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**THE RELATIONSHIP BETWEEN UNIVERSAL LAW AND PARTICULAR
LAW: AN ANALYSIS OF THE PARTICULAR COMPLEMENTARY NORMS
OF THE CATHOLIC BISHOPS' CONFERENCE OF NIGERIA (CBCN)**

by
Chinenye Celestine ANYANWU

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ABSTRACT

Before the Second Vatican Council, ecclesiastical legislation reflected uniformity throughout the entire Church. The Second Vatican Council however, placed greater emphasis on canonical institutes that best provided for the good of souls (*salus animarum*). Thus, to provide for the greater good of souls, c. 522 of the 1983 Code determines it is necessary that a parish priest has the benefit of stability in office and so he is to be appointed for an indeterminate period. The diocesan bishop can appoint him for a specified period only if the bishops' conference has, by decree, allowed this.

The decree of the Catholic Bishops' Conference of Nigeria (= CBCN), in response to the prescript of c. 522, is defective and fails to provide for the required stability for the office of a parish priest. The confusion caused by this single decree raised the question as to the status of the rest of the decrees of the conference that might give rise to similar or related problems. This situation informed the choice of our topic – the relationship between universal law and particular law: an analysis of the particular complementary norms of the Catholic Bishops' Conference of Nigeria.

Our project focused on a critical analysis of the complementary norms of CBCN to determine whether they complement the universal law or go contrary to it. Since the end of Canon Law is the salvation of souls, we gave special attention to the institute that best provides for this objective, that is, the office of the parish priest.

Our study shows that CBCN performed fairly well in its complementary norms, putting into consideration the time the norms were published and how fast they were put together. However, some of the decrees are inadequate and one might be tempted to say that such decrees are contrary to law (*contra legem*). We consider them apart from the law in view of the *recognitio* they have received from the Holy See.

We concluded our study with some suggestions that we hope could assist CBCN in the review of its particular complementary norms.

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ABBREVIATIONS

<i>AAS</i>	<i>Acta Apostolicae Sedis, commentarium officiale</i>
<i>AG</i>	SECOND VATICAN COUNCIL, decree <i>Ad gentes</i>
Art.	Article
Arts.	Articles
<i>ASS</i>	<i>Acta Sancta Sedis</i>
c.	canon
CB	CONGREGATION FOR BISHOPS
CBCN	Catholic Bishops' Conference of Nigeria
cc.	canons
CCCB	Canadian Conference of Catholic Bishops
<i>CCEO</i>	<i>Codex canonum Ecclesiarum orientalium</i>
<i>CCLA</i>	CAPARROS, E. et al. (eds.), <i>Code of Canon Law Annotated</i>
<i>CD</i>	SECOND VATICAN COUNCIL, decree <i>Christus Dominus</i>
CDF	CONGREGATION FOR THE DOCTRINE OF THE FAITH
CDW	CONGREGATION FOR DIVINE WORSHIP
CDWDS	CONGREGATION FOR DIVINE WORSHIP AND DISCIPLINE OF THE SACRAMENTS
CEP	CONGREGATION FOR THE EVANGELISATION OF PEOPLES
<i>CIC</i>	<i>Codex iuris canonici, auctoritate Ioanes Pauli PP. promulgatus</i>
<i>CIC/17</i>	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
<i>CIC/83</i>	<i>Codex iuris canonici auctoritate Ioanes Pauli PP promulgatus</i>
CIWA	CATHOLIC INSTITUTE OF WEST AFRICA
<i>CLD</i>	<i>Canon Law Digest</i>
<i>CLSA</i>	<i>Canon Law Society of America</i>
<i>CLSA Comm1</i>	CORIDEN, J., T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i>

ABBREVIATIONS

<i>CLSA Comm2</i>	BEAL, J.P. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
<i>CLSANZ</i>	<i>Canon Law Society of Australia and New Zealand</i>
<i>CLSAP</i>	<i>Canon Law Society of America Proceedings</i>
<i>CLSGBI</i>	Canon Law Society of Great Britain and Ireland
<i>CLSGBI Comm</i>	SHEEHY, G. et al. (eds.), <i>The Canon Law: Letter & Spirit</i>
<i>Comm.</i>	<i>Communicationes</i>
<i>Communiois notio</i>	CDF, Letter to the Bishops of the Catholic Church on Certain Aspects of the Church as Communion
<i>CSN</i>	Catholic Secretariat of Nigeria
<i>ed.</i>	Editor
<i>eds.</i>	Editors
<i>Exegetical Comm</i>	MARZOA, A., J. MIRA, R. RODRÍGUEZ-OCAÑA (eds.), and E. CAPARROS (gen. ed. of English trans.), <i>Exegetical Commentary</i>
<i>FLANNERY1</i>	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 1
<i>FLANNERY2</i>	FLANNERY, A. (gen. ed.), <i>Vatican Council II</i> , vol. 2
<i>Fontes</i>	GASPARRI, P. (ed.), <i>Codicis iuris canonici fontes</i>
<i>FRN</i>	FEDERAL REPUBLIC OF NIGERIA
<i>GE</i>	SECOND VATICAN COUNCIL, declaration on Christian education <i>Gravissimum educationis</i>
<i>gen. ed.</i>	General Editor
<i>GIRM</i>	GENERAL INSTRUCTION ON THE ROMAN MISSAL
<i>GS</i>	SECOND VATICAN COUNCIL, pastoral constitution <i>Gaudium et spes</i>
<i>LE</i>	OCHOA, X. (ed.), <i>Leges Ecclesiae post Codicem iuris canonici editae</i>
<i>LG</i>	SECOND VATICAN COUNCIL, dogmatic constitution <i>Lumen gentium</i>
<i>NCWC</i>	NATIONAL CATHOLIC WELFARE CONFERENCE
<i>no.</i>	Number
<i>nos.</i>	Numbers

ABBREVIATIONS

<i>OE</i>	SECOND VATICAN COUNCIL, decree <i>Orientalium Ecclesiarum</i>
<i>OT</i>	SECOND VATICAN COUNCIL, decree <i>Optatam totius</i>
<i>PB</i>	JOHN PAUL II, apostolic constitution <i>Pastor bonus</i>
PCLT	PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS (formally Pontifical Council for the Interpretation of Legislative Texts)
<i>PCN</i>	CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, <i>Particular Complementary Norms</i>
PCPCU	PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY
PCSC	PONTIFICAL COUNCIL FOR SOCIAL COMMUNICATIONS
<i>PG</i>	<i>Patrologiae cursus completus</i> , series Graeca
<i>PL</i>	<i>Patrologiae cursus completus</i> , series Latina
<i>PO</i>	SECOND VATICAN COUNCIL, decree <i>Presbyterorum ordinis</i>
<i>SC</i>	SECOND VATICAN COUNCIL, constitution <i>Sacrosanctum concilium</i>
SCCE	SACRED CONGREGATION FOR CATHOLIC EDUCATION
S.C. CONSIST.	SACRED CONSISTORIAL CONGREGATION
SCDF	SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH
Sec.	Section
SPA	SACRA POENITENTIARIA APOSTOLICA
<i>StC</i>	<i>Studia canonica</i>
trans.	Translation
tr. & ed.	Translator and Editor
<i>UR</i>	SECOND VATICAN COUNCIL, decree <i>Unitatis redintegratio</i>
USCCB	United States Conference of Catholic Bishops (since 1 July 2001)
vol.	Volume
vols.	Volumes
WAEC	West African School Certificate (equivalent to high school certificate)

GENERAL INTRODUCTION

The history of the tenure in office of a parish priest has made an interesting development, that is, from the perpetuity in office decreed by the Council of Trent, to the distinction between removable and irremovable parish priest of the 1917 Code, and to the stability in office for the good of souls in accord with the teaching of the Second Vatican Council.

A student of Canon Law can notice that, as ecclesiastical law developed, it tried to address issues that were of particular importance at a given time. In the early Church, there was great need of establishing doctrinal integrity and of devising ways and means of dealing with heretics and others who were intent on dividing the faith community.

Later on, the focus shifted to general organization, particularly with the establishment of dioceses and parishes. With the decree of the Council of Trent, parishes were separated by definite boundaries, and perpetual parish priests were assigned to each of them.

As the clergy became more numerous, it was necessary to establish rules governing their conduct and the carrying out of their pastoral duties. At the time of the Council of Trent, in addition to attempting to purify the Church of numerous ills that had afflicted it, steps were taken to ensure the financial stability of priests, especially through the benefice system.

Later, in the 20th Century, as the law was formally codified for the first time, and as the Church was enjoying a great missionary expansion, the emphasis seemed to be placed on uniformity throughout the entire Church.

Not surprisingly, then, when the Second Vatican Council convened, the Fathers saw the need of examining anew the underlying rationale for many of the Church's laws and practices. A strong focus was placed on those canonical institutes which best provided for the good of souls (*salus animarum*). Thus, it became necessary to break asunder certain bonds that specified a uniform approach to all matters, no matter what was the age of the Church, the culture in which it exercised its mission, or its relation with the surrounding world.

It became obvious that not all Church laws could be the same everywhere. Provision had to be made for appropriate adaptations, while retaining essential unity in those areas where such was required. For this reason, the Council focused a good part of its attention on conferences of bishops and their role in promoting the unity of the Church universal. It reviewed the nature of conferences and their competence, and entrusted to the local bishops more responsibilities than they had previously been asked to assume. This led, fortunately, to the development of a relatively new facet of Church law – what is known today as “particular law of the bishops’ conference,” that apply to the conference’s area of jurisdiction as distinguished from the “universal law,” which applies to Catholics of the Latin Church, no matter where they happen to find themselves.

It was not an easy matter for bishops in every part of the world to undertake the arduous task of preparing complementary legislation that would satisfy the requirements of the universal law, yet allow for appropriate adaptation according to the circumstances of time and place. The Catholic Bishops’ Conference of Nigeria (= CBCN) had to face this task and it took up the challenge. However, the first steps taken were sometimes uncertain and, at times, rather defective.

One area, in particular, could illustrate this point. When the emphasis of the Church shifted to the greater good of souls, rather than focusing on structures as primary, it became obvious that the situation of parish priests would play a major role in this regard. For they were the persons who were in immediate contact with the faithful on a regular basis. Thus, the vexed question of a parish priests' stability in office, which had seen many variations through the course of time, became the object of particular study.

The Second Vatican Council, in the perspective of promoting the *salus animarum*, examined this question of the stability of parish priests. Thus, the distinction between removable and irremovable parish priests was to be abolished; and appropriate procedures for the removal and transfer of parish priests were to be introduced, so that while observing the principles of natural and canonical justice, the bishop might more suitably provide for the good of souls (see CD, no. 31).

Because situations were so different from place to place, the Council simply determined a general principle promoting stability, and then allowed for appropriate adaptations. This insight was carried over into c. 522 of the 1983 Code. According to this canon, a parish priest must have the benefit of stability, and therefore, he is to be appointed for an indeterminate period of time (*ad tempus indefinitum*). Nevertheless, this is not an absolute norm because it is subject to the proper care of souls (*salus animarum*), which might necessitate an *ad certum tempus* appointment of a parish priest. For this reason, the legislator includes an exception to the general principle, subjecting an *ad tempus* appointment to the decision of the conference of bishops of a nation or region, which should specify the minimum number of years for *ad tempus* appointment.

In response to the prescript of c. 522, CBCN issued a decree that turned out to be quite problematic. It reads “The Catholic Bishops’ Conference of Nigeria directs and decrees that the appointment of parish priests shall be ‘ad tempus’ or for a specified period of time.”¹

Seeing the confusion caused by this one particular decree, the question arose as to the status of the other decrees of the CBCN that were likely to give rise to similar or related problems. This led to the choice of the topic of this dissertation: the relationship between universal² law and particular law: an analysis of the particular complementary norms of the Catholic Bishops’ Conference of Nigeria.

The scope of our project, then, is twofold, the relationship between universal law and particular law and an analysis of the particular complementary norms of the Catholic Bishops’ Conference of Nigeria. Thus, two inter-related questions are the focus of our inquiry, namely, i) what is the relationship between universal law and particular law; ii) are the particular complementary norms of CBCN in conformity with the universal law?

Our research indicates that there are no major studies directly related to our topic to date. Three articles have a relationship to our topic only because they address the

¹ CBCN, *Particular Complementary Norms to the Revised Code*, Onitsha, Vicatex (Nig.) Ltd., 1985 (= PCN), p. 4.

² The adjective “universal” is used to qualify laws that bind everywhere on earth (ubique terrarum) on those for whom they are made. A universal law then is not one that binds every person on earth or everyone in the Church universal, as some people tend to understand. Rather, as used in the Latin Code, it is the law that binds the members of the Latin Church wherever they may be. This is the sense in which universal law and particular law are used in the Latin Code; and we use the adjective “universal” in this sense. It is in this light that K. Bharanikulangara explains the notion of particular law in relation to common law in the Eastern Churches. He writes: “The notion of particular law is to be understood against the background of the use of the terms ‘universal law’ and ‘particular law’ in CIC” (K. BHARANIKULANGARA, *Particular Law of the Eastern Catholic Churches*, edited by J.D. Faris and F.J. Marini, New York, NY, Saint Maron Publications, 1996, p. xiv.

actions of bishops' conferences regarding "complementary norms;"³ and a JCD dissertation on the "National Episcopal Conference of Nigeria,"⁴ is not related to our project. There are however, some major works and articles on the conferences of bishops, but since our theme is not on conference of bishops as such, we have referred to such works only where necessary.

Our study is analytical in nature. By this, we mean that our approach is based on a systematic analysis of the topic under consideration. We will try to analyse the complementary norms of CBCN in light of the general principles of law, which regulate the relationship between universal and particular laws.

This project is developed in four chapters. The first chapter examines the function of law in the mission of the Church. It contains a discussion on the nature of the Church that needs law and on how its governance is achieved through the exercise of the *tria munera* of Christ. As the decrees of CBCN are the major focus in our work, this chapter also provides a brief description of the genesis of conferences of bishops, and a summary of how the conference exercises the power of governance in the Church. This chapter, which also includes an explanation of the notion of law and the relationship between

³ The first is S. EUART, "Complementary Norms Implementing the 1983 Code of Canon Law by the National Conference of Catholic Bishops [USA]," in *The Jurist*, 53 (1993), pp. 396-434. This was a compilation of the complementary norms approved by the United States Conference of Catholic Bishops. Another one is by the same author, "Complementary Norms Implementing the 1983 Code of Canon Law by the National Conference of Catholic Bishops [USA]," in CLSA, *Proceedings*, Portland, Oregon, 13-16 October 2003, pp. 43-63. The third is MORRISEY, F.G., "Decisions of Episcopal Conferences in Implementing the New Law," in *StC*, 20 (1986), pp. 105-121.

⁴ See B. ETAFO, *National Episcopal Conference of Nigeria: Its Legal Functionality*, JCD diss. Rome, Pontificia Universitas Urbaniana, 1983. In this work, Etafo examined the legal functionality of the National Episcopal Conference of Nigeria; and how the reception of norms promulgated by the conference could enhance the pastoral functions of the conference and the Church in Nigeria.

universal law and particular law, aims at providing the background for an analysis of the particular complementary norms enacted by CBCN.

The second chapter presents a study of the Catholic Bishops' Conference of Nigeria and its setting, which is Nigeria. It examines the statutes and the basic structural and functional aspects of CBCN and the scope of its authority.

Chapter three analyses the particular complementary norms of CBCN on matters in which it is obliged to promulgate particular complementary norms. These norms are analysed in the light of the prescripts of the universal law.

Similarly, in chapter four, we analyse the particular complementary norms of CBCN in those cases in which the conference is not obliged to enact particular complementary norms, but it may do so.

Our study is circumscribed mostly by the prescripts of the Code of Canon Law of the Latin Church, because there are no parallel canons on the conference of bishops in the Code of Canons of the Eastern Churches (= *CCEO*). Furthermore, at present, there is no Eastern Church *sui iuris* in Nigeria. Therefore, CBCN has not enacted any particular norms that involve the Eastern Churches. Nevertheless, in some places in our project, because of common scientific interest, we provide some parallel canons of the Eastern Code in order to create interest in further studies on this subject, in those places where both the Latin and Eastern Churches exist.

CHAPTER ONE

THE FUNCTION OF LAW IN THE MISSION OF THE CHURCH

INTRODUCTION

The Constitution on the Church, *Lumen gentium*, can be regarded as the most significant ecclesiological document of the Second Vatican Council because of its deeper treatment of the nature of the Church. This constitution forms the bedrock of the other documents of the council.¹ The central theme of *Lumen gentium* is the Church seen as a communion of faith, hope, and charity; and a visible organisation through which Jesus Christ communicates truth and grace to all members of the human family.² The Church, therefore, is at the same time a spiritual community (*communitas spiritualis*) and a visible society (*coetus adspectabilis*), a Church of charity and a juridical society. In the juridical realm, canon law proceeds from the very nature of the Church and is necessary for the mission of the Church since its purpose is to guide its members to their destined end. This doctrine has been clearly stated in the 1983 Code when it acknowledges that the supreme law guiding the legal activities of the Church is the salvation of souls (c. 1752).

Scholars who distinguish between “the juridical Church” and “the Church of charity” believe that the Church consists of various organs, but they reject the necessity of law in the Church. Their position could be summed up in the words of W. Lowrie who

¹ See A. DULLES, “The Church: Introduction,” in W.M. ABBOTT (gen. ed.), *The Documents of Vatican II in a New and Definitive Translation*, with commentaries and notes by Catholics, Protestants and Orthodox authorities, NY, Herder and Herder, Association Press, 1966, p. 10.

² See SECOND VATICAN COUNCIL (VATICAN II), Constitution on the Church *Lumen gentium* (= LG), no. 8, 21 November 1964, in *AAS*, 57 (1965), p. 11; English trans. in A. FLANNERY (gen. ed.), *Vatican Council II, Volume 1, The Conciliar and Post Conciliar Documents* (= FLANNERY1), New revised edition, Northport, NY, Costello Publishing Company, 1998, p. 357.

interprets Rudolph Sohm's *Kirchenrecht* as follows: "The body of Christ has its organs, but it is impossible that its organization be of a legal nature."³

The fundamental premise on which we develop this chapter is that canon law proceeds from the very nature of the Church and is essential to the fulfilment of its mission. Therefore, our focus here is the governing function of the Church carried out through its legislative activities. For this reason, we will first examine the nature of the Church and the exercise of the power of governance in it. Given that the central theme of our project concerns the particular norms enacted by the Catholic Bishops' Conference of Nigeria, we shall examine the conference of bishops and its exercise of *munus regendi*. Furthermore, since the Church of charity cannot exist without the juridical dimension of the Church, we will also discuss law and the mission of the Church. This approach, we hope, will enable us to evaluate critically the particular norms of CBCN in later chapters.

1.1 – THE NATURE OF THE CHURCH

The Church has remained the same through the past two millennia, but the understanding and mode of expressing its nature have varied in time. There was an erroneous tendency before the Second Vatican Council to equate the outward, human, and changeable elements in the Church with its unchangeable essence, which is the divine, the mystical body of Christ. This resulted from the presentation of the Church both in theological formulae that are provisional in nature and in juridical norms that are in constant flux. P. Granfield expresses this point as follows:

³ W. LOWRIE, *The Church and Its Organization in Primitive and Catholic Times: An Interpretation of Rudolph Sohm's Kirchenrecht*, The Primitive Age, London, Bombay, Longmans, Green, and Co., 1904, p. 141.

The impression was given that the Church as an organised society was distinct from the Church as a faith community of worship. Vatican II restored the view that the institutional and charismatic aspects of the Church are inseparable and together form 'one complex reality' (*LG*, no. 8).⁴

This mystical reality, inexhaustible in its very nature, is being described in various ways. In this section, we will examine the Church as a *societas perfecta* and as a *communio*, in the light of its *tria munera*.

1.1.1 – The Church as a *Societas perfecta*

As observed by K. Walf, the description of the Church as a perfect society (*Societas perfecta*) does not have an admirable history.⁵ It was “the product of the eighteenth and nineteenth centuries and was popular in theological circles from the time of Pius IX to Pius XII – a little over a century.”⁶ We need to recall briefly here some antecedents of the concept of the Church as a society.

In the Middle Ages, the Church and the State were not considered as two separate entities but rather as two parts of a unified social reality – the *respublica Christiana*. The civil and the ecclesiastical components formed the one perfect community known as the Christian commonwealth. The constant and unresolved problem between the civil power and the ecclesiastical authority was the maintenance of power and the limit of authority that each exercised. As autonomous states and nations began to emerge in Europe, the unitary view of society was gradually replaced by a dualistic concept. The Reformation and several other movements, motivated by a spirit of nationalism, tried to restrict the

⁴ P. GRANFIELD, “The Rise and Fall of *Societas perfecta*,” in *Concilium*, 157 (1982), p. 6.

⁵ See K. WALF, “Die katholische Kirche – eine ‘*Societas perfecta*’?” in *Theologische Quartalschrift*, 157 (1977), pp. 107-118, especially pp. 107-112.

⁶ GRANFIELD, “The Rise and Fall of *Societas perfecta*,” p. 3.

power of Rome over local Churches and increase the power of civil rulers over the affairs of the Church. It is out of continuing confrontation between the Church and the State that the concept of *Societas perfecta* was born.⁷

Perfect society ecclesiology dominated the period between the Council of Trent and the middle of the twentieth century. The idea of perfect society can be traced back to the fathers of the Church, especially Saint Augustine who often applied the term society to the Church because of "his conviction that the Holy Spirit, who is 'the society of the Father and the Son' within the Trinity, is also the ground of the Church as a society."⁸ According to Granfield, an Austrian canonist might have been the first to use the term *Societas perfecta* for the Church when he wrote that the Christian society is of divine origin and it is a perfect society.⁹ Before the 1917 Code, the concept of *Societas perfecta* for the Church appeared in many documents,¹⁰ including in some of the schemata for the First Vatican Council.

⁷ See *ibid.*, pp. 3-4.

⁸ F.X. LAWLOR, "Society (in Theology)," in *New Catholic Encyclopaedia*, W.J. McDONALD (ed.), prepared by The Catholic University of America, New York, McGraw-Hill Book Co., 1967, vol. 13, p. 394.

⁹ See GRANFIELD, "The Rise and Fall of *Societas perfecta*," p. 5. According to Granfield, Franciscus Rautenstrauch (d. 1785), an Austrian canonist, may have been the first to use the term "perfect society" for the Church in a compilation of laws governing public debates during the reign of Maria Theresa.

¹⁰ A few examples are Pope Pius IX's encyclical referring to the Church as a perfect society when he wrote that the supernatural power of ecclesiastical rule is different and independent from political authority: "... idcirco ipsum regnum Dei in terris regnum est societatis perfectae ..." (PIUS IX, Encyclical *Vix dum*, in *Acta PP. Pii XI*, pars prima, *Acta exhibens quae ad Ecclesiam universam spectant*, Romae, Ex typographia Bonarum Artium, 1854-1878, vol. 6, p. 298); Pope Leo XIII also wrote: "Num unigenitus Dei filius societatem in terris constituit, quae Ecclesia dicitur ... Haec societas, quamvis ex hominibus constet ... quibus ad finem contendit, supernaturalis est et spiritualis: atque idcirco distinguitur ac differt a societate civili ..." (LEO XIII, Encyclical *Immortale Dei*, in *Acta PP. Leonis XIII*, Romae, Ex typographia Vaticana, 1881-1905, vol. V, pp. 124-125).

The term “perfect society” did not appear in the final approved documents of Vatican I, but it was the principal theme in two of its major schemata, *Supremi pastoris*, and *Tametsi Deus*.¹¹ It is remarkable to note that the caption of chapter 3 of *Supremi pastoris* read that the Church was a true, perfect, spiritual, and supernatural society.¹² The hub of chapter III of *Supremi pastoris* is the teaching that stated as follows:

We teach and indeed declare, that all the qualities of a true society belong to the Church ... It is not a member or a part of neither any society whatsoever nor can it be confused or mixed with any other society. However, it is so perfect that, although it is distinct from all other human societies, it also far surpasses all of them.¹³

This society however, was not a society of equals because the faithful were not believed to have equal rights. It was an unequal society – *Societas inaequalis*.¹⁴ In *Supremi pastoris*, an anathema was pronounced on anyone who would say that the Church was not a perfect society but a *collegium*, or that it was within civil society or the State in such a way that it was subject to secular power.¹⁵ The synopsis of the concept of

¹¹ See GRANFIELD, “The Church as *Societas perfecta* in the Schemata of Vatican I,” in *Church History*, 48 (1979), p. 432. The official titles of these schemata are *Primum schema constitutionis de Ecclesia Christi* and *Schema constitutionis dogmaticae secundae de Ecclesia Christi secundum reverendissimorum patrum animadversiones reformatum* (see *ibid.*, pp. 433 and 442 respectively).

¹² “Ecclesiam esse societatem, perfectam, spiritualement et supernaturalem” (J.D. MANSI [ed.], *Sacrorum conciliorum nova et amplissima collectio* [= MANSI], Paris & Leipzig, Hubert Welter, 1902, vol. LI, *Supremi pastoris*, ch. III, col. 540).

¹³ “Docemus autem ac declaramus, ecclesiae inesse omnes verae societatis qualitates ... Neque eadem membrum est sive pars alterius cuiuslibet societatis, nec cum alia quavis confusa aut commiscenda; sed adeo in semetipsa perfecta, ut dum ab omnibus humanis societatibus distinguitur, supra eas tamen quam maxime evehatur” (*ibid.*). See also GRANFIELD, “The Church as *Societas perfecta* in the Schemata of Vatican I,” pp. 435–436.

¹⁴ “Christi autem ecclesia non est societas aequalium, ac si omnes in ea fideles eadem iura haberent; verum est societas inaequalis ...” (see the schema in MANSI LI, *Supremi pastoris*, ch. X, col. 543).

¹⁵ “Si quis dixerit, ecclesiam non esse societatem perfectam, sed collegium; aut ita in civili societate seu in statu esse, ut saeculari dominationi subiiciatur; anathema sit” (*ibid.*, ch. XV, c. X, col. 552).

the Church as a perfect society in the schema *Tametsi Deus* is in chapter 9, in which the Church is presented, as of right and merit, a perfect society that is distinct from other assemblies of persons. The Church moves towards its proper end by its own way and reasons. It is absolute, complete, and sufficient in itself to attain the goals proper to it. It is neither subject to, joined as a part, nor mixed and confused with any other society.¹⁶

While the 1917 Code did not use the expression “perfect society,” the concept is not lacking though, since the Church was described as a moral person (*CIC/17*, c. 100, §1).¹⁷ The concept appeared however, in the apostolic constitution *Providentissima Mater Ecclesia*, by which the Code was promulgated.¹⁸ Accordingly, to call the Church perfect society “does not refer to its excellence or holiness but rather to its self-sufficiency and autonomy.”¹⁹ A society in a common and ordinary sense, according to Cavagnis, is “a moral and stable union of very many persons for the attainment of the same end.”²⁰ A

¹⁶ “Qua de causa ecclesia etiam iure merito societas perfecta dicta est: quippe quae ad finem proprium propriis viis et rationibus tendens, a quovis alio hominum coetu distincta, atque ita in se absoluta et completa est, ut sibi ad finem consequendum sufficiens, in iis, quae eo pertinent, nulli alii societati sive subiecta sive tamquam pars innexa sive permixta et confusa sit” (MANSI 53, *Tametsi Deus*, ch. IX, col. 315).

¹⁷ “Persona moralis iuridica est iuridica societas” (F. CAVAGNIS, *Elementa iuris publici naturalis et ecclesiastici*, Romae, Typis Societatis Catholicae Instructivae, 1889, p. 7).

¹⁸ “Providentissima Mater Ecclesia, ita a conditore Christo constituta, ut omnibus instructa esset notis quae cuilibet perfectae societati congruunt ...” (BENEDICT XV, Apostolic Constitution *Providentissima Mater Ecclesia*, 27 May 1917, in *Codex iuris canonici*, PII X Pontificis maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus. Praef., fontium annotatione et indice analytico-alphabetico ab Emmo Petro Card. Gasparri auctus, [Romae] Typis polyglottis Vaticanis, 1933, p. xxxix.).

¹⁹ GRANFIELD, “The Rise and fall of *Societas perfecta*,” p. 3.

²⁰ “Plurium moralis et constans unio ad eundem finem communibus mediis consequendum” (CAVAGNIS, *Elementa iuris publici naturalis et ecclesiastici*, p. 7). See also A. OTTAVIANI, *Institutiones iuris publici ecclesiastici*, editio quarta, emendata et aucta adiuvante Iosepho Damizia, vol. 1, [In Civitate Vaticana], Typis polyglottis Vaticanis, 1958, p. 29.

society can be perfect or imperfect.²¹ Granfield defines a perfect society as “one that is complete and independent in itself and possesses all the means necessary to attain its proposed end.”²² The Church is a juridically perfect society because it is made up of persons with a bond of union as a complex organisation; its end is the salvation of the human person, and it is endowed with divine gifts to achieve its objective.²³

The Second Vatican Council ushered in a more useful ecclesiology on the nature of the Church. As observed by one of the Fathers of Vatican II, the Church is no longer to be regarded as a *societas inaequalis*, but one in which all the faithful, including the clergy and the lay faithful, constitute the People of God.²⁴ The council presented the Church as a communion of faith, hope, and charity, a visible organisation through which Jesus the Christ communicates truth and grace to all members of the human family (*LG*, no. 8). According to the council therefore, the Church is not only a visible society hierarchically structured, but also the People of God and a *communio*. The 1983 Code incorporated this model of the Church as the people of God, a society (c. 204; *CCEO*, c. 7), and hierarchically structured *communio* comprising of persons with obligations and rights (c. 96). We shall briefly review the *communio* model of the Church.

²¹ See *ibid.*, p. 46.

²² GRANFIELD, “The Rise and fall of *Societas perfecta*,” p. 3.

²³ “*Societas iuridice perfecta ea est quae bonum in suo ordine completum tamquam finem habens, ac media omnia ad illud consequendum iure possidens, est in suo ordine sibi sufficiens et independens, id est plene autonoma*” (OTTAVIANI, *Institutiones iuris publici ecclesiastici*, p. 46).

²⁴ “In populo Dei, omnes sumus alii cum aliis coniuncti et eadem iura et officia fundamentalia habemus. Omnes participamus regali sacerdotio populi Dei. Papa est unus ex fidelibus; episcopi, sacerdotes, laici, religiosi, omnes sumus fideles” (P.D. AEMILIUS DE SMEDT, Intervention at the first session of Vatican II *Patrum orationes*, 1 December 1962, in *Acta Synodalia Sacrosancti Concilii Oecumenici Vaticani Secundi*, [In Civitate Vaticana], Typis polyglottis Vaticanis, 1970, vol. 1, periodus prima, pars iv, p. 143); see also A. DULLES, *Models of the Church*, second edition, Dublin, Gill and Macmillan, 1988, p. 39.

1.1.2 – The Church as a *communio*

The notion of *communio* is essential for the understanding of the nature of the Church. *Communio* conveys many ideas in both usage and speech. It is often used interchangeably for terms such as fellowship and community. None of these terms brings out the exact sense embedded in the Greek word, *κοινωνία* (*koinonía*), translated in Latin as *communio* (communion). *Koinonía* derives from the root *κοινός* (*koinós*), which in turn means *common*; this conveys various meanings in different usages. It is “an abstract term from *κοινωνός* and *κοινωνέω* and denotes participation or fellowship ... with a close bond. It expresses a two-sided relation ... It thus means ... ‘participation’ ... ‘impartation’ ... ‘fellowship.’”²⁵ In our study, we shall use the words *koinonía*, *communio*, and communion interchangeably.

According to *Lumen gentium*, the Church is in the nature of sacrament – a sign and instrument, that is, of communion with God and of unity among all people (*LG*, no.

1). Describing the Church, the Congregation for the Doctrine of the Faith writes:

The concept of communion lies ‘at the heart of the church’s self understanding, insofar as it is the mystery of the personal union of each human being with the divine Trinity and with the rest of mankind, initiated with the faith, and, having begun as a reality in the church on earth, is directed toward its eschatological fulfilment in the heavenly church.’²⁶

Communio must be understood within the teaching of the Bible and the patristic tradition, in which communion always entails a double dimension: the vertical (communion with

²⁵ F. HAUCK, “Κοινωνία,” in *Theological Dictionary of the New Testament*, G. KITTEL (ed.), Grand Rapids, Michigan, WM. B. Eerdmans Publishing Company, 1965, p. 798.

²⁶ CONGREGATION FOR THE DOCTRINE OF THE FAITH (= CDF), Letter to the Bishops of the Catholic Church *Communio notio (koinonía)*, 28 May 1992, in *AAS*, 85 (1993), no. 3, p. 839; English trans. in *Origins*, 22 (1992-1993), p. 108.

God) and the horizontal (communion among people).²⁷ It expresses the sacramental nature of the Church and the particular unity binding the faithful in the one mystical body of Christ. This body, the Church, is an organically structured community endowed with suitable means for its visible and social union.

Communio, therefore, is both invisible and visible. As an invisible reality, it is the communion of each person with the Father through Christ in the Holy Spirit and with others who share in the divine nature (2 Peter 1:4) and passion of Christ (2 Cor. 1:7), in the same faith (Eph. 4:13; Philemon 6), and the same Spirit (Phil 2:1).²⁸ Thus, “God is the source of communion, with the Church as instrument of this, so that it is the present action of the Spirit in and through the Church that brings about communion of [persons] with God and with one another.”²⁹ As a visible reality, we speak of the communion between individuals in the Church, individuals and the Church, and the Church in Rome and other particular Churches. Thus, the expressions, “universal,” “particular,” and “local” are adjectives that qualify the one Church of Christ and add to our comprehension of the unique mystery of this Church.³⁰ They express the radically different dimensions

²⁷ See *ibid.*

²⁸ See *ibid.*, nos. 3, 4.

²⁹ G. GHIRLANDA, “Universal Church, Particular Church, and Local Church at the Second Vatican Council and in the New Code of Canon Law,” in R. LATOURELLE (ed.), *Vatican II: Assessment and Perspectives Twenty-five Years After (1962-1987)*, New York/Nahwah, Paulist Press, vol. 2, p. 234.

³⁰ Universal Church qualifies the *una, sancta, catholica, et apostolica ecclesia* of Christ which is found everywhere on earth (*ubique terrarum*). *Universus* – *a* – *um* and *universalis* – *e* are both adjectives and they are used synonymously here. Local Church qualifies a group of particular Churches in a particular nation or locality; and a particular Church is identified with a diocese or an eparchy.

that underline, each for its part, the same reality – the Church.³¹ Whatever name one may use to qualify the Church, the only basic reality is that it is a *koinonía*, indivisible and universal.³² Understood in this sense, the Church as a *koinonía* could be expressed in terms of *communio spiritualis*, *communio ecclesiastica*, and *communio hierarchica*.³³

The Church is the sacrament of the communion of persons with God, who is one and three, and of people with one another. Thus, God is the source of communion while the Church is its instrument, in such a way, that the present action of the Spirit in and through the Church brings about the communion of persons with God and with one another.³⁴ Within the reality of spiritual communion, we have the communion of the faithful (*communio fidelium*) with its basis in baptism, under the promptings of the Holy Spirit, and in direct relationship with the Eucharist. Accordingly, *communio spiritualis* is the spiritual union of the entire People of God brought about by the working of the Holy Spirit.³⁵ Spiritual communion, as the name implies, is spiritual in nature and it is invisible. However, *communio* is not only spiritual and invisible, but must also be juridical and visible;³⁶ and it is within this context that we discuss *communio ecclesiastica* and *communio hierarchica*.

³¹ See P. CHOUINARD, “Les expressions ‘Église locale’ et ‘Église particulière’ dans Vatican II,” in *Studia canonica* (= *StC*), 6 (1972), p. 115.

³² See *ibid.*, p. 131.

³³ See G. GHIRLANDA, “De definitione Ecclesiae universalis, particularis, localis, iuxta Concilium Vaticanum Secundum,” in *Periodica*, 71 (1982), pp. 607-612.

³⁴ See GHIRLANDA, “Universal, Particular, and Local Church,” p. 234.

³⁵ See *ibid.*, pp. 234-235.

³⁶ See *ibid.*, p. 235; see also CDF, *Communione notio*, no. 4; English trans. in *Origins*, 22 (1992-1993), p. 108.

Ecclesiastical communion applies to individuals in the sense that those baptised in Christ are in full communion with the Catholic Church here on earth, who are joined with Christ in his visible body, through the bonds of profession of faith, the sacraments, and ecclesiastical governance (c. 205; *CCEO*, c. 8).³⁷ It also applies to the relationship existing between the local Churches and Rome and between the local Churches themselves. This *communio*, expressed in the Eucharistic celebration,³⁸ constitutes the fullness of catholic communion (*plenitudo communionis Catholicae*).³⁹ It is important to emphasise here that the communion between particular Churches must not be presented in such a way as to weaken the unity of the Church at the visible and institutional level.

Consequently, the idea of ecclesiastical communion has no place for the autonomy of particular Churches. This is so because it is a clear lesson from history that when a particular Church seeks to become self-sufficient and weakens its real communion with the universal Church and with the living and visible centre, its internal unity suffers.⁴⁰ The term communion, as applied to the particular Churches is analogical, says the Congregation for the Doctrine of the Faith, and to be understood as explained:

In order to grasp the true meaning of the analogical application of the term communion to the particular churches taken as a whole, one must bear in mind

³⁷ See also *LG*, no. 14.

³⁸ See CDF, *Communio notio*, no. 5; English trans. in *Origins*, 22 (1992-1993), p108; See also VATICAN II, Decree on Ecumenism *Unitatis redintegratio* (= *UR*), nos. 4 and 15, 21 November 1964, in *AAS*, 57 (1965), pp. 94-95, 101-102; English trans. in FLANNERY1, pp. 457 and 465.

³⁹ See GHIRLANDA, "Universal, Particular, and Local Church," p. 239; see also, VATICAN II, Decree on the Catholic Eastern Churches *Orientalium Ecclesiarum* (= *OE*), no. 4, 21 November 1964, in *AAS*, 57 (1965), p. 77; English trans. in FLANNERY1, P. 443; *UR*, nos. 3, 4, 13 and 19.

⁴⁰ See PAUL VI, Evangelisation in the Modern World *Evangelii nuntiandi*, no. 64, 8 December 1975, in *AAS*, 68 (1976), pp. 54-55; English trans. in FLANNERY2, P. 743. See also CDF, *Communio notio*, no. 8; English trans. in *Origins*, 22 (1992-1993), p. 109

above all that the particular churches, insofar as they are 'part of the one church of Christ (CD, no. 6),' have a special relationship of 'mutual interiority' with the whole, that is, with the universal church, because in every particular church 'the one, holy, catholic and apostolic church of Christ is truly present and active'. For this reason, 'the universal church cannot be conceived as the sum of the particular churches or as a federation of particular churches'.⁴¹

The universal Church therefore, is neither the sum of the particular Churches nor a federation of particular Churches. "It is not the result of the communion of Churches, but in its essential mystery it is a reality ontologically and temporally prior to every individual particular church."⁴² Therefore, each member of the faithful, especially in the celebration of the Eucharist, is in his or her Church, in the Church of Christ, regardless of whether or not the member belongs, according to Canon Law (see cc. 368, 369),⁴³ to the diocese, parish, or other particular communities where the celebration takes place. Thus, whoever belongs to one particular Church belongs to all the Churches, since belonging to

⁴¹ CDF, *Communio notio*, no. 9; English trans. in *Origins*, 2 (1992-1993), p. 109.

⁴² Ibid. The expression that the universal Church is ontologically and temporally prior to the particular Churches was the main crux of the contention in the Ratzinger and Walter Kasper debate. Ratzinger had used this expression in his book *Church, Ecumenism and Politics*, New York, Crossroad, 1989, p. 75: "... the priority of the universal church always precede that of particular churches." The German edition of this book had appeared earlier in 1987. When expression appeared in *Communio notio*, the letter CDF sent to all bishops of the Catholic Church, Kasper took issue with it. The debate is so long that we cannot recapt it here. Most of them appeared in German. Some of the articles on this issue are: W. Kasper, "Zur Theologie und Praxis des bischoflichen Amtes," in *Wirklichkeiten-Herausforderungen-Wandlungen*, Munich, Bernward bei Don Bosco, 1999, pp. 32-48; J. Ratzinger, "On the Relation of the Universal Church and the Local Church in Vatican II," 22 December 2000, in *Frankfurter Allgemeine Zeitung* (a German newspaper); W. KASPER, "On the Church: A Friendly Reply to Cardinal Ratzinger," in *The Tablet*, 255 (2001), pp. 927-930; J. RATZINGER, "A Response to Walter Kasper: The Local Church and the Universal Church," in *America* 185 (2001), pp. 7-11; W. KASPER, "From the President for the Council for Promoting Christian Unity," in *America*, 185 (2001), pp. 28-29. McDonnell made a good synthesis of the Ratzinger/Kasper debate in his article (K. McDONNELL, "The Ratzinger/Kasper Debate: The Universal Church and Local Churches," in *Theological Studies*, 63 (2002), pp. 227-250.

⁴³ See also *CCEO*, c. 177, §1. In the Eastern Catholic Churches, the Church is apportioned into eparchies, the equivalent of dioceses in the Latin Church.

the communion, like belonging to the Church, is never simply particular, but by its very nature is always universal.⁴⁴

Apart from the full catholic communion (*plenitudo communionis Catholicae*), there exists an imperfect communion with some ecclesial communities (*UR*, nos. 3, 22). These are the baptised, honoured “by the name of Christian but do not profess the catholic faith in its entirety or have not preserved unity or communion under the successor of Peter (*LG*, no. 15).”⁴⁵

Hierarchical communion, on the other hand, constitutes ecclesiastical (catholic communion) and the full realisation of the Church as communion. It is of importance in defining the relationship between bishops and presbyters, and equally important in relation to the definition of the Church.⁴⁶ As regards bishops, hierarchical communion is based on the common gift of the Spirit communicated to them through episcopal consecration and the legitimisation of the consecration itself.⁴⁷ It points to the spiritual and organic (structural) bond between bishops and the head of the college and its other members.⁴⁸ For presbyters, hierarchical communion, by virtue of the union in the one

⁴⁴ See CDF, *Communio notio (koinonía)*, no. 10; English trans. in *Origins*, 22 (1992-1993), p. 110.

⁴⁵ CDF, *Communio notio*, no. 17; English trans. in *Origins*, 22 (1992-1993), p. 111.

⁴⁶ Ibid. Also, see GHIRLANDA, “Universal, Particular, and Local Church,” p. 239.

⁴⁷ The legitimacy of Episcopal consecration is by free appointment by the Supreme Pontiff or his confirmation of those lawfully elected (c. 377). In the Eastern Catholic Churches, the Roman Pontiff, without prejudice to cc. 149 and 168 of *CCEO*, appoints other bishops (*CCEO*, c. 181, §2).

⁴⁸ See GHIRLANDA, “Universal, Particular, and Local Church,” p. 239. Also see *LG*, nos. 21, 22; VATICAN II, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus* (= *CD*), nos. 4, 5, 28 October 1965, in *AAS*, 58 (1966), pp. 674-675; English trans. in FLANNERY I, pp. 565-566; *CIC/83*, cc. 375, §2, 336; *CCEO*, c. 49.

priesthood and legitimate ordination,⁴⁹ points to the spiritual and organic (structural) bond between presbyters and the order of bishops.⁵⁰ Hierarchical communion could equally be assumed to apply to deacons who are ordained for the ministry and service to the people of God in communion with the bishop and his priests.⁵¹

The Theological Commission of Vatican II, in its *Explanatory Note* to Chapter III of *Lumen gentium*, explicitly stated that *communio* “is not to be understood as some vague sort of goodwill, but as something organic which calls for a juridical structure as well as being enkindled by charity.”⁵² This note implies that the Church is both a *communio* and a visible society. These two dimensions do not make the Church two realities; rather, they form one interlocked reality comprising of the divine and human element (*LG*, no. 8).

This Church, structurally organised in the world as a perfect society, is different from all others.⁵³ Its end is the salvation of the People of God,⁵⁴ and it is governed by the successor of Peter and by the bishops in union with him (*LG*, nos. 8, 18). This governance is carried out through the exercise of the *tria munera*.

⁴⁹ Cf. *CIC/83* cc. 1015, §1, 1383; *CCEO* cc. 747, 748, 1459, §2.

⁵⁰ Cf. VATICAN II, Decree on the Ministry and Life of Priests *Presbyterorum ordinis* (= *PO*), nos. 7 and 15, 7 December 1965, in *AAS*, 58 (1966), pp. 1001 and 1036; English trans. in *FLANNERY1*, pp. 875 and 890; *CIC/83*, cc 273, 519; *CCEO*, cc. 370, 281, §1).

⁵¹ See GHIRLANDA, “Universal, Particular, and Local Church,” pp. 239-240. See also *LG*, no. 29; *CD*, no. 15.

⁵² *Preliminary Explanatory Note*, no. 2, 16 November 1964, in *AAS*, 57 (1965), p. 73; English trans. in *FLANNERY1*, p. 425.

⁵³ See *MANSI* 51, col. 540.

⁵⁴ Cf. *LG*, no. 18; *CIC/83*, c. 1752.

1.1.3 – The *tria munera* of the Church

The section of the 1983 Code on the power of governance, Book 1, Title VIII, uses the title, *De potestate regiminis*, in preference to the traditional expression *De potestate iurisdictionis*. One of the reasons for this shift is the need to differentiate the canonical concept of jurisdiction from its connotation in civil law. In some legal systems, jurisdiction refers to judicial power. The canonical concept of jurisdiction includes the exercise of legislative, judicial, and executive powers.⁵⁵ The more biblical and conciliar formula *munus regendi*, unlike its parallels in Books III (*De Ecclesiae munere docendi*) and IV (*De Ecclesiae munere sanctificandi*), has not been used to identify the power of governance in the 1983 Code. However, the Code has used the *tria munera* of Christ in terms of office, function, or service.⁵⁶ The use of *potestas regiminis* by the Code is rooted in the teaching of *Lumen gentium*. The explanatory note of chapter III of *LG* presents us with the difference between *munus* and *potestas* when it affirms:

In consecration is given an ontological participation in sacred functions (*munera*), as is clear beyond doubt from tradition, even liturgy. The word function is deliberately used in preference to powers, which can have the sense of power ordered to action. For such ready power ordered to action to be had, it requires canonical or juridical determination by hierarchical authority. A determination of this kind can come about through appointment to a particular office or the assignment of subjects, and is conferred according to norms approved by the supreme authority.⁵⁷

⁵⁵ See A. VIANA, Commentary on c. 135, in Á. MARZOA et al. (eds.), *Exegetical Commentary on the Code of Canon Law* (= *Exegetical Comm*), prepared under the responsibility of the MARTÍN DE AZPILCUETA INSTITUTE, Faculty of Canon Law, University of Navarra, English edition, E. CAPARROS (General editor), Montréal, Canada, Wilson & Lafleur; Chicago, Illinois, Midwest Theological Forum, 2004, vol. 1, p. 815.

⁵⁶ Cf. *CIC/83*, cc. 375, §2, 519, 1008; *CCEO*, 743.

⁵⁷ “In consecratione datur ontologica participatio sacrorum munerum, ut indubie constat ex Traditione, etiam liturgica. Consulto adhibetur vocabulum *munerum*, non vero *potestatum*, quia haec ultima vox de potestate *ad actum expedita* intelligi posset. Ut vero talis expedita potestas habeatur, accedere debet canonica seu iuridica determinatio per auctoritatem hierarchicam” (*Preliminary Explanatory Note*, no. 2; English trans. in FLANNERY1, p. 424).

Thus, the distinction is between the ontological sharing in the sacred functions (*munera sacra*) and canonical mission. The ontological function (*munus*) cannot be actualised without canonical mission by which the power is ordered to action. Canonical mission for a bishop, that is, admission to office, is made only when one “is constituted a member of the episcopal body in virtue of the sacramental consecration and by hierarchical communion with the head and members of the college” (*LG*, no. 22).

Through episcopal consecration, with a special outpouring of the Holy Spirit, sacramental grace is conferred on bishops, so that they undertake the role of Christ and act as his representative (*in eius persona*). The three functions of teaching, sanctifying, and governing are encapsulated in the episcopal office. Although sacramental grace, episcopal office, and *munus* are distinct, they are closely related.⁵⁸ The explanatory note of the theological commission regarding *munus* brings to focus the fact that ecclesiastical power, which Christ conferred on the Apostles and their successors (Lk. 22, 24-27), is characteristically for service. In this light, L. Chiappetta observes that this power is not in the Church for dignity or honour, but it is essentially a service rendered to God and for the human person.⁵⁹

⁵⁸ “*Munera sacramentalia et potestates hierarchicae seu regiminis et magisterii duo aspectus unius realitatis sunt, ministerii episcopalis nempe, cuius fons est Christus qui per sacramenta et hierarchiam in Ecclesia agit*” (G. GHIRLANDA, “De natura, origine et exercitio potestatis regiminis iuxta novum codicem,” in *Periodica*, 74 [1985], p. 158; cf. also *LG*, no. 21; *CIC/83*, c. 375).

⁵⁹ “Son questi i tre compiti essenziali della Chiesa, detti tradizionalmente **potestà** o **poteri** (*potestates*): di magistero, d’ordine e di governo. La classica distinzione figura anche nell’attuale Codice, che tuttavia, parlando unitariamente dei tre poteri, usa di preferenza il termine **munus** (funzione, ufficio, servizio): *munera docendi, sanctificandi et regendi* (cf. cann. 375, § 2; 519; 1008, ecc.). È la terminologia adoperata dal Concilio Vaticano II, che, con la parola “munus” ha inteso mettere in evidenza il carattere di ‘servizio’ proprio della ‘potestà ecclesiastica’, conferita da Cristo agli Apostoli e ai loro successori (Lc. 22, 24-27). In effetti la potestà non è direttamente nella Chiesa una ‘dignità’ o un ‘onore’, ma è essenzialmente un ‘servizio’, che si presta a Dio e ai fratelli” (L. CHIAPPETTA, *Il Codice di diritto canonico*:

The *tria munera*, by their very nature, are exercised by the bishops in hierarchical communion with the head and the members of the college of bishops.⁶⁰ They are exercised over the universal Church by the Roman Pontiff, the successor of Peter, or by the college of bishops, which must always act together with its head and never without him.⁶¹ As individuals, diocesan bishops exercise the *tria munera* only in the diocese entrusted to their care.⁶² The other faithful, in their own ways, share in the exercise of the *tria munera* of Christ in the Church. It is not the aim of our work to present a general treatment of the *tria munera* of the Church; nevertheless, we will now discuss further one aspect of the *tria munera*, the *munus regendi*, in this section.

1.1.4 – The Dimensions of *munus regendi* in the Church

Munus regendi is the ruling or governing function of the Church. J. Hervada describes the various aspects of *munus regendi* (governance function) as the regulation of the social life of the people of God and the direction, coordination, and control of the public activities of the ecclesiastical organisation. It also includes the establishment of those general, common, and basic norms of participation in the life of the people of God, decisions about doctrinal controversies, and judgment regarding the evangelical conformity of the activities and the spirituality of the faithful and the social dimension of institutions. Furthermore, it involves the regulation, fostering, and substitution of

commento giuridico-pastorale, 2nd ed., accresciuta e aggiornata, Roma, Edizione Dehoniane, 1996, vol. 1, p. 200).

⁶⁰ Cf. *LG*, no. 21; *CD*, no. 2; *CIC/83*, c. 375, §2.

⁶¹ Cf. *LG*, no. 22; *CIC/83*, cc. 330-341; *CCEO*, cc. 43-54.

⁶² Cf. *LG*, no. 23; *CD*, no. 3; *CIC/83*, cc. 376, 381; *CCEO*, cc. 178-179.

activities derived from the freedom of the faithful.⁶³ The power of governance exists in the Church by divine institution.⁶⁴ It can be defined as “the lawfully granted, public power necessary for validly performing a juridical act that is legislative, executive, or judicial.”⁶⁵ This power is also called the power of jurisdiction.⁶⁶ It is ordinary, if it is attached to an office by the law itself; or delegated, if it is granted to a person other than through an office. Ordinary power of governance can be proper or vicarious.⁶⁷

Inasmuch as by consecration the bishops receive the sacred functions of sanctifying, teaching and ruling (c. 375, §2), those in sacred orders are capable of the power of governance in accordance with the provisions of law.⁶⁸ Laypersons can cooperate in its exercise in accordance with the law.⁶⁹ Since the Code does not indicate that the lay Christian faithful are incapable of the power of governance (cf. 10), we may assume that they are capable. However, the Code has mixed messages about the

⁶³ “El gobierno eclesiástico tiene, según lo dicho, una competencia delimitada por las siguientes funciones:

La dirección, coordinación y control del ámbito público; es decir, de las actividades de la organización eclesiástica ... El establecimiento de aquellas normas *básicas, comunes y generales* ... de participación en la vida del Pueblo de Dios, que se entienden históricamente necesarias para que todo fiel esté vitalmente integrado en la Iglesia como comunidad religiosa ... La decisión de las controversias doctrinales y el juicio de conformidad evangélica respecto de las actividades y de la espiritualidad de los fieles y de las instituciones, en cuanto tienen una dimensión social ... La regulación, fomento, ayuda y —en su caso— suplencia de las actividades del ámbito ...” (J. HERVADA, *Elementos de derecho constitucional canónico*, 2nd edición, Pamplona, Navarra Gráfica ediciones, 2001, pp. 241-242). See also A. VIANA, Commentary on Title VIII, “The Power of Governance,” in *Exegetical Comm* 1, p. 817.

⁶⁴ Cf. *CIC/83*, c. 129, §1; *CCEO*, c. 979, §1.

⁶⁵ J.M. HUELS, “The Power of Governance and Its Exercise by Lay Persons: A Juridical Approach,” in *StC*, 35 (2001), pp. 65-66.

⁶⁶ See *CIC/83*, c. 129, §1; *CCEO*, c. 979, §1.

⁶⁷ See *CIC/83*, c. 131, §§1, 2; *CCEO*, c. 981.

⁶⁸ See *CIC/83*, c. 129, §1; *CCEO*, c. 979, §1.

⁶⁹ See *CIC/83*, c. 129, §2; *CCEO*, c. 979, §2.

capability of the lay Christian faithful to exercise the power of governance, at least with holding offices, because of the use of *solus* in c. 274, §1.⁷⁰ There is no argument regarding the provision that only clerics can obtain offices, the exercise of which requires the power of order. However, the second part of c. 274, §1, requiring the power of orders for the exercise of the power of ecclesiastical governance, has been a subject of lively debate among scholars.⁷¹ Canon 274, §1 is a clear indication that canonists are divided over the question whether *potestas ordinis* or *sacra potestas* is required for the reception of the power of jurisdiction. While some scholars argue that the prescript of c. 274, §1 runs contrary to the provision of c. 1421, §2 in which the lay Christian faithful can

⁷⁰ CIC/83, c. 274, §1: "Soli clerici obtinere possunt officia ad quorum exercitium requiritur potestas ordinis aut potestas regiminis ecclesiastici."

