. "It is by means of "inculturation" that one proceeds towards the full restoration of the covenant with the wisdom of God, which is Christ Himself. The whole Church will be enriched also by the cultures which, though lacking technology, abound in human wisdom and are enlivened by profound moral values"[22].

All along there have been many writers in Igboland who have written immensely about marriage in the Christian and Igbo tradition – its similarities and differences. Some have also written on inculturating the two marriage rites together but there has not been a work written with regard to inculturating the canonical preparation of marriage and the Igbo traditional preparation of marriage. This is our task in this work; to find a possible way of bringing the two preparations together in a process of inculturation so that it will be meaningful to the Igbo people without them loosing their Igbo identity and their Christian doctrine.

Christianity takes the risk of rejecting some important elements of Igbo culture and this makes it hard for prospective couples in Igboland to embrace canonical marriage preparation. Inculturation is needed. How can it be provided? People still get married and form families. How are they prepared for this life-long union? Many participate only on traditional marriage preparation while others do not prepare at all. There is therefore an urgent need for an improvement upon Igbo Christians positive attitudes towards canonical marriage preparation in the form of inculturation which could put a stop to the present dichotomy between the canonical marriage preparation and the traditional marriage preparation in Igboland.

22 FC, 10§3.

Argument of the Thesis

Marriage and family life constitute the biggest challenges facing the Catholic Church today. What are their chances of survival? Polygamy, separation, divorce, trial marriages and observing only traditional marriage are sometimes the order of the day in Igboland. Must that be the case? Is there anything we can do to change this trend? This is the argument of this work. One of the most meaningful arguments contributing for a successful marriage is preparation. Nothing must be ignored by the dioceses in Igboland to ensure that every prospective couple who wants to enter marriage is properly prepared. Preparing adequately will definitely go a long way towards ensuring successful marriages and towards the quality of life of those already married.

Therefore, what is needed, according to John Paul II, "is a serious preparation of young people for marriage, one which clearly presents Catholic teaching on this sacrament at the theological, anthropological, and spiritual levels"[23]. Adequate marriage preparation is provided through pastors of souls and the ecclesial community. The 1983 Code represents a new approach in norms concerning marriage preparation and the way marriage preparation and pastoral care in marriage preparation are to be organised and implemented[24].

Furthermore, since there is a level of obligation attached to this marriage preparation and pastoral care of marriage, pastors of souls and the ecclesial community are bound to assist in preparing prospective couples in Igbo dioceses for marriage in accordance with the law of the Church[25]. To this view, the work also argues that collaboration and co-responsibility among the agents of pastoral care of marriage in the Igbo dioceses of Nigeria and the effective implementation of the general norms of the Code concerning marriage preparation and pastoral care will undoubtedly lead to a good, adequate, effective, and efficient preparation of prospective couples for marriage and help them understand the true meaning of Christian marriage in its canonical and sacramental aspect.

Method of Research

Our method will be theological, canonical, pastoral, historical, expository, exegetical, evaluative, critical, and comparative so as to achieve the purpose of this work which is above all, presenting some guiding principles and policies for

23 CA, 46.
24 Cfr. CC.1063-1072 CIC/1983.
25 Cfr. C.1063 CIC/1983.

structuring a process of preparation, formation and catechesis for the sacrament of marriage in Igbo dioceses. In applying these methods we will focus our studies primarily on the appropriate canons and norms, and their commentaries. We shall also use the method of library research for the work. This method will incorporate the use of both primary and secondary sources and also other literatures that are appropriate to such a canonical work.

Motivation of the Work

Some years ago the institution of marriage was accorded the respect it deserved because of its stability. It was held in high esteem and seen as sacred which called a couple to each other in the most profound and permanent way. Before its celebration it was preceded by a well-drawn out process of preparation.

But today marriage in Igboland as well as other parts of the world faces a variety of problems and challenges especially in this area of stability. Marriage preparation and pastoral care of marriage in Igboland are still lacking adequate structures. There are still no set-up policies and guidelines for marriage preparation in Igbo dioceses.

