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This work is a thesis presented to the Klaus Mörsdorf Canonical Institute of the Ludwig-Maximilians-University Munich/Germany in partial fulfilment for the award of a Licentiate degree in canonical Jurisprudence. It was borne out of the desire of a concerned and experienced pastor and canonist to offer canonical and pastoral assistance to fellow and future pastors and to people who are suffering as a result of the wrong interpretation and application of the law.

The right to a Catholic burial is acquired by every Catholic at the moment of baptism and this right is not lost by the non-reception of Holy Communion. Catholics living without Church marriage are not public sinners and cannot be treated as such. The Igbos, right from the ages have been known for elaborate burial ceremonies. Should any Catholic therefore, be denied Church burial for any reason? Pick a copy for yourself and be informed.

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Denial of Catholic Funeral Rites and Irregular Marriages in Igboland (A canonical-pastoral analysis of cc. 1176 and 1184 CIC)

Mmaju Eke



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Dedication

All those gentle departed Catholic Souls, who were unjustly denied Catholic burial rites. Resquiescat in pace-God knows you better!

Acknowledgement

I owe the almighty God immense gratitude for my being and what he has decided to do with me till today. I give Him praise and everlasting honour. My Local Ordinary Bishop Dr. Gregor Maria Hanke OSB, the Bishop of Eichstaett Diocese, Germany, who believed in me and gave me the opportunity to undertake this studies in Jurisprudence even at my age. Also my Professors at the Klaus Mörsdorf Canonical Institute of the Ludwig-Maximilians-University Munich/Germany Prof. Dr. Dr. Stephan Haering OSB, Prof. Dr. Dr. Helmuth Pree and Prof. Dr. Dr. Elmar Güthoff for their invaluable assistance throughout my study years at the Institute and the permission to publish this work as a product of the Institute. My thanks also go to my good friend Asst. Prof. Dr. Marinus Iwuchukwu of the Dept. of Liberal Arts and Theology, Duquesne University, Pittsburgh Pennsylvania, U.S.A. for reading through the work before it was presented. To Mrs Ursula Förtsch, Rev. Frs. Jonathan Okafor, Cyril Okeke, Matthew Kalu, Jude Nnanna, Michael Ukpong, Rev. Fr. Drs. Okechukwu Hilary Ochulor, Ogbuagu Gabriel Okoko and Solomon Obasi and all those who in any way helped to make this work a reality and especially those who responded to my questionnaire during the field work, I say thanks a million times and may God reward you all.

Mmaju Eke

Preith, January 2014

Foreword

Dying, death and burial are particularly sensitive issues in every human society. The confrontation with earthly mortality raises very difficult questions, which are generally not easy to deal with, and which often demand a great deal of emotional and mental strength on the part of those directly affected.

Religious convictions can therefore be of immense value in dealing with and overcoming the pain of death. At such critical points in the personal and family life, many people look onto the Church for support and comfort. Death and dying in every individual case pose therefore an enormous pastoral challenge for the Church and her ministers, who in order to confront this challenge must turn to the Church's teaching on faith and her legal system, which is also the product of this teaching on faith.

Dr. theol., Lic. iur. can. Mmaju Eke, who as a priest of the Catholic Diocese of Eichstätt/Germany is active in the pastoral ministry and ecclesiastical judicial system examines the pastoral situation in his native Igboland in Nigeria as it concerns the burial of persons who at the moment of their death are living in a canonically invalid marriages. He undertakes a critical and constructive analysis of the prevalent pastoral practice and offers well-grounded, profound and adequate canonical suggestions which are of great significance and help towards a review, reform and correction of the burial laws in the affected region.

Rev. Fr. Prof. Dr. Dr. Stephan Haering OSB
Munich 3rd December 2013
Feast of St. Francis Xavier

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ABBREVIATIONS

AAS	Acta Apostolica Sedis
AfkKR	Archiv für katholisches Kirchenrecht
apconst.	apostolic Constitution
apexhort	apostolic exhortation
c.	canon
cc.	canons
CCEO	Codex Canonum Ecclesiarum Orientalium (Code of Canons of the Eastern Churches)
CIC	Codex Iuris Canonici (The Code of Canon Law)
CLD	Canon Law Digest
CLSA	Canon Law Society of America
CmCICRec	Pontifical Commission for the Revision of the Code of Canon Law (Pontificia Commissio Codicis Iuris)
Comm	Communicationes
decr.	decree
DOL	Documents on the Liturgy
ed.	editor
et. al.	et alii (and others)
GS	Gaudium et Spes
hrsg.	Herausgeber (editor)
Jur	The Jurist
KStuT	Kanonistische Studien und Texte
littcir	Circular letter
MK	Münsterischer Kommentar
OCF	Order of Christian Funeral (the English version of the Ordo Exsequiarum)
OE	Ordo Exsequiarum
p.	page
PastBl	Pastoralblatt
PCILT	Pontifical Council for the Interpretation of Legislative Texts
pp.	pages
SC	Sacrosanctum Concilium

SCDF	Sacred Congregation for the Doctrine of Faith
SCDW	Sacred Congregation for Divine Worship
SchCIC	Schema Codicis Canonici
SCConc	Sacred Congregation of the Council
SECAM	Symposium of Episcopal Conferences of Africa and Madagascar
USCC	United States Catholic Conference
UR	Unitatis redintegratio

Introduction

In Nigeria and especially in the south-eastern part of the country (precisely in Igboland) people who live in irregular marriages are excluded from “full” Catholic burial rites. That means the corpse will not be carried to the church for funeral mass (as is normal), no priest or deacon will officiate at the person’s burial ceremonies in accordance with cc. 1176 and 530 5° CIC. The corpse is virtually abandoned to the family - and this is so, irrespective of every sign of remorse the deceased may have shown during his lifetime (c. 1184 § 1 CIC).

Ironically however, at the end of every Requiem Mass, during the final commendation before the corpse is carried out of the church on transit for the internment, the priest reminds the assembled congregation of the obligation of all Christians to bury the dead worthily with the following words, “it is our duty as Christians to give the dead a befitting burial”. This statement, which rightly echoes the theological conviction of the Church that the body of all Christians has through baptism become the temple of the Holy Spirit and should thus be treated with dignity, found expression and legal promulgation in c. 1176 § 1 of the new code of canon law. The practice of the denial of Church burial to people who for one reason or the other could not regularize their marriages makes a caricature of this theological truth. The fact that this teaching and faith of the Church remains to be put into practice forms the focal point of this work.

Canon 1184 CIC mentions those to whom Catholic funeral rites are to be denied. They are –unless they show some signs of remorse before their death - schismatics, apostates, heretics and those public sinners, whose burial by the Church will cause grave scandal among the faithful. This is a modified form of the provisions of c. 1240 of the 1917 code of canon law, which contained a longer list of those to whom funeral rites were to be denied.

In 1972 the Congregation for the Doctrine of Faith was inundated with requests from all over the world asking it to review c. 1240 of the 1917 code with a view to relaxing¹ the burial law as it affects specifically those living in irregular marriages.

This request was fully deliberated and consequently granted with a letter to the Presidents of Episcopal Conferences on 29th May 1973. It became law with the decree of 20th September 1973², which at the same time abrogated c. 1240 § 1 of the 1917 Code of Canon Law. From this moment onwards, those living in irregular marriages were no longer to be denied Catholic burial rites as long as they showed some signs of remorse before their death. That also means that, even before the promulgation and coming into effect of the 1983 Code of Canon Law, people living in irregular marriages were no more on the list of those Catholics to whom Catholic funeral rites were to be denied, provided they showed a sign of remorse in their life time. This was also reflected in the new Code of Canon Law of 1983.

In the 3rd Principle for the revision of the Code of Canon Law, mention was made of the need, for practical, pastoral and human purposes to avoid too rigid norms so that charity and mercy could be the bases on which Church law should be applied³. Also Canon 1752

¹ Circular letter from the Congregation for the Doctrine of the Faith to Presidents of Episcopal Conferences regarding the catholic burial rites for people living in irregular Marriages. Document 16 of 29th May 1973 in: DocCath 70 (1973) also in: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19730529_sepolt-ecclmatr-irreg_it.html. For the English translation cf. Royce R. Thomas, Commentary to c. 1184 in: Coriden, J.A., et. al., (ed.), The Code of Canon Law. A text and Commentary – commissioned by The Canon Law Society of America, Paulist Press New York/Mahwah 1985, p. 840.

² Decree of the Congregation for the Doctrine of the Faith in: AAS 65 [1973], S. 500; Documenty 8 of 20.9.1973, cf. also: Communicationes 5 (1973) 145; DocCath 70 (1973) 1006; also in: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19730920_de-sepulturaecclesiastica_it.html.

³ “Pastoral care should be the hallmark of the Code [...]. Laws should be marked by a spirit of charity, temperance, humaneness, and moderation [...]. Norms should not be too rigid; they should leave a reasonable amount of discretionary authority in the hands of the Church’s pastoral leaders” Principia: Comm. 1 [1969] 79-80; cf. Praefatio CIC: AAS 75 [1983] Pars II, XXI; cf. also Alessandro, J. A., in: Corriden, J. A., et. al, *ibid.*, General Introduction, p. 6.

CIC, following in this line presents the salvation of the soul as the highest aim of the (ecclesiastical) law. C. 18 CIC on its part admonishes that laws which limit rights of persons are to be interpreted strictly and not broadly. Despite these changes in approach between the 1917 and 1983 Codes and despite the new emphasis of the new Code of Canon Law whereby the theological dimension of the Christ faithful was emphasized as basis for all ecclesiastical laws, this practice of denying people living in irregular marriages ecclesiastical funeral, which can be considered as a hang-over of the 1917 Code of Canon Law, has continued to be relevant in this part of the universal Church.

This research work intends to examine this phenomenon in the light of the above mentioned guidelines and the heavily pastoral and theological undertones of the Second Vatican Council as well as the new Code of Canon Law of 1983 with the aim of offering both canonical and pastoral relieve to bereaved families (c. 1176 CIC) and help the deceased receive a more dignifying treatment at death – a treatment which befits his status as the Temple of the Holy Spirit which he attained through baptism⁴.

It is furthermore intended that suggestions would be made regarding possible ways of “relaxing”⁵ this uncharitable law and practices so that deceased members of Christ’s faithful and their bereaved family members can be given more pastoral attention from the Church especially at the time they need it most. This pastoral attention must also be given without in any way compromising the teachings of the church by following the provisions of the code of canon law. This work does not claim to be exhaustive but rather a motivation for further research.

⁴ 1 Kor, 3,16.

⁵ Circular letter.

CHAPTER 1

The Premises and Terminologies

To limit the scope of this work, an attempt will be made right at the onset to clarify and narrow down the terms that are going to shape the direction of this research. This initial clarification, mainly of the terms used to formulate this work will then serve as the premises upon which the later arguments will be built. No attempt will be made to offer classical definitions of the terms. An effort will rather be made to fine-tune the terms in such a precise manner, that they may be relevant to our topic. In doing this however, we are not going to lose sight of the importance of scientific methodology. In as much as the explanations given here do not intend to claim to be exhaustive but perhaps only presented to the extent that they serve the purpose of the work, it should also be borne in mind that these explanations are necessary for a better understanding and delineation of the scope of the work. We shall therefore set out to delimit the following terminologies that will form the basis of our arguments. They are: 1) Igboland, 2) death and funeral rites in Igboland, 3) (full) Catholic funeral rites and 4) irregular marriages.

1.1 Igboland

For the purposes of orientation we shall try to isolate the area called Igboland without necessarily delving into an exhaustive

geographical or historical excursion but rather a simple and uncomplicated presentation of the geo-cultural entity called Igboland.

The geographical area designated as Igboland is predominantly the Eastern part of the West African nation of Nigeria popularly referred to as the area east of the Niger River. The area lies roughly between 6° and 8^{1/2}° E longitude and 4^{1/2}° and 7° N latitude. The present-day Igboland made up the bulk of the Eastern Region of Nigeria that unsuccessfully tried to secede from Nigeria in the late 1960s under the name Biafra.¹ This attempt, justified as it was because of the insecurity of the Igbos in the then Nigeria, was brutally resisted and quelled by the Nigerian Federal Government.²

The inhabitants of Igboland are known as the Igbos while their language is also simply called Igbo³. Igboland includes the present day Abia, Anambra, Ebonyi, Enugu and Imo States of Nigeria. But the Igbos are equally found beyond these core Igbo heartland: they are also found in Delta, Benue, Cross River and Rivers States. The neighbouring tribes to the Igbos are the Igalas and Tivs to the North, the Ekoi to the East, the Ibibios, Efiks, Ijaws and the Ogonis to the South and the Binis and the Isokos to the West.⁴ The Igbos are diverse in their culture but are also unified in their destiny. Austin Echema testifies to this fact: “despite the differences observable among the Igbo subgroups [...], there is still an overwhelming similarity in most facets of their culture.”⁵

¹ The Nigeria Civil War, which was fought between Biafra and the rest of Nigeria lasted from 1967-1970 with over three million people losing their lives.

² Achebe, C., *There was A Country. A Personal History of Biafra*, Penguin Press New York, 2012, p. 226.

³ Cf. Echema, A., *Igbo Funeral Rites Today. Anthropological and Theological Perspectives*, LIT Verlag, Berlin 2010, p. 7.

⁴ Cf. Arinze, F., *Sacrifice in Ibo Religion*, University Press Ibadan, 1970, p. 1.

⁵ Echema, A., *Igbo Funeral Rites Today*, p. 7

Because of these observable differences, which for the most part relate to politics and tradition, many early authors were inclined to think that the Igbo people had no common point of reference. A deep study reveals rather the opposite, for as Margaret M. Green writes, the Igbos “occupy a common territory, speak a common language though with many dialectal variations. Despite countless variations in custom, there are a number of cultural factors which are common to all Igbo areas [and] which are widely spread”.⁶

Politically the Igbos are organised in small units without any visible central unit. Practically every Igbo village is to a large extent separate and at the same time tied to a larger unit. That makes no Igbo village entirely independent from the other villages or towns around. Every town has its own government usually under an Eze. There are also village heads called partly Eze-Ogo and partly Village-Chiefs.

Prior to the advent of Christianity majority of the Igbos were natural religionists practicing the religion of their forefathers. The missionaries have described this form of religion variously – some calling it Animism, natural religion, ancestor-worship⁷, traditional religion or even paganism. It is common knowledge however, that nomenclatures depend on the standpoint of the person who is giving the names. You may be a pagan to me as long as you do not worship the same God that I worship and vice versa.

But because of the entrepreneur nature of the Igboman, coupled with his high sense of adaptability and interest for new things, he readily accepted Christianity without much questioning. This readiness for new things brought with it also the attending dangers of abandoning old ways of life. Chinua Achebe captures this mood in his controversial but soul-searching account of the Biafran war when he writes:

⁶ Green, M. M., *Igbo Village Affairs*, London: Frank Cass, 1964, p. 5.
⁷ Arinze, F., *Sacrifice*, p. 18f.

The Igbo culture, being receptive to change, individualistic, and highly competitive, gave the Igbo man an unquestioned advantage of his compatriots in securing credential for advancement in Nigerian colonial society. Unlike the Hausa/Fulani he was unhindered by a wary religion, and unlike the Yoruba he was unhampered by traditional hierarchies.⁸

These observations by Chinua Achebe, although made in relation to the sometimes bitter rivalries between the main ethnic groups in Nigeria (Hausa/Fulani, Yoruba and Igbo) which later culminated in the civil war – this observations best summarise the enterprising spirit of the Igboman which spurs him always to explore new grounds. These new grounds sometimes hold him so much captive to the new world discovered that he sometimes becomes a slave to his new environment and runs the risk of losing his identity in order to satisfy the new status.

The Igbos have a common language also called Igbo⁹ but there are almost as many dialects as there are towns, so that the Igbos have developed the so called central Igbo for easy communication among themselves. Although there is no common consensus on what the central Igbo should look like, it has become the official written Igbo. In this regard Francis Arinze observes that “it will cause no surprise that there are many Ibo dialects in view of the great political decentralization in the past”¹⁰. This is a reminder of the fact that the Igbos have no central government compared to the other ethnic groups in Nigeria like the Yorubas, Hausa/Fulanis, Nupes etc. The political system of the Igbos revolved around the village set-up. This does not however imply that they were a backward tribe. On the contrary, the Igbos are the most enterprising tribe in Nigeria, venturing beyond their vicinity in search of knowledge and wealth.

⁸ Achebe, C., *There Was A Country*, p. 74.
⁹ Echema, A., *Igbo Funeral Rites Today*, p. 7.
¹⁰ Arinze, F., *Sacrifice*, p. 2.

The term Igbo is used both for the people and for the language with the two accepted forms of pronunciation – Igbo and Ibo. As Francis Arinze once again rightly observes, “Igbo is more widespread among the people themselves, especially when it refers to the language itself. Ibo seems to have been first adopted largely by foreigners because of some difficulty in pronouncing the 'gb’”.¹¹

Although Arinze prefers to use the form Ibo, because he thinks it is more accepted by both foreigners and Nigerians, this form remains a derogation of the real name. That is why the form “Igbo”, which is the original and unadulterated form used by the Igbos themselves will also be used in this work. It is also worth mentioning that, the fact that the Igbos have various dialects does not mean that they cannot understand themselves when they speak in their different dialects. Only those Igbos from towns that have common boundaries with other ethnic groups and who as a result have a mixture of two languages may have difficulty being understood when they speak in their local dialect. But generally the Igbos make every effort to communicate with one another.

In order to situate the various dialectical zones in their proper perspective it will be expedient to make the following geo-linguistic clarifications with Austin Echema, which will help further to understand our area of interest. He classifies the Igbos in the following sub-cultural groups:

1. The Northern Igbo – Igbo-Ukwu, Onitsha, Udi, Enugu, Nsukka, Aro Ndizuogu, Ihiala, Akokwa, Nri-Awka
2. The Western Igbo – Ogwashi-Ukwu, Asaba, Agbor, Kwale, Illah, Aboh
3. The Southern Igbo – Umuahia, Ibeku, Ahoada, Okigwe, Orlu, Aba, Ngwa, Owerinta, Owerri,

¹¹ Arinze, F., *Sacrifice*, p. 2.

Mbaise, Mbano.

4. The Eastern Igbo – Afikpo, Arochukwu, Abam, Abiriba, Ohafia, Ihechiowa, Ututu, Bende
5. The Northeastern Igbo – Ogu-Ukwu, Abakaliki, Ezza, Uburu, Okposi.¹²

Whether this geographical arrangement as presented by Echema is really geographical and therefore tenable remains to be proved. It is however difficult to group some of these blocks together, even for a semi-cultural identity. For instance one would not like to separate the Afikpo and Abakaliki people in their geographical and cultural location as it is done above. It would rather be better to bring Afikpo into the group of the Northeastern Igbo. But suffice it to say that it gives an insight to the different trade-cultural and dialectical differences in Igboland and offers a guidance to a better understanding of the Igbos and their cultural varieties.

About the tradition of the Igbos, much has been written and said. The central theme is of course what has been said above that there is no unified central tradition of the Igbos. The rite of kolanut for example is so diverse that one always has to ask himself which part of Igboland one is, in order to understand the practice. In some parts, it is the youngest male of a gathering that shares the kolanut. In some other areas it is the eldest. In some parts it is the host of a gathering that takes the first portion while in other areas it is the guest.

Another example is the marriage ceremony. In some parts of Igboland marriage comes into being the moment the bride price is paid¹³. In other parts it is the traditional marriage also known as 'IgbaNkwu' that seals the marriage bond¹⁴, while yet in other areas it is

¹² Echema, A., *Igbo Funeral Rites Today*, p. 9.

¹³ Mgbobukwa, J., *Inculturation. A Positive Approach in the Nigerian Church*, Pacific Publishers, Obosi, 1994, p. 38.

¹⁴ We shall treat the issue of traditional marriage in detail in chapter 2.

the other form of marriage ceremony called Nduma or Idu Nwanyi¹⁵ that ratifies the marriage bond. But in all, every one agrees that once any form of these approved marriage rites is performed (depending on where one is) the couple becomes legally married in the eyes of the society. They can no longer be regarded as living illegally nor can they be regarded as causing scandal in the society.

During the preparatory days to this work, a questionnaire was prepared and distributed.¹⁶ Among other questions, the respondents were asked if they regarded such couples even without church wedding as causing scandal in the society. Most of the respondents who were all Catholics responded in the negative. But they were also quick to point out that such couples were public sinners in the eyes of the church and therefore causing scandal according to the judgement of the church. To these we shall come back, but suffice it to say that the Church no longer sees this group of people as public sinners as such.¹⁷ We all know that societal trends fashion theories, laws and even truths. We equally know that these theories and laws so developed and promulgated undergo periodical revisions in order to reflect changes in the society and address the changing issues in society, which in the first place probably gave rise to their emergence. The Catholic Church has through the ages made efforts to adjust to some of these changing trends by developing new theories and promulgating new laws.

¹⁵ In Ututu, the home town of the author, *Idu Nwanyi* or *Ndume* was the only accepted form of ratification until recently when the *Igba Nkwu* or traditional marriage method was forcefully introduced by the younger generation who were apparently not ready to subject themselves to the rigour required by tradition for marriage.

¹⁶ See Appendix/Questionnaire, p. 154.

¹⁷ Cf. Circular Letter from the Congregation for the Doctrine of the Faith to Presidents of Episcopal Conferences regarding the Catholic Burial Rites for people living in irregular Marriages. Document 16 of 29th May 1973 in: *DocCath 70 (1973) p. 707*; also in: http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19730529_sepolt-eccl-matr-irreg_lt.html. For the English translation, cf. Royce R. Thomas, Commentary to c. 1184 in: Coriden, J.A. et. al (Editor), *The Code of Canon Law. A Text and Commentary* commissioned by The Canon Law Society of America, Paulist Press New York/Mahwah 1985, p. 840.

For the case under review, this was seen in 1973 through a letter of the Sacred Congregation for the Doctrine of the Faith to Presidents of Bishops' Conferences. This letter was a response to the request from all over the world for the removal of people living in irregular marriages from the group of people hitherto considered as living in manifest public sin. This request consequently asked for their removal from the group to be denied church funeral. In the letter, which was a response to this request, the Sacred Congregation made it clear that the practice of denying Christian burial to Catholics living in irregular marriages was no longer tenable in the light of recent theological findings and developments. The letter afterwards found its canonical expression in c. 1184 of the 1983 Code of Canon Law, which forms the canonical basis of this work. Unfortunately this practice of denying Christian burial to Catholics living in irregular marriages has continued to find relevance in Igboland. One of the objectives of this work is to find out why.

The answer, and that is the problem as we shall see, is that Catholics in this part of the world (Igboland in particular and Nigeria in general) are so theologically stagnant that they are forced by the hierarchy to believe dogmatically in the past. The hierarchy systematically imposes an artificial ignorance on the faithful and makes them believe that an alternative will only lead to a break-down of the faith. But this has the only one motif of perpetuating and keeping intact the medieval clericalism inherited from the missionaries, even in the face of societal and theological changes that were very much emphasised by the Second Vatican Council. The clinging on clericalism provides then the forum through which the clergy exercises unchecked and sometimes despotic authority without regard to the cultural and even human feelings of the people. Elochukwu Uzukwu sees this rightly as an incurable disease¹⁸ that is ravaging this part of the world.¹⁹ But Bishop Mwoleka of Rulenge in Western Tanzania gives a background to this disease when he observed:

¹⁸ Uzukwu, E. E., *A Listening Church. Autonomy and Communion in African Churches*, Enugu, Snaap Press Ltd, 1996, p. 120.

¹⁹ Ibid.

The root of the trouble is that we have a fixed idea of the Church. [...]. Everybody seems to agree that the Church, of course, means all the faithful. But at the back of our minds and in our imagination, almost instinctively, the Church is always the Church of the clergy. The disease is incurable.²⁰

Commenting on this incontestable truth from Bishop Mwoleka, Elochukwu Uzukwu goes further to trace the root of this disease. He writes:

The church in Africa inherited this pattern of clericalism from the missionaries, who, naturally, communicated the post-Tridentine image of the church. The training of the clergy did not permit any question of such structures. Infact our bishops have no evident interest in changing the status quo in this church [...]. The reason is that those who occupy rank and posses the authority [...] do not have a natural inclination to tell the multitude, who are led like a docile flock, that there is an alternative.²¹

There can be no better way to summarise the problem than this submission by Uzukwu and that is precisely the root of the problem under review as practised in Igboland. The hierarchy in Igboland does not only lack the natural inclination to tell the faithful that there is an alternative as Uzukwu rightly observes. The hierarchy is rather absolutely afraid to inform the faithful that there has been a reform in the way of doing things. This fear has its roots in clericalism because the hierarchy in this part of the world is constantly afraid of losing its authority. So it prefers to hold on to the past provided its authority remains intact and unchallenged.

²⁰ Mwoleka, C., The Forms of Evangelization Demanded by Our Time: Small Christian Communities and Human Promotion, in Acts of the Fourth Plenary Assembly of SECAM held in Rome, 1975, pp. 172-188, here p. 181f.

²¹ Uzukwu, E. E., A Listening Church, p. 120.

Igboland is densely populated and makes up the largest concentration of Christians in the whole of Nigeria. Almost 95% of the Igbos are Christians and about 50% of them are Catholics. This explains why a backlash or adulteration or misrepresentation of the Catholic doctrine and practice or even a rigid interpretation and/or application of the law without reference to the feelings and the cultures of the people may have far reaching consequences in the future of the Church in Nigeria. This may further be compounded by the fact that even meaningful theological, pastoral and canonical changes initiated by the Church at the universal level to accommodate cultural feelings go seemingly unnoticed and are suppressed by the hierarchy of this region. The general mindset seems to be that of complacency with the status quo just like Uzukwu rightly puts it above.

For the purposes of this work however, we are going to group Igboland into the existing dioceses where they occupy. These are:

Onitsha Province:

1. Onitsha Archdiocese
2. Enugu Diocese
3. Awka Diocese
4. Nnewi Diocese
5. Nsukka Diocese
6. Abakaliki Diocese
7. Awgu Diocese

Owerri Province:

1. Owerri Archdiocese
2. Umuahia Diocese
3. Okigwe Diocese
4. Orlu Diocese
5. Aba Diocese
6. Ahiara Diocese

These 13 dioceses make up the area of Igboland that will form the focal point of this work. Although we are not going to delve into the

history of Catholicism in these dioceses, neither are we going to deal in detail with the different particular laws about burial ceremonies in the dioceses, we are however going to see that the practice of denying church funeral to those living in irregular marriages in this area is uniform, strong and widespread. The implementation of this practice is one of the few areas, where the Bishops of this region speak with one voice and this is so, although it has long become obsolete in the Catholic Church.

1.2 Death and Funeral Rites in Igboland

The African is a religious being by nature. Before the advent of Christianity, the Igbos endeavoured to live up to their religious obligations by maintaining a strong and unbroken tie with every member of the community who, up till today are regarded as belonging to one family. The aim of this tie was anchored in the hope that the community life survives this earthly life and therefore one is not abandoned in death. G.T. Basden puts it succinctly in these words:

The Ibo will endure everything demanded of him in this life; he will put up with hardships, the misbehavior of his children, indeed, anything, in order to ensure that his burial will be properly performed. His whole future welfare depends upon this, and hence it takes, at all times, a most prominent place in a man's calculations.²²

As we can see in the above testimony, it is not only the surviving family members of the deceased who see to it that the dead is properly buried. Everybody endeavours while alive to prepare for a befitting burial for himself as far as it is possible. Otherwise it is then left to the surviving members of the family to see that this honour is done him. In most cases consideration is not given to his status in society. Even

²² Basden, G.T., Niger Ibos, 1966, p. 117.

when the deceased had no possession or children while alive, his relatives always come together at death to give him a befitting burial.

To give the dead a befitting burial in Igbo tradition and culture was, and till the present time is an honour to which everyone looks up to. Francis Arinze captures this phenomenon vividly when he wrote:

The Ibos have a firm belief in a life after death. When a person dies his soul or spirit (mkpulu-obi, mmuo) wanders till it is received into the blessed company of his forbears on condition that the relations on earth celebrate the full funeral ceremonies.²³

These funeral rites, which to a large extent lasted for days and involved very elaborate ceremonies were meant to guarantee a safe passage of the deceased into the spirit world and to assure that he really can rest in peace. Arinze, once again alluding to W. O'Donnell, writes:

The main passport [...] is the performance of the funeral celebrations. Without these ceremonies the restless ghost of the deceased would return to haunt and harass his [...] relatives.²⁴

That is why bereaved families do everything within their power to ensure that their deceased members are accorded dignifying funeral rites. This is because as Austin Echema puts it, "the burial rites are [...] the means through which the spirit of the dead reaches its final place of rest and be at peace"²⁵.

²³ Arinze, F., Sacrifice, p. 17.

²⁴ Ibid.; cf. also O'Donnell, W., Religion and Morality among the Ibo of Southern Nigeria, in: Primitive Man, 4, (1931), p. 56; see also Basden, G., Among the Niger Ibos, pp. 18-21.

²⁵ Echema, A., Igbo Funeral Rites Today, p. 29.

The general belief of the Igbos is that unless these funeral rites are properly performed and all the required forms of leave-taking are observed, the dead person will not reach his destination, which for the Igbos is nothing other than joining the ancestors.

For a better understanding of the basis of this practice, it may be pertinent to bear in mind that “for the Igbos, the living and the dead belong together in one family”²⁶. The dead members of the family are regarded as the “living-dead”. John Mbiti throws light on the status of the living dead:

The living-dead is a person who is physically dead but alive in the memory of those who knew him in his life as well as being alive in the world of the spirits. So long as the living-dead is thus remembered, he is in the state of personal immortality²⁷.

And Austin Echema adds credence to this as he confirms :

The 'living-dead' are spirits of all the deceased who are still remembered and venerated by members of their family. These are called ancestors; those who achieved the highest spiritual status through good conduct [...]”²⁸.

The living-dead according to this belief are not completely gone, they are still part of the living, although in another status; they are now known as ancestors. But in all, “befitting funeral rites are condition sine qua non for becoming an ancestor”²⁹.

²⁶. Ibid., p. 22.

²⁷. Mbiti, J. S., African Religions and Philosophy, Heinemann Educational Books Ltd., London 1969, pp. 25-26.

²⁸. Echema, A., Igbo Funeral Rites Today, p. 22.

²⁹. Ibid.