⁷¹ There are various schools of thoughts on the role of the lay Christian faithful regarding the exercise of the power of governance. Some argue that the power of jurisdiction is essentially linked to the power of order and so, only those in sacred orders can possess the power of governance. See E. KILMARTIN, "Lay Participation in the Apostolate of the Hierarchy," in *The Jurist*, 41 (1981), pp. 353-354; V. DE PAOLIS, "De natura sacramentali potestatis sacrae," in *Periodica*, 66 (1976), pp. 67-78. Others argue that there is one sacred power in the Church with different expressions. They draw a distinction between the power of order and power of jurisdiction. The powers of the pope and bishops are different from those of the lower officers and delegates, which are determined by ecclesiastical law. Thus, the lay Christian faithful can share in ecclesiastical governance. See J.J. CUNEO, "The Power of Jurisdiction: Empowerment for Church Functioning and Mission Distinct from the Power of Orders," in *The Jurist*, 39 (1979), p. 209; J.M., HUELS, "The Power of Governance and Its Exercise," in *StC*, 35 [2001], especially pp. 64-65, 70-90; idem, "Another Look at Lay Jurisdiction," in *The Jurist*, 41 (1981), pp. 68-78). For others, like A. Stickler, the fundamental distinction between the power of orders and the power of jurisdiction is that, through ordination bishops receive the *tria munera*, which can be put into action only when they receive a canonical mission and are in hierarchical communion. The power (*potestas*), which actualises the three functions, is the power of jurisdiction that is a non-sacramental power. This power can be delegated according to the norms of law, provided the one delegating is in hierarchical communion. See A. STICKLER, "De potestatis sacrae natura et origine," in *Periodica* 71 (1981), 91; idem, "La 'potestas regiminis': visione teologica," in *Apollinaris*, 56 (1983), p. 401; idem, "Le pouvoir de gouvernement, pouvoir ordinaire et pouvoir délégué," in *L'Année canonique*, 24 (1980), pp. 83-84. The debate, regarding reception of holy orders as a prerequisite for the power of jurisdiction, can be put to rest if we recall the historical fact that some bishops exercised the power of jurisdiction before their consecration and so did some popes. See STICKLER, "De potestatis sacrae," pp. 74 and 75 respectively.

exercise the power of governance,⁷² others argue that c. 274, §1 is a general rule, while c. 1421, §2 is an exception to the rule; and exceptions do not invalidate the rule.⁷³ Granted that many scholars have presented weighty arguments to sustain their positions, it is reasonable to state that the more plausible explanation of the use of *solus* in c. 274, §1 is that it reflects the different positions of the experts who worked on the revision of the 1917 Code. There is clear disagreement between those who hold that the canonical tradition, which required *potestas sacra* for the reception of the power of governance, is still required for reception of the power of governance, and those who wanted that requirement changed. This is precisely why a clearer distinction of functions is very necessary in the present 1983 Code, as required by principle no. 7 that guided its development.

This principle, requiring that the various ecclesiastical functions be distinguished into legislative, executive, and judicial, was conceived as a technical and juridical instrument serving the protection of the rights of persons and an ordered exercise of power in the Church.⁷⁴ Following this, c. 135 of the 1983 Code (*CCEO*, 985) prescribes that the power of governance is divided into legislative, executive, and judicial. These

⁷² In addition to the citations in note 72, see also GHIRLANDA, "De natura, origine et exercitio potestatis," especially pp. 129, 143-149; J.H. PROVOST, "The Participation of the Laity in the Governance of the Church," in *StC*, 17 (1983), pp. 444-445; and R. PAGÉ, "Juges laïcs et exercice du pouvoir judiciaire," in M. THÉRIAULT, J. THORN (eds.), *Unico Ecclesiae servitio*, Canonical studies presented to Germain Lesage, OMI, Ottawa, Faculty of Canon Law, Saint Paul University, 1991, pp. 204-209.

⁷³ See F.J. URRUTIA, "Delegation of the Executive Power of Governance," in *StC*, 19 (1985), note 7, pp. 343-344.

⁷⁴ See the Principles for the Revision of the 1917 Code, no. 7, in E. CAPARROS et al. (eds.) *Code of Canon Law Annotated*, second edition revised and updated of the 6th Spanish language edition, Montréal, Wilson & Lafleur Limitée, 2004, p. 19; see also A. VIANA, Commentary on c. 135, in *Exegetical Comm I*, p. 851.

functions are to be exercised in the manner prescribed by law. Before examining these three aspects of the power of governance, it is necessary to have a brief overview of the exercise of the power of governance in the Church.

1.2 – THE EXERCISE OF THE POWER OF GOVERNANCE IN THE CHURCH

The division of powers, formulated in the seventeenth and eighteenth centuries, constitutes a fundamental principle of the modern legal system through the institution of independent organs. However, there is no such division of powers or independent organs in the Church because of the concentration of *potestas sacra* in the Roman Pontiff and in the bishops.⁷⁵ The bishops together with the Supreme Pontiff, the successor of Peter and the Vicar of Christ, are the successors of the apostles; they govern the Church by the exercise of Christ's *munera* (LG. no. 18). Thus, the Roman Pontiff,⁷⁶ and the bishops⁷⁷ in their dioceses, are legislators, administrators, and judges.⁷⁸ Accordingly, the power of governance, which is of divine institution, is concentrated in the pope and the bishops and is to be distinguished from the power of governance exercised by lower officials and delegates.⁷⁹ The power of governance is for the acts that are legislative, executive, and judicial. Nevertheless, as we briefly examine the legislative, executive, and judicial

⁷⁵ See VIANA, Commentary on c. 135, in *Exegetical Comm I*, pp. 849-850.

⁷⁶ Cf. *CIC/83*, cc. 331, 333, §2, 1442; *CCEO*, cc. 43, 45, §2, 1059, §1.

⁷⁷ Cf. *CIC/83*, cc. 391, 1419; *CCEO*, cc. 191, 1066.

⁷⁸ See VIANA, Commentary on c. 135, in *Exegetical Comm I*, p. 850.

⁷⁹ HUELS, "The Power of Governance and Its Exercise," p. 64.

powers in the Church, we must bear in mind that *munus regendi* covers more than the legislative, executive, and judicial powers.⁸⁰

1.2.1 – The Exercise of Legislative Power in the Church

Christ gave to his Church authority concerning things sacred, including the genuine power of making laws. Only legislators can enact laws (*leges*). We will discuss briefly those who exercise legislative power in the Church.

1.2.1.1 – The legislative power of the pope

The Church teaches that the power to legislate for the Church in its entirety pertains to the head (the pope), or the college of bishops with the pope and never without him.⁸¹ The Roman Pontiff is the pastor of the universal Church on earth and has full jurisdiction over it. Thus, by virtue of his office, he has supreme, full, immediate, and universal ordinary power to make laws for the entire Church. He can always freely exercise this power (c. 331; *CCEO*, c. 43).⁸² Consequently, he can enact both universal and particular laws. Because of the enormous responsibilities of his office, the Supreme Pontiff usually conducts the business of the universal Church through the Roman Curia,

⁸⁰ Power of governance or jurisdiction in the strict sense refers to juridically binding decisions. It is a capacity to make necessary effective law for a just and social order in the Church through legislative, executive, and judicial powers. Governance in the broad sense (*munus regendi*), however, is exercised not only in juridically binding decisions but also in other non-imperative provisions that promote the initiative and freedom of the faithful. The distinction is better illustrated by the provision of *LG*, no. 27 requiring bishops to rule also with advice, exhortations, and examples.

⁸¹ See LEO XIII, Encyclical *Immortale Dei*, nos. 9 and 11. As regards this teaching, see also PIUS XI, Encyclical *Ecclesiam Dei*, 12 November 1923, in *AAS*, 15 (1923), pp. 573-574; idem., Encyclical on Religious Unity *Mortalium animos*, 6 January 1928, in *AAS*, 20 (1928), p. 10; *LG*, nos. 18, 20, 22, 23; *OE*, no. 3; *UR*, no. 2; *CD*, nos. 2, 3.

⁸² Cf. also *LG*, nos. 18, 20, 22; 23, *Preliminary Explanatory Note*, 3 and 4; *OE*, no. 3; *UR*, no. 2; *CD*, no. 2.

which performs its function in his name and by his authority for the good of the Churches (c. 360).

The Roman Curia⁸³ is made up of various dicasteries, which help the Roman Pontiff in the exercise of his supreme pastoral function for the good and service of the entire Church.⁸⁴ The dicasteries of the Roman Curia do not enjoy ordinary legislative power but the Roman Pontiff can grant to any of them the power to make laws (general decrees) in his name.⁸⁵ Thus, within the structure of the Code, “delegation is the only channel established for the Roman Curia for the exercise of legislative power that belongs personally to the Pope.”⁸⁶ The apostolic constitution, *Pastor bonus*, provides the general norm concerning this matter:

Decisions of major importance are to be submitted for the approval of the Supreme Pontiff, except decisions for which special faculties have been granted to the moderators of the dicasteries as well as the sentences of the Tribunal of the Roman Rota and the Supreme Tribunal of the Apostolic Signatura within the limits of their proper competence. The dicasteries cannot issue laws or general decrees having the force of law or derogate from the prescriptions of the current universal law, unless in individual cases and with the specific approval of the Supreme Pontiff.⁸⁷

⁸³ The Roman Curia is a complex of dicasteries and institutes, which assist the Roman Pontiff in the exercise of his supreme pastoral function for the good and service of the universal Church. For more information on the organs of the Roman Curia, see JOHN PAUL II, *PB*, in *AAS*, 80 (1988), pp. 841-912; English trans. in *Exegetical Comm V*, pp. 32-127; SECRETARIAT OF STATE, Rescript, *Regolamento generale della curia Romana*, 30 April, 1999, in *AAS*, 91 (1999), pp. 629- 699; English trans. in *Exegetical Comm V*, pp. 177- 256. See also ARRIETA, *Governance Structures within the Catholic Church*, pp. 145-168; S.S. KARAMBAL, *Ministers and Ministries in the Local Church: A Comprehensive Guide to Ecclesiastical Norms*, Bombay, The Bombay Saint Paul Society, 2005, pp. 62-70.

⁸⁴ See JOHN PAUL II, Apostolic Constitution *Pastor bonus* (= *PB*), art. 1, 28 June 1988, in *AAS*, 80 (1988), p. 859; English trans. in *Exegetical Comm V*, p. 55.

⁸⁵ Cf. *CIC/83*, cc. 30, 135, §2; *CCEO*, 985, §2.

⁸⁶ VIANA, Commentary on c. 360, in *Exegetical Comm II/1*, p. 683.

⁸⁷ *PB*, art. 18; English trans. in *CLD XII*, p. 176.

However, to show which decree of the dicasteries is a law and which is not, the *Regolamento* provides that the clause '*in forma specifica approbavit*' must be expressly included to establish specific approval of an individual act of a dicastery by the pope in individual cases.⁸⁸

1.2.1.2 – The legislative power of the college of bishops

The college of bishops exercises legislative power over the universal Church in solemn form in an ecumenical council.⁸⁹ It can exercise the same function by the united action of the bishops dispersed throughout the world, when this action is as such proclaimed or freely accepted by the Roman Pontiff so that it becomes a truly collegial act.⁹⁰ It belongs to the pope to determine and promote other ways, according to the needs of the Church, in which the college of bishops can exercise this function in a collegial manner.⁹¹ Thus, the decrees of the ecumenical council do not oblige unless approved by the Roman Pontiff as well as by the fathers of a council, confirmed by the Roman Pontiff and promulgated by his directive. To have binding force, the same confirmation and promulgation is required for decrees, which the college of bishops issues by truly collegial actions in another manner introduced or freely accepted by the Roman Pontiff.⁹²

⁸⁸ "Affinché consti dell'approvazione in forma specifica si dovrà dire esplicitamente che il Sommo Pontefice '*in forma specifica approbavit*'" (SECRETARIAT OF STATE, *Regolamento generale della Curia Romana*, art. 126, §4, 30 April 1999, in *AAS*, 91 [1999], p. 680; see also *Exegetical Comm V*, p. 233).

⁸⁹ See *CIC/83*, c. 337, §1; *CCEO*, c. 50, §1. The decrees of an ecumenical council do not oblige unless they are approved by the Roman Pontiff together with the council fathers, confirmed by him, and promulgated at his order. Similarly, decrees which the college of bishops issues in a truly collegial action in another manner initiated or freely accepted by the Roman Pontiff need the same confirmation and promulgation. See c. 341; *CCEO*, c. 54.

⁹⁰ See *CIC/83*, c. 337, §2; *CCEO*, c. 50, §2.

⁹¹ See *CIC/83*, c. 337, §3; *CCEO*, c. 50, §3.

⁹² See *CIC/83*, c. 341; *CCEO*, c. 54.

1.2.1.3 – The legislative power of the diocesan bishop

The diocesan bishop and those who are equivalent to him in law (c. 368)⁹³ exercise a legislative power. In the diocese entrusted to his care, the diocesan bishop has all the ordinary, proper, and immediate power required for the exercise of his pastoral office except in those matters which, by law or decree, the Supreme Pontiff has reserved to himself or to other ecclesiastical authority (c. 381; see also *CCEO*, c. 178).⁹⁴ He legislates alone, as well as in the diocesan synod in which he is the only legislator (c. 466; see also *CCEO*, c. 241). The legislative power of the diocesan bishop is only for his own subjects with due consideration for the territoriality of particular laws (c. 13; *CCEO*, c. 1491, §§2, 3). In virtue of this power, the diocesan bishops have “a sacred right and a duty before the Lord of legislating for and of passing judgment on their subjects, as well as of regulating everything that concerns the good order of divine worship and the apostolate” (*LG*, no. 27). It is important to note that the diocesan bishop cannot delegate his legislative power. Legislative power at any level below that of the supreme authority in the Church cannot validly be delegated unless the law explicitly provides otherwise.⁹⁵

⁹³ Equivalent to a diocesan bishop are those at the head of a territorial prelature, a territorial abbacy, a vicariate apostolic, a prefecture apostolic, and a permanently established apostolic administration, unless the contrary is clear (c. 381, §2). The same applies to a Military Ordinariate. See JOHN PAUL II, Apostolic Constitution *Spirituali militum curae*, 21 April 1986, art. 11, §1, in *AAS*, 78 (1986), p. 483; English trans. in *CLD* XII, p. 314.

⁹⁴ See also *LG*, no. 27; *CD*, nos. 8, 11.

⁹⁵ See *CIC/83*, c. 135, §2; *CCEO*, c. 985, §2.

1.2.1.4 – The legislative power of particular councils⁹⁶

Particular councils are legislative organs in the Church. The legislative power of a particular council applies only to its own territory, and must always respect the universal law of the Church (c. 445). Before the decrees of a particular council are promulgated, they are to be reviewed by the Holy See (c. 446). The legislation of a particular council, without prejudice to the provision of c. 13,⁹⁷ binds the faithful of the territory of the council who have a domicile or quasi-domicile in it and are actually residing there (c. 12, §3). The legislative competence of the conference of bishops (c. 455) will be treated in a later part of this chapter.

1.2.1.5 – Legislative power in the institutes of consecrated life

The present Code repeatedly speaks of the power or authority of superiors and chapters in institutes of consecrated life and societies of apostolic life, but it has not explicitly stated the nature of that power. This authority which the superiors and chapters of all institutes exercise over their own members, as defined in the universal law and in the constitutions (c. 596, §1), derives from ecclesiastical power, “although it is not called power of governance or of jurisdiction in the strict sense.”⁹⁸ This authority “is contrasted

⁹⁶ Particular councils are plenary councils and the provincial councils mentioned in cc. 439 and 440.

⁹⁷ Canon 13 provides that particular law is territorial, unless it is established otherwise. The *peregrini* are not bound by the particular law of their own territory while they are absent from it, unless the law is personal or its transgression causes harm in their own territory. They are not bound by the particular law of the territory in which they are present, except for those laws, which take care of public order, or determine the formalities of legal acts, or concern immovable property located in the territory. The *vagi* are bound by universal law and the particular law that is in force in the place they are present. The Christian faithful of the Eastern Churches are bound by the provisions of the common law and of the particular law of their own Church *sui iuris* whether the laws are in force or not in the place where they are present (see also *CCEO*, c. 1491, §§2, 3).

⁹⁸ T. RINCÓN-PÉREZ, Commentary on c. 596, in *Exegetical Comm II/2*, p. 1543.

with the ecclesiastical power of governance possessed by the rest of the clerical religious institutes of pontifical right (c. 596, §2).⁹⁹ The legislator has not defined the nature of the power possessed by all the institutes in c. 596, §1; rather, he limited himself to giving practical norms by virtue of which the exercise of that power is governed by the same precepts governing the executive power of governance (c. 596, §3). T. Rincón-Pérez agrees in this present case it was a matter only of the power of executive governance, and not of legislative or judicial power.¹⁰⁰ Only the clerical religious institutes of pontifical right possess the ecclesiastical power of governance for both the external and internal forum (c. 596, §2; *CCEO*, c. 511, §2). In view of this, “a majority of the doctrine affirms that the supreme moderators of clerical religious institutes of pontifical right possess legislative authority.”¹⁰¹ However, one should be careful in using the title of ecclesiastical legislator for them since every ‘rational, imperative ordering, from the eternal law to the indication of a superior, merited the name ‘law’’.¹⁰² Diocesan clerical institutes possess only executive power of governance (c. 596, §1). Even those who have the right to incardinate by the provision of the universal law (c. 736) or by virtue of a concession of the Apostolic See (c. 266, §3) are under the authority of the diocesan bishop, except for what concerns the consecrated life of their own institutes (see c. 715).

Going by c. 631, §1, which provides that the general chapter in a religious institute has supreme authority according to the constitutions and issues norms which all are bound to obey, one might be tempted to interpret that all religious institutes have the

⁹⁹ Ibid.

¹⁰⁰ See *ibid.*

¹⁰¹ J. OTADUY, Commentary on Ecclesiastical Laws, in *Exegetical Comm* I, p. 263.

¹⁰² *Ibid.*, p. 264.

power of governance. There is no doubt that clerical religious institutes of pontifical right possess normative power for their own members. Nevertheless, opinions are divided whether any institute of consecrated life possesses legislative power, as do the pope, the bishops, and their equivalents in law. There is a consensus among scholars and in doctrine that ecclesiastical legislators include the Roman Pontiff and the ecumenical council for the universal Church (cc. 333, §1, 336), and the diocesan bishop and his equivalent in law (see c. 368) for their dioceses (c. 381). Others include conferences of bishops in cases where the universal law has so prescribed (c. 455, §1) and particular councils within their own jurisdiction. There is no consensus that clerical religious institutes of pontifical right possess legislative power; however, the majority of the doctrine affirms that they do (c. 596, §2).¹⁰³

It is always important to bear in mind that legislative action, according to c. 135, §2 of the Code, must follow the legal procedure established by the canonical system. It must submit to the supreme authority and, in the case of delegation of legislation, observe the conditions prescribed in the act of authorisation (c. 30). Besides, the exercise of the legislative power has to respect the principle of the hierarchy of norms that renders invalid the inferior norms that go contrary to the law of the superior grade.¹⁰⁴ Finally, unlike executive power, which can be subdelegated, a delegated legislative power cannot be subdelegated unless specifically authorised.

¹⁰³ See J.I. ARRIETA, *Governance Structures within the Catholic Church*, Montreal, Canada, Wilson & Lafleur Ltée, 2000, p. 32; HUELS, "The Power of Governance and Its Exercise," p. 75, foot note 40; J. OTADUY, Commentary on Ecclesiastical Laws, in *Exegetical Comm I*, p. 263; A. VIANA, Commentary on c. 135, in *Exegetical Comm I*, p. 852.

¹⁰⁴ See ARRIETA, *Governance Structures Within the Catholic Church*, p. 32.

1.2.2 – The Exercise of Executive Power in the Church

For the exercise of executive power, one must possess that power. One who possesses only executive power may issue only general executory decrees (c. 31) unless the person has delegated legislative power (c. 30) which permits an exception to the juridical order through a general decree that is law.¹⁰⁵ Executive power can be ordinary or delegated. Ordinary executive power of governance is that which by virtue of the law itself is attached to a given office. It may be proper or vicarious.¹⁰⁶ Executive power must be exercised within the competence attributed to the office. Thus, “executive acts are subject to review to ensure conformity with the law and the protection of the rights of the faithful.”¹⁰⁷ Delegated executive power, on the other hand, is granted to a person other than through an office.¹⁰⁸ Thus, the delegated executive power is the subjective juridical situation of power of the one who enjoys the capacity to perform acts of governance assigned to him/her personally by the officeholder having ordinary executive power. The activity of the delegate is always circumscribed by the conditions of the institute of delegation and the provision of the Code concerning the delegated power.¹⁰⁹ This is very important since “delegation of power to a person is understood to include everything necessary for the exercise of that power” (c. 138; *CCEO*, c. 989).

¹⁰⁵ See *ibid.*

¹⁰⁶ See *CIC/83*, c. 131; *CCEO*, c. 981.

¹⁰⁷ ARRIETA, *Governance Structures within the Catholic Church*, pp. 33-34.

¹⁰⁸ Cf. *CIC/83*, c. 131, §1; *CCEO*, c. 981, §1.

¹⁰⁹ Cf. ARRIETA, *Governance Structures within the Catholic Church*, p. 34. See also *CIC/83*, cc. 137-142; *CCEO*, cc. 988-989, 990, 992.

Generally speaking, executive power comprises various activities, such as: a) juridical execution, which is the mandatory application of law and application of acts of the legislator and judge; b) acts of administration, that is, the material administration or provisions for the common good; c) acts of government, which are resolutions of the ecclesiastical authority concerning actual situations.¹¹⁰ Ordinary executive power can be delegated, either for an individual case or for all cases, unless the law expressly provides otherwise (c. 137, §1; *CCEO*, c. 988, §1). Executive power delegated by the Apostolic See can be subdelegated, either for an individual case or for all cases, unless the delegation was deliberately given to the individual alone, or unless subdelegation was expressly prohibited (c. 137, §2; *CCEO*, c. 988, §2). However, executive power delegated by another authority (not the Apostolic See) having ordinary power, if delegated for all cases, can be subdelegated only for individual cases; if delegated for a determined act or acts, it cannot be subdelegated, except with the express grant of the person delegating it.¹¹¹ As a principle of law, no subdelegated power can again be subdelegated unless this was expressly granted by the person delegating it (c. 137, §4; *CCEO*, c. 988, §4). Thus, we will briefly discuss in this section the exercise of executive power by the pope, the diocesan bishop, particular councils, and institutes of consecrated life.

1.2.2.1 – The executive power of the pope

Under the power of governance of the Roman Pontiff as the supreme legislator for the universal Church are encapsulated acts that are legislative, executive, and judicial in

¹¹⁰ See ARRIETA, *Governance Structure within the Catholic Church*, p. 33.

¹¹¹ See *CIC/83*, c. 137, §3; *CCEO*, c. 988, §3. The provision of *CCEO* expressly states that this condition is *ad validitatem*. By analogy, this principle may be considered applicable also to the provisions of the Latin Code.

nature. Acts of the executive power are general administrative acts (cc. 31-34), including singular administrative acts (cc. 35-93),¹¹² and the issuing of statutes and rules of order (cc. 94-95).¹¹³ As a legislator, the Roman Pontiff can exercise these functions directly or through the Roman Curia, as he normally does. The Roman Pontiff can also exercise his executive power through whomsoever he may choose to do so. Since the college of bishops acts only in union with the Roman Pontiff, one can assume that its executive functions are carried out by the Roman Curia or by any other approved body or persons.

1.2.2.2 – The executive power of the diocesan bishop

The diocesan bishop ordinarily exercises his executive power either personally or through his vicars general or episcopal vicars in accordance with the law (c. 391, §2; *CCEO*, c. 191, §2).¹¹⁴ By virtue of their offices, vicars general and episcopal vicars are constituted local ordinaries of the diocese, besides the diocesan bishop (c. 134, §§1-2; *CCEO*, c. 984). In virtue of his office, the vicar general has the same executive power throughout the whole diocese as that which belongs by law to the diocesan bishop. Thus, he can perform all administrative acts, with the exception of those acts which the bishop has reserved to himself; or those which by law require a special mandate of the bishop (c. 479, §1). An episcopal vicar has the same power as in c. 479, §1, but only for the determined part of the territory or type of activity or for the faithful of a determined rite or group for which he was appointed. Matters, which the bishop reserves to himself or to

¹¹² Administrative acts in the Code of the Eastern Churches are treated in cc. 1510-1539.

¹¹³ See HUELS, "The Power of Governance and Its Exercise," p. 67.

¹¹⁴ The diocesan bishop is to appoint one or more vicars general, according to the size and need of the diocese. Similarly, he is to appoint Episcopal vicar(s) according to the need of the diocese. See cc. 475-481 for details regarding these offices.

the vicar general, which by law require a special mandate from the bishop, are exempt (c. 479, §2). Within the limits of their competence, vicars general and episcopal vicars have also the habitual faculties, which the Apostolic See has granted to the bishop. Consequently, they can execute rescripts, unless it is expressly provided otherwise, or unless the execution was entrusted to the bishop on a personal basis (c. 479, §3).¹¹⁵ Although the Code has vested in the vicars general and episcopal vicars ordinary executive power of governance, they are not to perform, without especial mandate, those acts which the law expressly reserved for the diocesan bishop or the functions the bishop has reserved to himself (c 134, §3; *CCEO*, c. 987).¹¹⁶

The diocesan bishop also uses the diocesan curia in the exercise of his administrative function. The Second Vatican Council directed that the “diocesan curia should be so organised that it may be a useful medium for the bishop, not only for diocesan administration, but also for pastoral activity.”¹¹⁷ Thus, the present Code provides that the diocesan curia is to be composed of those institutes and persons who assist the bishop in governing the entire diocese, especially in directing pastoral action, in

¹¹⁵ For the parallel offices of vicars general and Episcopal vicars as local ordinaries in the Code of Eastern Churches, see the protosyncellus and the syncelli in *CCEO*, c. 248.

¹¹⁶ Canon 134, §3: “Quae in canonibus nominatim Episcopo dioecesano, in ambitu potestatis executivae tribuuntur, intellegentur competere dumtaxat Episcopo dioecesano aliisque ipsi in can. 381, §2 equiparatis, exclusis Vicario generali et episcopali, nisi de speciali mandato.” For some reserved executive functions of the diocesan bishop, see cc. 72, 87, §1, 98, §2, 157, 193, §3, 235, §2, 241, §1, 267, §1, 312 §1, 3°, 393, 462, 500, 514, 515, 516, 520, §1, 609, §1, 733, §1, 612, 678, §3, 681, 682, 790, §1, 801, 1215, 1244, §2, 1263, 1281, §2, 1292, §1, 309, 1692, §§1-2, 1707, 1733, §2.

¹¹⁷ “Curia dioecesana ita ordinetur ut aptum instrumentum Episcopo fiat, non tantum ad dioecesim administrandam, sed etiam ad opera apostolatus exercenda” (*CD*, no. 27; English trans. in *FLANNERY*1, pp. 579-580. For the composition and function of the diocesan Curia, see cc. 469-494.

providing for the administration of the diocese, and in exercising judicial power (c. 469; cf. *CCEO*, c. 243, §1).¹¹⁸

1.2.2.3 – The executive power of particular councils

Particular councils exercise executive power directly or through organs, such as secretariats established for that purpose. Particular councils are not permanent organs; they can function only when they are convoked. It is true that any organ that enjoys legislative power also possesses executive power. However, particular councils do not have many executive functions outside the time when they are in session. The councils can establish temporary organs to execute what the councils have decreed during their sessions. The conference of bishops exercises executive functions either directly or through organs established for such purpose. We will treat this subject matter later when we discuss the conferences of bishops.

1.2.2.4 – The executive power of institutes of consecrated life

Superiors of institutes of consecrated life and societies of apostolic life can exercise executive power directly or through delegated persons or bodies according to the provision of law and of their constitutions. Therefore, they could do this through their various regional and provincial secretariats as well as commissions and committees. It is the constitution or statutes of an institute that should determine how each institute carries out its executive duties.

¹¹⁸ For norms governing the diocesan curia, see *CIC/83*, cc. 469-494, The parallel of these canons in *CCEO* are cc. 243-262, but cc. 472-474 of the 1983 Code do not have parallels in the *CCEO*.

1.2.3 - The Exercise of Judicial Power in the Church

While the legislative function is strictly restricted to the legislator in the canonical system, the rules regarding the judicial function are somewhat flexible. Judicial power belongs principally to the pope and the diocesan bishops (cc. 1419 and 1442); however, it is generally exercised with vicarious power by judges and tribunals stably constituted according to the provision of law (c. 1420).¹¹⁹ We will here discuss the judicial power of the Roman Pontiff, the diocesan bishop, and major superiors of the clerical religious institutes of pontifical rights.

1.2.3.1 – The judicial power of the pope

The Roman Pontiff is the supreme judge for the entire Catholic world. He gives judgement either personally, or through the ordinary tribunals of the Apostolic See, or through judges whom he delegates (c. 1442; *CCEO*, c. 1059, §1). There are four apostolic tribunals in the Roman Curia, each of which has a distinctive organisation and specialised competence in exercising judicial power in the name of the pope. These are the supreme tribunals of the Congregation for the Doctrine of the Faith, the Apostolic Penitentiary, the Apostolic Signatura, and the Roman Rota. What follows is a brief description of these apostolic tribunals.

The Congregation for the Doctrine of the Faith, which before 1965 was called the Sacred Congregation of the Holy Office,¹²⁰ has jurisdiction over the entire Catholic world

¹¹⁹ See ARRIETA, *Governance Structures within the Catholic Church*, p. 32.

¹²⁰ “Quae hactenus appellata est *Sacra Congregatio Sancti Officii*, in posterum appellabitur *Congregatio pro doctrina fidei*” (PAUL VI, Apostolic Letter *Motu proprio Integrae servandae*, 7 December 1965, in *AAS*, 57 [1965], p. 954; English trans. in *CLD* VI, p. 358)

in all things regarding faith and morals.¹²¹ This Congregation judges more grave delicts (*graviora delicta*), whether against morals or committed in the celebration of the sacraments, which have been reported to it and, if need be, it proceeds to declare or impose canonical sanctions in accordance with the norms of common or proper law.¹²² Pope John Paul II, with his apostolic letter issued *motu proprio*, *Sacramentorum sanctitatis tutela*, promulgated the norms concerning the more grave delicts (*graviora delicta*) reserved to CDF.¹²³ The prefect of the congregation presides as first among equals over the college of its members; in his absence, the secretary does his work.¹²⁴

The competence of the Apostolic Penitentiary is for the internal forum and indulgences. For the internal forum, whether sacramental or non-sacramental, it grants absolutions, dispensations, commutations, pardons (*condonationes*), validations (*sanationes*), and other favours (*PB*, arts. 117-120). The cardinal penitentiary decides such issues with a regent, a theologian, a canonist, and other officials.¹²⁵

¹²¹ See *PB*, art. 48, 874.; English trans. in *Exegetical Comm V*, p. 68.

¹²² “Delicta contra fidem necnon graviora delicta tum contra mores tum in sacramentorum celebratione commissa, quae ipsi delata fuerint, cognoscit atque, ubi opus fuerit, ad canonicas sanctiones declarandas aut irrogandas ad normam iuris, sive communis sive proprii, procedit.” (*PB*, art. 52; English trans. in *Exegetical Comm V*, p. 69).

¹²³ See JOHN PAUL II, Apostolic Letter *Sacramentorum sanctitatis tutela*, 30 April 2001, in *AAS*, 93 (2001), pp. 737-739; English trans. in W.H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of Canon Law*, second edition revised and updated, Ottawa, Faculty of Canon Law, Saint Paul University, 2003, pp. 300-302. The Latin and English translation of the norms are on pp. 303-309 of this book.

¹²⁴ “Patrum collegio, primus inter pares, praeest Congregationis Praefectus et, munere Praefecti vacante aut ipso Praefecto impedito, eius munera explet Congregationis Secretarius” (CDF Procedural norms, art. 7, §2, in WOESTMAN, *Ecclesiastical Sanctions*, p. 305). For the detailed history of CDF from its inception, see R.A. MILLER, *The Congregation for the Doctrine of the Faith: Its Origin, Concept, and the Development of Its Competence*, CLS no. 484, Washington, DC, The Catholic University of America, 1975.

¹²⁵ See KARAMBAI, *Ministers and Ministries*, p. 68.

The supreme tribunal of the Apostolic Signatura functions as a supreme court in the Catholic Church and ensures that justice in the Church is correctly administered (*PB*, art. 121). The first section of the tribunal handles judicial matters while the second section deals with all administrative matters. It adjudicates complaints of nullity and petitions arising from the sentences of the Roman Rota and recourses lodged against singular administrative acts issued by the Roman Curia or approved by them. The tribunal also adjudicates other administrative controversies referred to it by the Roman Pontiff or by dicasteries of the Roman Curia, as well as conflicts of competence between these dicasteries. It ensures the proper administration of justice in various ways as prescribed by law (*PB*, arts. 121-125).¹²⁶

The tribunal of the Roman Rota is a court of higher instance at the Apostolic See, usually at the appellate stage, with the purpose of safeguarding rights within the Church. It fosters unity of jurisprudence and provides assistance to lower tribunals by virtue of its own decisions (*PB*, art. 126). The judges of the Roman Rota constitute a college consisting of persons of proven doctrine and experience chosen by the pope from various parts of the world. The judges have ordinary power in cases that are within the competence of the tribunal according to the provision of law. The Roman Rota is presided over by the dean appointed by the Supreme Pontiff from among the judges for a specific term of office (*PB*, arts. 126-130).¹²⁷ Both the Apostolic Signatura and the Roman Rota are governed by their own laws.

¹²⁶ See also *CIC/83*, c. 1445.

¹²⁷ See also *CIC/83*, cc. 1443-1444. For a summary treatment of the apostolic tribunals, see ARRIETA, *Governance Structures within the Catholic Church*, p. 156; KARAMBAL, *Ministers and Ministries*, p. 68. However, these authors have not discussed the tribunal of the CDF.

1.2.3.2 – The judicial power of the diocesan bishop

In principle, the diocesan bishop is the ordinary judge in his diocese. However, he can exercise his judicial power either personally or through a judicial vicar and judges, in accordance with the law.¹²⁸ Nevertheless, it is expedient that the bishop not personally preside over cases unless special causes demand otherwise. Therefore, all bishops must establish a diocesan tribunal for their respective dioceses.¹²⁹ It is equally obligatory for each diocesan bishop to appoint a judicial vicar, or *officialis*, with ordinary power to judge unless the smallness of the diocese or the limited number of cases suggests otherwise (c. 1420, §1; *CCEO*, c. 1086, §1). The judicial vicar constitutes one tribunal with the bishop. However, he cannot judge cases which the bishop reserves to himself (c. 1420, §2; *CCEO*, c. 1086, §2). The size of the diocese and the number of cases which the tribunal admits may determine whether the judicial vicar can be given assistants, who are called associate judicial vicars or *vice-officiales* (c. 1420, §3; *CCEO*, c. 1086, §3).

In each diocese, in addition to the judicial vicar and associate judicial vicars, the diocesan bishop is to appoint judges who are clerics (c. 1421, §1; *CCEO*, c. 1087, §1). This does not exclude the possibility of appointing laypersons as judges, since the present Code provides that the bishops' conference can permit the appointment of laypersons as judges in certain circumstances. Where necessity suggests, one of these can be chosen in

¹²⁸ Cf. *CIC/83*, cc. 391, §2, 1419, §1; *CCEO*, cc. 191, §2, 1066, §1.

¹²⁹ "Expedit tamen, nisi speciales causae id exigant, ne ipse id per se faciat. Ideo omnes Episcopi pro sua dioecesi constituere debent tribunal dioecesanum" (PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS (= PCLT), Instruction to be observed by diocesan and inter-diocesan tribunals in handling causes of the nullity of marriage *Dignitas connubii*, art. 22, §§2-3, Città del Vaticano, Libreria editrice Vaticana, 2005, p. 36).

forming a college of judges (c. 1421, §2; *CCEO*, 1087, §2).¹³⁰ “Since the provision regarding lay judges constitutes an exception to the law (of cc. 1421, §1, 274, §2), it should be interpreted literally (c. 18).”¹³¹ Each layperson who is a judge may function only as a sole lay member of a college in which the other judges are clerics. “If a lay judge were to act as a sole judge or there were to be two or more lay judges in a college, judgment would be null and void pursuant to c. 1620, 2°.”¹³²

1.2.3.3 – The judicial power of institutes of consecrated life

According to doctrinal and legal evolution in the Church, the present Code recognises major superiors of clerical (cf. c. 588, §2; *CCEO*, c. 505, §3) religious institutes (cf. c. 607, §2) of pontifical right (cf. c. 589),¹³³ are ordinaries (c. 134, §1; *CCEO*, c. 984, §3), and have authentic power of jurisdiction over their own members (c. 596, §2; *CCEO*, c. 511, §2). By virtue of the law they exercise judicial power in accord with their proper law (cc. 1427, §§1, 2, 1438, 3°).¹³⁴ In contrast, both the lay religious institutes (cf. c. 588, §3; *CCEO*, 504, §2) and clerical religious institutes of diocesan right

¹³⁰ The appointment of the lay Christian faithful as judges is an innovation in Church law. Thus, the theological question regarding the power of jurisdiction of the laity has been hotly debated (cf. *Comm.* 2 [1970], p. 184; 3 [1971], p. 187; 10 [1978], p. 231; 14 [1982], pp. 146-149; 16 [1984], pp. 54-55). See also PCLT, *Acta et documenta Pontificiae commissionis Codici iuribus canonici recognoscendo: congregatio plenaria diebus 20-29 octobris 1981 habita*, Città del Vaticano, Typis polyglottis Vaticanis, 1991, pp. 35-97, 190-229, 493-495. For the opinions of some scholars on this issue, see, for example, PROVOST, “The Participation of the Laity in the Governance of the Church,” pp. 418-430; GHIRLANDA, “De natura, origine et exercitio potestatis,” pp. 153-160; E. McDONOUGH, “Laity and the Inner Working of the Church,” in *The Jurist*, 47 (1987), pp. 231-237; R. PAGÉ, “Juges laïcs et exercice du pouvoir judiciaire,” in M. THÉRIAULT, J. THORN (eds.), *Unico Ecclesiae servitio*, pp. 204-209.

¹³¹ Z. GROCHOLEWSKI, Commentary on c. 1421, in *Exegetical Comm* IV/1, p. 733.

¹³² Ibid.

¹³³ Cf. *CCEO*, cc. 434, 505, §§1, 2, 1° & 3°, 554, §2, 563, §2.

¹³⁴ Cf. also *CCEO*, c. 1069, §1.

(cf. c. 589; *CCEO*, c. 505, §3), do not have this power.¹³⁵ In a clerical institute of pontifical right, the power of jurisdiction is held by the major superior.¹³⁶ According to the prescript of c. 620, the term “major superior” includes the supreme moderator who governs the entire institute (cf. c. 622), the provincial superior (cf. c. 621), the person who governs part of an institute equivalent to a province, an abbot or a prior who governs a house *sui iuris* (cf. c. 613) and their respective vicars (cf. *CCEO*, c. 418, §1). This same canon accords power of jurisdiction to the abbot primate and abbot superior of a monastic congregation (not to their vicars), but they do not have all the authority that the universal law gives to the major superiors of the clerical institutes of pontifical right.¹³⁷

The Code recognises the judicial power of the superiors of clerical institutes of pontifical right; however, as pointed out by M.J. Arroba Conde, it does not deal directly with the tribunals of these institutes in the strict sense. It limits itself to showing the authority possessing judicial power for controversies arising within the same institute, either between physical persons or between juridical persons (c. 1427, §1). Such authority allows for the establishment of tribunals in a stable manner or only *ad casum*. The organisation of these tribunals belongs to the proper law or constitution of the religious institute.¹³⁸ The Code only delineates who is the judge of first instance if the

¹³⁵ See Z. GROCHOLEWSKI, Commentary on c. 1427, in *Exegetical Comm* VI/1, p. 754.

¹³⁶ Cf. *CIC/83*, cc. 134, §1, 596, §2; *CCEO*, cc. 984, 441, §2, 511, §2.

¹³⁷ See GROCHOLEWSKI, Commentary on c. 1427, in *Exegetical Comm* VI/1, p. 754.

¹³⁸ “In realtà il codice non parla di tribunali religiosi in senso stretto, ma dei titolari della potestà giudiziale nelle controversie sorte tra di loro. Tale titolarità permette la costituzione dei tribunali sia in modo permanente sia solo *ad casum*. L’organizzazione di essi viene affidata al diritto proprio, concretamente, alle costituzioni” (M.J. ARROBA CONDE, *Diritto processuale canonico*, second edition, Rome, Ediurcla, 1994, p. 140).

constitutions of the institutes do not provide otherwise. When a contentious matter arises between two provinces, the supreme moderator will be the judge at first instance, either personally or through a delegate. If the controversy is between two monasteries, the abbot superior of the monastic congregation will be the judge (c. 1427, §2).

The normative prescripts regarding the hierarchy of tribunals for clerical religious institutes of pontifical right depends on the internal structure of the institute and the provisions of the proper law. Nevertheless, the more frequently followed hierarchical order is that provided by the Code. For cases dealt with before a provincial superior, the tribunal of the second instance is that of the supreme moderator while for cases heard before the local abbot, the second instance court is that of the abbot superior of the monastic congregation (cf. cc. 1427 and 1438, 3°). The appeal court for cases heard before the second instance tribunal of the supreme moderator and those of the abbot superior is the Roman Rota.¹³⁹

1.3 – THE CONFERENCE OF BISHOPS AND THE EXERCISE OF THE *MUNUS REGENDI*

We cannot adequately situate the conference of bishops and the exercise of *munus regendi* without first examining very briefly the genesis of episcopal conferences, or, more grammatically correctly, of conferences of bishops. Canon 447 of the 1983 Code describes the conference of bishops as follows:

The Bishops' Conference, a permanent institution, is the assembly of the Bishops of a country or of a certain territory, exercising together certain pastoral offices for Christ's faithful of that territory. By forms and means of apostolate suited to the circumstances of time and place, it is to promote, in accordance with the law, that greater good which the Church offers to mankind.¹⁴⁰

¹³⁹ See *ibid.*, pp. 140-141.

¹⁴⁰ Canon 447: "Episcoporum conferentia, institutum quidem permanens, est coetus Episcoporum alicuius nationis vel certi territorii, munera quaedam pastoralia coniunctim pro

Before the conferences of bishops assumed permanent juridical status, deliberations among Church leaders have been traditionally a feature of its life. Assembling to deliberate and make decisions was a remarkable and real factor in the lives of the early Christians; the Acts of the Apostle provides a number of examples of communal discussion and decision. Thus we have the choosing of Matthias (Acts 1:15-26), the appointment of the seven deacons (Acts 5:2-7), and the Council of Jerusalem that was convoked "to resolve the difficulty of the observance or non-observance of the Mosaic Law."¹⁴¹ The model of the early Church is that of a local community gathered around the Eucharistic table and presided over by a single bishop. There is no documentary evidence to suggest formal gatherings of bishops until the last forty years of the second century. At this time, meetings were in the form of synods. They were summoned first in the 160s and later around 197. The meetings were a regular occurrence as shown in the collection of christian conciliar documents, which gives evidence of over four hundred synods and meetings of bishops, eastern, and western. These synods and meetings are known to have been held between the mid-second century and the pontificate of Gregory the Great.¹⁴² The frequency of the meetings, determined by circumstances, varied according to locality. As B. Daley expressed:

The regularity with which Christian bishops met for business seems to have varied according to need, political circumstances, and the ability of church

christifidelibus sui territorii exercentium, ad maius bonum provehendum, quod hominibus praebeat Ecclesia, praesertim per apostolatus formas et rationes temporis et loci adiunctis apte accommodatas, ad normam iuris." See also CD, no. 38, 1°.

¹⁴¹ F.P. CARROLL, *The Development of Episcopal Conferences*, JCD diss., Rome, Pontificia Universitas Urbaniana, 1964, pp. 1-2.

¹⁴² Cf. B.E. DALEY, "Structures of Charity: Bishops' Gatherings and the See of Rome in the Early Church," in T.J. REESE (ed.), *Episcopal Conferences: Historical, Canonical, and Theological Studies*, Washington, DC, Georgetown University Press, 1989, pp. 27-28.

leaders to overcome collective inertia. At least five synods are attested for Rome and eight for the province of Africa between 250 and 260, for instance: a time of strong leadership by Cyprian of Carthage and his Roman counterparts, and a time when the growing Christian communities, although still persecuted by a hostile Roman state, openly faced crucial questions of faith and discipline. The evidence suggests that meetings were normally much less frequent during periods of repression or social unrest.¹⁴³

However, with the legal, financial, and moral support that followed the peace of Constantine, the meetings of bishops became regular and recognised as an important means of preserving ecclesial and political unity.¹⁴⁴

Conferences of bishops originated from meetings of bishops of neighbouring dioceses who gathered to discuss issues affecting their pastoral responsibilities. Such meetings date back to about the middle of the nineteenth century when changes in society required a systematic consultation among bishops of the same nation if they were to take initiatives capable of meeting the new demands of evangelisation.¹⁴⁵ The development of the Catholic Bishops' Conference of Nigeria followed this trend.

These gatherings of bishops to discuss pastoral issues, which began informally at first through the spontaneous initiative of bishops, later drew the support of the Holy See. The regulation of conferences by common law began with Pope Pius X and the 1917 Code of Canon Law. At that time, the obligation was imposed on all the bishops of the Latin Church to hold meetings of a consultative character. Nevertheless, the imposition was accompanied by a refusal to recognise a "national" character for the conferences.¹⁴⁶

¹⁴³ Ibid., p. 28.

¹⁴⁴ See *ibid.*

¹⁴⁵ See G. FELICIANI, "Episcopal Conferences from Vatican II to the 1983 Code," in *The Jurist*, 48 (1988), p. 11.

¹⁴⁶ Ibid. See also PIUS X, Apostolic Constitution on the Roman Curia *Sapienti consilio*, 29 June 1908, in *AAS*, 1 (1909), p. 11. Here the Pope directed all matters concerning the

Historically, it is believed by many scholars that the meetings of bishops of a specific territory began in Belgium in 1830,¹⁴⁷ but some think otherwise.¹⁴⁸

The endorsement that the Holy See gave to the conferences of bishops spreading across the nations of the world is evident in many Church documents. Documents issued during the pontificates of Pius IX, Leo XIII, Pius X, and Benedict XV are especially noteworthy in this regard.¹⁴⁹ The support of the Holy See notwithstanding, it is interesting to note that, although non-conciliar episcopal meetings had begun to flourish and had received the enthusiastic support of Pius IX, little consideration was accorded them during the sessions of Vatican Council I, which was held in 1869-1870.¹⁵⁰ The Second

celebration and recognition of the meetings and conferences of bishops to the Congregation of the Council: "Ad eamdem pertinent ea omnia quae ad Conciliorum, celebrationem et recognitionem, atque ad Episcoporum coetus seu conferentias referuntur ..." Also in the *Ordo servandus* of 29 September 1908, prescribing the procedure to be observed in the congregations, tribunals and other offices of the Roman Curia, that which is of major importance that might have taken place in the meetings of the bishops was to be referred to the plenary of the Congregation of the Council: "Pariter quidquid maioris ponderis in Episcoporum coetibus contigerit statutumve sit, ad plenam Congregationem referatur" (*Ordo servandus*, 6° b, in *AAS*, 1 [1909], p. 95).

¹⁴⁷ See CARROLL, *The Development of Episcopal Conferences*, p. 9; P. HUIZING, "The Structure of Episcopal Conferences," in *The Jurist*, 28 (1968), p. 164; G. FELICIANI, *Le conferenze episcopali*, Bologna, Società editrice Il Mulino, 1974, p. 16; R. LETTMANN, "Episcopal Conferences in the New Canon Law," in *StC*, 14 (1980), p. 347, note 1.

¹⁴⁸ J. Rommerskirchen is of the view that historically the bishops' conference probably began in Germany and Austria in 1848 when they were convened at intervals and later annually. He writes: "Geschichtlich haben die Bischofskonferenzen ihren Ursprung wohl in Deutschland und Österreich, wo sie seit 1848 in kleineren Zeitabständen später alljährlich üblich wurden" (J. ROMMERSKIRCHEN, "Afrikanische Bischofskonferenzen," in J. ROMMERSKIRCHEN and N. KOWALSKY [eds.], *Missionswissenschaftliche Studien*, Aachen, Druckerei und Verlagsanstalt Wilhelm Metz, 1951, p. 393).

¹⁴⁹ See R.W. KUTNER, *The Development, Structure and Competence of the Episcopal Conference*, CLS no. 480, Washington, DC, The Catholic University of America, 1972, p. 24.

¹⁵⁰ See *ibid.*, p. 27; Episcopal meetings might have not been addressed during the First Vatican Council because it was cut short by the Italian Revolution.

Vatican Council¹⁵¹ and the subsequent complementary legislation gave them a firm place in the public law of the Church.¹⁵² The conference of bishops as a stable institution, as we have it today, is comparatively recent, and with the emphasis it received during the Second Vatican Council, it gained considerable recognition in post conciliar legislation.

There was no formal distinction between national conferences of bishops and the infrequent national particular councils until the present Code of Canon Law. When the Second Vatican Council, in its decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, formally encouraged bishops to work together in national and regional conferences, it did not make any juridical distinctions between synods, councils and conferences of bishops. It only laid down guidelines for the contemporary Roman Catholic institution of conferences of bishops (*CD*, nos. 36-38).¹⁵³ The distinction between particular councils and national conferences of bishops developed in cc. 439-459 of the present Code.

According to the provision of the present Code, the conference of bishops can issue general decrees which are legislative in nature, only in cases where the universal law has so prescribed, or by special mandate of the Apostolic See (c. 455, §1). The speculative question that arises from this provision whether the conference of bishops issues general decrees (laws) as a legislative or an executive body has already been put to rest. Writing on the nature of the conference of bishops Pope John Paul II clarified that

¹⁵¹ See VATICAN II, Constitution on the Sacred Liturgy *Sacrosanctum concilium* (= *SC*), 4 December 1963, in *AAS*, 56 (1964), no. 22, §2, p. 106; English trans. in FLANNERY1, p. 9; *UR*, no. 8; *LG*, no. 23; *CD*, nos. 3, 37 & 38.

¹⁵² See LETTMANN, "Episcopal Conferences in the New Canon Law," p. 347.

¹⁵³ See *ibid.*, pp. 25-26.

the logic is quite explicit in the canonical norm concerning the exercise of legislative power of the bishops assembled in episcopal conference.¹⁵⁴ The conference of bishops exercises together “certain pastoral functions” for the faithful of its territory (c. 447). Pastoral function (*munus pastorale*) is generally understood to include all the three functions of teaching, sanctifying, and governing. However, the Code places certain restrictions on the governing function of the conference, which like every other governing function, besides those of the Roman Pontiff and the diocesan bishops, are regulated by ecclesiastical law. As we briefly examine here the governing power of the conference of bishops, that is, the legislative, executive, and judicial powers, we hope to make a detailed discussion of them as they arise in other parts of this work, especially in Chapter Two.

1.3.1 – The Legislative Power of the Conference of Bishops

The conference of bishops exercises legislative power through general decrees (c. 29). However, the power of the conference to issue legislative decrees is limited only to cases where the universal law has so prescribed, or by special mandate of the Apostolic See on its own initiative, or at the request of the conference itself. The decrees of the conference are to be enacted during the plenary meeting with not less than two-thirds of the votes of those who belong to the conference with a deliberative vote (cf. c. 455, §§1-2). The conference cannot delegate its legislative function to either groups or individuals. That is why enactment of any decree must be during the plenary meeting or by individual

¹⁵⁴ “Haec ratio in canonica norma omnino patet de postestate legislativa exercenda, quae ad Episcopos spectat in Conferentiam episcopalem congregatos” (JOHN PAUL II, *Motu proprio* the Theological and Juridical Nature of Episcopal Conferences *Apostolos suos*, no. 20, in *AAS*, 90 [1998], p. 654; English trans. in *Origins* 28 [1998-1999], p. 156).

votes. Given this fact, and the nature of the conference of bishops, a member's participation in the conference cannot be delegated to someone else.¹⁵⁵ For the decrees of the conference of bishops to become law, they must receive *recognitio* from the Holy See before promulgation.

1.3.2 – The Executive Power of the Conference of Bishops

It is of the nature and principle of ecclesiastical law that the principal legislative organs in the Church (the Roman Pontiff and diocesan bishops) possess ordinary legislative power as well as executive and judicial power. In the case of the conference of bishops, although it possesses ordinary executive power, it exercises it with some limitations imposed by law. The proviso is that the procedure, which the conference follows to enact general decrees that are laws, is to be the same procedure for enacting general executory decrees that are not laws. Thus, for general executory decrees, which define more precisely the manner of applying a law, or which urge the observance of laws (c. 31, §1), to be enacted by the conference, they must be voted on during a plenary meeting or by mail vote. For the decrees to be validly enacted, they must receive at least two-thirds of the votes of those who belong to the conference with a deliberative vote, the *recognitio* of the Holy See, and be lawfully promulgated.¹⁵⁶ The implication of the

¹⁵⁵ See *Apostolos suos*, no. 17; English trans. in *Origins*, 28 [1998-1999], pp. 155-156. Even before the present Code came into force, the central Commission for the Interpretation of Conciliar Decrees had determined that the conference could not delegate its legislative function to an Episcopal commission established by the conference. See the response *Utrum potestas Christus Dominus*, no. 38, §4, 24 May 1966, in *AAS*, 60 [1968], p. 361; English trans. in *CLD* VII, p. 131.

¹⁵⁶ Cf. the provision of c. 455, §2 and the response of the Pontifical Council for Legislative Texts which clarifies that the expression “general decrees” of the conference of bishops in c. 455, §1 also includes general executory decrees of the kind mentioned in cc. 31-33.

interpretation, that the expression “general decrees” of the conference of bishops in c. 455, §1 also includes general executory decrees of the kind mentioned in cc. 31-33, is that the conference of bishops cannot delegate its function of enacting general executory decrees to individuals or any organs of the conference. However, other executory functions, when the conference is not in session, are exercised by the permanent council of bishops [the administrative board in the case of CBCN] (c. 457), or by the president when the council could not be convoked for lack of time; or by the various organs of the conference, namely, the secretariat, commissions, and committees.

1.3.3 – The Judicial Power of the Conference of Bishops

The conference of bishops is an organ in the Church; it is not a particular Church configured to have its own tribunal. In this sense, it does not exercise judicial power. Nevertheless, it has some administrative competencies related to the judicial function. The particular Churches that make up the territory of a conference of bishops are by law obliged to constitute diocesan tribunals of first instance for their dioceses (cf. cc. 1419-1421). In normal circumstances, a conference of bishops does not have any need for tribunals of first instance. However, for some reason, several diocesan bishops, with the approval of the Holy See, can establish a single tribunal of first instance for their dioceses in place of the diocesan tribunals mentioned in cc. 1419-1421 (see c. 1423, §1). If the dioceses of this group of bishops are not suffragans of the same metropolitan see, the conference of bishops, with the approval of the Apostolic See, must constitute a tribunal of second instance (c. 1439, §1).

See PCLT, Response in affirmative to a *dubium*, 1 August 1985, in *AAS*, 77 (1985), p. 771; *Comm.*, 17 (1985), p. 262; English trans. in *CLD* XI, p. 69 and *Exegetical Comm* V, p. 295.