In view of this, there is urgent need for marriage preparation and pastoral care of marriage in Igboland. There is the necessity to set-up a comprehensive diocesan and parish policies and guidelines concerning marriage preparation that will take into account the situation of marriage in the various dioceses and parishes in Igboland. Hence, the motivation of this work.

Structure of the Work

In order to accomplish the aim of this work, we systematically structured it into five chapters with general introduction and conclusion. The general introduction introduces the work by giving the background information, stating the problem, revealing the aim, scope of the work, and methodology of the work. It also discusses the argument of the work. The work argues that cooperation and responsibility among the various agents of marriage preparation and pastoral care of marriage in Igboland, and the proper execution of the norms of the Code concerning marriage preparation will lead to a good, fruitful and effective preparation of prospective couples for marriage in Igbo dioceses of Nigeria.

Chapter one deals with the study of the general norms about marriage preparation in the Code of 1917. In studying these norms there is no doubt that they will

provide a more fertile ground for a deeper and systematic study of the canonical norms which exerted powerful influence on marriage preparation in the revised Code of Canon Law. A number of vital developments will be dealt with in this chapter that gave important shape to marriage preparation, such as the two instructions issued by the Sacred Congregation for the Discipline of the Sacraments in 1921 and 1941.

This chapter examines also some elements of the response of the Church on marriage preparation starting with Pope Pius XI's encyclical Casti Connubii (1931), some writings of Pope Pius XII, some addresses of Pope John XXIII. We shall also turn our attention to the document of the Second Vatican Council, Gaudium et Spes, to see how it really influenced our understanding on the meaning of marriage today especially with regard to marriage preparation. The chapter will also explore what the 1980 Synod of Bishops on the Family discussed and proposed and proposed about marriage preparation, as well as John Paul II's apostolic exhortation, Familiaris Consortio (1981).

Chapter two treats purely the meaning and canonical understanding of marriage in the Code of 1983. Here, the nature, ends, properties and what marital consent means are going to be explored in this very chapter, to see what must be transmitted into the very understanding of marriage in Igbo tradition, and the fundamental principles and values underlying the more pertinent norms and texts.

Chapter three studies the various stages of the development of what was to be seen as canon 1063 of the Code of 1983. We shall look at the changes in its formulation and the arguments that preceded these changes. The influence the 1975 Schema exerted on the formulation of this very canon will also be examined. The exegesis and analysis of the canon will be treated in details to know exactly what the canon is establishing, drawing tremendously on the apostolic exhortation, Familiaris Consortio and the Pontifical Council for the Family on preparation for the sacrament of marriage. We shall also turn our attention on some of the difficult situations that arise in the marriage preparation and pastoral care for marriage.

Chapter four examines the nature of Igbo traditional marriage, the essential qualities, its impediments, Igbo traditional marriage procedures, consent in Igbo traditional marriage, and marriage preparation in Igbo tradition. The Igbo people do not contract marriage without traditionally preparing adequately for it. During such preparation great attention is given to parental role, community role and initiation into adulthood. The preparation in question will consist of remote and proximate and it takes sometimes a long process before it is concluded. In this traditional marriage preparation we shall see whether there is something similar to that of canonical marriage preparation in the Code. In this chapter we shall first consider the Igbo worldview as numerous factors contribute to the worldview of

the Igbo people. The Igbo traditional marriage is both procreation and community oriented.

We shall also in this chapter take a cursory look at the AECAWA overview on marriage preparation in West Africa. The bishops of this region of the continent recognise that the most pressing needs of the Church in West Africa and other parts of Africa is preparing the Christian faithful more properly and effectively for marriage.

The final chapter will explore how the provisions of canon 1063 of the new Code will help us to propose a pastoral guidelines and policies for marriage preparation in Igbo dioceses. To achieve this objective, we shall use the provisions of canonical doctrine on marriage and the good cultural values in Igboland to suggest these pastoral guidelines and policies. The frame work of this proposal will draw heavenly on the approach adopted by the General Synod of the Dioceses in the Federal Republic of Germany as well as some Archdioceses and Dioceses in the United State of America. We find this framework very suitable to our own situation as it permeates and appeals to both diocesan and parish level as a comprehensive marriage preparation that involves everybody and carries everybody along.