As we have seen, just as the living makes every effort to qualify to be counted among the ancestors by leading a good life and preparing for his burial, so also his relatives will see to it that he is given a proper funeral at death. Only so can he join his ancestors and only so does he continue to live in the minds of the living. The belief of the Igbos in life after death is nowhere else epitomised as in their belief in the ancestors, which can be compared to the belief in saints in the Catholic theology.

The Igbos further believe that there is “an inseparable communion between the two worlds of the living and the living-dead – a sense of cosmic oneness”³⁰. Ikenga Metuh goes further to explain that,

the ancestors [...] are believed to be around their homes and hearth, and take part in all important family affairs. There is a continuous exchange and interaction between beings in the universe irrespective of the realm (visible or invisible) to which they belong³¹.

These ideas and beliefs may sound strange to a non-Igbo and may be dismissed as non-scientific. But it is a factor, which has helped the Igbos to overcome the pain of death. Just as the Christian hope in the resurrection of the dead helps to explain reasonably the idea of life after death, so also, has the belief in the continuous interaction between the living and the living-dead in Igboland helped to rekindle the hope in a life after death. This idea also translates into the hope that everything does not end in death, but that death is only a temporary separation and a transition into a continuous existence in the world of the living-dead, the world of the ancestors.

³⁰. Ibid.

³¹. Metu, E.I., Comparative Studies of African Traditional Religion, Onitsha: IMICO Publishers, 1987, p. 63.

Because of this belief that the dead members of the family are not quite completely gone, but remain part of the family, some people in Igbo land choose to bury their dead members inside the house or in front of the main house. Although this practice is reserved only to elderly people and titled Chiefs, it further drums home the message that the deceased is still a member of the family whether in life or in death. Echema witnesses to this fact when he writes: “the Nze is buried in his house or within his compound”³². John S. Mbiti is more elaborate on this. He goes further and gives a more detailed insight to the disposal methods of the dead and also offers reasons for the practice. He argues thus:

From the funeral rites and methods of disposing with the dead body, we catch other glimpses of African concepts of death. Burial is the commonest method of dealing with the corpse, and different customs are followed. Some societies bury the body inside the house where the person was living at the time of death; others bury it in the compound where the homestead is situated; others bury the body behind the compound; and some do so at the place where the person was born [...]³³.

And yet others bury the body in a plot of land the deceased may have acquired while alive, where he may have intended to build a house. By so doing, the plot of land continues to belong to him in life and in death. His children, if still young would be shown this piece of land in future, not just as belonging to their father but as his final resting place. And all these go to show the intimate relationship between the dead and the living as a continued entity.

Conversely, to deny a person a proper funeral was and is still the

³². Echema, A., *Igbo Funeral Rites Today*, p. 34.

³³. Mbiti, J. S., *African Religions and Philosophy*, p. 158.

greatest type of humiliation and punishment reserved only to people who committed atrocities during their lifetime. John S. Mbiti alludes to this when he writes: “Yet, in other societies the dead body might be thrown into a river or bush where it is eaten by wild animals and birds of prey”³⁴.

Not just that the body is thrown into the bush. Infact, it was considered shameful und abominable. Those who died “shameful deaths” - criminals and those who committed abominable acts were thrown to the evil forest (ajo ohia or okpukpu mmuo) at death without any form of burial and left there at the mercy of wild animals and vultures.³⁵ In his detailed treatment of different burial forms in Igboland and the reasons for them, Austin Echema gives an elaborate description of why this type of burial may be chosen and for whom. He writes:

Deaths through dreadful diseases such as leprosy, smallpox, elephantiasis, tuberculosis, etc. are [...] regarded as bad deaths, and therefore, untimely, premature, and ungodly [...] ³⁶.

Continuing he writes:

Others involve perpetrators of sacrilege and abomination: [those who committed suicide], women pregnant during their mourning period [...]. All these are classified as bad death (onwu ojoo), i.e forbidden death. ³⁷

³⁴. Ibid.

³⁵. The idea of 'evil forest' has its origins from this practice. The forest is evil because of the spirit of these evil men and women, which hover in this forest. Such a forest can only be entered into at one's own risk.

³⁶. Echema, A., *Igbo Funeral Rites*, p. 37.

³⁷. Ibid., p. 25f.

And he testifies: “They are not buried but deposited in the bad bush (ajoochia) very often indeed before they are dead”³⁸.

From the background of these various methods of disposing the dead in Igboland prior to the advent of Christianity, it may be easier to understand the pain and agony family members go through when one of theirs after all the efforts made while living is denied proper funeral rites at the least flimsy excuse that may be available to the church authorities. It provides a background to understanding and appreciating the reaction of Catholics and non-Catholics alike, when they fail to understand the rationale behind this unchristian and unafrikan practice. Both Christianity and Igbo Philosophy teach that the dead should be treated with maximum dignity and respect and the bereaved family should be shown adequate solidarity.

After the advent of Christianity, those Igbos who became Christians and Catholics also continued with this practice of maintaining an unbroken tie with members of the community, now members of the church. Whether in the natural set-up or in the Christian-set-up, the Igbo still looked forward in his new found faith to the last moment here on earth, when all those to whom he was united in life will come together to give him a befitting burial. Some may be quick to condemn this as religious syncretism, but it is surely not. A little knowledge of religious psychology will reveal that this practice is present in every religion.

The Igbo Christian tried therefore to keep union with all the societies and organizations to which he belongs with this aim in view. Also the Christian teaching on charity, which the Igbo Catholic has wholeheartedly embraced, has provision for the last honours of burial to be accorded members. That is why it is hard to understand the basis on which this practice of denying some Christians church funeral rites in Igboland thrives.

³⁸ Ibid., p. 37.

The protagonists of this practice argue that these people who live in irregular marriages have through their behavior cut themselves off from the life of the community and therefore denied themselves of their right to full Catholic burial rites. These protagonists, most of whom are even priests, go ahead to claim and teach others to believe that these people are thus public sinners who are thus causing scandal by their life style.

The submission of this work from the onset is however, that these people have neither cut themselves off from the community of the faithful through apostasy, heresy or schism (as some would like to suggest), nor have they been cut off by the Church (through excommunication or interdict). Furthermore these people cannot under any law (civil or ecclesiastical) be called public sinners who are leading a life of scandal after they may have performed all the marriage rites as required by tradition (traditional marriage) – just as one cannot call people in Europe public sinners after performing court marriages. We shall come back to this topic in detail in chapter 2.

1.3 (Full) Catholic Funeral Rites

The term “full Catholic funeral rites“ has been consciously chosen in this work to expose the huge aberrations inherent in the Catholic burial rites as practiced today in Igboland. This term which has been used to imply that two categories of church funeral exist, has equally been so interpreted as to impress it on the faithful that only the full Catholic funeral rites matter. In this way the faithful are permanently kept under control. In most cases the faithful have no other meaningful alternative than to submit themselves to this mind-set without much questions because they are prevented in the first place to know that there is an alternative at all.

Although one would have expected to find a definition of church funeral rites in the liturgical books, this has not been the case as the liturgical books on their part concentrated on giving guidelines for

the celebration of church funerals instead of offering a definition, so that the 1917 Code remains the only available reference to the topic as we shall see later.

i) **Funeral Mass and Church Funeral**

The Church and infact the Christian community sees it as its responsibility to accord her departed members a church funeral³⁹. This responsibility finds its legal expression and translation in c. 1176 § 1 CIC, which reads: “Christ’s faithful who have died are to be given a Church funeral according to the norms of law”. Consequently and in connection with c. 213,⁴⁰ it is therefore the right of the faithful to be buried by the Church and at the same time an obligation for the Church (pastors) to bury their dead members.

C. 1176 further mentions the spiritual, pastoral and theological purposes of Church funerals when it states in § 2 among others:

In these funeral rites the Church prays for the spiritual support of the dead, it honours their bodies, and at the same time brings to the living the comfort of hope.

Funeral rites so understood are a part of the public worship of the church, through which various occasions in the life of the faithful are sanctified through the intercession of the Church⁴¹. They provide the opportunity for the Church to commit the departed faithful to the mercy of God by interceding for him and at the same time offer pastoral assistance to the living.

³⁹. The terms church funeral, church burial, christian funeral and christian funeral (rites) will to a large extent be used interchangeably in this work. They designate in most cases the same thing except when expressly otherwise stated.

⁴⁰. C. 213 CIC – “Christ’s faithful have the right to be assisted by their Pastors from the spiritual riches of the Church, especially by the word of God and the sacraments”.

⁴¹. SC 60 & 61.

Church funeral is therefore a form of public worship of the church. In line with this teaching and belief, church funeral is according to Aymans-Mörsdorf “the outstanding appreciation of the earthly existence of a person by the Church. The Church gives God thanks for an accomplished life here on earth and in the hope of the resurrection prays for, and in a dignifying manner buries the body of the deceased faithful, ‘which through baptism became the temple of the Holy Spirit’”.⁴²

Church funeral so understood is the whole rite meant to accord the departed faithful the dignity of this burial. It begins with the rite of blessing of the corps in the house of the deceased through the accompanying of the same corpse to the church, the mass for the dead (Requiem mass) and concludes with the internment at the grave.

It is a futile venture to look for definitions in law books. But the 1917 Code of Canon Law tried to offer what may seem to qualify as a description of a church funeral rite. In it, efforts were made to spell out the essential stadia of a church funeral. According to c. 1204/1917 Church burial “consists in the transfer of the body [of the deceased] to the church, the celebration of funeral services held over the body in the church, its internment in the place legitimately destined for the burial of the faithful departed”.⁴³

This canonical provision, which could also serve as the definiton of ecclesiastical burial, is not contained in the 1983 Code. This makes it imperative to rely on the 1917 Code for a clearer understanding of what church funeral entails. Put in the right perspective, that would mean that no station or stage is left out or should be left out in the

⁴². Aymans-Mörsdorf, *Kanonisches Recht. Lehrbuch aufgrund des Codex Iuris Canonici*, Bd. III, Paderborn, München, 2007, p. 545. (“Das kirchliche Begräbnis ist die herausragende Würdigung des irdischen Daseins eines Menschen durch die Gemeinschaft der Kirche, die Gott für das vollendete Erdensein dankt, für den Verstorbenen im Glauben an die Auferstehung betet und seinen Leib, ‘der in der Taufe Tempel des Heiligen Geistes geworden ist’ würdig bestattet”).

⁴³. Bouscaren, T. L., et. al., *Canon Law, A Text and Commentary*, The Bruce Publishing Company, Milwaukee, 1963⁴, p. 672f.

entire process. No part should be arbitrarily omitted or delegated, all in the name of “full” or “partial” burial rites. The whole ecclesiastical funeral rite is according to this definition an entity – it is full, it is total and it is not done half-way. This is what could be termed as “full” church funeral rites. The omission of this definition in the 1983 Code can however not be termed a mistake, because as we shall see in the developments of the review commission, a lot of factors were put into consideration including that of reorganising the whole section and books dealing with funeral and burial to bring it under one umbrella. This is evident in the use of the terms “exequiae”, “sepultura” and “funus”.

In the 1983 Code of Canon Law, the term “exequiae” was used indiscriminately by the legislator – first of all in the superscription to the whole of Title III, in c. 1176: *De Exequiis Ecclesiasticis* – Church Funeral. Then in a more general sense in Chapter I: *De Exequiarum Celebratione* – The celebration of Funerals (cc. 1177-1182), “exequiae” is used to designate the Mass for the dead, whereas in chapter II: *De iis quibus Exequiae Ecclesiasticae Concedendae sunt aut Denegandae* – Those to whom Church Funeral are to be allowed or denied (cc. 1183-1185), it is used to designate burial (internment). This subtle difference and its relevance in legal terms becomes obvious when one compares the first with the second part of c. 1185 which talks explicitly but also differently in qualitative terms about Church Funeral and Funeral Mass.⁴⁴

In legal terminology and for the purposes of this work, it would appear expedient to follow the suggestion of Aymans-Mörsdorf and reserve the term “exequiae” for the funeral mass (Requiem) and “sepultura” for the burial. If this suggestion is followed, the caption of this title according to Aymans-Mörsdorf should have been: “*De exequiis atque sepulturis ecclesiasticis*”⁴⁵ – Church funeral mass and burials.

⁴⁴ The terms used here are: “exequiae” (Church funeral) and “Missaexequalis” (funeral Mass).

⁴⁵ Aymans-Mörsdorf, *Kanonisches Recht*, Bd. III, p. 546.

For the purposes of this work however, the term “church funeral” will be used as a generic term to designate both the funeral mass and burial.

ii) Full vis-a-vis not full burial rites

From what we have seen above, the question at this point is: can we from the canonical point of view conveniently speak about “full” and “partial” Catholic Funeral Rites? Put otherwise, do we have a *first-class* and a *second-class* burial rite in the Catholic Church? During an interview conducted by the author with a fellow priest in relation to this topic, he tried to explain that the people living in irregular marriages are not denied catholic burial rites but only denied “*full burial rites*”. This implies that they should not be accorded all the burial rites, which are giving to a full member of the Catholic Church such as carrying the corpse to the church for Requiem Mass, the officiating of the entire burial rites by a priest etc. That means, for the burial of people living in irregular marriages, it is either the catechist or a seminarian who presides over the rites. Moreover these restricted rites will not take place in the church but (perhaps) in the compound of the deceased.

The priest respondent with whom the conversation was held went ahead to inform the author, that the difference between *full* Catholic burial rites and “*not full*” Catholic burial rites is that the corpse (for full burial rites) is carried to the church for the Requiem Mass and the rites up till internment are presided over by a priest (mostly the parish priest). For the “*non-full*” burial rite, the rites take place in the compound of the deceased, presided over by a lay representative of the parish (mostly the catechist or seminarian) – this second variation is what we shall refer in this work as “*second-class burial*”.

The author reminded the priest-informant however, that until the coming into effect of the burial law⁴⁶ in most dioceses in Igboland,

⁴⁶ See burial laws of various dioceses in Igboland below.

funeral Masses were sometimes celebrated at the compound of the deceased either because the family could not afford to bring the corpse to the Church because of the distance or on financial reasons or the like. On the other hand, it was also a sign of affluence to celebrate funeral masses in the compounds of wealthy people instead of carrying their bodies to the church. Some of the bishops saw this second variation rightly as an abuse of ecclesiastical privilege because these affluent members of the Church (and their relatives) hijacked this system as an avenue to show how many priests (and sometimes bishops) they can attract to their compounds. The burial laws in some dioceses were actually introduced to curb these apparent abuse and commercialisation of burial ceremonies. The priest-respondent did not however know this aspect of history. The burial law in Umuahia diocese⁴⁷ for instance came into effect sometime in 1997. According to this law, certain conditions have to be fulfilled before any church funeral could be officiated by the clergy or even catechist of Umuahia diocese. The law states in part as follows:

Fourteen (14) days are maximum between death and burial; no lying in state overnight of remains; no vigils; no demands of cows, goats, dogs, chicken, drinks, etc by Umunna; and no feasting or serving of expensive drinks such as beer, stout, spirits, etc.⁴⁸

Non-compliance to these conditions results to a total abandonment of the corpse by the Church. Although the members may now attend the burial as private citizens, they are forbidden even to come near the house of the deceased on the day of burial as a group. Not only that the Church refuses to bury such a person, it also forbids anybody under pain of excommunication to have any official contact with the family.

⁴⁷. Umuahia is the home diocese but not the diocese of incardination of the author.

⁴⁸. Ugorji L.I., Bishop of Umuahia, Decree on Christian Burial, given at Umuahia on the 21st day of February 1996 with effect from April 1st 1996, reprinted in Lumen, Lent 2007 Edition, Vol. 11, pp. 4 & 6.

This raises the all-important question of who at this point is actually being punished – the deceased who may have tried his best to be united with the church while alive and had looked forward to this last honour. Or the bereaved family, who, for one reason or the other could not meet up with the deadline. It is surely the deceased, who is unjustly being punished and this makes this law and practice not just inhuman but also unchristian and unafrican. The bishops could look for other means of bringing out the Christian aspect of funeral services than legislating on how burials should be conducted. Attention should for instances be focused on those areas where the burial rites come in conflict with the Christian principles and practices. Burial ceremonies belong to the private and emotional realm and should be left there.

Even though this episode described above may look like a distraction or sidetracking from the primary focus of this work, it has its relevance in the fact that it is now a wide-spread practice and excuse with which Catholics in Igboland are denied Church funeral rites. The link to our topic is therefore that Catholic burial rites cannot just be denied to Catholics at the least imaginable excuse, be it in the name of burial law or anything of its like. If however a genuine reason for denial exists, the law should then take its normal course and be implemented.

It may be helpful here to go back to history and culture. The Igbo as we have noted above celebrate life and death. Giving someone a befitting burial has always been part of the Igbo culture and that is why burial ceremonies just like marriage rites are a community celebration.

In the past, when someone died and the family members were not prepared to accord him a befitting burial either because his children were still minors and could not yet afford the burial ceremonies or the burial could not immediately take place due to some funeral laws imposed by traditional calendar, the corpse was quietly lowered into the earth while the family prepares for the burial ceremony. This preparation lasted for days or months or even years.

The missionaries came and saw this practice and since they did not understand the background behind it, gave it a name: '*second burial*'. But this was no second burial. And as they did to everything African; with this name the missionaries condemned this practice as unchristian. This misunderstanding was blindly and undilutedly handed over to the indigenous clergy who in a haste to satisfy their masters' wish generally adopted the philosophy of seeing everything African as unchristian, hence the rash condemnation of African values without proper investigation and research. It is this misunderstanding that has brought us to where we are today and that is what has given rise to the different burial laws in the different dioceses in Igboland. But the Catholic liturgical calendar knows this practice also. Requiem Masses are for instance not allowed in the Holy Triduum beginning from Holy Thursday to Holy Saturday. If a Catholic dies in this period and must be buried without waiting, the corpse is then interred and later the Requiem is celebrated. If the hierarchy in Igboland had taken serious note of the psychology and anthropology of the Igbos with regard to death and burial, we would not have had the burial laws in the first place.

Even though the Umuahia diocesan burial law in its preamble states its desire to reduce costs of burial ceremonies and avoid extravagance in the guise of "befitting burial"⁴⁹ what it did not take into consideration were the cultural, theological and canonical implications of an outright denial of Church funeral rites to defaulters. But that is only one example of the insensitivity of the clergy in Igboland, which tends to impose only its will on the faithful without taking into consideration the nature of the Church itself which has more to do with compassion than with authority.

However, since the promulgation of this law in Umuahia, the practice of carrying the corpse to the church was introduced for those who were buried within two weeks while having the funeral service in the

⁴⁹. Ibid.

compound was now limited to those cases where the deceased for one reason or the other was not considered qualified for the so-called "*full*" funeral services.

In such cases the catechist or seminarian or any lay member of the church deputises for the parish priest who with his absence sends the strong message that the deceased was not good enough to deserve his presence as *pastor of souls*. For the parish priest, such a person should not have even been buried by the church in the first place but out of his own magnanimity, he has decided to grant him "*partial funeral rite*" by sending the catechist. This type of mindset and behaviour of a *pastor of souls* can sometimes amount to a gross insensitivity towards the pains experienced by bereaved families and highhandedness in the interpretation of the law.

That is why this law has to be reviewed. And already it has started to lose its relevance. There also some pastors who, in order to ameliorate the situation and make some pastoral concessions have started to circumvent this law, but in doing this some have also resorted to unorthodox and sometimes incredible means by either encouraging the bereaved families not to make known the actual date of death of their deceased members or by outrightly disobeying the law. By so doing they render the burial law inconsistent in its application and subject it to serious attacks, so that its effectiveness is equally weakend. Since habit is the best interpreter of the law (c. 27 CIC) and the burial law has obviously lost its force and relevance, the only wise thing for the bishops to do is to review and repeal it.

As already mentioned, the 1983 Code of Canon Law does not define what Catholic burial rites are. It refers rather to the liturgical books and insists that the norms found therein be followed.⁵⁰

⁵⁰. C. 1176 § 1, see also Comm 12 (1980), 346; SCDW, *Ordo Exsequiarum* (Rome: Typis Polyglottis Vaticanis, 1969). English trans.: Rite of Funerals (Washington: USCC/ICEL, 1971). For some perceptive reflections on this whole issue, see Rutherford, R., *The Death of a Christian: Rite of Funerals* (New York: Pueblo, 1980).

The Second Vatican Council gives an insight to what a church funeral should emphasise. In SC 81 we read the following: “Funeral rites should express more clearly the paschal character of Christian death, and should correspond more closely to the circumstances and traditions found in various regions“.

Already in this conciliary pronouncement, we see a tendency towards recognising and indeed giving attention to cultural differences in the Catholic world as a constitutive element in the celebration of Christian funeral rites. Although this tendency was not embraced in the codified form, it is already an indication of what Church funeral rites should take into account: the paschal character of Christian burial and the cultural peculiarities of each given region. The text does not speak of the destruction of one culture to the detriment of another. It does not insist on an imperialistic imposition of other cultures which are not necessarily Christian on others, neither does it make it mandatory to copy blindly the burial rites from other cultures which intrinsically have nothing to do with the Christian faith. Every tradition and culture must be able to integrate its traditional burial rites into the Christian burial rites so as to make the Christian hope and faith in the resurrection be more radiant in these cultures. Only those elements, which negate this Christian values, should be repudiated.

This pronouncement of the Second Vatican Council is a first indicative of what may be termed as inculturation in the area of funeral rites. We have presented in this first chapter the traditional and cultural understanding of death and burial in Igboland⁵¹ to help us understand more the perspective and target of this work. But suffice it to say that there is nothing canonically or liturgically like *full* and *partial* funeral rites in the Catholic Church. It is either a Church Funeral or it is not. That is why we are going to be using the term „funeral rites“ in this work unless where for clarity sake it becomes necessary to used the form „full funeral rites“.

⁵¹. See Chapter 1.2 above.

iii) Catholic Burial Laws in Owerri Ecclesiastical Province

Many Bishops' Conferences the world over have issued guidelines regarding Catholic burial rites in line with or as a translation of the **editio typica**⁵². In almost all of these guidelines, emphasis has been laid on the need to treat the dead with honour and dignity in line with the tradition of the people as contained in SC 81 and reflected in c. 1176 § 2 and to see and celebrate funeral rites in the light of the Christian faithful's union with Christ through baptism which gives him a share also in the resurrection of Christ.⁵³ Whether the Nigerian Bishops' Conference has issued such guidelines remains unclear as at the time of writing this work⁵⁴. But one thing stands out, and that is, that there is not yet a unified response of the Nigerian Bishops regarding the guidelines to the celebration of church funerals. The most the bishops have done especially in Igboland is to issue particular laws in forms of decrees to regulate mainly the period between the time of death and the time of burial which range between 14 days (Umuahia diocese) and 30 days (Orlu diocese) in their so-called diocesan burial laws.

In the diocese of Umuahia for instance, the burial law provides among other things, that the bodies of the deceased be buried within 14 days of death⁵⁵. Orlu Diocese settled for four weeks,⁵⁶ Ahiara

⁵². The editio typica is the official liturgical book, published first in 1969 and has been continuously revised. It contains texts, explanations and instructions for liturgical celebration of Church Funerals. We shall discuss the book in details in Chapter 3.2.5.

⁵³. See among others: Die kirchliche Begräbnisfeier. Pastorale Einführung, hrsg.vom Sekretariat der Deutschen Bischofskonferenz, Bonn 2009, (Arbeitshilfen; 232); Tote begraben und Trauernde trösten. Bestattungskultur im Wandel aus katholischer Sicht, hrsg.vom Sekretariat der Deutschen Bischofskonferenz, Bonn, 20. Juni 2005.

⁵⁴. Painstaking research has not revealed anything of such.

⁵⁵. For the Text, see Footnote 46 above.

⁵⁶. Ochiagha, G., Bishop of Orlu, Directives on the Pastoral Care of the Sick and the Dead, Goodway Press, Orlu 1987, p. 5.

Diocese for 21 days⁵⁷ while Owerri pegged the allowed time at two weeks (14 days).⁵⁸

Aba Diocese remains the only diocese that had recourse to the code of canon law and recognised in the preamble that “it is the right of a truly baptized Christian to receive a Church funeral at death”. And having stated this, it went ahead in line with the other dioceses to peg the period between death and burial at four weeks⁵⁹ without really threatening any concrete canonical consequences for offenders. While the other dioceses like Umuahia forbade wake-keeping ceremonies outrightly, Aba diocese seemed to be more concerned with the abuses arising from these wake-keeping ceremonies than with the interval between death and burial, but it fell short of forbidding the wake-keeping ceremonies outrightly. It observed rightly and also legislated accordingly: Because of “the atrocities and debased activities during wake-keeping, the faithful in Aba are restricted only to the vigil Mass”.⁶⁰ Apparently being more sensitive than the other dioceses, this issue in Aba diocese was theologically, pastorally and canonically more reflected upon than in the other dioceses, because Vigil Mass is an integral part of the Catholic Funeral Rites. Okigwe Diocese was not left out. Taking a clue from Aba diocese it also allowed Vigil Mass but only till 7.00pm and pegged the interval between death and burial to 15 days⁶¹. Non-compliance to these laws attracts different types of sanctions (both for the deceased and for the bereaved family) in the different dioceses, so that one gets the impression that it is better or worse to die in some dioceses than in others. This is why the bishops of this region have a great responsibility to concentrate on the essentials and

^{57.} Chikwe, V.A., Bishop of Ahiara, printed in: The Guide, Ahiara Diocesan Newspaper, February 10th 1994, p. 4; also Chikwe, V.A., We are an “Easter People“, Lenten Pastoral, 2003, p. 21.

^{58.} Owerri Archdiocesan Laity Council: “Suggestions on Christian Funerals“, 18th November 1997.

^{59.} Catholic Diocese of Aba, Synod Acts, Sibros Printing 2004, especially, pp. 86-89.

^{60.} Ibid.

^{61.} The Second Okigwe Diocesan Synod (1st– 4thDecember 1998). The Instrumentum Laboris, p. 19f.; see also the Proceedings of the Synod proper, especially pp. 1-6.

make the practice of the faith more affordable for the faithful in their dioceses by reviewing and repealing these laws.

In most cases, families which cannot abide by these guidelines (for whatever reason) face the embarrassment of having their deceased members abandoned by the Church with the attendant pastoral consequences of an entire family leaving the Catholic Church to join whichever Church that came to their rescue at this bitter moment of their lives. As we have seen in the course of this work, this abandonment, which was reserved in Igbo culture to those who died shameful deaths, is the greatest dishonour that can be given to the dead and this is abhorred. That is why the families of such deceased members do everything at the last minute to arrange for alternative funeral ceremonies that will guarantee an honourable burial for their departed loved ones.

In order to address the issue of full and partial funeral rites in the Catholic Church in Igboland, it will be expedient to look once again into the Code of Canon Law a little more closely. C. 1176 § 1 gives the following norms: “Christ's faithful who have died are to be given a Church funeral according to the norms of law“.

The law does not in the first instance speak of partial and full Church funeral. It talks exclusively and simply of Church funeral. Secondly the law sees it as a right of all the faithful to be given this church funeral. This right is derived from the common baptism of all Christians (c. 204 § 1) which makes them co-heirs to Christ and through which they have united their death with that of Christ. It is a right, which they attained through baptism, when they died with Christ the Lord in order to share in his resurrection. Through the same baptism the bodies of the faithful Christians have become the temple of the Holy Spirit and thus deserve to be treated with that dignity, which is due to them through this act of divine grace (c. 1176 § 2). This right of the faithful implies invariably the obligation on the part of the pastors of souls to bury the dead members of his church of jurisdiction (c. 1177). This right cannot be arbitrarily denied nor the

obligation be ignored at the least flimsy excuse. We shall come back to this issue in detail in Chapter 4. Before then let us examine the next important term that is going to confront us in this work.

1.4 Irregular marriages

*Irregular marriage*⁶² is a commonly used canonical term, which does not appear in the Code of Canon Law of 1983. Also the 1917 Code does not contain such a terminology. The term “irregular” was however used in the Code mainly in connection with the sacrament of Orders. A candidate can only be ordained to the priesthood or diaconate if it is certified that he is free from “any irregularity” (c. 1025 § 1 CIC). Although the meaning of the term is not adequately specified in the Code, the use of the alternate term “impediment”⁶³ in the same canon suggests that the two terms may be synonymous or at least have the same meaning and effect.

The legislator however gives an insight to the canonical interrelatedness of the two terms: “An impediment may be simple; or it may be perpetual, in which case it is called an irregularity” (c. 1040). According to this canon, an irregularity can be understood to be a permanent impediment. These perpetual impediments or irregularities are mentioned in c. 1041 to include insanity, apostasy, heresy, schism, attempted marriage, willful homicide, procured abortion, mutilation, assumption of ecclesiastical office which one does not have. These delicts (if not dispensed from) render one irregular to receive the sacrament of Holy Orders. But all these are in relation to the sacrament of Orders.

An irregular marriage on the other hand is a marital union between two persons both of whom, or at least one of whom was baptised a

⁶² The term was used in the circular letter of the Congregation for the Doctrine of the Faith of 29th May 1973.

⁶³ “In order lawfully to confer the orders of priesthood or diaconate, it must have been established, in accordance with the proofs laid down by law, that [the candidate] is free of any irregularity or impediment [...]” – c. 1025 § 2.

Catholic or was admitted into the Catholic Church after baptism in another church (cann. 1086 § 1, 1117), without observing the canonical form of marriage as stated in cc. 1108 §§ 1-2,⁶⁴ 1117 and 1124 – 1129. Such a marriage is described as an irregular or invalid marriage. In most cases it is also described as a non-sacramental marriage although not all non-sacramental marriages are irregular or invalid. A marriage is therefore irregular and therefore invalid on the basis of the non-observance of the prescribed canonical form of marriage for Catholics. Purely traditional or court marriages fall under this category. An irregular marriage can however be regularised by observing the canonical form of marriage. In other words the couples may be potentially free to marry validly, only that they have not exhausted their chances of doing so.

While irregularity in relation to the sacrament of Orders affects the candidate – i.e. makes him irregular to receive Ordination, irregularity in marriage affects the marriage itself. The marriage is invalid because of the non-observance of the canonical form of marriage as prescribed for all Catholics and not necessarily on account of any form of impediment (cc. 1073-1094 CIC), although this may not be excluded.