When there are no inter-diocesan tribunals of first instance comprising suffragan dioceses of different ecclesiastical provinces in its territory, a conference of bishops, with the approval of the Holy See, can (but is not obliged) constitute one or more tribunals of second instance for its territory (c. 1439, §2). In respect of the second instance tribunals constituted by a conference of bishops, the conference, or a bishop designated by it, has all the powers that belong to a diocesan bishop in respect of his own tribunal (c. 1439, §3). Thus, when the conference does not designate a diocesan bishop for the said tribunal, the conference, as a group, has judicial power regarding the tribunal mentioned in c. 1439. When a diocesan bishop is designated as a moderator of a tribunal constituted by a conference of bishops, he does not act on behalf of the conference because he is not acting with delegated power. He has all the powers that belong to a diocesan bishop in respect of his own tribunal. This power is granted by law itself (c. 1439, §3; *CCEO*, 1067, §4).

One might argue that the conference of bishops exercises judicial power when it permits that laypersons be appointed judges. We argue on the contrary because permission is not delegation of juridical power. It is the diocesan bishop, not the conference of bishops, who appoints laypersons as judges in the diocesan tribunal.

1.4 – LAW AND THE MISSION OF THE CHURCH

Not all scholars believe that the Church needs law for its day-to-day life. Both the proponents of the necessity of law in the Church and their opponents, who advocate for a Church without law, all agree that there is need for order and organisation in the Church; but the opponents are against its achievement through legal means. They believe that the

Church is the Church of charity and of the Holy Spirit; therefore, law has little, if any place in it. Their argument is thus represented:

Order and organization are ends which are perfectly compatible with the idea of the *Ecclesia* ... they are positively requisite to the fulfilment of it. Visible unity ... is an ideal which belongs essentially and *peculiarly* to the *Ecclesia*; and the better the true nature of the *Ecclesia* is understood, so much the more is one prompted to pursue this end. The ideal of the *Ecclesia* exacts in conformity ... in things essential ... out of obedience to the express command of God ... and of the peace and unity which ensues from it. These ends are consonant with the idea of *Ecclesia*, only – *they are not to be attained by legal means.*¹⁵⁷

Against the position that law has nothing to do with the Church of charity, the Church's stand on this issue is well expressed in the teaching of Pope Paul VI. He taught that, as the soul cannot be separated from the body without causing death, so also "the Church of charity" cannot exist without the "juridical" Church. It is impossible to ignore the fact that the Church is by the will of God a visible society equipped with all the institutions designed for its external government. In this Church, the law has its purpose; that is, to direct properly and to guide to their destined end the members of the Church, all souls and the whole community, solidly united on a spiritual level.¹⁵⁸ While, obviously, we share the teaching of the pope in this regard, we believe that for law to achieve its objective in the Church, we must not divest it of the necessary qualities it needs to attain the required goal. For this reason, we have to examine briefly the notion of

¹⁵⁷ LOWRIE, *The Church and Its Organization in Primitive and Catholic Times*, p. 157. See also R. SOHM, *Kirchenrecht*, II, *Katholisches Kirchenrecht*, München und Leipzig Duncker & Humblot, 1892, especially §3, "Die Organisation der Ekklesia," pp. 22-28.

¹⁵⁸ "Attamen, quemadmodum anima a corpore seiungi nequit quin mors subsequatur, Ecclesia, quam a 'caritate' nuncupant, sine Ecclesia 'iuridica' exsistere nequit. Non licet ignorare Ecclesiam ... ex Dei voluntate esse societatem visibilem omnibus cum institutis ad exteriorum moderationem pertinentibus ... Tamen cum ius eo pertineat, ut vitam Ecclesiae membrorum recte componat et ad finem conducat, ac quidem singulas animas totamque communitatem, mutuo nexu in re quoque spirituali inter se coniunctas" (PAUL VI, Allocation to the Members and Consultors of the Commission for the Revision of the Code of Canon Law, 20 November 1965, in *AAS*, 57 [1965], pp. 986-988; English trans. in *CLD VI*, pp. 143-144).

law and the relationship between universal law and particular law. Since this relationship has real meaning within the context of the Church, we will highlight some deductions arising from the relationship between the Church universal and the particular Church in view of the Church as a *communio*.

1.4.1 – The Notion of Law

The nature of law (*ius*) is better expressed in relation to its derivations, which are justice, fairness, and equity. In this light, Ulpian has noted that a “law student at the onset of his study ought first to know the derivation of the word *jus*. Its derivation is from *justitia*.”¹⁵⁹ The term *ius* is a Latin word that has no exact English equivalence. It is not exactly the same as law (*lex*) but both are frequently connected, and *ius* is sometime taken as a synonym of *lex*.¹⁶⁰ There is an intrinsic relationship between the two. *Lex* is a species of *ius* as J. Huels explains:

Leges are but one kind of *ius*, those that are issued on the authority of a legislator ... The word ‘law’ in the sense of *lex*, is used in the canonical system as a category for various kinds of norms that have legislative force, the highest juridical force in canonical system. Ecclesiastical laws are never titled ‘laws’ as such but are called laws in general sense. ‘Law’ is the genus; ‘canon,’ ‘rubric,’ ‘norm,’ ‘precept,’ etc., are the various species. And ‘law’ itself is a species of the genus *ius*.¹⁶¹

It is not possible to encapsulate the meaning of law in a definition because, etymologically, it admits of various definitions. Law (*ius*) is the art of goodness and

¹⁵⁹ D. 1, 1, 1, ULPIAN, *Institutes*, book 1: “Iuri operam daturum prius nosse oportet, unde nomen iuris descendat est autem a iustitia appellatum.”

¹⁶⁰ See F. SUÁREZ, *Selections from Three Works of Francisco Suarez*, Oxford, Clarendon Press, 1944, p. 27.

¹⁶¹ J.M. HUELS, “A Theory of Juridical Documents Based on Canon 29-34,” in *StC*, 32 (1998), p. 347.

fairness (*ars boni et aequi*).¹⁶² The various meanings of *ius* have significantly influenced the many ways scholars define law according to their own theories of law. Thus, Cicero states that most learned people are right to begin with law in the investigation of the origins of justice, if according to their definition:

Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite. This reason, when firmly fixed and fully developed in the human mind, is Law. And so they believe that Law is intelligence, whose natural function it is to command right conduct and forbid wrong doing.¹⁶³

According to Suárez, law is “a common, just and stable precept, which has been sufficiently promulgated.”¹⁶⁴ For Saint Thomas Aquinas “law is an ordinance of reason for the common good made by the authority who has care of the community and promulgated.”¹⁶⁵ L. Örsy argues that Aquinas’ definition only holds in the abstract world because we need to understand law in relation to the values it seeks:

Laws are norms of action for the community, set by legitimate authority, for the appropriation of values by the community. They are instruments of life, growth and perfection because they point to the needed values and prompt the community to reach out for them.¹⁶⁶

A. Cicognani defined ecclesiastical law as an “ordinance in accordance with reason promulgated by him who has the care of the ecclesiastical community, for the sake

¹⁶² See D. 1, 1, 1. ULPAN, *Institutes*, book 1.

¹⁶³ “... lex est ratio summa insita in natura, quae iubet ea, quae facienda sunt, prohibetque contraria eadem ratio cum est in hominis mente confirmata et confecta, lex est. Itaque arbitrantur prudentiam esse legem, cuius ea vis sit, ut recte facere iubeat, vetet delinquere” (M.T. CICERO, *De re publica; De legibus*, bk. 1. ch. VI, §18, with English trans. by C.W. KEYES, Cambridge, Mass., Harvard University Press, London, William Heinemann Ltd, 1988, p. 316).

¹⁶⁴ SUÁREZ, *Selections*, p. 128.

¹⁶⁵ “Ordinatio rationis ad bonum commune, ab eo qui curam communitatis habet, promulgata” (T. AQUINAS, *Summa theologiae*, Ia-IIae, 90, art. 4.).

¹⁶⁶ L. ÖRSY, *Theology and Canon Law, New Horizons*, Oxford, Clarendon Press, 1994, p. 92.

of the common welfare of the Church.”¹⁶⁷ Cicognani’s definition, informed by the definition of Aquinas, does not reflect the nature of the Church as presented by the Second Vatican Council, as both a sign and instrument, a *communio* and a society (LG, no. 1). If the traditional Thomistic definition of law were to apply to canon law, some argue, it would lack ecclesial sense and be unfair to the revealed nature of the Church. “Thus, canonical law would be, fundamentally, an *ordinatio fidei*, but it would require the condition of *ratione efformata* for its operative efficacy.”¹⁶⁸ The common good in St. Thomas’ definition must be interpreted from an ecclesial point of view, that is, canon law must be directed *in bonum communionis* rather than *in bonum commune*.¹⁶⁹ The definition of canon law then must not exclusively be based on the social aspect of the Church; the essential internal elements of the nature of the Church, the *fides* and *communio*, must be reflected in a true definition of canon law. The common denominator in any definition is that law, whether common, civil or ecclesiastical, ought to be an ordinance of reason, patterned according to the nature of the community for which the law is enacted. It must be just, stable, for the common good, and duly promulgated by a competent authority for a community that is capable of receiving law.

Canon 7 of the 1980 schema provided a definition of law that did not appear in the finally promulgated 1983 Code.¹⁷⁰ It was argued that the function of the Code is not to

¹⁶⁷ A.G. CICOGNANI, *Canon Law*, 2nd revised edition, authorised English version by J. M. O’HARA and F. BRENNAN, from the Latin original as revised and enlarged by the author, Philadelphia, Dolphin Press, 1935, p. 522.

¹⁶⁸ J. OTADUY, Commentary on cc. 7-22, Introduction, in *Exegetical Comm* 1, p. 261.

¹⁶⁹ See *ibid.*, pp. 261-262.

¹⁷⁰ “Lex quae quidem est norma generalis ad bonum commune alicui communitati a competenti auctoritate data instituitur cum promulgatur” (*Codex iuris canonici: Schema Patribus Commissionis reservatum*, Libreria editrice Vaticana, 1980, c. 7, p. 4).

define the juridical institutions but to attribute to them their relevant effects.¹⁷¹ Like every law, ecclesiastical law should be an ordinance and not a mere suggestion or an exhortation. It ought to be reasonable, moral, and just, as it puts into consideration both the divine and human elements of the Church. It must not be simply for social control by coercion. Any Church law that is not both physically and morally possible is a dead law; and, according to a legal adage, no one is bound to the impossible (*ad impossibile nemo tenetur*). Ecclesiastical law should be for the common good of the Christian faithful. It has to be stable to distinguish it from transitory ordinances. Ecclesiastical law should be enacted by a competent authority who must promulgate it before it comes into force. It should respect the rights of persons both as a group and as individuals. Laws enacted by a lower legislator should always respect the principle of legality (c. 135, §2), in which particular law must not be contrary to universal law. Finally, and more importantly, Church law must not replace faith, grace, charisms, and charity, in the life of the Church and Christ's faithful. This is well expressed by Pope John Paul II:

[...] it is sufficiently clear that the purpose of the Code is not in any way to replace faith, grace, charisms and above all charity in the life of the Church or of Christ's faithful. On the contrary, the Code rather looks towards the achievement of order in the ecclesial society, such that while attributing a primacy to love, grace and the charisms, it facilitates at the same time an orderly development in the life of both of the ecclesial and of the individual persons who belong to it.

As the Church's fundamental legislative document, and because it is based on the juridical and legislative heritage of revelation and tradition, the Code must be regarded as the essential instrument for the preservation of right order, both in individual and social life and in the Church's zeal. Therefore, over and above the

¹⁷¹ The Commission for the 1983 Code did not believe that it is the duty of the legislator to define law, because it is not only unnecessary but also dangerous to do so: "Plerique censent nullam dari debere definitionem legis: ut notat aliquis, legislator non debet dare definitiones, sed debet leges ferre ... est insuper qui animadvertit, legislatorem abstinere debere a definitionibus quae non sunt omnino necessariae, quia omnis definitio in iure est periculosa" (*Comm.*, 16 [1984], p. 144).

fundamental elements ... it is necessary for the Code to define also certain rules and norms of action.¹⁷²

Thus, the idea of defining rules and norms presupposes that a lack of clarity should not be associated with ecclesiastical law.

1.4.2 – The Relationship between Universal Law and Particular Law

A universal law, as explained in the introduction to this work, binds the members of the Latin Church wherever they may be (c. 12, §1). The 1917 Code used the term general laws (*leges generales*) instead of universal laws, and they were binding everywhere (*ubique terrarum*) on those for whom they were made.¹⁷³ It is very important to grasp the fact that universality here does not mean the totality of the Catholic faithful (*universitas fidelium*) but the entire globe (*ubique terrarum*).

In other words, the characteristic of universal laws is that they affect, not the totality of the faithful (the *universitas fidelium*), but the entire globe (*ubique terrarum*). Within that unlimited territorial scope, universal laws affect ‘all those for whom they were enacted’.¹⁷⁴

Universal law can be general or special. It is general when it affects all the faithful irrespective of their various states in life, such as laws that express the fundamental rights

¹⁷² “[...] satis apparet finem Codicis minime illum esse, ut in vita Ecclesiae christifidelium fides, gratia, charismata ac praesertim caritas substituantur. Ex contrario, Codex eo potius spectat, ut talem gignat ordinem in ecclesiali societate, qui, praecipuas tribuens partes amoris, gratiae atque charismati, eodem tempore faciliorem reddat ordinatam eorum progressionem in vita sive ecclesialis societatis, sive etiam singulorum hominum, qui ad illam pertinent. Codex, utpote quod est primarium documentum legiferum Ecclesiae, innixum in hereditate iuridica et legifera Revelationis atque Traditionis, necessarium instrumentum censendum est, quo debitus servetur ordo tum in vita individuali atque sociali, tum in ipsa Ecclesiae navitate. Quare, praeter elementa fundamentalia ... Codex quasdam etiam regulas atque agendi normas definiat oportet” (JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, special edition, 75 [1983], p. xi; English trans., in *Exegetical Comm I*, p. 177).

¹⁷³ *CIC/17*, c. 13, §1: “Legibus generalibus tenentur ubique terrarum omnes pro quibus latae sunt.” As already indicated in the Introduction, the *Code of Canons of the Eastern Churches* uses the term “common” instead of “universal.” See *CCEO*, cc. 1493, §1 and 1491, §3, 3°).

¹⁷⁴ J. OTADUY, Commentary on c. 12, in *Exegetical Comm I*, p. 294.

and obligations of all the faithful (cc. 208-223; *CCEO*, cc. 11-26). It is called special when it affects certain categories of persons, such as the laws common to all institutes of consecrated life (cc. 573-606).¹⁷⁵ The legislators for the universal law are the Supreme Pontiff, the college of bishops united with the head, or the Roman Curia, when delegated by the pope.

On the other hand, particular laws are laws enacted for a particular territory. Particular laws are those enacted by particular councils for their territories, such as a plenary council (c. 439, §1), a provincial council (cc. 439, §2 and 440, §§1, 2), and conferences of bishops (c. 455, §§1, 2), or lawful customs, statutes and other norms meant for a particular Church or a group of persons. Apart from the Roman Pontiff, the college of bishops united with the head, and the Roman Curia (when delegated by the Supreme Pontiff), those who can enact particular laws within the realm of their competence are, the diocesan bishops and those equivalent to them in law, the conference of bishops, particular councils and the major superiors of clerical religious institutes of pontifical right.

Since in the Church the salvation of souls (*salus animarum*) must always be the supreme law (*suprema semper lex*)¹⁷⁶, canon law has the salvation of souls as its main

¹⁷⁵ Cf. *CCEO*, cc. 410-411, 426, 435, 506, §1, 566, 508, §2, 439, 440, §§1, 2, 438, §§1, 2, 4, 507, 566, 438, §3, 508, §2, 505, §3, 554, §2, 434, 505, §§1, 2, 1°, 3°, 554, §2, 563, §2, 412, §1, 555, 564, 412, §2, 419, 554, §2, 413, 554, §2, 413, 554, §2, 414, §1, 1°, 2°, §3, 554, §2, 566, 441, §§1, 2, 511, 557, 995, 448, 449, 450, 1°, 518, 559, §1, 568, §1, 426, 481, 570, 571, 1505.

¹⁷⁶ "... it is sufficiently clear that the purpose of the Code is not in any way to replace faith, grace, charism and above all charity in the life of the Church or of Christ's faithful. On the contrary, the Code rather looks towards the achievement of order in the ecclesial society, such that while attributing a primacy to love grace and the charisms, it facilitates at the same time an orderly development in the life both of the ecclesial society and of the individual persons who belong to it" (JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, 65 pars II (1983), p. xii; English trans. in *Exegetical Comm* I, p. 177).

purpose of existence (cf. c. 1752). Speaking to the commission responsible for the revision of the 1917 Code, Pope Paul VI recalled the teaching of his predecessor as follows:

Hence canon law, which ... has its basis in the power of jurisdiction which Christ gave to the hierarchy, 'is wholly oriented to the good of the souls ...' This is the highest purpose towards which canon law is directed, and consequently it has the special competency of governing the Church and controlling its structure by just institutions and laws.¹⁷⁷

In view of this important function of ecclesiastical law there should be no friction between universal law and particular law since, in fact, they have the same goal – the salvation of souls. Particular law is not opposed to universal law but, rather, draws direction and strength from it. It is like a practical application of the principle of subsidiarity in the Church. The universal law recognises in particular law, "the local initiatives fostering the life of the people of God in a given area."¹⁷⁸ Since ours is the Church of unity in diversity, enacting particular legislation is a unique opportunity afforded to the particular Churches and territories to take the universal law and apply it, where possible, to their particular circumstances.¹⁷⁹ The universal law and particular law, therefore, complement each other, such that, what the universal law did not legislate on, it concedes to particular legislation. Nevertheless, the enactment of any particular law is to be guided by the provisions of the universal law so that they may not contradict each other. Thus, the Code of Canon Law abrogated all laws, whether universal or particular,

¹⁷⁷ PAUL VI, Allocution to the Members and Consultors of the Commission for the Revision of the Code of Canon Law *Singulari cum animi*, 20 November 1965, in *AAS*, 57 (1965), p. 985; English trans. in *CLD* VI, p. 142.

¹⁷⁸ F.G. MORRISEY, "The Code of Canon Law: The Importance of Particular Law," in *Origins*, 11 (1981-1982), p. 426.

¹⁷⁹ See *ibid.*, pp. 426-427.

which were contrary to it, unless it is otherwise expressly provided in respect of particular laws (c. 6, §1, 2°).

Ecclesiastical laws (*leges*), whether they are universal or particular, have the same characteristics. When examined from the point of view of the principle of legality (c. 135, §2; *CCEO*, c 985, §2), they can be ranked hierarchically according to their authors. However, the relationship between them is intertwined with the relationship between the universal Church and the particular Church. For a deeper appreciation of this relationship, we need to make some deductions from what we have already discussed above on the Church as a *communio*.

1.4.3 - Some Deductions on the Church as a *communio*

As indicated above, the words universal, particular, and local are descriptive adjectives that qualify one reality, and they add to our comprehension of this reality, a unique mystery, which is the Church. Thus, what we want to bring to the forefront, among the elements that characterise the true and genuine image of the Church, whether universally or within its particular configuration, is primarily the fact that the Church is the people of God and hierarchical authority is for service. In addition, the Church as a *communio* determines the relationship between the universal Church and particular Church, as expressed by the Pope John Paul II in the following words:

Foremost among the elements, which express the true and authentic image of the Church are: the teaching whereby the Church is presented as the people of God (cf. *LG*, 2) and its hierarchical authority as service (*LG*, 3); the further teaching which portrays the Church as a communion and then spells out the mutual relationship which must intervene between the particular and the universal Church, and between collegiality and primacy; like wise, the teaching by which all the members of the people of God share, each in their own measure, in the threefold priestly, prophetic and kingly office of Christ, with which teaching is

associated also that which looks to the duties and rights of Christ's faithful and specifically the laity ...¹⁸⁰

God himself is the fount of this communion while the Church is the instrument through which it is realised. In a way, the Church in her plenitude is constituted as a communion as in the image of communion made among the three divine Persons.¹⁸¹ Thus, the relationship between the universal Church and particular Church is so intertwined that at no time is any of the essential elements of the Church lacking in either. These elements define the essential nature of the Church, which is not universal, particular, or local; but a "mystery of communion."¹⁸² In light of this relation, the expression "particular Church" which is employed about thirty-five times throughout the documents of the Second Vatican Council,¹⁸³ in each case "points to the relationship of the one unique subject, the Church, to a part of the totality of the baptized."¹⁸⁴ It is in this line that the council defines the diocese, which it has nearly always identified with a particular Church, as a portion of the people of God in these words:

A diocese is a [portion] of the People of God entrusted to a bishop to be guided by him with the assistance of his clergy so that, loyal to its pastor and formed by him into one community in the Holy Spirit through the Gospel and the Eucharist, it constitutes one particular Church in which the one, holy, catholic and apostolic Church of Christ is truly present and active.¹⁸⁵

¹⁸⁰ JOHN PAUL II, *Sacrae disciplinae leges*, in *Exegetical Comm* I, p. 179.

¹⁸¹ See GHIRLANDA, "De definitione Ecclesiae universalis, particularis, localis," pp. 605-606.

¹⁸² See CDF, *Communio notio (koinonía)*, no. 3; English trans. in *Origins*, 22 (1992-1993), p. 108.

¹⁸³ See CHOURNARD, "Les 'Église locale' et 'Église particulière'," p. 160.

¹⁸⁴ GHIRLANDA, "Universal Church, Particular Church, Local Church," p. 242.

¹⁸⁵ *CD*, no. 11; in FLANNERY1, p. 569.

Thus, the universal Church and the particular Church have a special relationship of mutual interiority,¹⁸⁶ because in every particular Church the one, holy, catholic, and apostolic Church of Christ is truly present and active.¹⁸⁷ Nevertheless, the particular Church does not exhaust all the mysteries of the Church outside the universal Church since some constitutive elements of the Church, such as the office of the successor of Peter and the episcopal college, will be lacking as expressed in the words of Pope John Paul II.¹⁸⁸ The relationship between the universal Church and the particular Church is a mystery, not comparable to the relationship between a whole and a part in a purely human group or society.¹⁸⁹ As the particular Church is the expression of the universal Church in a concrete locality of persons and culture, so must the particular law be the expression of the universal law in a concrete locality and culture. This, in fact, mirrors the relationship that exists between the ministry of the Supreme Pontiff and that of the bishops and the mutual obligations and rights set up by the ministries. As the successor of Peter, the rock, the foundation, and the holder of the keys of the Church, the ministry of the Supreme Pontiff is the perpetual and visible source and foundation of the unity of the

¹⁸⁶ See JOHN PAUL II, Address to the Roman Curia, 20 December 1990, in *AAS*, 83 (1991), pp. 740-748, especially no. 9, p. 746; see also CDF, *Communio notio (koinonía)*, no. 9; English trans. in *Origins*, 22 (1992-1993), p. 109.

¹⁸⁷ See *CD*, no. 11; in FLANNERY I, p. 569; CDF, *Communio notio (koinonía)*, no. 9; English trans. in *Origins*, 22 (1992-1993), p. 109.

¹⁸⁸ "La Chiesa particolare è «Chiesa» proprio perché è presenza particolare della Chiesa universale. Così, da una parte la Chiesa universale trova la sua esistenza concreta in ogni Chiesa particolare in cui essa è presente e operante e, dall'altra, la Chiesa particolare non esaurisce la totalità del mistero della Chiesa, dato che alcuni suoi elementi costitutivi non sono deducibili dalla pura analisi della Chiesa particolare stessa. Tali elementi sono l'ufficio del successore di Pietro e lo stesso Collegio Episcopale" (JOHN PAUL II, Address to the Roman Curia, 20 December 1990, no. 9, p. 746).

¹⁸⁹ See CDF, *Communio notio (koinonía)*, no. 9; English trans. in *Origins*, 22 (1992-1993), p. 109.

faith and of the communion both of bishops and of all the faithful. On the other hand, the ministry of the bishops, as individuals, consists of the fact that they are the visible source and foundation of unity within their particular Churches that they represent; while as a college, all the bishops with the Supreme Pontiff as their head represent the whole Church in the bond of peace, love, and unity.¹⁹⁰ It follows that the pre-eminent ordinary power of the supreme legislator over all particular Churches and their groupings (c. 333, §1; *CCEO*, c. 45, §1) reinforces and defends the proper, ordinary, and immediate power (c. 381, §1; *CCEO*, c. 178) which the diocesan bishops have in the particular Churches entrusted to their care. Since, as a college, the bishops, with the Supreme Pontiff, represent the whole Church, the government of the Church, must therefore, be organised in such a way that the interests of the universal Church and the particular Churches are protected.

The Church as a *communio* can also explain the relationship between the universal Church and a conference of bishops; and by analogy, the relationship between the universal law and the decrees of the conference. By this relationship, a conference of bishops works for the good of the local Church constituting its territory, as well as for the Church universal, to enhance the greater good that the Church offers to humanity (c. 447, *LG*, no. 38).¹⁹¹ Consequently, as part of the collegial body, a conference of bishops should not place an act that is contrary to the collegial spirit. Similarly, its decrees cannot be valid if they go contrary to the laws of the universal legislator, unless specifically allowed by him. Therefore, as the particular Church does not contradict the Church

¹⁹⁰ See GHIRLANDA, "Universal Church, Particular Church, Local Church," p. 247.

¹⁹¹ See also *Apostolos suos*, no. 14; English trans. in *Origins*, 28 (1998-1999), p. 155.

universal, particular laws enacted by a legislator below the supreme legislator must not go contrary to universal law.

CONCLUSION

Throughout the history of the Church, we find a tendency to identify the nature of the Church with its accidental at the expense of its essential elements. This erroneous approach, prevalent before the Second Vatican Council, equated the external, human, and mutable elements in the Church with its unchangeable essence. Thus, more emphasis was laid on the Church as a perfect society (*societas perfecta*). This emphasis was the result of ecclesiology responding to the issues of the time, provisional theological formulae, and mutable juridical norms.

When, during the Middle Ages, the Church and state were two parts of a unified social reality – *respublica Christiana* – many could not imagine the rift that came between them thereafter. Various movements during the Reformation, motivated by a spirit of nationalism, restricted the power of the Church and increased the power of the civil rulers. In response to this, the ecclesiology of the Church as a perfect society was born to defend the autonomy of the Church. However, this response gave the impression that the Church as an organised society was distinct from the Church as a community of faith. This dominated the period between the Council of Trent and the middle of the past century.

Thanks to the Second Vatican Council for a rethinking of this conventional ecclesiological image of the Church viewed as a “perfect society” pitched against the perfect society of the *Civitas*. With Vatican II came a more profound ecclesiology. Instead of starting with discussions on the structures and government of the Church, as

was the propensity in the First Vatican Council, *Lumen gentium* starts with the notion of the Church as a people to whom God has communicated Himself in love. The Church is no more seen as a perfect society mirrored in the image of civil society, a society of inequality (*societas inaequalis*) but one in which all are held in a bond of communion. This communion involves a double dimension of vertical communion with God and horizontal communion with people.

The nature of the Church is a mystery where the visible and invisible realities are intertwined. It is both an organically structured society and a *communio* founded by Christ, with the mission to proclaim and establish God's kingdom. It is endowed with the gifts – the hierarchy and charisms – to attain its end. The recipients of these gifts are by no means superior to others. The gifts in the Church – a community of faith – are gratuitous, where office is for service and not for honour, and both the clergy and laypersons are together Christians – the people of God, no matter to which particular Church they belong. Thus, the universality or particularity of the Church is a qualification of one unique reality – the Church that is essentially a communion.

Organically structured, the Church is governed by the Supreme Pontiff and the bishops, with others who share or cooperate in the governance. This governance is achieved through the exercise of the *tria munera* of Christ. The *tria munera* are exercised fully by the pope and bishops while others share or cooperate in the governance of the Church. It is in this light that we examined the power of governance in the Church as regards the Supreme Pontiff, the college of bishops, the diocesan bishops, the particular councils, the conference of bishops, and the clerical religious institutes of pontifical right.

Power of governance, also known as power of jurisdiction, exists in the Church by divine institution. It is ordinary if attached to an office by virtue of law or delegated if it is granted to a person other than through an office. It is exercised through its three distinguished powers, namely, legislative, executive, and judicial.

Legislative power is exercised in a manner determined by law. The only ecclesiastical legislator that can delegate his legislative power is the Supreme Pontiff (unless the law explicitly provides otherwise c. 135, §2), and this power cannot be subdelegated unless the law provides otherwise. Legislators below the Supreme Pontiff cannot delegate their legislative power without prejudice to c. 135, §2. In the exercise of legislative power, the principle of legality must always be observed. Thus, a lower norm cannot go contrary to a higher norm.

Judicial power in the Church can be delegated in accord with the norm of law. Judicial power possessed by judges and judicial colleges is exercised in the manner prescribed by law; it cannot be delegated except for the performance of acts preparatory to some decree or judgement.

Executive power, as a power of governance, is granted by law or delegation for juridical competence for the habitual administration of the activities of governance. Unlike legislative power, which only the Supreme Pontiff can delegate (unless the law provides otherwise (c. 135, §2), and judicial power, which cannot be subdelegated, executive power can be delegated by all who hold ordinary executive power in the Church and it can as well be sub-delegated.

Because the Catholic Bishops' Conference of Nigeria is one of the focuses of our work, we examined separately, but briefly, the conferences of bishops. Since there are

many writings on the history of the bishops' conference, we have only summarised the genesis of the conference of bishops. The exercise of the power of governance of the conference of bishops as regards the legislative, executive, and judicial functions is also discussed. How the conference exercises these functions, is strictly determined by law outside of which it acts invalidly.

Governing functions, be they in the Church or civil society, therefore, require regulations to be carried out effectively. Each system of governance determines the *modus operandi* of its law. Thus, we establish the inevitable role of laws (*leges*) or norms (*normae*) in the act of governance; and consequently the importance of canon law in the Church. Since the conference of bishops is to be conscious of the good of the whole Church in the exercise of its governing functions, we examined law in the mission of the Church and the relationship between universal law and particular law. By deduction, since the universal Church and the particular Church are the same reality, particular law must not go contrary to universal law.

Generally, law, which has its basis in the power of jurisdiction, is mainly for order and control of societal structures. As it strives to achieve these, church law, both universal and particular, is wholly oriented to the good of souls. Thus, any church law, be it universal or particular, patterned outside this goal goes contrary to the name and is doomed to fail. This is why universal law and particular law are interlaced in relationships, and particular law does not contradict the universal law but rather complements it.

Similarly, the Church is a unique reality that is indivisible. Thus, the particular Church is the expression of the universal Church in a concrete locality of persons and

culture. It is inconceivable for a particular Church to be contrary to the universal Church. The relation that exists between the universal Church and the particular Church, which is never the relationship between a part and a whole, is better explained by the doctrine in which the Church is seen as a *communio*, and in which all the faithful, wherever they may be, are the people of God with obligations and rights.

Based on what is established in this chapter, we intend, in the following chapters, to discuss the Catholic Bishops' Conference of Nigeria, and critically analyse the particular complimentary norms enacted by it.

CHAPTER TWO

THE CATHOLIC BISHOPS' CONFERENCE OF NIGERIA

INTRODUCTION

Nigeria is a West African country bordering the Gulf of Guinea, with Benin Republic to the west, Niger to the north, Chad to the northeast and Cameroon to the east and southeast. Its geographic coordinates are 1000 N and 800 E. It has an area of 923,768 sq km, of which 910,768 sq km is land and 13,000 sq km is water. Nigeria has a 773 km border with Benin Republic, 1690 km with Cameroon, 87 km with Chad and 1497 km with Niger. It has equatorial climate in the south, tropical in the centre, and arid in the north. The average annual rainfall is more than 2,500mm (98 in.) in parts of the southeast, but in certain areas of the north, it is as low as 600mm (24 in.). The average annual temperature is about 32°C (90°F) with high humidity. This information may sound superfluous, yet it is important to locate Nigeria and the climatic conditions in order to appreciate the ordeal of the missionaries who sowed the catholic faith in the country.

Nigeria has an estimated population of about 131,859,731 people,¹ with more than 250 ethnic groups and 521 listed languages. About 510 of these languages are living languages, two are second language with mother-tongue speakers, and nine are extinct. There are three major languages in Nigeria, namely, Igbo, Yoruba and Hausa. The three

¹ The result of the most recent census by the Nigerian Government was released on 29 December 2006 (Information from website: <http://en.wikipedia.org/wiki/Nigeria>, of Wikimedia Foundation, USA. The site was last modified on 8 June 2007 and accessed on 12 June 2007. The Nigerian census results are rarely accurate. The CENTRAL INTELLIGENCE AGENCY (CIA), estimates the population to be about 135,031,164 people. See *The World Factbook*, on the website, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>, accessed 12 June 2007. See also SUMMER INSTITUTE OF LINGUISTICS [= SIL], *Ethnologue: Languages of the World*, in http://www.ethnologue.com/show_country.asp?name=NG, last modified, 30 May 2007, accessed 12 June 2007. Nigeria is believed to be the most populous nation in Africa.

major religions in Nigeria are Islam, Christianity, and Traditional Religion. Adherents to Islam are about 47.2%, Christians are about 34.5% and other indigenous beliefs are about 18%.² Before December 1991, when Abuja became the new capital, Lagos was the capital of Nigeria. Presently there are thirty-six states in Nigeria, excluding the federal capital territory Abuja.³

It is very important to observe that the Nigeria we know today is not what it was before the inception of the Catholic Church there. Nigeria was made up of various entities with their various cultures and histories before it was amalgamated by Britain, her colonial master, on 1 January 1914. M. Crowder puts this in a very mild way thus:

Although Nigeria was the creation of European ambitions and rivalries in West Africa, it would be an error to assume that its people had little history before its final boundaries were negotiated by Britain, France and Germany at the turn of the twentieth century. For this newly created country contained ... a number of great kingdoms that had evolved complex systems of government independent of contact with Europe.⁴

Before this period, there were the Yoruba kingdom and the Benin kingdom, the Northern kingdom of the Savannah (notable among which were the Bornu kingdom and the Fulani kingdom) and the egalitarian nation of the Igbo.⁵ Although Nigeria has been merged together without its consent or any consultation to form a country, it remains very

² There is no agreement in the estimated percentage of Muslims, Christians, and other beliefs. EUROPA PUBLICATIONS, *The Europa World Year Book 2004*, vol. II, London and New York, Taylor & Francis Group, 2004 [= EUROPA, *The World Year Book 2004*], p. 3198 has it as indicated above. CIA, *The World Factbook* has it as 50%, 40% and 10% respectively; see website, <https://www.cia.gov/library/publications/the-world-factbook/geos/ni.html>, date as above.

³ Information taken from EUROPA, *The world Year Book 2004*, vol. II, p. 3198; CIA, *The World Factbook*, same website; SIL *Ethnologue*, same website, and A.C. BURNS, *History of Nigeria*, 3rd edition, London, George Allen & Unwin Ltd., 1942, pp. 22-28.

⁴ M. CROWDER, *The Story of Nigeria*, London, Faber and Faber, 1966, p. 21.

⁵ See *ibid.*

elusive to create an egalitarian system reminiscent of that of the Igbo culture and history. This is the country that received the catholic faith sown through the relentless efforts of missionaries, many of whom sacrificed their lives for the spread of the faith.

In this chapter, we intend to examine the Catholic Church in Nigeria and the Catholic Bishops' Conference of Nigeria, its establishment, composition, statutes, and organs. We shall also study the authority of CBCN, the decrees of the conference, the *recognitio* of the Holy See, and the binding force of the decrees of CBCN will follow these.

2.1 – THE CATHOLIC CHURCH IN NIGERIA

During the fifteenth century, efforts were made to establish the catholic faith in West Africa of which Nigeria is a part. This period is usually referred to as the second phase of the evangelisation of Africa.⁶ At the beginning of this phase, the conversion of West Africa was the monopoly of the King of Portugal in virtue of the papal Bull of Demarcation.⁷ “This monopoly was based on the exploration done on the West African

⁶ Pope John Paul II referred to this phase when he said: “A second phase, involving the parts of the Continent south of Sahara, took place in the fifteenth and sixteenth centuries” (JOHN PAUL II, *Post Synodal Apostolic Exhortation, Ecclesia in Africa*, no. 30, Ottawa, Canadian Conference of Catholic Bishops, 1995, p. 31).

⁷ The discovery of the new world by Christopher Columbus in 1492 gave rise to increasing tension between Spain and Portugal over land claims. The Portuguese felt threatened because they wanted to protect their monopoly on the trade route to Africa. To avoid the misunderstanding that may have arisen over territorial disputes Pope Alexander VI, on 4 May 1493, issued the Bull, *Inter caetera*, establishing an imaginary line from the Arctic to the Antarctic pole, one hundred leagues towards the west and south. Spain was assigned possession of unclaimed territories to the west of this imaginary line and Portugal the unclaimed territories to the east of the line to which Africa belonged. See ALEXANDER VI, Bull, *Inter caetera*, 4 May 1493, in *Bullarium romanorum, diplomatum et privilegiorum Sanctorum Romanorum Pontificum* (= *Bullarium*), Taurinensis editio, vol. 5, Augustae Taurinorum, Seb. Franco et Henrico Delmazzo editoribus, 1862, pp. 361-364.

Coast with funds and charters by the Portuguese monarchy in the fifteenth century.”⁸ Between 1472 and 1621, the efforts to bring the catholic faith to Nigeria did not yield fruit. The King of Portugal sent missionaries and merchants on this mission. His target was the Benin Kingdom, with the belief that if the king were converted his subjects would automatically be converted too. Although they succeeded in reaching the Benin Kingdom against all odds, their mission was not a success. The failure was partly accounted for by both the mistaken methods of approach used by Lisbon to bring the Bini to the Church and by a language barrier.⁹

Another enthusiastic effort to establish the catholic faith in Nigeria took place between 1622 and 1717, after the creation of the Congregation for the Propagation of the Faith (*Propaganda fide*) in 1622. The situation of “the Benin mission” was brought to the attention of this dicastery by letters from the prefect of the French mission to West Africa and by the missionary, Father Francisco de Pamplona. Thus, in 1648, the Holy See created the Apostolic Prefecture of Benin with Angel de Valencia, a Spanish Capuchin, as the prefect. He and his team reached Benin in 1651 and were cordially received. This mission also failed because of his endeavour to stop a ritual human sacrifice. Another mission that immediately followed this was that of the Italian Capuchins, and it too was a failure.¹⁰ It took some time before further attempts were made and success recorded.

⁸ C.A. IMOKHAI, “The Evolution of the Catholic Church in Nigeria,” in A.O. MAKOZI and G.J.A. OJO (eds.), *The History of the Catholic Church in Nigeria*, Yaba Lagos, Macmillan Nigeria Ltd., 1982, p. 3.

⁹ See *ibid.*, pp. 3-6.

¹⁰ See *ibid.*, pp. 7-8.

The success of the Nigerian mission began with the *Société des Missions Africaines* (SMA). The first member of the SMA to reach Lagos and to found a mission there arrived on 8 September 1863. This led to the creation of the Apostolic Vicariate of the Bright of Benin in 1870.¹¹ Lokoja received the catholic faith with the creation of the Apostolic Prefecture of the Niger in 1884. Lokoja was the main entry to northern Nigeria in those days and thus, was made the seat of the prefecture.¹² What was to become the Apostolic Prefecture of the Lower Niger began with the arrival (from the Vicariate of Gabon) of Fathers Joseph Lutz and Johan Horne (of the Holy Ghost Congregation) at Onitsha on 5 December 1885.¹³ The Apostolic Prefecture of Lower Niger was erected in 1889.¹⁴ The catholic faith spread to the far north of Nigeria around 1907. Thus, in 1911, the Apostolic Prefecture North of the Benue was established with Shendam as its seat. Later, in 1934, the seat was transferred to Kaduna, which was the civil administrative centre of northern Nigeria in those days.¹⁵ The earlier missionaries to Nigeria laboured,

¹¹ See *ibid.*, pp. 8-10; M.P. MACLOUGHLIN, "Highlights of the History of the Catholic Church in Lagos Ecclesiastical Province," in MAKOZI, *The History of the Catholic Church in Nigeria*, p. 15.

¹² See *ibid.*, p. 26; also see CHRISTIAN ORGANISATIONS RESEARCH ADVISORY TRUST AFRICA (CORATAFRICA), *Draft Evaluation Report of the Catholic Secretariat of Nigeria* (= *Evaluation Report of the CSN*), Lagos, Nigeria, Catholic Secretariat of Nigeria, 1997, p. 7.

¹³ See E. IKENGA-METUH and C.I. EJIZU, *Hundred Years of Catholicism in Eastern Nigeria: 1885-1985, The Nnewi Story, A Historico-Missiological Analysis*, Nimo, Nigeria, Asele Institute, 1985, p. 12.

¹⁴ See IMOKHAI, "The Evolution of the Catholic Church in Nigeria," p. 11; V.A. NWOSU, "The Growth of the Catholic Church in Onitsha Ecclesiastical Province," in MAKOZI and OJO (eds.), *The History of the Catholic Church in Nigeria*, p. 40; and *Evaluation Report of the CSN*, p. 7.

¹⁵ See J.J. ONOTU, "Milestones in the Growth of the Catholic Church in Northern Nigeria," in MAKOZI and OJO (eds.), *The History of the Catholic Church in Nigeria*, pp. 58-59; and *Evaluation Report of the CSN*, p. 7.

and many of them sacrificed their lives, to sow the catholic faith in this country. Their labour was not in vain, for the Church in Nigeria since then saw a steady growth.

The sign of growth and maturity of the Church in Nigeria is evident in the increase in the number of diocesan priests, religious and above all, of new ecclesiastical jurisdictions and of indigenous bishops. The number of Nigerian religious, priests, brothers and sisters of societies of apostolic life put together, rose substantially and soon exceeded the thousand marks before the first indigenous Nigerian bishop, Dominic Ekandem, was created a cardinal priest on 24 May 1975.¹⁶ Francis Cardinal Arinze, the second Nigerian cardinal, became a cardinal deacon on 27 May 1985, promoted to cardinal priest on 29 January 1996 and cardinal bishop on 25 April 2005. He is presently the Prefect of the Congregation for Divine Worship and the Discipline of the Sacraments. Anthony Cardinal Olubunmi Okegie, the most recent Nigerian Cardinal, was made a cardinal priest on 21 October 2003.

Until 1991, Nigeria comprised three ecclesiastical provinces, namely Lagos, Onitsha, and Kaduna. It was from these three provinces that six new ecclesiastical provinces were created in 1994.¹⁷ Presently there are nine ecclesiastical provinces in Nigeria¹⁸ and a total of fifty dioceses and two vicariates apostolic. All the bishops and

¹⁶ See A.O. MAKOZI, "Contemporary Trends in the Growth of the Catholic Church in Nigeria," in MAKOZI and OJO (eds.), *The History of the Catholic Church in Nigeria*, pp. 88-89.

¹⁷ With the creation of new ecclesiastical provinces in Nigeria, we now have the following in alphabetical order, with their date of erection: Abuja (26 March 1994), Benin City (26 March 1994), Calabar (26 March 1994), Ibadan (26 March 1994), Jos (26 March 1994), Kaduna (29 June 1953), Lagos (18 April 1950), Onitsha (18 April 1950), and Owerri (26 March 1994). See *Annuario pontificio*, Città del Vaticano, Tipografia poliglotta Vaticana, 2005, pp. 16, 96, 132, 302, 331, 336, 378, 519, and 531 respectively.

¹⁸ See THE MISSIONARY SOCIETY OF SAINT PAUL, *2005 Catholic Diary & Directory* (= MSP, *2005 Catholic Diary & Directory*), Iperu-Remo, Nigeria, The Ambassadors Publications, 2005, p. 112; *Evaluation Report of the CSN*, p. 7.

those equivalent to them who head these dioceses and vicariates apostolic are indigenous clergy except three. The catholic population in Nigeria is estimated to be about 18.9 million (15% of the whole population). Catholics are dominant in the south and particularly active among the Igbo community.¹⁹ There are about 4,695 priests, and 4,231 of these are indigenous diocesan priests. The remaining 464 priests are indigenous members of religious congregations, societies of apostolic life, and those of foreign nationality. There are five permanent deacons. The religious sisters are about 3,339 in number and of these only about 2% are foreigners. The number of religious brothers and those belonging to societies of apostolic life is about 283, and of these, about forty are foreign nationals. The number of major seminarians is about 3,682. There are about 731 catechists in the entire country.²⁰

There are twelve diocesan major seminaries for the various ecclesiastical provinces in Nigeria. Four are in the north, two in the west and six in the east. There are other institutes owned by religious congregations. Two institutes (one for philosophy and one for theology) are for members of the Holy Ghost congregation; there is a philosophy institute for the Claretians, and an institute of philosophy and theology for the Dominicans. The Catholic Institute of West Africa (CIWA) is located in Port Harcourt. The Catholic University of Nigeria, situated in Abuja, was scheduled to begin operating

¹⁹ See BBC News, World factfile: Roman Catholics around the World, 13 July 2005, <http://www.news.bbc.co.uk/go/pr/fr/-/1/hi/world/4243727.stm> (1 April 2005, 18:30 GMT).

²⁰ The statistics of priests, deacons, nuns, major seminarians and catechists are taken from MSP, *2005 Catholic Diary & Directory*, pp. 113-354. These statistics seem to be flawed. The producers may have used old statistics of some of the dioceses in Nigeria. Thus there are some discrepancies as seen on p. 146 of the *2005 Catholic Diary & Directory* where the number of the priests in Awka diocese is stated to be 332, while in the Awka diocesan directory it is 414 as of the year 2004. See AWKA DIOCESE, *Liturgical Directory 2005*, Nimo, Nigeria, Rex Charles & Patrick Ltd., 2005, p. 82.

in September 2007 at a temporary site in Obehie – Aba diocese, an extension of the Catholic Institute of West Africa. This is a very brief description of the Church in Nigeria, where the Catholic Bishops' Conference of Nigeria exercises certain pastoral functions for the good of the faithful of the nation.

2.2 – THE CATHOLIC BISHOPS' CONFERENCE OF NIGERIA (CBCN)

As already indicated in chapter one, conferences of bishops derive from meetings of bishops of neighbouring dioceses who gathered to discuss issues affecting their local churches. Such meetings, that date back to the nineteenth century, focussed on the pastoral life of the Church as well as the issues affecting the relationship between Church and State. These meetings were necessary if the bishops were to take initiatives capable of meeting the demands of evangelisation.²¹ The earliest meetings of the Nigerian bishops were contemporaneous with this trend.

2.2.1 – Establishment of the Catholic Bishops' Conference of Nigeria

Inspired by the desire to see the catholic faith deeply rooted in Nigeria, ardent zeal to fulfil their pastoral responsibilities and relentless efforts to promote the common good of the Churches entrusted to their care, the bishops of Nigeria met at different times to discuss relevant pastoral issues. These meetings eventually led to the establishment of the Catholic Bishops' Conference of Nigeria, even before the conference was made mandatory by the Second Vatican Council.

²¹ See G. FELICIANI, "Episcopal Conferences from Vatican II to the 1983 Code," in *The Jurist*, 48 (1988), p. 11.

The origin of the Catholic Bishops' Conference of Nigeria is traceable to the gatherings of the church hierarchy of Nigeria at various times before they had meetings with Apostolic delegates. As reported in the *Nigerian Catholic Herald*, Archbishop Arthur Hinsley, the Apostolic Delegate to the "British colonies of West Africa," is believed to have had meetings with the bishops in these territories in the summer and autumn of 1929. Thus, in August 1929, he met with the bishops of the Church in Nigeria.²² A similar meeting was held in Lagos with another apostolic delegate, Archbishop A. Riberi, in May 1937.²³ Between 27 November and 1 December 1939, the bishops of Nigeria and Cameroon met in Enugu, Nigeria.²⁴ The agendas of these meetings are not clear, but we have every reason to believe that they were pastoral in nature. This is buttressed by the fact that in 1939 a joint instruction signed and published by ten of the Nigerian bishops condemned excessive spending on weddings and funerals.²⁵ In the British Colonies of West Africa, the mutual support and pastoral needs that compelled the bishops to meet was not limited to Nigeria. Thus, between 1941 and 1946, several meetings of the bishops of these colonies took place. The first one took place in Nigeria in December 1941; then in Northern Rhodesia in March 1943; in Kenya in November 1945, and again in Nigeria in March 1946.²⁶ There is also a report in the *Gold Coast Catholic Voice* of a meeting of the West African bishops that took place between 8 and

²² See ROMMERSKIRCHEN, "Africkanische Bischofskonferenzen," in *Missionswissenschaftliche Studien*, p. 400.

²³ See *ibid.*, p. 401.

²⁴ See *ibid.*

²⁵ See *ibid.*

²⁶ See *ibid.* p. 402.

13 April 1947 in Cape Coast. Present at this meeting were representatives from the vicariates apostolic of Liberia, Lagos, Kumasi, Gold Coast, Dahomey (Republic of Benin), Abidjan, Lome, Lower Volta, and the apostolic prefectures of Kaduna, Jos, and Sokodé.²⁷ At this time, there was no permanent body in Nigeria such as a bishops' conference; the bishops of Nigeria seemed to have assembled only when pastoral needs so required.

The genesis of the Catholic Bishops' Conference of Nigeria as a stable body is traceable to 1956, as reported in the brief history of the Catholic Secretariat of Nigeria:

At its plenary meeting of September 4th–5th, 1956 held in Kaduna, the Catholic Bishops of Nigeria took the decision to establish a National Conference to be known as the Catholic Welfare Conference of Nigeria. The Conference became the administrative organ of the hierarchy through which it could discuss and act on matters of common interest.²⁸

A.O. Makozi calls this decision to establish a national conference “one of the major antecedents of recent events in the life of the Church in Nigeria.”²⁹ The Catholic Welfare Conference of Nigeria became a legal person when it drew up its own constitution, and was incorporated on 15 March 1958 under the Lands Perpetual Succession Act of Nigeria. The offices of the conference were initially located in Yaba, Lagos. At this time, five departments were created to look after certain pastoral needs: education, medical, welfare, legal, and press and films.³⁰ The last two formed a department.

²⁷ See *ibid.*

²⁸ *Evaluation Report of the CSN*, p. 15.

²⁹ MAKOZI, “Contemporary Trends in the Growth of the Catholic Church in Nigeria,” in MAKOZI and OJO (eds.), *The History of the Catholic Church in Nigeria*, p. 88.

³⁰ See *Evaluation Report of the CSN*, p. 15. See also MAKOZI, “Contemporary Trends in the Growth of the Catholic Church in Nigeria,” in MAKOZI and OJO (eds.), *The History of the Catholic Church in Nigeria*, p. 88.

In 1960, it was decided to distinguish the hierarchy of the Church from the conference's seat of governance and administrative organ. Thus, the meeting of the hierarchy retained the name "Catholic Welfare Conference of Nigeria,"³¹ while its seat of governance was called "Catholic Secretariat of Nigeria."³² Within a couple of years, the need to relocate the secretariat for lack of space became obvious. A larger parcel of land was acquired, and on 23 September 1964, the Catholic Welfare Conference of Nigeria received the title deed for the parcel of land on which the secretariat is currently situated in Lagos.³³ Construction work started immediately but was halted by the Nigerian federal government with an offer of an alternative site. The conference vehemently objected to that offer. Consequently, the federal government reconsidered its position. The church hierarchy in Nigeria eventually received a letter from the head of the Lagos Executive Development Board dated 17 May 1966 through which permission was granted to proceed with the building of the Catholic Secretariat National Headquarters in Lagos. The work resumed and the building was completed in 1969.³⁴ With the relocation of the

³¹ It is interesting to note that the Catholic Bishops' Conference of Nigeria first appeared in the *Annuario pontificio* with the name, "Meeting of the Hierarchy of Nigeria." See *Annuario pontificio*, 1962, p. 776. This name was maintained until 1967 when it appeared with another name, "Nigeria Episcopal Conference." See *Annuario pontificio*, 1967, p. 802. The Nigeria Episcopal Conference continued to appear in the *Annuario pontificio* up to 1970 when the adjective Episcopal was dropped for Bishops only to be picked up again in 1971. From 1972 through 1983, it appeared with another name, "National Episcopal Conference of Nigeria." See *Annuario pontificio*, 1972, p. 886. Finally, from 1984 to date it has appeared with the name by which it is known and addressed today, "Catholic Bishops' Conference of Nigeria." See *Annuario pontificio*, 1984, p. 958.

³² See *Evaluation Report of the CSN*, p. 15.

³³ See *ibid.*

³⁴ See *ibid.*

national capital to Abuja, the Catholic Bishops' Conference of Nigeria built a new secretariat in Abuja, which is now the Catholic Secretariat National Headquarters.

The Catholic Bishops' Conference of Nigeria was established by the Holy See³⁵ and has juridical personality in the Church by virtue of the law itself (c. 449, §§1, 2). Before this time, as indicated above, the conference had assumed legal personality under Nigerian civil law by its incorporation under the Lands Perpetual Succession Act of Nigeria. The incorporation took place before the norm of the Decree *Christus Dominus* prescribed that "the bishops of each country or region should meet regularly ... and exchanging views they may jointly formulate a program for the common good of the Church."³⁶ Calling for the urgent implementation of the decrees of the Second Vatican Council, Pope Paul VI expressed the need for the conference of bishops in these terms:

The bishops of countries or territories which have not yet established an episcopal conference, in accordance with the law of the Decree *Christus Dominus*, should take the steps as quickly as possible to do so and draw up its statutes which are to be approved by the Apostolic See.³⁷

The pope further directed in *Ecclesiae sanctae*, no. 41, §2, that the conferences of bishops, which were already in existence, should prepare their own statutes in accordance with the directives of the Second Vatican Council. The conferences that already had statutes were to revise them according to the mind of the council and submit them to the Apostolic See for approval.³⁸

³⁵ See CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, *Statutes of the Catholic Bishops' Conference of Nigeria* (= CBCN, *Statutes*), Lagos, 2002, art. 1, p. 1.

³⁶ CD, no. 37, in *AAS*, 58 (1966), p. 693; English trans. in FLANNERY1, p. 587.

³⁷ PAUL VI, *Motu proprio* on Norms for Implementing Some Decrees of the Council *Ecclesiae sanctae*, 6 August 1966, in *AAS*, 58 (1966), no. 41, §1, p. 773; FLANNERY1, p. 609.

³⁸ See *ibid.*, p. 774.

As noted above, CBCN already existed before the Second Vatican Council with the title “Catholic Welfare Conference of Nigeria.” The conference revised its statutes according to the mind of the council and submitted them to the Apostolic See for approval. On 6 May 1976, the statutes of CBCN were approved by the Apostolic See.³⁹ As already observed above, the conference did not maintain a constant name in the *Annuario* until 1984.⁴⁰ The Catholic Bishops’ Conference of Nigeria is a national conference. We now examine its composition.

2.2.2 – The Composition of the Catholic Bishops’ Conference of Nigeria

The Catholic Bishops’ Conference of Nigeria, a permanent institution, is the assembly of the Catholic Bishops of Nigeria (c. 447). Following its establishment, the conference has become an organ of unity, coordination, and mutual collaboration of the bishops in Nigeria as they work together for the good of the Church.⁴¹ It is composed of “those who preside over all the particular Churches” of the Latin rite in Nigeria (c. 448, §1). The membership is summarised thus:

By virtue of the law, the following persons in Nigeria belong to the Conference: all diocesan Bishops and those equivalent to them in law, all co-adjutor Bishops, auxiliary Bishops and other titular Bishops who exercise in Nigeria a special office assigned to them by the Apostolic See or the Conference (c. 450 §1). Retired Bishops resident in Nigeria are members of the Conference by virtue of these statutes.⁴²

³⁹ See *Annuario pontificio*, 1977, p. 933.