We shall also in this last chapter suggest and propose the inculturation of traditional and Church marriages in the celebration of sacramental marriage. We shall do this, by integrating the positive values of Igbo culture especially as it regards traditional marriage preparation and Igbo traditional rite of marriage into the principles of Christian marriage so that the Igbo people will be glad to perform the two ceremonies together without loosing their cultural identity and the Christian doctrine.

Chapter One: Legal marriage preparation during the validity of the Code of 1917

1. Marriage Preparation in the Code of 1917

1.1. Introduction

The concern in this chapter is to study the norms in general concerning marriage preparation in the code of 1917. The study of the prevailing canonical doctrines involved during this period will provide more fertile ground for a deeper and systematic study of the canonical norms which undoubtedly exerted considerable influence on the preparation of marriage in the 1983 code of canon law. The main elements involved in marriage preparation of 1917 code were principally the canonical investigation by the parish priest of those intending to marry, and the publication of the marriage banns[26] as we shall see when analyzing the general norms concerning marriage preparation in the 1917 code. The 1917 code however, stressed maintaining the freedom of the parties to marry, with some concern for the proper instruction about marriage. The focus was more of juridical than a strictly pastoral nature, with a pre-occupation to ensure that those wishing to marry were free from any impediment and were aware of those basic elements of their faith and what the church understood by the sacrament of marriage.

1.2. The General Norms Concerning Marriage Preparation

The first chapter in the title on marriage in the 1917 code concerns what need to be done before the celebration of marriage, most especially the banns of marriage[27]. The initial canons on the title matrimony deal with the general canonical and theological nature of marriage. These canons describe marriage as being elevated by Christ our Lord between two baptized persons to the dignity of a

26 Cfr.F.Gavin, Pastoral Care in Marriage Preparation(can.1063).History,Analysis of the Norm and its Implication by Some Particular Churches,Rome 2004,p.22.

27 Cfr.1917 Code,Book III,Part 1 De Sacramentis,Title IV De Matrimonio,chapter I De iis quae matrimonii celebration praemitti debent et praesertim de publicationibus matrimonialibus,cc.1019-1034.

sacrament.[28] For this elevation to take place in any concrete instance, it is necessary and sufficient that both parties be validly baptized and validly married. Marriage has this sacramental character from the moment of its celebration, if both parties are already validly baptized. Canon 1013 deals with the ends and essential properties of marriage. Canon 1014 establishes a presumption in favour of the validity of marriage in all cases where there is a positive and probable doubt, that is, reason both for validity and against it. Canon 1015 differentiates between merely ratified, ratified and consummated, legitimate and putative marriage. It asserts the presumption in favour of the consummation of the marriage once the parties have cohabited together. Canon 1016 determines the areas of competence of divine law, canon law and civil law as regards marriages of baptised persons .Canon 1017 treats the act of betrothal[29] or formal engagement. This is a promise of marriage made either unilaterally (by one party) or bilaterally (by both parties) which must be made in writing. The object of the promise is future marriage.[30]

The most important canon on the parish priest's obligation to instruct his people on the sacrament of marriage and its impediments is canon 1018.[31] This canon addresses the general instruction by the parish priest on marriage. The general instruction on marriage is to be addressed not only to those about to be married but also to all the parishioners. This canon however, does not enumerate when and how this instruction is to be given and does not also go into details with regard to the content of the instruction. However, the general instruction is to be understood in the context of canon 1332 which urges parish priests to hold a catechetical instruction for adults on Sundays and holydays of obligation,[32] and canon 1344 which obliges the parish priest to announce the word of God in the customary homily.[33] While these are clearly two different obligations, they have much in common.[34] Major consideration in the canons was given in canon 1019

28 Cfr.c.1012 CIC/1917: §1."Christus Dominus ad sacramenti dignitatem evexit ipsum contractum matrimonialem inter baptizatos"; §2. "Quare inter baptizatos nequit matrimonialis contractus validus consistere,quin sit eo ipso sacramentum".