However, not all non-sacramental marriages are invalid. A non-sacramental marriage entered into with a dispensation from the competent ecclesiastical authority falls outside the category of invalid marriages (cc. 1124-1129 CIC). For the purposes of this work we shall use the term irregular marriage to refer to all marital unions of Catholics in Igboland without the observance of the canonical

⁶⁴ Can. 1108 § 1 “Only those marriages are valid which are contracted in the presence of the local Ordinary or Parish Priest or of the priest or deacon delegated by either of them, who, in the presence of two witnesses, assists, in accordance however with the rules set out in the following canons, and without prejudice to the exceptions mentioned in cann. 144, 1112 § 1, 1116 and 1127 §§ 2-3”.

§ 2 “Only that person, who being present, asks the contracting parties to manifest their consent and in the name of the Church receives it, is understood to assist at a marriage”.

3form of marriage. In most cases these are marriage unions validly contracted according to native law and custom (traditional marriage).

On which legal basis then should those living in irregular marriages be denied Church funeral? C. 1184 CIC speaks however of notoriously living in manifest grave sin as one of the conditions which may justify the denial of Church funeral rites. The next question is naturally going to be: does living in a non-sacramental marriage (even though one has been properly married traditionally or in the court) constitute manifest grave sin⁶⁵ – just because one does not marry in the church, or do such unions qualify as concubinage of which c. 1093 talks about, so that c. 916 could easily be applied as is the case in Igboland where people living in irregular marriages are erroneously referred to as living in concubinage?

Pope Pius IX described the non-sacramental marriage of Catholic faithfuls who did not observe the canonical form of marriage as concubinage⁶⁶ and this influenced the interpretation of the 1917 Code of Canon Law. But Heimerl and Pree argue rightly that in the light of the 1983 Code this line of thought can no longer be tenable on the following bases:

- a) it must be presumed that the couples at least possess the necessary prerequisites to enter into a marital union
- b) even though there was no church marriage ceremony, there was at least a public form of marriage (whether civil or traditional wedding)
- c) the church law recognises the civil or traditional marriage of those not bound by canonical form of marriage as valid

⁶⁵ Althaus quoting Lüdike writes: “Sünde ist keine Kategorie des Kirchenrechts. Ob etwas überhaupt Sünde ist, lässt sich nicht ausschließlich anhand eines äußeren Verstoßes gegen die für das Leben eines Christen geltenden Forderungen feststellen, sondern verlangt zugleich ein Urteil darüber, ob der Verstoß subjektiv den Charakter einer Auflehnung gegen Gott hat“ Kommentar zu c. 915, Rdn. 4 a.

⁶⁶ Pius IX, Speech “Acerbissimum“ of 27th September 1852.

marriage as long as there is no lack of consent or diriment impediment

- d) the possibility of healing the marriage from the roots through “sanatio in radice” as long as there was a valid consent and the marriage was invalid only because of the non-observance of the canonical form of marriage. In which case the marriage is not considered as non-marriage.
- e) it has also to be noted that the obligation to canonical form of marriage in its respective aspects is a norm of human church law and therefore dispensable. It is in no way an essential element of marriage
- f) in the penal law (cc. 1394 & 1395), a distinction is made between the attempted civil marriage of a cleric or religious and the concubinage of the cleric.

With this analysis Heimerl and Pree came to the conclusion that, for proper appraisal of the legal nature of the purely civil marriage of those bound by canonical form of marriage, it is important to note that the new Code does not in any way consider this marriage as concubinage.⁶⁷

⁶⁷ Heimerl, H und Pree, H., Kirchenrecht. Allgemeine Normen und Ehe recht, Wien 1983, p. 183f.– “Obwohl Papst Pius IX. die Zivilehe Formpflichtiger als Konkubinat bezeichnet [...], so ist dies aus der Sicht des gegenwärtigen Kirchenrechts aus folgenden Gründen entschieden zu verneinen: Erstens darf angenommen werden, dass wenigstens im Normalfall die Partner der Zivilehe den erforderlichen Ehe konsens (dh den Willen zu einer dauernden und ausschließlichen Lebensgemeinschaft) besitzen; zweitens wird eine zwar nicht kirchliche, aber immerhin öffentliche Form der Trauung eingehalten. Drittens anerkennt das kanonische Recht bei allen nicht der Formpflicht unterworfenen Personen die zivile Trauung als gültige Eheschließung, sofern keine Konsensmängel oder trennende Ehehindernisse vorliegen. Viertens ermöglichen die Bestimmungen über die sanatio in radice (can. 1161-1165) die Vergütung von Zivilehe, was voraussetzt, dass ein gültiger Konsens vorliegt, die Ehe jedoch wegen Nichteinhaltung der Form als nicht gültig, jedenfalls, aber auch nicht als Nichtehe angesehen wird. Fünftens ist festzustellen, dass die kanonische Formpflicht in ihrer jeweiligen gesetzlichen Ausgestaltung eine Norm des menschlichen Kirchenrechts ist (und deshalb auch dispensabel) und kein Wesensmoment der Ehe ausmacht. Sechstens: Im Strafrecht (can. 1394; 1395) wird bei Religiösen und Klerikern genau unterschieden zwischen matrimonium civiliter attentum und (Kleriker-) Konkubinat. Dieser Befund ergibt für die Beurteilung der Rechtsnatur der Zivilehe formpflichtiger Personen folgendes: der neue CIC betrachtet diese Ehe eindeutig nicht als Konkubinat”.

The person is simply living in an invalid marriage to the extent that he did not observe the canonical forms of marriage as prescribed by the law for all Catholics.

For the purposes of this work, we shall be using the term 'irregular marriage' therefore to designate the purely civil or traditional marital unions of Catholics in Igboland who did not observe the stipulated canonical form of marriage, that is, without Church wedding. This is also called non-sacramental marriage. Two groups will fall into this category: monogamous unions without church wedding and polygenous unions. In the second group of people, we shall however discover that not all of them are purely without sacramental marriage. This is because some people in Igboland, for whatever reasons became polygenists after they had sacramentally wedded with their first wife. In most cases, depending on the circumstances that led to their becoming polygenists, they remain attached to the church. And as we shall see, this attachment passes also as signs of remorse in accordance with c. 1184. This is however going to occupy us fully in chapter 4 of this work.

Now, back to our question: can someone who has met all the conditions necessary for a valid traditional marriage (in Igboland) or court marriage (in Europe) be conveniently regarded as living in concubinage or as a public sinner simply because he did not observe the canonical form of marriage and is therefore not sacramentally married? From what we have discussed above, the answer is of course a capital NO. Granted that they are living in a non-sacramental marriage, and that consequently excludes them from the reception of the sacraments, they are however not automatically excluded from the life of the Church including the pastoral care of the Church. The Church must therefore find other remedies to this heartbreaking canonical and pastoral problem especially in Igboland, taking into cognisance the traditional values of the people as repeatedly emphasised by the magisterium.

CHAPTER 2

Marriages in Igboland

In the first chapter, attempt was made to explain what an irregular marriage in general entails. We came to the conclusion that any marital union between two persons, one of whom was baptized in the Catholic Church or received into it after baptism (c. 1117), without observing the canonical form of marriage as provided for, in the Code of Canon Law is regarded as an irregular marriage. In this second chapter we are going to examine more closely such marriages in Igboland and what gives rise to them. It must be said at the onset that the teaching of the Church on this issue is very clear: a non-sacramental marriage remains as such and all those living in such unions are excluded from the reception of the sacraments especially the Eucharist. This work is not going to contest that fact, even though there are not enough canonical arguments to support this exclusion¹. The attention is rather going to focus on the question, whether we have enough reason in the light of recent theological and canonical developments to deny such people Church funeral rites.

Two categories of marriage are going to be considered here: a monogamous non-sacramental marriage and a polygynous marriage. But in order to place the two in their right perspectives, we intend first

¹ See Footnote 65 in Chapter 1.

to examine the notion of marriage in Igboland and also how a marital union comes into existence in Igboland. Thereafter we shall continue our argument in chapter one on the issue of denial of Church Funeral to these people.

We intend to pose the following questions:

- a) who are those living in irregular marriages?,
- b) at what point do two individuals become husband and wife in Igboland?,
- c) what are the legal, cultural and traditional consequences after that?,
- d) when does a couple cease to be regarded as such?,
- e) why do people live in irregular marriages?,
- f) why do people live in polygyny etc?

It must be noted that the answers to these questions might not yet be canonically relevant, but at least the answers will be as much relevant to the extent that they help us to understand whether these people fit in to the categories of those mentioned in c. 1184 § 1 CIC – i.e. those who should be denied Catholic funeral rites. In the second part of the interpretation², we shall try to fathom the meaning and proper understanding of showing remorse before death as used by c. 1184 § 1.

2.1 The Notion of Marriage in Igboland

Before we set out to discuss how a marital union comes to be in Igboland, it will be expedient first to present the notion of Marriage in general in Igboland.

The Igbos have a great respect for all aspects of their cultural life including the marriage institution. In it the various segments of life from birth to death find expression. John S. Mbiti attests to this fact in the following words:

² See Chapter 5.5.

Marriage is a complex affair with economic, social and religious aspects which often overlap so firmly that they cannot be separated from one another³.

Through marriages very strong and inseparable family ties are established. There is this Igbo saying 'Ezigbo ogo bu ikwu ato' meaning a good in-law is the third relation. And through such ties, rights and responsibilities develop which are observed and kept. Marriage ceremonies are therefore not private ceremonies. They involve the whole village and the relations and family members of the two families. And as J.S. Mbiti again observes, for the Africans in general and the Igbos in particular:

marriage is the focus of existence. It is the point where all the members of a given community meet: the departed, the living and those yet unborn [...]. Marriage is a drama in which everyone becomes an actor or actress and not just a spectator⁴.

It is from this perspective that marriage for the Igbos is seen as a form of pledge to the society to continue to participate in upholding and transmitting the cultural and societal values and thus maintain the tie between the living and dead, between the different generations and between the communities and families. Marriage so seen becomes then "a duty, a requirement from the corporate society, and a rhythm of life in which everyone must participate [...]"⁵.

Non-participation in this rhythm, which means, not getting married, is therefore seen by the society as a failure.

³. Mbiti, J. S., African Religions and Philosophy, p. 25f.

⁴. Ibid., p. 133.

⁵. Ibid.

2.1.1 Marriage and Procreation

The other aspect of marriage which is an offshoot of, and inseparably connected to the duty to marry as imposed by the society is procreation. In Igboland and in most parts of Africa, marriage and procreation are a unity. One cannot talk of marriage without procreation. The question of procreation and off-spring is so paramount in Igbo culture that it cannot be ignored if one wants to understand the notion and the *raison d'être* of marriage. In the words of Celestine Obi, "children occupy the central point in Igbo marriage. The first and foremost consideration is the fertility of the couple"⁶. While love may be the motivating factor for marriage for the European mind and by extension the Catholic teaching on marriage, which built her legal system largely upon the Roman and European legal systems, the motivating factor for the African and Igbo is simply the results of marriage. John S. Mbiti tries to give this mode of thinking a religious undertone when he writes:

without procreation marriage is incomplete. This is a unity which attempts to recapture, at least in part, the lost gift of immortality [...]. It is a religious obligation by means of which the individual contributes the seeds of life towards man's struggle against the loss of original immortality. Biologically both husband and wife are reproduced in their children, thus perpetuating the chain of humanity⁷.

Mbiti is echoing here the story of creation in Genesis where God gives Adam and Eve the charge to increase and multiply⁸. This is the first consideration for marriage in Igboland and any marriage, which

⁶. Obi, C., Marriage among the Igbo of Nigeria, (Taken from unpublished doctoral thesis submitted to Pontifical Urban University, Rome (1970) by Celestine A. Obi), in: <http://www.afrikaworld.net/afrel/igbo-marriage.htm>, sourced on 12th September 2012.

⁷. Mbiti, J. S., African Religions and Philosophy, p. 133.

⁸. Gen 1, 28 - At the beginning of Marriage in the Garden of Eden, there was no mention of love – the only command given was that of continuing human life: increase and multiply. This may sound absurd for the western mind, which places love above every other thing in marriage.

does not achieve this aim of perpetuating the chain of humanity runs into serious troubles and is doomed to fail. Celestine Obi captures this view in the following words:

The position of a wife in her husband's family remains shaky and unpredictable until she begets a child. She becomes really secure after the birth of a male child. At this stage she is specially welcome as a responsible housewife in her husband's extended family and Umunna. In fact the birth of the child gives her the title of wife, before this time she may be said to be a wife only in anticipation. The fate of a sterile woman is a very hard one indeed. Not uncommonly she is made the object of conversation and ridicule by some of her female neighbours⁹.

A childless marriage is therefore a great source of worry and a serious disappointment for the couple. And if the situation persists, it leads surely, sooner or later to serious troubles not just between man and wife but also in the whole family. So strong is the reaction towards a childless marriage that no one would ever wish himself such a fate. And what happens when it becomes a reality in one's life can only be imagined.

In most cases people try to locate the problem always with the woman and she suffers it the most when a marriage ends up childless. She is blamed for everything that went wrong, deprived of all inheritance in the family of her husband and is treated like a witch. Elisabeth Isichei puts it this way:

In Igboland, childless Christian widows were often the poorest of the poor, for they were debarred from the system of wife inheritance that had traditionally provided for them¹⁰.

⁹ Obi, C., Marriage.

¹⁰ Isichei, E., A History of Christianity in Africa, Michigan, 1995, p. 269.

In order to liberate oneself from such agony, the only considerable option remains to try one's luck elsewhere by getting into another marriage. Since divorce is often discouraged, this solution remains open only to men. But in the few cases where a woman may choose to remarry, this second marriage is most times intended to prove to the society that such a woman can also bear children and contribute to the perpetuation of humanity.

It must be remarked here however that the author is in no way supportive of this practice. He is only presenting the situation in order to demonstrate the fact that those Catholics who find themselves in an irregular marriage in Igboland were most often forced into it by circumstances as we shall see later, and not that they chose it as a snob on the Catholic teaching on the indissolubility of marriage. Igbo culture actually excludes divorce in its understanding of and preparation for marriage and that is why it was originally a rare occurrence. Polygyny replaced divorce as an alternative form of the indissolubility of marriage. We shall still come back to this issue¹¹.

On the part of men, the cultural pressure of marrying another wife in order to beget children comes from all angles including sometimes even his barren wife who meanwhile accepts her fate and becomes more concerned with the survival of the future generation of her husband.

Mbiti also gives credence to this and offers an insight into this phenomenon. He transcends the level of mortals in his explanation and locates the underlying reason behind this belief in the religious-cultural realm. He sees the quest for offsprings, especially in male offsprings in the Igbo concept of personal immortality as exemplified in elaborate funeral rites, which we have discussed in detail in chapter 1. To this regard he writes:

This concept of personal immortality should help us to understand the religious significance of marriage in

¹¹ Chapter 2.3. below

African societies. Unless a person has close relatives to remember him when he has physically died, then he is nobody and simply vanishes out of human existence like a flame when it is extinguished. Therefore it is a duty, religious and ontological, for everyone to get married; and if a man has no children or only daughters, he finds another wife so that through her, children (or sons) may be born who would survive him and keep him (with the other living-dead of the family) in personal immortality. Procreation is the absolute way of insuring that a person is not cut off from personal immortality¹².

So it is, that the Igbos considered marriage and procreation to be so inseparably joined together that already in marriage they have their funeral rites at the back of their head as a necessary consequence of this new existence which takes its root in marriage. And here we also see the necessary connectivity between marriage and funeral in Igboland.

At this juncture, we want to summarise this section with Celestine Obi's presentation of marriage in Igboland. He writes:

For the ordinary Igbo, marriage is the lawful living together of man and woman of different families for the purpose of begetting children after some rites have been performed. It is regarded as a milestone in the life of a man and a woman, which will enable them to immortalise their remembrance through their children. They regard consent as the most important element¹³.

¹². Mbiti, J. S., African Religions, p. 25f.

¹³. Obi, C., Marriage.

Armed with this scholarly definition and having now understood the notion of marriage in Igboland, we may now move to the next stage of the work: to examine how a marriage comes into being in Igboland.

2.1.2 Marriage Ceremonies

We want to begin this section with a simple question: When does a woman become wife in Igboland?

This question will try to explain at what point two individuals – a man and a woman – can be said to have become couples (husband and wife) according to Igbo tradition and culture. We shall also try to espouse the cultural and legal implications of such unions and see how relevant the consequences can be in the Catholic Church's evaluation of Igbo traditional marriage. But before we proceed let us call to mind the statement made by Pope Pius XII highlighting what should be the Church's view on the tradition and culture of evangelised people. The Pontiff said:

The Church from the beginning down to our time has followed this wise practice: let not the Gospel on being introduced into any new land destroy or extinguish whatever its people possess that is naturally good, just or beautiful. For the Church, when she calls people to a higher culture and a better way of life, under the inspiration of the Christian religion, does not act like one who recklessly cuts down and uproots a thriving forest. No, she grafts a good scion upon the wind stock that it may bear a more delicious fruit¹⁴.

This position may serve as a guide in our discussion of Igbo traditional marriage, as it relates to the practice in Igboland of denying Catholic funeral rites to those who are only traditionally married.

¹⁴. Pius XII, Heralds of the Gospel, June 2nd 1951, The Paulist Press, p. 25.

There are elaborate marriage ceremonies in Igbo tradition and culture with little observable differences depending on which region one finds himself. However, these differences notwithstanding, there still exists the basic marriage requirements which remain essentially the same everywhere. One can therefore speak of the *constants* and the *variables*. The variables may range from the stipulated number of years for courtship, to the various ways of preparing the bride for marriage and the acceptable amount of the bride price (including negotiation processes). The constants are the cultural and traditional consequences of the variables. For the variables, we shall give a glossary account of a traditional Igbo marriage bearing in mind that, as the name implies, these may vary from place to place and from region to region.

2.1.3 Choosing a Marriage Partner

The first issue is that of choosing a partner. In the past, it was normal for parents to choose a partner for their children, mainly for their male children. In order to ensure a smooth transmission of good and noble family traits and values, many parents took extra time to ensure that their children got the right partners. This practice can be summarised thus with Mbiti who writes:

Different customs are observed in the matter of finding partners for marriage. In some societies the choice is made by parents, and this may be done even before the children are born. This means that if in one household there is a young boy, his parents go to another household where there is a young girl or where there is an expectant mother and put in an 'application' for the present girl or for the child to be born in the event that it is a girl [...]. The children, however, get married only when they are old enough and not immediately after birth or while very young¹⁵.

¹⁵. Mbiti, J. S., African Religions, p. 135.

It must however be mentioned that this system sometimes led to instability in marriage as some of these couples grew up to discover that they did not suit one another. This did not lead immediately and directly to divorce because of the shame that goes with it, but it led often to polygyny, as we shall see later.

This practice notwithstanding, Mbiti further observes that, "in some other societies it is the young people themselves who make their own choice and afterwards inform their parents about it. Then the parents and relatives begin the betrothal and marriage negotiations"¹⁶.

2.2 Traditional Marriage (and its legal implications in the society)

When the right partners for marriage have been found according to the laid-down rules as seen above, marriage negotiations begin almost immediately. The two families and relations are fully involved from the first day until the celebration of marriage. And even after marriage has been celebrated, family members still get involved in offering support and advice throughout the life of the couple because marriage for the Igbos is a life-long affair uniting two families. That is why also there were very few cases of divorce in Igboland in the traditional set-up, since the society and the culture frowned at it.

But because of the variety of cultures and traditions, which we discussed in Chapter 1, the stages leading to traditional marriage may also vary from place to place. This is what we called the *variables*, but there are also the essential aspects which are uniform everywhere. That is what we called the *constants*. Jude Mgbobukwa has helped us identify five main stages at this level. There are: IKU AKA, IFE ANI, IME EGO, IGBA NKWU, and AMARA M UZO OGO¹⁷. We shall however discuss only the most important stages.

¹⁶. Ibid., p. 136.

¹⁷. Mgbobukwa, J., Inculturation, p. 36.

a) IKUAKAN’UZO

This means literally knocking at the door. At this stage a young man who intends to marry a girl introduces himself to the parents of the girl. He may be accompanied by his parents or those who represent them. He brings along with him some bottles of wine or hot drinks. The girl makes a short appearance and leaves while her parents discuss with the guests. After their departure, the parents of the girl ask her about her opinion. If she agrees to marry the young man, investigations on both sides will then begin. This investigation period in Ututu¹⁸ is called Ofia ajuju (literally meaning forest of inquiry). “Parents inquire very meticulously [about] vices like murder, theft, lying, obstinate disobedience, wanton violence and other undesirable qualities [that] would be introduced into their family”¹⁹. And these investigations are sometimes carried out through middle men and women²⁰. It is an equivalent of the publication of marriage bans in the Catholic Church’s preparation to marriage²¹.

If the investigations turn out positive on both sides, the parents of the girl fix a date for further meetings with the intending husband and his parents. By this meeting, the girl receives a cup of drink from her father or the person who represents him, drinks a little of it and then kneeling before the husband-to-be, gives him the cup with the drink. He in turn drinks of it. This ceremony is actually the official engagement of the two young people.

In some regions however this ritual of drinking from the cup is performed on the Igba Nkwu day (the day of the traditional marriage) and in this case it becomes the official exchange of consent. This exchange of drinks ends this first stage of marriage negotiations.

^{18.} Ututu is the hometown of the author.
^{19.} Obi, C., Marriage.
^{20.} Mgbobukwa, J., Inculturation, p. 36.
^{21.} C. 1067 CIC.

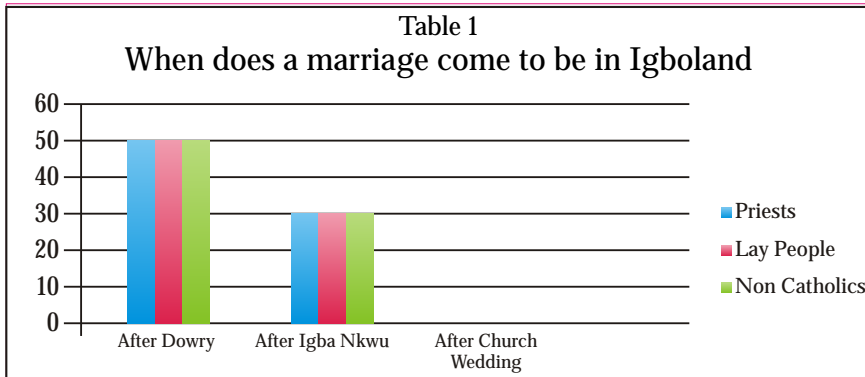
In some regions, the girl now goes with the young man and stays with him for a period of eight days in order to acclimatise herself with the environment of the man and decide whether she can really marry him. In this period however the two of them are strictly separated. “The custom of the land bars them from sexual intercourse throughout the duration [...]. They don’t even sleep together”²². At the end of the period, the girl goes home and reports to her parents her findings and feelings. The official consent or disapproval of the family does not come from her, but from her parents²³.

If no impediments are found on both sides and if both the young woman and young man are amenable to each other and wish to continue the marriage process, a date is fixed for the next stage which is called Ime ego in some areas and Ohuhu afia in some other areas.

b) IME EGO:

This is generally referred to as bride price. At this occasion the bride price is fixed and the husband-to-be is given a list of materials he has to provide. The proceedings at this stage of the marriage negotiations vary from region to region. The details shall be consigned to what we have described as the variables. But after the payment of the dowry (bride price) the girl technically becomes the wife of the young man. There is actually a confusion as to which moment a girl becomes a wife. Some see it at the moment of the payment of the bride price while others see it at the moment of the Igba Nkwu or Nduma. In the questionnaire distributed during the research stage to this work, 90% of those who responded were of the view that the payment of the dowry was the decisive moment of marriage. In the distribution only about 1% of the priests who responded were of the view that Church marriage was the actual moment a marriage comes into existence in Igboland. (Table below).

^{22.} Mgbobukwa, J., Inculturation, p. 36.
^{23.} Cf. Ibid.



But suffice it to say that “without the bride price, the girl belongs to her parents as an unmarried woman even if the couple cohabit with the knowledge of everybody and in a manner that seems to portray them as being officially united [...]”²⁴. And that is actually the situation, which causes scandal among the people and every parent and young couple do everything within their power to avoid this. It is not only abhorred in Igbo tradition, it is also regarded as an abomination. Children born of such unions are regarded as bastards and have no rights of inheritance.

But on the other hand, even if the other marriage rites are no longer accomplished, the payment of the bride price elevates the young people to the status of married couple before the society. Under normal circumstances however, “more than 95% of the girls remain with their parents after the pride-price had been paid [until after Igba Nkwu]”²⁵.

G. T. Basden attests to the fact that there exists at this stage what may look like the Catholic Church’s marriage instruction, whereby the new couple is initiated into the art of married life.

To this he writes:

²⁴ Ibid., p. 38.

²⁵ Ibid., p. 39.

At some time just prior to the marriage, the bride-elect must appear before one or more women, especially appointed, whose function is to instruct her, and impress upon her the rules governing marriage and the married life of a woman, according to the etiquette of the town. It will be made clear to her what things are permissible and what are Nso (forbidden) and she is enjoined to observe these regulations strictly²⁶.

At the same time the bridegroom also undergoes some drilling aimed at preparing him for his new status and make him aware of the responsibilities attached to the title of husband.

c) INONZUZU or IRU MGBEDE (Fattening period)

Although this stage of preparation appears to be unknown to many parts of Igboland, it has been consciously included to bring out its beauty in those regions where it was practiced. In some regions like Ututu, a certain period of time is set aside between the concluding stage of the marriage negotiations and the actual traditional marriage, which is called Nduma. During this period, the girl abstains from all forms of labour. Her pre-occupation during this time is to make herself beautiful and attractive for her bridegroom. Celestine Obi also gives credence to this as he confirms:

Also among the Igbos in the past, a prospective wife was set aside in a hut and fed and instructed without much exercise until she was well prepared physically and psychologically to assume the role of house wife and after a short time, that of a mother. This practice

²⁶ Basden, G.T., Among the Niger Ibos, London, 1921, p. 75.

which no longer exists today, was referred to as 'ino na nkpu or npu' (returning to the fattening house)²⁷.

At the end of this fattening period, which in Ututu lasted for about four months, a date is then fixed, usually on an Eke market day for the traditional marriage known in this part of the world as Nduma or literally "accompanying home". On this day the bride is "accompanied" with music and dance from her parents' home to her new home. They take along with them and display same along the way, the household materials they have bought for her to enable her begin her new home. The bridegroom waits patiently with his family members and friends at the entrance of his compound or at his village square to receive his bride. At the end of this elaborate ceremony, the couple is then officially recognised as husband and wife with all the rights and obligations attached to the status. This practice is unfortunately no longer observed by the younger generation. It has been eroded and gradually replaced with Igba Nkwu.

d) IGBANKWU (Traditional Marriage proper)

In most parts of Igboland the mode of marriage generally called Igba Nkwu which literally means 'pouring of palm wine' has become the most widespread and most practiced. It could be described as the final stage of traditional marriage. It is at this ceremony that the bride and the bridegroom receive the good wishes and blessings of their parents, relatives and wellwishers.

It entails an elaborate ceremony in which friends and family members of the couple gather together to finalise the marriage rites. The couple officially pose in public as husband and wife and acknowledge the good wishes of those around. They sit together most of the time where they are congratulated through gifts and prayers by all who come for the ceremony.

²⁷. Obi, C., Marriage.

The most important aspect of the traditional marriage is perhaps the fact that the bride is the focal point of the day. Jude Mgbobukwa confirms this in his appraisal of the ceremony. He writes:

IGBA NKWU is mainly undertaken in honour of the girl being married. It makes her agbala nwanyi. She begins to rank in honour and respect with other married women. It is also during this Igba nkwu that all who are related to the girl are recognised. The two Umunna contracting the marriage use it as an opportunity to know themselves and begin to see themselves as people who share a common bond²⁸.

Just like in the case of Nduma as discussed above, from the moment of Igba Nkwu (traditional wedding) the couple begin to enjoy the legal recognition of the whole community. This is an equivalent of the court marriage in the western world.

At the end of this excursion on traditional marriage, we may like to come back to the initial question, which shaped this section: when does a woman become a wife? What we have discussed above dwells mainly on the variables of traditional marriage. To get an answer to this question it may be worth it to concentrate on the constants, i.e. those aspects of the traditional marriage, which are found everywhere.

The answers given by respondents during the research work²⁹ show how unanimous the people are that the payment of the dowry is the important stage after which a woman becomes a wife. Although others would see the Igba Nkwu as the decisive moment, it could be remarked that the Igba Nkwu is more a public affair in contrast to the payment of the dowry, which more or less takes place in a more

²⁸. Mgbobukwa, J., Inculturation, p. 40.

²⁹. Table 1.

subdued and family atmosphere (depending on where you are). But again these answers are dependent on the variables, which to a large extent fall outside our area of interest in this work.

But suffice it to say that this difference in opinion is not so grave that it would have changed anything substantial in the end result. This is because both the payment of the dowry and the traditional wedding take place simultaneously in some regions and in some regions you do not even find two of them existing side by side. That is, it is either traditional marriage (IgbaNkwu) or payment of dowry.

Whether it is the payment of dowry or traditional marriage, it is always a public ceremony through which the parents of the new wife acknowledge publicly that the bridegroom has fulfilled all conditions required by tradition and culture in order to take the bride as his lawfully married wife. In some regions where the payment of the bride price (dowry) is separated from the traditional marriage, the couple waits until the performance of the traditional marriage before they can live together. In some other regions, the bride is recognized from the moment of the payment of the dowry as the lawfully married wife to her husband and the community accepts her as such. Here it is important to note that this recognition is accorded the couple irrespective of the fact whether this was the first marriage or otherwise of the bridegroom. From this moment no one can refer to the couple as public sinners (in case of a polygynous marriage) or as people living in concubinage or in scandal, because they have fulfilled all conditions required by native and customary law to be husband and wife.

The woman so married remains the lawfully married wife of her husband until the dowries are paid back to the family of the husband. Not even the death of the husband can change this situation. And even if the husband sends her back to her family because of irreconcilable differences (which is sometimes the case) and the woman spends the rest of her life in her family of origin, she still remains the wife of this lawfully married (and from tradition and culture recognized)

husband. And that is why this woman can also not remarry, although the husband can any time marry another wife or even more wives. The logic (even though unjust) is simply because of the fact that only the husband paid the bride price and so acquired the woman as his private property. He does not owe the wife anything, but the wife and her family owe the husband the bride price (dowry), which he paid before marriage. And in this case there is actually no divorce but only a separation.