⁴⁰ The constant change of names in the *Annuario pontificio* could suggest that the statistics sent to the Holy See from the Nigerian hierarchy did not maintain a constant name for the Catholic Bishops’ Conference of Nigeria; it could also suggest that previous type settings of statistics from the Nigerian hierarchy were carried over to new publications by the producers of *Annuario pontificio*, without thoroughly cross-checking with the new statistics sent in yearly.

⁴¹ Cf. CONGREGATION FOR BISHOPS, “Draft Statement on Episcopal Conferences,” in *Origins*, 17 (1987-1988), p. 731.

⁴² CBCN, *Statutes*, p. 1.

The stipulation for membership by the law itself is recognised first in all the diocesan bishops and all those who are juridically equivalent to them.⁴³ The provision of c. 381, §2, determines those who are by law equivalent to the diocesan bishops. Thus, those who are placed in charge over “a territorial prelature, a territorial abbacy, a vicariate apostolic, a prefecture apostolic and a permanently established apostolic administration” are, in law, equivalent to diocesan bishops unless established otherwise (c. 368). Consequently, territorial abbots, territorial prelates, vicars and prefects apostolic, and apostolic administrators are by law members of the bishops’ conference (see cc. 370-371). By virtue of the law also, the “Military Ordinary belongs to the Conference of Bishops of the country in which the Ordinariate is situated.”⁴⁴ When a see is vacant, the right of participation falls on the diocesan administrator since c. 427, §1 affords him, in principle, the rights and duties proper to a diocesan bishop.⁴⁵

Membership by right in the bishops’ conference also includes coadjutor bishops who have the right of succession (c. 403, §3), auxiliary bishops and other titular bishops who exercise a special office (in Nigeria) assigned to them by the Apostolic See or by CBCN (c. 450, §1). Since the bishops’ conference is a stable institution, the *peculiare munus*, which an auxiliary bishop or a titular bishop exercises, ought to be a stable one for him to enjoy membership in the conference.

⁴³ See G. FELICIANI, Commentary on c. 450, in *Exegetical Comm II/1*, p. 999.

⁴⁴ JOHN PAUL II, Apostolic Constitution on Spiritual Care of the Military *Spirituali militum curae*, art. III, 21 April 1986, in *AAS*, 78 (1986), p. 483; English trans. in *CLD*, XII, p. 314.

⁴⁵ See FELICIANI, Commentary on c. 450, in *Exegetical Comm II/1*, p. 1000.

The provision of c. 450, §1 of the 1983 Code concerning those who must be included in the conference refers to the very nature and character of the conference: cooperation among bishops in a joint exercise of pastoral office in order to enhance the Church's beneficial influence on all people.⁴⁶ This is the theological foundation of the bishops' conferences by which they "admirably help to foster a spirit of communion with the universal Church and among the different local Churches."⁴⁷ At the same time, they contribute "to the realization and development of the spirit of collegiality (*affectus collegialis*) among members of the same Episcopate."⁴⁸ Thus, CBCN is not rooted in the collegiality of the bishops in Nigeria but in "the joint exercise of those particular tasks, which fall under the competence" of the bishops' conference in the country.⁴⁹

The Second Vatican Council did not specify areas of joint exercise of the pastoral office by bishops. Nevertheless, the Code, in order to safeguard the autonomy of the diocesan bishop in his diocese, did specify that the joint exercise of ministry refers to "certain pastoral offices" (c. 447), without mentioning any of them. The pope gives the

⁴⁶ See CD, no. 38, §1, in FLANNERY I, p. 587; c. 447; JOHN PAUL II, *Motu proprio* on the Theological and Juridical Nature of Episcopal Conferences *Apostolos suos*, 21 May 1998, in AAS, 90 (1998), no. 14, p. 644; English trans. in *Origins*, 28 (1998-1999), p. 155.

⁴⁷ Cf. *Apostolos suos*, no 5, in *Origins*, 28 (1998-1999), p. 153. See also CONGREGATION FOR BISHOPS, *Directory on the Pastoral Ministry of Bishops Ecclesiae imago*, translated by the Benedictine Monks of the Seminary of Christ the King, Mission, BC, Ottawa, Canadian Conference of Catholic Bishops, 1974, no. 210, p. 112.

⁴⁸ CONGREGATION FOR BISHOPS, *Directory for the Pastoral Ministry of Bishops Apostolorum successores*, Città del Vaticano, Libreria editrice Vaticana, 2004, no. 28, p. 39.

⁴⁹ See R. CASTILLO LARA, "The Presidency of Episcopal Conferences," in *L'Osservatore romano*, English language edition (= ORE), 20 March 1989, p. 11. See also J.H. PROVOST, "Episcopal Conferences as an Expression of the Communion of the Churches," in REESE (ed.), *Episcopal Conferences*, p. 284.

reason why the Code is not specific and mentions some possible areas of joint exercise of pastoral office:

It is not possible to give an exhaustive list of the issues which require such cooperation, but it escapes no one that issues which currently call for the joint action of bishops include the promotion and safeguarding of faith and morals, the translation of liturgical books, the promotion and formation of priestly vocations, the preparation of catechetical aids, the promotion and safeguarding of catholic universities and other educational centers, the ecumenical task, relations with civil authorities, the defense of human life, of peace and of human rights, also in order to ensure their protection in civil legislation, the promotion of social justice, the use of the means of social communication, etc.⁵⁰

The statutes of CBCN are silent about the membership of the bishops of other Churches *sui iuris* since they do not exist presently in Nigeria.

Paragraph 2 of c. 450, on the other hand, stipulates that the legate of the Roman Pontiff and other titular bishops do not belong to the bishops' conference *de iure*. Thus, it reaffirms an existing law, which provides that the *nuncio* is not by law a member of the conference.⁵¹ The inclusion of the retired bishops resident in Nigeria as members of CBCN is remarkable (see c. 402, §1). Although, John Paul II, in the *motu proprio Apostolos suos*, recommended that "it is appropriate that the statutes of episcopal conferences allow for the presence of bishops *emeriti* and that they have a consultative vote,"⁵² the statutes of CBCN constitute them as full members.

⁵⁰ *Apostolos suos*, no. 15, in *Origins*, 28 (1998-1999), p. 155.

⁵¹ "Quamvis ex iure membrum Conferentiae non sit" (PAUL VI, *Motu proprio* on the Office of the Papal Legate *Sollicitudo omnium ecclesiarum*, 24 June 1969, in *AAS*, 61 [1969], art. 8, no. 2, p. 482; English trans. in *CLD*, VII, p. 281.

⁵² *Apostolos suos*, no. 17, in *Origins*, 28 (1998-1999), p. 155.

2.2.3 – The Statutes of the Conference⁵³

Canon 451 of the 1983 Code, consistent with the mind of the Fathers of the Second Vatican Council,⁵⁴ provides that each conference of bishops is to draw up its own statutes. This provision is realistic and an acknowledgement that it is impossible to regulate “in an absolutely homogeneous way the realities that were presented in various countries with notably diverse characteristics regarding ... pastoral exigencies, and relations with the civil authorities.”⁵⁵

The present statutes of CBCN have eight chapters, with fifty-six articles. We will only comment on some of the articles that are relevant to the matters of this chapter. Chapter one describes the name and the establishment, aim, membership and the organs of the conference in four articles.

Article 1 begins with the affirmation of the name of the conference and defines it as “an assembly.” It has juridical personality by law itself once it is established by the Holy See (c. 449, §2).⁵⁶ Thus, erected by the Holy See, with a specific mission to be fulfilled for the public good and in the name of the Church, CBCN is a public juridical person (c. 116, §1) since its statutes have been approved by the competent authority (c. 117), the Holy See.⁵⁷ The choice of the word “assembly” here is unique and reflects the relation between the conference and Nigerian society as regards the right to peaceful

⁵³ The statutes of CBCN are presented in Appendix I.

⁵⁴ Cf. *CD*, no. 38, §3, in *FLANNERY*1, p. 587.

⁵⁵ FELICIANI, Commentary on c. 451, in *Exegetical Comm* II/1, p. 1003.

⁵⁶ See CBCN, *Statutes*, p. 1.

⁵⁷ For the decree of approval of the statutes of CBCN by the Holy See, see Appendix I.

assembly and association. According to the civil law of the country every “person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.”⁵⁸ Article 2 describes the aim as “consultation on policies ... unification, co-ordination, and organisation” of the activities of the Church in Nigeria, especially in specific areas.⁵⁹ By the inclusion of retired bishops as members of the conference, article 3 displays a high degree of originality compared to simple reproductions of the provisions of the universal law in a number of articles in the statutes.

We share the view of B.E. Etafo who writes:

The provision allowing and making the ‘retired bishops resident in Nigeria’ members of the Conference is characteristically Nigerian and significant. Traditionally, Nigerians value the wealth of experience of their elders and of persons who had earlier served them successfully in a specific office ... Such men are ever present to be consulted and to share their experience which in most cases cannot be found in documents.⁶⁰

Chapter two, with thirty articles, treats the plenary meeting of CBCN with regard to attendance, quorum, voting rights of the members, time, and place of the meeting, officers and their duties, agenda, doctrinal declarations, manner of voting, binding force of the general decree of the conference, competence of the plenary meeting, and minutes of the conference. The use of the term “local ordinary” in article 5 is ambiguous, since coadjutor bishops and auxiliary bishops are local ordinaries if they are vicars general or episcopal vicars (c. 134, §§1-2). It implies that coadjutor bishops and auxiliary bishops

⁵⁸ FEDERAL REPUBLIC OF NIGERIA, Official Gazette, no. 27, vol. 86, Decree 24, FGP 195/599/1,500 (OL32) 5 May 1999, *Constitution of the Federal Republic of Nigeria* (= Nigeria, *Constitution*), Lagos, The Federal Government Press, 1999, art. 40, p. A900.

⁵⁹ See CBCN, *Statutes*, p. 1.

⁶⁰ B.E. ETAFO, *National Episcopal Conference of Nigeria: Its Legal Functionality*, JCD diss., Rome, Pontificia Universitas Urbaniana, 1983, p. 126.

who are neither vicars general nor episcopal vicars cannot be represented at the plenary meetings of the conference since they are not local ordinaries. Article 6 is a reproduction of the universal law regarding the papal legate who has the right to attend the first meeting of each general session of the bishops' conference, "without prejudice to the right of taking part in other meetings of the conference at the invitation of the bishops themselves or by express order of the Apostolic See."⁶¹

By law, certain members of the bishops' conference are excluded from seeking certain offices of the conference. The president and vice-president of the conference of bishops must be chosen only from among the members who are diocesan bishops.⁶² *Apostolos suos* further directs that it is appropriate that the statutes of the conference of bishops allow for the presence of bishops emeriti and that they have a consultative vote.⁶³ However, the statutes of CBCN constitute both the auxiliary bishops and bishops emeriti members of the conference with deliberative vote except for the amendment of the statutes.⁶⁴ This provision is within the prescription of church law. Article 8 of the statutes of CBCN is ambiguous. It provides that "all members of the conference shall have both active and passive voice in the Plenary Meetings."⁶⁵ It further provides that a priest representative shall have active voice but not passive voice in accordance with the law.⁶⁶

⁶¹ *Sollicitudo omnium ecclesiarum*, art. 8, in *CLD*, VII, p. 281.

⁶² See *Apostolos suos*, no. 17, in *Origins*, 28 (1998-1999), p. 155.

⁶³ *Ibid.*

⁶⁴ See CBCN, *Statutes*, arts. 3, 28 and 69.

⁶⁵ *Ibid.*, p. 2.

⁶⁶ See *ibid.*

An exception clause should have been inserted here since not all the members of CBCN can seek the office of the president and vice-president.

According to law, a delegate to the plenary meeting does not have a deliberative vote.⁶⁷ Explaining why a delegate is not allowed to vote, the circular letter from the Congregation for Bishops relates it to “the nature of the episcopal conference” in which “a member may not delegate his proper functions to another (cf. *Apostolos suos*, 17).” The letter further stated that when someone is delegated, the statutes are “permitting him only to transmit the mind of the delegating bishop.” He “does not have the right to vote in the name of the delegating bishop in matters pertaining to binding norms of a legislative nature or doctrinal declarations.”⁶⁸

By providing that all members shall have both active and passive voice⁶⁹ in the plenary meetings (art. 8), and that the plenary meeting shall choose from its members a president and vice-president (c. 452 §1; art. 15), the statutes have failed to provide clearly, as directed by the universal law, that the “president and vice president of the episcopal conference must be chosen only from among the members who are diocesan bishops.”⁷⁰ Before the *motu proprio Apostolos suos* was promulgated, the Pontifical

⁶⁷ Due to the nature of the conference of bishops a member's participation cannot be delegated to someone else (see *Apostolos suos*, no. 17, in *Origins*, 28 (1998-1999), pp. 155-156).

⁶⁸ CONGREGATION FOR BISHOPS, Circular Letter to the Bishops' Conferences regarding *Apostolos suos*, “Doctrinal Declarations by Bishops' Conferences” (= CB, “Doctrinal Declarations”), 15 May 1998, no. 6, in *Origins*, 29 (1999-2000), p. 114. This same letter was sent by the Congregation for the Evangelisation of Peoples (= CEP), to the bishops' conferences in mission territories.

⁶⁹ To have both active voice and passive voice means that one could vote be voted for into any office, unless otherwise specifically stated.

⁷⁰ *Apostolos suos*, no. 17, in *Origins*, 28 (1998-1999), p. 155. See also CB, “Doctrinal Declarations,” no. 7, in *Origins*, 29 (1999-2000), p. 114.

Commission for the Authentic Interpretation of the Code of Canon Law⁷¹ had determined, in response to a *Dubium*, that auxiliary bishops can neither be elected to the office of the president or vice-president of the bishops' conference nor undertake such a position in gatherings of bishops of ecclesiastical regions:

Dubium: Whether an auxiliary bishop is able to undertake the office of president (or pro-president) of an episcopal conference. Whether he can undertake such a position in gatherings of the bishops of ecclesiastical regions mentioned in c. 434?

Responsum: Negative to both.⁷²

Article 26 of the *Statutes* of CBCN responds to the prescript of *Sollicitudo omnium ecclesiarum* that "in due time, the issue to be treated of in the session will be made known to him [the Legate of the Roman Pontiff]."⁷³ The legislation on doctrinal declarations in article 28 clearly reflects the guideline of *Apostolos suos*. It is lifted entirely from the letter of the Congregation for Bishops to bishops' conferences: the "proposed" formula from *Apostolos suos*, no. 22, "for insertion into the statutes of each

⁷¹ After the promulgation of the 1983 Code of Canon Law, with the *Motu proprio Recognito iuris canonici* of 2 January 1984, John Paul II instituted the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law. This Commission was charged with the task of "authentic interpretation ... of the canons of the Code of Canon Law and of other universal laws of the Latin Church." See *AAS*, 76 (1984), pp. 433-434; *Comm.*, 16 (1984), pp. 3-4; *CLD*, XI, pp. 12-14. Following the promulgation of *Pastor bonus* of 28 June 1988, this Commission became the Pontifical Council for the Interpretation of Legislative Texts for the Latin Church. See *AAS*, 80 (1988), pp. 901-902; *CLD*, XII, pp. 196-197. In 1991, the competence of the Council was extended to those of the Eastern Catholic Churches. See the letter from the Secretary of State, Cardinal Sodano, to the pro-president of the Pontifical Council for the Interpretation of Legislative Texts, Archbishop Fagiolo, 27 February 1991, Prot. no. 278.287/G.N., in *Comm.*, 23 (1991), pp. 14-15. Presently, the Council is in charge of all legislative texts and their interpretation. It now goes by the name, "Pontifical Council for Legislative Texts" (for both the Latin Church and the Eastern Catholic Churches). See *Annuario pontificio*, 2003, pp. 1149-1151 and 1711-1712.

⁷² *Comm.*, 20 (1988), p. 155. See also *AAS*, 81 (1989), p. 388; *ORE*, 10 March 1989, p. 5; W.A. SCHUMACHER, L. JARRELL (eds.), *Roman Replies and CLSA Advisory Opinions* 1990, Washington, DC, Canon Law Society of America, 1990, p. 112; E. CAPARROS et al. (eds.), *Code of Canon Law Annotated*, Second edition, revised and updated of 6th Spanish language edition, Montréal, Wilson & Lafleur Limitée, 2004, pp. 1618 and 1619.

⁷³ *Sollicitudo omnium ecclesiarum*, art. 8, in *CLD*, VII, p. 281.

episcopal conference.”⁷⁴ Thus, it reaffirms the provision of article 1 of the “Complementary Norms Regarding the Conference of Bishops.”⁷⁵ Articles 30 and 31 take care of the manner of voting in the conference. While article 32 is a summary of the competence of CBCN, article 33 highlights the fact that the power of the conference is vested on the plenary meeting. Nevertheless, some of its power is delegated to the permanent bodies of the conference, the administrative board, and others. Article 34 echoes c. 456 which prescribes that when a “plenary meeting ... has been concluded, its minutes are to be sent by the president to the Apostolic See for information, and its decrees, if any, for review.”⁷⁶

Chapters three, four, five, six, and seven of the statutes are comprised of 33 articles and they treat of the different organs of the conference (the administrative board, episcopal commissions, the catholic secretariat of Nigeria, provincial and regional offices and other agencies). We shall consider these in the following section (2.2.4) of this work. Chapter eight of the statutes prescribes that the statutes are to be reviewed every five years and that their provisions may be changed. The change can be effected only by the vote of at least two-thirds of the members who are diocesan bishops and those who are equivalent to them in law and, subsequently, reviewed by the Apostolic See (c 454, §§1,

⁷⁴ “In order to constitute authentic magisterium and be published in the name of the conference, doctrinal declarations must be approved in the plenary assembly by unanimous vote of the bishop members, or by a majority of at least two-thirds of the bishops holding a deliberative vote. In the later case, the *recognitio* of the Holy See must precede promulgation” (CB, “Doctrinal Declarations,” no. 3, in *Origins*, 29 [1999-2000], p. 113).

⁷⁵ *Apostolos suos*, in *Origins*, 28 (1998-1999), p. 157.

⁷⁶ See also *Sollicitudo omnium ecclesiarum*, art. 8, in *CLD*, VII, p. 281. Here we read: A “copy of the transactions will be sent him so that he himself will be informed on the matters and he can transmit them to the Apostolic See.”

2).⁷⁷ The statutes of CBCN received their *recognitio* from the Congregation for the Evangelisation of People;⁷⁸ and they made provisions for the organs of the conference.

2.2.4 – The Organs of CBCN

The Catholic Bishops' Conference of Nigeria is a juridical person. The highest and most important expression of CBCN, as a body, is the plenary session, which ordinarily meets twice a year. In the plenary assembly, which all the members are required to attend, is vested all the power of the conference. The conference however, can delegate some of its non-legislative functions to commissions and committees. Any extraordinary meeting for a plenary assembly is to be according to the provisions of the statutes.⁷⁹

Since the plenary meeting is not permanent, the Code of Canon Law has provided that each bishops' conference, through "its own statutes," makes provisions for the permanent and continuous operation of the conference (c. 451). In response to this, CBCN has established organs for the daily exigencies and continuous functioning of the conference. These organs include the administrative board, episcopal commissions, and committees, the Catholic Secretariat of Nigeria (CSN), provincial and regional offices. We will examine these organs in light of the Nigerian situation and the requirements of law.

⁷⁷ See also *Apostolos suos*, Complementary Norms Regarding the Conferences of Bishops, art. 4, in *Origins*, 28 (1998-1999), p. 157.

⁷⁸ The Congregation for Bishops is responsible for giving the required *recognitio* for bishops' conferences in non-mission territories. The Congregation for the Evangelisation of Peoples does the same for the conferences of bishops in mission territories. The Pontifical Council for Legislative Texts provides the juridical evaluation of all statutes of conferences of bishops. See *Pastor bonus*, arts. 82, 89 and 157, in *AAS*, 80 (1988), pp. 880, 882 and 901; English trans. in *Exegetical Comm V*, pp. 75, 77, and 94.

⁷⁹ See CBCN, *Statutes*, art. 9.

The administrative board is a permanent organ of CBCN in response to c. 451, which prescribes that each bishops' conference must provide in its statutes for a permanent committee of bishops. This permanent body is vital for the conference to maintain its permanency since the "plenary assembly," which lasts only for a few days or at most a week, "is in no position to assure directly and completely the common continuous action required by the institutional end of the conference."⁸⁰ The administrative board of CBCN is subordinate to the plenary assembly of the conference and cannot substitute for it. The principal task of this organ is not only to prepare the agenda of the plenary meetings and ensure the execution of decisions (c. 457), but also to see to it that the "purpose" of the conference is more effectively achieved (c. 451).⁸¹

The administrative board of CBCN is composed of any member who is a cardinal, the president, the secretary, the vice-president and the assistant secretary of the conference. Others are all residential archbishops, the episcopal chairmen of the departments of the Catholic Secretariat of Nigeria (= CSN), and the secretary general of the CSN.⁸² The composition of the board reflects the culture of Nigeria in which respect and prominence are accorded to elders. Nevertheless, the present provision of the statutes needs a thorough re-examination; otherwise, it will perpetuate the dominance within the administrative board of the same archbishops. At present, the administrative board is made up of five bishops (who are members for a minimum of three years or a maximum of six years), eight archbishops (who remain members as long as they are residential

⁸⁰ See FELICIANI, Commentary on c. 451, in *Exegetical Comm*, II/1, pp. 1004-1005.

⁸¹ See also CBCN, *Statutes*, arts. 21 and 35.

⁸² See CBCN, *Statutes*, art. 36.

bishops), and a cardinal (who is always a member as long as he is resident in Nigeria). In principle, the administrative board of CBCN is subordinate to the plenary session of the conference. However, the composition of this permanent body only heightens the fear, which Feliciani expressed thus:

Nevertheless, grave problems can come up in practice. In effect, it is evident that when the assemblies are very numerous, the bodies responsible for the formulation of the agenda, instructions, and the presentation of the various themes, and for the management of the meeting, exercise a notable influence over the orientation and the development of the debates, as well as over the respective conclusions.⁸³

In such situations, Feliciani argues, “the most efficacious guarantee against the constitution of episcopal oligarchies is constituted by the election of the bishops responsible for permanent functions for a certain time by the plenary assembly ...”⁸⁴ In this way the bishops have the freedom to confirm or revoke their confidence in the members of the permanent committee. Consequently, the statutes of CBCN ought to have made provision for the plenary session to elect, at least the majority of the members of the permanent council. In that way, the bishops would have the freedom to determine those who serve on the board and those whose services should be reviewed.

As a permanent body required by law, the composition of the administrative board of CBCN leaves one wondering whether it complies with the prescription of universal law. The 1983 Code has mandated that this body should be composed of bishops only (c. 451). In the previous statutes of CBCN, the administrative board reflected its episcopal nature, with only bishops as members. The present change came with the newly reviewed statutes in response to the call of *Apostolos suos* that bishops’

⁸³ FELICIANI, Commentary on c. 451, in *Exegetical Comm*, II/1, p. 1005.

⁸⁴ *Ibid.*, p. 1006.

conferences should review their statutes to comply with its provision. If the statutes of the conference were reviewed to comply with the provision of *Apostolos suos*, one wonders why the statutes make the secretary general of CSN, who is not a bishop member of the conference or one equivalent to a bishop in law (c. 381, §2), a member of the administrative board by virtue of his office. The administrative board is not just any of the commissions or committees of the conference, which could not be designated episcopal if they have members that are not bishops. It should not be confused with non-episcopal commissions or committees that are not mandatory. Clarifying the various commissions and committees of the bishops' conference, the Congregation for Bishops has this to say:

The permanent commissions of the episcopal conference and those constituted ad hoc and denominated *episcopal* are to be constituted only by bishop members of the conference or by those equivalent to them in law (cf. canon 381 §2). In the case of a conference constituted by a small number of bishops, which is insufficient to form commissions, other organs may be foreseen (councils, committees etc.). With a bishop presiding, such may be formed of priests, consecrated persons and members of the laity. They may not, however, be denominated episcopal.⁸⁵

In this clarification, the Congregation for Bishops has clearly explained that episcopal commissions or committees should be composed of only bishops and those who are equivalent to them in law. There is no situation in which this clarification could suggest that a permanent committee composed of episcopal and non-episcopal members

⁸⁵ CB, "Doctrinal Declarations," no. 9, in *Origins*, 29 (1999-2000) p. 114. The statutes of CBCN provide, in art. 49, §1, that permanent commissions of the bishops' conference are to be constituted only by the bishop members or by those equivalent to them in law. But the same statutes constitute the secretary general of CSN (who is neither a bishop nor equivalent to a bishop in law), a member of the administrative board of CBCN (CBCN, *Statutes*, art. 36, no. 6). This is contradictory to both c. 451, the Circular Letter of the Congregation for Bishops which explains the provisions of *Apostolos suos* (as quoted above), and art. 49, §1 of the statutes of CBCN.

(as is the case with the administrative board of CBCN), substitutes for the permanent committee of bishops stipulated by law (cf. cc. 451 and 457).

Commenting on c. 451 of the 1983 Code, Feliciani reflects on the obligatory nature of permanent episcopal committee as follows:

Consequently, canon 451 imposes on every conference the obligation of providing in the statutes of the institution for a permanent episcopal committee, a secretary-general, and, moreover, all of the offices or commissions that might be useful or necessary.

The Code, following the Council, wanted to limit itself to this vague and generic direction to respect the various needs of the different episcopates, which adopted the most disparate solutions. Thus, in some countries there is a complete lack of offices and commissions, and in the various statutes the attributions of the permanent bodies are not identical. On the other hand, it should be emphasized that, in singular contrast to this orientation, the institution of the permanent committee is obligatory, even though the smaller episcopates may not see its necessity.⁸⁶

Article 38 of the statutes of CBCN empowers the administrative board to choose a substitute if a member of the board is incapacitated, resigns, or dies. It would perhaps have been preferable that the power of the plenary assembly to elect any member of the administrative board not be delegated to the board. Our reasoning here is informed by the fact that the administrative board of CBCN has only a few of its members elected by its plenary assembly.

The officers of the administrative board are determined by the statutes. Thus, the president and vice-president of the conference are the chairman and vice-chairman of the administrative board (c. 452, §2)⁸⁷. The statutes further provide in article 40 that the secretary general of CSN shall be the secretary of the administrative board. The present secretary general of CSN is neither a bishop nor equivalent to a bishop in law (381, §2).

⁸⁶ FELICIANI, Commentary on c. 451, in *Exegetical Comm* II/1, p. 1005.

⁸⁷ See CBCN, *Statutes*, art. 39.

Like the president and vice-president of CBCN who are the chairman and vice-chairman respectively⁸⁸ by virtue of their offices, one would have expected the secretary and assistant secretary of the conference to be the secretary and assistant secretary respectively of the administrative board since they are members of the board by virtue of their offices.

The administrative board of CBCN, as a permanent organ of the conference, makes “extraordinary decisions or urgent public declarations” in the name of the conference when it is not possible to convene a plenary assembly of the conference. In such situations, the decisions or public declarations made outside the plenary meeting shall be communicated to the Holy See.⁸⁹

The statutory meetings of the administrative board are held twice a year. Besides these meetings, the board can also hold an extraordinary meeting whenever the chairman and two other members consider it necessary.⁹⁰ As the name suggests, the administrative board of CBCN is an administrative organ of the conference and not an organ for policymaking. Some of the business of CBCN is taken care of by other organs, such as commissions and committees, which are permanent organs of the conference, “set up for the purpose of studying important and special problems.”⁹¹ Both the permanent commissions of the conference and those constituted ‘ad hoc’ and designated episcopal are to be constituted only by bishops who are members of the conference or by those equivalent to them in law. The issues for which commissions or committees are formed

⁸⁸ Ibid.

⁸⁹ See *ibid.*, art. 45.

⁹⁰ See *ibid.*, art. 42.

⁹¹ *Ibid.*, art. 50.

may require experts such as members of the laity, consecrated persons, and priests. These commissions or committees are not denominated “episcopal,” but they are presided over by bishops.⁹² From the documents available to us, there is no indication that CBCN has any other permanent episcopal commission or committee. However, there are presently about nineteen committees that are not episcopal.⁹³

The statutes of CBCN provide that every “Episcopal Commission and Committee shall meet at least once a year and failure to do so shall render the Commission or Committee defunct.”⁹⁴ There are no statutory meetings specified for other commissions and committees that are not designated episcopal. Almost all the committees that are not denominated episcopal are made up of priests, consecrated persons, and members of the laity. In conformity with the recommendation of the Congregation for Bishops,⁹⁵ each of these committees has a bishop as chairman.

The administrative board, the commissions, and committees are bodies, which meet and disperse. To meet the daily needs of the conference, there is an organ that does not just simply meet and disperse; that organ is the catholic secretariat of Nigeria (CSN).

The Catholic Secretariat of Nigeria is one of the organs prescribed by law that every conference of bishops should have (c. 451). The catholic secretariat of Nigeria is

⁹² See *ibid.*, art. 49, §§ 1, 2. See also CB, “Doctrinal Declarations,” no. 9, in *Origins*, 29 (1999-2000), p. 114.

⁹³ See CSN, *Manual of Executive Instructions*, revised and updated according to the new structure, Lagos, CSN, 2003 (= CSN, *Manual of Executive Instructions*), p. 2, in Appendix IV.

⁹⁴ CBCN, Statutes, art. 51. The question that arises here is whether it is reasonable for any of these organs to be rendered automatically defunct if no annual meeting is held, no matter why a meeting did not take place. The statutes provided neither how an organ is declared defunct nor who takes care of the functions of a defunct organ.

⁹⁵ See CB, “Doctrinal Declarations by Bishops’ Conferences,” no. 9, in *Origins*, 29 (1999-2000), p. 114.

the executive organ of the activity and information of the conference and is ordinarily located in the federal capital of Nigeria. It is the Administrative Headquarters of CBCN and the most visible symbol of the unity of the Catholic Church in Nigeria.⁹⁶ Presently there are two national offices of the secretariat; one, the headquarters, is in the federal capital, Abuja, where the secretary general of the secretariat resides, while the other is in Lagos where his deputy resides.

The Catholic Secretariat of Nigeria is headed by the secretary general, as directed by c. 451 of the 1983 Code of Canon Law.⁹⁷ It has eight departments, namely, pastoral department, justice and peace, education, social communications, health, legal department, lay apostolate, and consecrated life.⁹⁸ Each of these departments has an episcopal chairman. Other departments may be established in the future as need arises.

The Catholic Secretariat of Nigeria is administered by the secretary general, his deputies, and the secretaries of its various departments. However, the secretary general is the chief executive officer of the secretariat and the co-ordinating authority of its various departments. While he is immediately responsible to the chairman of the administrative

⁹⁶ See CBCN, *Statutes*, art. 52 and CSN, *Manual of Executive Instruction*, p. 1.

⁹⁷ See also CBCN, *Statutes*, art. 53.

⁹⁸ Ibid., art. 54. There are, however, some discrepancies between the *Statutes* of CBCN and the *Manual of Executive Instructions* for the CSN. While the *Statutes* prescribe eight departments for CSN the *Manual of Executive Instructions* for CSN has only five departments with entirely different names. See CSN, *Manual of Executive Instructions*, p. 2 in Appendix III, which reflects the departments and committees on the website of CBCN, www.cbcn.org, as of 13 June 2007. Following the principle of legality (a higher norm takes precedence over a lower norm), the *Manual of Executive Instructions* is supposed to have been modelled on the *Statutes* of CBCN. The administrative board of CBCN, according to the *Statutes* of the conference, is supposed to have prepared this Manual (see CBCN, *Statutes*, art. 55).

board, the deputy secretaries general and the departmental secretaries are immediately responsible to the secretary general according to the provisions of the statutes of CBCN.⁹⁹

Apart from preparing an account of the acts and decrees of the plenary meetings of the conference, and the acts of the permanent committee of bishops, and communicating these acts to all the members of the conference, it is the function of CSN to record other acts entrusted to it by the president or the permanent committee (administrative board). It also communicates such acts and documents, as determined by the plenary meeting or the permanent committee of bishops, to the neighbouring bishops' conferences (c. 458, 1°, 2°). The function of CSN is summarised by the statutes thus:

The functions of the Catholic Secretariat are:

1. To provide for the Conference and its agencies such secretariat services as the collection and preparation of documentation and the custody of records.
2. To serve as administrative intermediary for the Conference with public authorities, civic organisations and private persons.
3. To facilitate communication among agencies of the Conference and to assist in the co-ordination of the activities.
4. Officially to communicate or disseminate decisions and declarations of the Conference and its agencies as may be appropriate.
5. To undertake such other tasks as the Conference may direct.¹⁰⁰

The Catholic Secretariat of Nigeria is financed by the contributions of the "Ecclesiastical Jurisdictions of Nigeria" as determined by the "Plenary Meeting of the Conference."¹⁰¹ In order to maintain a healthy financial management, the administrative board appoints, as it deems appropriate, a finance committee with the responsibility to prepare a comprehensive budget and employ ways and means to raise revenues for the

⁹⁹ See CBCN, *Statutes*, arts. 58-62.

¹⁰⁰ CBCN, *Statutes*, art. 63.

¹⁰¹ *Ibid.*, art. 64.

conference. The committee also conducts a regular review of the yearly revenues and expenditures of CBCN; it receives, considers, and comments on its external auditor's report; and carries out any other financial matters assigned to it by the administrative board.¹⁰² Neither the *Statutes* of CBCN nor the *Manual of Executive Instructions for CSN* provides any information as regards the financing of the provincial and regional offices prescribed in article 66 of the *Statutes*.

The provincial and regional offices of CSN are found in various ecclesiastical jurisdictions throughout the country. In each jurisdiction, where they exist, the "location, composition, officers, and functions of the officers" are determined by the bishops in each jurisdiction, according to the constitution and objectives of CBCN.¹⁰³ The conference may establish other organs as the need arises. We shall now examine the authority of the conference.

2.3 – THE AUTHORITY OF THE CATHOLIC BISHOPS' CONFERENCE OF NIGERIA

The issue of the authority of the conferences of bishops, especially their teaching authority, has drawn varied views from various scholars. Here we intend to examine certain aspects of the authority of bishops' conference in relation to CBCN. We shall discuss the scope of the authority, its exercise, and the nature of the *recognitio*, which some acts require, as well as the binding force of the decrees.

¹⁰² Ibid., art. 65.

¹⁰³ CBCN, *Statutes*, art. 66.

2.3.1 – The Parameters of the Authority of CBCN

The authority of the bishops' conference can be examined from two perspectives, namely, its teaching and legislative roles. The documents of Vatican II did not mention explicitly the teaching authority of the bishops' conference. Nevertheless, the council did present the conference as an assembly in which the bishops of a certain country or region exercise their pastoral office jointly in order to enhance the Church's beneficial influence on all (CD, 38, 1^o). The exercise of a pastoral office does not exclude the function of teaching in any way. Nevertheless, the lack of explicitness as regards the teaching function of the conference of bishops has generated debates since the post conciliar period. We need to examine here some of the views on this matter.

Some authors have their reservations about the teaching authority of bishops' conferences. Among these was Cardinal Joseph Ratzinger to whom is attributed the statement that a bishops' conference as such does not have a *mandatum docendi*. This belongs only to the individual bishops or to the college of bishops with the pope.¹⁰⁴ For safeguarding "the very nature of the Catholic Church," he maintains, no "episcopal conference, as such, has a teaching mission; its documents have no weight of their own save that of the consent given by the individual bishops."¹⁰⁵ G. Ghirlanda, on the other hand, distinguishes between the teaching office (*munus docendi*), which he concedes to the conference of bishops, and authoritative teaching power (*potestas magisterii*

¹⁰⁴ See Cardinal Ratzinger's position during the Vatican consultation on peace and disarmament, with the caption: "A Vatican Synthesis," in *Origins*, 12 (7 April 1983), p. 692.

¹⁰⁵ J. RATZINGER, *The Ratzinger Report: An Exclusive Interview on the State of the Church*, Joseph Cardinal Ratzinger with Vittorio Messori, trans. S. ATTANASIO and G. HARRISON, San Francisco, Ignatius Press, 1985, p. 60.

authentici), which he denies to the conference.¹⁰⁶ F.J. Urrutia favours the teaching authority of bishops' conferences. According to him, the conference teaches as a conference and not as individual bishops, provided that the bishops individually acquiesce in the content of the teaching or declaration. Consequently, religious submission (*obsequium religiosum*) is to be given to the teaching of the conference both by the members themselves and the faithful of their Churches.¹⁰⁷ In the same camp with Urrutia is J. Manzanares who holds that the conference, while not infallible, is capable of exercising an authoritative magisterium. The bishops' conference legitimately established as a unity, and acting according to its statutes, is capable of exercising an authoritative magisterium and is juridically empowered to exercise this *de facto*.¹⁰⁸ L. Örsy's view seems to bridge the negative and positive opinions about the conferences of bishops. He reasons that bishops' conferences are the expression of *communio*, which is a theological reality. Consequently, their teaching is a theological reality rooted in the authority of the Word of God, and in the Spirit who assists the bishops who speak it. Nevertheless, since the conferences of bishops do not have the charisma of infallibility, their authoritative teaching ought to be assessed in the light of the scripture, the tradition, and the

¹⁰⁶ See G. GHIRLANDA, "De Episcoporum Conferentiis deque exercitio potestatis magisterii," in *Periodica*, 76 (1987), pp. 573-603. Ghirlanda believes that a Conference of bishops can jointly teach as a conference but such a teaching is not authoritative, unless the conference has received a special power from the Holy See.

¹⁰⁷ Urrutia wrote: "... cum Conferentia docet, ipsa ut talis docet, non singuli Episcopi quatenus adhaerent sententiae quae in declaratione continetur. Unde et ab ipsis Episcopis, sicut a fidelibus eorum Ecclesiarum, sententiis a Conferentia propositis debetur adhaesio obsequio religioso" (F.J. URRUTIA, "De exercitio muneris docendi a Conferentiis Episcoporum," in *Periodica*, 76 [1987], p. 607).

¹⁰⁸ See J. MANZANARES, "The Teaching Authority of Episcopal Conferences," in *The Jurist*, 48 (1988), p. 263.

magisterium of the Church.¹⁰⁹ Cardinal A. Dulles concedes authoritative teaching power to the bishops' conference as far as its teaching reiterates the doctrine of the universal Church. He puts his argument thus:

Unlike Urrutia, I would hold that when an episcopal conference is not simply reiterating the doctrine of the universal church, but attempting to develop doctrine by a binding declaration, some safeguards should be imposed to prevent a regional hierarchy from diverging doctrinally from the universal church and to protect the freedom of the bishops and faithful of the region from undue restrictions in matters of belief. When witnessing to the faith the bishops should strive for moral unanimity.¹¹⁰

The foregoing discussion presents us with various opinions regarding the teaching authority of the bishops, individually or in a *coetus*. The Church maintains that, gathered either individually or in particular councils, though not infallible, the bishops are the authentic instructors and teachers of the faith for the faithful entrusted to their care. The 1983 Code, in c. 753, articulates this thus:

Whether they teach individually, or in Bishops' Conferences, or gathered together in particular councils, Bishops in communion with the head and members of the College, while not infallible in their teaching, are the authentic instructors and teachers of the faith for Christ's faithful entrusted to their care. Christ's faithful are bound to adhere, with a religious submission of mind, to this authentic magisterium of their Bishops.

This canon reflects the 1917 Code, the teachings of various popes, of the fathers of the Second Vatican Council, and of the Congregation for the Doctrine of the Faith.¹¹¹

¹⁰⁹ See L. ÖRSY, "Reflections on the Teaching Authority of the Episcopal Conferences," in REESE (ed.), *Episcopal Conferences*, pp. 238-239.

¹¹⁰ A. DULLES, "Doctrinal Authority of Episcopal Conferences," in REESE (ed.), *Episcopal Conferences*, p. 219.

¹¹¹ Canon 1326 of the 1917 Code: "Episcopi quoque, licet singuli vel etiam in Conciliis particularibus congregati infallibilitate docendi non polleant, fidelium tamen suis curis commissorum, sub auctoritate Romani Pontificis, veri doctores seu magistri sunt." See also GREGORY XVI, Encyclical *Mirari vos*, 15 August 1832, in *Acta Gregorii Papae XVI*, vol. I, Graz-Austria, Akademische Druck- U Verlagsanstalt, 1971, pp. 169-174; LEO XIII, Epistle *Est sane molestum*, 17 December 1888, in *ASS*, 21 (1888), pp. 321-323; PIUS X, Encyclical *Arcerbo*

The *motu proprio Apostolos suos* admits that the conference of bishops has doctrinal authority. Nevertheless, the authority and “its field of action are in strict relation to the authority and action of the diocesan bishop and the bishops equivalent to them in law.”¹¹²

It describes the exercise of this authority thus:

Its exercise is regulated by the Supreme Authority of the church, and this is the necessary consequence of the relation between the universal church and the particular church, since the latter exists only as a portion of the people of God ‘in which the one catholic church is truly present and operative (CD, no. 11).’ In fact, ‘the primacy of the bishop of Rome and episcopal college are proper elements of the universal church that are not derived from the particularity of the churches, but are nevertheless interior to each particular church.’ As part of such regulation, the exercise of the sacred power of the bishop ‘can be circumscribed by certain limits, for the advantage of the church or of the faithful.’¹¹³

The *motu proprio* acknowledges that the joint exercise of episcopal ministry also involves the teaching office, and the fundamental norm in this regard is provided by c. 753.¹¹⁴ Thus, the pronouncement of the bishops’ conference, though authentic, lacks the characteristics of universal magisterium because it is fallible. The *motu proprio* further points out that:

Apart from this general norm the code also establishes more concretely some areas of doctrinal competence of the conferences of bishops such as providing ‘that catechisms are issued for its own territory if such seems useful, with the prior approval of the Apostolic See’ (c. 775, §2), and the approval of editions of the books of sacred Scripture and their translations (c. 825).¹¹⁵

nimis, 15 April 1905, in *ASS*, 37 (1904-1905), pp. 613-625; PIUS XII, Allocution to Cardinals, Archbishops and Bishops, 31 May 1954, in *The Pope Speaks*, 1 (1954), pp. 153-158; *LG*, no. 25; SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH (= SCDF), Letter, 24 July 1966, in *AAS*, 58 (1966), pp. 659-661; English trans. in *CLD*, VI, pp. 260-264.

¹¹² *Apostolos suos*, no. 19, in *Origins*, 28 (1998-1999), p. 156.

¹¹³ *Ibid.*

¹¹⁴ See *ibid.*, no. 21., p. 156.

¹¹⁵ *Ibid.*

The joint proclamation of the catholic faith in matters of faith and morals by the concerted voice of the bishops of a determined territory, when in communion with the Roman Pontiff, can reach their people more effectively. Thus, in matters concerning doctrine and faith bishops' conferences must follow the magisterium of the Church for their pronouncements to be authentic:

Since the doctrine of the faith is the common good of the whole church and a bond of her communion, the bishops assembled in episcopal conference must take special care to follow the magisterium of the universal church and to communicate it opportunely to the people entrusted to them.¹¹⁶

In making pronouncements, the conferences of bishops must always bear in mind the good of the Church and should be very aware of their limit in resolving new problems that arise from changes in the society. Consequently,

In dealing with new questions and in acting so that the message of Christ enlightens and guides people's consciences in resolving new problems arising from changes in society, the bishops assembled in the episcopal conference and jointly exercising their teaching office are well aware of the limits of their pronouncements. While being official and authentic and in communion with the Apostolic See, these pronouncements do not have the characteristics of a universal magisterium. For this reason the bishops are to be careful to avoid interfering with the doctrinal work of the bishops of other territories, bearing in mind the wider, even worldwide, resonance which the means of social communication give to the events of a particular region.¹¹⁷

Thus, a bishops' conference, and in our case CBCN, has authority to teach Christ's faithful in its area of jurisdiction, while Christ's faithful are bound to adhere, with religious submission of mind, to this authentic magisterium of their bishops (c. 753). Since the teaching authority of the conference of bishops and its field of action are in strict relation to the authority and action of the diocesan bishop, on no condition should the bishops' conference eclipse the pastoral care of the diocesan bishop, as the shepherd

¹¹⁶ Ibid.

¹¹⁷ Ibid.

of Christ's faithful committed to his care. Thus, whether individually or united in conference, bishops cannot autonomously limit their own sacred power in favour of the episcopal conference.¹¹⁸

For the teaching of a conference of bishops to constitute an authentic magisterium and be published in the name of the conference, not only must the bishops "always be in communion with the head of the college and its members," the teaching must receive the approval of all the bishops who are members of the conference. When not all can agree, the universal legislator has thus determined:

However ... a majority alone of the bishops of a conference cannot issue a declaration as authentic teaching of the conference to which all the faithful of the territory would have to adhere, unless it obtains the *recognitio* of the Apostolic See, which will not give it if the majority requesting it is not substantial. The intervention of the Apostolic See is analogous to that required by the law in order for the episcopal conference to issue general decrees.¹¹⁹

The unanimous doctrinal declaration of the bishops exercised in a plenary session does not require any *recognitio* from the Apostolic See.¹²⁰ We believe the fathers of the Second Vatican Council gave a reason for this when they affirmed:

The Bishops, in as much as they are successors of the apostles, receive from the Lord, to whom all power is given in heaven and on earth, the mission of teaching all peoples, and of preaching the gospel to every creature, so that all [people] may attain to salvation through faith, baptism and the observance of the commandments (cf. Mt. 28: 18; Mk. 16: 15-16; Acts 26: 17 f.). For the carrying out of this mission Christ promised the Holy Spirit to the apostles and sent him from heaven on the day of Pentecost, so that through his power they might be

¹¹⁸ See *ibid.*, no. 20, in *Origins*, 28 (1998-1999), p. 156.

¹¹⁹ *Ibid.*, no 22, in *Origins*, 28 (1998-1999), p. 157. For the Apostolic See to accord the *recognitio*, the teaching must have received at the plenary meeting, at least two-thirds of the votes of all the members with a deliberative vote (c. 455, §2).

¹²⁰ See *Apostolos suos*, "Complementary Norms Regarding the Conference of Bishops," art. 1, in *Origins*, 28 (1998-1999), p. 157. See also CB, "Doctrinal Declarations," no 3, in *Origins*, 29 (1999-2000), p. 113.

witnesses to him in the remotest parts of the earth, before nations and peoples and kings (cf. Acts 1: 8; 2: 1ff.; 9: 15).¹²¹

The Catholic Bishops' Conference of Nigeria exercises its teaching functions through the plenary meetings of the conference that usually last for about a week. Normally, the conference chooses beforehand issues to be discussed in the plenary meeting and these comprise the agenda.¹²² This is supposed to give the bishops time to reflect on the particular theme for the conference to be able to make fruitful contributions during the meeting. After in-depth discussions during the plenary meeting, the thoughts of the bishops are articulated in a skeletal form. This is developed and given flesh as it is drafted and redrafted by a *coetus* of about three *periti*, until the observations of all the bishops have been taken care of. The final documents have usually received the unanimous *placet* votes of the members. One very remarkable thing about CBCN is the fact that the members are very rarely absent from the plenary meetings. Their commitment to duty can be seen in a collection of 486 pages of various communiqués and joint pastoral letters published in 2002.¹²³

Up to the time of this writing, to the best of our knowledge, there has never been any controversial document that has split the members of the conference into factions of opinions. Issues that could not just be resolved in a plenary meeting are often committed to the thorough and in-depth study of commissions or committees. When these bodies finish any work entrusted to them, it is again discussed in plenary session and voted on

¹²¹ CD, no. 24.

¹²² See CBCN, *Statutes*, arts. 22, 24 and 25.

¹²³ See P. SCHINELLER (ed.), *The Voice of the Voiceless: Pastoral Letters and Communiqués of the Catholic Bishops' Conference of Nigeria 1960-2002*, Ibadan, Nigeria, Daily Graphics Nigeria Limited, 2002.

before the act of promulgation begins. As long as CBCN is in communion with the head and members of the college of bishops, its unanimous doctrinal teaching constitutes authentic magisterium for the area of their jurisdiction. When the teaching lacks unanimity, but receives approval of at least two-thirds of the bishop members, a *recognitio* is required from the Holy See if the decree is to be normative or the teaching is to be published.¹²⁴ When the *recognitio* is given, any bishop with a *non-placet* vote is obliged to abide by the decision of the Holy See. He has not thus limited his sacred power in favour of the bishops' conference. On the contrary:

The bishop accepts with loyal submission the decisions legitimately taken by the conference and reviewed by the Apostolic See, for they have the force of law through the Church's highest authority (CD 38, 4), and he puts them into practice in his diocese, although he may not previously have agreed with them or they may cause him some inconvenience.¹²⁵

The Holy See accords the *recognitio* to the teaching or pronouncement of the bishops' conference, which did not receive the unanimous vote of the bishops, only and when it is for the good of the faithful of the territory, the common good of the Church, and if it enhances the Church's beneficial influence on all people.¹²⁶ The *recognitio* of the Holy See serves furthermore to guarantee that in dealing with new questions the doctrinal response will favour communion and not harm it, and will rather prepare an eventual intervention of the universal magisterium.¹²⁷

¹²⁴ See *Apostolos suos*, "Complementary Norms Regarding the Conference of Bishops," art. 1, in *Origins*, 28 (1998-1999), p. 157; *Apostolorum successores*, pp. 44-45.

¹²⁵ *Ecclesiae imago*, no. 212. a, p. 113.

¹²⁶ See CD, nos. 37 and 38; c. 447; *Apostolos suos*, nos. 14 and 20, in *Origins*, 28 (1998-1999), pp. 155 and 156 respectively.

¹²⁷ See *Apostolos suos*, no. 22, in *Origins*, 28 (1998-1999), p. 156.

Unlike the teaching authority of the bishops' conference, its legislative authority is more precisely defined because the conference is not primarily a legislative body. An examination of the legislative authority of the bishops' conference must focus mainly on c. 455 of the 1983 Code, which derives from *Christus Dominus*, no. 38, 4°. This canon specifies the conditions under which a conference of bishops may issue general decrees. Summarising the content of this canon with regard to general decrees issued by a conference of bishops, J. Provost observes:

General decrees issued by a conference of bishops in accord with canon 455 have the force of law for the territory represented in the conference (c. 29). The authority of the conference to issue general decrees extends to those matters specified in general law or for which special authorization has been given by the Apostolic See. Two-thirds of the voting members, whether present for the vote or not, must adopt such a general decree, and their action must be reviewed by the Apostolic See before it can be promulgated and have binding effect for the area.¹²⁸

The Catholic Bishops' Conference of Nigeria, like any other bishops' conference, can issue general decrees (laws) and general executory decrees, which are not laws. It does not enjoy general legislative competence. However, it exercises ordinary legislative power only in those cases specifically authorised by the law. In other instances, it exercises delegated legislative power "by special mandate of the Apostolic See, either on its own initiative or at the request of the Conference itself" (c. 455, §1). We shall now examine how the decrees of CBCN are prepared and promulgated.

2.3.2 – The Decrees of CBCN

As provided by c. 29, "general decrees, by which common provisions for a community capable of receiving a law are made by competent legislator, are true laws,"

¹²⁸ J.H. PROVOST, "Conferences of Bishops (cc. 447-459)," in *CLSA Comm1*, p. 368.

and they are regulated by the provisions of the canons on laws. The Catholic Bishops' Conference of Nigeria, as a bishops' conference, is competent to issue general decrees but only in cases where the universal law has so prescribed or by the mandate of the Apostolic See, either on its own initiative or at the request of the conference itself (c. 455, §1). Consequently, c. 455, §1 is "a rule of recognition specifying the extent of the legislative power of the episcopal conferences."¹²⁹ It is also an invalidating law (cf. c. 10); since the bishops' conference has power to legislate only in certain cases (*tantummodo potest in casis*); "it invalidly attempts to legislate outside those cases."¹³⁰

It will be wrong to argue that because a conference of bishops is limited to legislating only in cases the universal law has authorised it to legislate it lacks ordinary legislative power. The limited scope of power to cases in which a conference can legislate does not affect the ordinary nature of its legislative power. Johnson has the same view when he writes:

However limited, the legislative competence of the conference is nonetheless genuine. According to canon 131, §1, governmental power which is attached by law to an office is ordinary. Whenever the conference legislates in the light of provisions of universal law, it is therefore exercising the ordinary power proper to itself. Whenever the Holy See authorizes the conference to legislate, however, the conference would be exercising delegated papal power.¹³¹

As a permanent institution for the exercise of certain pastoral functions,¹³² the conference of bishops can legislate in certain cases with ordinary legislative power, though, in the mind of the drafting committee of the 1983 Code, it is not understood primarily as a

¹²⁹ J.G. JOHNSON, Commentary on c. 455 §1, in *CLSA Comm2*, p. 597.

¹³⁰ Ibid.

¹³¹ Ibid., p. 598.

¹³² See *CD*, no. 38, 1°; c. 447; and *Apostolos suos*, no. 14, in *Origins*, 28 (1998-1999), p. 155.

legislative body but an organ of union and communication of bishops among themselves.¹³³

He who possesses legislative authority also has executive power. Thus, CBCN can issue not only general decrees but also general executory ones, “which define more precisely the manner of applying a law, or which urge the observance of laws” (c. 31, §1). The competence of the conference to issue general decrees (or general executory decrees) exists only in cases specified by the universal law, or with the special mandate of the Apostolic See. Outside these, the competence of the diocesan bishop remains intact (c. 455, §4).

The procedure for issuing “general decrees” by the bishops’ conference has been specified by the universal law. It must be at the plenary meeting. The decrees must receive at least two-thirds of the votes of the members having a deliberative vote. They must be reviewed by the Apostolic See and lawfully promulgated (c. 455, §2). The decrees of CBCN go through this procedure before they become binding. Before issues are discussed at the plenary meeting for voting they are very often committed to a commission for an in depth research and study. The commission consults at length with other experts in the field and presents its final work to the conference. The conference debates on it during the plenary meeting and, after an exhaustive deliberation, the president calls for a vote by the members (without prejudice to the provision of c. 454 §2 as regards the making or changing of the statutes). The procedure for voting is as

¹³³ “Et merito quidem, quia Conferentia Episcoporum non intellegitur primarie ut coetus legislativus qui fere omnia centralizare debeat, sed est praesetim organum unionis et communicationis Episcoporum inter se...” (*Comm.*, 14 [1982], p. 199).

stipulated by law,¹³⁴ and it must receive at least two thirds of the votes of the members with deliberative vote before the decree is validly enacted. Of course, the review of the Holy See is required for lawful promulgation.