29 Cfr.P.C. Augustine, A Commentary on the New Code of Canon Law, London 1935,p.35.

30 Cfr.F.Gavin, Pastoral Care in Marriage Preparation,p.24.

31 Cfr.c.1018 CIC/1917: „ Parochus ne omittat populum prudenter erudire de matrimonii sacramento eiusque impedimentis".

32 Cfr.c.1332 CIC/1917: „ Diebus dominicis aliisque festis de praecepto, ea hora quae suo iudicio magis apta sit ad populi frequentiam,debet insuper parochus catechismuim fidelibus adultis, sermone ad eorum captum accommodato, explicare."

33 Cfr. c.1344 CIC/1917: „ Diebus dominicis caterisque per annum festis de praecepto proprium cuiusque parochi officium est, consueta homilia, praesertim intra missam in qua maior soleat esse populi frequentia, verbum Dei populo nuntiare."

34 Cfr. F.Gavin, Pastoral Care in Marriage Preparation,p.29.

§ 1[35] to assuring that nothing stood in the way of the valid or licit celebration of the marriage. This canon asserts that before a marriage is celebrated it must appear with moral certainty from a careful investigation, that there is no obstacle to its validity.[36] The canon indicates that the legislator does not presume a readiness for marriage on the part of all who request it. The moral certitude mentioned in this canon is analogous to that required of the judge before declaring the invalidity of a marriage. In other words, if the ensuing investigation leads the parish priest or other priests to the well-founded conclusion that in all probability the proposed marriage will be invalid, he has no choice but to refuse to witness it.[37] Hence, the parish priest must determine the free state of those about to marry, meaning that they must be free of that which would prevent the marriage from being valid or licit in the external forum.[38] The parish priest has a grave obligation to examine the method of reaching moral certitude and states before he admits people to marriage. This certitude is arrived at by means of positive and morally certain arguments and not merely conjecture or negative arguments.[39]

Canon 1019 § 2 declares that in danger of death, if other proofs cannot be had, and in the absence of indications to the contrary, the sworn statement of the contracting parties that they have been baptized and are under no impediment is sufficient. This implies that the danger of death which is one of the conditions for being content with less rigid proof, means a probability of death affecting either party, from any cause whether intrinsic or extrinsic. The fact that only one exception is mentioned seems to suggest that, in the mind of the legislator, those prescriptions are not to be dispensed with except for really grave reasons.[40]

The preliminary investigation in canon 1019 § 1 consists chiefly of two procedures: the personal investigation of the parties by the parish priest, and the publication of the banns. The norms regarding this first procedure are stipulated in canon 1020. This canon states that it is the responsibility of the parish priest to carry out this personal investigation, even when another priest is to perform

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35 Cfr. C. 1019 § 1 CIC/1917: „ Antequam matrimonium celebretur, constare debet nihil eius validae ac licitae celebrationi obsistere."

36 Cfr. T.L. Bouscaren – A.C. Ellis, Canon Law: A Text and Commentary, Milwaukee 1957,p.457. See also, M. F. Capello, De matrimonio,n. 145,p.140; F.X. Werns – P. Vidal, Ius matrimonial, n. 122, p.140.

37 Cfr. T.P. Doyle, The Canonical Foundations for Pre-marriage Guidlines, in: T.P. Doyle, ed; Marriage studies,1, Washington D.C. 1980,p.67.

38 Cfr. F. Capello, De Sacramentis, vol. v; De Matrimonio, edition quinta,Taurino 1947,p.147. "Status liber sponsorum est eorum libertas seu immunitas ab iis omnibus quae in ford externo validate ac licitae matrimonii celebrationi obstare possent, praesertim immunitas ab omni matrimonio impedimento." Cfr.T.P. Dolyle ,The Canonical Foundations.pp.67 and 75.