As we have seen above, marriage in Igboland is a serious and sacred institution. “The Igbo does not step into marriage without preparation. It is a step which must be taken with the eyes wide open”³⁰. Marriage is not rushed. On the contrary very stringent laid down procedures are followed.

The above-described procedure of marriage focused on monogamous marriages in Igboland, which is actually the most practiced form of marriage. Monogamy as we know is the form of marriage between one man and one woman. But these procedures also apply to polygynous marriages, which form the next stage of our discussion.

2.3 Polygyny

Before we proceed in this section, we intend first of all to correct an erroneous impression, which has dominated the perception of African marriage in general and that of the Igbos in particular. It is the term Polygamy.

Many writers have erroneously implied that polygamy is a normal form of marriage in Africa or in Igboland. This is far from the truth. Polygamy is the practice of having more than one wife or one husband at the same time. Polygamy so understood is actually

³⁰. Obi, C., Marriage.

practised nowhere in Igboland, neither in the past nor at the present. Unfortunately however, because of misinformation or lack of adequate scientific research, “the traditional African polygynous marriage system has always been misconstrued for polygamy”³¹. There are only two forms of marriage in Igboland: Monogamy and Polygyny. In the Britannica World Language Dictionary, Polygamy is defined as the “the condition of having more than one wife or husband at the same time”³². And the Webster’s Third New International Dictionary defines it as “a marriage form in which a spouse of either sex may possess a plurality of mates at the same time”³³.

Polygyny on the other hand refers to “the practice of having more than one wife or female mate at one time”³⁴. In the same Britannica World Language Dictionary, Polygyny is described as “the marriage [...] of one male with more than one female”³⁵. For the Britannica World Language Dictionary on its part Polygyny is “a marriage form in which a man has two or more wives at the same time”³⁶. The Academic American Encyclopedia gives a detailed differentiation by presenting the other forms of marriage in one analogy. It states:

Polygamy is a type of marriage in which a person may legally have several spouses concurrently, as opposed to monogamy, marriage to only one spouse at a time. It may take the form of polygyny, the marriage of a man to more than one woman, or polyandry, the marriage of a woman to more than one man. Both systems seem to arise from special local conditions³⁷.

³¹. Ochulor, O. H., *The Function of Dialogue in the Process of Evangelisation*, Owerri 2006, Footnote 53, p. 110.

³². Polygamy in: *Britanica World Language Dictionary*, Chicago, 1967. Vol. I.

³³. Polygamy, in: *Webster’s Third New International Dictionary*, Chicago, 1981, Vol. II.

³⁴. *Webster’s New Encyclopedic Dictionary*, p. 780.

³⁵. Polygyny, in: *Britanica World Language Dictionary*, op. cit.

³⁶. Polygyny, in: *Britanica World Language Dictionary*, op. cit.

³⁷. Gibbs, J. L. Jr., Polygamy, in: *Academic American Encyclopedia*, 1985, Vol. 15, p. 419.

With this clarification and distinction, which show that polygyny is the direct opposite of polyandry (marriage between one woman and many men)³⁸ we once again emphasise, that the Igbos have never been polygamists. For a valid marriage according to Igbo tradition and culture to come into existence, whether monogamous or polygynous marriages, the same marriage rites and procedures are meticulously observed. In the next section, we intend to discuss the circumstances, which lead to a polygynous marriage in order to better understand the psyche of those who find themselves in this situation and so be better equipped to render them the necessary pastoral assistance without encouraging nor condemning them.

2.3.1 Causes of Polygyny

Polygyny in the Igbo society was not only tolerated in the past, it was also encouraged. It offered a meaningful alternative to many embarrassing situations in life and thereby helped to keep many families and their values intact. “In the past, polygyny was rather encouraged and

supported while today the support is at least tacit or implied since society still accepts it as a lawful form of marriage”³⁹. Today, with the advent of Christianity and the full embrace of the new religion by the Igbos, Polygyny is rather an exception than a normality. But this did not

happen without grave pastoral consequences because the early missionaries hurriedly condemned polygyny under the name polygamy without taking the pains to study the great difference between the two phenomena and also the reasons that lead to it. The missionaries demanded that polygynists select one from their other wives for the sacramental marriage and send the rest away. This demand found legal expression in c. 1148 § 1 where the law *inter alia* states:

³⁸. Ochulor, O. H., *The Function of Dialogue*, p. 110.

³⁹. Obi, C., *Marriage*.

After he has received baptism in the Catholic Church, a previously nonbaptized man who simultaneously has several non-baptized wives can keep one of them as his wife while dismissing the others if it is difficult for him to remain with the first.

Although the legislator here addresses a previously non-baptized person who intends to receive the sacrament of baptism, the problem is the same. This canon and indeed the whole of the Code did not address the issue of those who after baptism or even after sacramental marriage find themselves in a polygynous marriage, neither does it address the status of the sent-away wives since they remain legally married to their husband until the return of the dowry. The solution offered here is therefore to be applied with care.

However, this strategy did not always work because as we have seen above in the section on traditional marriage, once the bride price of a woman is paid, she remains the wife of the man until this bride price is returned. The question then is, where does this man send the other wives to, and what will be their status. As a result of this demand of the missionaries, “many decided not to identify with the Church”⁴⁰ and Elizabeth Isichei confirms this fact in the following words:

The mission churches’ rigid insistence on monogamy led many to join African or prophetic churches, and kept others outside the formal structures of Christianity altogether⁴¹.

Although monogamous marriages today greatly outnumber polygynous ones⁴², the pastoral consequences resulting from its blanket condemnation and rejection by the early missionaries are still felt today.

⁴⁰. Ochulor, O. H., *The Function of Dialogue*, p. 102.

⁴¹. Isichei, E., *History*, p. 268.

⁴². Obi, C., *Marriage*

In as much as we are not condoning or approving polygyny, we shall attempt to present in a nutshell some of the factors that lead to it. By doing so, we should not forget the fact that these causes depend on differing individual and life situations which should also be borne in mind while appraising the phenomenon.

i) **Childlessness**

To be able to discuss the causes of polygyny in Igboland, we should recall what we said above about marriage and procreation. Bearing this in mind, childlessness can be posited as one of the main reasons people marry more than one wife. A childless marriage negates the main objective of marriage in Igboland, and to save this situation pressure is put on the man to get a second wife without necessarily sending the first wife away. Celestine Obi gives an insight to this reality and summarises the situation thus:

Love for having children is another dynamic factor that leads to polygyny among the Igbo people. Children are a great asset, and so every marriage has procreation as its *raison d'être*. When a marriage has proved fruitless, then another woman [...] is sought to redeem the situation. If the husband fails to or delays before taking a wife, he sets the ball of gossip rolling. Often people advise him to act quickly. Marriage must be fruitful. Of what use is it, if it is not fruitful? One year is enough for any woman who would have a baby to begin making one⁴³.

We can see from this quotation that even when the man is unwilling to take another wife, the society, the tradition and the environment force him to act. Often the childless wife herself puts pressure on the man to get himself a second wife. Sometime he bows to the pressure.

⁴³. Ibid.

This is a fact, which the Church in her pastoral encounter with these people must take into consideration.

ii) Lack of male issues

The second cause of polygyny is similar to that of childlessness. Even when a man has many children, if he has no male child who should continue the family lineage, that marriage will also be exposed to all the dangers a childless marriage faces. This is because the Igbo family structure is patrilineal and inheritance follows this pattern.

iii) Socio-economic reasons

In the past when parents chose wives for their sons, these sons always received yam tubers and other agricultural seeds for planting, and since the wife was supposed to be his help-mate, she offered help also for the farm work. As expected this woman should have her first child within the next one year. If that happens, she will no longer be able to help the husband in the farm work. At this point the need arises for him to get a second wife.

Furthermore husbands are not allowed in some regions of Igboland to have sexual intercourse with their wives during pregnancy and breast-feeding, which usually lasted for three years, “especially [in those] cultures where pregnancy and lactation dictate abstinence for the married couple”⁴⁴. This is mainly to ensure that the woman does not become pregnant within this period, which would be regarded as an abomination⁴⁵.

In other instances marriage to many wives was seen many years ago as a sign of affluence, power and prosperity so that “to have only one wife at a time was [regarded as] a sign of economic poverty and low

⁴⁴. Polygyny, in: The New Encyclopaedia Britannica, Vol. 9, 2002, p. 579.

⁴⁵. Family Planning and sexual enlightenment as we have them today were non-existent. Couples had intercourse only for the purpose of producing children.

class or status”⁴⁶. Celestine Obi summarises these causes in the following words:

Among the Igbos, polygyny is adopted for economic and social, and for sexual and other reasons. In the past, it was the normal ambition of every family-head, to continue to add to the number of his wives throughout his life. The man needed many hands so as to cope with the work in his farms. Women themselves are generally very good at farm work. A wife does not only help but within some few years, her children will join the team⁴⁷.

iv) An Unhappy Marriage

There are also cases where couples find it difficult to live in harmony and because of the sacredness of marriage in Igboland (marriage involves actually the whole community), divorce may not be the first option for the couple. This may further be compounded by the fact that they have gotten offsprings, whom they do not want to raise in a divided family. In this case it may be necessary for the man to marry a new wife to bring a new spirit in the family, the spirit of healthy competition. The wives now must compete for the love of the man and in most cases the first wife has been brought back to fall in line through this method. Obi once again confirms this tactic in these words:

A second wife may also be taken if the first becomes impossible to live with. Both will now compete to win the good favour of the husband. We have also seen cases where the first wife led the way in marrying a second wife into the family. It is not only for economic

⁴⁶. Okolo, B. C., The African Synod: Hope For The Continent's Liberation. AMAECA Graba Pub. (Spearheds Nos 130-131), 1994, p. 25.

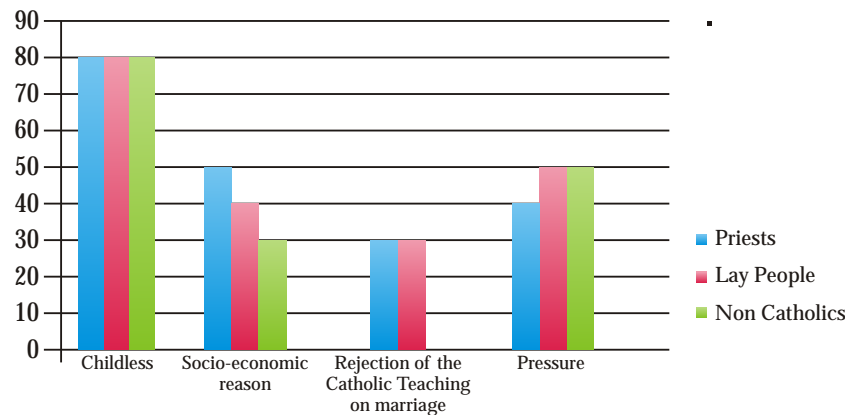
⁴⁷. Obi, C., Marriage.

reasons or to have children that has made polygyny to flourish as it did in Igboland.

These reasons given above are not exhaustive. There may be other issues, which may lead or sometimes force someone into a polygynous marriages. Each case should therefore be judged on its own merit and not on pre-conceived ideas.

In all these cases examined, there is no single evidence that people enter into polygynous marriage in order to demonstrate their rejection of the Catholic teaching on marriage and its indissolubility. No, many of them are forced into it by circumstances, which sometimes are beyond their control as human beings and as Igbos. Over 90% of the respondents to the questionnaire distributed prior to this work also agree that these polygynists or those living in irregular marriages do not go into it purposely to show their rejection of the Catholic teaching on the indissolubility of marriage (Table 2). Again, these facts should be borne in mind in the pastoral care of these people.

Table 2
Some causes of Polygyny in Igboland



2.4 Pastoral Reflections - A Dialogue between Theology and Culture

The next point to be addressed here is how Christianity can harness this rich cultural heritage of the Igbos with respect to marriage and marriage rites to make them meaningful in the evangelisation of the Igbo people. How does the good news of salvation view this cultural heritage today. Does it still serve us right to toe the path of our early missionaries who condemned everything African as pagan?

To answer these questions, theology should enter into dialogue with the Igbo culture in order to bring out the good in it and purify it in the light of the gospel. This may not yet go far in translating into canonical breakthrough, but at least this dialogue could help first recognise the dignity of the Igbo traditional marriage and consequently the dignity of those who live in such marriages without condemning them to hell even before they die. Many may like to give this dialogue the name inculturation but we are hesitant to use the term here, since it has no place in canon law. We would rather talk about particular laws to accommodate this reality especially as it affects the treatment given to these people at death.

Within the context of this dialogue we join Peter Schineller to appeal that “the [mad] rush to modernization in third world nations should not be pursued at the cost of the destruction of their traditional values”⁴⁸. Also the zeal to apply the provisions of the Code of Canon Law should be done in the light of the authentic interpretation of the law. The Church as the legislator has given the guidelines for this authentic interpretation. Modernization and the application of Canon Law should rather proceed in such a pace that those who embrace them should still be able to retain their identities. The Igbo Catholics who live in these marriages know also their limitations as far as ecclesiastical Law is concerned and many of them make effort to

⁴⁸. Cf. Schineller, P., A Handbook on Inculturation, New York – Mahwah, 1991, p. 45.

regularize their marriages canonically. Bishop H. Karlen attests to this selfconsciousness in the following words:

From the time of their traditional marriage, even Catholics consider themselves to be properly married. They are nonetheless, aware that they cannot receive the Eucharist as long as they remain unmarried in the eyes of the Church. If it takes place [...] at least, it regularizes a couple's position before the priest and thus provides access to the Eucharist⁴⁹.

This work is not in any way advocating their admission to the sacraments. It is rather soliciting a more humane understanding of their situation with a view to rendering them pastoral assistance. To do this effectively the pastors of souls are going to lead this dialogue between theology and Igbo culture. Everyone involved must demonstrate the willingness to embark on this task since the Church authorities through her pronouncements have already created both the necessary theological and legal prerequisites. And as Cardinal Arinze rightly points out, if in any particular area of the world, there has not been adequate attention paid to the people's culture in the work of evangelization, this is not due to lack of proper official directives from the Church, but due to failure to follow these directions⁵⁰.

This failure to follow Church instructions is the greatest bane of the Igbo Church today. It would appear the Church hierarchy in Igboland is more interested in making the practice of the Catholic faith as difficult as possible in order to retain its authority over the faithful. There appears to be a tendency toward preaching the gospel of intimidation and threat than that of liberation and mercy with the motto: the more you instill fear into the faithful, the more you can

⁴⁹. Karlen, H., Canonical Form and Traditional Marriage 59, in: West African Journal of Ecclesial Studies No. 3, 1991, p. 62.

⁵⁰. Arinze, F.A., Living our Faith, Onitsha 1983, p. 43.

control and manipulate them. And to achieve this aim, imposed ignorance seems to be the order of the day, so that the faithful will never come to know their rights, not to talk of demanding for them. This is evident in the fact that the hierarchy in Igboland makes no effort to pass on information along their chain of command so as to avail the faithful the opportunity of being aware of recent theological developments in the Church, which also open up opportunities for an alternative to the way of doing things. The hierarchy is simply comfortable with the status quo as long as it favours it. Jude Mgbobukwa generalizes this phenomenon and extends the blame to all Africans in the following words:

“The problem now with the African is that he felt brutalized by the missionaries, by the way they gave out the word, but lacked the courage to effect changes when and where necessary. Added to this is not just the general lack of appreciation of our culture by the missionaries but the dangerous trend whereby some of our people are beginning to be ashamed of our culture. This is a fact that may not be easily accepted by those who should at best stand accused⁵¹.

The position of this work is that there should be a dialogue between theology and culture in Igboland, motivated by a new awareness and appreciation of the Igbo culture and its values. This work is not advocating syncretism, rather a healthy dialogue. “This new awareness of culture should go hand in hand with theological awareness”⁵² according to Peter Schineller. His understanding of theology as critical reflection on one's faith, or, in a traditional formulation, as faith seeking understanding leads him to posit the thesis that just as one's faith is influenced by one's culture, so too is one's theology influenced. Schineller comes to the interesting

⁵¹. Mgbobukwa, J., Inculturation, p. 10.

⁵². Schineller, P., Handbook p. 45.

conclusion that, “theological understandings [...] have an impact on the culture and are affected by the culture”⁵³.

This understanding can no doubt be realized when both culture and theology engage each other in a healthy interaction aimed at mutual enrichment. With this in mind and with regard to the interplay of grace, revelation, theology and culture we may wish to conclude our pastoral reflection with the words of Peter Schineller:

“Grace, the human person’s sharing in the inner life of God, like revelation is offered to all men and women, and any exclusivist understanding of grace would deny the understanding of inculturation as a two-way street, a listening as well as a sharing or teaching. The older, exclusivist understanding of grace accounted for the lack of respect for local cultures and traditional religion, and for the colonialist attitude of much traditional missionary endeavor⁵⁴.

⁵³. Ibid.
⁵⁴. Ibid., p. 47.

CHAPTER 3

Catholic Burial Rites

In the first chapter of this work, we tried to describe the Catholic Church funeral rites in general without claiming to define it. We were able to establish the fact that there is nothing like full and not-full or partial burial rite, first-class or second-class burial rites. It is either a funeral rite in accordance with the approved liturgical norms of the Catholic Church or it is not. In the same chapter one, we tried to present the Igbo understanding of death as a passage into the abode of the living-dead and this understanding shaped their apparently elaborate burial ceremonies. For easy connectivity to our topic, we took a break in chapter two to discuss irregular marriages in Igboland and ended up with some pastoral reflections on our discovery. Here in this chapter, we are going to examine deeper the theological and historical developments of Church funeral rites as well as their pastoral relevance before we conclude with the canonical implication of these developments.

In doing this, Holy Scripture and Tradition are going to be of great importance. The liturgical books and their prayers for the dead also offer a deep insight into the theology of Church Funeral Rites, which expound the deep faith of the church in the efficacy of the funeral rites and prayers.

3.1 Theological Foundations of Church Funeral Rites

The theological location of the Christian burial finds its root in the burial of Christ the Lord, who died and was buried. The Apostle Paul writes: “you have been taught that when we were baptized in Christ Jesus we were baptized into his death; In other words when we were baptized we went into the tomb with him and joined him in death, so that as Christ was raised from the dead by the Father's glory, we too might live a new life. If in union with Christ we have imitated his death, we shall also imitate him in his resurrection” (Romans 6,3-5).

Also in 2 Cor. 16, 19 St. Paul reminds us that all of us who are baptised have become the Temple of the Holy Spirit. Thus, all baptised Christians join him also in his paschal triumph from death to life. This teaching was re-echoed by the Fathers of the Second Vatican Council in the pastoral Constitution on the Sacred Liturgy when they proclaimed: “Funeral rites should express more clearly the paschal character of Christian death”¹. This Proclamation as we shall see formed the theological foundation of all Christian funeral liturgies. Christian death is therefore to be understood in its close relationship to the death and resurrection of Christ. Irrespective of the hitherto divergent views of the different cultures of the world about death, the Resurrection of Christ changed the perception of death for all believers – death is no more the last thing, but now a transition from a world of immortality to a world of continuous life – the Christian understanding of death is now primarily shaped by the paschal mystery of Christ and as such, Christian funeral Rites should also reflect this theological understanding.

In the preceding chapter, we have reflected on the concept of Marriage in Igboland and ended up with an appeal for dialogue between theology and culture. In this present chapter, we intend to open a gateway on the part of the Church for that dialogue. We intend

¹ SC 81.

here to analyse the Church's view over the ages on Catholic funeral rites. This survey is going to be undertaken as prelude to identifying the similarities and perhaps differences in the understanding of funeral rites both in Catholic theology and Igbo anthropology. Funeral ceremonies and the internment of the dead are not peculiar to Christianity alone. They are found in all the religions and cultures of the world. But Christian funeral rites “express the Church's care for the departed, its belief in the resurrection and its reverence for the body as sharing in redemption”.²

Vincent Kwame Owusu appears to give us an adequate insight into what funeral ceremonies are meant to achieve when he writes:

The function of the funeral celebrations is to dispose of the physical body of the deceased and at the same time, to serve as the last gesture by which one can honour the dead. It enables the individual and the community to engage in the therapeutic process of handling the sentiments of loss, of anguish and of fear in the face of death. It enables the survivors to overcome grief and to mourn for the loss of a loved one in a tangible and socially approved way. During the funeral celebration one discovers the religious meaning of death as a return to immortality. Death is an affirmation of life, of a life after death. In other words, the funeral is a form of divine worship in one of the crisis situations of life. In it we come to God, bowed low, seeking his ever-present strength in the hour of need³.

In funeral ceremonies there is an interplay of social, religious, anthropological, liturgical, pastoral, theological, Christian and cultural elements. In these funeral ceremonies, sentiments come up

² Davies, J. G., *A New Dictionary of Liturgy and Worship*, 1986, p. 117.

³ Owusu, V. K., *The Roman Funeral Liturgy: History, Celebration and Theology*, 1993, p. 1.

and are expressed. And these sentiments cannot simply be ignored by any institution that claims to have the good of its people as uppermost priority without running the risk of being out of touch with reality. These different aspects of life, which find expression in the funeral ceremonies in turn determine to a large extent the funeral rites observed by the various groups, because the death of a person is not just a private matter of the immediate family but that of the entire society in which the deceased lived.

Every death affects the community as a whole. That is why the entire community takes part in the rites of farewell for the dead: the local community, the bereaved family, the poor, etc. At no time in a person's life is one so sociable as at his or her death. At the celebration of death, the ties and relationships are renewed between the deceased and the living; and among the living, efforts are renewed to bring peace and harmony that may have been shattered in the realities of everyday life. The ties and relationships are also renewed between the deceased and the living on the one hand and their maker on the other. The funeral celebration imparts a sense of hope and togetherness, of solidarity and support to the bereaved⁴.

Consequently, the period between death and burial is not the best period to recount past animosities nor a period of fault-finding and discrimination. It is not a period to hold on to anachronistic laws that have lost their relevance in the course of history. It is in many cultures and religions a period of forgiveness and reconciliation. A period to let go and a period to recommend the deceased to God's mercy and offer consolation to the mourning family. The Church, which is the champion of these virtues, cannot excuse herself from this function

⁴ Ibid.

through her funeral rites without compromising her credibility. The Church must, in order to be true to her vocation, be responsive to the sentiments of her members and react to them accordingly. And Vincent Owusu points out the theological argument, which should inform the Church's reaction to the death and burial of her members. He writes:

The Church is not indifferent to these human and religious sentiments of humanity in the face of death. Seeing in the body of its faithful a temple of the Holy Spirit, a body destined to rise in blessed immortality, the Church has always shared in the expression of these human sentiments, raising them to a higher level. Following the example of its Saviour, the Church renders special honour in ritual form to its dead members who are believed to have a share in the resurrection of Christ⁵.

As we shall see in the section dealing with the development of Church's funeral rites, the Church has over the years been conscious of these sentiments, as she has reacted to them through the various Orders of Funeral Rites. We shall also see, as Francis Arinze observed, that the inability by any local church to respond to these sentiments does not lie in the dearth of ecclesiastical directives, but simply in the inability or the unwillingness of such a local church to implement the directives⁶. This is again the intention of this work: to bring to the notice of the Church in Igboland the presence of these directives.

Admittedly, there may be abuses or breakdown in traditional mourning customs in some areas, but that makes the dialogue between theology and culture all the more imperative in order to offer the needed assistance to the bereaved family members, instead of re-

⁵. Ibid.

⁶. Arinze, F., Living our Faith, p. 43.

enacting the blanket ban of everything that was Igbo and traditional, which was employed by the early missionaries who evangelised Igboland. This they did out of their ignorance of the Igbo culture. The indigenous clergy of the 21st century in Igboland have no justification whatsoever to follow the footsteps of these early missionaries and turn their back on the faithful who look unto their pastors to show them a foretaste of the mercy of God, which they preach in the gospels. Deeper research and dialogue are needed so as to help the Igbo Christians practice their faith without losing their Igbo identity⁷.

When a limit of 14 days is placed for instance for a burial with the argument that we want to save the people from expensive burial ceremonies, why must we as a Church at the same time insist that the family must pay all outstanding debts owed the Church by the deceased before he is granted Church burial. Some pastors will argue that these people refused to support the Church while they were living. We could also at the same time enquire whether such a person was even able to meet up his basic requirements while he was alive. Supporting the Church can also be understood and interpreted differently. Someone who gives his widow's mite at the offering box is in his way also supporting the Church and someone who is in good standing in his parish of domicile cannot be expected to have two parishes of domicile at the same time. Although he is expected to support his home parish (if he is living outside), this support cannot be raised to a necessary condition before burial is granted because c. 1177 states that any member of Christ's faithful may choose another Church for his burial. This requires only the information not the permission of the local pastor.

Furthermore why must some of our pastors insist on thanksgiving/'outing Mass' the next Sunday after burial and give a list of items that must be presented as gift as if we were trading with death? Why can we not offer Mass the next Sunday as part of our own

⁷. See Acts of the Apostles, Chapter 15.

contribution to reduce cost without asking for or expecting materials in exchange? Why must some pastors go the extra mile of organising second collection at burials for the so-called celebration of Masses for the deceased, when they know, that is mere exploitation?

Again this is also part of the dialogue we are advocating. We all know that bereaved families need help and understanding in order to cope with the pain and grief at the loss of loved ones. When we subject them to such horrors of demanding our own share of the booty and at the same time prohibiting elaborate funeral ceremonies, we only present ourselves as hypocrites.

The Church cannot just prevent her members from mourning and bidding farewell to their deceased relations, because mourning is not only an integral part of the human existence in all cultures, “mourning is [also] important for Christians [and] there is plenty of evidence of the psychological damage caused by suppressed grief”⁸. The Church should integrate in her pastoral work a programme to help people bid proper farewell to their departed members in affordable and dignifying ways, instead of imposing insensitive and draconic laws that have nothing to do with the proclamation of the Gospel message. The Second Vatican Council in Sacrosanctum Concilium clearly directed that Church funeral rites should be adapted to the customs and traditions of the local people⁹. Bearing this in mind, the following observations should be taken as guideline in approaching the issue of Church funeral rites in Igboland:

There is [...] a pastoral challenge to help Christians reflect on the meaning of death, to enable them to draw on the resources of Christian tradition, firmly rooted in the death and the resurrection of Christ. We must help them find ways and means of expressing

⁸. Owusu, V. K., *The Roman Funeral Liturgy*, p. 2.
⁹. Cf. SC 81.

their Christian faith and Christian hope within their contemporary culture. Liturgically, this means that we ought to stress the commendation of the dead to the all-loving and forgiving God. This commendation should be a sober and an unsentimental assurance of the forgiveness and love of God to whom the dead are commended. Every Christian funeral liturgy must express the fullness of the tradition creatively in order to minister to the needs of the bereaved community¹⁰.

With these introductory remarks we shall now endeavour in the subsequent sections of this chapter to present a glossary account of the development of the Catholic funeral rites over the years. In doing this, we have also to keep in mind that we are not undertaking a liturgical treatise, but rather only presenting an historical overview to help us fit into the historical and theological factors that informed and shaped the Church's response to real situations as evidenced in her liturgy.

3.2 Historical Development of Church Burial Rites

In every culture, religion and tradition, the death of any member of the society has always raised the question about the meaning of life and life after death. To answer this question, the various cultures and religions of the world have adequately developed rites meant to accord the dead a befitting farewell and to offer solace and succour to the bereaved family members. These cultures have then developed their religious beliefs regarding life and death and consequently developed their funeral rites,¹¹ which to a large extent are proper to their religious and cultural world-views.

¹⁰. Owusu, V. K., *The Roman Funeral Liturgy*, p.3.

¹¹. Cf. Althaus, R., *Heiligungsamt: Begräbnis – Einführung vor c. 1176*, in: MK, 45. Lfg. 2009, Rdn. 1.

3.2.1 Judaism

Christianity is agreeably an offshoot of the Jewish Religion into which Christ the saviour of mankind was born. He grew up as every other Jew observing the tenets of this religion. Jesus, who did not come to abolish the law but to fulfil it¹², gave us an example to follow in dealing with the various traditions and cultures, which play host to the Christian way of life. And so it is, that most of our present day Christian practices trace their origins back to the Jewish religion, obviously with some modifications to sooth various times and places. The Christian funeral rite is one of such practices, then,

the roots of the tradition of Christian burial are found in Judaism. In the Jewish community, burial has long been regarded as both an obligation and a work of mercy, and what scattered references we have to their ancient burial rites reflect both realism and simplicity¹³.

The Church also sees it as her obligation to bury in a proper manner her dead members¹⁴. This is also understood as a service to the dead, which cannot be ignored nor relegated. It is imperatively a Christian work of mercy.

When Jesus, the Lord died, he was buried according to Jewish custom.

Although the nearness of the Sabbath, coupled with fear of the authorities, prevented his friends from anointing the body in the usual way, both the synoptic and the Johannine gospels,¹⁵ while differing in

¹². Mt 5,17.

¹³. Upton, J., Christian Burial, in: The new Dictionary of Sacramental Worship ed. by Peter E. Fink, SJ, 1990, 140.

¹⁴. C. 1176 CIC.

¹⁵. Cf. Mt 27, 59; Mk 15,46; Lk 23, 53; 56; 24,1; Jn 14, 39-40.

specific details, record that his body was wrapped in linen, with myrrh and aloes between the bands and laid to rest in the tomb¹⁶.

In other words, he observed the Jewish custom from the moment of his incarnation (into this culture) till his death and burial (in the tomb). He now introduced something new which changed the whole meaning of death: he rose from the dead. From now on and with Christ, death no longer means the last thing to happen to mankind. Death became only a passage into a new life – an exodus of a sort, a paschal.

Before then however, the Jewish burial practices were not without a hint of superstition, just as it is in every culture. It was the custom, for example, to dispose of all water in the house after someone died. Explanations of this custom vary. Some believed that before leaving earth, the soul might have cleansed itself in the water; while others feared that the soul might live in the water if there were no room in the House of the Dead. Another explanation was the belief that the Angel of Death washed the blood of the dead off in the waters, or might even be lurking there, waiting for the next victim¹⁷. But Christ's death, burial and resurrection changed all those beliefs because the dead now proceeded to a new life of eternity.

Prior to the death of Christ, it was the 'Kaddish' – the prayer of sanctification – however, that gives us a synthesis of Jewish theology with regard to death. It was originally the concluding prayer of the synagogue liturgy, an eschatological prayer, similar to the Lord's Prayer. "Traditionally, the Kaddish must be recited every day for eleven months following the death of a parent, blood relative or spouse"¹⁸.