One might think that only the general decrees that constitute laws should go through this process. On the contrary, all decrees (both the general decrees and general executory ones) of CBCN and of all conferences of bishops must go through this procedure and they require a *recognitio* of the Holy See before they can be promulgated. This is confirmed by the answer of the Commission for the Authentic Interpretation of the Code of Canon Law to a *dubium*. The commission was asked whether the expression "general decrees" in c. 455, §1 also includes general executory decrees mentioned in canons 31-33.¹³⁵

One may wonder why the authority of the bishops' conference is so restricted. We may find an answer in the words of the drafting committee of the 1983 Code. The members of the committee expressed the fear, that an indiscriminate concession of legislative power to the bishops' conference can be detrimental, not only to the authority of the Holy See, but also to the authority which each bishop enjoys in his own diocese, and would be contrary to the mind and the words of the Second Vatican Council.¹³⁶ To allay this fear the institute of *recognitio* becomes a tool for checks and balances.

¹³⁴ The *Statutes* of CBCN stipulate that voting here "is by open ballot, unless two members present ask for secret ballot" (CBCN, *Statutes*, art. 29).

¹³⁵ "D. Utrum sub locutione 'decreta generalia' de qua in can. 455, §1, veniant etiam decreta generalia exsecutoria de quibus in cann. 31-33? R. Affirmative" (see PONTIFICAL COMMISSION FOR THE AUTHENTIC INTERPRETATION OF THE CODE OF CANON LAW, 14 May 1985, in *AAS*, 77 [1985], p. 771. See also *Comm.*, 17 [1985], p. 262; *Roman Replies and CLSA Advisory Opinions* 1986, p. 91; and *CLD*, XI, p. 69).

¹³⁶ "[...] concessio indiscriminata potestati legislativae Conferentiis Episcoporum esset in detrimentum, non tantum auctoritatis Sanctae Sedis, sed etiam auctoritatis qua in sua cuiusque

The *recognitio* plays a major role in the process used by the conference of bishops to fulfil its teaching and normative functions. It is not required in all situations when the conference exercises its teaching function. It is, however, required in the exercise of the teaching function only in cases in which there is no unanimous agreement among the bishop members and the teaching is to be published.¹³⁷ It is required in all cases, when the conference exercises its normative function, whether they receive a unanimous vote or at least two-thirds of the vote of those who belong to the conference with a deliberative vote (c. 455, §2). It will not be out of place to review briefly here the nature and implications of *recognitio*.

2.3.3 – The *Recognitio*: Its Nature and Consequences

The word *recognitio* is a Latin noun, which means *formal inspection*. It has its roots in the Latin transitive verb, “*recognoscō -gnosċere -gnōvi -gnitus tr.*” which means, “to call to mind again, review; to recognize; to look over, examine, inspect, investigate; to certify, authorize.”¹³⁸

We need to understand the nature of the *recognitio* of the Apostolic See, which is required only for the norms and teachings to be published, to be able to appreciate its consequences or effects. For P. Krämer, *recognitio* is “certainly a participation of the Apostolic See in the development of a particular law.” However, the “conference remains

dioecesi singuli Episcopi dioecesani pollut, necnon contra mentem et verba Concilii Vaticani II (cf. CD no. 38 §4; *Ecclesiae sanctae*, 1, no. 41)” (*Comm.*, 14 [1982], p. 199). See also JOHNSON, Commentary on c. 455 §1, note 123, in *CLSA Comm2*, p. 597.

¹³⁷ See *Apostolos suos*, “Complementary Norms Regarding the Conference of Bishops,” art. 1, in *Origins*, 28 (1998-1999), p. 157.

¹³⁸ J.C. TRAUPMAN, *Latin & English Dictionary*, revised and enlarged, New York, Toronto, London, Sydney, Auckland, Bantam Books, 1966, p. 357.

the only author of each respective decision.”¹³⁹ This is reasonable since the bishops’ conference must be in communion with the head and members of the college to function legitimately. J. Otaduy sees *recognitio* as “an act of administrative control exercised by the Holy See with the power to evaluate the legality and even the suitability of the law or decree, a review which nevertheless does not alter the authorship of the norm.”¹⁴⁰ On the other hand, T.J. Green sees *recognitio* as one of the “values of affirming papal primacy (c. 331) and fostering church unity...”¹⁴¹ F.J. Murphy traces the history of *recognitio* to the period after the Council of Trent, highlighting its rationale, when he succinctly writes:

During the twenty-odd years following the Council of Trent, provincial councils spontaneously adopted the practice of submitting their decrees, before promulgation, to the approval of the Holy See. This was a measure of prudence, a safeguard against conflicts with the common law, and against ambiguities in the conciliar expression regarding dogma or discipline.¹⁴²

What was spontaneous became part of universal law, by the apostolic constitution of Pope Sixtus V, which states that “before being promulgated all the *acta* of provincial councils should be submitted to the Sacred Congregation for the Council for examination and revision.”¹⁴³

The *recognitio* (review) of the Apostolic See is, in effect, necessary for the protection of the legitimate authority of diocesan bishops who will be bound by the

¹³⁹ P. KRÄMER, “Episcopal Conferences and the Apostolic See,” in *The Jurist*, 48 (1988), pp. 137-138.

¹⁴⁰ J. OTADUY, Commentary on c. 8, in *Exegetical Comm* 1, p. 276.

¹⁴¹ T.J. GREEN, “The Normative Role of Episcopal Conferences in the 1983 Code,” in REESE (ed.), *Episcopal Conferences*, p. 153.

¹⁴² F.J. MURPHY, *Legislative Power of the Provincial Council: A Historical Synopsis and Commentary*, CLS no. 257, Washington, DC, The Catholic University of America, 1947, pp. 24-25.

¹⁴³ Ibid., p. 25. SIXTUS V, in his Apostolic Constitution *Immensa aeterni*, 22 January 1587, in *Bullarium*, vol. 8, p. 991, wrote: “Povincialium vero, ubi vis terrarum illae celebrentur, decreta ad se [S.C. Conc] mitti praecipiet, eaque singula expendet et recognoscet.”

decrees of the conference. It is a necessary review of the act of a lower authority to ensure that its activity corresponds to its competence, thus, respecting the hierarchy of norms operative in our legal system (c. 135, §2). Above all, *recognitio* demonstrates the concern of the Apostolic See for harmonious activity of the Church and a needed protection against a possible compromising of the faith, church unity, or episcopal collegiality.¹⁴⁴

It is important to note that *recognitio* does not change the nature of the decree since the conference remains its author. "The Apostolic See does not make this decision its own, but limits itself to examining it as to its conformity to the law... It declares that there is no objection to the decision of the conference."¹⁴⁵ Recalling the statement of the Code Commission,¹⁴⁶ D.B. Murray reminds us that, the *recognitio* "is not a rubber-stamping operation, nor is it merely a question of approving or rejecting the proposed decree ..." It "may involve 'the making of modifications, even substantial ones'." This does not suggest "that the law or decree" for that reason, is an act of the Apostolic See "but remains always the act of the Episcopal conference."¹⁴⁷ The *recognitio* for the decrees of conferences of bishops in non-mission territories is granted by the Congregation for Bishops. The *recognitio* for mission territories is granted by the

¹⁴⁴ See GREEN, "The Normative Role of Episcopal Conferences in the 1983 Code," p. 154.

¹⁴⁵ KRÄMER, "Episcopal Conferences and the Apostolic See," p. 138.

¹⁴⁶ The Code Commission stated: "Quae recognitio non est tantum formalitas quaedam, sed actus potestatis regiminis, absolute necessarius ... et quo imponi possunt modificationes, etiam substantiales in lege vel decreto ad recognitionem praesentato. Actus tamen (lex vel decretum) non fit auctoritatis superioris sed manet semper actus auctoritatis que illum statuit et promulgat" (*Comm.*, 15 [1983], p. 173).

¹⁴⁷ D.B. MURRAY, "The Legislative Authority of the Episcopal Conference," in *StC*, 20 (1986), p. 44.

Congregation for the Evangelisation of Peoples. In all cases, the Pontifical Council for Legislative Texts is to provide the juridical evaluation of the documents.¹⁴⁸

What effect then has the *recognitio*, one may ask, since it implies less significant intervention of the Apostolic See compared to the approval (*approbatio, probatio or confirmatio*)¹⁴⁹ of canons 242, §1 (programme of priestly formation) and 775, §2 (publication of catechisms). It “has only a declarative and not a constitutive force and technically does not change the basic Episcopal nature” of the decisions.¹⁵⁰ Nevertheless, it must be noted that the decisions of a bishops’ conference are without binding force unless they are legitimately promulgated; and for legitimate promulgation, the *recognitio* of the Holy See is required (c. 455, §2).¹⁵¹

2.3.4 – The Binding Force of the Decrees of CBCN

Canon 455, §2 has determined the conditions necessary for the decrees of a bishops’ conference to have binding force, while *Apostolos suos* provides the same for the doctrinal declarations of the conference.¹⁵² The Code has provided that the decrees are

¹⁴⁸ See *Pastor bonus*, arts., 82, 89 and 157.

¹⁴⁹ *Approbatio* is the confirmation of the acts of a lower legislator by the universal legislator whereby the acts receive a greater extrinsic authority but remain the acts of the lower authority and are presupposed to contain nothing contrary to the common law of the Church (*confirmatio in forma communi*); or the acts are intrinsically transformed into papal enactments (*confirmatio in forma specifica*). See E.O. POBLETE, *The Plenary Council: A Historical Synopsis and a Commentary*, CLS no. 372, Washington, DC, The Catholic University of America, 1958, pp. 94-95.

¹⁵⁰ See T.J. GREEN, “The Authority of Episcopal Conferences: Some Normative and Doctrinal Considerations,” in *CLSA Proceedings* 51 (1989), p. 128. See also FELICIANI, Commentary on c. 455, in *Exegetical Comm II/1*, p. 1018.

¹⁵¹ See G. FELICIANI, “Episcopal Conferences from Vatican II to the 1983 Code,” in *The Jurist*, 48 (1988), p. 21.

¹⁵² See *Apostolos suos*, “Complementary Norms Regarding the Conference of Bishops,” art. 1, in *Origins*, 28 (1998-1999), p. 157.

to be made in regard to those matters prescribed by the universal law or where a special mandate has been granted by the Holy See. They must be enacted at a plenary meeting and must receive, at least, two thirds of the votes of the members of the conference with deliberative vote. After receiving the *recognitio* of the Apostolic See, they must be lawfully promulgated. The decrees of the bishops' conference are promulgated in the manner determined by the conference and they begin to bind one month from the date of the promulgation unless prescribed otherwise in the decrees themselves (cf. cc. 8, §2, 455, §3). From the foregoing discussion, we observe that the decisions of a bishops' conference can have juridical or non-juridical binding force. They have juridical force when they are legitimately promulgated otherwise they are not binding. A decision may lack juridical binding force while it is morally binding.

Having seen how the decrees and declarations of the bishops' conference acquire their binding force, the question arises: Whom does the decrees or declarations bind? As particular laws, the decrees of the conference of bishops "are not presumed to be personal, but rather territorial, unless it is established otherwise" (c. 13, §1). Thus, the decrees of the conference are binding on the faithful who live in its area of jurisdiction. It is important to note that the bishops are also members of Christ's faithful in their areas of jurisdiction. Consequently, all the decrees and declarations of the bishops' conference, which are lawfully issued, are binding on all the members of the conference who must make sure that these are implemented in their individual dioceses. Outside the lawfully issued decrees and declarations, the competence of each bishop remains intact, and neither the conference nor its president can act in the name of all the bishops (c. 455 §4).

CONCLUSION

In this chapter we have presented a brief description of Nigeria to give the reader a glimpse of the country with an adverse climatic condition to the missionaries (neither used to the arid north, tropical centre, nor the equatorial south climatic conditions of the country), who laboured to sow the catholic faith in the country. It is a country of deep culture and varying problems where the members of CBCN, in communion with the Apostolic See, cooperate as they perform certain pastoral functions for the good of the faithful in their territory.

The catholic faith was sown in Nigeria, around 1863, after some failed attempts, through the initiatives of the Congregation for the Evangelisation of Peoples (*Propaganda fide*) and the untiring efforts of the missionaries, many of whom shed their blood for the spread of the faith. The effort and labour of these gallant missionaries was not in vain, for the catholic faith took root in the country and the Church in Nigeria since then saw a steady growth. This growth is evident in the steady increase in the number of Catholics, indigenous clergy, persons of consecrated life, and aspirants to the priesthood and consecrated life.

During the early stages of the Church in Nigeria, the bishops met from time to time for the common good of the Church, inspired by their desire to see the catholic faith deeply rooted in the country. In these meetings, the bishops discussed pastoral issues and the relationship between the state and the Church. These meetings, though unofficial at the time, are what gave rise to the Catholic Bishops' Conference of Nigeria, as we know it today.

Like many other bishops' conferences, the Catholic Bishops' Conference of Nigeria existed before it became compulsory for every country or region to have one. As the conference of bishops became regulated by common law, CBCN acquired public ecclesiastical juridical personality. It first assumed a legal personality through the Nigerian civil law. After the initial hurdles of land acquisition, the first national secretariat of the conference, sited in Lagos, was completed in 1969. The new national secretariat in Abuja is the National Headquarters of the Catholic Secretariat of Nigeria. The conference was first called the Catholic Welfare Conference of Nigeria and later the Catholic Bishops' Conference of Nigeria.

While the Holy See approved the first statutes of the conference, revised according to the mind of the Second Vatican Council, in 1976, the present statutes, revised to comply with the provision of *Apostolos suos* received the *recognitio* of the Holy See in 2002. They were subsequently promulgated in 2003. The statutes, though lacking clarity in certain areas, determine the composition of the conference and the parameter of its authority.

As a national conference, the Catholic Bishops' Conference of Nigeria is composed of bishops resident in Nigeria. The common law vested it with legislative power (in stipulated cases). By virtue of their episcopal ordination, the Catholic Bishops' Conference of Nigeria has doctrinal authority (in the area of its jurisdiction) when teaching in communion with the head and members of the college of bishops. Their doctrinal decisions have binding force when they are unanimous or when they receive the *recognitio* of the Holy See, according to the provisions of law. However, the doctrinal decisions of the conference do not enjoy infallibility.

The decrees of the conference are to be enacted at the plenary meeting with at least two-thirds of the votes of the members having a deliberative vote. In all cases, the decrees and teaching documents (that lack unanimity) of the conference must receive *recognitio* from the Apostolic See before they are promulgated. The legally enacted decisions of CBCN have binding force only in the areas of jurisdiction of the conference. Outside the lawfully issued decrees and declarations of the conference, the competence of each bishop remains intact in his area of jurisdiction. In the subsequent two chapters, we will discuss the cases in which CBCN is competent to issue decrees.

CHAPTER THREE

OBLIGATORY PARTICULAR COMPLEMENTARY NORMS¹

INTRODUCTION

In his letter of 8 November 1983, shortly before the Code of Canon Law went into effect, the Secretary of State, Cardinal A. Casaroli observed that some bishops' conferences might find it difficult to determine in due time the complementary norms that belong to their competence. Thus, he sent to the presidents of all bishops' conferences a list indicating those cases for which the conferences *must* publish particular complementary norms and those for which they could publish particular norms to complement the Code.² In this chapter, we shall examine those cases in which CBCN *must* publish particular norms complementing the 1983 Code. There is hardly any case in Books I, VI and VII of the 1983 Code, on which the bishops' conference must publish complementary norms. Consequently, our attention will be focused on Book II on the People of God, Book III on the Teaching Office, Book IV on the Sanctifying Office, and Book V on Temporal Goods.

3.1 – ON THE PEOPLE OF GOD

In Book II of the 1983 Code, which has the general heading "The People of God," there are seven instances (as provided by the list from the Secretariat of State which is reproduced in Appendix IV), on which the bishops' conference *must* promulgate

¹ See list in Appendix IV, pp. 338-339.

² See A. CASAROLI, Letter to Presidents of Episcopal Conferences with accompanying list, Prot. No. 120. 568/236, in *Comm.*, 15 (1983), pp. 135-139; English trans. in *CLD* XI, pp. 5-8. See also Appendix IV.

complementary norms. Six of these deal with the clergy while one is on the laity. We will examine each of the cases separately, namely, guidelines for the ministries of lector and acolyte, formation of permanent deacons, priestly formation in the seminary, deacons and the liturgy of the hours, norms on clerical dress, norms for the statutes of the presbyteral council and maintenance of retired parish priests.

3.1.1 – Guidelines for the Ministries of Lector and Acolyte

In the ancient tradition of the Church, certain ministries were instituted by the Church for duly worshipping God and for rendering service to the needs of the People of God. Through such ministries, various liturgical and charitable duties, according to the needs of the time, were entrusted to the faithful. Gradually those functions that were closely connected with the liturgical action were “considered as preparatory steps for the reception of sacred Orders”³ With the changes brought about by the *motu proprio Ministeria quaedam* of Pope Paul VI, these liturgical functions (minor orders inclusive), were revised,⁴ paving the way again for the ministries of lector and acolyte to be exercised by lay persons. In the *motu proprio*, the pope decreed:

- I. First Tonsure is no longer conferred; entrance into the clerical state is conjoined with the diaconate.
- II. The Orders which up to this time were called minor are hereafter to be called ‘ministries’.
- III. Ministries can be entrusted to Christian lay persons with the result that they are not to be considered as reserved to candidates for the sacrament of Orders.
- IV. The ministries which are to be preserved in the whole Latin Church and accommodated to present-day needs are two, namely, those of *lector* and

³ PAUL VI, *Motu proprio* on First Tonsure, Minor Orders and the Subdiaconate *Ministeria quaedam*, 15 August 1972, in *AAS*, 64 (1972), p. 529; English trans. in *CLD* VII, pp. 690-691.

⁴ See *CIC/17*, c. 949, which lists minor orders as acolyte, exorcist, lector and doorkeeper.

acolyte. The functions which were heretofore committed to the subdeacon, are entrusted to the lector and the acolyte; as a consequence, the major Order of the subdiaconate is no longer had in the Latin Church ...⁵

This *motu proprio* provided that the ministries of lector and acolyte can be entrusted to Christ's faithful, both men and women, so that they are no longer considered as reserved to candidates for the sacrament of Orders.⁶ However, it further prescribed that the "instalment of lector and acolyte, in accordance with the venerable tradition of the Church, is reserved for men."⁷ This is the source of c. 230 §1 which reads: "Lay men whose age and talents meet the requirements prescribed by decree of the bishops' conference, can be given the stable ministry of lector and of acolyte, through the prescribed liturgical rite." The details, which each bishops' conference has to determine in its area of jurisdiction, are the age and talents required for the stable ministry of lector and acolyte.

The decree of CBCN in response to this provision is in Appendix II of this work. It is very lengthy, capturing, almost verbatim, everything contained in *Ministeria quaedam* on the ministries of lector and acolyte. This approach was most probably intended to catechise the Christian faithful in Nigeria on the content of *Ministeria quaedam*, especially those who did not have the opportunity to read the text. However, the decree is not quite specific in some aspects, especially in its lack of clarity with regard to the prerequisites for these ministries.

⁵ *Ministeria quaedam*, in *AAS*, 64 (1972), pp. 531-532; *CLD* VII, p. 693.

⁶ See *ibid.*, no. III, in *AAS*, 64 (1972), p. 531; *CLD* VII, p. 693.

⁷ *Ibid.*, no. VII, in *AAS*, 64 (1972), p. 533; *CLD* VII, p. 694.

Describing a possible candidate for these ministries, CBCN decrees as follows, in no. 2 of the general guidelines for lector and acolyte: “He must be properly married or, if single, a fully mature adult. It would not be wise to install a man as lector or acolyte who may later put himself in a condition in which he could not receive the sacraments.” In no. 3 of the same guidelines the conference continues: “Number 2 sets the minimum age well enough. The maximum age for installation permitted for [ministries] should be 60 years.”⁸ Here we are left wondering how the expression: “He must be properly married or, if single, a fully mature adult,” sets the minimum age well enough. In effect, the conference has set the maximum age, without determining the minimum for these ministries. Above all, setting the maximum age at sixty is unpleasant, since it gives the impression that people above this age in the Church in Nigeria have outlived their usefulness to their local Church. Apart from the minimum age, which CBCN has failed to determine, another important thing it could have considered is capacity. If one is capable of performing these ministries relatively well, we do not see how age sixty could be an obstacle.

As regards the stable ministry of a lector, contrary to one’s expectation, there is no specification with regard to the minimum education required in a candidate to the ministry. It would have been appropriate to decree a minimum required education, making provision for an equivalent in a diocese where such minimum qualification was not readily available. Lack of explicitness in this decree is evident also in no. 4, which speaks of the ministry of acolyte. The decree simply states, “a specific role should be

⁸ CBCN, *Particular Complementary Norms to the Revised Code*, Onitsha, Vicatex (Nig.) Ltd., 1985 (= PCN), p. 4.

assigned to the Acolyte, so that it is obvious to the faithful that the Acolyte's role in the liturgy is more intimate and important than that of ordinary mass-servers."⁹ In view of the fact that the role of an acolyte is specified in *Ministeria quaedam*,¹⁰ one would have expected CBCN to describe what specific role it intends to assign to an acolyte.

Presently the installation of acolytes is a very rare occurrence in many parts of Nigeria. It is not clear here if CBCN is suggesting that on installation, the functions of an acolyte, as provided by the *motu proprio Ministeria quaedam* and GIRM, are to be dropped so that only a specific role could be assigned to him. Alternatively, is CBCN looking for an additional role to the already specified functions of an acolyte? In our opinion, since there are no permanent deacons in Nigerian dioceses, except for two, the functions an acolyte will do when installed are more than enough. However, the question that lingers in our mind is, when will the majority of the Nigerian diocese see the need to install laymen as acolytes as directed by church law? It is important also to observe that the use of "ordinary" here to qualify mass-servers is not, in our view, canonically appropriate. Further, when CBCN likened a bishop to a "chief in the African context" it failed to be contextual enough since chieftaincy in Nigeria today does not portray the image of bishop as a servant and shepherd.

3.1.2 – Formation of Permanent Deacons

The permanent diaconate, an ancient custom of the Catholic Church, was highly esteemed for its ministerial functions since apostolic times, as evidenced in scripture (cf.

⁹ Ibid., p. 6.

¹⁰ See PAUL V, *Motu proprio Ministeria quaedam*, no. 6, in *AAS*, 64 (1972), pp. 532-533; *CLD* VII, p. 694. See also the *General Instruction on the Roman Missal* (= GIRM), nos. 187-193.

Phil. 1: 1; 1Tim. 3: 8-13). Gradually, however, the laws and customs of the Latin Church in many areas rendered it difficult to fulfil some functions that are extremely necessary for the life of the Church.¹¹ The dogmatic constitution, *Lumen gentium*, of the Second Vatican Council decreed that it would be possible in the future to restore the diaconate “as a proper and permanent rank of the hierarchy” (*LG*, no. 29). In his *motu proprio Sacrum diaconatus ordinem*, Pope Paul VI reaffirms the proper and permanent rank of the diaconate when he says:

This will be ideal to highlight the special nature of this Order, which should not be regarded as just a step toward the priesthood, but rather as enriched with an indelible character and a special grace of its own so that those who are called to it can “serve the mysteries of Christ and the Church” (*Lumen gentium*, n. 41) in a stable fashion.¹²

Thus, with the *motu proprio Sacrum diaconatus ordinem*, permanent diaconate was restored and Pope Paul VI called on bishops’ conferences to define and publish rules, adapting existing discipline to the precepts of the Second Vatican Council, and to determine the right conditions for the proper exercise of the diaconal ministry. Canon 236 of the Code presents this call thus:

Those who aspire to the permanent diaconate are to be formed in the spiritual life and appropriately instructed in the fulfilment of the duties proper to that order, in accordance with the provisions made by the Bishops’ Conference:

1° young men are to reside for at least three years in a special house, unless the diocesan Bishop for grave reasons decides otherwise;

2° men of more mature years, whether celibate or married, are to prepare for three years in a manner determined by the same Bishops’ Conference.

¹¹ See *LG*, no. 29. There was no positive law suppressing the *munus* of permanent deacon in the Latin Church. However, it steadily lost ground because of “increasing practice of ‘private Masses’...” in the Middle Ages and better material recompense for priests. See J.L. CASAÑAS MEDINA, *The Law for the Restoration of the Permanent Diaconate: A Canonical Commentary*, CLS no. 460, Washington, DC, The Catholic University of America, 1969, pp. 14-15.

¹² PAUL VI, *Motu proprio* on General Norms for Restoring the Permanent Diaconate in the Latin Church *Sacrum diaconatus ordinem*, 18 June 1967, Introduction, in *AAS*, 59 (1967), p. 697; English trans. in *CLD* VI, p. 578.

In response to this canon, CBCN reiterates in its decree the requirement stated in *Sacrum diaconatus ordinem*, of the quality of good reputation in the community.¹³ The conference prescribes the age of 35 years for permanent diaconate for both celibate and married men.¹⁴ This is the “more mature age” determined in the *motu proprio Sacrum diaconatus ordinem*.¹⁵ The married men must have been married in the Church for ten years and have the consent of their wives.¹⁶ The minimum education required by the decree of CBCN is the West African School Certificate (= WASC), which is the equivalent of a high school diploma. The conference suggests a three-year programme for the training of the candidates while each diocese is to determine their means of sustenance. According to the decree, the required courses are scripture, liturgy, dogmatic theology, catechetics, church history, canon law and principles of moral theology. The decree further prescribes spiritual formation for the candidates during their formation.

It is good that in this decree the conference specifies the minimum education required for the permanent diaconate. However, it does not specify the length or duration of the programme; it makes only a suggestion. When the universal law prescribes that the “period of preparation for the diaconate should run at least three years,”¹⁷ it gives bishops’ conferences enough latitude to determine the period of preparation for the

¹³ See CBCN, *PCN*, p. 8; *Sacrum diaconatus ordinem*, no. 13, in *AAS*, 59 (1967), p. 700; *CLD* VI, p. 580.

¹⁴ Canon 1031 §2 of the 1983 Code prescribes a minimum of 25 years for the admission of unmarried candidates to the permanent diaconate and a minimum of 35 years for those who are married; §3 of the same canon gives the conference the option of prescribing different minimum ages for unmarried and married permanent deacons.

¹⁵ See *Sacrum diaconatus ordinem*, no. 12, in *AAS*, 59 (1967), p. 700; *CLD* VI, p. 580.

¹⁶ See CBCN, *PCN*, p. 8; *Sacrum diaconatus ordinem*, nos. 11-13, in *AAS*, 59 (1967), p. 700; *CLD* VI, p. 580.

¹⁷ *Sacrum diaconatus ordinem*, no. 9, in *AAS*, 59 (1967), p. 700; *CLD* VI, p. 580.

permanent diaconate in their own countries or regions. However, CBCN does not fix any period for this programme. Again, it only makes a suggestion,¹⁸ most probably because it does not feel it opportune at this time to have permanent deacons in Nigeria, considering its observation:

Most Bishops, and even some lay people would want the Church in Nigeria to 'be [cautious] introducing Married Deacons' to Nigeria. They are of the opinion that it will kill vocations to the Ministerial celibate Priesthood. They say that serious thought should be given to nationwide 'even' distribution of the Priests being ordained hence the National Missionary Seminary ... should be massively encouraged, and that this was bound to be a very effective solution to the scarcity of Priests in most parts of Nigeria.¹⁹

The need to fulfil certain functions, extremely necessary for the life of the Church, rendered difficult by laws and customs of the Latin Church in effect today in many areas, necessitated the restoration of the diaconate as a proper and permanent rank of the hierarchy.²⁰ Nevertheless, we must not overlook the importance of the diaconate, as "the third rank of sacred Orders"²¹ in any part of the Church. We are of the opinion that, in addition to fulfilling certain functions, the restoration of permanent diaconate in every particular Church "will highlight the special nature of this Order."²²

It is not proven that the restoration of the permanent diaconate in Nigeria will negatively influence priestly vocations as feared by the conference. Presently, in Nigeria, only Lokoja and Sokoto dioceses have permanent deacons. Lokoja has four who are now

¹⁸ The CBCN suggests a three-year full time programme; see CBCN, *PCN*, p. 8.

¹⁹ *Ibid.*, pp. 9-10.

²⁰ See *LG*, no. 29; *Sacrum diaconatus ordinem*, Introduction, in *AAS*, 59 (1967), pp. 697-698; *CLD* VI, pp. 577-578.

²¹ *Sacrum diaconatus ordinem*, Introduction, in *AAS*, 59 (1967), p. 697; *CLD* VI, p. 577.

²² *Ibid.*, Introduction, in *AAS*, 59 (1967), p. 698; *CLD* VI, p. 578.

in their sixties (one of them has a son who is a priest) while Sokoto has only one. In our view, the permanent diaconate calls for its proper recognition everywhere in the universal Church as the third rank of the sacred orders, while reinforcing special interest in the priestly vocations and in the formation of priests.

3.1.3 – Programme for Priestly Formation

The fathers of the Second Vatican Council, aware that the renewal of the Church “depends in great part upon a priestly ministry animated by the spirit of Christ,”²³ emphasised the critical importance of priestly formation. Such a renewal, the council said must take into consideration the diversity of peoples, countries, and their various circumstances:

Since only a regulation of a general nature can be made, owing to the wide diversity of peoples and countries, each nation or rite should have its own *Program of Priestly Training*. This should be drawn up by the Episcopal conference and should be revised at regular intervals and approved by the Holy See. In every such program, the general regulations will be adapted to the circumstances of time and places, so that priestly training will always answer the pastoral requirements of the particular area in which the ministry is to be exercised.²⁴

After the council, the 1967 synod of bishops requested the Congregation for Catholic Education to prepare a basic programme to help bishops’ conferences “draw up the specific and authoritative programs for their own nations.”²⁵ In 1970, the congregation

²³ SECOND VATICAN COUNCIL, Decree on the Training of Priest *Optatam totius*, 28 October 1965, in *AAS*, 58 (1966), Introduction, p. 713; English trans. in FLANNERY1, p. 707.

²⁴ Ibid., in *AAS*, 58 (1966), pp. 713-714; FLANNERY1, p. 708.

²⁵ Cf. P. HEBBLETHWAITE, *Understanding the Synod*, Dublin and Sydney, Gill and Son, 1968, pp. 74-75.

issued the *Ratio fundamentalis*, the basic programme for all seminaries in the Church.²⁶ We cannot but underscore the importance of this programme since there is an essential image of the priesthood that does not change, in whatever milieu, for the priest of tomorrow, no less than for the priest of today.²⁷ The 1983 Code, echoing the teachings of the Second Vatican Council, stipulates that in each country there is to be a programme of priestly formation, which is to be drawn up by each bishops' conference. It is to be adapted to new circumstances, and should define the overall principles governing formation in the seminary, while taking account of the norms issued by the supreme church authority, and receive the approval of the Holy See (c. 242, §1). The programme is to be followed in all seminaries, whether diocesan or inter-diocesan (c. 242, §2).

In response to this, CBCN has stated that a "program of Priestly Formation drawn up by the Catholic Bishops' Conference of Nigeria is yet to be approved by the Holy See."²⁸ It is interesting to note that for more than 20 years, after the promulgation of the *Particular Complementary Norms* of CBCN, the seminaries in Nigeria do not yet have any programme for priestly formation adapted to the circumstances of the country. Unlike the regional bishops' conference in West Africa that has an interim programme,

²⁶ See SACRED CONGREGATION FOR CATHOLIC EDUCATION, On the Basic Programme for Priestly Formation *Ratio fundamentalis institutionis sacerdotalis*, 6 January 1970, in *AAS*, 62 (1970), pp. 321-384; English trans. in *The Pope Speaks*, 15 (1970), pp. 264-314.

²⁷ "Existit sane 'quaedam sacerdotalis essentialis imago, quae mutari nequit, cum sacerdos, tam ille quem pro crastino desideramus quam ille qui hodie est, uni Christo assimilari debeat...'" (JOHN PAUL II, Post-synodal Apostolic Exhortation *Pastores dabo vobis*, 25 March 1992, in *AAS*, 84 [1992], no. 5, p. 664). See also SECOND VATICAN COUNCIL *Presbyterorum ordinis* (= *PO*), 7 December 1965, no. 2, in *AAS*, 58 (1966), p. 992; English trans. in FLANNERY I, p. 865; SYNOD OF BISHOPS, On the Ministry of the Priest *De sacerdotio ministeriali*, 30 November 1971, Part One, no. 5, in *AAS*, 63 (1971), p. 907; English trans. in *CLD* VII, p. 351.

²⁸ CBCN, *PCN*, p. 10.

pending the approval of their programme for priestly formation,²⁹ Nigeria has nothing. This vacuum is certainly a matter of concern for the Church in Nigeria. From the information we have been able to collect from one of the major seminaries in Nigeria, we understand that the provisions of the universal *Ratio fundamentalis institutionis sacerdotalis* presently govern the seminaries in the country. This raises the question as to how serious CBCN is in adapting the formation of priests to the circumstances and needs of the Church in Nigeria. Moreover, the silence on this matter, presumably, on the part of Congregation for the Evangelisation of Peoples, makes one wonder whether the programme will be implemented only when the congregation sees the need:

Mission bishops had a problem of their own. Many of their seminaries do not come under Cardinal Garrone's Congregation but under the Congregation of Propaganda (from 1 January 1968 to be called, optionally, the Congregation for the Evangelization of Peoples) ... Archbishop Cordeiro of Karachi wanted bishops dependent on Propaganda to have greater autonomy in dealing with their seminaries.³⁰

This observation remains valid, yesterday as it is today. If the Church in mission territories must grow, and not continue to be in the state of "a child," the competent dicastery must reflect on its proactive role in matters of this kind. The congregation competent to do so must encourage CBCN to develop and implement a programme for priestly formation adapted to the needs of the Church in Nigeria. Such a programme will be helpful also in the formation of permanent deacons when CBCN considers it opportune to extend the programme to the diaconate.

²⁹ For the Inter-Territorial Catholic Bishops' Conference of Gambia, Liberia and Sierra Leone, "[the] present Charter of Priestly Formation for St. Paul's Seminary remains in force until the new charter is approved by the Holy See" (*Exegetical Comm V*, p. 352.).

³⁰ HEBBLETHWAITE, *Understanding the Synod*, p. 72.

3.1.4 – Obligation of the Liturgy of the Hours for Permanent Deacons

The liturgy of the hours has been an important part of the prayer life of the Church “in the course of so many centuries, with constancy and faithfulness, in the marvellous variety of its forms.”³¹ Clerics were customarily bound to participate daily in the office of the hours. The unequivocal statement about this obligation is a text from the First Council of Toledo (400), as quoted by M. Semple:

If any priest or deacon or any cleric who is attached to a church, and is within the city or in any place in which there is a church and does not come to the daily chanting of the office of the hours or matins and vespers in the church, let him be deposed from the clerical state if, having been reprimanded, he refuses to deserve pardon from the bishop by (doing suitable) satisfaction.³²

While the council was specific about clerics attached to a church being obliged to the daily chanting of the office, the Fourth Lateran Council spoke of clerics in general: “Prelates and clerics are commanded in virtue of obedience to celebrate diligently and devoutly the diurnal and nocturnal offices.”³³ The 1917 Code bound only clerics in major orders to this obligation. In c. 135, it prescribed that they are bound by the obligation of reciting the entire canonical hours according to the proper and approved liturgical books.

Following the 1917 Code, the Second Vatican Council obliged clerics in major orders, distinguishing between clerics bound to office in choir and those not bound: “Clerics not bound to office in choir, but who are in major orders, are bound to pray the

³¹ PAUL VI, Apostolic Constitution on Renewal of the Divine Office *Laudis canticum*, 1 November 1970, in *AAS*, 63 (1970), p. 527; English trans. in *The Pope Speaks*, 16 (1971), p. 129.

³² M. SEMPLE, *The Obligation of the Divine Office in the Latin and Oriental Churches*, CLS no. 454, Washington, DC, The Catholic University of America, 1967, p. 16. This work presents a good history of the liturgy of the hours in the Church.

³³ LATERAN COUNCIL IV, c. 17, in H.J. SCHROEDER (tr. & ed.), *Disciplinary Decrees of the General Councils* (= SCHROEDER, *General Councils*), text, translation, and commentary, St. Louis, MO, London, B. Herder Book Co., 1937, p. 257.

entire office every day, either in common or individually.”³⁴ In view of the commitment of permanent deacons to temporal affairs, it might be a heavy burden to oblige them to the daily praying of the entire liturgy of the hours. For this reason, the pope, in *Sacrum diaconatus ordinem*, has determined that it “is very fitting for permanent deacons to recite daily at least some part of the Divine Office, to be specified by the Episcopal conference.”³⁵ This is reiterated in c. 276 §2, 3° of the present Code.

In response to this prescript, CBCN decrees that permanent deacons in Nigeria “shall recite Morning and Evening Prayers of the Liturgy of the hours daily.”³⁶ This decree recaptures the importance of morning and evening prayers as the pivot around which the daily office revolves.³⁷

3.1.5 – Norms on Clerical Dress

The law on clerical dress, though it survived a better part of the early centuries of the Church, did not exist at the earliest centuries when “there was no distinction between the dress of the clergy and the laity.”³⁸ The clerical dress did not develop as a sign of class distinction as some may suggest today; it is a discipline regarding modesty in priestly ministry. “It was not until the sixth century that a distinction was seen, for at that

³⁴ SECOND VATICAN COUNCIL, Constitution on Sacred Liturgy *Sacrosanctum concilium*, 4 December 1963, in *AAS*, 56 (1964), no. 96, p.123; English trans. in FLANNERY1, p. 27.

³⁵ *Sacrum diaconatus ordinem*, no. 27, in *CLD* VI, p. 583.

³⁶ CBCN, *PCN*, p. 10.

³⁷ “By the venerable tradition of the universal Church, Lauds as morning prayer, and Vespers as evening prayer, are the two hinges on which the daily office turns. They must be considered as the chief hours and are to be celebrated as such” (*SC*, no. 89 [a]).

³⁸ H.J. MCCLOUD, *Clerical Dress and Insignia of the Roman Catholic Church*, Milwaukee, The Bruce Publishing Company, 1948, p. 37.

time the laity began to adapt shorter tunics while the clergy retained the old Roman style of the long tunics.”³⁹ To forestall clerics being swept away by new fashions, various decrees were promulgated regarding clerical dress. We recall here the decree of the Council of Nicaea II summarised as follows: “Clerics shall wear modest and unostentatious clothing and not array themselves in gay and showy apparel embroidered with silk.”⁴⁰ Lateran Council IV issued a similar decree: “Clerics are not to engage in secular pursuits ... Their clothing must be in keeping with their dignity.”⁴¹ The Council of Vienne further decreed a penalty on defaulters of the law on clerical dress:

A cleric who, having a benefice, publicly wears unbecoming garments, loses for six months the usufruct of that benefice; if he has no benefice, he becomes for the same length of time disqualified from obtaining one. The same applies to regular and secular priests with and without benefices.⁴²

The Council of Constance lamented the excesses of prelates and clerics reiterating:

Among other excesses of prelates and clerics, this one stands out most prominently, that, ecclesiastical propriety in dress being spurned, many delight in what is unbecoming and desire to adopt the way of the laity, exhibiting outwardly in dress what they entertain inwardly ... we renew and command all earlier legislation in regard to clerical clothes ... and habits in form as well as in color, also in regard ... to decorum and integrity, to be strictly observed; which legislation has been too much disregarded by both the secular and the regular clergy.⁴³

The Council of Trent, recognising the role of local ordinaries, decreed that clerics should wear the dress that represents “their own dignity and clerical honor ... in conformity with

³⁹ Ibid.

⁴⁰ COUNCIL OF NICAEA II, (787), c. 16, in SCHROEDER, *General Councils*, p. 151.

⁴¹ LATERAN COUNCIL IV, (1215), c. 15, in SCHROEDER, *General Councils*, p. 256.

⁴² COUNCIL OF VIENNE, (1311-1312), c. 10, in SCHROEDER, *General Councils*, p. 423.

⁴³ COUNCIL OF CONSTANCE, (1414-1418), no. 7, in SCHROEDER, *General Councils*, p. 455.

the ordinance and mandate of their bishop ...”⁴⁴ The decree of the Council of Baltimore which prescribed that the clergy (whether at home or in the church), always wear the cassock which is proper to them, typifies a particular law on the obligation of wearing the clerical dress.⁴⁵

In keeping with ecclesiastical law on clerical dress, and following the example of the Council of Trent, subsequent legislation left the determination of clerical attire to the customs of the place or the prescripts of local ordinaries. It is in this line that the 1917 Code prescribed clerical dress.⁴⁶ The Second Vatican Council retained the custom of clerical attire, binding “all religious, even exempt.”⁴⁷ Canon 284 of the 1983 Code allows the matter of clerical dress to be decided by legitimate authority of each country and local custom: “Clerics are to wear suitable ecclesiastical dress, in accordance with the norms established by the Bishops’ Conference and legitimate local custom.”

The Catholic Bishops’ Conference of Nigeria, responding to this prescript, has decreed that the “Diocesan clerics are to wear white soutane; and clerics of religious Institutes and Societies of Apostolic Life are to wear their distinctive habits.” In addition

⁴⁴ H.J. SCHROEDER (tr. & ed.), *Canons and Decrees of the Council of Trent* (= SCHROEDER, *Canons and Decrees*), Original Text with English Translation, St. Louis, MO, London, B Herder Book Co., 1941, p. 110.

⁴⁵ “Ecclesia praescribit oportere clericum vestes proprio suo statui congruentes semper deferre... Volumus itaque et praecipimus, ut omnes Ecclesiae legem servant, domique agentes vel in templo veste talari, quae clerico propria est, semper utantur” (COUNCIL OF BALTIMORE III, *Acta et decreta Concilii Plenarii Baltimorensis*, presided over by Archbishop James Gibbons, Baltimore, Typis Joannis Murphy et Sociorum, 1886, no. 77, p. 41).

⁴⁶ See *CIC/17*, c. 136, §§1 & 3. See also *CIC/17*, cc. 188, 7°; 213 §1, 670, 671, 2°, 3° & 6°, 683, 1576 §1, 2°, 2298, 9° & 11°, 2300, 2304 §§1 & 2, 2305, 2379.

⁴⁷ See PAUL VI, Norms for Implementing Some Decrees of the Council *Ecclesiae sanctae*, 6 August 1966, no. 25, §§1 and 2(d), in *AAS*, 58 (1966), p. 770; English trans. in FLANNERY1, p. 605.

to this, “Grey French suit with cross or black suit with a Roman collar” are accepted.⁴⁸ The white cassock and, occasionally, the Roman collar, have been the customary ecclesiastical dress for the clergy in Nigeria. The French suit was one of the fashions in vogue in Nigeria when CBCN issued its decree. According to CBCN, what will make this fashion clerical is the pinning of ‘a cross’ on it. By including the French suit as one of the modes of clerical dress, this decree presents neither the culture nor the significance of clerical dress. The decree on clerical dress ought to reflect the distinctiveness required of a clerical dress, as vividly expressed by Pope John Paul II:

On many occasions in my meetings with priests I expressed my thought in this regard, pointing out the value and significance of this distinctive sign, not only because it contributes to the decorum of the priest in his external comportment or in the exercise of his ministry, but above all because it indicates within the ecclesiastical community the public testimony which every priest is bound to give of his own identity and of his special dedication to God.⁴⁹

The Roman collar, by way of enculturation, has become part of the Nigerian society. Both this collar and the soutane, when worn, indicate within the Nigerian society the public testimony which every priest is bound to give of his priestly identity.

3.1.6 – Norms for the Statutes of Presbyteral Council

The presbyteral council, with no analogous body in the 1917 Code, is an innovation in ecclesiastical law. It finds its root in the decree *Christus Dominus*, of the Second Vatican Council, which declared that the existing diocesan consultative groups should be reorganised according to contemporary needs:

⁴⁸ See CBCN, *PCN*, p. 11.

⁴⁹ JOHN PAUL II, Letter to the Cardinal Vicar of Rome on Ecclesiastical and Religious Dress as a Sign and Witness in the World, 27 September 1982 in *CLD* X, p. 11; *ORE*, 25 October 1982, p. 5.

Among the co-operators of the bishops in the governing of the diocese are included the priests who constitute his senate or council...or other committees according to the circumstances and character of different localities. These councils...should be reorganized, as far as is necessary, to suit contemporary needs.⁵⁰

Thus, the council envisioned an innovative consultative body; an assembly of priests that represents the presbyterium and with its advice can effectively assist the bishop in the government of the diocese.⁵¹ Consequently, in the *motu proprio Ecclesiae sanctae*, Pope Paul VI decreed that in “every diocese, according to the ways and forms determined by the Bishop, there shall be a council of Priests”⁵² Accordingly, the 1983 Code has made it obligatory to have a presbyteral council in each diocese (c. 495); and this council of priests is to have its own statutes which should take into account the norms laid down by the bishops’ conference (c. 496).

The Catholic Bishops’ Conference of Nigeria has, to date, established no norms on the presbyteral council as required by the Code. It only reiterates c. 495 §1, that every “diocese should set up a Presbyteral Council if there is [none] already in existence.”⁵³ While the conference provided a good sample of a constitution for the presbyteral council (a sample not required of it by law), it failed to lay down the required norms which could have, at a glance, provided for similarities in the presbyteral councils of the dioceses in

⁵⁰ *CD*, no. 27.

⁵¹ See *PO*, no. 7.

⁵² “In unaquaque dioecesi, modis ac formis ab Episcopo statuendis, habeatur Consilium Presbyterale, scilicet coetus seu senatus sacerdotum, Presbyterium repraesentantium, qui Episcopum in regimine dioecesis suis consiliis efficaciter adiuvere possit” (*ES*, no. 15, §1, in *AAS*, 58 [1966], p. 766; English trans. in *FLANNERY*1, p. 600). Also cf. CONGREGATION FOR CLERGY, Circular Letter to the Presidents of Bishops’ Conferences, 11 April 1970, in *AAS*, 62 (1970), pp. 459-465; English trans. in *CLD* VII, pp. 383-390.

⁵³ CBCN, *PCN*, p. 12.

Nigeria. If CBCN had provided norms, reflecting the Nigerian culture, it would have been interesting to know the constitution of its membership, for example, if retired priests could be members of the presbyteral council and what voting rights they could have.

3.1.7 – Maintenance and Residence of Retired Parish Priests

The issue of maintenance of a retired priest was for long left unattended, and the 1917 Code was not specific about it. However, it was taken for granted because of the system of benefices (and many pastors were immovable), through which many clerics became rich and had enough to cater for themselves in their old age. Today, with the changes ushered in by the Second Vatican Council (with regard to the tenure in office of a parish priest, his retirement and maintenance), the situation has changed significantly (CD, no. 31). Canon 538, §3 provides that “the diocesan bishop must make provision for the priest who has resigned.” The same canon prescribes that the bishops’ conference is to lay down norms, which the diocesan bishop must take into account as he makes provisions for the retired priest.

In response to the provision of this canon, CBCN has decreed that every diocese in its territory should adopt and implement the “*Opus Securitatis of the Pontificium Opus A.S. Petro Apostolo Pro Clero Missionum.*” It directs further that an “Insurance plan” should be put in place in each diocese; and that a “special house for retired priests” should be provided in all the dioceses. Of interest is the caveat of the conference: “Care should be taken not to encourage priests to retire to their relations. If they do, adequate spiritual care should be provided [for] such priests.”⁵⁴ We are not aware of any

⁵⁴ Ibid., pp. 23-24.

“Insurance Plans” for priests in Nigeria. The past, as well as the present civil administrations in Nigeria have failed to put in place a system that guarantees social security, social insurance, and health insurance for the citizens of the country. This situation is disturbing as it engenders feelings of insecurity among priests in Nigeria. The conference should have heeded the requirement of law concerning the future security of priests in Nigeria: “Where there is as yet no properly organised system of social provision for the clergy, the Bishops’ Conference is to see that a fund is established which will furnish adequate social security for them” (c. 1274, §2). The Catholic Bishops’ Conference of Nigeria has not responded to this prescript. Consequently, priests lack adequate health care in Nigeria, resulting in early death of many. In the past, many dioceses did not make any provisions for the retirement of priests. At present, retirement homes for priests find a place in the priority lists of bishops, and some dioceses have started putting in place infrastructures to that effect.

As regards discouraging priests from retiring to their relatives, we need to note that the family is one of the greatest values the Nigerian people cherish. Nigerians believe that a catholic priest, though chosen from among them, is set apart for the service of God. Thus, he is no longer expected to return to his family to live after ordination. With the belief that a priest never retires, he has to live always in the rectory (or the father’s house as is called in Nigeria). Nevertheless, relatives will prefer the priest taken from among them to retire among his own people who will never abandon him in his old age. Among the Igbo of Nigeria, the family tie is so strong that sending an old member of a family to old peoples’ home is interpreted as abandonment, no matter how poor the family may be.

Before the advent of Christianity, the priest of Traditional Religion lived with his family and among his people. Since the teaching of the Second Vatican Council and the canonical norms of the 1983 Code have provided for the retirement of priests, there is nothing wrong if a priest chooses to retire to his family. Consequently, since dioceses have made no provisions for retirement homes for priests, those priests who choose the option of retiring to their families should receive not only spiritual care (as decreed by CBCN), but also all other benefits that are due to them in accord with the norm of law (see cc. 281 and 384).

In summary, with regard to the implementation of the norms indicated in Book II, we can say that the Catholic Bishops' Conference of Nigeria has tried its best to promulgate elaborate decrees on several matters but these are not contextual enough for Nigerian. Considering the importance of formation and future care of priests in today's Church, its greatest failure is its inability to provide a programme for priestly formation for its seminaries, and to put in place appropriate system of social security for the overall well-being of retiring priests.

3.2 – ON THE TEACHING OFFICE

The governing function of the bishops' conference in Book III of the 1983 Code is restricted to three areas of its teaching office. This limitation can be interpreted as a protective measure vis-à-vis the authority of the diocesan bishops. As one author says, "Perhaps the concerns about the conference's alleged interference in the governmental discretion of diocesan bishops encouraged the commission to limit the role of the

conference.”⁵⁵ The areas included are, Christian teaching on radio and television, participation of clerics and religious in radio and television programmes and norms regulating the catechumenate. We shall examine each of these areas.

3.2.1 – Christian Teaching on Radio and Television

The Second Vatican Council, having probed more profoundly into the mystery of the Church, saw the need to address itself, without hesitation, not only to the sons and daughters of the Church but also to the whole of humanity.⁵⁶ The need cannot be more urgent because humanity is passing through changes that are profound and amazingly rapid, across the world.⁵⁷ While the scientific and technological advances bear tremendous impact on human culture and modes of thinking,⁵⁸ the innovations in mass media technology are shaping the people’s knowledge. Today, the information technology is so fast and effective that it triggers instant reactions in peoples around the world.⁵⁹

Fortunately, the Church has never lost sight of the influence of this explosion on humanity. Pope Pius XI, in his encyclical, *Divini illius Magistri*, called for vigilance over books, cinema, and radio that could adversely influence youths.⁶⁰ He observed that these

⁵⁵ T.J. GREEN, “The Normative Role of Episcopal Conference in the 1983 Code,” in REESE (ed.), *Episcopal Conferences*, p. 157.

⁵⁶ See *GS*, no. 2.

⁵⁷ See *ibid.*, no. 4.

⁵⁸ See *ibid.*, no. 5.

⁵⁹ See *ibid.*, no. 6.

⁶⁰ PIUS XI, Encyclical on Christian Education of the Youth *Divini illius Magistri*, 31 December 1929, in *AAS*, 22 (1930), pp. 81-82; English trans. in NATIONAL CATHOLIC WELFARE

instruments could be immensely useful in the field of education if directed by sound principles; on the other hand, they can also be seriously detrimental to human well-being.⁶¹ In a later encyclical, *Vigilanti cura*,⁶² the same pope praised the efforts of bishops and Christian people, especially in the United States of America, where the “Legion of Decency”⁶³ had waged a holy war against “the abuse of the art of the cinema.”⁶⁴ The pope left no one guessing how urgent and absolutely necessary it is for the Church to strive to make the best use of the media of communication in its mission in serving people and in spreading the kingdom of Jesus Christ.⁶⁵

CONFERENCE (=NCWC), *Encyclical Christian Education of Youth*, Washington, DC, NCWC, 1936, p. 34.

⁶¹ “Validissima eiusmodi ad quidvis evulgandum subsidia, quae, si ad sana principia apte regantur, eruditioni magnopere atque educationi prodesse queant, saepe -proh dolor- provehendis vitiorum illecebris sordidisque quaestibus serviunt” (*Divini illius Magistri*, in *AAS*, 22 [1930], p. 82; English trans in NCWC, *Christian Education of Youth*, pp. 34-35).

⁶² See PIUS XI, Encyclical on Motion Pictures *Vigilanti cura*, 29 June 1936, in *AAS*, 28 (1936), pp. 249-263; English trans. in *The Papal Encyclicals 1903-1939*, compiled by C. CARLEN, [Wilmington, NC], McGrath Publishing Company, 1981, pp. 517-523.

⁶³ In April 1934, the bishops of the United States of America formed an organisation called the *National Legion of Decency*. The principal aim of the organisation was to discourage the production and patronising of films which are not worthy of the rational nature of the human person and not morally healthy. The organisation was charged with combating indecency and immorality in entertainment motion pictures. The Legion reviewed and classified entertainment motion pictures solely from the viewpoint of Christian morality and decency. Today the work of this organisation is subsumed into the United States Conference of Catholic Bishops (USCCB) office for film and broadcasting. For details about the efforts and works of this organisation, see NATIONAL LEGION OF DECENCY, *Motion Pictures Classified by National Legion of Decency, February 1936-November 1948*, New York, NY, National Office, 1948; NATIONAL LEGION OF DECENCY, *Motion Pictures Classified by National Legion of Decency, 1948-1952*, New York, NY, National Office, 1952.

⁶⁴ PIUS VI, *Vigilanti cura*, in *AAS*, 28 (1936), p. 248, English trans. in *The Papal Encyclicals 1903-1939*, p. 517.

⁶⁵ “Siquidem pernecessarium est ac penitus urget id providere atque efficere, ut quidquid ex Dei munere progrediens aetas in humanas disciplinas ac vel in ipsas technicae industriae artes invexerit, ita divinae gloriae, animarum saluti et Iesu Christi propaganda regno reapse inserviat, ut omnes, quemadmodum Ecclesia nos precari iubet, ‘sic transeamus per bona temporalia, ut non

On 16 December 1954, Pope Pius XII established a special commission to deal with the various issues related to motion pictures, radio, and television as they relate to the Christian faith.⁶⁶ He reiterated the Church's stand as regards the means of communication, which are to serve the truth and contribute to the proper education of contemporary civil society:

And so the three principal means of transmitting sounds and pictures over a distance – motion pictures, radio, and television – are not only means of recreation and relaxation, though many listeners and viewers ask nothing more; they are also capable of furthering man's intellectual development and growth in virtue and can make a major contribution to the proper education and development of civil society in our times.⁶⁷

The Second Vatican Council affirmed that, it “is the Church's birthright to use and own any of these media which are necessary or useful for the formation of Christians and for pastoral activity.”⁶⁸ Thus, all the members of the Church must endeavour with resolute spirit, to ensure, without delay, that the means of communication are put to the service of the multiple forms of the apostolate.⁶⁹

Following the conciliar directive,⁷⁰ the Pontifical Council for Social Communication issued an instruction, *Communio et progressio*, to facilitate coordinated

amittamus aeterna” (*Vigilanti cura*, in *AAS*, 28 [1936], p. 251; English trans. in *The Papal Encyclicals 1903-1939*, p. 518).