39 Cfr. F.X. Wernz – P. Vidal, Ius matrimoniale, Rome 1946, n.112, p.140.

40 Cfr. H.A. Ayrinhac, Marriage legislation in the Code of Canon Law, London 1932, p.25.

the marriage.[41] The parish priest who has the right to assist at the marriage is determined according to canon 1097.[42] This personal investigation by the parish priest is to take place before the Banns are published and before the parties are issued the required instruction on the nature of the marriage.[43] The parish priest must question the parties separately about the freedom of their consent. No priest is to assist at a marriage if there is any reasonable ground of suspicion regarding the freedom of consent on both sides. The conversation, however, should be conducted cautiously, that is, with tact and prudence.[44] The aim of this personal investigation consists of: 1.To determine freedom from impediments. 2. To ensure that the parties have sufficient knowledge of Christian doctrine. 3. To ensure freedom of consent.[45] In Igbo traditional marriage, this freedom of consent is not only limited to the two parties involved but it is also subject to parental approval so as to guarantee the progress of the family and to ensure the handing on of a well-organized marriage tradition to their posterity. Matrimonial consent is in fact much more than a mere act of the will. It must be noted that the three areas of investigation are separate. However, it should be noted that freedom from canonical impediments does not necessarily mean freedom of consent.[46] An instruction stressing the need to assure the parties freedom to marry was first issued in 1911 by the Sacred Congregation for the Sacraments. The same purpose was spelled out in a more detailed – instruction in 1921. A later instruction on June 29, 1941,

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41 Cfr. c. 1020 CIC/1917:§1. „Parochus cui ius est assistendi matrimonio, opportuno antea tempore, diligenter in, vestiget num matrimonio contrahendo aliquid obstet." §2. "Tum sponsum tum sponsam etiam seorsum et caute interroget num aliquot detineantur impedimento, an consensum libere, praestent, et an in doctrina Christiana sufficienter instructi sint, nisi ob personarum qualitatem haec ultima interrogation inutilis appareat." §3. "Ordinarii loci est peculiares normas pro huiusmodi parochi investigatione dare."

42 Cfr.c.1097 CIC/1917: §1.„Parochus autem vel loci Ordinarius matrimonio licite assistunt:
1° Constito sibi legitime de libero statu contrahentium ad norman iuris;
2° Constito insuper de domicilio vel quasi-domicilio vel menstrual commoratione aut, si de vago agatur, actuali commoratione alterutrius contrahentis in loco matrimonii;
3° Habita, si conditions deficient de quibus n.2, licentia parochi vel Ordinarii domicilii vel quasi domicilii aut menstruae commorationis alterutius contrahentis, nisi vel de vagis actu itinerantibus res sit, qui nullibi commorationis sedem habent, vel gravis necessitas intercedat quae a licentia petenda excuset."
§ 2: "In quolibet casu pro regula habeatur ut matrimonium coram sponsae parocho celebretur, nisi iusta causa excuset; matrimonia autem catholicorum mixti ritus, nisi aliud particulari cautum sit, in ritu viri et coram eiusdem parocho sunt celebranda."
§ 3: "Parochus qui sine licentia iure requisite matrimonio assistit, emolumenta stolae non facit sua, eaque proprio contrahentium parocho remittat."

43 Cfr.F.X. Wernz – P. Vidal, Ius matrimoniale, n.112, p.144.

44 Cfr. T.L. Bouscaren – A.C. Ellis, Canon Law, p.458.

45 Cfr. F.X. Wernz – P. Vidal, Ius matrimoniale, n.112, p.143.

46 Cfr. T.P. Doyle, The Canonical Foundations, p.68.

went into much greater detail and even adds new safeguards of reporting as a way of implementing its directives.[47] The Code Commission added that if the parties are ignorant of the Christian doctrines, that it is the duty of the priest to instruct them at least in the rudiments of the Christian doctrine and not refuses to wed them as provided in the case of public sinners or persons notoriously under a censure according to canon 1066.[48] The diocesan bishop could issue more special rules or norms for this investigation.

Canon 1021 states that unless baptism was administered in the parish priest own church, he is to require a baptismal certificate of each party or of the catholic party only, if the marriage is to be contracted with a dispensation from disparity of cult. From the catholic party a baptismal certificate is required before the date of the marriage. This is designed to prove not only that the person is baptized, but also to prove the freedom from certain public impediments such as public vows, previous marriage, etc, which are required by law to be recorded there. Only in case an official certificate cannot be obtained can it be supplied by other proof.[49] This requirement of a certificate is also applicable to a baptized non- catholic.[50] The practice of being contented with an ordinary assurance from a baptized non-catholic is clearly contrary to what the code says, and exposes the marriage to the danger of objective nullity unless a dispensation from disparity of cult has been obtained ad cautelam.[51]