¹⁶. Upton, J., Christian Burial, p. 140

¹⁷. Cf. Ibid.

¹⁸. Ibid.

3.2.2 Early Christian Era

As the Christian community became more organised in the course of history, there was need to develop a funeral liturgy for its deceased members. In doing this however, the Christian community borrowed more from the Roman than from the Jewish tradition. Roman customs reveal an attraction to the mystery cults of the East, as well as, the practices in Egypt. Initially, Christians and pagans were buried side by side in cemeteries, with only decorations or inspirations to distinguish one grave from another. Early Christian symbolism depicted Jesus as tending sheep, fishing, or presiding over the heavenly banquet. In time however, as the theology of death emphasized more the paschal character of death flowing from the death of Christ, symbols of deliverance began to predominate. Jesus' miracles, particularly, the raising of Lazarus and the curing of the blind man, were popular representations¹⁹.

In early Christianity, there are evidence of 'funeral meals', which probably had their origin in the Roman custom of graveside feast, rather than in the Jewish "meals of comfort" held in the homes of the mourners. Roman funeral meals were connected with either the belief that the dead needed nourishment or the idea that the "tedium" of the dead would be relieved by such feasts. Often they became occasions of such scandalous behaviour that most of the knowledge about them is derived mainly from their condemnation by various bishops. The bishops did not condemn the practice but rather the scandal, which such excesses caused. They "then offered alternatives in line with the gospel message by encouraging prayer vigils, fasting and gifts to the needy as more appropriate customs to develop"²⁰. This could also be a lesson to the Bishops of Igboland. Instead of placing a blanket ban on the Igbo burial practices which, admittedly are sometimes not devoid of superstitious beliefs and practices, the bishops should encourage pastors of souls to explain the paschal character of the Christian's

¹⁹. Ibid.

²⁰. Ibid.

death. This will go a long way to helping the Igbos to still celebrate death exactly the same way as in the past but with a new emphasis on the hope and faith in the resurrection.

Another area of similarity between the Igbo approach to death and that of the early Christian community is in the method of expressing grief in the face of death.

The weeping and wailing associated with mourning, as well as black mourning garments, were also considered to be "unchristian", because despair rather than hope was seen to be their motivation. Consequently, devout Christians developed more suitable means of expressing their grief, replacing weeping and wailing with singing psalms and hymns²¹.

Without having any knowledge about the paschal character of death, the typical Igbo burial ceremony has always seen burial as a celebration of life, because of the Igbo's belief in the living-dead. And that made them to roll out the carpet during funerals. The Church could also build on this and direct attention on the resurrection as the reason for this practice.

3.2.3 Ordo 49

The oldest Roman ritual for death and burial is the Ordo 49, which dates back to the 7th century. It does not contain highly structured ritual the way we have it today. It rather presents an outline for the funeral service consisting of two parts: the first, which ritualized death, took place in the home of the deceased; the other, a burial ritual, took place in the church and cemetery²².

²¹. Ibid.

²². Ibid., p. 141f.

It provides that a Christian be given the Eucharist once his death appeared to be imminent. This reception of the Eucharist served as a token of the resurrection he or she was about to experience. From that time until the moment of death, family and friends would read the passion narrative to the one dying. The attention here focused on the duty of family members to offer the last company before death.

After death, the body was placed on a litter and carried in procession to the church. There the community recited an “office”, consisting of psalms, using the poignant antiphon: “May the angels lead you into paradise, may the martyrs welcome you and guide you into the holy city Jerusalem”²³. On the way to the grave Psalm 117 and 113, which formed part of the Jewish Passover meal are recited. The recitation of these Psalms signifies the belief that death is not a destruction of life but provides a passage into a new and better form of life. And it demonstrates that Christian death completes the paschal “exodus”²⁴.

3.2.4 The Rituale Romanum of 1614

One notices a dramatic shift in focus in the medieval period. The burial rites found in this period were mainly monastic in nature and structure, reflecting also monastic life and theology. But the Roman ritual's burial rite is a simplified version of the mediaeval one, designed for use in parishes. “While permitting local adaptation it remains the first official and universal funeral rite”²⁵. The Middle Ages emphasis on final judgment and the terror of death came to replace the earlier emphasis on entry into the joy of paradise²⁶. Gradually, the peaceful, paschal vision of the Christian's final journey as experienced in the paschal exodus was replaced by harsh scenes of the final judgment. Under this frame of thinking, God and

²³. Ibid., p. 142.

²⁴. Ibid.; see also Owusu, V. K., *The Roman Funeral Liturgy*, p. 26.

²⁵. News, B., *Medieval and Roman Catholic Burial*, in: *A New Dictionary of Liturgy & Worship*, Davies, J.G. (ed.), 1986, 119.

²⁶. Cf., Owusu, V. K., *The Roman Funeral Liturgy*, p. 35.

the company of angels were no longer waiting to welcome Christians who through death have completed their journey on earth. The angels instead stood guard, waiting to scrutinize them before the heavenly court. “Christian death ceased to be recognized as an accomplishment of the paschal exodus, and was seen instead as yet another ordeal”²⁷. And as Kevin Owusu rightly observes, “this is the characteristic of the ritual, the art and even the civilization in general, in the milieu from the fifteenth to the seventeenth century. This is precisely the epoch when the Roman Ritual was fixed”²⁸.

The Ordo of 1614 included funeral rites along with rites from sacraments and blessings. Prior to its compilation the various monasteries of the medieval era developed funeral rites for their members, which were to a large extent adapted to the monastic life. The Ordo of 1614 attempted therefore to bring order to the collection of monastic rituals that had been developing. The funeral rite reflects two trends of belief, which also shaped monastic and scholastic thinking: death as triumph or reward and death as ordeal. And these two trends find their expression in the ritual.

The service began at the door of the church, where the priest met the body of the deceased and the company of mourners. It is then followed by responsories and prayers of absolution. The priest then incenses the coffin and sprinkles it with holy water, symbolizing purification from sin. “These rites indicate an increased stress on need for forgiveness and fear of judgment, and also the value attached to the priest's prayer of absolution, an extension of his power to absolve the living”²⁹.

Although, trust in God's mercy underlies the prayers, they beg God repeatedly, to spare the sinner from the pains of hell³⁰. Psalm 113 (in

²⁷. Upton, J., *Christian Burial*, p. 142

²⁸. Owusu, V.K., *The Roman Funeral Liturgy*, p. 35.

²⁹. News, B., *Medieval and Roman Catholic Burial*, p. 119.

³⁰. Upton, J., *Christian Burial*, p. 142.

exitu) with its paschal and baptismal character is replaced with *De Profundis*³¹ and the tone of the psalmody becomes generally penitential. The stress changed from a peaceful, paschal vision of Christian death to a dramatic vision of judgment and a discourse on the fate of the sinner who runs the risk of falling forever into the fires of hell. God and his angels are no longer at the end of the road to welcome the dead person with open arms, but instead they are there to examine him or to judge him before the tribunal.

These developments were so prevalent that they found relevance and excellent expression in the *Dies irae, dies illa* chant, composed in the twelfth or thirteenth century. They modified somewhat the atmosphere of joy and hope that was characteristic of the ancient funeral liturgy with its paschal expectation, looking forward to the resurrection of the body and entrance into God's kingdom. The medieval liturgy was rather more conscious of sin and death, purgatory and judgment. Its preoccupation was more with the destiny of the soul than of the body³².

The apocalyptic character of the sequence *Dies irae* seems to be more reflective of the superstitions of pagan mythology than of a people formed in the resurrection of Christ³³. It is however, the celebration of the Mass, except when it is not possible, that is considered the main element of this Ritual. In this celebration, the Church implores the Lord so that the Eucharist, the sacrifice of Christ may purify definitely the soul of the dead, thus associating it with the elect³⁴.

It is also in the Eucharistic prayer that a note of genuine hope is heard in the liturgy. "For those who have been faithful, Lord, life is not ended, but merely changed; and when this earthly abode dissolves, an

³¹. Ps. 130 (Out of the depths I cry to you O Lord).

³². Newns, B., *Medieval and Roman Catholic Burial*, p. 119.

³³. Upton, J., *Christian Burial*, p. 142.

³⁴. Owusu, V. K., *The Roman Funeral Liturgy*, p. 36.

eternal dwelling place awaits them in heaven"³⁵. This image rather than the apparent superstitious eschatological fear of being swallowed by the pit is more compatible to Christian faith³⁶. And although "most of the prayers come from the ancient Sacramentaries of the seventh and eighth centuries and express confidence in the resurrection, this Ritual has many texts that manifest the fear and the uncertainty in the face of death and in the beyond"³⁷.

Conversely, the idea of the judgment peculiar to each individual gave rise to a concern for the proper manner of dying. "The rite retains some of the best of the ancient burial chants and prayers which stress welcome into paradise and bodily resurrection, yet the mediaeval emphasis on the need for the forgiveness and fear of judgment remains"³⁸. In this era under review, a good death, i.e. dying in the state of grace, redeemed everything. Importance was given to the way the dying person behaved and to the circumstances surrounding the death. This is what really counted and every other thing was immaterial. "Christian devotion gave the name of *artes moriendi* to this thinking"³⁹. Since the fifteenth century, then, the *artes moriendi* formed the guiding principle on how the individual had to shrieve his or her soul in preparation for death, and how to meet social and even ecclesial obligations to achieve a 'proper death'⁴⁰.

Unfortunately, it is this mediaeval mode of thinking and practice that still prevails till the present day in the Catholic Church in Igboland. According to this mind-set the Church still applies the mediaeval method of instilling fears into the faithful and preaches the message of threat instead of the good news of the mercy of God. This practice and mind-set have persisted in Igboland despite the words of the

³⁵. Upton, J., *Christian Burial*, p. 142.

³⁶. Ibid.

³⁷. Owusu, V. K., *The Roman Funeral Liturgy*, p. 35.

³⁸. Newns, B., *Medieval and Roman Catholic Burial*, p. 119.

³⁹. Owusu, V. K., *The Roman Funeral Liturgy*, p. 35.

⁴⁰. Ibid.

prayers at the final commendation after every funeral Mass which clearly emphasises the mercy of God and death as a passage into another world⁴¹.

3.2.5 The New Roman Funeral Ritual (1969)

The Sacred Congregation for Divine Worship on August 15th 1969 published for the universal Roman Catholic Church, the official Latin version of the Ordo Exsequiarum⁴². This publication actualised and completed the reforms initiated by the Second Vatican Council⁴³. The name itself Ordo Exsequiarum (the Rite of Funerals) suggests a notion of funeral that encompasses more than a single rite of farewell. There is broader understanding of exsequiae where the term includes all the rituals with which human death is surrounded, from the time of death itself until the moment the last farewell is bade and Christian consolation are completed⁴⁴.

The Fathers of the Second Vatican Council called for the revision of the funeral liturgy because of their realisation that the funeral Ritual inherited from the Council of Trent did not convey adequately the doctrinal richness of the Christian vision of death nor did it allow for the diverse cultural circumstances that made pastoral considerations more urgent. The Council Fathers therefore directed in its Constitution on Liturgy that the Roman Ritual of funerals be revised not only to correspond with the general programme of the council's constitution on the liturgy, but in such a way that it expresses more clearly, the paschal character of the Christian's death and corresponds

⁴¹. See 3.2.9 below.

⁴². Sacred Congregation for Divine Worship (SCDW), *Rituale Romanum ex decretis sacrosancti oecumenici Concilii Vaticani II instauratum auctoritate Pauli PP promulgatum, Ordo Exsequiarum, Editio Typica* (Roma: Typis Polyglottis Vaticanis, 1969) Engl. Trans.: *Rite of Funerals* (Washington: USCC/ICEL, 1971).

⁴³. Cf. SC 81.

⁴⁴. Cf. Owusu, V. K., *The Roman Funeral Liturgy*, p. 37.

more closely with the circumstances and traditions found in various regions⁴⁵.

Right from the onset, the revision of the Ritual was therefore meant to respond to a specific theology: to manifest better the paschal character of Christian death. It was also to respond to a specific anthropology: to take into account the diversity of the situations of different countries and cultures; and to be adaptive to the milieu and age of the dead⁴⁶.

To achieve this goal, a commission on the Reform of the Liturgy was set up. As a guide to its work, the commission sampled the various funeral practices in the world. These practices helped it to work out three main types of Ceremonies in the new Ritual. According to the first type, the traditional Roman Ritual especially from the 8th century, which was generally used in Italy and France, the principal celebration takes place in the church. According to the second type used principally in German-speaking countries where it has long been the custom, and in some places the law, not to bring the corpse into the church, the dead were taken directly from the house to the cemetery where the principal liturgical rite took place. Lastly, the third type whose essential funeral rite takes place in the house of the dead, either because of the great distance to the church or cemetery, or in view of local traditions. Such usage was found in many regions of Africa, and possibly, show better than the afore-mentioned types⁴⁷ that bringing a Christian faith-dimension to death and the disposition of the dead is a living tradition, capable of adapting to many different needs. The preparatory commission decided therefore to prepare three types of funeral rites. Besides, the editio typica was to be adapted by Bishop's Conferences (OE 22)⁴⁸.

⁴⁵. Cf. SC 81.

⁴⁶. Cf. Owusu, V. K., *The Roman Funeral Liturgy*, p. 37.

⁴⁷. Cf. R. Rutherford, *The Death of a Christian*, 1980, p. 152.

⁴⁸. Cf. Owusu, V.K., *The Roman Funeral Liturgy*, p. 38.

Unfortunately, the only adaptation the Bishops' Conferences in Igboland have made seems to be those, which actually have nothing to do with the cultural and pastoral needs of the Igbo people. Some of the dioceses have, for instance, forbidden the celebration of Masses at the homes of the deceased with the argument, that such Masses encourage an unnecessary display of wealth. Even Vigil Masses have been forbidden in some dioceses with the same reasons, even though it is an integral part of the Catholic Funeral Rites.

On the other hand however, these dioceses seem either to forget or are completely unaware of the reasons given above by the review commission for recommending such Masses as a way of offering pastoral assistance to bereaved families who cannot afford to bring the corpses of their dead relations to the church for the funeral Mass. There is no denying the fact also, that some wealthy families may want to have the Funeral Mass of their deceased members celebrated in the family compound as a way of displaying their profile and not because they cannot afford to bring the corpse to the church. This is the type of aberration, which should actually be controlled instead of an indiscriminate and a general prohibition.

Secondly it would seem that the Church cries wolf and compromises her credibility by issuing burial laws with the argument that she wants to reduce burial costs and avoid unnecessary display of wealth. But these dioceses, which issue such laws, also forget that in order to bring the corpse to the church, the families also need an ambulance with its attendant costs. If the church really wants to reduce burial costs it should heed the advice of the Ritual and allow the celebration of Funeral Masses (for those who cannot afford otherwise) at the homes of deceased members in order to save them the cost of ambulance and at the same time reduce the danger of unnecessary display of wealth on the way between the home of the deceased and the church. It is not necessarily the duty of the Church to dictate to

Catholic families how they should bury their dead as long as they do not go contrary to the gospel teaching and Christian practice⁴⁹.

3.2.6 Order of Christian Funerals (1989)

The Order of Christian Funerals (O.C.F) is a 1989 revision, reorganization and the English translation of the *Ordo Exsequiarum*⁵⁰ of August 15, 1969. The Rites have been rearranged and developed so that they represent a cohesive theology of death and Christian burial, and can be of greater use to ministers, both in preaching and in presiding. The general introduction is an expansion of the introduction given in the Latin edition, and also contains pastoral notes before each of the Rites. New composed prayers are added to provide for situations not addressed in the Latin edition⁵¹.

An outstanding characteristic of the Order of Christian Funerals is its ability to provide the Roman Catholic community with a coherent means of ministering to both the social and spiritual needs of the members of the community who face the searing pain of death. This ministry is seen as an important aspect of Christian Funeral, which does not merely focus on the internment, but also on a comprehensive pastoral assistance and support. The progression of Rites, is therefore meant to bring hope and consolation to the living by immersing the faithful again and again in the wonder of the paschal mystery⁵². Perhaps the most moving argument in understanding the importance the Ritual attaches to the pastoral ministry of the Church through the Funeral Rites is the summary given in Nr. 5 of the Praenotanda in the following words:

⁴⁹. See SC 81.

⁵⁰. See *Ordo Exsequiarum*, Editio Typica.

⁵¹. Cf. Upton, J., *Christian Burial*, p. 142f.

⁵². Cf. *Ibid.*, p. 143.

The Church through its funeral rites commends the dead to God's merciful love and pleads for the forgiveness of their sins. At the funeral rites, especially at the celebration of the Eucharistic sacrifice, the Christian community affirms and expresses the union of the Church on earth with the Church in heaven in the one great communion of saints. Though separated from the living, the dead are still at one with the community of believers on earth and benefit from their prayers and intercession. At the rite of final commendation and farewell, the community acknowledges the reality of separation and commends the deceased to God. In this way it recognises the spiritual bond that still exists between the living and the dead and proclaims its belief that all faithful will be raised up and reunited in the new heavens and a new earth, where death will be no more.

3.3 Theological Arguments of OCF

In the Praenotanda for the revised rites, the appropriate focus for the Funeral Rites is established by adequately bringing out the theological connection between the paschal mystery and baptism⁵³. Since baptism has already united the Christian to that great mystery of faith, it is at the Eucharist that this mystery is most completely celebrated. Therefore, the funeral Mass is the principal celebration surrounding the Christian burial⁵⁴. Some of those who argue for the denial of funeral rites to people living in irregular marriages base their argument on the fact that these people have already been excluded or have excluded themselves from the Eucharist by

⁵³. Cf. OCF 1- 15.

⁵⁴. Cf. Upton, J., *Christian Burial*, p. 143. – Praenotanda Nr. 5 “Christians celebrate the funeral rites to offer worship, praise, and thanksgiving to God for the gift of a life which has now been returned to God, the author of life and the hope of the just. The Mass, the memorial of Christ's death and resurrection, is the principal celebration of the Christian funeral”.

choosing their state of life. Consequently, they argue, since they did not participate in the Eucharistic banquet while alive, it should not also be celebrated for them at death. However correct this argument may appear to sound, it is important to note that the celebration of Mass as an essential part of the Catholic funeral rites is meant to establish the paschal connection between baptism, death and resurrection of the Christian. St. Paul also testifies to this intimate relation when he writes:

You have been taught that when we were baptized in Christ Jesus we were baptized into his death; in other words when we were baptized we went into the tomb with him and joined him in death, so that as Christ was raised from the dead by the Father's glory, we too might live a new life. If in union with Christ we have imitated his death, we shall also imitate him in his resurrection (Romans 6,3-5).

It is not the reception of the Eucharist therefore, that makes one a Christian, neither is it the criterion that qualifies one for Church funeral. It is the reception of baptism alone, through which God elevated the baptised to the rank of the elect that qualifies him. His exclusion from the reception of the Eucharist does not in any way disqualify him from this once acquired right. The Eucharist as thanksgiving brings to expression the faith that he now shares in the joy of the Resurrection. The Second Vatican Council's document on Liturgy also confirms this when it declared:

Christ 'achieved his task of redeeming humanity and giving perfect glory to God, principally by the paschal mystery of his blessed passion, resurrection from the dead, and glorious ascension'⁵⁵.

⁵⁵. SC 5.

Taking this conciliary pronouncement as a basis, the OCF makes a strong Christological argument by establishing the inseparable connection between the paschal mystery of Christ and the death of a Christian faithful. According to this, death is seen as liberation from sin and the beginning of a new life in Christ. The OCF expresses this optimism in the face of death in the following words:

In the face of death, the Church confidently proclaims that God has created each person for eternal life and that Jesus, the Son of God, by his death and resurrection, has broken the chains of sin and death that bound humanity⁵⁶.

And to bring this interrelationship between the new dignity of the faithful through baptism and the celebration of the Holy Mass and its place in the funeral of a Christian, the OCF further directs:

Christians celebrate the funeral rites to offer worship, praise, and thanksgiving to God for the gift of a life which has now been returned to God, the author of life and the hope of the just. The Mass, the memorial of Christ's death and resurrection, is the principal celebration of the Christian funeral⁵⁷.

And because the Eucharist is “a sacrament of love, a sign of unity, a bond of charity, a paschal banquet in which Christ is eaten, the mind is filled with grace, and a pledge of future glory is given to us”⁵⁸, the OCF further recommends that “it is most appropriate that the community gather to celebrate Eucharist together when one of its members dies. Full and active participation of the assembly is encouraged and members of the larger parish assume their usual roles

^{56.} OCF 1.
^{57.} OCF 5.
^{58.} SC 47.

in the parish's celebration of funerals as they would in the Sunday celebration”⁵⁹.

Consequently, the priest is the most appropriate person to preside at funeral rites. Only when this becomes impossible can a deacon or even a lay person preside⁶⁰. Although the Ritual did not elaborate on what constitutes 'impossibility' in this regard, it may be presumed that such impossibilities may arise from the dearth of priests or also physical or even legal impossibility. The Ritual, however gives examples of cases where a funeral Mass may not be opportune when it directs:

Funeral Masses may not be celebrated during the Sacred Triduum, on solemnities of obligation, or on the Sundays of Advent, Lent or Easter. Therefore, when it is not possible to have a funeral Mass, the funeral liturgy takes place outside Mass before the rite of committal. A Mass for the deceased would then be scheduled at another time. In such a case, a deacon or designated lay person may preside at the funeral liturgy⁶¹.

This is however left to ecclesiastical laws to determine and in case of doubt the local ordinary should be consulted⁶².

Not only are the members of the Christian community to be accorded Church funeral rites, but also unbaptized infants whose parents intended to have their child baptised before it died. Also members of other churches whose ministers are not available can also be granted Church funeral rites⁶³, as long as the deceased did not show

^{59.} Upton, J., Christian Burial, p. 143.
^{60.} OCF 14.
^{61.} OCF 151.
^{62.} Cf. c. 1184 § 2.
^{63.} Cf. OCF 18.

opposition to it while living. He does not necessarily need to have shown support for it. The reason for this opinion can be deduced from c. 1183 § 3 which states: “Provided their own minister is not available, baptised persons belonging to a non-catholic Church or ecclesial community may, in accordance with the prudent judgement of the local Ordinary, be allowed Church funeral rites, unless it is established that they did not wish this”.

Although the OCF did not expressly treat the issue of granting Church funeral rites to non-baptised, it is nonetheless presumed that this is not provided for. The reason for this presumption can easily be seen in the strong emphasis on the paschal character of Church funeral rites, which makes baptism the most important prerequisite. The non-baptised do not therefore share in this paschal dimension of Christian death and therefore, Christian burial.

This does not however, address a situation of a non-baptised who is surrounded by Catholic relatives and who at his death request for a Catholic burial. In this case, c. 1183 § 2 may be invoked, if there is enough evidence to the effect that the deceased, even though not baptised expressed or entertained the desire to be baptised while living.

3.4 The Funeral Liturgy - Pastoral Reflections on Church Burial Rites

In no other part of the OCF is the pastoral dimension of Church funeral more evident as in the section on the Funeral Liturgy.

At the funeral liturgy the community gathers with the family and friends of the deceased to give praise and thanks to God for Christ's victory over sin and death, to commend the deceased to God's tender mercy and compassion, and to seek strength in the proclamation of the paschal mystery. Through the Holy Spirit the

community is joined together in faith as one Body in Christ to reaffirm in sign and symbol, word and gesture that each believer through baptism shares in Christ's death and resurrection and can look to the day when all the elect will be raised up and united in the kingdom of light and peace⁶⁴.

Two forms of the funeral liturgy as the central celebration of the Christian community for the deceased are provided: 'Funeral Mass' and 'Funeral Liturgy outside Mass'⁶⁵. We have seen above that the Church especially encourages the celebration of the Mass when one of its members dies.

The funeral Mass begins with the greeting of the body and the mourners at the door; and the sprinkling of the casket with holy water as reminder of the dead Christian's baptismal incorporation into Christ's death and resurrection. A white pall recalling the white robe of Baptism and the Christian's dignity, may be placed on the casket in silence, then the procession goes forward and the Mass continues. Then the liturgy of the word, and the Eucharist. At the conclusion of Mass, after a moment of silent prayer, the song of farewell is sung by the community as the body is honoured with holy water and incense. The prayer of commendation and invitation to join the procession to the grave brings the funeral Mass to a close⁶⁶.

When the Funeral Mass cannot be celebrated for any of the reasons enumerated below, the second form of the funeral liturgy may be used

^{64.} OCF 138.

^{65.} Cf. OCF 137.

^{66.} Stravinskis, P., (ed.), Our Sunday Visitors' Catholic Encyclopedia, 1991, 421.

and a Mass for the deceased should be celebrated, if possible, at a later time⁶⁷. The reasons are:

1. When the funeral Mass is not permitted, namely, on solemnities of obligation, on Holy Thursday and the Easter Triduum, and on the Sundays of Advent, Lent, and the Easter season (See General Instruction of the Roman Missal, no. 336)
2. When in some places or circumstances it is not possible to celebrate the funeral Mass before the internment, for example, if a priest is not available
3. When for pastoral reasons the priest and the family judge that the funeral liturgy outside Mass is a more suitable form of celebration⁶⁸.

Although, the parish church is the ordinary place to celebrate the funeral liturgy outside Mass, “it may also be celebrated in the home of the deceased, a funeral home, parlour, chapel of rest, or cemetery chapel”⁶⁹. That means, if any of the conditions, which may prevent the celebration of funeral liturgy outside Mass occurs, the parish church still remains the most appropriate place for the celebration. Going outside the parish church can only be regarded as an unavoidable alternative. The situation in Igboland, is however, that of a systematic separation of funeral rites along the lines of those who die 'a good death' and the rest. Those who die a good death are taken to the church and the other ones are then celebrated elsewhere. The OCF provides for the two alternatives not because one is superior and the other inferior, but only as a decision to be taken in order to solve a pastoral problem.

⁶⁷. Order of Christian Funerals. Study Edition, Approved for use in the Dioceses of England and Wales and Scotland, London 1991.

⁶⁸. Cf. OCF 189.

⁶⁹. OCF 190.

In chapter 1.2 we discussed a similar scenario in the traditional Igbo burial ceremony prior to the advent of Christianity, where those who died a 'bad death' are either abandoned to wild animals in the evil forest or are simply left to the immediate family to bury. In the separation of funeral rites into '*full*' and '*partial*' church funeral rites as practiced by the Catholic Church in Igboland, we are sort of re-living the obnoxious Igbo practice which is supposed to have been replaced by a new practice borne out of the Christian message of hope and pastoral care of the Church towards her members and their bereaved families.

3.5 Prayer at the final commendation

Another area of pastoral emphasis is in the prayer at the final commendation. In it, the Church expresses its faith in the mercy of God and in the resurrection of the body. It also declares its willingness to treat the dead with respect and dignity in the following words:

With faith in Jesus Christ, we reverently bring the body of our brother/sister to be buried in its human imperfection. Let us pray confidently to God who gives life to all things that He will raise up this mortal body to the perfection and the company of the saints. May God give him/her a merciful judgment and forgive all his/her sins. May Christ the Good shepherd lead him/her safely home to be at peace with God our Father. And may he/she be happy for ever with all the saints in the presence of the Eternal King⁷⁰.

The Igbo translation of this prayer is even more powerful, bringing together both the pastoral and paschal dimensions of Church funeral rites. It makes the reverential treatment of the dead a Christian

⁷⁰. Final Commendation, in: Usoro Emume Sacrament Asaa na Ekperega, Ngozi ndiozoga, maka ndi Ukochukwu na ndi Uka Katolik, Revised Edition, Dona Chuks Publishers, Onitsha 2006, p.222.

obligation, thereby bringing out in a more beautiful way the Christian and even African understanding of death as a transition into a new life. This prayer in Igbo reads:

Anyi ka odiri, dika ezigbo ndi otu Kristi, ili ahu mmadu n'uzo kwesiri ekwesi. Ya mere ka anyi jiri nu umeala rio Chineke, ka okulite ahu nwanne anyi N... onye anyi na-eli ugbua a n'adighi ike, n'onodu ndi nso na n'ike nke Muo nso. Ka O meeka o sonye n'otu ndi nso na nke ndi niile kwerenu garaaga. Ka O gosi ya ebere n'ikpe nke O ga-ekpe ya. Nwanne anyi bukwa onye e ji onwu gbaputa, onye akwuorala ugwo o ji, onye e mere ka ya na Nna dikwa na mma, na onye e bukwara n'ubu aka nke ezigbo Onye nche Aturu. Ka Chineke mee ka o gaa sonye na nnukwu ogbako nke Eze ahu di ebighebi, n'anuri nke na-enweghi ngwucha, na mmeko nke ndi nso niile⁷¹.

This Igbo version which is today generally used in every part of Igboland is a first indicative that the directives of the Second Vatican Council that funeral rites reflect the sensitivities of the various cultures⁷² has been well received (at least on paper). The prayer, after reminding the Christian community of its obligation to bury the dead in the proper manner⁷³, goes ahead to acknowledge the fact that the faithful departed has been redeemed through the death and resurrection of Christ. The Church expresses the hope therefore, that he be admitted among the saints in heaven. As a conclusion, the Paradisum is sung by the assembly as a sign of this farewell and as a hand-over to the saints who should now accompany the dead in this last journey into eternity.

⁷¹. Ibid.

⁷². Cf. SC 81.

⁷³. This practice has its root also in the Igbo Culture of according respect to the dead as enumerated in chapter 1.2.

3.6 Canonical Reflections to the Catholic Burial Rites

Having now detailed out the theological and historical developments of Catholic funeral rites, we now undertake some preliminary canonical reflections arising from our findings. This is necessary in order to further prepare our mind to properly launch into our main topic: how to pastorally handle this group of people who “find themselves in this situation” at the moment of death⁷⁴. We shall thereby not lose sight of the provisions of c. 1184 CIC which forms our point of reference. In this canon the group of people to be denied Catholic Funeral Rites is clearly listed. Clearly stated therein is also the condition that must be fulfilled before the denial can be justified, namely, only if they do not show any sign of remorse before death. The bulk of the work with the canon will surely centre on the authentic interpretation of the canon itself focusing on what it means to show a sign of remorse. This task of authentic interpretation will be undertaken in Chapter 5 of this work in order to ascertain who is therein being referred to.

3.6.1 C. 1176 CIC

C. 1176 - § 1 states: “Christ's faithful who have died are to be given a Church funeral according to the norms of law”.

§ 2: “Church funerals are to be celebrated according to the liturgical books. In these funeral rites the Church prays for the spiritual support of the dead, it honours their bodies, and at the same time it brings to the living the comfort of hope”.