⁶⁶ See *AAS*, 46 (1954), pp. 783-784. Pope John XXIII, by an Apostolic Letter *motu proprio Boni pastoris*, 22 February 1959 (in *AAS*, 51 [1959], pp. 183-187), raised this commission to the status of a permanent Office of the Holy See joined to the Secretariat of State.

⁶⁷ PIUS XII, Encyclical on Motion Pictures, Radio, and Television *Miranda prorsus*, 8 September 1957, in *AAS*, 49 (1957), p. 776; English trans. in *The Pope Speaks*, 4 (1957), p. 327.

⁶⁸ SECOND VATICAN COUNCIL, Decree on the Means of Social Communication *Inter mirifica*, no. 3, 4 December 1963, in *AAS*, 56 (1964), p. 146; English trans. in FLANNERY1, p. 285.

⁶⁹ See *ibid.*, no. 13, in *AAS*, 56 (1964), p. 149; FLANNERY1, p. 288.

⁷⁰ See *ibid.*, nos. 23-24; in FLANNERY1, p. 292. In order that the general principles and norms of the Second Vatican Council on the means of social communication may be put into

and effective use of the means of communication.⁷¹ It called on conferences of bishops and synods of the Eastern Churches to consult experts in their territories on adapting the instruction “to the needs of the people in their care.”⁷²

While Christ’s faithful are to strive to make the divine message reach all people at all times (c. 211) and to promote and support the mission of the Church (c. 216), the competent authority has the duty to safeguard the integrity and morals of the Church’s teaching in the use of the means of social communication (c. 823, §1). To meet this objective, the Code has prescribed that in expounding Christian teaching on radio or television, the provisions of the bishops’ conference are to be observed (c. 772, §2). Thus, it is the duty of each bishops’ conference to regulate the ministry of the Word that is spread through the latest means of mass communication (c. 823, §2).

In response to this prescript, CBCN treated cc. 772, §2 and 831, §2 together. Through its decree on this matter, the conference directs each diocese to establish a team to be in charge of mass media, with a cleric or religious assigned to a full-time job of mass communication. Studios are to be set up and each diocese is to make use of the time allocated to it for programmes on government radio and television stations. Further, the doctrine and quality of radio and television programmes are to be reviewed before they are released to the public (c. 823, §1). There should be provision for immediate response

effect, the fathers of the council directed the Pontifical Council for Social Communication to issue this pastoral instruction.

⁷¹ See PONTIFICAL COUNCIL FOR SOCIAL COMMUNICATIONS (= PCSC), Pastoral Instruction on the Means of Social Communication *Communio et progressio*, 23 May 1971, in *AAS*, 63 (1971), pp. 593-656; English trans. in FLANNERY1, pp. 293-349. See also PCSC, Pastoral Instruction on Social Communications *Aetatis novae*, 20 February 1992, in *Origins*, 21 (1991-1992), pp. 669, 671-677. This instruction gives a methodical approach to the media as it offers a critical appraisal of its impact upon today’s culture.

⁷² PCSC, *Communio et progressio*, no. 4.

to slander against the Church or distortion of catholic teaching through the media (c. 823, §1); and catholic publications and cassettes in the vernacular should be readily and easily available to people. In addition, the conference directs those in charge of the existing catholic newspapers to improve them in quality and circulation; and that priests, religious and knowledgeable laypersons be encouraged to write religious articles in the Nigerian daily newspapers.⁷³

Canon 772, §2, recognises not just the general importance of means of social communications for expounding Christian teaching, but above all, the fact that these media exercise an influence that reaches far beyond a given diocese. Because of this, the canon assigns the responsibility to the bishops' conference for making rules to be observed in the use of these media.⁷⁴ The effort of CBCN to formulate its directives in a wide range of areas of communication is commendable, since its competence extends to the general ministry of the Word.⁷⁵ However, CBCN did not keep in view the fact that its competence here (see c. 455, §1) is on general ministry of the Word on radio and television, but not the newspapers. In addition, since CBCN treated cc. 772, §2 and 831, §2, together, one would have expected it to provide specific directives on the participation of clerics and members of religious institutes in radio and television programmes which concern catholic doctrine and morals.

⁷³ See CBCN, *PCN*, pp. 26-27.

⁷⁴ See J.A. FUENTES, Commentary on c. 772, §2, in *Exegetical Comm* III/1, p. 106.

⁷⁵ See *ibid.*

3.2.2 – Participation of Clerics and Religious in Radio and Television Programmes

Canon 831, §2 of the 1983 Code enjoins on the bishops' conference the task of determining norms on the prerequisites for clerics and members of religious institutes to take part in radio and television programmes that concern catholic doctrine and morals. There is no doubt that this canon ought to be interpreted in light of c. 772, §2. Canon 772, §2 prescribes that the bishops' conference is to determine the requirements for expounding Christian teaching on radio and television. However, c. 831, §2, obliges the conference to determine the requirements for clerics and members of religious institutes to take part in radio and television programmes which concern catholic doctrine and morals. The Code is here distinguishing when other Catholics (who are neither clerics nor religious) take part in these programmes and when clerics or religious do the same. As one author puts it, "The reason for this distinction arises from the fact that the faithful who are not clerics or religious, in principle, are not answerable to the Church or its authority as such regarding these matters."⁷⁶ The directives of CBCN, when it treated cc 772, §2 and 831, §2,⁷⁷ do not reflect this distinction. One had expected that the discretion required of c. 666⁷⁸ ought to have been clearly indicated. In addition, CBCN has not specified whether every priest is authorised to take part in radio and television programmes and handle issues concerning catholic doctrine and morals. One would have expected norms from CBCN distinguishing "between occasional involvement and

⁷⁶ Ibid.

⁷⁷ See CBCN, *PCN*, pp. 26-27.

⁷⁸ This concerns things harmful to the vocation and dangerous to the chastity of the consecrated persons.

frequent involvement so that stricter requirements can be demanded (for doctrinal competence and technical training to work in such communications media).’’⁷⁹

3.2.3 – Norms for the Catechumenate

With an increase in the number of adult baptisms, especially in mission territories, many ordinaries had requested the Holy See that the various baptismal rites, which were contracted into one order, be to some extent brought back to their ancient form. About six months before the inception of the Second Vatican Council, the Sacred Congregation of Rites issued an instruction authorising the restoration of the catechumenate through which adult catechumens may in the course of appropriate intervals of time corresponding to their progress in catechetical instruction, go on to receive the sacrament of baptism.⁸⁰ The seven stages of this instruction, of a journey toward baptism, were simply lifted almost verbatim from the old rite. The Second Vatican Council was not satisfied with the instruction. The council affirmed that the end of catechumenate is not baptism; rather the catechumenal journey is oriented toward the Eucharist.⁸¹ The Catechumen, while already sharing through faith in the mystery of the death and resurrection of Christ, passes from the old person to the new one made perfect in Christ

⁷⁹ C.J. ERRÁZURIZ, Commentary on c. 831, §2, in *Exegetical Comm III/I*, p. 328.

⁸⁰ “His omnibus rite perpensis atque utilitate restitutionis variorum rituum qui ad institutionem catechumenorum pertinent, recognita, ne tamen usus difformes inducantur, haec Sacra Congregatio Ordinem Baptismi adultorum, quem supra memoravimus, per septem gradus disposuit, quibus, per opportuna temporis spatia, catechumeni adulti secundum progressum institutionis catecheticae, ad suscipiendum Sacramentum Baptismatis tendant” (SACRED CONGREGATION OF RITES, General Decree *Ordo baptismi adultorum*, in *AAS*, 54 [1962], p. 310; English trans. in *CLD V*, p. 402).

⁸¹ See *PO*, no. 5.

by means of a spiritual journey.⁸² Thus, the fathers of Second Vatican Council not only called for the restoration of the catechumenate for adults,⁸³ but they further directed that both “rites of the Baptism of adults are to be revised, not only the simpler rite but also, taking into consideration the restored catechumenate, the more solemn rite.”⁸⁴ The juridical status of Catechumens is to be defined in the new Code of Canon Law (SC, no. 14), while the rites of Christian initiation of adults are to be adapted to the needs of various regions. In virtue of the power conceded by law, the bishops’ conferences can regulate the rites of Christian initiation of adults “within certain defined limits” (SC, no. 22, §2).⁸⁵

In 1972, the Congregation for Divine Worship promulgated the new *Rite of Christian Initiation of Adults*, as directed by the Second Vatican Council.⁸⁶ The rite made provision for various adaptations according to situations and circumstances of different peoples.⁸⁷ Consequently, the Code prescribed that it falls to the bishops’ conference to regulate the catechumenate, determine the obligations of Catechumens, and make provision for their prerogatives.⁸⁸ Going by c. 455, §1, canon 788, §3 requires two things

⁸² SECOND VATICAN COUNCIL, Decree on the Missionary Activity of the Church *Ad gentes* (=AG), 7 December 1965, in *AAS*, 58 (1966), no. 13, p. 964; English trans. in FLANNERY I, p. 827.

⁸³ See SC, no. 64.

⁸⁴ SC, no. 66.

⁸⁵ See also c. 455, §1.

⁸⁶ See CONGREGATION FOR DIVINE WORSHIP [=CDW], *Rite of Christian Initiation of Adults Ordo initiationis christianae adultorum*, editio typica, Civitate Vaticana, Typis polyglottis Vaticanis, 1972. This Rite was promulgated on 6 January 1972, see *AAS*, 64 (1972), p. 252.

⁸⁷ For some changes envisioned by the revised rite, see *ibid.*, nos. 64-65, pp. 29-30.

⁸⁸ “Conferentiae Episcoporum est statuta edere quibus catechumenatus ordinetur, determinando quatenus a catechumenis sint praestanda, atque definiendo quatenus eis agnoscantur praerogativae” (CIC/83, c. 788, §3).

of the conference of bishops: first, to establish norms on what should be done by the Catechumens, and secondly, to determine their prerogatives in these norms. In other words, apart from the duties of the Catechumens, the conference is to provide what rights and prerogative they should enjoy. These are to be determined in light of c. 206, §2 which requires that various prerogatives proper to Christians be accorded to Catechumens.

The Catholic Bishops' Conference of Nigeria responded to c. 788, §3 thus: "The Catholic Bishops' Conference of Nigeria directs that the norms issued by it in the National Directory for Christian Initiation published in 1981 shall be followed."⁸⁹ The *National Directory for Christian Initiation* is a book of five chapters in 127 pages. In this book, the rite of Christian initiation of adults and children above the age of reason is treated in Chapter II, under the following headings: introduction, commentary, pastoral implications, catechesis of adults, and finally, guidelines.⁹⁰ Here the *Ordo Initiationis Christianae Adultorum* is explained with some commentary. However, there is no adequate treatment given to the obligations, rights, and prerogatives of the Catechumens. Generally, the unique texture of the Nigerian situation should have been appropriately considered in the guidelines. In these guidelines, neither the obligations nor the prerogatives of Catechumens are provided for by CBCN, as they are by some other conferences.⁹¹

⁸⁹ CBCN, *PCN*, P. 27.

⁹⁰ See CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, *National Directory for Christian Initiation*, Ibadan, Claverianum Press, [1981], pp. 39-81.

⁹¹ We can draw examples from some bishops' conferences: The INTER-TERRITORIAL CATHOLIC BISHOPS' CONFERENCE OF THE GAMBIA, LIBERIA AND SIERRA LEONE (ITCBCGLSL), prescribes that Catechumens have the obligation of attending mass on the days it is obligatory to do so. They should also undergo a minimum of two years catechumenate. They

3.3 – ON THE SANCTIFYING OFFICE

The normative role of the bishops' conference, according to Cardinal Casaroli's list to the presidents of conferences of bishops,⁹² is most extensive with respect to the Sanctifying Office of the Church regulated in Book IV of the 1983 Code (cc. 834-1253). Nevertheless, the cases on which the conference **must** publish particular complementary norms are few (six canons) compared to the cases they are not obliged to publish particular complementary norms (twelve canons). We shall here examine the cases in which CBCN **must** issue particular complementary norms, namely: catechumenate of adults, adoption, confessionals, engagements, pre-marriage enquiry and publication of banns, and formalities on mixed marriages.

3.3.1 – Norms on the Rite of Christian Initiation of Adults

When the Second Vatican Council gave directives for the restoration of the catechumenate, the vision was that it was to be brought into use at the directives of the local ordinary. Thus, the catechumenate period, intended as a suitable time for instruction, is to be sanctified by sacred rites celebrated at successive intervals (*SC*, no. 64).⁹³ The council fathers allowed for adaptation of those elements of rites of initiation in

equally have the right to be informed in the Christian way of life, instruction in scripture, and basic theology. They have the right to wear medals and a crucifix, to receive blessings (c. 1170), and participate in prayer gatherings (see *Exegetical Comm*, V, p. 354). See also the provision of the CONFERENCE OF CATHOLIC BISHOPS OF INDIA (CCBI), the Latin rite branch, in *Exegetical Comm*, V, pp. 363-364; and that of NEW ZEALAND BISHOPS' CONFERENCE, in *Exegetical Comm*, V, p. 381. Both the CANADIAN CONFERENCE OF CATHOLIC BISHOPS and the SOUTH AFRICAN CONFERENCE OF CATHOLIC BISHOPS, prescribe the signing of the acts of the various steps of the catechumenate as obligatory to the Catechumens.

⁹² See A. CASAROLI, in *Comm.*, 15 (1983), pp. 137-139; English trans. in *CLD* XI, pp. 6-8.

⁹³ "Instauretur catechumenatus adultorum pluribus gradibus distinctus, de iudicio Ordinarii loci in usum deducendus; quo fiat ut tempus catechumenatus, aptae institutioni

use according to circumstances of places and peoples, insofar as they can be adapted to the Christian ritual, according to the provision of law (SC, no. 65).⁹⁴ While the restoration and use of the catechumenate is left to the discretion of the diocesan bishop, the regulation of the rite of catechumenate within certain defined limits, by virtue of the power conceded by law, is the responsibility of the legitimately established conference of bishops.⁹⁵ Following the Second Vatican Council and other post conciliar legislation,⁹⁶ c. 851, 1° of the Code provides that the admission of adults to the catechumenate and its subsequent stages are to be, as far as possible, in accordance with the rite of initiation adapted by the bishop's conference and the particular norms issued by it.⁹⁷ In response to its responsibility as regards c. 851, 1°, CBCN stated that the "issue has been treated in c.

destinatum, sacris ritibus successivis temporibus celebrandis, sanctificari possit" (AAS, 56 [1964], p. 117).

⁹⁴ Articles 37-40 of *Sacrosanctum concilium* had already made provision for this adaptation.

⁹⁵ "Ex potestate a iure concessa, rei liturgicae moderatio inter limites statutos pertinet quoque ad competentes varii generis territoriales Episcoporum coetus legitime constitutos" (SC, no 22, §2, in AAS, 56 [1964], p. 106). See also PAUL VI, *Motu proprio* on the Sacred Liturgy, *Sacram liturgiam*, 25 January 1964, in AAS, 56 (1964), no. 10, p. 143.

⁹⁶ "Qua in re, Conferentiarum Episcoporum erit:

- 1) Aptationes definire, de quibus in art. 39 Constitutionis de sacra Liturgia.
- 2) Sedulo et prudenter considerare quid ex traditionibus ingenioque singulorum populorum opportune admitti possit; ideoque alias aptationes, quae utiles vel necessariae existimantur, Apostolicae Sedi proponere, de ipsius consensu introducendas.
- 3) Propria autem Ritualium particularium iam exstantium elementa, si quae habentur, retinere, dummodo cum Constitutione de sacra Liturgia et necessitatibus hodiernis componi queant, vel ea aptare" (CDW, *Ordo initiationis christianae adultorum*, praenotanda generalia no. 30, §§ 1, 2 and 3, p. 12. See also praenotanda, nos. 64-65, pp. 29-30.

⁹⁷ "[...] adultus, qui baptismum recipere intendit, ad catechumenatum admittatur et, quatenus fieri potest, per varios gradus ad initiationem sacramentalem perducatur, secundum ordinem initiationis ab Episcoporum conferentia aptatum et peculiare normas ab eadem editas" (CIC/83, c. 851, 1°).

788, §3.”⁹⁸ Although cc. 788, §3 and 851, 1° are related, they are treating different things. While the former concerns the subject of the catechumenate, that is the Catechumens themselves, the latter is about the rite of Christian initiation of adults. The conference is required to adapt the rite of Christian initiation of adults to its own circumstances, and issue norms on it, which the diocesan bishops are obliged to observe in their respective dioceses.

The Catholic Bishops’ Conference of Nigeria succinctly captured what the 1983 Code requires of it about adaptation:

By adaptation here we mean using ways and means native to the adult converts in the process of initiating them into the Christian life. Ways which are not only known and legitimate but would also help them grasp the faith for what it is and make it a life to be lived. It is true that the old no longer has complete control over them and the new is not yet sorted out but beneath it all is a principle which says that a pattern of life established over the years is very difficult to throw away ... In practical life, no new mode of behaviour which does not reflect the old by adequately replacing it, can stand the test of time.⁹⁹

Nevertheless, CBCN believes that urbanisation is influencing Nigerian life. Children are born in urban areas; they grow up there and go to school there. Thus, we “cannot go back to dig up the traditional rites of passage in order to adapt.”¹⁰⁰ The conference agrees that whatever forms of rite the Church in Nigeria adapts, it must face some perennial and certain truths, which the conference calls pragmatic considerations:

Our liturgical practices should take into consideration such facts as that the average Nigerian accepts Christianity because of certain changes he observes are or will be his. You can call this the pragmatic approach, if you will, but we should do well to be guided by such pragmatic considerations in our approach to him also. This means that, among other things our initiation rites should be spread over a good length of time – longer rather than shorter ... Our people have

⁹⁸ CBCN, *PCN*, p. 30.

⁹⁹ CBCN, *National Directory for Christian Initiation*, p. 71.

¹⁰⁰ *Ibid.*

not outgrown this sentiment nor should they be forced into abandoning it for the sake of simpler and less time-consuming rites. Everything must be done to underscore the Christian religious symbols and their significance in the African context. Thus all the exorcisms should be retained and if possible perhaps even increased.¹⁰¹

What are more relevant to us here are the guidelines,¹⁰² which treated the catechumenate, admission into it, the rite of renunciation of Satan, and the sequence of sacraments of initiation. According to the guidelines, the rite of catechumenate “emphasises that Christian initiation is entry into a community. The method of achieving this aim consists in preaching the Christian message to the adults progressively in a manner adapted to their mentality and religious situation.”¹⁰³ The rite of admission is best celebrated in a place, among friends and family, where both Christians and non-Christians know the candidate.

It therefore requires a communal action of the local Church with its Bishops, priests, deacons, catechists and all the faithful playing their parts ... It will be futile to introduce the catechumenate without adapting it to social conditions and set-up of the people concerned.¹⁰⁴

The guideline directs that the renunciation of the devil should be a concrete rejection of the local gods and goddesses commonly worshipped in the area, including any resort to oracles in time of trouble. “Correspondingly, the candidates could turn towards the direction of their local pagan shrines and tell all present that they renounce them.”¹⁰⁵

The conference acknowledges that the sequence as provided by the *Rite of Christian Initiation of Adults* is taken for granted; namely, baptism, followed by

¹⁰¹ Ibid., pp. 72-73.

¹⁰² See *ibid.*, pp. 79-81

¹⁰³ Ibid., p. 79.

¹⁰⁴ Ibid., pp. 79-80.

¹⁰⁵ Ibid., p. 80.

confirmation and, lastly, Eucharist. Thus, it “implies then that the Bishop allows his priests to confirm during Christian initiation of adults.”¹⁰⁶

Considering the set up of Nigerian society, the emphasis CBCN places on the idea of community, age grades, and the need to renounce idol worship, where it exists, is commendable. Clearly, CBCN believes in “using ways and means native to the adult converts in the process of initiating them into the Christian life.”¹⁰⁷ However, the conference seems afraid of using traditional elements because people are becoming urbanised; thus, “we cannot go back to dig up the traditional rites of passage in order to adapt.”¹⁰⁸ The conference favours a long period of catechumenate so that “initiation rites should be spread over a good length of time – longer rather than shorter.”¹⁰⁹ Nevertheless, it falls short of stipulating a minimum time for the catechumenate. After more than 24 years since the publication of the *National Directory for Christian Initiation*, there is an urgent need for its revision.

3.3.2 – Notation of Adoption in Baptismal Register

Baptism is the *ianua sacramentorum*, the gateway to all the other sacraments (c. 849). Any act conferring these other sacraments on a recipient who has not received the sacrament of baptism is invalid. Baptism, apart from incorporating a person into Christ and into the Church, constitutes the recipient a person with obligations and rights proper

¹⁰⁶ Ibid., p. 81.

¹⁰⁷ Ibid., p. 71.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., p. 72.

to Christians (c. 96).¹¹⁰ Thus, in doubt, proof of baptism becomes necessary. Canon 877, §1, requires that baptism be carefully registered by the parish priest, without delay. This is the best way to prove that baptism took place. Moreover, registration of baptism can be invaluable in a prejudicial case that lacks other proofs of baptism. Registration of baptism provides valuable records about a person, particularly in Nigeria where many hospitals and clinics do not record the birth of newborn babies; and is helpful even to civil administrations.

María Blanco reports one of the utilities of this tradition of the Church record in the adjudication of a case in a supreme court of Spain thus:

Along these lines, it is interesting to find a judicial decision from Spain's Supreme Court at the beginning of the century in which the claimant, born on February 1, 1869, as demonstrated by a certificate of baptism, proves that, on June 22, 1891 he was 22 years, 4 months and 22 days old. In other words, that since he was not 23 years old yet (after publication of the Civil Code of 1889), he was a minor.¹¹¹

Because of the importance of the record of baptism, in determining the juridical status of an individual and more, the Code prescribes that the name of the baptised, the minister, parents, sponsors, witnesses, place and date of baptism as well as place and date of birth be recorded (c. 877, §1). For an unmarried mother, the mother's name is recorded, if it is publicly known or if she freely asks. Similarly, the name of the father is recorded if the paternity is established (c. 877, §2).

When c. 877, §3 prescribes the notation of adoption in the baptismal register it does not give any specific reason; K. Hart, however explains:

¹¹⁰ See also cc. 204-205, 208-223.

¹¹¹ M. BLANCO, Commentary on c. 877, in *Exegetical Comm* III/1, p. 487.

Paragraph three (c. 877, §3) tries to find a balance between the desirability of a complete record of baptism, which includes the names of the natural parents, and respect for the civil requirements which may demand the concealment of the names of the natural parents.¹¹²

Since civil requirements may not be the same in all countries, the 1983 Code has wisely provided that there must be a ruling of the bishops' conference on the registration of an adopted child in the baptismal register (c. 877, §3).¹¹³ In response to this provision, CBCN decrees that in the case of an adopted child, the names of the adopting parents are to be registered as well as those of the natural parents in accordance with §§ 1 and 2 of c. 877.¹¹⁴ This is a prudent decision since in Nigeria, almost in every situation, the natural parents of adopted children prefer to remain anonymous, because the stigma of illegitimacy follows a person to the grave. It is very important to note that while in many countries children are freely given for adoption without any stigma, in Nigerian culture only the children of unmarried mothers are given for adoption. It is exceptionally rare that one finds the contrary. These mothers choose to remain anonymous because it is repudiating for a woman to give birth to children while unmarried.

Thus, the decree of CBCN on c. 877, §3 implies that in the registration of a child of an unmarried mother, the following are to be documented: the name of the adopted child, his/her date and of place of birth, names of the adopting parents, the minister of

¹¹² K.T. HART, Commentary on c. 877, in *CLSA Comm2*, p. 1065.

¹¹³ In a study carried out in 1976, which gave the summary of the civil laws of several countries on adoption, Nigeria was noted among the nations with no law in which the relationship arising from adoption constitutes a marriage impediment (See *CLD VIII*, p. 634). However, it is very important to note that though Nigeria may not have any written law that makes the relationship arising from legal adoption an impediment to marriage, yet, from our experience of the custom and culture of the people, the relationship arising from legal adoption constitutes an impediment to marriage.

¹¹⁴ See CBCN, *PCN*, p. 30.

baptism, place of baptism, and names of witnesses (c. 877, §1). In addition to these, the maternity of the child is to be registered if it is publicly known or if she freely asks that her name be registered. Further, the paternity is also to be registered if established, either by some public document or by personal declaration (c. 877, §2).

The use of “a child of unmarried mother” (c. 877, §2), as opposed to the notion of illegitimacy mentioned in c. 777, §2 of the 1917 Code, revolves much around the fact that a distinction is no longer made between legitimate and illegitimate children as to the juridical effects. A distinction is made only regarding their characterization,¹¹⁵ that is, those born within marriage and those born outside of marriage. However, the notion of legitimate and illegitimate children is still very much alive in the present Code.¹¹⁶ During the revision of the 1917 Code, “deletion of the canons on legitimacy was suggested, because of the tendency in civil law to consider legitimate and illegitimate children as equal and because the *CIC* no longer sets forth the irregularity due to a birth defect.”¹¹⁷ The argument was that it was unreasonable to retain in the Code the distinction between legitimate and illegitimate children that has no consequence in law.¹¹⁸ The suggestion was

¹¹⁵ See BLANCO, Commentary on c. 877, in *Exegetical Comm* III/1, p. 489.

¹¹⁶ Canon 1137 discusses the notion that children conceived or born of valid or putative marriage are legitimate. The use of legitimacy and illegitimacy in the present Code does not affect any of these children negatively as in the 1917 Code. Canon 1138 discusses the issue of proof when legitimacy is challenged; while c. 1139 discusses the legitimisation of illegitimate children, which is either by subsequent marriage of the parents or by a rescript of the Holy See. Finally, c. 1140 only states the fact of law: as far as *canonical effects* are concerned, legitimated children are equivalent to legitimate children in all respects, unless otherwise expressly provided by law.

¹¹⁷ J. FORNÉS, Commentary on c. 1137, in *Exegetical Comm* III/2, p. 1533.

¹¹⁸ “Nonnulli suggererunt ut cann. 333-335 schematis penitus deleantur sive quia tendentia habetur in iuribus civitatum equiparandi in omnibus filios legitimos, sive quia in novo Codice canonico iam non sustinetur irregularitas ex defectu natalium, ideoque non est ratio retinendi in Codice notiones filiorum legitimorum vel illegitimorum quae nullam consequentiam in iure habent” (*Comm.*, 10 [1978], p. 106).

not accepted by the relevant study group (with a vote of *placet* 1, *non placet* 4, *abstinent*, 2), which emphasised that the notion of illegitimacy is necessary because of the consequences it could have in particular law.¹¹⁹

The 1980 Schema suggested suppression of the canons referring to illegitimacy because of the stigma attached to the notion, so that, where necessary, particular law could make appropriate provision.¹²⁰ This suggestion too was rejected with the argument that, although all the effects of illegitimacy have been removed from universal law, the canons on it remain because they may be applied in particular law; conversely, they highlight the sanctity of marriage in their own way.¹²¹ Thus, c. 877, §3 presents a situation in which the respect the universal law has for particular law is reinforced.

3.3.3 – Norms on Confessionals

Historically, grilles were not used in confessionals until the 16th century. St. Charles Borromeo, Archbishop of Milan (1565-1584), introduced the use of the confessional, as it is known today, in its basic and essential elements. In the Provincial Council of Milan IV (1576), he decreed that every parochial church was to have a

¹¹⁹ “Aliquis Consultor animadvertit hanc notionem adhuc esse necessariam, quia consequentias saltem in iure particulari certo certius habebit. Post brevem discussionem, fit suffragatio an placeat delere cann. 333-335: *placet* 1, *non placet* 4, *abstinent* 2” (*Comm.*, 10 [1978], p. 106).

¹²⁰ “Supprimantur, quia omnes effectus illegitimitatis in novo Schemate ablati sunt et si notio manet, manet adhuc stigma illegitimitatis quod totaliter auferri debet. Ubi opus sit, provideat ius particulare” (PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionis ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a Secretaria et Consultoribus datis*, Città del Vaticano, Typis polyglottis Vaticanis, (Patribus Commissionis stricte reservata) [= *Relatio*], 1981, p. 264). See also FORNÉS, Commentary on c. 1137, in *Exegetical Comm* III/2, p. 1533.

¹²¹ “Etsi omnes effectus illegitimitatis e iure universali sublatis sunt, maneat convenientius canones, quia applicationem in iure particulari habere possunt aliaque ex parte sanctitatem matrimonii suo modo in luce ponunt” (*Relatio*, p. 264).

confessional constructed according to the form described in his 'Book of Instructions'.¹²²

In the Church where confessors out-numbered the confessionals, the law on the confessional must be obeyed by using what Borromeo called *tabella*.¹²³ Subsequently, many other local councils and Churches adopted the use of the confessional according to their various circumstances.¹²⁴ Before the 1917 Code, various documents of the Roman Curia¹²⁵ provided for the use of grilles in confessionals. These documents either were reactions to particular laws on the confessional or to particular circumstances in local Churches. In most of the particular laws relating to the hearing of confessions, more

¹²² F.J. FAZZALARO, *The Place for the Hearing of Confessions; A Historical Synopsis and a Commentary*, CLS no. 301, Washington, DC, The Catholic University of America, 1950, p. 12. See also J.B. O'CONNELL, *Church Building and Furnishing: The Church's Way; A Study in Liturgical Law*, London, Burns & Oates, 1955, p. 72.

¹²³ "In foribus Sacristiae cujusvis Ecclesiae, ubi confessiones audiri, & confessores plures esse solent, affigatur tabella, in qua nomina, & cognomina confessorum approbatorum descripta sint" (*Acta Ecclesiae mediolanensis*, a. S. Carolo Cardinali S. Praxedis archiepiscopo condita, Patavii, Typis Seminarii, Apud J. Manfrè, 1754, p. 10).

¹²⁴ The Council of Naples (1576) not only adopted the use of confessionals but forbade the hearing of confessions of women in the Church before sunrise or after sunset (FAZZALARO, *The Place for the Hearing of Confessions*, pp.16-17). Others are, the Provincial Council of Aix (1585), *ibid.*, p. 18; Provincial Council of Mexico (1585), *ibid.*; the Council of Salerno (1596), *ibid.*, p. 20; in Belgium, the Provincial Council of Malines (1607), *ibid.*, p. 21; the Provincial Council I of Baltimore (1829), *ibid.*, p. 31; the Provincial Council I of Westminster, England (1852), *ibid.*, p. 34; and in addition to the prescript of the *Roman Ritual*, the Provincial Council of Quebec II (1854), had a local regulation that "in summer the confessional seat was to be located in the Church, but in winter it could be placed in the sacristy," *ibid.*, etc.

¹²⁵ See SACRED CONGREGATION OF BISHOPS AND REGULARS, Decree, 22 September 1645, in P. GASPARRI (ed.), *Codicis iuris canonici fontes* (= *Fontes*), 9 vols., Rome, Typis polyglottis Vaticanis, 1923-1939, vol. 4, no. 1774, pp. 770-771. SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, Decree to the Archbishop of Sofia, 22 February 1660, in *Fontes*, vol. 7, no. 4464, p. 22; Response, as to whether the bishop visitor of Tunkin rightly required the confessions of women not to be heard without a screen between the confessor and the penitent, 12 June 1764, in *Fontes*, vol. 7, no. 4542, p. 82; Reminder to Regulars about the law forbidding priests from hearing confessions outside the confessional, 26 August 1780, in *Fontes*, vol. 7, no. 4582, pp. 123-124; Decree, that in the mission of Chan-si in China, the use of confessional grille was obligatory, 17 March 1785, in *Fontes*, vol. 7, no. 4600, p. 150. SACRED CONGREGATION FOR THE HOLY OFFICE, Decree concerning the Vicariate Apostolic of Tunkin, ordering that its decree on the confessional be amended so that priests were forbidden simply to hear confessions of women without a red-screen with small perforations, 28 November 1725, in *Fontes*, vol. 4, no. 784, p. 63. See also FAZZALARO, *The Place for the Hearing of Confessions*, especially pp. 12-47.

emphasis was put on the place for confession and the use of a screen when the confessions of women were being heard. This influenced the universal law regarding the place for confession and the use of confessional.

Thus, the first universal law on the confessional was promulgated in *Rituale Romanum*.¹²⁶ Canon 909, §1 of the 1917 Code stipulated that the confessional seat for hearing the confessions of women must be located in an open and conspicuous place; generally in a church or public oratory, or in a semi-public oratory of women. In §2 of the same canon, it further ruled that the confessional seat should have a fixed perforated grille between the penitent and the confessor.¹²⁷ The 1983 Code, though influenced by past legislation on the use of confessional, de-emphasised the reference to women in regulating the use of the confessional. It recognised the influence of local circumstances on the past legislation. Consequently, while maintaining that the place for hearing confessions is a church or oratory, the present Code has left the regulation relating to the confessional itself to the bishops' conference. The conference is to make sure that there is a proviso for a confessional in an open place, with a fixed grille between the penitent and the confessor.¹²⁸

¹²⁶ "In Ecclesia, non autem in privatis aedibus, confessiones audiat, nisi ex causa rationabili, quae cum inciderit, studeat tamen id decenti, ac patenti loco praestare. Habeat in Ecclesia sedem confessionalem, in qua sacras confessiones excipiat: quae sedes in patenti, conspicuo, & apto Ecclesiae loco posita, crate perforata inter poenitentem, & Sacerdotem sit instructa" (*Rituale Romanum*, Pauli V, Pont. Max, iussu editum, ablatis vero additionibus, juxta Decretum Sacrae Congreg. Indicis sub Benedicto Papa XIII emanatum, Venetiis, Apud Nicholaum Pezzana, 1725, p. 40).

¹²⁷ "[...] §1 Sedes confessionalis ad audiendas mulierum confessiones semper collocetur in loco patenti et conspicuo, et generatim in ecclesia vel oratorio publico aut semi-publico mulieribus destinato. §2 Sedes confessionalis crate fixa ac tenuiter perforata inter poenitentem et confessarium sit instructa" (*CIC/17*, c. 909).

¹²⁸ "§1. Ad sacramentales confessiones excipiendas locus proprius est ecclesia aut oratorium. §2. Ad Sedem confessionalem quod attinet, normae ab Episcoporum conferentia statuuntur, cauto tamen ut semper habeantur in loco patenti sedes confessionales crate fixa inter

In response to c. 964, §2, the Catholic Bishops' Conference of Nigeria decreed that, "Grates as of now are to be used and are to provide adequate privacy."¹²⁹ It further decreed, "Other places may be used for a reasonable and just cause provided due precautions are taken. Causes are, for example, sickness, old age of penitent (etc)."¹³⁰ The purpose of the grille in confessionals is to safeguard "necessary discretion and to guarantee the right of all the faithful to confess their sins without necessarily having to reveal their personal identity."¹³¹ The faithful who so wish, may freely use confessionals with a fixed grille (c. 964, §2). However, for a just reason, the minister can lawfully decide otherwise apart from the case of necessity.¹³² Moreover, the confessor cannot lawfully insist that confession be heard outside a confessional without a fixed grille against the will of a penitent.

3.3.4 – Regulation on Engagements

In the history of marriage, engagement has been a customary prelude to most marriage contracts. Moreover, the "institution of the formal engagement to marry has

paenitentem et confessarium instructae, quibus libere uti possint fideles, qui id desiderent. §3. Confessiones extra sedem confessionalem ne excipiantur, nisi iusta de causa" (CIC/83, c. 964).

¹²⁹ CBCN, PCN, p. 32.

¹³⁰ Ibid. A reasonable and just cause is to be based on pastoral reason. See JOHN PAUL II, Apostolic letter *motu proprio Misericordia Dei*, no 9a, 7 April 2002, in *Comm.*, 34 (2002), p. 10; English trans. in *Origins*, 32 (2002-2003), p. 15.

¹³¹ T. RINCÓN, Commentary on c. 964, in CAPARROS et al. (eds.), *Code of Canon Law Annotated*, 2nd ed., p. 737.

¹³² "D. Utrum attentio praescripto c. 964, §2, CIC sacramenti minister, iusta de causa et excluso casu necessitatis, legitime decernere valeat, etiamsi poenitens forte aliud postulet, ut confessio sacramentalis excipiat in sede confessionali crate fixa instructa.

R. *Affirmative*" (PONTIFICAL COUNCIL FOR THE AUTHENTIC INTERPRETATION OF LEGISLATIVE TEXTS (= PCAILT), Response, 16 June 1998, approved by the Supreme Pontiff on 7 July 1998, in *AAS*, 90 [1998], p. 711. See also *Code of Canon Law Annotated*, pp. 1628 and

enjoyed a long canonical tradition.”¹³³ When examined from the contractual aspect, the essential element of engagement is “the promise of future marriage itself. This promise, so all canonists agree, differs from a *mere* proposal or desire to enter into espousals.”¹³⁴ It is consensual in origin and content and linked to the will to marry. “It is a unilateral or bilateral commitment (a promise) supported by a will to enter into marriage in the future with a certain and determined person.”¹³⁵ Thus, one who sincerely and seriously makes this promise, “not only gives expression to his resolve but also manifests his intent to oblige himself, to come under some obligation, so that on failure to fulfil, he will be acting contrary to some virtue, be it fidelity or justice.”¹³⁶ To this effect, there is a promise of marriage if it is bilateral; and this “promise may be called espousal, plight, troth, betrothal or engagement.”¹³⁷

The 1917 Code prescribed that a promise of marriage (engagement) was invalid in either forum, unless it was put in writing and signed by the parties, and counter-signed either by the pastor or the local ordinary, or at least, by two witnesses.¹³⁸ This canon failed to put in perspective the role of particular laws, civil or customary, prevalent in

1629). This provision is reaffirmed in *Misericordia Dei*, no. 9b, 7 April 2002, in *Comm.*, 34 (2002), p. 10; English trans. in *Origins*, 32 (2002-2003), p. 15.

¹³³ J.I. BAÑARES, Commentary on c. 1062, in *Exegetical Comm* III/2, p. 1105.

¹³⁴ C.F. WRZASZCZAK, *The Betrothal Contract in the Code of Canon Law (Canon 1017)*, CLS no. 326, Washington, DC, The Catholic University of America, 1954, p. 97.

¹³⁵ BAÑARES, Commentary on c. 1062, in *Exegetical Comm* III/2, p. 1105.

¹³⁶ WRZASZCZAK, *The Betrothal Contract*, p. 97.

¹³⁷ BAÑARES, Commentary on c. 1062, in *Exegetical Comm* III/2, p. 1106.

¹³⁸ “Matrimonii promissio sive unilateralis, sive bilateralis seu sponsalitia, irrita est pro utroque foro, nisi facta fuerit per scripturam subsignatum a partibus et vel a parrocho aut loci Ordinario, vel a duobus saltem testibus” (*CIC/17*, c. 1017, §1).

various places. The 1983 Code, in contrast, recognised that there might be varieties of cultural, customary, or civil *fora* of engagement. It accords importance to particular law prevailing in diverse cultures. Accordingly, the legislator remits the regulation of engagements to the particular law that each conference of bishops should establish.¹³⁹ Thus, the particular law enacted by conference of bishops, after considering the customs and civil laws of the place, would govern the practice of engagement.¹⁴⁰

In response to the provision of c. 1062, §1, CBCN decrees, “The stipulation of this canon does not apply in Nigeria.”¹⁴¹ This statement is not to be interpreted wrongly. By this statement, the conference does not mean that there is no engagement in Nigeria. Engagement is a prelude to a customary marriage in Nigeria. It is a grave and ethically binding promise to marry among the Igbo people of Nigeria. Nevertheless, it does not give rise to a legally enforceable right to marriage. The disappointed party can always lay claim to what has been spent on the party that breaks the promise. The party breaking the promise has no right to claim anything from the faithful party. The CBCN statement only confirms the fact that there is no canonical engagement in Nigeria. Though, there is no canonical consequence arising from whatever type of engagement that is practiced in Nigeria, the natural right to seek redress holds sway for the aggrieved party (c. 1491).

¹³⁹ See BAÑARES, Commentary on c. 1062, in *Exegetical Comm* III/2, p. 1106.

¹⁴⁰ “Matrimonii promisso sive unilateralis sive bilateralis, quam sponsalia vocant, regitur iure particulari, quod ab Episcoporum conferentia, habita ratione consuetudinum et legum civilium, si quae sint, statutum fuit” (CIC/83, c. 1062, §1). The *Code of Canons of the Eastern Churches* has similar provision. See CCEO, c. 782.

¹⁴¹ CBCB, PCN, p. 33.

3.3.5 – Pre-Marriage Enquiry and Publication of Banns

There has been a very long tradition in the Church, which ensured that before marriage was celebrated nothing stood in the way of its valid and licit celebration.¹⁴² Thus, to ascertain that the parties are free to marry, with nothing standing in the way of a valid and lawful celebration, an enquiry was to be carried out. The enquiry was meant to establish the freedom from invalidating impediments (*CIC/17*, cc. 1067-1079). Although the 1917 Code of Canon Law contained comprehensive directives on those things, which were to be taken care of, especially on the publication of the banns of marriage, before any marriage took place, the Code also left it to the local ordinary to give specific norms on how the pre-nuptial enquiry was to be carried out by the pastors.¹⁴³

The Congregation for the Sacraments charged the ordinaries to diligently see to it that the prescripts of law were exactly observed; they were to admonish the violators of their duty, if necessary, by canonical sanctions.¹⁴⁴ The congregation provided all the details of the marriage enquiry in *De disciplina sacramentorum* and an appendix that followed it,¹⁴⁵ which provided the questions to be asked of the parties and described how the banns were to be published.

¹⁴² Canon 1019, §1 of *CIC/17* reads: “Antequam matrimonium celebretur, constare debet nihil eius validae ac licitae celebrationi obsistere.”

¹⁴³ Canon 1020, §3 of *CIC/17* prescribed thus: “Ordinarii loci est peculiare normas pro huiusmodi parochi investigatione dare.”

¹⁴⁴ See SACRED CONGREGATION FOR THE SACRAMENTS, Instruction on Proof of Freedom to Marry and on Giving Notice of Marriage *Iterum conquesti*, 4 July 1921, in *AAS*, 13 (1921), no. 6, p. 348; English trans. in *CLD* I, p. 498. See also of this same Congregation, Instruction on the Rules to be Observed by the Pastor in Conducting the Canonical Investigation before Admitting the Parties to the Celebration of Marriage *Sacrosanctum matrimonii*, 29 June 1941, in *AAS*, 33 (1941), no. 12, p. 306; English trans. in *CLD* II, p. 264.

¹⁴⁵ See *AAS*, 33 (1941), pp. 297-319; English trans. *CLD* II, pp. 253-276.

The 1983 Code has softened the rigour of the old prescript in c. 1067:

The Bishops' Conference is to lay down norms concerning the questions to be asked of the parties, and concerning the publication of marriage banns or other appropriate means of enquiry to be carried out as a pre-requisite for marriage. When he has successfully observed these norms the parish priest may proceed to assist at marriage.¹⁴⁶

By assigning this responsibility to bishops' conference, the means and technicalities for carrying out the universally obligatory pre-nuptial enquiry become decentralised.

The decentralization of the normative process in this area seems in every way appropriate because the particular legislator is closer to the uses and customs of each nation. Yet, considering that marriages are often celebrated between parties from different dioceses in a country, it also seems positive and useful to assign jurisdiction to the Bishops' Conference.¹⁴⁷

The Catholic Bishops' Conference of Nigeria, in response to c. 1067, prescribes norms for questioning the parties, the publication of banns, and other means of enquiry. Regarding questions to the parties, the parish priest or his assistant is personally to interview the intending spouses separately. The parties are to answer the questions under oath, unless it is certain they are trustworthy. Either the parish priest or his assistant is to record the enquiry as accurately as possible. The questions put to the parties are provided in the *Particular Complementary Norms* of CBCN.¹⁴⁸ The form of these questions can be prepared by each diocese. Three months mandatory pre-marriage instruction is required; and a certificate of completed instruction should be presented before the wedding is celebrated.¹⁴⁹ Apart from the questioning of the parties, it is for the bishops' conference to

¹⁴⁶ "Episcoporum conferentia statuat normas de examine sponsorum, necnon de publicationibus matrimonialibus aliisque opportunis mediis ad investigationes peragendas, quae ante matrimonium necessaria sunt, quibus diligenter observatis, parochus procedere possit ad matrimonio assistendum."

¹⁴⁷ T. RINCÓN-PÉREZ, Commentary on c. 1067, in *Exegetical Comm* III/2, p. 1126.

¹⁴⁸ See Appendix II.

¹⁴⁹ See CBCN, PCN, pp. 34-35.

determine other ways to establish that nothing stands in the way of licit and valid celebration of marriage. One of the other ways is through the publication of banns. Some of the conference's norms for the publication of banns lack basic logic and so are confusing: In no. 1 of the norms, CBCN states:

The publication of banns is the traditional way of making the catholic community aware of the coming marriage and of giving the community the opportunity of manifesting reasonable objections to the marriage and of informing the pastor of any impediment.¹⁵⁰

This is a very good explanation; but is it consistent with the subsequent norms? This we have to see as we examine the other norms. The no. 2 of the norms reads thus:

The banns are to be sent to the home parish of the parties and are to be published for at least three consecutive Sundays in the church of the town of origin of the parties [and] in the church of the place where the parties are actually residing.¹⁵¹

There is confusion here as to which is the home parish and which is the church of the town of origin. Are these different or do they refer to the same parish?

The no. 3 norm directs that "Publication of the banns in the bulletin satisfies the obligation in no. 2. Also fixing the names on the notice board is acceptable."¹⁵² The prescript of no. 3 is not very clear. There are two obligations in no. 2 norm: a) to send the banns to the home parishes and the parishes where the parties are presently residing, b) to publish the banns for, at least, three consecutive Sundays. This no. 3 norm can satisfy only one of these obligations, namely the obligation of publication. It is not clear how publication in the bulletin satisfies sending the banns to the home parish and the church where the parties actually reside, unless the banns are published in those parishes.

¹⁵⁰ Ibid., p. 35.

¹⁵¹ Ibid.

¹⁵² Ibid.

Very likely, what CBCN means here is that the publication of the banns in the parish bulletins, of the said churches, satisfies the regular custom of announcing the names of the parties during Masses. If this is the case, and we believe it is, the conference lost sight of its objective in the no. 1 norm of this prescript, which is to create awareness among the catholic community and to give them the opportunity to manifest reasonable objection to the pastor. One of the objectives for which the Code committed to the bishops' conference the responsibility of determining how to carry out the publication of banns is to take care of the differences in circumstances, culture, and custom in various places. The Catholic Bishops' Conference of Nigeria forgets that it is legislating for a society, the majority of which lack the ability to read and write. When the vast majority cannot read and write, a community is ill equipped to manifest any "reasonable objections to the marriage," if the banns are only published in the bulletin or fixed on the board.

The no. 4 norm is contextual to the Nigerian situation. Here CBCN prescribes that parish priests and their associates are to be punctual in executing the banns and "should not use the banns as a means to collect levies and other contributions."¹⁵³ This prescript reflects the Nigerian situation where some parish priests use the occasion of the banns to collect outstanding levies and contributions the parties had not paid. Pastors are to be mindful that they ask for nothing beyond the offering, which are determined by the competent authority, and must always assure that the needy are not deprived of the help of the sacraments because of poverty (c. 848). The bishops of each ecclesiastical province in Nigeria are to make sure that they fulfil their obligation to implement the provision of

¹⁵³ Ibid.

c. 1264;¹⁵⁴ and make sure that the prescripts they issue on the matter are faithfully observed.

The no. 5 norm sets the time lines for the sending of the banns and the reply to them: “After 6 weeks of sending out banns and no reply comes, a reminder is to be sent. At the expiry of another 6 weeks, the priest can approach the local ordinary for permission to go ahead with the [celebration] of the marriage.”¹⁵⁵ This is a very wise prescript because it takes care of the banns, which might be withheld because of unpaid levies and contributions. In norm no. 6, CBCN directs that the “reply to the banns should be made with an authentic document, duly signed and sealed with parish stamp by the parish priest or vicar.”¹⁵⁶ This prescript recalls the importance of the requirements for the validity of a juridical act (c.124, §1; *CCEO*, c. 931, §1).

The Catholic Bishops’ Conference of Nigeria also provides for other mean of enquiry. It prescribes that, should doubts remain after the questioning of the parties and the publication of banns, the parents of the parties are to be interviewed under oath.¹⁵⁷ If doubt persists, “the parish priest or his assistant is to use any other opportune and prudent means to satisfy himself about the requirements for a valid and lawful celebration of marriage and about the reasonable hope of the success of the marriage.”¹⁵⁸ In case of a

¹⁵⁴ The bishops of each ecclesiastical province are to fix taxes (for their territories) for acts of executive authority, which grants a favour or for the execution of rescripts from the Apostolic See. The Holy See must approve these taxes. They are also to determine the offerings on the occasion of the administration of the sacraments and sacramentals for their subjects (c. 1264). See also c. 1181, regarding preferential treatment and marginalisation of the poor.

¹⁵⁵ CBCN *PCN*, p. 35.

¹⁵⁶ *Ibid.*

¹⁵⁷ See *ibid.*

¹⁵⁸ *Ibid.*, p. 36.

mixed marriage, the parish priest or his assistant must see to it that the requirements stipulated by law are implemented.

3.3.6 – Declarations and Promises in a Mixed Marriage

At one time, the Church severely (*severissime*) prohibited mixed marriages between Catholics and those considered as heretics or schismatics. This was reflected in the 1917 Code, which proscribed a marriage between two baptised persons, one a Catholic, and the other belonging to a Christian denomination not in communion with the Catholic Church. Such a marriage was regarded as forbidden by divine law, if there was danger to the faith of the catholic party and of the children.¹⁵⁹ The 1917 Code “based its prohibition of mixed marriages on the impedient impediment of mixed religion (see *CIC/17*, cc. 1060-1064). To enter a mixed marriage lawfully, a Catholic had first to be dispensed from this impediment.”¹⁶⁰ Nevertheless, the Church did not dispense from the impediment of mixed religion unless some precautions were taken. Thus, for it to be dispensed, there were to be grave causes; the non-catholic party did not constitute danger to the faith of the catholic party and both parties agreed all the children would be baptised as Catholics and so educated; there was moral certitude the precautions would be implemented; and finally, these precautions were to be in writing.¹⁶¹ Dispensation from the impedient impediment of mix religion did not include a dispensation from the

¹⁵⁹ “*Severissime Ecclesia ubique prohibet ne matrimonium ineatur inter duas personas baptizatas, quarum altera sit catholica, altera vero sectae haereticae seu schismatica adscripta; quod si adsit perversionis periculum coniugis catholici et prolis, coniugium ipsa etiam lege divina vetatur*” (*CIC/17*, c. 1060).

¹⁶⁰ J.P. BEAL, Commentary on c. 1124, in *CLSA Comm2*, p. 1344.

¹⁶¹ See *CIC/17*, c. 1061.

canonical form of marriage (*CIC/7*, c. 1099). Most of the rigorous norms on mixed marriages have been significantly modified since the Second Vatican Council.¹⁶² The post conciliar revision of the norms on mixed marriages has shaped the prescripts promulgated in the 1983 Code on the matter.

Canon 1124 of the 1983 Code provides that in cases of a mixed marriage, there must be an express permission of the competent authority before its celebration. According to c. 1125, the competent authority to grant this permission is the local ordinary, who is not to grant it unless the catholic party makes certain declarations and promises at the appropriate time as provided by law.¹⁶³ The non-catholic party is to be informed of these declarations and promises in good time to be truly aware of the obligations of the catholic party (c. 1125, 2°). These declarations and promises are necessary in mixed marriages and the catholic party cannot be dispensed from them. The

¹⁶² Of important note is the decree of the Second Vatican Council (regarding mixed marriage) that exempts marriages between Eastern Catholics and baptised Eastern non-Catholics from the obligation *ad validitatem* of the canonical form (*OE*, no. 18). This is the only prescript of the Second Vatican Council on mixed marriage. Some notable subsequent provisions are: CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Matrimonii sacramentum*, 18 March 1966, in *AAS*, 62 (1970), p. 235-239; English trans. in *CLD* VI, pp. 592-596, which upholds that canonical form is obligatory for the validity of mixed marriages. PAUL VI, *Motu proprio De episcoporum muneribus*, 15 June 1966, in *AAS*, 58 (1966), pp. 467-472; English trans. in *CLD* VI, pp. 394-400, which reserves to the Holy See the dispensation from the canonical form of marriage. CONGREGATION FOR THE ORIENTAL CHURCHES, Decree *Crescens matrimoniorum*, 22 February 1967, in *AAS*, 59 (1967), pp. 165-166; English trans. in *CLD* VI, pp. 605-606, which applies the provision of *OE*, no. 18, to marriages between Catholics of the Latin rite and baptised Eastern non-Catholics. PAUL VI, *Motu proprio Matrimonia mixta*, 31 March 1970, in *AAS*, 62 (1970), pp. 257-263; English trans. in *CLD* VII, pp. 711-717, which granted local ordinaries the faculty to dispense from the canonical form in mixed marriages. PONTIFICAL COMMISSION FOR THE INTERPRETATION OF THE DECREES OF SECOND VATICAN COUNCIL, Response, 11 February 1972, in *AAS*, 64 (1972), p. 397; English trans. in *CLD* VII, p. 750, which, regarding dispensation from canonical form, equates the marriage of a Catholic to a defected Catholic with a mixed marriage. Response, 9 April 1979, in *AAS*, 71 (1979), p. 632; English trans. in *CLD* IX, p. 659, which gives the diocesan bishop the faculty to add invalidating clauses to limit the scope of dispensation from canonical form in mixed marriages. See also R. NAVARRO-VALLS, Commentary on c. 1124, in *Exegetical Comm* III/2, p. 1505.

¹⁶³ The catholic party is to declare that he/she is prepared to remove dangers of defecting from the faith, and is to make sincere promise to do everything, in his/her power, to ensure that all the children are baptised and brought up in the Catholic Church. See *CIC/83*, c. 1125, 1°.

bishops' conference is to prescribe the manner in which the declarations and promises are to be made, how they are established in the external forum, and how the non-catholic party is to be informed of them (c. 1126).

In response to this provision, CBCN determines that the declarations and promises required by cc. 1125 and 1086, §2 are to be made in writing, under oath, before the parish priest or his representative and the non-catholic party. At least a parent or a very close relation of the Catholic and the non-catholic party are to be present. The parish priest or his representative, together with the non-catholic party and the parents or close relatives are to sign as witnesses after the document, signed by the catholic party, has been clearly explained to them.¹⁶⁴ The conference also provides a format¹⁶⁵ that makes it easier to record the declarations and promises of those who cannot read and write. It is customary in Nigeria for those who cannot read and write to attach their right thumbprint against their names after the document has been clearly explained to them. To be able to establish that the provision for declarations and promises by the catholic party was in fact followed, the "original of the document is to be preserved in the parish archives while an authentic copy is to accompany the application for the permission or dispensation for a mixed marriage."¹⁶⁶ The decree of the conference makes publication of banns compulsory for mixed marriages: "For mixed marriages, disparity of cult or mixed religion banns must be published, and due investigations carried out."¹⁶⁷ Although disparity of cult is not

¹⁶⁴ See CBCN, *PCN*, p. 37.

¹⁶⁵ See *ibid.*, pp. 37-38.

¹⁶⁶ *Ibid.*, p. 38.

¹⁶⁷ *Ibid.*

a mixed marriage in the strict sense, CBCN provides a format for applying for dispensation from the impediment of disparity of cult.