The norms regarding the publication of Banns cover over half of the canons concerning marriage preparation in the 1917 code (cc.1022 – 1030). This publication of marriage banns has already been stated and discussed at the Council of Trent.[52] The parish priest has the mandatory obligation to announce publicly the

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47 Cfr.S. Congregatio de Sacramentis, Instructio ad Ordinarios circa statum liberum ac Denunciationem initi matrimonii,March 6,1911: AAS3(1911) 102-103; S. Congregatio de Disciplina Sacramentorum, instruction ad Ordinarios locorum super probatione status liberi ac denuntiatione initi matrimonii,July 4, 1921: AAS13, pp.348- 349.Cfr.J.H.Provost – K.Walf, ed; Studies in Canon Law, Leuven 1991,p.175.

48 Cfr.c. 1066 CIC/1917: „ Si publicus peccator aut censura notorie innodatus prius ad sacramentalem confessionem accedere aut cum Ecclesia reconciliari recusaverit, parochus euis matrimonio ne assistat, nisi gravis urgeat causa, de qua, si fieri possit, consulat Ordinarium.“ For a more detail on the response by the code Commission concerning knowing the Christian doctrine by the parties, see: Pontificia Commissio ad Codics Canones Authentice Interpretandos, Dubia 1918,IV, 3:AAS 10,p.345.Cfr. J.H. Provost –K.Walf, ed; Studies in Canon Law, p.175.

49 Cfr. T.L. Bouscaren – A.C. Ellis, Canon Law, p.459.

50 Cfr. M.F. Capello, De matrimonio, n.149, p.142. Cfr. F.Gavin, Pastoral Care in Marriage Preparation, p.26.

51 Cfr. T.L. Bouscaren – A.C. Ellis, Canon Law, p.459.

52 „Hence, following in the footsteps of the holy council of the Lateran held under Innocent III, this council orders that henceforth, before a marriage is contracted, an announcement of those intending to marry shall be made publicly during the mass by the parish priest of the contracting parties on three successive feast days. After these announcements have been made, and if

names of those who are about to marry (c.1022).[53] The obligation to announce publicly the names is grave and remains binding even though the parish priest is certain that no impediment exists. The necessity of the Banns affects, not the validity, but only the licitness of marriage.[54] The publication of the Banns must be made by the parties' own parish priest in the parish where the parties or either of the parties has a domicile or quasi-domicile (c.1023). Canon 1024 stipulates that the publications should be made for three successive Sundays or other days of obligation, in the church, during the solemnities of the mass or during other divine services attended by many of the people. Here, the time, place and form of publication are to be taking into consideration.

The local ordinary of the place may, for his own territory, substitute for the publications the public posting of the names of the contracting parties at the doors of the parochial or other church for a period of at least eight days, provided, that two feast days of obligation are included within the period (c. 1025). Canon 1026 states cases in which the Banns of marriage are omitted. The Banns are not to be made for marriages contracted with a dispensation from the impediment of disparity of cult or mixed religion. Their publication may be permitted by the local ordinary under the conditions: (1) that there be some prudent reason there for; (2) that there be no danger of scandal; (3) that the dispensation from the impediment has been obtained beforehand; (4) that the religion of the non-catholic party be omitted from the announcements.[55] The reason behind the omission of the Banns was a fear that the church might have been seen as implicitly approving of or encouraging mixed marriages.[56] All the faithful are bound to make known of any impediment they know to the parish priest or the local ordinary of the place before the celebration of the marriage (c. 1027). The canonical obligation[57]

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no legitimate impediment is raised in objection, the celebration of the marriage must then take place in open church." Cfr.Council of Trent, sess. XXIV, de ref. matrim; c.I,Cfr. Tanner, pp.755 – 756.Cfr. F.Gavin, Pastoral Care in Marriage Preparation, p.26.