§ 3: “The Church earnestly recommends that the pious custom of burial be retained”.

§ 1 entails both the right of the faithful to be given Church funeral and the obligation of the Church to grant this right, as long as are there is no obstacle militating against it⁷⁵. For the deceased, it is a right that

⁷⁴. Cf. Circular Letter.

⁷⁵. See c. 1184.

cannot be arbitrarily denied⁷⁶. It is equally a right that carries with it an obligation on the part of both the family and the church represented by the parish priest or his assistant⁷⁷. These people should see to it that this right, which is due to the deceased, is granted to him. From this point of view, one may also talk about justice. Since justice is giving to someone what is due to him, the dead members of the Church can only be said to have received justice when their right to Church burial is accorded them.

C. 1176 § 2 on its part puts up a strong argument which seeks to highlight in very practical terms the threefold specific purpose of a church funeral:

- a) primarily to pray for the spiritual support of the person who has died, i.e. earnestly to ask that God's infinite mercy would admit this person to the eternal life merited by the death and resurrection of Christ [...],
- b) to honour this dead body which in life, by reason of baptism, had been a temple of the Holy Spirit,
- c) to bring to the living – obviously, in the first place, to the family, friends and other close associates of the person who has died – 'the comfort of hope', that Christian hope which carries the certainty of reunion in eternal life⁷⁸.

As we can see, c. 1176 § 2 is an attempt to give legal expression to the pastoral recommendations already given in the OCF, so that it translates into law. It becomes binding and may therefore not be arbitrarily denied.

⁷⁶ Cf. Sheehy, G., et. al. (ed.), Scheehy, G. et. al., *The Law, Letter & Spirit. A Practical Guide to the Code of Canon Law*, prepared by the Canon Law Society of Great Britain and Ireland in association with The Canadian Canon Law Society, London 1995. Titul III: Church Funerals: 667/2374.

⁷⁷ Cf. c. 530 5°.

⁷⁸ Sheehy, G., *The Law*, 668/2375

§ 3 repeals the earlier practice whereby cremation was forbidden. It reappraises the law of the church in view of recent knowledge and theology and recommends that the old practice of earth-burial be retained even as other disposal methods are recognised.

In order to appreciate the relevance of c. 1176 to our work, it may be wise at this juncture to have a look at its historical development over the years and see how the shift in emphasis in the Church's understanding of the theology of death has influenced this development. It is at the same time to be borne in mind that these developments have to a large extent been influenced by new research in the field of Christian anthropology and jurisprudence.

3.6.2 History of the Canons on Church Funeral (1917 to 1983 Code)

The 1917 Code of Canon Law treated the subject matter about Church funeral under the Titul “*De sepultura ecclesiastica*” (Ecclesiastical Burial) in *Titulus XII* of Part II “*De locis et temporibus sacris*” (Sacred Places and Times) of Book III titled: “*De rebus*”. The section contained 40 canons altogether (cc. 1203-1242) with two introductory canons (cc.1203-1204) and the following subtitles:

Chapter I	<i>De coemeteriis</i> – Cemeteries (cc. 1205-1214)
Chapter II	<i>De cadeveris translatione ad ecclesiam, funere ac deposition</i> - Funeral Services and Burial (cc. 1215 -1238)
Chapter III	<i>De iis quibus sepultura ecclesiastica concedenda est aut neganda</i> – The Right of ecclesiastical Burial (cc. 1239 -1242)

One of the intentions of Pope John XXIII after announcing the convocation of the Second Vatican Council was also the review of the 1917 Code of Canon Law. Shortly after the end of the Council, the Codex Review Commission was also constituted and given the

mandate to review the code in line with the teachings and theology of the council. This review commission was further divided into committees or “coetus”.

The committee for '*De locis et temporibus sacris*' had the assignment of reviewing the section on '*De sepultura ecclesiastica*'. It had its first meeting on 29th October 1971⁷⁹ and nine meetings during its 2nd Session from 20th – 24th March 1972⁸⁰, during which it adopted twelve canons⁸¹, which were integrated into cc. 28 - 40 of the SchLocTemSac of 1977⁸².

The first question to be resolved by this committee right from the beginning was the question of the title to this section. It was agreed that the former heading '*De sepultura ecclesiastica*' only expresses the prevalent practice of (earth)burial. But since the new *Ordo exequiarum* which was published on 15th August 1969 has a provision for cremation, it would be better to title the section either '*De exequiis ecclesiasticis*' or '*De funere ecclesiastico*'. The first suggestion was agreed upon, since it incorporates both liturgical and non-liturgical actions in its meaning. But the secretary of the committee pointed out that if the new code was going to lay emphasis on the funeral service (*funus*) instead of burial (*sepultura*), it would then be more appropriate for legislative systematics to integrate the subject matter into the section on the Sacramentals – '*De sacramentalibus*' instead of '*De locis sacris*' – Holy Places. Some others however saw in this suggestion on the restructuring of titles an unnecessary watering down of the importance and meaning of Christian cemeteries. This group saw no reason to deviate from the previous systematics. Others suggested the separation of the canons according to their contents. Finally, the committee agreed to postpone the issue of the title to their last meeting⁸³, but the two suggestions

^{79.} Comm. 35 [2003] 79.

^{80.} Comm. 35 [2003] 83-106.

^{81.} Comm. 35 [2003] 107-109.

^{82.} cf. Althaus, R., Kommentarzu c. 1176, in: MK, Rdn. 4a.

remained in the SchLocTempSac unchanged⁸⁴.

After two introductory canons (cc. 28-29), the subject matter was divided into the following chapters:

Chapter I	<i>De coemeteriis</i> (cc. 30–32)
Chapter II	<i>De cadaveris translatione ad ecclesiam, funere ac depositione</i> (cc. 33–38)
Chapter III	<i>De iis quibus sepultura ecclesiastica condenda est aut de neganda</i> (cc. 39–40)

When the deliberations resumed from 3rd to 5th December 1979⁸⁵, it was decided to adopt the title '*De coemeteriis*' because of the subject matter treated therein. However, some were of the opinion that the canons treating burial should be transferred to the title '*De sacramentalibus*'⁸⁶.

The present title and systematic as contained in the CIC/1983 was agreed upon at the last meeting of the committee. The subject matter was divided into '*De exequiis ecclesiasticis*' which was integrated into the section dealing with '*De ceteris actibus cultus divi*' and '*De coemeteriis*' into the section dealing with '*De locis et temporibus sacris*'⁸⁷. With that, the subject matter about Church funeral was finally settled⁸⁸ and that is how we came to the present constellation⁸⁹, which however has not also been perfectly satisfactory because of the indiscriminate use of the words burial and funeral Mass⁹⁰. C. 1176

^{83.} Cf. Comm. 35 [2003] 84-85.

^{84.} Cf. Althaus, R., Kommentarzu c. 1176, Rdn. 4a.

^{85.} Cf. Comm. 12 [1980] 345–357.

^{86.} Cf. Ibid., 345.

^{87.} Cf. Comm. 12 [1980] 384.

^{88.} For more information about the treatment of the cc. 1127 -1136 (*De exequiis ecclesiasticis*) im Sch CIC/1980 see also Comm. 15 [1983] 244 -246.

^{89.} For a more detailed account of the genesis of this canon, see Althaus, *Einführung* vor c. 1176 in MK, 45. Lfg. 2009. This is a transliteration of his account as contained therein.

forms the introductory part of the new revised title '*De exequiis ecclesiasticis*' - Church Funeral and spells out the Right to Church Funeral, its purpose and forms.

3.6.3 The Genesis c. 1176 CIC

C. 1230 § 1/1917 made it an obligation on the part of the parish priest not only to bury the dead members of his parish, but also to accompany the corpse from the house of the deceased to the church where the funeral Mass is to be celebrated by him⁹¹. This pastoral duty can only be delegated in very extreme cases of incapacity or legal hindrance on the part of the priest. Otherwise it is the obligation of the pastor to carry out this duty *in persona*.

C. 1231/1917 took up the issue of assistance and provides that the parish priest also has the duty to accompany the corpse from the church after the funeral mass to the graveside and to perform the internment ceremonies personally⁹². In cases of grave necessity, he can however delegate this duty to another priest⁹³, but not to any lay person⁹⁴. Since the determination of “cases of grave necessity” is a discretionary decision, it was therefore left to the concrete appraisal of a concrete situation to be able to make a judgement on the issue.

Secondly, the necessity must also be grave. Again the determination

^{90.} cf. c. 1185 and footnote 44 of chapter 1.

^{91.} C. 1230 § 1/1917 – “The proper pastor of the deceased has not only the right but also the duty, except in cases of grave necessity, to escort the body from the house to his parish church and to conduct the funeral services”.

^{92.} C. 1231 § 1/1917 – “On the termination of the funeral services in the church, the body is to be interred in the cemetery of the same church with the ceremonies prescribed by the liturgical books, unless the body is to be taken to some other cemetery in accordance with canons 1228 and 1229. The Priest who conducts the funeral services in the Church, has not only the right but also the duty (except in cases of grave necessity), to accompany either in person, or through another priest, the body to the place of burial”.

^{93.} Another priest here could also be the assistant parish priest or any other priest that may be available either by request or by representation.

^{94.} Lay person here could be a seminarian or the catechist or pastoral assistant in the parish.

of the gravity is a matter of discretion requiring a discretionary judgment, but it is never left to the arbitrary decision nor to abuse of the power of decision.

On its part, c. 1203/1917 prescribed emphatically that the dead body should be buried. It condemned outrightly the cremation of dead bodies no matter for what reasons and forbade the implementation of such orders in case they were contained in the will of the deceased. The Pontifical Commission for the Authentic Interpretation of the Codex⁹⁵ decided on 10th November 1925 that the ban on cremation was also to be observed, even if the will of the deceased for cremation was not carried out. The SC Conc⁹⁶ in reacting to various questions on different issues on 16th January 1920 also maintained its stand on the issue and the Holy See repeated the ban on 23rd February 1926 and gave insight into the background of the ban⁹⁷. Finally this decasterium justified the current legal position on the matter with the instruction 'De cadaverum crematione' on 5th July 1963⁹⁸.

In its decree '*Ritibus exsequiarum*' of 15th August 1969 for the introduction of the new *Ordo exsequiarum*, the SC Cult⁹⁹ emphasised the importance of the funeral service as an instrument with which the Church commends not only the dead to God but also reaffirms the hope of the faithful and their witness to the faith in the resurrection with Christ¹⁰⁰. In the same vein, the *Ordo exsequiarum* emphasised the fact that spiritual assistance and comforting hope are offered through church funeral services¹⁰¹ and the body of the deceased

^{95.} PCI = Pontificia Commissio ad Codicis Canones Authentice Interpretandos, later called PCLT = Pontificium Consilium de Legum Textibus Interpretandis.

^{96.} Sacra Congregatio Concilii.

^{97.} Cf. Althaus, R., Einführung, Rdn. 9.

^{98.} Cf. Ibid.

^{99.} Sacra Congregatio pro Cultu Divino.

^{100.} Cf. Althaus, R., Einführung, Rdn. 1a.

^{101.} Cf. OCF I, reproduced in: Einführung vor 1176 by Althaus, R., Rdn. 2b.

faithful who lived as the Temple of the Holy Spirit is thereby honoured¹⁰².

In line with the Pronouncement of the Fathers of the Second Vatican Council¹⁰³ the new *Ordo exsequiarum* explained: “the burial will be celebrated in the form common to the local people; it should however not be forgotten, that the Church prefers the burial of bodies just as Christ the Lord wanted his body to be buried. The danger of scandal or injury among the faithful should be avoided”¹⁰⁴. Reacting to an inquiry in January 1977 the SC Sacramentum¹⁰⁵ explained that the celebration of funeral Masses without the urn of the cremated body was not allowed¹⁰⁶. This is then the legislative systematic which found its expression in the c. 1176 CIC.

3.6.4 Right to Church Funeral Rites (c. 213 CIC in conjunction with c. 1176 CIC)

C. 1176 § 1, which opens the section on Church funerals, states clearly that Christ's faithful have the right to Church funerals¹⁰⁷. This right flows from their common membership to Christ's faithful through baptism¹⁰⁸ and finds its legal expression in the fundamental rights of all the faithful.¹⁰⁹ This right to Church funeral rites is therefore not tied to the reception or non-reception of the sacraments – that is, one does not lose the right to Christian funeral by the mere fact that one is for whatever reason excluded from the reception of the sacraments. Excommunication may, in some individual cases lead to a denial, insofar as the excommunicated loses every rights from the

¹⁰². Cf. OCF 3.

¹⁰³. Cf. SC 81.

¹⁰⁴. Cf. SC 81.

¹⁰⁵. OCF 15.

¹⁰⁶. Sacra Congregatio pro Sacramentis et Cultu Divino.

¹⁰⁷. Cf. Ochoa, *Leges Ecclesiae* V, n. 4493.

¹⁰⁸. Cf. also c. 1183.

¹⁰⁹. Cf. c. 204 § 1 “Christ's faithful are those who, since they are incorporated into Christ through baptism, are constituted the people of God [...]”. See also LG 10.

moment of excommunication, but only if the excommunication is public. Otherwise the fact of excommunication alone (if it remains in the internal forum) does not lead to denial of Church funeral. It is such a fundamental right in the Church, that it cannot therefore be arbitrarily renounced or denied by anybody. It is to this extent a right of all Christ's faithful, as long as they themselves however did not obstruct its application through their actions or inactions as detailed in c. 1184 CIC.

3.6.5 Obligation to celebrate Church Funeral Rites (c. 530, 5° CIC in conjunction with c. 1176 CIC)

The Church sees it as her obligation to grant Church funeral rites to every of her dead members. This obligation, which finds its legal expression in c. 1176 § 1 CIC, is to be fulfilled in accordance with the provisions of the law. That means:

1. The obligation exists on the part of the Church as long as the deceased member during his lifetime did not create a situation that will militate against the fulfilment of this obligation on the part of the Church.
2. The obligation is to be fulfilled in accordance with the liturgical norms issued by the competent ecclesiastical authority whose legal duty it is to perform the rites (§ 2).
3. Because it is a legal obligation, the ecclesiastical authority has therefore no choice between fulfilling it and not fulfilling it. If he is reasonably impeded, it is then his duty to delegate another priest to perform the duty in his name (c. 530, 5°; 549).

Canon 1176 CIC makes it clear that it is the official duty of the parish priest to ensure that the deceased members of Christ's faithful in his parish are buried in a dignifying manner. If for a grave reason he

cannot personally perform this duty, only then, can he delegate this duty to other persons in this order:

- a) first to his assistant or one of his assistants,
- b) any other Priest who is attached to the parish pastorally (e.g. resident Priests or Priests working in institutions near or within the Parish),
- c) any other Priest who has an attachment to the deceased or the bereaved family (e.g. relations, family friends, parish priests of domicile parishes in cases where the parish of domicile is different from the parish of burial, etc.),
- d) a deacon,
- e) in very extreme but exceptional cases a lay person can also be delegated but only when the above conditions cannot be met (e.g. Senior seminarian, catechist etc.).

In the cases of d) and e) the funeral Mass cannot be celebrated. That means that the function of the deacon or lay person will be limited to the Service of Words and the prayers at the graveside¹¹⁰.

This obligation however lies not only on the side of the ecclesiastical office holders (parish priest etc.), but also on the side of the family members and representatives of the deceased person¹¹¹. It is their duty to see to it that their deceased family member is given a proper Church funeral (as long as he did not provide otherwise before death). It is therefore imperative on them to inform the parish priest as soon as the death occurs and to impress it on him to stand to his obligation

^{110.} c. 213 – “Christ’s faithful have the right to be assisted by their pastors from the spiritual riches of the Church, especially by the Word of God and the sacraments

^{111.} Cf. Aymans-Mörsdorf, Kanonisches Recht, Bd. III, p. 550.

of giving him a decent Church funeral as long as he is not prevented by law¹¹². They have also the obligation to follow the instructions of the pastor whose duty it is to offer the family all the necessary assistance it needs to overcome the tragedy of death.

^{112.} Cf. Sheehy, G., The Law, p. 667 Nr. 2374.

CHAPTER 4

Denial of Catholic Funeral Rites

(c. 1184 CIC/ c. 1240/1917)

C. 1184 of the 1983 Code of Canon Law states:

§1 – Church funeral rites are to be denied to the following, unless they gave signs of repentance before death:

- 1° notorious apostates, heretics and schismatics;
- 2° those who for anti-christian motives chose that their bodies be cremated;
- 3° other manifest sinners to whom a Church funeral could not be granted without public scandal to the faithful.

§2 If any doubt occurs, the local Ordinary is to be consulted and his judgement followed.

Canon 877 of the Code of Canon Law of the Eastern Churches (CCEO) is similar but not identical. It provides:

Sinners are to be deprived of an ecclesiastical funeral who could not be granted it without public scandal to the Christian faithful unless prior to death they gave some signs of repentance.

We have so far been able to present the cultural, historical as well as the theological and pastoral dimensions of Church Funeral Rites. We have also seen the development in the course of history in the field of theology and canon law, which eventually led to a shift in emphasis in ecclesiastical and liturgical laws. We have equally seen that the granting of ecclesiastical funeral rites is a right of all Catholic faithful. The law states clearly in c. 1176 CIC that it is the right of Christ's faithful to be accorded ecclesiastical funeral rites. In the present chapter, attention is going to be focused on those exceptional canonical situations, which may lead to a denial of this right. The legal basis for our discussion is obviously c. 1184¹ of the 1983 Code of Canon Law as presented above.

The preceding c. 1183 contains a list of those to whom church funeral rites could be conceded. They include non-baptised infants whose parents intended to have them baptised before their death, baptised non-catholics whose proper pastors cannot be reached and whose relatives request for a Catholic funeral ceremony.

C. 1184 on its part speaks specifically of those who are to be denied church funeral rites. But it is not an outright denial, rather a denial with very strict reservations. It can be said to be a denial with reluctance. That is why the spirit of the interpretation of this canon is more important than an uninformed and heavy-handed application. These groups of people enumerated in this canon are to be denied Church funeral only if they do not show any sign of repentance before

¹ Cf. Aymans-Mörsdorf, Kirchliches Begräbnis, in: Kanonisches Recht, Lehrbuch aufgrund des Codex Iuris Canonici, Band III, 2007, p. 545f.; Barry, R., Should the Catholic Church Give Christian Burial to Rational Suicides?, in: Angelicum 74 (1997) pp. 513-550; Endlein, E., Kirchliche Beerdigungen von aus der Kirche Ausgetretenen: PastBl 47 (1995) pp. 378-379; García, E., Funeral for Masons: Boletín Ecclesiástico de Filipinas 73 (1997) pp. 751-754; Irwin, K. W., Dying, Death and Burial – Overview of Christian Practice, in: The Jurist 59 (1999) p. 175-190; Primetshofer, B., Die Beerdigung von Andersgläubigen auf konfessionellen Friedhöfen: Ars boni et aequi in: Kremsmair, J., Pree, H., (hrsg.), Gesammelte Schriften von Bruno Primetshofer, Berlin 1997 (KStuT 44) pp. 957-960; Provost, J. H., Canonical Aspects of the Treatment of the Dead, in: The Jurist 59 (1999) pp. 203-213; Wagner, W. J., Death, Dying, and Burial: Approaches in Religious Law and Practice, in: The Jurist 59 (1999) pp. 135-146.

death. The correct understanding and interpretation of ‘sign of repentance’ in accordance with c. 18 CIC is going to be the decisive element therefore in the application of the canon.

Compared with its counterpart in cc. 1203-1242 of the 1917 Code, this title is considerably shortened and simplified. Taking as its starting point, the injunction of the Vat. II that ‘funeral rites should express more clearly the paschal character of Christian death’,² its general thrust is aptly expressed in the revised Rite of Funerals³ in the following words:

At the funeral of its children the Church confidently celebrates Christ’s paschal mystery. Its intention is that those who by baptism were made one body with the dead and risen Christ may with him pass from death to life. In soul they are to be cleansed and taken up into heaven with the saints and elect; in body they await the blessed hope of Christ’s coming and the resurrection of the dead ...

Because of the communion of all Christ’s members with each other, all of this brings spiritual aid to the dead and the consolation of hope to the living. As they celebrate the funerals of their brothers and sisters, Christians should be intent on affirming with certainty their hope for eternal life⁴.

C. 1240 of the 1917 Code, which is the predecessor of c. 1184 CIC, contained a more detailed list of those to be denied church burial. It stated:

§1 – The following are deprived of ecclesiastical burial, unless before death they gave some signs of repentance:

² Cf. SC 81.

³ Cf., Scheehy, G., Nr. 2373.

⁴ SCDW 15. VIII.1969 nn. 1-2, DOL (Documents on Liturgy), nn. 3373-3374.

1° Notorious apostates from the Christian faith, or persons who notoriously belong to heretical or schismatical sect or to a Masonic sect or other society of the same sort;

2° Persons who are excommunicated or interdicted, after a condemnatory or declaratory sentence;

3° Those who killed themselves of deliberate purpose;

4° Those who die in a duel, or from a wound received in a duel;

5° Those who gave orders that their body be cremated;

6° Other public and manifest sinners.

§2 – In any of the above cases, if a doubt arise, the Ordinary should be consulted if time permits; if the doubt persists, the body should receive ecclesiastical burial, but in a such a way that scandal be avoided”.

A comparison of the two codes will reveal that the penalty of denial has now largely been dropped⁵ in the new Code to reflect the effort of the Pontifical Commission on the Review of the Code of Canon Law to respond to requests that the law offers a listing of sins warranting denial of burial even if such a listing were not a taxative one⁶. Although this request was not completely granted, the new canon (1184 CIC) indicates the very few occasions, where the right to ecclesiastical funeral rites may be denied.

In the interpretation and application of this canon therefore, it should be noted that: “the denial of a Church funeral to one of its members has always been an extremely sensitive issue in the Church’s law”⁷. This sensitivity touches on the very nature of death itself as a moment of immense importance to the destiny of every human being.

⁵ Cf. Thomas, R. R., Commentary to c. 1884, in: Coriden, J. A., et. al., (ed.), The Code of Canon Law. A Text and Commentary. Commissioned by The Canon Law Society of America, New York 1985, p. 839.

⁶ Cf. Comm 12 (1980), 355-356.

⁷ Scheehy, G., The Law, Nr. 2390.

On the other hand, this sensitivity is equally ontological and anthropological. That means, it is intrinsically deep rooted in the human nature. This sensitivity is not foreign to ecclesiastical laws and that is why “even in the 1917 Code (cc. 1239-1242) a considerable care was exercised to seek a balance between, on the one hand, a necessary discipline and, on the other, a true understanding of the mercy of God, revealed principally in the death and resurrection of Christ”⁸. Although, the 1917 Code of Canon Law, in line with the Tridentine theology which shaped it took a too much legalistic approach in the interpretation, as well as the application of c. 1240/1917 with regard to the list of those to whom ecclesiastical funeral should be denied, the present Code in seeking to strike a more pastoral balance to the provisions of the law took into account two very relevant factors, namely that:

- a) the primary purpose of a Church funeral is to pray ‘for the spiritual support of the dead’ (c. 1176 § 2): this consideration alone induces a strong reluctance to deny such a funeral to any of its members;
- b) all liturgical actions (of which funerals are certainly one) are not private, but are celebrations of the Church itself as the “sacrament of unity“ ... (which) concern the whole body of the Church, making it known and influencing it (c. 837 § 1).⁹

On the backdrop of these two considerations, it becomes evident therefore that the Church does not see the denial of Church funeral rites to any of her members as a good option. Rather, it is an option that must be properly weighed and should be resorted to only when every other solution has failed. This is evident also in the formulation of the canon: ‘only if such people do not exhibit any sign of contrite

⁸ Comm 12 (1980), 355-356.
⁹ Ibid.

before death’. That means therefore, no matter what canonical delicts one may have committed during ones’s life time; and no matter the degree of persistence in this delict, the legislator places more emphasis on the sign of contrite exhibited by this person involved. This sign of contrite must neither be sacramental (through confession) nor declarative (through any public act), but a simple desire to maintain union and attachment to the Church would also suffice, as we shall see later.

Moreover, the law decrees that these persons are to be denied a Church funeral, because of their deliberate and irrevocable decision to secede from the unity and community of the Church¹⁰. It is only after the establishment of the existence of such a willful secession, that the Church makes the reluctant decision to deny any person the right to ecclesiastical funeral rites. It is also in the light of these considerations that c. 1184 CIC has to be understood and applied¹¹. This explains also why – as in c. 1240 § 1 of the 1917 Code – the denial of a Church funeral to those named in c. 1184 § 1 CIC, does not apply ‘if they gave some signs of repentance before death’.

4.1 The Code of Canon Law 1983 (CIC)

On the surface appearance, the Code of Canon Law of 1983 appears to have a clear stand on the fate of those living in irregular marriages. But on a closer look it does not. The 1917 Code provided in c. 855 that these people cannot be admitted into the sacraments especially of the Eucharist. The canon says:

“Catholics who are publicly known to be unworthy (for example, those who have been excommunicated or interdicted or who are manifestly of ill repute) must

¹⁰ Cf. Ibid.

¹¹ It must therefore be clearly understood that the denial of a Church funeral is never a penal measure in respect of a person’s conduct during life.

be refused Holy Communion until their repentance and amendment have been established, and satisfaction has been made for the public scandal which they have given. Occult sinners, who secretly ask for Holy Communion, shall be refused by the minister if he knows that they have not amended; if, however, they seek Communion publicly and the priest cannot pass them by without scandal, he shall not refuse them”.

The use of the word ‘must’ by the legislator in the first part of the Canon expresses the highest and strongest form of prohibition in legal terms.

The 1983 Code on its part is a little reserved and not so explicit in its regulation. This maybe, because of the heavily theological background of the Code which is based on the understanding of the second Vatican Council of all Christ’ faithful as the People of God. C. 915 CIC which is based on c. 855/1917 states simply who should be excluded from the Eucharistic Banquet without being exhaustive. Excommunicated and interdicted Catholics are excluded from the sacraments by the virtue of the penal law¹². But “other categories of manifest and grave sins are not so neatly discernible”¹³. For this reason, it may not be very easy to categorize people living in non-sacramental marriages as public sinners since the concept of sin falls outside the scope of Canon Law. John M. Huels however suggests rightly that “any prudent doubt about either the gravity or the public nature of the sin should be resolved by the minister in favor of the person who approaches the sacrament”¹⁴. On the issue of scandal to the community, it is also important to remember that scandal may sometimes be relative and situational depending on cultural and

¹². Cc. 1331 § 1, 2°; & 1332 CIC.

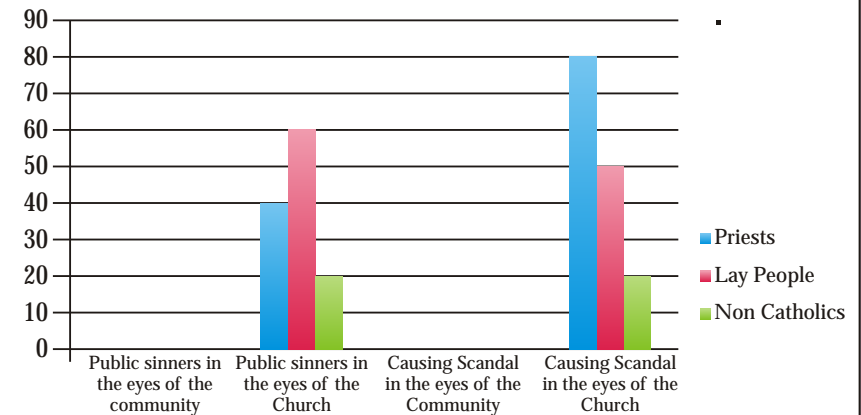
¹³. Huels, J. M., Commentary to c. 915, in: Corriden, J. A., et. al., (ed.), The Code of Canon Law. A Text and Commentary, commissioned by the Canon Law Society of America, 1985, p. 653.

¹⁴. Ibid.

environmental situations. In this regard, Huels again rightly observes, that “the fact of actual scandal is [...] culturally relative. What causes scandal in one part of the world may not cause scandal elsewhere”¹⁵. And this is exactly the point, which the hierarchy in Igboland has refused to acknowledge. That we cannot blindly transfer foreign cultural ideas into the Igbo Culture in the name of Christianity cannot be over-emphasized. The example of the first Council of Jerusalem in Acts 15 serves this purpose adequately.

People who are living in canonically irregular marriages in Igboland, but in accordance with the stipulated traditional marriage procedures as enumerated above (whether in monogamous non-sacramental or polygynous marriages), can never be regarded as public sinners who are causing scandal in the community (simply because they are not sacramentally married). All those interviewed during the research work did not equally consider them as public sinners in the eyes of the local community. Due to the nature of their religious up-bringing and oblivious of the already mentioned letter of the Congregation of the

Table 3:
About those living in irregular marriages



¹⁵. Ibid.

Faith, some of the respondents to the questionnaire to this work (especially priests) were however also quick to add that our target group were public sinners in the Church's understanding and therefore causing scandal.¹⁶

Perhaps the most appropriate way to demonstrate this point further is with the example given by J.M. Huels in expatiating this view. He states:

“In North America, the faithful often are more scandalized by the Church's denial of sacraments and sacramental than by the sin that occasions it, because it seems to them contrary to the mercy and forgiveness commanded by Christ¹⁷.”

Not only in North America are the faithful more scandalized by the Church's denial of the works of mercy and forgiveness, but also in Igboland. And that is why this issue demands an action by the hierarchy in order to check this scandal. The problem is however that the Church hierarchy always looks and locates the scandal everywhere except in its own actions.

Scandal is only understood as being caused by the Laity. Unfortunately the hierarchy of the Igbo Church always overlooks the scandal of denial of Church funeral rites and that is why this practice has continued to thrive even when people leave the Church because of it and even after the directives of the highest Church authorities that the practice has become obsolete¹⁸.

Admittedly these people have contravened the provisions of the Code of Canon Law by not observing the rules guiding Catholic marriage, and are consequently and justifiably excluded from the reception of

¹⁶. See Table 3.

¹⁷. Huels, Commentary to c. 915, p. 653.

¹⁸. Cf. Circular Letter.

the sacraments. But within the context of the moral obligation of the Church to bury her dead members in a dignifying manner (c. 1176 § 1), the question to be raised in this research work is whether it is still canonically, pastorally and morally justifiable in the twenty-first century to deny these people living in irregular marriages Catholic Burial Rites.