The customs of marriages are as diverse as are the people of Nigeria. Thus, the provision of c. 1126 reflects the principle of subsidiarity whereby the universal law remits to particular laws matters that are handled more appropriately by the competent authorities closer to the culture and customs of their peoples. Nevertheless, compelling the non-catholic party, the parents or close relatives to sign the written declaration of the catholic party goes contrary to c. 1, which limits the scope of the 1983 Code to members of the Latin Church. One expected that the marriage broker, or what we call “*Onye aka ebe*,” should have been effectively used in this regard.

3.4 – ON THE TEMPORAL GOODS OF THE CHURCH

The Church, which is both a spiritual communion and a visible society, has always maintained the right to acquire, possess, and administer temporal goods. The various ways in which the Church did this depended on the time, place and circumstances.¹⁶⁸ With time, some of the customs and practices regarding acquisition of ecclesiastical goods were discontinued. Others found their way into *De bonis Ecclesiae temporalibus*, of Book III, in the 1917 Code, particularly in Title XVII, *De bonis ecclesiasticis acquirendis* (CIC/17, cc. 1499-1517).

¹⁶⁸ For a historical survey of the right of the Church to acquire temporal goods, see J.A. GOODWINE, *The Right of the Church to Acquire Temporal Goods*, CLS no. 131, Washington, DC, The Catholic University of America, 1941, pp. 56-98. A good historical insight regarding how the needs of the Church are provided for can be gleaned also from J. SSERUNJOGLI, *Self-Support of the Local Church Based on Canon 222, §§1-2, and the Apostolic Exhortation Ecclesia in Africa*, JCD diss., Rome, Pontificia Universitas Urbaniana, 1998, particularly pp. 1-107.

In the 1983 Code, the financial organisation and administration of the Church's temporal goods "follows the lines of the basic principles and juridical techniques that were generally contained in the *CIC/17*."¹⁶⁹ Nevertheless, they are interpreted according to the mind and principles of the Second Vatican Council. In this part of our discussion, our focus will be on those issues that concern the temporal goods of the Church, for which CBCN must provide complementary norms. They are support to the Church in response to appeal, regulation of benefices, acts of extraordinary administration, and leasing of church goods.

3.4.1 – Support of the Faithful to the Church in Response to Appeals

Ownership of goods belongs to the juridical person that has lawfully acquired them (c. 1256). As a juridical person, the Church can acquire temporal goods in any way that is lawful, either by natural or positive law (c. 1259). It does this in various ways other than out of the strictly juridical obligation of the faithful.

There is at present an ecclesiastical sense that the ordinary source of income for the Church is from the offerings of the faithful and is not a response to a strictly juridical obligation; it consists of goods freely offered, either voluntarily or in response to a request by the appropriate authority. Contrary to taxation, in this case there is no true juridical obligation to contribute goods, although the general obligation to contribute to the Church's needs continues in force (c. 222, §1).¹⁷⁰

During the revision of the 1983 Code, the consultors recognised that free offerings, rather than taxation, had priority of place in sourcing for funds in the Church. The present c. 1262 was placed after c. 1263 on taxation, in the earlier schema. Their positions were reversed in the final draft "precisely to avoid the impression that taxation, rather than

¹⁶⁹ M.L. ALARCÓN, Introductory commentary on Book V of the 1983 Code, in *Code of Canon Law Annotated*, p. 963.

¹⁷⁰ D. TIRAPU, Commentary on c. 1262, in *Exegetical Comm IV/1*, p. 52.

free-will responses to fund-raising appeals, is the preferred mode of acquisition.”¹⁷¹ Among the recognised ways in church law, by which the Church acquires temporal goods, are free donations (cc. 1261 and 1267), appeals (c. 1262), taxation (cc. 1263 and 1264), fund raising (c. 1265), prescription (c. 1268), income from existing goods (cc. 1271 and 1274), and contracts and payments (c. 1290). Thus, greater emphasis is placed on voluntary offerings rather than on taxation for the acquisition of funds.

In almost all cases in the 1917 Code, the diocesan bishop (the local ordinary) regulated the acquisition of temporal goods in his diocese, except for cases where the provincial council had set fees for the entire ecclesiastical province.¹⁷² The provision of the 1983 Code that the bishops’ conference regulates the appeals (c. 1262), which is one of the ordinary means of raising funds for the Church, is an innovation in church law. In response to this provision, CBCN has decreed, from the wide investigations conducted into the matter, that it is satisfied and gives approval to the various methods adopted in the country as of now.¹⁷³ It would have been interesting to know the various methods adopted by the dioceses in Nigeria. Unfortunately, CBCN mentioned none of them. One might surmise that these methods are so diverse that the bishops did not find a common ground for legislation but left each one with his own method. The decree of CBCN regarding c. 1262 reflects the caution the bishops’ conferences have to exercise in avoiding undue interference into the legitimate competency of diocesan bishops in patrimonial matters. Consequently, the majority of the bishops’ conferences that have

¹⁷¹ R.T. KENNEDY, Commentary on c. 1262 (footnote 33), in *CLSA Comm2*, p. 1461. Cf. also *Comm.*, 12 (1980), p. 402 and 16 (1984), pp. 28-30; *Relatio*, p. 282.

¹⁷² Cf. *De bonis ecclesiasticis acquirendis*, especially *CIC/17*, cc. 1503-1517.

¹⁷³ See CBCN, *PCN*, p. 42.

laid down norms on this matter have left it to the diocesan bishops to determine the modalities for appeals for funds in their own dioceses.¹⁷⁴ The present situation strengthens the stance of the critics with respect to c. 1262, that the powers of the bishops' conferences were excessive in view of the legitimate competency of the diocesan bishop.¹⁷⁵ In the present situation, the degree of coordination between particular Churches envisaged by the Commission for the Revision of the 1983 Code¹⁷⁶ is lacking in almost all the decrees of the bishops' conferences on c. 1262.

The Catholic Bishops Conference of Nigeria should have determined that each diocesan bishop regulates appeals in his diocese since in "accord with canon 1258, the term 'Church' in this canon (c. 1262) refers to public juridical persons"¹⁷⁷ and not exclusively to the diocese. That CBCN is "satisfied and gives approval to the various

¹⁷⁴ Cf. the legislation of some conferences of bishops. For Canada, norms are to be determined in each diocese by the diocesan bishop (see *Exegetical Comm* V, p. 342). For England and Wales, long-standing customs in dioceses obtain the force of law (see *ibid.*, p. 350). For Gambia, Liberia, and Sierra Leone, the mandate of the local bishop is required (*ibid.*, p. 358). For India, norms are to be drawn at the regional or diocesan level (see *ibid.*, pp. 368-369). For Ireland which reflected the voluntary emphasis placed on the contribution to the Church, the matter is left to each individual diocesan bishop (see *ibid.*, p. 376). For New Zealand, more detailed norms are to be determined in each diocese by the diocesan bishop (see *ibid.*, p. 385). For the Philippines, permission is to be given in writing by the competent authority (see *ibid.*, p. 428). For Scotland, the matter is left to the determination of each diocesan bishop (see *ibid.*, p. 436). For South Africa, norms are to be determined by the diocesan bishops of each province for their dioceses (see *ibid.*, p. 450). For the United States, the diocesan bishops are to establish norms (see *ibid.*, p. 1816).

¹⁷⁵ "Plures animadvertunt in schemate nimiam potestatem tribui Episcoporum Conferentiis circa aliqua instituta, ita ut instauretur aliquod ius vigilantiae supra Episcopos, quod quidem intolerabile videtur attentis sive principiis doctrinalibus sive consecrariis practicis" (*Comm.*, 12 [1980], p. 391). See also TIRAPU, Commentary on c. 1262, in *Exegetical Comm* IV/I, p. 53.

¹⁷⁶ "Consultores concordantes sunt ut e Schemate expungatur quicquid implicare possit vigilantiam Conferentiae supra Ecclesias uti pastores ordinarii et immediati. Attamen, attentis documentis Concilii Vat. II, praevideri debent quaedam normae, quibus melior coordinatio assequatur ope Episcoporum Conferentiarum circa regimen bonorum ecclesiasticorum quod attinet ad peculiaria quaedam instituta" (*Comm.*, 12 [1980], p. 391).

¹⁷⁷ KENNEDY, Commentary on c. 1262, in *CLSA Comm2*, p. 1461.

methods adopted in the country as of now” is neither a common concrete norm nor a reflection of the envisaged degree of coordination between the various dioceses of the country.

3.4.2 – Regulation of Benefices

A benefice was defined in church law as a juridical entity erected in perpetuity by the competent ecclesiastical authority consisting of a sacred office and the right to receive profit from the endowment attached to the office.¹⁷⁸ The experiences related to benefices in the Church have not always been positive.¹⁷⁹ The term derives from the grants of land, made in the early centuries, by temporal princes. These grants were made to their soldiers in reward for services.¹⁸⁰

For many centuries, immovable goods constituted the endowment of benefices. However, with the loss of the territorial patrimony of the Church through confiscation, canon law enlarged the idea of benefices, making it applicable to many entities, which

¹⁷⁸ “Beneficium ecclesiasticum est ens iuridicum a competente ecclesiastica auctoritate in perpetuum constitutum seu erectum, constans officio sacro et iure percipiendi redditus ex dote officio adnexos” (CIC/17, c. 1409).

¹⁷⁹ For a good presentation of the history of benefices in the Church, see H. GOLDEN, *Parochial Benefice in the New Code*, CLS no. 10, Washington, DC, The Catholic University of America, 1921; J.J. HAYDT, *Reserved Benefices*, CLS no. 161, Washington, DC, The Catholic University of America, 1942. Yet, it is equally important to read the works of certain authors, who are critical of the Church, as represented in Paolo Sarpi. See P. SARPI, *History of Benefices and Selections from the History of the Council of Trent*, Newly translated and edited, with an Introduction by P. BURKE, New York, Washington Square Press, 1967.

¹⁸⁰ According to Sarpi: “At this time, the princes distributed the lands of the State to soldiers ... These lands were called *fiefs* in the Frankish and Lombard languages, and in Latin, which was not yet totally extinct, they were called *beneficia*, because the prince gave them out of beneficence. Shares of Church property, or rather the right to such shares, were also called “benefices”, because they were given by the prince, like bishoprics, or by the bishop with the prince’s consent, like the other benefices, and because the clergy were soldiers of the faith and carried on spiritual warfare” (SARPI, *History of Benefices*, p. 21. Cf. also GOLDEN, *Parochial Benefice in the New Code*, p. 3).

were not included under the old idea of a benefice.¹⁸¹ With time, the suppression of benefices became necessary as their importance drastically diminished with almost a total failure of the system to be equitable, as well as the interference with the freedom of a bishop to confer diocesan offices (CD no. 28).¹⁸² The council fathers called for the suppression of benefices when they determined that greatest importance must be placed on the ecclesiastical office rather than on the revenue attached to the endowment of the office.¹⁸³ With the preferential treatment epitomised in benefices, the inequality they created among clerics in almost identical circumstances and the interference in the legitimate functions of the diocesan bishop, the pope entrusted the reform of the system of benefices to the Commission for the Revision of the Code of Canon Law.¹⁸⁴ That reform gave rise to c. 1272, which provides that the bishops' conferences should regulate benefices so that the income and capital from them, in so far as possible, should be transferred to the central fund (c. 1272). In response to this provision, CBCN has determined that "benefices properly so called do not exist in Nigeria."¹⁸⁵ This is true because the Church in Nigeria is relatively young. Before the Church took root in Nigeria, the system of benefices had drastically lost acceptance.

¹⁸¹ See TIRAPU, Commentary on c. 1272, in *Exegetical Comm IV/I*, p. 77-78; GOLDEN, *Parochial Benefice in the New Code*, p. 3.

¹⁸² See also TIRUPU, Commentary on c. 1272, in *Exegetical Comm IV/I*, p. 78.

¹⁸³ "Officio vero, quod sacri ministri adimplent, praecipuum momentum tribuere oportet. Quare systema sic dictum beneficiale relinquatur aut saltem ita reformetur ut pars beneficalis, seu ius ad redditus ex dote officio adnexos, habeatur tamquam secundaria, et princeps in iure tribuatur locus ipsi officio ecclesiastico, quod quidem deinceps intellegi debet quodlibet munus stabiliter collatum in finem spiritualem exercendum" (PO, no. 20, in AAS, 58 [1966], p. 1021).

¹⁸⁴ "Commissioni Codici Iuris Canonici recognoscendo committitur reformatio systematis beneficalis" (PAUL VI, *Ecclesiae sanctae*, no. 8, in AAS, 58 [1966], p. 762).

¹⁸⁵ CBCN, PCN, p. 43.

3.4.3 – Acts of Extraordinary Administration

In line with the gradual suppression of the system of benefices, a new system, which is to be marked by diligent administration, equity and accountability, was introduced “for remunerating the clergy and satisfying the other financial needs of the diocese.”¹⁸⁶ Consequently, ecclesiastical goods were not to be administered according to individual whims but according to the provisions of law. Thus, c. 1277 provides for three types of administration of ecclesiastical goods, namely, acts of ordinary¹⁸⁷ and extraordinary administration and acts of major importance. The 1983 Code does not state what an act of major importance is; instead, it stipulates that it is determined in light of the financial situation of a diocese (c. 1277).¹⁸⁸ Though not specified by the Code, while acts of ordinary administration are those, which occur regularly and whose financial consequences are moderate, acts of extraordinary administration are those, which do not fall within the realm of the ordinary administration. An act of extraordinary administration is determined by its end and purpose and how it is performed. The Code does not specify what amounts to an act of extraordinary administration but it allows the bishops’ conferences to make such a determination.

Applying the directive of c. 1277, CBCN determines that the following are acts of extraordinary administration: (i) transactions involving 10% of the annual revenue of a diocese or other juridical persons; (ii) any transactions not in the approved annual

¹⁸⁶ Z. COMBALÍA, Commentary on Book V, Title II, *De administratione bonorum*, Introduction, in *Exegetical Comm* VI/I, p. 81. See also *CIC/83*, c. 1274.

¹⁸⁷ Although c. 1277 does not explicitly mention ordinary administration, but the mention of extraordinary administration implies an ordinary administration.

¹⁸⁸ This is consistent with the view of the Code Commission (see *Comm.*, 12 [1980], p. 414).

budget.¹⁸⁹ The first part of this decree is rather straightforward and is easily verifiable. However, the second part could give rise to ambiguity. Surely, not every unforeseen expense in the annual budget would be classified as extraordinary. It could be of minimal importance. It might have been preferable, then, had CBCN stated that an unforeseen expenditure amounting to, say, 3% or 5% of the total budget would be considered to be an act of extraordinary administration.

3.4.4 – Alienation of Ecclesiastical Goods

The Code contains several norms to assist the administrator in efficiently administering ecclesiastical goods. Various acts are involved in the administration of ecclesiastical goods. One of these is the alienation of goods. Alienation strictly speaking is any act by which the right to ownership of ecclesiastical goods is transferred to another. It “consists in transferring full ownership of goods to a third person by an ‘*inter vivos*’ act, onerously (as sale, for example) or gratuitously (a donation). Therefore, the following would be included in this concept: buying and selling, donations, exchanges, credit transfers, etc.”¹⁹⁰

The Code prescribes that the permission of the competent ecclesiastical authority is needed for the valid alienation of goods, which by lawful assignment, constitute the stable patrimony of a public juridical person whenever their value exceeds the sum defined by law.¹⁹¹ Following the principle of subsidiarity, the Code has left it to the

¹⁸⁹ See CBCN PCN, p. 44.

¹⁹⁰ J. MANTECÓN, Commentary on c. 1291, in *Exegetical Comm* IV/I, p. 130.

¹⁹¹ “Ad valide alienanda bona, quae personae iuridicae publicae ex legitima assignatione patrimonium stabile constituunt et quorum valor summam iure definitam excedit, requiritur licentia auctoritatis ad normam iuris competentis” (CIC/83, c. 1291).

conferences of bishops to determine applicable sums to be applied in cases of alienation (c. 1292, §1).

In response to this provision, CBCN decreed that the minimum sum is ₦50,000 while the maximum is ₦1,750,000. This decree was made in 1985 when ₦1 was equivalent to \$2 (US), but at present the Naira has depreciated so much. At the time of this writing ₦1 is about \$0.008028 (US), which means that \$1 (US) is equivalent to about ₦124.560. One would have expected a revision of this decree considering the drastic devaluation of the Naira; but the prescript is still in force. This raises the question whether this decree can be applied now to the alienation of ecclesiastical goods in Nigeria or whether it is already a dead letter.

3.4.5 – Leasing of Ecclesiastical Goods

A lease is a contract by which movable or immovable property is let to another for use, for a determined time at a specified price or rent.¹⁹² It “is a contract by which, in exchange for compensation – usually monetary in nature – one of the contracting parties is obligated to provide the other with the use and enjoyment of something.”¹⁹³ The 1917 Code was very elaborate on the leasing of Church goods. It contained detailed prescripts regarding renting to the highest bidder, safeguarding and care of property, payment and guarantees, requisite permissions and duration of the lease.¹⁹⁴ However, c. 1297 of the

¹⁹² See F.G. MORRISEY, “Leasing of Goods,” in CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES [CHAUS], *Inventorying Church Property and Other Administrative Matters*, St. Louis, CHAUS, 1994, pp. 57-58.

¹⁹³ J. MANTECON, Commentary on c. 1297, in *Exegetical Comm VI*, p. 146.

¹⁹⁴ See *CIC/17*, c. 1541.

1983 Code remits the entire matter to the decision of the bishops' conference.

Consequently, CBCN decrees that:

(i) For the valid leasing of ecclesiastical goods that diminishes or worsens the economic situation of the Church, there must be grave reason and a written consent of the competent superior.

(ii) If the value of the goods is more than 25% of the fixed assets of the diocese, a diocese cannot validly lease it out without the consent of the Apostolic See. For other juridical persons subject to the diocesan bishop, his written consent is required.

(iii) Ecclesiastical goods cannot be validly leased for more than ten years, without the written consent of the competent superior. In the case of a diocese, its bishop needs the consent of the finance committee and the college of consultors.

(iv) Ecclesiastical goods valued at less than 25% of the fixed assets of the juridical person may be leased for not more than ten years with the written consent of the competent Superior, which is given after consultation with the finance council of the juridical person.

(v) Leasing of ecclesiastical goods must be done by contract according to the provisions of Nigerian civil law.¹⁹⁵

The decree of CBCN for the leasing of ecclesiastical goods is quite elaborate with norms requiring permission *ad validitatem*. As observed by J. Mantecón, this is to avoid any harmful repercussion on the patrimonial stability of juridical persons.¹⁹⁶

¹⁹⁵ See CBCN, *PCN*, p. 45.

¹⁹⁶ See MANTECÓN, Commentary on c. 1297, in *Exegetical Comm IV/I*, pp. 146-147.

CONCLUSION

Because of the diverse circumstances of various countries or regions, what the universal law could not legislate on, was entrusted to bishops' conferences. This constitutes, in a way, an application of the principle of subsidiarity. The task of a conference is more vital in the cases treated in this chapter in which it must promulgate particular complementary norms to avoid a *lacuna legis*. How has CBCN executed this task? Unlike some bishops' conferences, CBCN has made provisions in nearly all the cases in which it is required to promulgate particular complementary norms. However, the adequacy of the provisions is another issue.

Regarding its task in relation to Book II, CBCN is quite detailed on some issues, although rather unclear on some others. It is able to integrate the existing documents of the Church on various issues, but sometime these are over-used, making it verbose and superfluous. The conference has done a fair job, considering the time, 1985, when it published its *Particular Complementary Norms*. However, we need to point out some lapses in certain areas:

(1) The minimum age for installation of lectors and acolytes is not clear. In stipulating a minimum age, CBCN states: "He must be properly married or, if single, a fully mature adult ... This sets the minimum age well enough."¹⁹⁷ This does not make any sense. It is very regrettable that CBCN prescribed sixty years as maximum for installation of lectors and acolytes when we have many learned and articulate persons in Nigeria in their sixties who can efficiently perform these functions. Regarding the installation of

¹⁹⁷ CBCN, *PCN*, p. 4.

people for these functions, the concept of ordinary as 'Chief' in the African context,¹⁹⁸ one who is to be served and worshipped, rather than the conciliar concept of a servant to the people, is obsolete.

(2) Sometimes, the conference, instead of making a decree, makes suggestions, as seen in the norm on the duration for the training and formation of permanent deacons (see CBCN, *PCN*, p. 8). There is no way a suggestion can be regarded as a general decree. If there is no decree on a particular matter as required by law (c. 455, §1), then the conference has not fulfilled its obligation with respect to that matter.

(3) At other times, there is neither a decree nor a suggestion, as in the case of norms for the presbyteral councils. Instead of providing norms, the conference provides a sample constitution and commentary (see CBCN, *PCN*, pp. 12-21).

(4) The most serious lack in regard to Book II is the absence of any provision for the programme of priestly formation in the seminaries in Nigeria, as required by c. 242, §1. One should have expected that the Congregation for the Evangelisation of Peoples be proactively concerned about this lack.

On Book III, the Teaching Office, the language of the conference is more directive. However, not all the issues requiring the action of CBCN are tackled by it. Treating cc. 772, §2 (Christian teaching on radio and television) and 831, §3 (participation of clerics and religious in radio and television programmes) together is thoughtful since both are connected. Nevertheless, CBCN has not fulfilled its responsibility regarding c. 831, §2, since it does not provide the needed norms for the participation of clerics and religious in radio and television programmes. Instead it

¹⁹⁸ "... it is preferable in the African context that the Ordinary, as the 'Chief' comes to the

directs, “Priests and religious and knowledgeable lay people should be encouraged to write religious articles in Nigerian daily newspapers.”¹⁹⁹ As far as the guidelines for the catechumenate are concerned, the *National Directory for Christian Initiation* of CBCN needs to be overhauled. It follows that the particular complementary norms of CBCN on the Teaching Office require more focus and clarity.

Regarding Book IV, on the Sanctifying Office, the conference seems more business-like. Concerning the catechumenate and Christian initiation of adults, it is commendable that CBCN believes in using ways and means (such as the age grade) native to the adult converts in the process of initiating them into the Christian life. However, there are some lapses; the conference seems afraid using traditional elements because people are becoming urbanised, as it says, “...we cannot go back to dig up the traditional rites of passage in order to adapt.”²⁰⁰ It falls short of stipulating a minimum time for the catechumenate. Above all, the prescript of CBCN on publication of banns is confusing.

Under the Temporal Goods of the Church in Book V, CBCN has done a commendable job concerning its decrees on acts of extraordinary administration (c. 1277), alienation (c. 1292, §1), and the leasing of ecclesiastical goods (c. 1297). Yet, the sums for alienation need re-examination, especially in view of the devaluation of the Naira. As far as benefices are concerned, the conference could not legislate on something that does not exist. However, on things that very much need to be regulated (appeals and

parish church to install them” (see CBCN, *PCN*, p. 5).

¹⁹⁹ CBCN, *PCN*, p. 27.

²⁰⁰ CBCN, *National Directory for Christian Initiation*, p. 71.

fund-raising) CBCN fails to lay down rules as required by c. 1262. Instead, it simply states that it is “satisfied and gives approval to the various methods adopted in the country as of now.”²⁰¹ It would have been very helpful if CBCN were to identify the various methods it seems to have approved.

Our next task is to examine critically those cases for which conferences of bishops are not obligated but **may** publish particular complementary norms to the Code.

²⁰¹ Ibid, p. 42.

CHAPTER FOUR

NON-OBLIGATORY COMPLEMENTARY NORMS¹

INTRODUCTION

Apart from those instances where it is mandatory for the bishops' conferences to issue particular complementary norms (as explained by the letter of Cardinal Casaroli, with the accompanying list²), there is another category that is optional. In this chapter, we will examine the decrees on optional matters published by CBCN. As we did in Chapter III, we will follow the order of the Code. Since there are no instances in Books I and VI in which bishops' conferences can enact complementary norms, we will examine the decrees of CBCN on canons contained in Books II, III, IV, V and VII. Given that the canons with non-obligatory norms are few in most of these books, we will treat the canons in Books II & III under one heading and those in Book IV under a heading and those in Books V & VII under another heading.

4.1. ON THE PEOPLE OF GOD AND THE TEACHING OFFICE OF THE CHURCH

In Book II, *The People of God*, there are only three instances where the bishops' conference has the discretion to publish complementary norms. Likewise, there are three in Book III, *The Teaching Office of the Church*. In addition to the six cases listed by the Secretary of State, we will examine a seventh one in which CBCN has published particular complementary norms. They include maintenance for retired diocesan bishops, the cathedral chapter acting as college of consultors, tenure in office for a parish priests,

¹ See list in Appendix IV, pp. 337-338.

² See *Comm.*, 15 (1983), pp. 135-139.

additional parish registers, ecumenism, guidelines for permitting laypersons to preach, and norms on Catholic education.

4.1.1 – Maintenance for Retired Diocesan Bishops³

As indicated in Chapter III regarding the maintenance of retired parish priests, the issue of maintenance of the retired clergy was not treated in the 1917 Code. The system of benefices usually provided for the care of the bishops in their old age. Thus, it was most probably not considered necessary to treat the retirement of bishops in the 1917 Code because of the system of benefices. However, the Second Vatican Council called for the reformation of the benefice system and stressed the importance and the arduous nature of the episcopal office. The council earnestly requested the diocesan bishops and those equivalent to them in law to resign from their office when they become less able to carry out their duties. The competent authority who accepts the resignation takes care of their maintenance.⁴ Of course, this competent authority is the Holy See.

However, the *motu proprio, Ecclesiae sanctae*, while earnestly requesting that diocesan bishops and those equivalent to them in law voluntarily submit their resignation on completion of their seventy-fifth year, shifted the responsibility for their maintenance

³ Canon 402, §2, which prescribes for the upkeep of a retired bishop, is neither among the canons in which (according to the list of the Secretary of State) the bishop's conference *must* publish complementary norms nor among those in which it *can* publish them. But CBCN has published a particular complementary norm on it since it provides that the bishops' conference must ensure that suitable and worthy provision is made for the upkeep of a retired bishop.

⁴ "Cum igitur pastorale Episcoporum munus tanti sit momenti tantaeque gravitates, Episcopi diocesani alique in iure ipsis aequiparati, si, ob ingravescentem aetatem aliamve gravem causam, implendo suo officio minus apti evaserint, enixe rogantur ut, vel sua ipsi sponte vel a competenti Auctoritate invitati, renuntiationem ab officio exhibeant. Competens autem Auctoritas, si illam acceptaverit, et de congruenti renuntiantium sustentatione et de peculiaribus iuribus iisdem recognoscendis providebit" (CD, no. 21, in AAS, 58 [1966], p. 683).

to their individual dioceses. Thus, it became the duty of the bishops' Conference to determine norms, according to which the dioceses would fulfil this obligation.⁵ Furthermore, the 1983 Code provides that a diocesan bishop who has completed his seventy-fifth year of age is requested to offer his resignation from office to the Supreme Pontiff, who, taking all the circumstances into account, will make provision accordingly (c. 401, §1). The bishops' conference must ensure that a suitable and worthy provision is made for the upkeep of a retired bishop, bearing in mind that it is the primary duty of the diocese which he served (c. 402, §2).

In response to the prescript of c. 402, §2, CBCN directs that for an adequate maintenance of a retired bishop, assistance shall be requested from the Holy See. Nevertheless, the diocese where the bishop emeritus served most years in office shall have the primary obligation of his worthy maintenance. The bishop emeritus is to retire in the diocesan retirement home, any parish he has chosen, or any other house provided by the diocese. Alternatively, he can retire to his own house among his relatives.⁶ The conference further stipulates that a house can be built for a bishop emeritus, either by a particular diocese or by a parish. In either of these instances, the house is to be modest in size and furnishing, and the ownership of the house is to be clearly established in civil law and made known to the community. However, if the emeritus resides in a parish or

⁵ "Ipsa ceterum dioecesis providere debet Episcopi renuntiantis congruae ac dignae sustentationi. Conferentiae Episcoporum territorii est, per modum normae generalis, determinare rationes, secundum quas dioeceses huic officio satisfacere debent" (*ES I*, no. 11, in *AAS*, 58 [1966], p. 763).

⁶ See CBCN, *PCN*, p. 11.

diocesan house, an agreement regarding the upkeep, repairs, taxes etc., has to be made between him and the juridical person concerned.⁷

The Catholic Bishops' Conference of Nigeria has provided comprehensive norms for the retired diocesan bishop (emeritus). He can retire among his relatives, though retired priests are discouraged from doing so (see CBCN, *PCN*, p. 24). We believe that it is in consideration for the economic welfare of the Church in Nigeria that CBCN directs that the bishop emeritus "shall preferably reside in the diocesan retirement home, the parish house of his choice, or any other house provided by the diocese."⁸ The decree of CBCN provides that the "diocese where the Bishop Emeritus has served most years shall have the primary obligation for his suitable and worthy maintenance."⁹ This puts to rest the surmising that the primary obligation falls on the diocese where the bishop emeritus exercised his ministry last.¹⁰ Although not expressly stated, the decree regarding a retired diocesan bishop applies also to retired coadjutor and auxiliary bishops (c. 411).

4.1.2 – Cathedral Chapter as College of Consultors

The 1917 Code of Canon Law had provisions for various diocesan organisations, such as the diocesan Curia (*CIC/17*, 363), the chapter of Canons (*CIC/17*, c. 391), be it

⁷ See *ibid.*, pp. 11-12.

⁸ *Ibid.*, p. 11. To our knowledge, no bishop emeritus has retired to diocesan retirement homes, and we cannot recall if any of such homes exist in any diocese in Nigeria. A very few have retired to parish houses, one retired to a seminary and others have houses built for them. It will be economical for dioceses of mission Churches to have retirement homes with special sections reserved for the retired bishops who would not like to live in parish houses.

⁹ CBCN, *PCN*, P. 11.

¹⁰ See J.L. GUTIERREZ, Commentary on c. 402, in *Code of Canon Law Annotate*, p. 343. However, the principle of equity requires that all the dioceses, which the bishop emeritus served, share the responsibility proportionally, according to the means available to each of them.

cathedral or collegiate,¹¹ and the diocesan college of consultors (*CIC/17*, c. 423). The cathedral chapter served as a senate for the bishop as prescribed by law and supplied in the place of a bishop in the governance of the diocese when the see was vacant (*CIC/17*, c. 391, §1). In any diocese where there was no cathedral chapter, the diocesan bishop had to designate consultors (*CIC/17*, c. 423). These, like a senate for the bishop, took the place of the cathedral chapter. Thus, the norms regarding the governance of the diocese attributed to the cathedral chapter, both when the see was occupied, and when it was impeded or vacant, applied also to the diocesan consultors (*CIC/17*, c. 427). The Second Vatican Council, recognising the contemporary needs of the Church, directed that these councils, especially the cathedral chapter, be reorganised as far as it was necessary.¹² The reorganisation was addressed during the revision of the 1917 Code.

Thus, according to the 1983 Code, the college of consultors is a permanent college of priests, freely appointed by the diocesan bishop from among the members of the council of priests. They are to be not less than six or more than twelve in number. The functions of this body are determined by law (c. 502, §1).¹³ The present Code defines the

¹¹ Canons, as we know, are priests with special functions in the cathedral. Benefices were normally attached to the office such that “*Canonicatus sine adnexis emolumentis ne instituantur sine speciali Apostolicae Sedis concessione*” (*CIC/17*, c. 393, §3).

¹² “[...] *Haec instituta, praesertim capitula cathedralia, novae ordinationi, quatenus opus sit, necessitatibus hodiernis aptatae, subiciantur*” (*CD*, no. 27, in *AAS*, 58 [1966], p. 686).

¹³ The law determines that the consent of the college of consultors is required for the diocesan administrator to incardinate, excardinate or grant permission for transfer to another diocese (c. 272). Some members are to be consulted by the papal legate, if he judges it expedient for the appointment of the diocesan bishop or the coadjutor bishop. It receives the letter from the Apostolic See upon the diocesan bishop taking possession of the diocese (c. 382, §3) and in the case of the coadjutor bishop, when he takes his office or when the diocesan bishop is impeded (c. 404, §1 and 3). When the diocesan bishop is impeded, and there is neither a coadjutor nor an auxiliary bishop and there is no list from which the person to govern the diocese could be chosen, it is the duty of the college of consultors to elect a priest who will govern the diocese (c. 413, §2). When the See is vacant and there is no auxiliary bishop, and if the Holy See has not provided

cathedral chapter as a college of priests whose role is to celebrate the more solemn liturgical functions in the cathedral or the collegial church. Thus, there is a new configuration of the cathedral chapter. Pursuant to the directives of the Second Vatican Council, the cathedral chapter was to be reorganised (*CD*, no. 27), a group or senate of priests was to be set up in a way suited to the present-day needs, in a form and with rules to be determined by law (*PO*, no. 7). The new configuration involves various factors:

The Code profoundly reforms the nature and competence of the cathedral chapter that the *CIC/1917* had. The abandoning of the beneficial system (*PO*, no. 20 and c. 1272); the creation of the council of priests as the 'senate of bishop' (c. 495, §1) and of the college of Consultors substantially affected the institution, which has been configured, almost *ex novo*, by the present codification.¹⁴

In the provision of the present Code, the function of the cathedral chapter is purely liturgical. However, the bishops' conference can determine that the functions which the 1983 Code attributes to the college of consultors may be entrusted to the cathedral chapter (c. 502, §3). In effect, if a bishops' conference decides to entrust the functions of the college of consultors to the cathedral chapter, the diocesan bishop will have no need to constitute a college of consultors if a cathedral chapter already exists in

otherwise, the college is responsible for the governance of the diocese (c. 419) and must choose a diocesan administrator within eight days from the notice of the vacancy of the see (c. 421, §1). It informs the Holy See of the death of the diocesan bishop if there is no auxiliary bishop (c. 422). If the college receives the resignation of the administrator or if he dies, the college must choose another priest according to c. 421. The consent of the college is needed by the diocesan administrator for the removal from office of the chancellor and the notaries of the curia (c. 485). It must be consulted for the appointment of the diocesan finance officer (c. 494, §1), and for the removal of the same officer (c. 494, §2). The college of consultors also receives the profession of faith of the diocesan administrator (c. 833, 4°). Its consent is needed by the diocesan administrator to issue dimissorial letters for the secular clerics (c. 1018, §1, 2°). The bishop needs the consent of the college for an extraordinary administrative act in addition to the cases specifically expressed in the universal law or in the statutes of a foundation (c. 1277). Its consent is also required by the bishop for the alienation of goods whose value is between the minimum and maximum sum for alienation belonging to juridical persons not subject to the Bishop, as well as those belonging to the diocese (c. 1292, §1, see also c. 1295).

¹⁴ F. LOZA, Commentary on c. 503, in *Exegetical Comm* II/2, pp. 1221-1222.

his diocese. In response to c. 502, §3, CBCN determines that it “does not consider this option (of entrusting the functions of the college of consultors to cathedral chapter) necessary in Nigeria.”¹⁵ Its decision is informed by the fact that “benefices properly so called do not exist in Nigeria.”¹⁶ Moreover, since cathedral chapters were instituted with benefices (see *CIC/17*, c. 393), it logically follows that the institute of cathedral chapter does not exist in Nigeria since there has never been the system of benefices in the Church in Nigeria.

4.1.3 – The Tenure in Office for a Parish Priest¹⁷

The anomalous situation of a particular law defeating the objective of a universal law, with special reference to the particular complementary norms of CBCN regarding c. 522 of the 1983 Code, as noted earlier in this dissertation, is one of the inspirations behind our study of the relationship between universal law and particular law. Consequently, little elaboration is needed in this section. The concern of c. 522 of the 1983 Code is the stability of the parish priest. Stability has been traditionally considered a feature that characterises this office. Its purpose was to facilitate the Church’s mission, the salvation of souls. The Council of Trent mandated bishops to divide the faithful into definite and distinct parishes and assign to each of them a perpetual parish priest.¹⁸ A parish priest was not to be removed from office except in case of infirmity, suspension of

¹⁵ CBCN, *PCN*, p. 22.

¹⁶ *Ibid.*, p. 43.

¹⁷ As we progress, parish priest will be used synonymously with pastor.

¹⁸ “... mandat sancta synodus episcopis pro tutiori animarum eis commissarum salute, ut distincto populo in certas propriasque parochias unicuique suum perpetuum peculiaremque parochum assignent ...” (SCHROEDER, *Canons and Decrees*, p. 473).

benefices or some similar cause.¹⁹ Some authors understood perpetuity in office as an essential feature of the parochial care of souls. Díaz-Moreno believes *perpetual* and *immovable* are equivalent terms.²⁰ We share Sánchez-Gil's thought in this regard:

Nevertheless, perpetuity was spoken of not in absolute terms but in opposition to the temporary appointment of the parish priest. In this sense, perpetuity was juridically translated as *non-removable*, specified in an appointment *for an indefinite time*, but always *compatible with removal* for grave causes in conformance with the norm of law, when it was required for the good of souls.²¹

The distinction between removable and irremovable pastor originated according to whether the holder of the office enjoyed greater or lesser stability. In either case, appointment for an indefinite time was maintained.²² The existing custom influenced the 1917 Code of Canon Law. Incorporating the idea of irremovable and removable parish priests, it established different degrees of stability. The Code made it clear that pastors should enjoy stability in their parishes.²³ However, they could be removed according to the rule of law (*quod tamen non impedit quominus omnes ab ea removeri queant ad normam iuris*, CIC/17, c. 454, §1).²⁴ With the passage of time, the office of the pastor was considered more as a personal right than a responsibility for the salvation of souls. For some parish priests, benefices became more important than pastoral functions. Thus,

¹⁹ See SACRED CONSISTORIAL CONGREGATION (= S.C. CONSIST.), *Maxima cura*, canon 30, 20 August 1910, in *Fontes*, vol. V, no. 2074, p. 44.

²⁰ "Algunos autores creen esencial la *perpetuidad*; por tanto, el párroco temporal no tendría, según ellos, una verdadera cura de almas parroquial. Creemos que perpetuo e inamovible son términos equivalentes" (J.M. DÍAZ-MORENO, *La regulación jurídica de la cura de alma en los canonistas hispánicos de los siglos XVI-XVII*, Granada, Facultad de Teología, 1972, p. 83).

²¹ A.S. SÁNCHEZ-GIL, Commentary on c. 522, in *Exegetical Comm* II/2, p. 1297.

²² See *ibid.*

²³ "Qui parociae administrandae praeficiuntur qua proprii eiusdem rectores, stabiles in ea esse debent ..." (CIC/17, c. 454, §1).

²⁴ See also S.C. CONSIST., *Maxima cura*, canon 30, in *Fontes*, vol. 5, no. 2074, p. 44.

one practical result was “the predominance – at least in the opinion of most – of the figure of *proprietary parish priest* over that of the *pastoral parish priest*.”²⁵ This distorted the true pastoral image of the office of the parish priest. A reform became inevitable if the supreme law in the Church (*salus animarum*) was to be respected.

To address this anomaly, the Second Vatican Council declared that the system of benefices should be abandoned or totally reformed (*PO*, no. 20). In order that the pastoral function of the parish priest might bear fruitful, seminary training was emphasised. Seminarians were to learn the art of exercising the apostolate and should be initiated into pastoral work as part of their course of studies (*OT*, no. 21). Above all, the council directed that each parish priest should enjoy stability in office as required for the good of souls. Consequently, the distinction between removable and irremovable pastors was to be abandoned, the norms for the transfer and removal of parish priests should be simplified, and the diocesan bishop should observe the principle of natural and canonical justice for the suitable provision for the good of souls.²⁶

With the directives of the Second Vatican Council, it became the responsibility of the Commission for the Revision of the 1917 Code to make sure that both the stability of the parish priest and the good of souls were taken into account in the new legislation. As c. 522 of the new Code was in the making, certain terms were used to identify stability;

²⁵ SÁNCHEZ-GIL, Commentary on c. 522, in *Exegetical Comm* II/2, p. 1297.

²⁶ “Parochi vero in sua quisque paroecia ea gaudeant stabilitate in officio, quam animarum bonum requirat. Quare, abrogata distinctione inter parochos amovibiles et inamovibiles, recognoscatur et simplicior reddatur modus procedendi in translatione et amotione parochorum, quo Episcopus, servata quidem naturali et canonica aequitate, aptius necessitatibus boni animarum providere possit” (*CD*, no. 31, in *AAS*, 58 [1966], p. 689).

tempus indeterminatum,²⁷ was first used and later it was substituted with *tempus indefinitum*,²⁸ which is what appeared in the promulgated version of the Code. To appoint a parish priest *ad tempus indefinitum* means that, on his part, he is irremovable.²⁹ If left unqualified, this provision would have adversely affected the liberty of the diocesan bishop to provide for the good of souls, while observing the principle of natural and canonical equity. To strike a balance, the Code, while retaining *ad tempus indefinitum* for the appointment of a pastor, provides that the diocesan bishop can appoint him for a specified (*certum*) period, *only* (*tantum*) if the bishops' conference has permitted so by decree (c. 522).³⁰ The idea of a specified time seems to run contrary to indefinite time. It was however pointed out that stability does not mean an indefinite appointment since *stabilitas* can coexist with the definite concept of time. It rather means that during the duration of the specified time of office the pastor is not to be removed.³¹ Thus, the 1983 Code dropped all distinctions between removable and irremovable pastors. All pastors now enjoy the same type of stability in office, for a longer or shorter period, and are subject to the same removal process (cc. 1740-1747).

²⁷ See *Comm.*, 8 (1976), p. 26.

²⁸ See *Comm.*, 14 (1982), p. 223.

²⁹ "... ex parte parochi 'ad tempus indefinitum' intelligi postest tamquam in praxi 'inamovibilis'" (*Comm.*, 14 [1982], p. 223).

³⁰ "Parochus stabilitate gaudeat oportet ideoque ad tempus indefinitum nominetur; ad certum tempus tantum ab Episcopo diocesano nominari potest, si id ab Episcoporum conferentia per decretum admissum fuerit" (*CIC/83*, c. 522).

³¹ "Sostiene anche che la stabilità può coesistere con il concetto di tempo definito, perché 'stabilitas' significa non che debba essere nominato per un tempo indefinito, ma che, 'eo durante non debet amoveri'" (*Comm.*, 13 [1981], p. 272).

Responding to the prescript of c. 522, CBCN “decrees that the appointment of parish priests shall be ‘*ad tempus*’ or for a specified period of time.”³² Canon 522 requires CBCN to determine a specified (*certum*) period of time for the appointment of a pastor, should any diocesan bishop choose not to appoint him for an indefinite period (*tempus indefinitum*). Considering the practice in Nigeria today,³³ this decree of CBCN has fallen short of the objective of c. 522.

Canon 522 of the 1983 Code is very clear about the office of a parish priest and every bishop’s conference must put this into consideration when it issues a decree:

It is necessary that a parish priest have the benefit of stability, and therefore he is to be appointed for an indeterminate period of time. The diocesan Bishop may appoint him for a specified period of time only if the Bishops’ Conference has by decree allowed this.³⁴

The stability of the pastor is taken for granted in the Code and any complementary norm that does not protect this stability goes contrary to the principle of legality, since a lower legislator cannot validly make a law which is contrary to that of a higher legislator (c. 135, §2). The appointment of a pastor *ad certum tempus*, as provided by c. 522, is an exception to the rule, **only** (*tantum*) if the bishops’ conference has determined so by a decree.

³² CBCN, *PCN*, p. 22.

³³ In many dioceses in Nigeria, the diocesan bishops appoint priests to the office of parish priest without any standardised practice. Some priests are appointed parish priest for two years, some for three years, and some for only one year or less. A very few dioceses have a maximum of four years as the tenure in office of a parish priest. More often letters of appointment to offices are not given to those appointed to offices (contrary to c. 156), for fear of spelling out the mandate given to the person. Instead, a list of all the parishes and institutions in the diocese (with the names of the priests assigned to them) is circulated to all the priests of the diocese; nothing is specified about the term of office. In our opinion, this practice constitutes a serious disregard for rule of law in the Church.

³⁴ “Parochus stabilitate gaudeat oportet ideoque ad tempus indefinitum nominetur, ad certum tempus tantum ab Episcopo dioecesano nominari potest, si id ab Episcoporum conferentia per decretum admissum fuerit” (*CIC/83*, c. 522).

Stability in office is required for adequate pastoral care of a parish, to whomever this is entrusted to, according to the requirements of law (cf. cc. 517, §1, 521, 524 & 542). The wordings of the canon parallel to c. 522 in the *Codes of Canon of the Eastern Churches* underscore our argument for the stability of the office of a pastor:

The pastor is permanent in his office, therefore he is not to be appointed for a determined period of time unless:

- 1° it concerns a member of a religious institute or society of common life in the manner of religious;
- 2° a candidate agrees to this in writing;
- 3° it concerns a special case, in which case the consent of the college of eparchial consultors is required;
- 4° the particular law of his Church *sui iuris* permits it.³⁵

Thus, the duty of CBCN was to determine what number of years constitutes stability in the office of the parish priest in Nigeria. Since it has not made this determination, the prescript of c. 522, regarding the appointment of a pastor *ad tempus indefinitum*, is supposed to be binding on the diocesan bishops and those equivalent to them in law in Nigeria. Nevertheless, this is not the case; instead, there is the confusion in which bishops do not appoint parish priests according to the provision of law.

What adds more confusion to this situation is the fact that the “*ad tempus*” decree of CBCN has received its *recognitio* from the Holy See and cannot be said to be *contra legem*. At best, we can say that the decree is *praeter legem*. Consequently, there is little regard for the stability of the office of a pastor in Nigeria. Each diocesan bishop appoints a parish priest as he chooses and the stability envisaged by c. 522 is compromised. The parish priests are not sure for how long they will be in office and they expect transfer any time. With this scenario, we assume that *ad tempus* for CBCN is that each diocesan

³⁵ CCEO, c. 284, §3.

bishop determines the duration for the office of a parish priest as he chooses. As the author of this decree, only CBCN and the Pontifical Council for Legislative Text (if requested to do so)³⁶ can give adequate interpretation of what *ad tempus* appointment means. For the Congregation for the Evangelisation of Peoples to have accorded *recognitio* to the CBCN decree on c. 522, means that the congregation understood what an *ad tempus* appointment means. Whatever interpretation CBCN may give to this decree, it does not mitigate the obligation of the diocesan bishop to provide for the stability in office of the parish priest, including those priests appointed for the pastoral care of a parish in *solidum* (c. 517, §1). They ought to enjoy the stability in office as provided by c. 522 (c. 542, 2°).

The Holy See had intervened in the past in the decree of a bishops' conference where the stability of the pastor was not guaranteed, as recalled in the provision by the United States Conference of Catholic Bishops (USCCB) in 1983:

In November 1983, the National Conference of Catholic Bishops voted to allow diocesan bishops the option of adopting term of office policies for the assignment of pastors; they also voted to leave it up to the diocesan bishops to determine the length and renewability of such terms. The Holy See approved of this action but stipulated that the term must be six years; such a term may be renewed. This policy became effective on September 24, 1984.³⁷

In this stipulation, the Holy See insisted that the term of office of a parish priest must be six years. If the Holy See had insisted on a specified period for the tenure of office of a pastor in the USA, one wonders why the decree of CBCN regarding c. 522 was given approval by the same Holy See. Granted, *recognitio* for the decrees of USCCB was accorded by the Congregation for Bishops while the Congregation for the Evangelisation

³⁶ We made this request as provided by law (*PB*, art. 158) and received no response.

³⁷ J.A. JANICKI, Commentary on c. 522, in *CLSA Comm1*, p. 422.

of Peoples accorded *recognitio* to the decrees of CBCN. Nevertheless, a degree of coordination could have been expected among the highly organised offices of the Holy See. A question that still lingers in one's mind is whether it was due to oversight that this decree of CBCN was accorded the *recognitio* or could it be because of the particular needs and circumstances of the Church in Nigeria (as a church in a mission territory)? If it is an oversight, then it could be a mistake, but if it is because Nigeria is in a mission territory, such argument defies any logic in light of the statistics available to us.³⁸

4.1.4 – Additional Parish Registers

Preserving documentation has been a long practice in the Church. In the earliest centuries of the Church, there were no parochial registers because parishes were as yet to be formed. However, as noted by J. O'Rourke, quasi-baptismal registers were available:

In the very early days of Christianity quasi-baptismal registers were not lacking. The newly-baptized were recorded on what were known as the diptychs of the baptized. The diptych, as the name suggests, a folded parchment giving the appearance of a two page book, was carried over from the Roman civil document to do service in the Church. This tablet was a kind of a baptismal register in which the names of the recently baptized and those of the parents were inscribed.³⁹

Before the enactments of the Council of Trent, particular legislative bodies drew up measures to secure the maintenance of the parochial books, but there was no general

³⁸ Of the statistics available to us it is only CBCN that has failed to specify the duration for the term of office of a parish priest. This could be seen from the terms of office determined by the following bishops' conferences: For Australia, it is six years, renewable (see APPENDIX III, COMPLEMENTARY NORMS TO THE CODE OF CANON LAW, promulgated by English Language Speaking Conferences of Bishops, in *Exegetical Comm* V, p. 319). For Canada, it is six years, renewable (see *ibid.*, p. 331); for Gambia, Liberia, and Sierra Leone, it is six years, renewable (see *ibid.*, p. 353); for India, it is not less than six years, renewable (see *ibid.*, p. 372); for Nigeria, it is "*ad tempus* or for a specified period of time" (*ibid.*, p. 397); for the Philippines, it is six years, renewable (see *ibid.*, 418); for South Africa, it is six years renewable (see *ibid.*, p. 440); and for United States of America, it is six years, renewable (see *ibid.*, p. 453).

³⁹ J.J. O'ROURKE, *Parish Registers: An Historical Synopsis and Commentary*, CLS no. 88, Washington, DC, The Catholic University of America, 1934, pp. 20-21.

legislation until 1563.⁴⁰ The first general legislation was in November 1563, when the Council of Trent decreed that the parish priests should have a book in which would be recorded the names of those who were married and the witnesses. The day and place of the marriage were to be recorded and the book was to be carefully preserved.⁴¹ Thus, the keeping of parochial registers as prescribed by c. 535, §1 of the 1983 Code is not an innovation in the Church. The main reason for registers is to provide accurate records from which certificates are issued. Both the records and the certificates drawn from them are public ecclesiastical documents (c. 1540). As a result, unless established by contrary and clear argument, they constitute proof of those matters, which are directly and principally affirmed in them (c. 1541). This is why the Code has made it mandatory that in each parish there would be parochial registers of baptisms, marriages and deaths. However, any other register prescribed by the bishops' conference or the diocesan bishop should equally be available in each parish (c. 535, §1).

In response to the prescript of c. 535, §1, CBCN decrees additional pre-catechumenate register (which records attendances for instruction before initiation), catechumenate register I (which records the candidates enrolled for the catechumenate) and catechumenate register part II (which records the names of catechumens elected for

⁴⁰ See *ibid.*, p. 25-26.

⁴¹ "Habeat parochus librum, in quo conjugum et testium nomina, diemque et locum contracti matrimonii describat, quem diligenter apud se custodiat" (MANSI, XXXIII, Session XXIV, 15 November 1563, *De matrimonio: de reformatione*, ch. I, col. 153); See also SCHROEDER, *Canons and Decrees*, p. 455. Even marriages celebrated in secret were to be recorded in the book for secret marriages (see BENEDICT XIV, Encyclical on Marriage *Satis vobis*, 17 November 1741, in *Benedicti XIV, Pont. Opt. Max. olim Prosperi Cardinalis de Lambertinis Bullarium* [= *Lambertinis Bullarium*], editae ab initio pontificatus, Prati, In typographia Aldina, 1845, vol. 15, §10, p. 115). Books for parish records were to be examined during the Episcopal visitation of the parish (see BENEDICT XIV, Constitution *Firmandis*, 6 November 1744, in *Lambertinis Bullarium*, vol. 15, §9, pp. 452-453).

the sacraments of initiation at the Easter Vigil).⁴² No other additional registers are considered necessary since, in Nigeria, baptismal registers normally have columns for confirmation, marriage, holy orders, and religious profession. It might have been better to provide for a separate confirmation register since not all who are confirmed in a parish were baptised there. A separate register would be preferable for an easy check and for the sake of those who are confirmed in a parish different from where they were baptised. Nevertheless, the diocesan bishop can still legislate that such a register be available in each parish in his diocese since the law is very clear on this (“*aliique secundum Episcoporum conferentiae aut Episcopi dioecesan praescripta*” c. 535, §1).

4.1.5 – Norms on Ecumenism

Before the Church began to give serious attention to Christian unity in the form of ecumenism, Catholic faithful were forbidden to come together to discuss issues about doctrine or faith with those who were called heretics without special permission from the Holy See.⁴³ The Church has always handled issues of ecumenism with great caution, striving to avoid difference of opinions as taught by the apostle Paul.⁴⁴ The prescript of

⁴² See CBCN, PCN, p. 23.

⁴³ Cf. SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH, 8 March 1625, in *Fontes*, vol. 7, no. 4428, p. 1; 7 February 1645, in *ibid.*, no. 4457, p. 11; and 18 December 1662, in *ibid.*, no. 4467, p. 28.

⁴⁴ “Itaque Paulus Apostolus christianos, ut idem sentiant omnes, effugiantque opinionum dissidia non rogat tantum, sed flagitat ac plane obsecrat: *Obsecro autem vos, fratres, per nomen Domini nostri Iesu Christi: ut idipsum dicatis omnes, et non sint in vobis schismata: sitis autem perfecti in eodem sensu, et in eadem sententia*” (LEO XIII, Encyclical on the Unity of the Church *Satis cognitum*, 29 June 1896, in *Acta Leonis XIII*, 16 [1897], p. 169).

the 1917 Code of Canon Law was not different either.⁴⁵ Nevertheless, the ‘Pan-Christians’ movement for Christian unity was momentous for ecumenism.⁴⁶ In his encyclical, *Mortalium animos*, Pope Pius XI said it was futile to strive to unite all Christians upon a common platform of admitted doctrines, as the Church had indeed nothing more at heart than to recall her erring sons and daughters to lead them back to her bosom.⁴⁷ The Holy See could neither take part in such a movement nor permit Catholics to support or work for such an enterprise.⁴⁸ However, this position changed with the passage of time.

The first official commitment of the Church regarding ecumenism was in the instruction of the Holy Office to local ordinaries.⁴⁹ The ecumenical movement, it said, pertains primarily to the authority and office of the Church and should be attended to with special care by the bishops. Thus, they should not only diligently and effectively watch over the entire activity, but also prudently promote and direct it for the purpose of those who seek the truth and for protecting the faithful from the dangers of such a

⁴⁵ “Caveant catholici ne disputationes vel collationes, publicas praesertim, cum acatholicis habeant, sine venia Sanctae Sedis aut, si casus urgeat, loci Ordinarii” (*CIC/17*, c. 1325, §3).

⁴⁶ This group strove to unite all Christian denominations by compromise upon a common platform of admitted doctrines. See *CLD* I, p. 621.

⁴⁷ “Inceptum interea istud tam actuose provehitur ... alliciatque talis efficiendae unionis quae cum Sanctae Matris Ecclesiae votis congruere videatur, cui profecto nihil antiquius quam ut devios ad gremium suum filios revocet ac reducat” (PIUS XI, Encyclical on Religious Unity *Mortalium animos*, 6 January 1928, in *AAS*, 20 [1928], p. 7).