53 Cfr. C. 1022 CIC/1917: „ Publice a parocho denuntietur inter quosnam matrimonium sit contrahendum."

54 Cfr. T.L. Bouscaren – A.C. Ellis, Canon Law, p. 460; F.X. Wernz – P. Vidal, Ius matrimonial, n. 122, p. 150; M. F. Cappello, De matrimonio, n. 161, pp. 154 – 155; H.A. Ayrinhac, Marriage legislation, p. 33.Cfr. F.Gavin, Pastoral Care in Marriage Preparation, p. 26.

55 Cfr. T. L. Bouscaren – A. C. Ellis, Canon Law, p. 462.

56 Cfr.J.A. Abbo – J.D. Hannan, The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church, II, St. Louis 1960, p. 202; J.B. Roberts, The Banns of Marriage: An Historical Synopsis and Commentary, Washington 1931, pp. 44 – 56.Cfr. F.Gavin,Pastoral Care in Marriage Preparation, p.27.

57 This Obligation arises from the natural and divine law, in as much as all are obliged to the extent of their power to prevent irreverence to the sacrament, sin, and harm to the neighbour, some or all of which evils necessarily result from illicit or invalid marriage. However, it is also binding as an ecclesiastical law in accordance to the terms of this canon, on all persons who

is a grave one in conscience, to reveal the impediment to the parish priest or to the local ordinary of the place, and as soon as possible.[58] Canon 1028 speaks of dispensation from the Banns.[59] This dispensation is to be given for just cause by the local ordinary of the parties (loci Ordinarius proprius) of the place where the parties, or either of them, have a domicile or quasi- domicile. The local ordinary can as well dispense from the Banns even outside his own diocese. The dispensing power given to the local ordinary here is attached to his office by the law itself and therefore, it is ordinary jurisdiction.[60] If another parish priest conducted the investigation he must immediately by authentic document[61] send information as to the result of the same to the parish priest who is to assist at the marriage (c.1029). This investigation by the parish priest starts with the examination of the parties as stated in canon 1020 and involves any further investigation that may be necessary to establish a moral certainty that they are free to marry. The parish priest should not assist at the marriage after the investigations and publications until he has received all the necessary documents, and unless there is reasonable cause to the contrary, until three days have elapsed after the last publication (1030). The necessary documents are: (a) reports from other parish priests on the result of any investigation or publication which they may have carried out; (b) the prescripts containing any dispensations which may be required.[62]

Procedure in doubt or certainty regarding impediment is recorded in canon 1031. In order that the necessary moral certainty is established, this canon states that when a doubt[63] arises about the existence of an impediment, the parish priest

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know (with certainty or at least serious probability) of any impediment. For more details on this, see: T. L. Bouscaren – A.C. Ellis, Canon Law, p. 463; H.A. Ayrinhac, Marriage Legislation, p.41; J.A. Abbo – J.D. Hannan, The Sacred Canons, p.202.

58 Cfr. T.L. Bouscaren – A. C. Ellis, Canon Law, p.463.

59 Cfr. c. 1028 CIC/1917: §1."Loci Ordinarius proprius pro suo prudenti iudicio potest ex legitima causa a publicationibus etiam in aliena dioecesi faciendis dispensare."

§ 2. "Si plures sint Ordinarii proprii, ille ius habet dispensandi, in cuius dioecesi matrimonium celebratur; quod si matrimonium extra proprias ineatur dioeceses, quilibet Ordinarius proprius dispensare potest."

60 Cfr. c.197 CIC/1917:§1. "Potestas iurisdictionis ordinaria ea est quae ipso iure adnexa est officio; delegate, quae commissa est personae."

§ 2. "Potestas ordinaria potest esse sive propria sive vicaria."

61 An authentic document in this context means a letter properly signed by the parish priest and sealed with the parish seal. Therefore, the report is authentic when these conditions are met, and that is all that the code explicitly requires.

62 Cfr.T.L. Bouscaren – A.C. Ellis, Canon Law, p.466.

63 A doubt here could be positive or negative. A positive doubt is one in which there are some reasons both for and against the existence of the impediment. A negative doubt is one that is not based on reasons or one based on weak or negligible reasons. Cfr. J.J. Donovan, The Pastor's Obligation in Pre-nuptial Investigation: A historical Synopsis and Commentary, Washington 1938, p.107.