In order to answer this question; we wish first of all to examine whether the people living in irregular marriages fit in to the provisions of c. 1184 CIC in connection with c. 751 CIC. In addition, and as a guide to interpretation and application of c. 1184 CIC, we wish once again to draw attention to the letter of the Sacred Congregation for the Doctrine of Faith on 29th May 1973 and the consequent decree of the same congregation of 20th September 1973 with which people living in irregular marriages were expressly and officially removed from the list of public sinners and thereby abrogating the provisions of c. 1240 of the 1917 code.

4.2 Those to be denied Church Funeral

In comparison to the 1917 Code, the new Code has however reduced the list, while maintaining the basic teaching that denial is not the principal aim of the canon but only when no sign of contrite is discernible. According to the revised Code of Canon Law of 1983, the following people are to be denied ecclesiastical funeral rites if at the point of their death, they did not show any sign of remorse: Apostates, heretics, schismatics and public sinners. Let us begin by posing the question: Who are they?

4.2.1 Apostates

C. 751 CIC describes apostasy as “the total post-baptismal repudiation of the Christian faith”. According to the Shorter Oxford English Dictionary, to repudiate means to 1) “to reject; to refuse to accept [...] or to have dealings with [...]”; 2) to reject (opinions,

conduct, etc.) with condemnation or abhorrence; 3) to reject as unauthorized or as having no binding force on one”¹⁹. Repudiation, according to the above is the rejection and denial of the truth or validity of the Christian faith. The repudiation of a once accepted Christian truth therefore amounts to a renunciation of the Christian faith itself. And since it is through the sacrament of baptism that one becomes a Christian and thus, qualifies for a Christian funeral, a repudiation of that, which makes one what he is (Christian), is tantamount to an automatic disqualification from Christian funeral rites. Positively considered, Apostasy includes also publicly belonging to a non Christian Religion or membership in a secret cult like the Freemasons²⁰.

The all-important question then is, does living in an irregular marriage mean repudiation, or better said a rejection of an article of the Christian faith or membership in a secret cult?

Otherwise put - is the sacrament of matrimony an article of faith, whose rejection or repudiation results in the sin of apostasy? The Christian articles of faith are found in the Creed and are summarised by the belief in the Holy Trinity, the Holy Roman Catholic and Apostolic Church, the Resurrection of the body and life everlasting. The sacraments are not part of these articles of faith, even though they are a great source of divine grace for the faithful. While the other two delicts in this canon – heresy and schism - are delicts against the Catholic faith, apostasy is a delict against the Christian faith in general. But not even a denial of the Catholic faith can be classified as apostasy; at most it may qualify as heresy or schism but certainly not apostasy.

¹⁹. “Repudiate“, in: The Shorter Oxford English Dictionary, Oxford, 1974.

²⁰. Cf. The Declaration of the SCDF, 17th February 1981: AAS 73 (1981) 240f., reprinted in AfkKR 150 (1981), p. 172f.

In our case however, it is not about the denial of the sacrament of matrimony (which relates to the Catholic faith) but about the ability or inability to fulfil the conditions necessary before a sacramental marriage can be entered into. Therefore, those Catholics who live in an irregular marriage are not apostates and do not fit into the group to be denied Church funeral rites on the ground of apostasy.

Another condition for the application of this canon is that the sin of apostasy must be notorious, otherwise Church funeral may not be denied. The revised Code of Canon Law does not discuss notoriety. In the light of the 1917 Code of Canon Law however, it may be understood in two different ways: notoriety in law and notoriety in fact. “Notoriety in law follows the sentence of a competent judge or a judicial confession. Notoriety in fact means that an action is publicly known or has been committed in such circumstances that it is entirely impossible to conceal it or offer any legal justification for it”²¹.

For the canon to apply therefore, “a properly strict interpretation of the canon seems to require that notoriety in law be verified before ecclesiastical burial is denied”²². Furthermore, it should be noted that those who are baptized into non-Catholic churches are not technically considered heretics or schismatics”²³ since these delicts are strictly against the Catholic faith per se.

4.2.2 Heretics

The next group to be denied ecclesiastical funeral according to c. 1184 are heretics. Heresy according to c. 751 is “the obstinate post-baptismal denial or doubt about some truth which is to be believed as part of divine and Catholic faith”. Heretics obstinately deny or doubt a divinely revealed truth and thus make the life of faith difficult since one cannot live that, which one does not believe. Let us assume that

²¹. C. 2197/1917.

²². Sheehy, G., The Law, Nr. 2390.

²³. UR 3.

living in a sacramental marriage is a divine truth, can we confidently prove that those Catholics living in irregular marriages obstinately deny this truth? Does the mere fact of living in a non-sacramental marriage amount to doubting the reality of the sacrament of matrimony? Cc. 1096 § 1 CIC und 1101 § 2 CIC provide that the will to enter into a valid marriage must include the acceptance of the essential qualities and properties of marriage which are: the indissolubility and unity of the marriage bond, which is ordered to the well-being of the spouses and to the procreation and bringing of children²⁴.

From the ongoing and from our review of the causes of non-sacramental marriages²⁵, it is evident that those Christians living in irregular marriages do not do so because they do not believe in the sacrament of matrimony nor do they express with it, their rejection of the teaching of the Church on marriage. We have rather found out, that most people in this group ‘found themselves in the situation’²⁶ due to different reasons, some of which were beyond their control. Consequently, the fact that one is living in an irregular marriage does not immediately mean a denial or doubt of the sacrament of matrimony. They therefore do not qualify as heretics and should not be treated as such by denying them Church funeral rites based on c. 1184 § 1 CIC. Every case needs to be studied and understood within its appropriate context in order to achieve maximum pastoral regulation.

Moreover the establishment of the denial of divinely revealed truth in this situation is also governed by the principle of notoriety as stated

²⁴ For matrimonial consent to exist, it is necessary that the contracting parties be at least not ignorant of the fact that marriage is a permanent partnership between a man and a woman, ordered to the procreation of children through some form of sexual cooperation (C. 1096 CIC). „If, however, either or both of the parties should by a positive act of will exclude marriage itself or any essential element of marriage or any essential property, such party contracts invalidly“ (c. 1101 § 2 CIC).

²⁵ See chapter 2.3.1.

²⁶ This expression “to find oneself in the situation” was correctly used by the SCDF in its circular letter of 29th May 1973.

by c. 1184 CIC. Until this notoriety is proven in the external forum, no action may be taken. If however it is established in the eternal forum that one chose to live in an irregular marriage in order to show his resentment or denial or doubt of the sacrament of matrimony, then a denial of Church funeral on the basis of c. 1184 § 1 CIC may not be inevitable.

4.2.3 Schismatics

Schism is the ‘post-baptismal refusal of submission to the Holy Father or of communion with the members of the church subject to him’ (c. 751 CIC). Schismatics by this definition are those who obstinately and consciously through their actions virtually cut themselves off from ecclesial communion. Great care must however be taken here on the distinction between ecclesial communion and reception of the sacrament of Holy Communion. Although the sacrament of Eucharist and its reception bring out in a more visible manner the bond of unity existing among Catholic faithfuls, there are still other forms of maintaining contact with the members of the Church²⁷. These other forms, which may be expressed in divergent ways have to be taken into consideration when appraising the delict of schism²⁸. Even though many are wont to see any act by the faithful, which excludes them from the reception of the sacraments as a sign of schism, care must be exercised in drawing rash and theologically illogical conclusions especially when it comes to the issue of sanctions and penalties²⁹. One, who abstains from the reception of the Holy Communion until after the reception of the sacrament of Reconciliation because he is, for instance conscious of a grave sin, cannot be regarded as a schismatic merely on this fact of the self-exclusion from Holy Communion. Such a person still remains a member of the Church, but has temporarily cut himself off from participation at the table of the Lord.

²⁷ Cf. circular Letter.

²⁸ See circular letter.

²⁹ See c. 18 CIC.

Similarly, the people who are living in irregular marriages and are therefore excluded from the reception of the Holy Communion cannot be regarded as schismatics for that mere fact of separation. There still exists a greater chance through the mercy of God that they can regularize their marriages. Real and actual schism must therefore have to be established.

Consequently, the mere fact of living in an irregular marriage and the subsequent exclusion from the Holy Communion does not make one a schismatic and does not therefore qualify one for denial of ecclesiastical funeral.

4.2.4 Public Sinners

The next group of people to be denied Church funeral rites according to c. 1184 § 2 CIC are public sinners. ‘Public sin’ with its subsequent scandal is something that may be relative, cultural or even situational. Consequently, it is a terminology, which does not allow itself to be pinned down. Who are these public sinners who sum up the list of those to be denied funeral rites?

Among such ‘manifest sinners’ would be included e.g. those who had publicly espoused atheistic ideologies, those who were publicly known to have been members of a group or society whose purpose was to inveigh against the Church, etc. Under the 1917 Code (c. 1240 § 1, 6°) some would have included in this category those who had been living in an invalid or otherwise irregular marital union. “Excluded from funeral rites are only those who are manifest sinners whose funeral will cause public scandal, such as gangsters who have given no signs of repentance”³⁰.

Included as public sinners are also those who are under an imposed or declared penalty of excommunication or interdict³¹, but they are not

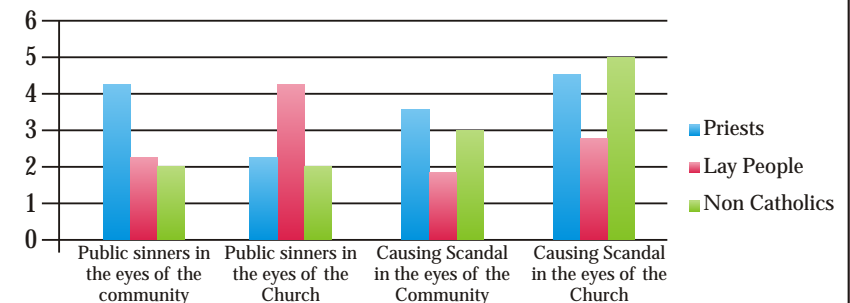
³⁰ Huels, J.M., The Pastoral Companion: A Canon Law Handbook for Catholic Ministry, Montreal 2009, p. 352f.

³¹ Cf., c. 1331.

even to be denied Church funeral, if there is no danger of public scandal, for instance if the penalty is not known to the community³². Making reference to the circular letter of the SCDF John M. Huels maintains: “Ordinarily, those who are in invalid marriages may have a Church funeral if they had preserved their attachment to the Church and there is no scandal”³³.

Many pastors in Igboland however tend till today to classify people living in irregular marriages in line with c. 1240/1917 as public sinners because in their view they are persisting in sin and refuse to repent by continuing to live together without Church marriage. And for them that amounts to causing scandal among the faithful. In an interview conducted to ascertain this fact, 99% of the respondents regarded these people as public sinners in the eyes of the Church (see table 4 below) and as such fit in to the group to be denied ecclesiastical funeral rites.

Table 4
Do you think that people living in irregular marriages are:



³² Cf. Huels, J.M., The Pastoral Companion, p. 353.

³³ Ibid.

It is however necessary at this point to draw the attention of such pastors and infact the attention of the Church in Igboland once again to the letter from the Sacred Congregation for the Doctrine of Faith issued on 29th May 1973 which inter alia reads as follows:

the celebration of ecclesiastical burial should be made easier for those Catholics to whom it had been denied by the provisions of c. 1240 (of the 1917 Code). As an amendment to this canon to the extent required, a new set of regulations will be promulgated as soon as possible. On the basis of the new arrangement the celebration of liturgical funeral rites will no longer be forbidden in the case of the faithful, who, even though involved in a clearly sinful situation before their death, have maintained allegiance to the Church and have given some evidence of repentance. A necessary condition is that there be no public scandal for the rest of the faithful. It will be possible to lessen or forestall such scandal ... to the extent that pastors explain in an effective way the meaning of a Christian funeral. Then the majority will see the funeral as an appeal to God's mercy and as the Christian community's witness to faith in the resurrection of the dead and life eternal³⁴.

This letter, which later shaped the formulation of c. 1184 CIC, has to be taken into serious consideration in interpreting and applying the same canon in Igboland. It is also obvious from this letter, that there exists no more legal, moral, pastoral or even liturgical basis to indiscriminately deny Catholic funeral rites to people living in

³⁴ DOL [documents on liturgy] n. 3398, reported also in CLD [canon law digest] 8 862-863. By way of followup to that Letter, cf. SCDF decr. 20th September 1973 which declared that 'a funeral is not to be forbidden for public sinners if before death they have given some evidence of repentance and there is no danger of scandal to other members of the faithful': DOL n. 3399: CLD 8 864. Cf. Also Comm 12 (1980) 356.

irregular marriages. Care has to be taken however to examine individual cases before arriving at a judgment. This is because even "the mere non-practising of the faith does not exclude the right of a Catholic to a Church funeral"³⁵ not to talk of someone who takes part in the life of the Church.

Furthermore, manifest sinners must truly be 'manifest'. The offense must clearly have been public, not merely 'known' by the individual or a small group. From our analysis above, we have seen that many people living in an irregular marriage do not do so in order to slight the Church and her teachings on marriage. We have seen that many of them are desirous to amend their lives and regularise their marital status. From this argument, it is clear that even though these people may be living in sin, they have not actually committed any crime and as such must not be treated as common criminals. Consequently, even in a situation where it is known by everybody that these people are living together without sacramental marriage, funeral rites are to be denied only if public scandal would arise were they granted³⁶.

The circular letter from the SCDF has given directions on how to remove scandal in such a situation, namely by emphasising the paschal character of Christian death. It would seem however, that the only scandal left in Igboland to this regard is the one the clergy have created, and that is: the consistent and sometimes stubborn refusal of the hierarchy in Igboland to let the faithful be aware of the new attention and shift of emphasis of the magisterium on the paschal dimension of Christian death. In most cases in our Church today however "greater scandal would arise from the denial of ecclesiastical funeral rites than from their being granted. The broadest scope of the Church as an agent of God's mercy and its image as a 'refuge of sinners' would be most applicable at the time of

³⁵ Huels, J. M., *The Pastoral Companion*, p. 352.

³⁶ See circular letter.

death and burial even of a person who might be considered one of the ‘lost ones’³⁷.

From all of these, one point stands out clearly: the law’s reluctance to deny a Church funeral except in the most publicly scandalous of situations – with the clear obligation on priests, in perhaps sometimes difficult situations, to explain to their people the meaning of a Christian funeral. It will be easily appreciated that in this area there may well arise a doubt as to how best to act in a given situation. In § 2 of this canon a clear directive is provided: “the local Ordinary is to be consulted and his judgement followed”. In making his decision, the relevant Ordinary should obviously be guided by the forgoing considerations.

³⁷ Cusack, B.A., [1992], Denial of Ecclesiastical Funeral in the Case of an Abortion, in: Cogan, P.J., (ed.), CLSA Advisory Opinions (1984-1993), 1995, p. 382f.

CHAPTER 5

Relevant interpretative materials

For a better appraisal of the subject matter under review and in order to come to a scientifically acceptable conclusion, we shall at this junction bring into the discussion various tools, materials and theological as well as historical moments which are relevant in the development of the church's teaching on our topic.

5.1 Between 1917 and 1983

Between the 1917 Code of Canon Law and the promulgation of the current Code of Canon Law of 1983, a lot of discussions, based on recent theological findings (as presented in the course of this work) were conducted to review and update the Church's teaching on the fate of people living in irregular marriages with a view to finding a more humane and pastoral approach to the problem without compromising Catholic theology. Prominent among them was the letter issued by the Congregation for the Doctrine of the Faith on 29th May 1973, which specifically dealt with this problem and the decree with which c. 1240/1917 was abrogated. This was followed by the deliberations of the Codex Review Commission and lastly the Promulgation of the 1983 Code.

5.2 Document 16 of 29th May 1973 - Removal of people living in irregular marriages from the group of people to be denied Catholic Funeral Rites.

The issuance of this circular letter, which has so often been quoted in this work, formed the decisive turning point of the practice hitherto, whereby people living in irregular marriages were officially regarded as public sinners who are causing scandal in the community by their way of life and were therefore denied Church funeral rites at death. This letter and the subsequent decree fell in line with the theology of the Second Vatican Council and the reforms it initiated.

Although c. 1240 of the 1917 Code still made provisions for the possibility of granting these people Church funeral if they showed a sign of remorse, this canon was so interpreted that the mere fact of one living in an irregular marriage meant obstinate and persistently living in public sin. This fact alone excluded any possible sign of remorse, no matter how little and how private this must have been. This letter therefore marked a radical point of departure in the official teaching of the Church and offered a new and better interpretation of c. 1240/1917 in line with the teaching of the Second Vatican Council prior to the promulgation of the new Code of Canon Law. The letter in its entirety reads:

Sacred Congregation for the Doctrine of the Faith¹
Circular letter to the venerable Presidents of Bishops' Conferences about the Church funeral for those faithful, who find themselves living in irregular marriages
Rome, 29th May 1973

Your Excellency,

Several Bishops' Conferences and many Local Ordinaries have pleaded with this Congregation to review and soften the current

¹. Circular letter

practice whereby people who at the time of death are living in irregular marriages are denied Church funeral.

The opinions and deliberations, which we received regarding this issue were carefully examined by this Decasterium und presented to the Plenary Assembly of the Congregation in 1972 for verification.

During the Assembly, the members decided with the approval of the Pope, that the celebration of ecclesiastical burial should be made easier for those Catholics to whom it had been denied by the provisions of c. 1240 (of the 1917 Code).

As an amendment to this canon to the extent required, a new set of regulations will be promulgated as soon as possible. On the basis of the new arrangement the celebration of liturgical funeral rites will no longer be forbidden in the case of the faithful, who, even though involved in a clearly sinful situation before their death, have maintained allegiance to the Church and have given some evidence of repentance. A necessary condition is that there be no public scandal for the rest of the faithful.

It will be possible to lessen or forestall such scandal among the faithful to the extent that pastors explain in an effective way the meaning of a Christian funeral. Then the majority will see the funeral as an appeal to God's mercy and as the Christian community's witness to faith in the resurrection of the dead and life eternal.

I hereby request your Excellency to inform the Ordinaries of your Bishops' Conference, that the text of the new decree about Church Funeral will be published very soon and will take effect from the day of its publication².

² DOL [documents on liturgy] n. 3398, reported also in CLD [canon law digest] 8 862-863. By way of follow-up to that Letter, cf. SCDF decr 20.IX.1973 which declared that ,a funeral is not to be forbidden for public sinners if before death they have given some evidence of repentance and there is no danger of scandal to others of the faithful' : DOL n. 3399; CLD 8 864. Cf. Also Comm 12 (1980) 356.

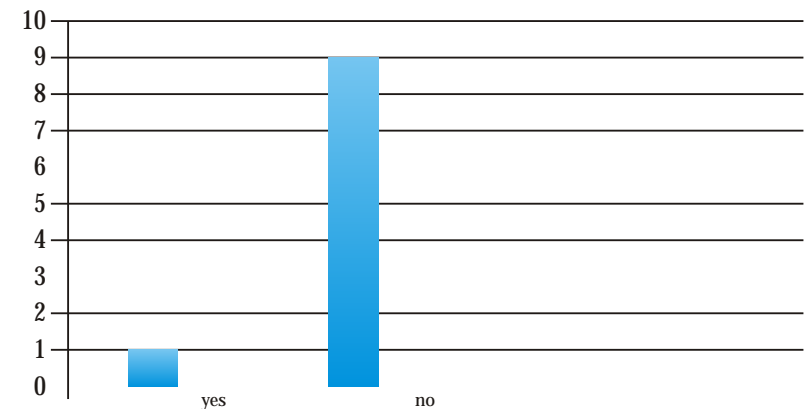
While communicating this to you, I remain.

+ Francis Card. Seper
Prefect

+ Jerome Hammer, OP
Secretary

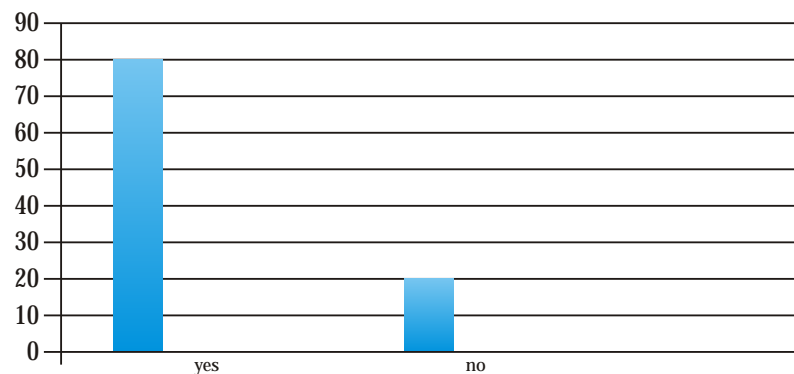
As can be seen, this letter, which was originally written in Latin and French was addressed and sent to Presidents of National Bishops Conferences all over the world (including Nigeria) with the instruction to pass it on to the bishops and priests in their territories. But interestingly, the majority of the priests interviewed during the writing of this work had never heard about this letter nor about its content.

Table 5
The SCDF issued a letter on 29th May 1973 with which it removed those living in irregular marriages from the group to be denied Church Funeral Rites. Do you know about this letter?



The respondents to the interview were further asked if they would have supported the burial of this group of people, if they had known about the content of the letter. Again the majority answered in the affirmative.

Table 6
If you knew about the content of this letter, would you have supported granting Church funeral to the people?



And this goes on to show how a little communication gap in the chain of command in the Church can affect a whole lot of pastoral activity and even the theology of a whole region to the detriment of the faithful who rely on the knowledge of their pastors for the practice of their faith.

This resuscitates the unanswered question of whether the ignorance to this letter in Igboland was intentional or accidental. But whichever way the pendulum goes, it should not be forgotten that with this letter, the SCDF sought to address the imbalance and pastorally and theologically untenable and obsolete practice of denying ecclesiastical funeral to people living in irregular marriages.

With this letter, the Congregation set the ball rolling for a phenomenal and interesting discussion in the Church, which started at the Second Vatican Council with the Pastoral Constitution on the Sacred Liturgy³, found concrete application in the Ordo Exsequiarum of 1969 and formed one of the guiding principles during the discussions

for the review of the 1917 Code of Canon Law. The whole effort found its culmination and canonical expression in the promulgation of c. 1184 of the 1983 Code.

5.3 Abrogation of c. 1240 § 1/1917 (Decree of the same Congregation 20th September 1973)⁴

The Sacred Congregation did not stop at merely issuing a letter, it went further to issue a follow-up decree with which it officially abrogated c. 1240/1917 with all its obsolete interpretations and applications. The decree reads:

The members of the Congregation for the Doctrine of Faith who met from 14th to 15th November 1972 took the following decisions with regard to Church Funeral:

Ecclesiastical Funeral Rites will not be denied to sinners, if they showed some signs of repentance before death and if there is no danger of scandal to other members of the faithful.

In a private audience granted the undersigned Cardinal on 17th November 1972 the Holy Father Pope Paul VI ratified and gave his approbation for this decision of the Congregation and ordered its publication. With this the Holy Father has abrogated c. 1240 § 1.

Given at Rome on 20th September 1973

Francis Seper
 Prefect

Jerome Hamer, OP
 Secretary

³ Cf. SC 81.

⁴ SCDF Decree 20.IX.1973: AAS 65 (1973) 500; see also, DOL (documents on liturgy) n. 3398; CLD (CanonLaw Digest) 8, 864; Comm 12 (1980) 356; AfkKR 142 (1973) 473.

With the publication of this decree, which effectively abrogated c. 1240 § 1/1917, all other practices that were based on this canon were equally repealed. From this date therefore only this decree as presented had the force of law. And it was this decree that informed the reformulation of the new Code which, taken other factors into consideration (principle 3 of the reform-commission, cc. 17 & 18, etc.) metamorphosed into the present c. 1184 CIC. This development should also not be forgotten in interpreting and applying this canon.

5.4 Guides for Interpretation (cc. 17 & 18 CIC)

A proper understanding and an authentic interpretation of canonical norms are indispensable instruments in the application of Canon Law. In order to appreciate the goal of this work, we intend to present in this section some rules that would help us in the interpretation of c. 1184 CIC.

i) C. 17 CIC

According to c. 17 CIC, “ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context. If the meaning remains doubtful and obscure, recourse must be made to parallel places, if there are such, to the purpose and circumstances of the law, and to the mind of the legislator”.

The interpretation of the law can sometimes be a complex assignment, which requires the observation of certain rules in order to achieve maximum result. Canon law is not left out in this complexity. C. 17 as the first of two canons, which offer assistance to the task of interpretation states in very unequivocal language the prerequisites for an authentic interpretation.

The first step begins with the proper understanding of the meaning of the words used in the formulation of the legal document, and these must be considered in their text and context.

Since “many canonical words and expressions have a standard, technical meaning that is familiar to canonists but is often not evident to others”⁵, it requires the effort of experts in the field of canon law to offer the authentic interpretation of such legal texts. That is why “canonical tradition holds in high esteem, not only official interpretations by legislators and judges and administrators, but also the private interpretation of canon law by scholars”⁶.

Commentaries from canonists, who explore the proper meaning of words used in the formulation of a legal text, are of a very big help in understanding a particular text.

This text, which cannot and should not be considered in isolation must also and therefore be interpreted within its context. Here, “the context refers to related texts in the same book, document, or section in which the law is published, for example [...] the introductory section of certain judicial documents that briefly provides the historical context, theoretical underpinnings, and rationale for the norms that follow”⁷. In our case this would mean analysing and understanding the historical development of c. 1184 CIC and the introductory statements to this canon. It could here be recalled that the entire Title III of Part II of Bk IV that treats ‘Ecclesiastical Funerals’, has as its principal source the 1969 Ordo exsequiarum, which on its part was the culmination of the debates and discussions of the II. Vatican councils as treated above⁸.

C. 1176 CIC, which forms the introductory canon to this title, states clearly the rights of all Christ’s faithful to ecclesiastical funeral rites. It further states the aim of ecclesiastical funeral to include praying for

⁵. Huels, J.M., Commentary to c. 17, in: Beal, J. P., et. al. (ed.) New Commentary on the Code of Canon Law, Commissioned by the Canon Law Society of America, Bangalore 2003, p. 73.

⁶. Huels, J.M., Commentary to c. 17/73.

⁷. Huels, J.M., Commentary to c. 17/73.

⁸. See Chapters 3.2.5 and 3.3.

the spiritual support of the dead, honouring their bodies, and at the same time bringing to the living the comfort of hope⁹.

Consequently, to understand the meaning of can. 1184 according to c. 17 would mean understanding also the context of the genesis of the section on ecclesiastical funeral, which has its roots in the *Ordo exsequiarum*. Furthermore, the impact of the circular letter of the SCDF on the formulation of c. 1184 should also not be forgotten in interpreting the canon. And that is what we have done above.

The next related point with regard to text and context is also the introductory part of c. 1184 § 1, which states: “unless they gave some signs of repentance before death, the following must be deprived of ecclesiastical funerals”. The clause ‘sign of repentance’ as we shall see below¹⁰, places as a matter of fact a very important limitation to the extent ecclesiastical funeral can be denied. Only the absence of repentance and not necessarily the committing of the offence is the decisive factor in the application of the law.

The second sentence of c. 17 refers to a situation where the meaning of the law remains obscure from the text and context. Here recourse must be made to parallel places where the same subject is treated. This is always an indispensable process in order to arrive at a good doctrinal interpretation. The consultation of the Eastern Code for instance or of other judicial documents may be of immense help¹¹.

Of importance is also the effort to discover the purpose of the law. “Each law has a specific purpose, which it sets out to achieve, besides the overarching purpose of canon law itself, which is the spiritual welfare of the faithful, the *salus animarum* (cf. c. 1752)”¹². What is therefore the purpose of the canon under review? To understand this

⁹ See c. 1176 § 2; also SDCW, 15.VIII.1969 *Ordo Exsequiarum* nn 1-2, DOLnn. 3373-3374.

¹⁰ See Chapter 5.5.

¹¹ Cf., Huels, J.M., Commentary to c. 17/74.

¹² Ibid.

purpose, it is necessary to reflect “on the law and its relation to its context, the legal system as a whole, and/or the very mission of the Church”¹³.

Understanding the circumstance of the law is the next point made by c. 17. This includes “the relevant historical facts about the matter regulated by the law, factors that led to the immediate creation of the law, and, if the law is being restated or modified later, the circumstances at that time. Investigation of the circumstances takes the interpreter into the field of history, especially church history. The circumstances include political, social, and ecclesial factors and other influences relevant to the making of the law. This might involve the study of the law’s remote history, discussions about the matter at Vatican II, postconciliar developments, and the various drafts of the law before its most recent promulgation”¹⁴.

We have meticulously applied this method in the course of this work. We have examined the circumstances that led to the promulgation of c. 1184 CIC – we discussed documents of the Second Vatican Council¹⁵, the complaints of various bishops which led to the circular letter from the Sacred Congregation for the Doctrine of Faith on 29th May 1973 to Bishops all over the world. We also presented a detailed analysis of the *Ordo exsequiarum*, which as we have seen above formed the primary source of the Title on Ecclesiastical Funerals in cc. 1176 - 1185 CIC. All these were meant to present a balanced doctrinal and canonical interpretation of the subject matter under discussion.

The last point mentioned in c. 17 is the understanding of the mind of the legislator. According to John M. Huels, this does not mean

¹³ Ibid.

¹⁴ Huels, J.M., Commentary to c. 17/75.

¹⁵ Cf. SC 81.

understanding the subjective mind of the legislator or his successor, since this is largely unknown and even irrelevant. “It is the objective text of the law that must be observed, not what anyone presumes the legislator might have been thinking when he made the law”¹⁶. This takes into consideration, and presumes knowledge of the whole institution of the law itself and of course, the canonical tradition that has developed over the years. This requires again “a considerable study and experience in the field of canon law, and it also requires knowledge of related disciplines, such as ecclesiology and moral theology”¹⁷.

ii) C. 18 CIC

The legislator states in c. 18 CIC: “Laws which prescribe a penalty, or restrict the free exercise of rights, or contain an exception to the law, are to be interpreted strictly”. In the 1917 Code of Canon Law the traditional rule for interpretation *favorabili amplia, odiosa restringenda*, was expressed in this technical formula and this was left unchanged in the 1983 Code. “The legislator, mindful of the forces which naturally operate in favour of broad interpretation in canon law – especially because of the integration, in the notion of equity, not only of justice, but also of benignity and compassion in particular cases – has established only three types of situations in which the interpretation must be strict”¹⁸. These include cases where penalties are imposed, where rights are restricted and where exceptions in law are to be made.

To have a better understanding of the subject, let us first distinguish between broad and strict interpretation in Law. According John M. Huels, “strict interpretation limits the law’s application to the minimum stated in the law; broad interpretation widens the

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Lobardia, P., Commentary to c. 18, in: Caparros, C., et. al., (ed.) Code of Canon Law Annotated, Montreal 1993, p. 91.

application of the law to all possible cases that fall within the meaning. Broad interpretation is normative when a law is favourable, strict interpretation is required when a law is ‘odious’, namely, in the three instances mentioned in this canon”¹⁹. In the same vein, a clear distinction is required of the main terminologies (penal law, restrictions and exception) used in c. 18.

Penal laws are understood to be those for whose violation the law already prescribes a penalty²⁰. According to John M. Huels, “strict interpretation of penal laws is necessary to protect the rights of persons, including those who have committed or been accused of a crime”²¹. No one can therefore be punished for an offence that is not a crime in canon law, nor can one be imposed with a penalty that is not proportionate to the one prescribed by the law itself. For example, living in an irregular marriage, though sinful is not in itself a crime that can be punished with denial of funeral rites.

The second provision in c. 18 is that laws that restrict the free exercise of a right must be interpreted strictly. Such laws place one or more restrictions on the right already recognised in canon law. In our case c. 1184 places restrictions on the rights already recognized in c. 1176.

That is why the norms of c. 1184 must be subjected to strict interpretation “to enable maximal exercise of the personal rights within the letter of the law [...]. To restrict this right, there must be a clear basis in the law²², or the right is unlawfully denied”²³. An authentic interpretation and application of c. 1184 in conjunction with c. 18 would take into consideration the fact, if the affected faithful has exhibited any sign of repentance in the forms mentioned

¹⁹ Huels, J.M., Commentary to c. 18/75.

²⁰ Cf. Ibid., Commentary to c. 18/76, also cc. 1364-1399 and John Paul II, apconst Universi Dominici gregis, February 22, 1996, AAS 88 (1996) 303-343, nn. 58, 80, 81.

²¹ Huels, J.M., Commentary to c. 18/77.

²² Cf. c. 1184 § 1.

²³ Huels, J.M., Commentary to c. 18/77.

below²⁴ and that scandal to other faithfuls has been removed or minimised²⁵.

The next provision of c. 18 which deals with exceptions in law is of little interest to our work and will therefore not be treated here. Canonists are however unanimous in their view that “laws containing an exception from the law must be strictly interpreted, even if the exception grants a favour, whenever broad interpretation would have an ‘odious’ result, in particular, when broad interpretation would be unreasonable”²⁶. If however an exception happens to be favourable to one person or group, but at the same time infringes on the rights of another, the exception must for the sake of equity be strictly interpreted.

After this analysis of c. 18, the first question to be raised here in relation to our topic is whether c. 1184 prescribes a penalty or limits the free exercise of rights. To offer an answer to this question, we may want to look at c. 1176 again, which states in very clear terms the rights of the faithful to ecclesiastical funeral rites. C. 530, 5^o CIC also speaks of the obligation of the parish priest to bury the dead members of his parish and this invariably means that the members have a right to be buried by their pastors.

Does c. 1184 therefore prescribe a penalty or restrict a right? T. Lincoln Bouscaren answers in the affirmative, when he writes: “The privation of ecclesiastical burial by this canon has the nature of a penalty, and hence, is to be strictly interpreted”²⁷. John M. Huel also subscribes to this in his commentary to c. 915, which also places a

²⁴ See 5.5.

²⁵ See circular letter.

²⁶ Huels, J.M., Commentary to c. 18/77.

²⁷ Bouscaren, L.T., Bouscaren, L. T., et. al., Canon Law, A Text and Commentary, 4th Edition, 1963, commentary to c. 1240/1917, p. 689..

restriction on the faithful and suggests a strict interpretation²⁸. Huels further observes rightly that it might sometimes be difficult to judge that a baptised person living in an irregular marriage is obstinately persisting in manifest, serious sin. The reason for this difficulty might be found in the arguments presented above²⁹. Huels concludes his observation by arguing that “the mere fact that a person is [living] in an irregular marriage does not in itself demonstrate persistent obstinacy or the public nature of the sin, or even its gravity in the internal forum”³⁰. It is therefore at this stage a matter between him and his God and when all indices point towards a continuous and manifest attachment to the Church, a denial of ecclesiastical funeral will be wrong according to c. 18. Before however a judgement is made, the following points according to Huels must be taken into consideration: “Were signs of repentance given before death? Would there be greater public scandal in denying consolation to the grieving family by refusing the funeral rites?”³¹.

From the ongoing discussion and analysis of c. 18 it would appear that the guiding principle in interpreting c. 1184 will be the determination of the question, whether Christian burial is a right or a privilege? And again to the other question: whether the denial of ecclesiastical funeral rites is a penalty or not. Barbara Anne Cusack gives us the following answer:

If access to ecclesiastical funeral rites is to be viewed as a right rather than a privilege, then the law restricting the right to a Christian funeral must be strictly interpreted in accord with the norms of canon

²⁸ Cf., Huels, J.M., Opinion [1990], in: CLSA Advisory Opinions (2001-2005), p. 285

²⁹ See Chapter 2.3.1.

³⁰ Huels, J.M., Opinion, p. 285.

³¹ Cox, C. A. & Griffin, B. F., [1997], Denial of Ecclesiastical Funeral Rites, in: CLSA Advisory Opinions (1994-2000), p. 389-391.

18. In the same manner, if canon 1184 is a law establishing a penalty, then a strict interpretation must be applied³².

In either cases, sound canonical tradition requires the application of c. 1184 in interpreting c. 1184 since the denial of ecclesiastical funeral rites appears both as a restriction of the exercise of a right and as a penalty for certain crimes. This flows from c. 1176 as we have seen above and even when the denial of ecclesiastical funeral rites is not found in Book VI, under 'Sanctions', "it has to be interpreted in the light of sanctions, a penalty for stated offense. Therefore, on both accounts, a strict interpretation must be given"³³. Cusack comes then to the logical conclusion that,

for several reasons, based on a strict interpretation of canon 1184, it does not seem that [those living in irregular marriages] could be denied ecclesiastical funeral rites. If there has been a connection with the Church [...] that should be interpreted as a sign of repentance in which case funeral rites are not to be denied³⁴.

5.5 Signs of repentance

This sign of repentance is a phrase, which has long been interpreted by canonists in the most charitable, generous and wide sense. C. 1184 raises it almost to the level of *conditio sine qua non* for the denial of Church funeral rites. Put in its proper perspective, this condition forms the only criterion for interpreting and applying c. 1184. That is why we wish to direct our attention to the understanding of 'sign of repentance' both as contained in the circular letter of the Sacred

³² Cusack, B. A., [1992], Denial of Ecclesiastical Funeral in the Case of an Abortion, in: CLSA Advisory Opinions (1984-1993), ed. Patrick J. Cogan, 1995, p. 382f.

³³ Ibid.

³⁴ Ibid.

Congregation for the Doctrine of faith (29th May 1973) and in c. 1184 § 1 CIC. "Almost any positive sign which would indicate the person's continued belief in God's mercy, however apparently flawed by previous personal conduct, would suffice – even e.g. by his or her making the sign of the cross, by responding to an invocation of God's mercy, or the like"³⁵. And in the opinion of T. Lincoln Bouscaren, "any sign of repentance before death excuses from the penalty [of denial of Church funeral]; this means some positive sign, such as calling for a priest, kissing a crucifix [...]"³⁶, an expressed desire not to die without the sacraments. Taking active part in the life of the local Church even if such a person does not receive the sacraments, identifying oneself with the church in communal ecclesiology and keeping faith with other members, attending church services and church activities³⁷ - these are further and obvious signs of attachment to the church and signs of repentance on the part of those living in irregular marriages.

5.6 Principle Nr. 3 of the Codex-Review-Commission³⁸

With the announcement of Pope John XIII on 25th January 1959 to convoke the Second Vatican Council³⁹, he also expressed his intention to revise the Code of Canon Law. But it was impossible, and at the same time not practicable to have revised the Code simultaneously with the Council. And although the first members of the Pontifical Commission for the Review of the Code of Canon Law were appointed on March 28th 1963, shortly before the death of John XIII and well after the completion of the first session of the Council, the commission delayed its work until the completion of the Council. The commission was finally inaugurated on November 20th 1965 by Pope Paul VI. In his inaugural address to the Commission, the Pope

³⁵ Sheehy, G., The Law, Nr. 2390.

³⁶ Bouscaren, L. T., Commentary to c. 1240/1917, p. 689.

³⁷ See Circular Letter of SCDF, 29th May 1973.

³⁸ Comm. I [1969] 79-80; cf. Praefatio CIC: AAS 75 [1983] Pars II, XXI; cf. also Alesandro, J. A., in: Corriden, J. A., et. al. *ibid.*, General Introduction, p. 6.

³⁹ AAS 51 (1959), pp. 65-69.

urged it to be conscious of the close relationship of the revision to the Council in the following words:

Now, however, with changing conditions – for life seems to evolve more rapidly – canon law must be prudently reformed; specifically, it must be accommodated to a new way of thinking proper to the Second Ecumenical Council of the Vatican, in which pastoral care and new needs of the people of God are met⁴⁰.

With this mandate in mind the commission was obviously not only to reformulate and refine canonical principles but also to redraft and reform ecclesial structures and norms to conform to the thinking of the Second Vatican Council. That meant of course “that the canons, many of which repeat or summarise the Councils’ texts, must be interpreted in light of its teaching; they cannot properly be isolated from their historical sources”⁴¹.

With this, it became obvious that the link between the Council and the Code was to be a decisive factor in understanding, interpreting and applying the Code in the life of the Church. In order to reflect this link in the new Code, the Review Commission was presented with ten principles to guide it in its work. And “throughout the revision process, the principles regulated the task of translating the pastoral decisions of the Council into the juridical content of the canons”⁴².

Although, all the ten principles are of vital importance in the interpretation and application of the law, we are only going to limit ourselves to the discussion of the 3rd principle, which directly addresses our topic. The 3rd principle reads:

⁴⁰ Comm 1 [1969] 41, see also Alesandro, J.A., General Introduction, in: James Coriden et. al., (ed.), The Code of Canon Law, 1985, p. 5.

⁴¹ Ibid 5.

⁴² Ibid., p. 6.

Pastoral care should be the hallmark of the Code. The Code should be neither simply a hortatory document nor on the other hand an overly perceptive one. Laws should be marked by a spirit of charity, temperance, humaneness, and moderation. The Code should be reluctant to establish laws that render juridic acts null and void or impose ecclesiastical penalties – unless the matter is of grave importance and such norms are necessary for the public good and church discipline. Norms should not be too rigid; they should leave a reasonable amount of discretionary authority in the hands of the Church’s pastoral leaders⁴³.

From our review of the circumstances leading to c. 1184, it is obvious that this principle was taken into consideration in the formulation of the canon. And this principle has equally been followed in its interpretation and application in the other parts of the Catholic world.

What is lacking in the Church in Igboland is the pastoral and theological will to follow this principle and interpret the law in the spirit of the Second Vatican Council. This work offers the opportunity of viewing, interpreting and applying the law in this spirit and thereby offers the faithful in Igboland a Christian practice that is in keeping with the ‘changing conditions’ not only in the society but also in the Church.

5.6.7 *Omnium in mentem*⁴⁴ - *Semel catholicus semper catholicus*

Canon 11 describes Catholics as all those who have been baptised into the Catholic Church or received into it after baptism in another church. These people are bound by the Codes of Canon Law of 1983 including the canonical forms of marriage. Up to the Motu proprio

⁴³ Comm 1 (1969) 41.

⁴⁴ Motu proprio *Omnium in mentem*, Vatican City, 26th October 2010.

‘Omnium in Mentem’ of 2010, once baptised Catholics could only be said to become fallen Catholics either by notoriously and publicly abandoning the faith⁴⁵ - i.e. when they stop practising the Catholic faith (the so-called virtual form) or through a formal act of defection (cc. 1086 § 1, 1117 und 1124). That meant that all those who were baptised into the Catholic Church or received into it and have not left it through a formal act of defection were regarded as Catholics with all the rights and obligations associated with being a Catholic. Omnium in mentem, and before it, the document of the Pontifical Council for Legislative Texts (PCLT) “Actus formalis defectionis ab ecclesia catholica” of 13th March 2006⁴⁶ listed the conditions to be fulfilled before a formal act of defection can validly be posited. The document of the PCLT expressly mentioned the so-called virtual, i.e. notoriously or publicly abandoning the Catholic faith which is not covered by this new regulation. Thereafter it went ahead to mention these conditions to include: a) the internal decision to leave the Catholic Church; b) the realization and external manifestation of that decision; and c) the reception of that decision by the competent ecclesiastical authority. Unless these three conditions are fulfilled all baptised Catholics and converted Catholics remain Catholics and are bound by the provisions of the Code of Canon Law of 1983.

These documents, which had as their focus point the regulation of the effects and meaning of canonical forms of marriage on Catholics who leave the Church through a proclamation in court registries have also a threefold relevance to our topic:

i) only those who entertain the wish and will to leave the Catholic Church and ii) have actually left it (virtual departure) and iii) their (written) decision to leave has been accepted by a competent ecclesiastical authority (in this case their parish priest).

⁴⁵ Cc. 171 § 1, 4^o; 194 § 1, 2^o; 316 § 1; 694 § 1, 1^o, 1071 § 1, 4^o and § 2.

⁴⁶ Actus formalis defectionis ab ecclesia catholica, Vatican City, 13th March 2006.

The letter of the PCLT goes ahead to posit, that only after the fulfilment of these three conditions (or after the so-called virtual departure)⁴⁷ can one be regarded as having left the Catholic Church).

The legal implication is therefore, that until these conditions are fulfilled, such people continue to be regarded technically as Catholics and will continue to enjoy the rights which they have in common with other Catholics as long as they are not prohibited by law. It also implies that they are bound by all the obligations imposed on them by their membership of the Catholic Church. This includes the canonical form of marriage. Whoever therefore enters into any marital union without observing these canonically stipulated procedures, enters such a union invalidly and renders such a union irregular. But they remain Catholics with all their rights and obligations as long as they have not fulfilled the above conditions stipulated by Omnes in mentem.

The group of people under review includes Catholics who despite the situation they found themselves (irregular marriage) remained faithful to the Catholic Church unto death, observing and fulfilling their obligations as Catholics by supporting the Church financially and otherwise and taking full and active part in the life of the Church. They never separated themselves formally and virtually from the Catholic Church. They are therefore not fallen Catholics, (neither are they fallen Christians) i.e. they have not left the Catholic Church through a formal act of defect as required above). They can also not be treated as such. That is why simple logic and the principle of mercy and forgiveness demand also that they be accorded their last honour and right due to them as baptised members of Christ’s faithful whose bodies have become the Temple of the Holy Spirit and who shared in the hope of the Resurrection.

⁴⁷ Ibid.

5.7 **Salus animarum (c. 1752 CIC)**

The last canon in the 1983 Code of Canon Law emphasises the salvation of souls (*salus animarum*) as the highest goal of canon law. Although this canon, which was also found in cc. 2156, § 1-2 and 2146 § 3 of the 1917 Code and in c. 1397 CCEO, refers exclusively to, and regulates the transfer of pastors, it has become the most used maxim in interpreting the new code of canon law. Despite its exclusive use, “[its] text and context suggest that [it] is meant to apply to all areas of canonical jurisprudence”⁴⁸. But Craig A. Cox warns against appealing too often to the maxim of ‘the salvation of souls as the supreme law of the Church’ since it can be cited in both sides of the conflict for which it was formulated, namely transfer and removal of pastors. But a greater danger is to be avoided, where the invocation of this maxim may lead to the law losing its effectiveness, “by becoming too easily invoked in any and every situation”⁴⁹. This is what Carlos José Errázuriz calls the dialectic between the juridical and the pastoral when he writes:

As regards the relationship between the juridical and the pastoral, even if the formulation may be new, this problem undoubtedly always has been present in the life of the Church. In fact canon law traditionally has made reference to the finality of the *salus animarum*, and consequently to the implementation of the juridical means (*aequitas canonica*, dispensation, etc.) both to avoid the rigidity of human laws and also to introduce considerations of mercy into the application of the law (for example, in the application of punishments)⁵⁰.

⁴⁸ Cox, C.A., Commentary to c. 1752, in: John P. Beal et. al. (ed.), *New Commentary on the Code of Canon Law*, p. 1847.

⁴⁹ *Ibid.*

⁵⁰ Errázuriz, C.J.M, *Justice in the Church. A Fundamental Theory of Canon Law* (English translation by Jean Gray in collaboration with Michael Dunnigan), 2009, p. 65f., here p. 65.

This dialectic between the juridical and the pastoral runs the danger of sometimes creating an unnecessary dichotomy between charity and justice. The big difference between civil and canon law is that “in the Church pastoral considerations lead one to view problems from the perspective of charity, and thus of mercy and understanding towards persons in their individual circumstances. This seems to require one to transcend a juridical logic marked by rigor and the severity of a non-evangelical justice, which would place certain institutional, societal and collective considerations above the good of each person”⁵¹. This conception is actually in line with the 3rd principle for the revision of the code of canon law as we have presented it above. It also falls in line with the pastoral teachings of the Second Vatican Council.

Moreover, the invocation of the maxim of the salvation of souls as the highest goal of canon law cannot be considered to be out of place in the interpretation and application of c. 1184. This flows from the declared goal of Christian funeral rites as contained in c. 1176: ‘to pray for the spiritual support of the dead’. This makes it absurd then, in line with c. 1752 to abandon this maxim at the moment when the salvation of the soul is most at stake and resort to a rigorous interpretation of the law. Consequently c. 1752 should be of vital importance before a decision be made regarding granting or denial of Church funeral rites to Catholics living in irregular marriages, because ‘the salvation of souls is the highest goal of canon law’.

⁵¹ *Ibid.*

CHAPTER 6

Evaluation and Conclusion

Having presented our arguments and analysis in the preceding chapters, we wish now to attempt a conclusion, which will mainly be about the closing arguments. Since a conclusion logically flows from already known premises, this attempt at a conclusion will go the way of popular practice in jurisprudence. We shall therefore apply the principle of subsumption in order to arrive at a scientific conclusion. Subsumption is ordinarily the procedure, through which a term is arranged under another; the instancing of a case under a rule, or the like¹. It has its roots in the latin words sub – under; from below, and *sumere*, take. Used in jurisprudence the term is the application of a legal rule to life circumstance, i.e., as subordination of circumstances under the conditions of the standard. Accordingly, subsumption always has an *if-then-structure*, which normally disintegrates into *if-clause* and a legal consequence. In jurisprudence, it means, that if the necessary facts are present, then the appropriate factual characteristics are therefore fulfilled. And if all factual characteristics are given, then the legal consequence will follow.

¹ Subsumtion (also written *Subsumption*), in: The Oxford English Dictionary, second edition, 1989.

An exact definition or delineation of the topic under examination is necessary in order to arrive at a result by means of subsumption. The definition is always a result of the interpretation of the legal text that has to be applied. Subsumption is therefore a constantly used method to find out whether a factual characteristic (connecting factor of a law) is fulfilled by concrete circumstances and thus legally planned legal consequence occurs. If for example the facts of a theft are established, then the legal consequence is the punishment. Through Subsumption one can establish whether a crime has been committed or not and then take necessary actions. It leads to the affirmation or otherwise of a guilt, using a narrative of the material facts or comparable matter². We wish to apply this principle to our case, so as to establish whether the factual circumstances for the denial of Church funeral exist or not. If they exist, then denial should be enforced, that means the law (c. 1184 CIC) should apply. But if they do not exist, the law of denial (c. 1184 CIC) does not apply and should not be enforced.

6.1 Facts of the matter

The facts of the matter are, that in Igboland, people living in irregular marriages or, to borrow the words of Emmanuel Asuquo Akpan ‘the non-sacramentarians’³ are denied Church funeral rites. This is so, irrespective of whatever close associations they may have maintained with the Church during life. Some of them are polygenists, some of them are divorcees who have remarried, some of them are first time couples but without Church marriage. In most cases these people, irrespective of their canonical status, remain

² Subsumtion, in: Webster’s Third New International Dictionary, 1971.

³ Akpan, E.A., Defence and Protection of Rights in Canon Law. A Useful Manual for Pastors and Christian Faithful, Uyo 20033, p. 161. By this term Akpan means those Catholics who do not receive the sacraments. It is however important to note that they are different from people who are not in ‘full communion’ with the Catholic Church. The latter refers to excommunicated or interdicted persons (cc. 1331-1333 CIC) and not those who are disqualified from receiving the sacraments. These are two different realities and should be treated as such.

attached to the Church by sharing in ecclesial union. The question we have tried to answer in this work is: whether these people fit in to the group of people mentioned in c. 1184 CIC. Should they really be denied ecclesiastical funeral?

6.2 The Law

The Law states in c. 1184 CIC:

“§1 – Church funeral rites are to be denied to the following, unless they gave signs of repentance before death:

- 1° notorious apostates, heretics and schismatics;
- 2° those who for anti-Christian motives chose that their bodies be cremated;
- 3° other manifest sinners to whom a Church funeral could not be granted without public scandal to the faithful.

§2 If any doubt occurs, the local Ordinary is to be consulted and his judgement followed”.

6.3 The Arguments

In our analysis, we have contended that those living in irregular marriages do not meet the provisions of c. 1184 CIC. To arrive at this conclusion we have delved into the history and development of this canon; considered the aim and purpose of the *Ordo Exequiarum* of 1969 and its influence on c. 1176 CIC, which emphasises the right of all Catholics to Church funeral rites. We equally considered the cultural and traditional environments and conditions, which give rise to irregular marriages in Igboland. We came to the knowledge that these people, most of whom ‘found themselves in this situation’⁴ did not do so in order to show their contempt towards the Church’s teaching on marriage.

⁴ See Circular Letter.

We equally established, through our analysis, that these people are neither heretics, nor apostates nor schismatics. They are neither excommunicated nor have they excommunicated themselves. They are simply unable, for whatever reasons, to fulfil the conditions necessary for them to enter into a valid canonically sacramental marriage. They are neither living in concubinage nor causing scandal in the community. They can therefore not be regarded as public sinners. To prove this, we invoked the circular letter of the SCDF of 1973, which formed the basis of c. 1184 and therefore offers an indispensable guide to the authentic interpretation of the canon. This circular letter made it equally clear that there is no reason to deny these people Church funeral rites as long as they showed signs of remorse and/or maintained ecclesial union with the Church. We have also seen that these signs of remorse vary in practice and interpretation. And to help in the interpretation, we also presented guidelines to be followed, so as to arrive at an authentic interpretation of c. 1184 CIC. The issue of scandal, which seem to be the most decisive concern of pastors in Igboland was also treated. In order to remove whatever scandal that may arise from the burial of such people, the circular letter further instructed that pastors educate their faithful to see Christian death in the light of the paschal mystery of Christ, and not necessarily in the light of sanctions and penalties.

We also made the argument that the only scandal that seem to exist in Igboland in this regard is the scandal the Church hierarchy has created by not letting the faithful be aware of the shift in emphasis in the Church’s theology and law.

6.4. Conclusion

Taking into consideration all the facts and arguments presented in the course of this work; being conscious of the fact that no danger of scandal exists, should all the guidelines given by the Church be

followed and, following the spirit of the Second Vatican Council in the interpretation of canonical texts, which emphasised the pastoral dimension of Canon Law; calling to mind that the highest goal of Canon Law is the salvation of souls, this work makes bold to posit that there is no canonical, moral, liturgical or pastoral reason to deny Church funeral to people living in irregular marriages. An appeal is hereby made to the Church hierarchy in Igboland to mitigate this law and stop the practice in order to bring pastoral relief to the Igbo Catholic faithfuls.

Appendix Questionnaire

In the invitation to prayers during the final commendation at burials, the priest reminds the assembled Christian community of its obligation towards the dead with the following words in Igbo: “Anyi ka o diri, dika ezigbo ndi otu Kristi, ili ahu mmadu n’uzo kwesiri ekwesi” - it is our duty as Christians to bury the dead in a befitting manner” -

Our Igbo catechism lists the burial of the dead as one of the seven corporal works of mercy.....

C. 1176 - § 1 of the code of canon law 1983 states: “Christ’s faithful who have died are to be given a Church funeral according to the norms of law“.

§ 2: “Church funerals are to be celebrated according to the liturgical books. In these funeral rites the Church prays for the spiritual support of the dead, it honours their bodies, and at the same time it brings to the living the comfort hope”.

§ 3: “The Church earnestly recommends that the pious custom of burial be retained”.

Canon 1184: § 1 on its part states: Church funeral rites are to be denied to the following, unless they show some signs of repentance before death:

- 1° notorious apostates, heretics and schismatics;
- 2° those who for anti-christian motives chose that their bodies be cremated;
- 3° other manifest sinners to whom a church funeral could not be granted without public scandal to the faithful.

§ 2: If any doubt occurs, the local ordinary is to be consulted and his judgment followed.

C. 751 of the same code defines apostasy, heresy and schism as follows:

“Heresy is the obstinate denial or doubt, after baptism, of a truth which must be believed by divine and catholic faith. Apostasy is the total repudiation of the Christian faith. Schism is withdrawal of submission to the Supreme Pontiff or from communion with the members of the church subject to him”.

I am researching about the canonical-pastoral implication arising from the denial of full catholic burial rites to Catholics living in irregular marriages (non-sacramental marriages), with special reference to Igboland. I will appreciate, if you will take time to answer the following questions without any form of prejudice:

1. Questions to the causes of polygamy or non-church marriage:
 - a) In your opinion, why do most people become polygamists?
 - i. Traditional forces: childlessness, no male issue, lack of love to the husband/wife, pressure from relations, pressure from the wife/husband (please underline)
 - ii. Economic/financial reasons: to boost ones status in the society, for political reasons, for religious reasons, as source of manpower for business ventures, as manpower for farm works, as a sign of self-determination for those who thought that their first wife/husband was chosen for them by someone (please underline)
 - iii. Religious Reasons: to express disapproval of the teaching of the church, willful disobedience of the church and her values
 - b) Why do people go into second marriage?
 - iv. Traditional forces: childlessness, lack of love, desperation to get married on the part of the woman,
 - c) Why do people live together without church marriage?
 - i. Financial problems, to prove fertility, to test each other, to show their rejection of church laws, to express their rejection of the catholic, faith, to show their freedom to live as they wish, to demonstrate to the church that the church has no authorities over them, other reasons.....
 - d) At what point according to the Igbo tradition are a man and a woman legally reconsidered as married?
 - i. After the payment of dowry
 - ii. After traditional marriage
 - iii. After church marriage
2. Do you think that somebody who is living with a wife/ husband without church marriage is living in sin?

3. Is such a person therefore a public sinner because of that?
 - i. In the church – Yes/No
 - ii. In the community (culturally) – Yes/No
4. Is such a person in your opinion therefore causing public scandal because of that?
 - i. In the church – Yes/No
 - ii. In the community – Yes/No
5. Qualification:
 - a) Do you think these people (unwedded couples) qualify as apostates, heretics or schismatics in accordance with c. 751 above?
 - b) If yes why:
Apostates:
Heretics:
Schismatics:
 - c) If no why:
Apostates:
Heretics:
Schismatics:
6. Do you think people who live in irregular marriages do so purposely to renounce the catholic faith? Yes/No
7. Do you think therefore that this act qualifies automatically as separation from the catholic church and therefore makes one a fallen catholic? Yes/No
8. Do you think that burial rites are to be equated to the sacraments, so that whoever is excluded from the sacraments should also be excluded from the burial rites? Yes/No
9. Most people who live in irregular marriages, remain good catholics by attending Masses, supporting the church etc., do you think this is enough sign of repentance on their part? Yes/No
10. Some people who live in irregular marriages, regret their act later even if humanly speaking it is difficult for them to regularize their marriage. They therefore live in perpetual agony because of it and also express it. Do you think that is enough penance for them? Or should they be punished unto death by denying them full burial rites? Yes/No
11. Do you think that granting of full catholic burial rites will cause so much scandal among the faithful that they will leave the Catholic Church because of that? Yes/No
12. Do you think that granting of full catholic burial rites will help stop some people from leaving the Catholic Church? Yes/No
13. Do you think that granting of full burial rites is against divine law? Yes/No
14. Do you think that granting full burial rites to those living in irregular marriages is discriminatory against them? Yes/No

15. Do you think granting of full burial rites to those living in irregular marriages is unfair to those who have tried to live according to the laws of the church? Yes/No
16. On 29th May 1973 the Sacred Congregation for the Doctrine of Faith reacting to requests from different dioceses across the catholic world to remove people living in irregular marriages from the group of public sinners to be denied Church Funeral Rites issued a circular letter to national bishops' conferences instructing that henceforth these people should not be denied Church funeral Rites. This letter also directed pastors to educate the faithful on the paschal character of Church Funeral Rites and therefore de-emphasize the hitherto so-called scandal arising from the burial of such people. This letter was followed by a decree of the same congregation on 20th September 1973 with which can 1240 § 1 of the 1917 Code was abrogated. Do you know about the existence of this letter? Yes/No
17. If yes, since when do you know about this letter?
18. Why in your opinion was the instruction not followed in this part of the world?.....
.....
.....
19. If you did not know about it, what do you think could be the reason (it was sent to bishops all over the world to be made available to pastors who in turn should educate the faithful about the new change)
.....
.....
20. If you knew about it's existence and its content, would it have changed your opinion on the topic? Yes/No
21. How – Would you have supported the the burial of these people? Yes/No
22. If it is proved to you that this letter exists how would you consider the present practice of denying Church Funeral Rites to Catholics living in irregular marriages
.....
.....

Questions to your person

23. What is your denomination – Catholic or Non-catholic?
24. What is your marital status? Single or married
25. What is your marital status in the church? Church wedding or no church wedding?
26. Your parish of origin?
27. Your parish of domicile?
28. Educational qualification

29. What is your profession?
30. Have you a theological education of any sort? Yes/NO: if yes which one?
.....
31. What is your age? Male/Female
32. Has any member of your family or relation been denied full Catholic burial rites for any reason? Yes/No
33. If yes what was the reason?
34. How did you or/and members of your family react to this denial?.....
.....
.....
35. Have you any recommendations to this topic?

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