⁴⁸ “Quae cum ita se habeant, manifesto patet, nec eorum conventus Apostolicam Sedem ullo pacto participare posse, nec ullo pacto catholicis licere talibus inceptis vel suffragari vel operam dare suam” (*ibid.*, p. 11).

⁴⁹ See SACRA CONGREGATIO SANCTI OFFICII, Instruction on Ecumenical Movement *Ecclesia Catholica*, 20 December 1949, in *AAS*, 42 (1950), p. 142-147; English trans. in *CLD* III, p. 536-542.

movement.⁵⁰ The creation of the Secretariat for Promoting Christian Unity by Pope John XXIII gave the quest for Christian unity more force.⁵¹ The Second Vatican Council articulated its concern for Christian unity in the decree, *Unitatis redintegratio*, which is the Church's official stand on ecumenism. In this decree, the council outlined the principles that must guide the ecumenical movement. To enhance the implementation of these principles, the council called for the preparation of an ecumenical directory, which was initially published by the Pontifical Council for Promoting Christian Unity in two parts.⁵² During and after the Second Vatican Council there have been significant developments in ecumenical matters.

In comparison to these developments, the provision of 1983 Code on ecumenism is meagre, at least in quantity.⁵³ In the 1983 Code, only c. 755 is devoted to ecumenism, while other canons⁵⁴ are simply its applications. The provision of *CCEO* is more elaborate on ecumenism. It devoted a whole title on Ecumenism or Fostering the Unity of Christians (*CCEO*, cc. 902-908). However, our concern in the prescript of c. 755 is that:

i) bishops in their dioceses and bishops' conferences are to promote Christian unity in

⁵⁰ "Ipsi igitur non solum diligenter et efficaciter universae huic actioni invigilare debent, verum etiam prudenter eam promovere et dirigere, tum ut adiuventur qui veritatem veramque Ecclesiam exquirunt, tum ut arceantur a fidelibus pericula, quae actionem ipsius 'Motionis' facile consequuntur" (ibid., no. 1, p. 143; English trans. in *CLD* III, p. 537).

⁵¹ See JOHN XXIII, *Motu proprio* institution of the Commissions for the Preparation of the Second Vatican Council *Superno Dei nutu*, 5 June 1960, in *AAS*, 52 (1960), no. 9, p. 436.

⁵² See PONTIFICAL COUNCIL FOR PROMOTING CHRISTIAN UNITY (= PCPCU), Directory for the Application of Second Vatican Council's Decisions on Ecumenism *Ad totam Ecclesiam*, 14 May 1967, in *AAS*, 59 (1967), pp. 574-592, and in *AAS*, 62 (1970), pp. 705-724.

⁵³ See F.R. McMANUS, "Canonical Overview: 1983-1999," in *CLSA Comm2*, p. 16.

⁵⁴ While c. 383, §3 prescribes that the diocesan bishop should foster ecumenism as understood by the Church, c. 825, §2 provides for publication of versions of Scriptures with separated brethren, and c. 844 is about lawful administration of the sacraments to non-Catholics.

accordance with the law; ii) taking into consideration the various needs and opportunities of the circumstances in their areas, bishops' conferences are to issue practical norms on ecumenism according to the provisions laid down by the Supreme Pontiff (c. 755, §2).

In response to c. 755, §2 CBCN decree, briefly summarised, states that Bishops have the duty to foster ecumenism; they are to have regards for non-Catholics and those not in full communion with the Church and dialogue with them; they are to socialise with non-Catholics and avoid discrimination on the basis of faith or church affiliation. It further directs that as a practical expression of ecumenism, there should be positive doctrinal preaching. Associations that favour ecumenism should be encouraged and patronised. Ecumenical liturgical celebrations should be attentive to and study the Nigerian situation to avoid scandal. Ecumenical charismatic movements should be discouraged. Norms on mixed marriage, as directed by the conference, should be scrupulously observed; dispensation from canonical form should be judiciously granted and properly executed; and special vigilance and care for the children of mixed marriages should be considered a form of ecumenism with the study of the situation prevailing in Nigeria.⁵⁵

The decree of CBCN on ecumenism is comprehensive considering the fact that its particular complementary norms to the Code were published in 1985 before the present documents were issued by the Pontifical Council for the Promotion of Christian Unity.⁵⁶ It is very encouraging to note that in the recent restructuring of the National Secretariat of

⁵⁵ See CBCN, *PCN*, pp. 25-26.

⁵⁶ See PCPCU, *Directory for the Application of Principles and Norms on Ecumenism*, Vatican City, Libreria editrice Vaticana, 1993 (= 1993 *Ecumenical Directory*); PCPCU, *The Ecumenical Dimension in the Formation of Those Engaged in Pastoral Work*, Rome, Typis Vaticanis, 1997.

CBCN a provision was made for an ecumenism committee under Mission and Dialogue Department. While bishops can make up in their diocese for what is lacking in the decree of CBCN, it is important to observe that ecumenism, as decreed by the conference, is not realisable unless the teaching of particular courses on ecumenism is made compulsory in all the ecclesiastical institutions of learning in Nigeria. In its present state, Nigeria needs the cooperation of all Christians to salvage it from the shackles of corrupt leaders. There is still deep-seated division among Nigerian Christians, which has affected their attitude towards the Nigerian polity. To be practical with ecumenism, CBCN should not wait further to initiate the much-needed dialogue that will bridge the rift between Christians in Nigeria. The ecumenism required of CBCN today is not merely attending the meetings of the Christian Association of Nigeria (CAN),⁵⁷ but injecting the association with vital dynamic support more than it has at present, notwithstanding all obstacles.

4.1.6 – Guidelines for Permitting Laypersons to Preach

The provision for preaching by laypersons is one of the most obvious innovations in the 1983 Code. History shows that there have been many canonical prescripts limiting preaching to clerics or directly prohibiting the laypersons from preaching.⁵⁸ “In the earliest sources found in patristics and the canons, there is clear distinction between the

⁵⁷ CAN is an association of the leaders all the Christian denominations in Nigeria Its presidency and the executive body rotate from one denomination to the other.

⁵⁸ “Item, utrum credit, quod liceat laicis utriusque sexus, viris scilicet et mulieribus, libere praedicare verbum Dei” (MARTIN V, Constitution *Inter cunctas*, §14, 35°, 22 February 1418, in *Bullarium diplomatum et privilegiorum sanctorum Romanorum pontificum*, Augustae Taurinorum, Taurinensis editio, 1857-1872, [= *Bullarium Romanorum*] vol. IV, p. 675, regarding the way heretics or suspected heretics were to be interrogated). See also J.A. FUENTES, Commentary on c. 766, in *Exegetical Comm* III/1, p. 85.

function of teaching the faithful and the function of ordained ministers.”⁵⁹ However, there are also a few specific instances in history of preaching by the laypersons. This could be gleaned, at least, from the fact that although the 1917 Code absolutely forbade non-clerics from preaching,⁶⁰ yet those in minor orders (who were neither priests nor deacons) were ranked among clerics. Thus, though the faculty was given only to priests and deacons, for reasonable cause (*rationabili de causa*), in the judgement of the ordinary, those in the minor orders could be permitted to preach in individual cases (*in casibus singularibus*).⁶¹

The new norm as provided by the 1983 Code permits the laypersons to preach under certain circumstances according to the provisions of the bishops’ conference (c. 766).⁶² The circumstances, necessity and the advantage of such preaching are factors for a change in a long-lasting discipline. Fuentes summarises this thus:

The reason for this change in discipline is not to be found in Vatican II’s recognition of the laity’s responsibilities in the Church, i.e., the sources of this canon are not *LG* or *AA*, which are conciliar texts proclaiming their mission. The new norm is based on the fill in for priests or in particular cases where it would be advantageous. This is literally how the canon reads and this can also be inferred from its sources⁶³ ... ‘Since it is a task done as a stand-in, it is formally

⁵⁹ FUENTES, Commentary on c. 766, in *Exegetical Comm* III/1, p. 85.

⁶⁰ “Concionari in ecclesia vetantur laici omnes, etsi religiosi” (*CIC/17*, c. 1342, §2).

⁶¹ “Concionandi facultas solis sacerdotibus vel diaconis fiat, non vero ceteris clericis, nisi rationabili de causa, iudicio Ordinarii et in casibus singularibus” (*CIC/17*, c. 1342, §1).

⁶² “Ad praedicandum in ecclesia vel oratorio admitti possunt laici, si certis in audiuntis necessitas id requirat aut in casibus particularibus utilitas id suadeat, iuxta Episcoporum conferentiae praescripta, et salvo can. 767, §1” (*CIC/83*, c. 766).

⁶³ Cf. i) *CIC/17*, c. 1342. ii) PIUS XII, Allocution on the Teaching Authority of the Church *Si diligis*, 31 May 1954, in *AAS*, 46 (1954), pp. 313-317; English trans. in *The Pope Speaks*, 1 (1964), pp. 153-158. Here the pope pointed out that there is no teaching authority of the laity without the guidance and supervision of the sacred teaching authority: “Verumtamen haec contra retinenda sunt: numquam nempe fuit neque est neque umquam erit in Ecclesia legitimum laicorum magisterium, quod a Deo auctoritati, ductui, vigilantiae sacri Magisterii fuerit subtractum” (*AAS*, 46 [1954], p. 317). iii) SACRED CONGREGATION FOR RITES, Instruction *Inter*

and immediately legitimized in the official duty done by pastors, and any given exercise thereof depends on supervision by Church authorities' (*Christifideles laici*, 23).⁶⁴

Thus, c. 766 establishes some conditions for allowing the laypersons to preach: i) it must be in particular cases of need (absence of ministers, for example); or ii) in circumstances in which it would be particularly advantageous for the laypersons to preach; and iii) in accord with the guidelines established by the bishops' conference, which must always be followed.⁶⁵

In response to the prescript of c. 766, CBCN starts its decree with a prelude, which recalls that the sacred hierarchy has the primary responsibility of proclaiming the word of God while the laypersons share in this work. The conference expresses, in the introduction, its belief that the prescript of c. 766 intends "to involve the laity more [in] the work of preaching."⁶⁶ However, it reaffirms the prescript of c. 767, §1 which reserves the homily to a priest or deacon. It determines also the following: i) in celebrations which do not involve a priest or deacon, the catechist or any other lay person approved by the parish priest may preach; ii) lay persons of proven ability or special competence may be allowed to preach to the gathered faithful on special occasions, provided their

oecumenici, 26 September 1964, in *AAS*, 56 (1964), pp. 877-900; English trans. in *CLD* VI, pp. 73-99. This Instruction directed that in a place that lacks a priest to celebrate Mass on Sundays or feast days of obligation, the celebration of the word of God is to be fostered, with a deacon or a lay person delegated, according to the judgement of the local ordinary, to preside over this service: "In locis quae sacerdote carent, si nulla copia est Missam celebrandi diebus dominicis et festis de praecepto, sacra verbi Dei celebratio, de iudicio Ordinarii loci, foveatur, diacono vel etiam laico ad hoc deputato ei praesidente" (*Inter oecumenici*, ch. 1, X, §37, in *AAS*, 56 [1964], pp. 884-885).

⁶⁴ FUENTES, Commentary on c. 766, in *Exegetical Comm* III/1, p. 86.

⁶⁵ See *ibid.*

⁶⁶ CBCN, *PCN*, p. 25.

exhortations are considered to be very opportune and are given at the end of the Eucharistic celebration; and iii) lay persons who may be permitted to preach in a church or oratory should have due knowledge, lead an exemplary life and be docile to the magisterium and legitimate local pastors.⁶⁷

This decree of CBCN is in conformity with the teaching of the Church but it lacks the extensive interpretation that CBCN gives to c. 766 at the introduction of the decree. In its words: "Wishing to involve the laity more [in] the work of preaching ..."⁶⁸ It is important to note here that the interpretation of CBCN, that c. 766 intends to involve the laypersons more in the work of preaching, is inadequate. In contrast, this canon has made provision only for the permission for laypersons to preach where there is a shortage of sacred ministers and permanent objectively verifiable situation of need, or for particular reasons foreseen by the universal law, as explained in the Instruction approved in *forma specifica* and signed by seven offices of the Roman curia:

In some areas, circumstances can arise in which a shortage of sacred ministers and permanent, objectively verifiable situations of need or advantage exist that would recommend the admission of the non-ordained faithful to preach. Preaching in churches or oratories by the non-ordained faithful can be permitted only as a supply for sacred ministers or for those particular reasons foreseen by the universal law of the church or by conferences of bishops. It cannot, however, be regarded as an ordinary occurrence nor as an authentic promotion of the laity.⁶⁹

The decree of CBCN in no. i) above makes it easy for pastors to make a judgement on the immediate need to have a layperson preach in a church or oratory

⁶⁷ See *ibid.*, p. 26.

⁶⁸ *Ibid.*, p. 25.

⁶⁹ CONGREGATION FOR THE CLERGY, Instruction on Some Questions Regarding Collaboration of non-Ordained Faithful in Priests' Sacred Ministry *Ecclesiae de mysterio*, art. 2, §4, 15 August 1997, in *AAS*, 89 (1997), p. 864; English trans. in *Origins*, 27 (1997-1998), pp. 403-404.

without waiting to get the permission of the diocesan bishop. This refers to a celebration in which there is no priest or deacon. However, CBCN does not specify who gives the permission to the layperson who may preach on special occasions as envisioned in no. ii) above. The requisite life-style required of the layperson who preaches in a church or oratory is appropriate. However, to require that a layperson preach at the end of the Eucharistic celebration, in our opinion, will be counter productive. It could have been preferable to situate the preaching after communion rather than at the end of the Mass. The synonymous use of preaching and exhortation in this decree is out of place; c. 766 speaks of allowing the laypersons to preach and not to give exhortation.

4.1.7 – Norms on Catholic Religious Education

The Church has always claimed its exclusive competence regarding catholic religious education. Even before the promulgation in the 1917 Code, issues related to teaching in the institutions of learning had been treated by the Council of Trent. Those who were in charge of such institutions were diligently to see to it that the teaching and doctrine of the Church were integrally received. The masters, doctors and others in the universities were to teach and interpret the contents of the catholic faith in conformity with catholic teaching.⁷⁰ The authority of the Church with regard to catholic religious education has been upheld in various Church documents.⁷¹ These documents constitute

⁷⁰ See COUNCIL OF TRENT, Session XXV, ch. II, *De reformatione*: “Ad haec omnes ii, ad quos universitatum et studiorum generalium cura ... diligenter curent, ut ab eisdem universitatibus canones et decreta hujus sanctae synodi integer recipiantur, ad eorumque normam magistri, doctores, et alii in eisdem universitatibus ea, quae catholicae fidei sunt, doceant et interpretentur...” in MANSI, XXXIII, col. 182; see also SCHROEDER, *Canons and Decrees*, p. 234.

⁷¹ See PIUS IX, Encyclical *Nostis et nobiscum*, 8 December 1849, in PIUS IX, *Acta*, pars prima: acta exhibens quae ad Ecclesiam universam spectant (= *Acta Pii IX*), Romae, Ex typographia Bonarum Artium, (1854-1878), vol. 1, pp. 198-223, especially p. 217; Encyclical

the *fontes* of c. 1381 of the 1917 Code, which prescribed that the religious instruction of youths is subject to the authority and inspection of the Church and that to local ordinaries belong both the right and the duty to be vigilant over schools within their territories.⁷² The teaching of the Church on catholic religious education has remained constant and relevant through the centuries.⁷³ It will continue to be relevant and bear much fruit if we put in proper perspective the circumstances of our time, as observed by the Congregation for Catholic Education:

The diversity of situation in which the Catholic school must operate in the various countries, whose tradition may or may not be Christian, and the diversity of the laws with which the school must come to terms, require that the specific problems of the Catholic school be faced and resolved by the local Churches in their varying socio-cultural contexts.⁷⁴

In view of the socio-cultural diversity in which catholic schools are found, the 1983 Code prescribes that the formation and education in catholic religion provided in any school, and through various means of social communication, is subject to the

Cum nuper, 20 January 1858, in *ibid.*, vol. III, pp. 8-16, especially pp. 11-12; Encyclical *Maximae quidem*, 18 August 1864, in *ibid.*, pp. 674-679, especially 677-679; LEO XIII, Constitution *Romanos Pontifices*, 8 May 1881, in LEO XIII, *Acta* (= *Acta Leonis XIII*), Romae, Ex typographia Vaticana, 1882, vol. II, pp. 231-260, especially pp. 246-248; LEO XIII, Encyclical *Quod multum*, 22 August 1886, in *ibid.*, vol. VI, pp. 146-161 (here the pope noted that the Church as parent and teacher is the holy guardian of religion, moral integrity, and virtue: "Est enim religionis sanctissima custos, et innocentiae morum omniumque virtutum, quae a religione sponte proficiscuntur, parens educatrixque Ecclesia" (p. 151).

⁷² "Religiosa iuventutis institutio in scholis quibuslibet auctoritati et inspectioni Ecclesiae subiicitur. Ordinariis locorum ius et officium est vigilandi ne in quibusvis scholis sui territorii quidquam contra fidem vel bonos mores tradatur aut fiat" (c. 1381, §§1, 2).

⁷³ See SACRED CONGREGATION FOR THE COUNCIL, *Normae circa institutionem religiosam in scholis publicis*, 28 August 1924, in X. OCHOA, *Leges Ecclesiae* (= OCHOA, *LE*) 1 (1917-1941), no. 613, cols. 714-716; Circular Letter, 21 June 1930, in *AAS*, 22 (1930), pp. 395-400; PIUS XII, Encyclical *Humani generis*, 12 August 1950, in *AAS*, 42 (1950), pp. 561-578; SACRED CONGREGATION FOR CATHOLIC EDUCATION (= SCCE), Instruction *La scuola cattolica*, 19 March 1977, in OCHOA, *LE*, 5 (1973-1978), no. 4505, cols. 7301-7313; English trans. in *The Pope Speaks*, 22 (1977), pp. 332-357).

⁷⁴ SCCE, *La scuola cattolica*, in *The Pope Speaks*, 22 (1977), p. 332.

authority of the local Church. Thus, it is for the bishops' conferences to issue norms concerning this field of activity and for the diocesan bishop to regulate and watch over it (c. 804, §1).

In response to this prescript, CBCN recalls both the teaching of the Second Vatican Council (*GE*, no. 2) and the provision of c. 217 of the 1983 Code, that all Christians have a right to a Christian education. Observing that among the foremost means of advancing catholic education are catholic schools, it decrees that, where possible, catholic institutions of learning should be established at all levels. Formation and education in the catholic religion require teachers who are carefully trained in principles and methods of teaching according to the demands of the time. In non-catholic schools, pastors should see to it that those who teach catholic moral and religious education are organised and assisted in fulfilling this task effectively. They should also secure suitable periods in these schools for moral instructions, which they should personally undertake, or delegate persons well equipped to do so. Associations of volunteer religious teachers should also be organised and people trained for this purpose. The teachers should be qualified in both religious and secular learning. Imbued with apostolic zeal and an inspiring way of life, they should be charitably disposed toward each other and the pupils they teach; and they must be capable of working with the parents. The teachers must be sufficiently provided with all they need to be successful in this apostolate. The inalienable duty and right of parents to educate their children should be acknowledged and respected by civil authority, which should make necessary provisions to enable the parents to discharge this duty and exercise their legitimate right.

Finally, there must be cooperation and collaboration between pastors, parents, and teachers for maximum results.⁷⁵

This decree is very detailed but lacks juridical precision and clarity. It is interesting that CBCN stresses the importance of establishing catholic institutions of learning at all levels but is silent on how the catholic schools, confiscated by the Nigerian government, can be regained. The saying “*res clamat ad dominum*” (a thing cries for its owner) remains true in all ages. The schools were confiscated by military dictatorship. If Nigeria has true democracy today, where justice is not delayed, the Catholic Church should back its schools and be compensated. This decree could have been more persuasive if CBCN has briefly stated the norms leaving the specifications for their application to its committee on education.

4.2 – ON THE SANCTIFYING OFFICE OF THE CHURCH

The cases, in which the bishops’ conference is not obliged to promulgate decrees but may do so, are most extensive in Book IV, on *The Sanctifying Office of the Church*. In this section, we will analyse those cases listed as optional in the letter of the Secretary of State as well as those on which CBCN has, on its own, issued some complementary norms. Thus, the following matters will be addressed here: administration of some sacraments to non-Catholic Christians; method for the administration of baptism; age for confirmation; parochial register for confirmation; age for orders; age for licit celebration of marriage; distinctive rite for marriage; norms for dispensation from canonical form; materials for constructing an altar; holy days of obligation; abstinence and fasting.

⁷⁵ See CBCN, *PCN*, pp. 27-29.

4.2.1 – Administration of Some Sacraments to Non-Catholic Christians

It had been the practice of the Catholic Church to refuse the sacraments to those who are not in full communion with it, even if they asked for them in good faith, unless they had first rejected their errors and reconciled with the Church.⁷⁶ Thus, before the Second Vatican Council, *communicatio in sacris* between Catholics and non-Catholics was totally forbidden by the Church. The Second Vatican Council modified this position when it addressed the situation of those Eastern Churches, which have valid sacraments:

A mutual sharing in sacred things (*communicatio in sacris*), which runs counter to the unity of the Church, or which involves formal adhesion to error or the danger of aberration in the faith, of scandal and of indifferentism, is forbidden by the law of God. However, with regard to our Eastern brethren ... individuals can and ought to be taken into account ... where the need of salvation and the spiritual good of souls are prime considerations.⁷⁷

Regarding other Churches and ecclesial communities, “insofar as they lack especially a priesthood, the sacramental reciprocity is more difficult and exceptional (*UR*, 22).”⁷⁸ Accordingly, practical guidelines regarding the sharing of the sacraments with non-Catholic Christians are found in various documents.⁷⁹ It is only in exceptional situations, and with unity of sacramental faith, that the sacraments could be administered to non-Catholic Christians.

⁷⁶ “Vetitum est Sacramenta Ecclesiae ministrare haereticis aut schismaticis, etiam bona fide errantibus eaque petentibus, nisi prius, erroribus reiectis, Ecclesiae reconciliati fuerint” (*CIC/17*, c. 731, §2).

⁷⁷ *OE*, no. 26, p. 84; English trans. in *FLANNERY*1, p. 450.

⁷⁸ J.T. MARTÍN de AGAR, Commentary on c. 844, in *Exegetical Comm* III/1, p. 411.

⁷⁹ Cf. PCPCU, *Ad totam Ecclesiam*, in *AAS*, 59 (1967), pp. 574-592, and in *AAS*, 62 (1970), pp. 705-724; Declaration *Dans ces derniers*, 7 January 1970, in *AAS*, 62 (1970), pp. 184-188; English trans. in *CLD* VII, pp. 796-801; Instruction on Common Eucharist between Christians of Different Confessions *In quibus rerum*, 1 June 1972, in *AAS*, 64 (1972), pp. 518-525. See also the explanatory note to this Instruction, Admission of non-Catholic Christians to Holy Communion: Interpretation *Dopo la pubblicazione*, 17 October 1973, in *AAS*, 65 (1973), pp. 616-619; English trans. in *CLD* VIII, pp. 468-472.

Where the unity of sacramental faith is deficient, the administration of the sacraments to non-Catholic Christians (who are not of the Eastern Churches), especially the sacraments of the Eucharist, reconciliation and anointing of the sick, is forbidden. However, since these sacraments are both signs of unity and sources of grace (*UR*, no. 8), the Church, for adequate reason, under certain circumstances, allows access to the non-Catholic Christians who spontaneously ask for them.⁸⁰ Apart from the danger of death, other grave reasons that might warrant the administration of these sacraments to non-Catholic Christians may vary according to situations and circumstances of place and time. Thus, the 1983 Code leaves it to the judgment of the diocesan bishop or the bishops' conference, to determine other instances of grave and pressing need, when Catholic ministers may lawfully administer the sacraments of penance, Eucharist and anointing of the sick to other Christians not in full communion with the Catholic Church; if they spontaneously ask for them and are properly disposed (c. 844, §4).

Responding to this prescript of the Code, CBCN decrees that it "leaves the judgement of the existence of such grave or urgent need to the diocesan Bishop."⁸¹ This is a wise provision, considering the diversity of Nigerian society. Therefore, it is the duty of the diocesan bishop to establish general norms for judging situations of grave and

⁸⁰ "Unde ubi haec unitas fidei quoad sacramenta deficit, participatio Fratrum seiunctorum cum Catholicis, praesertim in sacramentis Eucharistiae, Paenitentiae et Unctionis Infirmorum, vetatur. Tamen, cum sacramenta sint tum signa unitatis tum fontes gratiae procurandae, Ecclesia potest, propter rationes sufficientes, accessum ad haec sacramenta alicui Fratri seiuncto permittere. Qui accessus permitti potest in periculo mortis vel in urgente necessitate ... si frater seiunctus ad suae Communionis ministrum accedere non potest et sponte sua a sacerdote catholico sacramenta postulat, dummodo fidem consentaneam fidei Ecclesiae quoad haec sacramenta exprimat et rite dispositus sit" (PCPCU, *Ad totam Ecclesiam*, no. 55, in *AAS*, 59 [1967], p. 590).

⁸¹ CBCN, *PCN*, p. 30.

pressing need; and for verifying the conditions under which, in his diocese, a catholic minister may administer the Eucharist, penance, and anointing of the sick to baptised non-Catholics. As required by law, the diocesan bishop must consult with the competent authority of the non-catholic Churches and ecclesial communities, who are concerned before publishing such norms (c. 844, §5).

4.2.2 – Method for the Administration of Baptism

Baptism “is the basis of the whole Christian life, the gateway to life in the Spirit (*vitae spiritualis ianua*), and the door which gives access to the other sacraments (*ianua sacramentorum*, c. 849).”⁸² Baptism derived its name from the central rite by which it is carried out. Thus, to baptise is from the Greek word *baptizein* (βαπτίζειν), which means to “plunge” or to “immerse.” The immersion into water symbolises the baptised person’s descent into death with Christ, dying to sin and rising as a new creature.⁸³ The Church has taught that baptism could be administered by either immersion, infusion or aspersion.⁸⁴

The 1917 Code allowed baptism either by infusion, immersion, and aspersion or by a combination of infusion and immersion (*CIC/17*, c. 758). Neither the Rite nor the present Code of Canon Law allows the combination of infusion and immersion for the administration of baptism.⁸⁵ However, the Rite is explicit about immersion as more

⁸² *Catechism of the Catholic Church* (= CCC), with modifications from the Editio typica, New York, Toronto, Doubleday, 2003, no. 1213, p. 342.

⁸³ See *ibid.*

⁸⁴ See BENEDICT XIV, Constitution *Etsi pastoralis*, §2, no. II, 26 May 1742, in BENEDICT XIV, *Lambertinis Bullarium*, vol. 15, p. 199; *Rituale Romanum*, Title II, ch. 1, de sacramento baptismi rite administrando, no. 10.

⁸⁵ There is no specification as whether a person is to be baptised by immersion or by infusion in the Eastern Code. It only requires that a person be washed with natural water (*CCEO*, 675, §1).

suitable for baptism.⁸⁶ In either case, the washing with water should take on its full importance as the sign of the mystical sharing in Christ's death and resurrection through which those who believe in his name die to sin and rise to eternal life. Thus, whichever serves best in individual cases and in various traditions and circumstances should be chosen, to ensure the clear understanding that baptismal washing is not a mere purification rite but the sacrament of being joined to Christ.⁸⁷ To avoid arbitrariness in the choice between immersion and pouring (infusion) and to encourage uniformity among people of the same tradition and circumstances, the 1983 Code prescribes that baptism is to be conferred by either of the two rites, in accordance with the provisions of the bishops' conference (c. 854).

In response to this prescript, CBCN determines that baptism should be administered by infusion. The local ordinary may allow it by immersion only by way of experiment.⁸⁸ Since the symbolism of water depicts real washing and cleansing of sin, CBCN is mindful of its cultural setting which could interpret immersion as a mere purification rite.

⁸⁶ "As to the rite for baptizing, either the rite of immersion, which is more suitable as a symbol of participation in the death and resurrection of Christ, or pouring may lawfully be used in the celebration of baptism" (*Rite of Christian Initiation of Adults, the Roman Ritual* [= *RCIA*], revised by the decree of the Second Vatican Council and published by authority of Pope Paul VI, Ottawa, Canadian Conference of Catholic Bishops, 1987, no. 22, p xiv).

⁸⁷ "Propterea ablutio aquae, cum mysticam participationem mortis et resurrectionis Christi significet, per quam credentes in nomine eius peccatis moriuntur et in vitam resurgent aeternam, plenum suum momentum in celebratione Baptismi obtineat: seligatur proinde ritus vel immersionis vel infusionis, singulis casibus aptior, ut, pro variis traditionibus et rerum adiunctis melius intellegatur eam ablutionem non esse mere purificationis ritum, sed sacramentum coniunctionis cum Christo" (*Rituale Romanum, Ordo initiationis christianae adultorum*, editio typica, in Civitate Vaticana, [reimpressio emendata, 1974], Typis polyglottis Vaticanis, 1972, no. 32, p. 22).

⁸⁸ See CBCN, *PCN*, p. 30.

4.2.3 – The Age for Confirmation

In the earliest days of the Church, the sacraments of Christian initiation (baptism, confirmation and Eucharist) were conferred simultaneously. This was not necessarily because the recipients of these sacraments at that time were mostly adults. It was more so because of the intimate union of these sacraments for full Christian initiation. For pastoral, more than theological reasons, the Latin Church became less aware of this union, compared to the Eastern Christians, both Catholics and non-Catholics who are more conscious of the intimate union between baptism, confirmation, and the Eucharist for full Christian initiation.⁸⁹

The Latin church deferred confirmation until a later age, not for any compelling theological reason, but simply because it took several years for the bishop to visit all his local communities to confer the sacrament. The gradual development of a theology of confirmation as a sacrament of adult or mature faith was an attempt to justify theologically the historical and ‘accidental’ separation of confirmation from baptism, and to give more meaning to a sacrament that was normally celebrated apart and seen as distinct from baptism.⁹⁰

The separation of confirmation from baptism was a historical fact, for it was a lawful custom to administer both together, only to be abolished with time; thus, requiring that it be administered at a certain age.⁹¹ Compelled by pastoral demands, unless in exceptional cases, the Latin Church no longer confers the sacraments of initiation

⁸⁹ See W.H. WOESTMAN, *Sacraments: Initiation, Penance, Anointing of the Sick, Commentary on Canon 840-1007*, 3rd edition, revised and updated with appendices, Ottawa, Faculty of Canon Law, Saint Paul University, 2004, p. 7.

⁹⁰ K.T. HART, Commentary on c. 891, in *CLSA Comm2*, p. 1088.

⁹¹ “Praeterea licet apud Occidentales etiam Ecclesias in more posita quandoque fuerit Baptismatis, et Confirmationis simultanea collatio, et haec consuetudo in aliquibus Dioecesibus anteactio tempore inoleverit ... nihilominus abrogato prorsus a Romana Ecclesia aliarum Matre et Magistra hujusmodi more, consultissimis Summorum Pontificum Decretis provide cautum est, ut renatis Fonte Baptismatis conferretur Sacramentum Confirmationis in ea solum aetate ...” (BENEDICT XIV, Instruction *Eo quamvis*, §6, 4 May 1745, in *Lambertinis Bullarium*, vol. 15, p. 517).

simultaneously but requires that the candidates for the Eucharist and confirmation be old “enough to be able to distinguish between good and evil.”⁹² The 1917 Code prescribed that the sacrament of confirmation in the Latin Church was to be conveniently deferred until about the age of seven. Nevertheless, it was to be conferred earlier in danger of death or when there was a grave and just cause to expedite it (*CIC/17*, c. 788). With emphasis on age and discretion, the connection between the sacraments of initiation seemed to have been neglected. The Second Vatican Council ordered the revision of the rite of confirmation so that the intimate connection of this sacrament with the whole of the Christian initiation may be made more clearly apparent. Thus, the renewal of baptismal promises should precede the reception of confirmation when the two sacraments are not administered simultaneously (*SC*, no. 71). Apart from the age of discretion, there is no canonical age for confirmation unless the bishops’ conference determines one (c. 891). If it does, it is for lawfulness and not for validity. In danger of death, any baptised person can receive the sacrament validly and lawfully. Consequently, in danger of death, infants can receive the sacrament validly and lawfully. However, to be lawfully received outside of danger of death the person must be suitably instructed, properly disposed and able to renew the baptismal promises.

⁹² “Tertium denique exemplum suppeditant nonnulli ex Cophtis, quorum Ritus praescribit, ut post Baptismi Sacramentum illico adjungatur Confirmatio; qui mos non obtinet in Occidentali Ecclesia, quae plerumque talem in confirmandis aetatem exposcit ut qui bonum, quidve malum sit, possint dignoscere” (BENEDICT XIV, Encyclical *Allatae sunt*, §22, 22 July 1755, in *Lumbertinis Bullarium*, vol. 17/2, pp. 257-258). See also LEO XIII, Epistle *Abrogata*, 22 June 1897, in *Acta Leonis XIII*, 17 (1897), pp. 205-206.

In response to c. 891, CBCN leaves the determination of age, other than that of discretion, to the judgement of the diocesan bishop.⁹³ In our opinion, this canon requires the determination of age by CBCN but it failed to do so.

4.2.4 – Parish Confirmation Register

It has been the custom of the Church to keep records regarding those who were confirmed.⁹⁴ In conformity with this practice, the 1917 Code obliged the pastor to record in a special parish book, the name of the minister, those confirmed, the parents and sponsors, the day and place of confirmation.⁹⁵ While the 1917 Code required specifically that the record was to be made in a special book of the parish, the present Code prescribes that it be made in the confirmation register of the diocesan curia; or it could be recorded in the register to be kept in the parish archives if it has been prescribed by the bishops' conference or the diocesan bishop.⁹⁶ The wording of this canon shows preference to the registration of confirmation in the confirmation register of the diocesan curia. The

⁹³ See CBCN, PCN, p. 31.

⁹⁴ See BENEDICT XIV, Constitution *Firmandis*, §9, 6 November 1744, in *Lambertinis Bullarium*, vol. 15, p. 453: "... denique an Parochus apud se recte ordinatos retineat libros tum Baptizatorum, ubi Fons Baptismalis adsit in ipsius Ecclesia, tum Sacro Chrismate confirmatorum, libros etiam Matrimoniorum, et status animarum." See also BENEDICT XIV, Constitution *Ad honorandam*, §13, 27 March 1752, in *ibid*, vol. 17/1, pp. 366-367.

⁹⁵ "Nomina ministri, confirmatorum, parentum et patrinorum, diem ac locum confirmationis parochus inscribat in peculiari libro ..." (*CIC/17*, c. 798).

⁹⁶ "Nomina confirmatorum, facta mentione ministri, parentum et patrinorum, loci et diei collatae confirmationis in librum confirmatorum Curiae dioecessanae adnotuntur, vel, ubi id praescripserit Episcoporum conferentia aut Episcopus dioecesanus, in librum in archivio paroeciali conservandum ..." (*CIC/83*, c. 895).

purpose of this could be an implicit affirmation of the primacy of the bishop as the ordinary minister of the sacrament.⁹⁷

In response to the prescript of c. 895, CBCN acknowledges that it is already customary in many dioceses in Nigeria to keep a parish confirmation register and “directs that all dioceses do the same.”⁹⁸ The juridical status of a person is not so much affected by confirmation as it is by baptism (cc. 11, 96, 204, §1, 842, §1), holy Orders (1087) and matrimony (c. 1085). However, the registration of confirmation helps to establish that a person was confirmed in order to undertake the office of sponsor for baptism or confirmation. Full initiation into the Church is a requirement for one to assume the responsibility of sponsorship (c. 874, §1, 3°).

4.2.5 – Criteria for General Absolution

The Church has always taught that integral confession of sins is a divine injunction necessary for all who have sinned gravely after baptism.⁹⁹ Thus, Christ empowered the Church to minister to the faithful with his forgiving sacrament. The Church fulfils this ministry through its priests. The priest, in the person of Christ, by virtue of the power of the keys, imparts the forgiveness of sins. He could neither do this without knowledge of the matter, nor observe justice in imposing appropriate penance, should the faithful declare their sins only generally. It then follows that all mortal sins which a penitent has knowledge of after a diligent examination of conscience, must be

⁹⁷ See HART, Commentary on c. 895, in *CLSA Comm2*, p. 1093.

⁹⁸ CBCN, *PCN*, p. 31.

⁹⁹ “... universa ecclesia semper intellexit, institutam etiam esse a Domino integram peccatorum confessionem, et omnibus post baptismum lapsis jure divino ...” (COUNCIL OF TRENT, Session XIV, chapter v, De confessione, 25 November 1551, in MANSI, XXXIII, col. 94).

confessed in the act of sacramental reconciliation.¹⁰⁰ Therefore, the Church teaches that individual and integral confession by the penitent and absolution by the priest constitutes the *ordinary* means by which a penitent, conscious of grave sin, is reconciled to God and to the Church. The first document of the Holy See dealing with general absolution addressed the situation of soldiers about to engage in war (World War I). In it, the Holy See replied in the affirmative to the doubt whether soldiers in this situation could be absolved lawfully by means of general absolution.¹⁰¹ A second document that addressed the same situation was in regard to the faculty conceded by Pope Pius XII, through the Consistorial Congregation to military vicars or major chaplains. By this faculty, which was valid only during the course of the Second World War, the priests concerned could absolve by a general formula or common absolution when fighting was imminent or had actually begun. However, the decree directed that the priest should not fail to inform the penitents of the need for proper disposition and that they are bound to make a complete

¹⁰⁰ “Constat enim, sacerdotes iudicium hoc incognita causa exercere non potuisse, nec aequitatem illos in poenis injungendis servare potuisse, si in genere dumtaxat, & non potius in specie ac sigillatim sua ipsi peccata declarassent. Ex his colligitur, oportere a poenitentibus omnia peccata mortalia, quorum post diligentem sui discussionem conscientiam habent, in confessione recenseri, etiamsi occultissima illa sint & tantum adversus duo ultima decalogi praecepta commissa, quae nonnumquam animum gravius sauciant, & periculosiora sunt iis, quae in manifesto admittuntur ...” (COUNCIL OF TRENT, *De confessione*, in MANSI, XXXIII, col. 94). See also SCHROEDER, *Canons and Decrees*, pp. 92-93 and 102-103, cc 4, 5, 6; *CIC/17*, cc. 870 and 901.

¹⁰¹ “Affirmative. Nihil vero obstare quominus sic absoluti in praefatis adiunctis ad sacram Eucharistiam suscipiendam admittantur. Ne omittant vero cappellani militum, data opportunitate, eos docere absolutionem sic impertiendam non esse profuturam, nisi rite dispositi fuerint, iisdemque obligationem manere integram confessionem suo tempore peragendi, si periculum evaserint’. Contrariis quibuscumque non obstantibus” (SACRA PAENITENTIARIA APOSTOLICA [= SPA], Declaration *Proposito*, 6 February 1915, in *AAS*, 7 [1915], p. 72).

confession in its proper time.¹⁰² Hitherto, the use of general absolution has been in cases involving danger of death in time of war and similar situations.

The faculty to absolve several penitents by general absolution was extended by the Instruction *Ut dubia*, of the Apostolic Penitentiary to include other cases of grave and urgent necessity proportionate to the divine precept of the integrity of confession. An example is when penitents would be deprived, for a long time, of sacramental grace and of Holy Communion without their own fault.¹⁰³ The novelty introduced by this Instruction gave rise to misinterpretation and abuse which the subsequent norms on the subject sought to correct. Thus, the pastoral norms of the Congregation for the Doctrine of the Faith, *Sacramentum paenitentiae*, were not only to reiterate that the teaching of the Council of Trent on confession must continue to be firmly held and faithfully put into practice, but also to respond to the concerns of local ordinaries about the difficulties their faithful had and certain erroneous theories regarding the sacrament of penance. The Congregation for the Doctrine of the Faith expressed these as follows:

On the other hand, many local Ordinaries are concerned from one angle, about the difficulty their faithful have in getting to individual confession and because of the dearth of priests existing in some places and, from another angle, about certain erroneous theories regarding the doctrine of the sacrament of penance and the growing tendency and unwarranted practice of imparting sacramental absolution to many persons at one and the same time who have made only a generic confession. They have besought the Holy See to recall to the mind of the

¹⁰² "... liceat iisdem sacerdotibus absolvere a quibusvis peccatis ... generali formula seu communi absolutione, absque praevia orali confessione, sed doloris actu debite emisso, quando sive prae militum multitudine sive prae temporis angustia singuli audiri nequeant, eosque ita absolutos ... Ne omittant vero poenitentes docere absolutionem ita receptam non esse profuturam, nisi rite dispositi fuerint, eisdemque obligationem manere integram confessionem suo tempore peragendi" (SACRA CONGREGATIO CONSISTORIALIS, Decree *Sacrum bis litandi*, no. 14 b, 8 December 1939, in *AAS*, 31 [1939], p. 712; English trans. in *CLD* II, pp. 143-144).

¹⁰³ "... licet vero si accedat alia gravis omnino et urgens necessitas, gravitati praecepti divini integritatis confessionis proportionata, verbi gratia si poenitentes – secus nulla sua culpa – diu gratia sacramentali et sacra Communionem carere cognantur" (SPA, Instruction *Ut dubia*, 25 March 1944, in *AAS*, 36 [1944], p. 155; English trans. in *CLD* III, p. 378).

Christian people, in accord with the true nature of the sacrament of penance, the conditions necessary for the correct use of this sacrament and to set forth some norms in the present circumstances.¹⁰⁴

These pastoral norms, which were basically inspired by the aforementioned Instruction (*Ut dubia*), served as the doctrinal basis of the disciplinary and liturgical reform of the Rite of the Sacrament of Reconciliation (*Ordo paenitentiae*).¹⁰⁵ This Rite of Penance, which was promulgated pursuant to the order of the Second Vatican Council (SC, no. 72), received the discipline of the norms of *Sacramentum paenitentiae*, and established the rite based upon which absolution could be imparted.¹⁰⁶ The phrase, "cases of grave and urgent necessity by which penitents would be deprived for a long time of sacramental grace and of Holy Communion," as appeared in nos. 5 and 32 of *Sacramentum paenitentiae* and *Ordo paenitentiae* respectively, led to the often incorrect application of the norms. These gave rise to further intervention by the magisterium both before and after the promulgation of the 1983 Code.¹⁰⁷ Considering the abuses in the use of the rite of general absolution, the 1983 Code prescribes, contrary to the provisions of

¹⁰⁴ SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH (= SCDF), Pastoral Norms, on General Sacramental Absolution *Sacramentum paenitentiae*, 16 June 1972, in *AAS*, 64 (1972), p. 510; English trans. in *CLD* VII, p. 668.

¹⁰⁵ See CONGREGATION FOR THE DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS (= CDWDS), Rite of Penance *Ordo paenitentiae*, 2 December 1973, Editio typica, Typis polyglottis Vaticanis, 1974.

¹⁰⁶ See W.H. STETSON, Commentary on c. 961, in *Exegetical Comm* III/1, p. 761.

¹⁰⁷ See SCDF, Letter to the National Conference of Catholic Bishops (U.S.A.), on General Absolution, 14 January 1977, in OCHOA, *LE*, 5 (1973-1978), no. 4487, cols. 7287-7288 and in *CLD* VIII, 554-556; Response on a question about General Absolution, 20 January 1978, in OCHOA, *LE*, 5 (1973-1978), no. 4555, col. 7358 and in *Notitiae* 14 (1978), pp. 6-7; PAUL VI, Allocution to Bishops of the New York District, USA, during their "Adlimina" visit, 20 April 1978, in *AAS*, 70 (1978), pp. 328-332 and in *Origins*, 7 (1977-1978), p. 721, 723-724; JOHN PAUL II, Allocution to the Members of the Sacred Apostolic Penitentiary, 30 January 1981, in *AAS*, 73 (1981), pp. 201-204 and in *CLD* IX, pp. 592-597; JOHN PAUL II, Exhortation *Reconciliatio et paenitentia*, 2 December 1984, in *AAS*, 77 (1985), pp. 185-275 and in *The Pope Speaks* 30 (1985), pp. 21-41, 48-82. The Apostolic Letter *motu proprio* of Pope John Paul II was

nos. 5 and 32 of *Sacramentum paenitentiae* and *Ordo paenitentiae* respectively, that only the diocesan bishop can judge whether the conditions required for grave necessity exist. Thus, mindful of the criteria determined in agreement with the other members of the bishops' conference, the diocesan bishop has to identify the cases which constitute grave necessity (c. 961, §2).

In response to this prescript, CBCN decrees that priests are not free to presume the existence of urgent and grave necessity, and it outlines the following criteria for judging grave necessity:

- a) Genuine pastoral needs of stable nature arising from the size of a parish such that the priests available cannot reasonably provide for individual and integral confessions within three months;
- b) Other situations in which the faithful could be unduly deprived of the sacrament because of an unavoidable shortage of priests;
- c) The penitents have to be instructed to make individual confession of their grave sins in due time before receiving another general absolution. Moreover, the confessor should offer opportunity for individual confession to those who so desire;
- d) After these criteria, general absolution is imparted after a well-prepared and celebrated penitential rite.¹⁰⁸

The discipline regarding general absolution has always been strictly observed in Nigeria, especially in the Eastern part of the country where the faithful are very familiar with the rigorous application of the Church law. Situations of pastoral need are rare where in the

the latest intervention of the magisterium on this issue (see JOHN PAUL II, Apostolic Letter *motu proprio Misericordia Dei*, 7 April 2002, in *The Pope Speaks*, 47 [2002], pp. 307-312).

¹⁰⁸ See CBCN, *PCN*, pp. 31-32.

priests cannot provide the penitents with individual and integral confession within three months. Such situation existed only during the Nigerian-Biafran war.

The decree of CBCN on general absolution conforms faithfully to the teaching of the Church on general absolution. However, it is reasonable to raise some theological questions that concern the requirement to confess in an individual confession the grave sins already forgiven in general sacramental absolution. The crucial questions are: Are the grave sins for which a penitent has received general absolution truly forgiven by such absolution? Does the requirement of later individual confessions imply that the grave sins absolved in a general absolution were not forgiven in the first place? Could it be that the efficacy of the absolution was suspended only to be actualised in an individual confession later? Should the priest who hears the confession later impart absolution for the same sins? We believe that individual and integral confession and absolution are the ordinary means by which the faithful, conscious of grave sin, are reconciled with God and the Church, barring physical and moral impossibility (c. 960).¹⁰⁹ Consequently, the practice of general absolution contrary to the prescribed norms of the Church constitutes a grave abuse of the sacrament.¹¹⁰

4.2.6 – Older Age for the Presbyterate or Permanent Diaconate

The discipline governing age limit for candidates for the diaconate and the priesthood has been in effect in the Church for a very long time. The Council of Trent

¹⁰⁹ See also *Misericordia Dei*, no. 1a, in *The Pope Speaks*, 47 (2002), p. 309.

¹¹⁰ “Absolutiones sacramentales modo generali impertitae, nisi supradictae normae servantur, tamquam abusus graves habendae sunt. Quod pastores omnes sedulo arceant, conscii moralis oneris sibi iniuncti erga bonum animarum ac dignitatem sacramenti paenitentiae tuendam” (*Sacramentum paenitentiae*, no. 13, in *AAS*, 64 [1972], p. 514).

decreed specific ages for receiving the various orders. It ruled that no one should be promoted to the diaconate before age twenty-three and to the priesthood before the twenty-fifth year of his age. However, the attainment of this stipulated age was not the sole criterion for admission to the respective orders. The age had to be matched by the required knowledge and suitability for the office.¹¹¹ Daniel Cenalmor explains the rationale behind the canonical age limit for orders as follows:

The fundamental object of age limits established in this canon is to prudently ensure that the candidates to the diaconate and the priesthood possess sufficient human and spiritual maturity to be able to embrace their vocation with a full responsible choice, *mature deliberata* (OT, no. 12), as well as to later suitably fulfil their ministerial functions, in which they will act representing Christ as the head (c. 1008).¹¹²

The 1917 Code reduced the age prescribed by the Council of Trent for both the diaconate and the priesthood, by one year respectively.¹¹³ However, the 1983 Code reverted to the requirements of the Council of Trent by prescribing that the priesthood may be conferred only upon those who have completed their twenty-fifth year of age and the transitional diaconate on those who have completed their twenty-third year (c. 1031, §1). For the permanent diaconate, however, the candidates must have completed their twenty-fifth year if they are not married, and thirty-fifth year if they are married (c. 1031, §2). Even so, the bishops' conferences, taking into account the cultural circumstances in

¹¹¹ "Nullus in posterum ... ad diaconatus ante vigesimum tertium, ad presbyteratus ante vigesimum quintum aetatis suae annum promoveatur. Sciant tamen episcopi, non singulos in ea aetate constitutos debere ad hos ordines assumi, sed dignos dumtaxat, et quorum probata vita senectus sit" (MANSI, XXXIII, 15 July 1563, Session XXIII, *De ordine: De reformatione*, ch. XII, col. 145). See also SCHROEDER, *Canons and Decrees*, pp. 171-172.

¹¹² D. CENALMOR, Commentary on c. 1031, in *Exegetical Comm* III/1, p. 959.

¹¹³ See *CIC/17*, c. 975: "Subdiaconatus ne conferatur ante annum vicesimum primum completum; diaconatus ante vicesimum secundum completum; presbyteratus ante vicesimum quartum completum."

their various areas of jurisdiction, may decree a later age for the priesthood and permanent diaconate, but not for the transitional diaconate (c. 1031, §3).

In response to the prescript of c. 1031, §3, CBCN decrees as follows:

The Conference retains the age limits stipulated in this canon, namely, the priesthood may be conferred only on those who have completed their twenty-fifth year of age. Those who are destined for the priesthood are to be admitted to the order of diaconate only when they have completed their twenty-third year.¹¹⁴

It is obvious that diocesan bishops and their equivalents in law can dispense from defect of age (c. 87, §1), provided it is not for more than a year below the required age. A dispensation from more than one year below the required age for orders is reserved to the Holy See (c. 1031, §4). If recourse to the Holy See is difficult and there is danger of grave harm in delay, any ordinary can dispense from the required age for conferring the sacrament of Orders (c. 87, §2);¹¹⁵ and provided the dispensation is not more than 18 months below the age for the priesthood and the transitional diaconate, and 30 months for the married diaconate.¹¹⁶ Some ordained had challenged the validity of their ordinations conducted with dispensation from age, on grounds of psychological and emotional

¹¹⁴ CBCN, *PCN*, p. 33.

¹¹⁵ We have to note that a local ordinary can dispense from the laws made by the bishops' conference whenever he judges that it contributes to the spiritual welfare of the faithful (c. 88). Major superiors of the clerical religious institutes of pontifical right, with the consent of their council, can also dispense their own subjects who are to be promoted to sacred orders from the defect of age, provided it does not exceed six complete months: "De consensu sui Consilii, dispensandi subditos suos ad sacros Ordines promovendos a defectu aetatis, qui sex integros menses non excedat" (SECRETARIAT OF STATE, Rescripts *Cum admotae*, no. 6, 6 November 1964, in *AAS*, 59 [1967], p. 375; English trans. in *CLD* VI, p. 148).

¹¹⁶ "... questo Dicastero potesse concedere un'ulteriore dispensa di 6 mesi da aggiungere a quella di 1 anno di competenza dei vescovi (per un totale di 18 mesi) per il presbiterato, per il diaconato transeunte e per quello permanente celibatario e di 30 mesi per il diaconato permanente coniugato (Lett. Segr. di Stato N. 346.606 del 23 marzo 1994 e N. 390.341 del 20 maggio 1996)" (CDWDS, Notification on Dispensation for Lack of Age for Sacred Orders, 24 July 1997, in *Notitiae*, 33 [1997], pp. 281-282).

immaturity as observed by CDWDS. Therefore, with the approval of the pope, i decided not to grant the said dispensation any longer except for *extreme, rare, and exceptional cases* based exclusively on grave pastoral demand for the *salus animarum*. In such situations, the candidate might be lacking the required age by months and not years, and provided the request is made, at least six months, before the ordination.¹¹⁷

4.2.7 – Older Age for Licit Celebration of Marriage

The Church has constantly and cautiously made every effort to assure that nothing stands in the way of the valid celebration of marriage. Thus, it is not only a question of law (c. 1075, §1),¹¹⁸ but it has been the teaching of the Church, that it lies within the competence of the Supreme ecclesiastical authority to regulate the contracting of marriage.¹¹⁹ The requirement of a certain age for the valid celebration of marriage is to make sure that a person is physically and psychologically mature enough before assuming the responsibility of marriage. In most cultures, marriage is presumed to be from the age of puberty when people are able to assume responsibilities, and have been emancipated from the guardianship of others. Stressing the importance of age in marriage among the Romans, Percy Ellwood Corbett writes:

There could be no legal marriage at Rome between persons under the age of puberty. The male must be *pubes*, the female *viripotens*. In the earliest law, however, it is impossible to speak of an ‘age of puberty’, since puberty was determined by actual inspection of the body. Out of respect for their modesty,

¹¹⁷ See *ibid*, p. 283; see also CENALMOR, Commentary on c. 1031, in *Exegetical Comm* III/1, pp. 960-961.

¹¹⁸ “Supremae tantum auctoritatis ecclesiasticae est authentice declarare quandam ius divinum matrimonium impediat vel dirimat” (CIC/17, c. 1038, §1).

¹¹⁹ See COUNCIL OF TRENT, XXIV, *De sacramento matrimonii*, cc. 3 & 4, 11 November 1563, in MANSI, XXXIII, col. 150.

this practice was at a remote period discontinued in the case of girls and the fixed age of twelve settled upon; but boys continued to be examined, probably in connexion with the *tirocinium fori* when they assumed the dress and political privileges of men.¹²⁰

In accord with this ancient custom of fixing, in law, when people assume full responsibility of their actions, the marriageable ages (*aetas nubilis*), in the Church were fourteen years for men and twelve for women.¹²¹ The 1917 Code changed this discipline, increasing the age for validly contracting marriage by two years for both men and women.¹²² The 1983 Code has retained the provision of the 1917 Code regarding the age for entering into a valid marriage (c. 1083, §1). However, circumstances in various customs and culture concerning the age of puberty, as well as civil laws, might have an adverse effect on a marriage contracted in the Church. Consequently, the Code has also provided that the bishops' conference may establish a higher age for the lawful celebration of marriage (c. 1083, §2).

In response to this provision, CBCN determines that it "leaves it to the judgement of each local ordinary to establish a higher age for the lawful celebration of marriage either in general or for individual cases within his jurisdiction."¹²³ It is a prudent decision to leave the determination of a higher age for the lawful celebration of marriage to each

¹²⁰ P.E. CORBETT, *The Roman Law of Marriage*, Oxford, Clarendon Press, 1930, p. 51.

¹²¹ "Iam vero Ecclesia iure antiquo declaravit illicitum et invalidum matrimonium ante utriusque partis pubertatem, idest inter virum ante XIV aetatis annum completum et mulierem ante annum XII completum; quae proinde dici solebat *aetas nubilis, anni nubiles, aetas apta, anni apti ad matrimonium*, prout canones loquebantur" (P. GASPARRI, *Tractatus canonicus de matrimonio*, editio nova ad mentem Codicis I. C., Città del Vaticano, Typis polyglottis Vaticanis, 1932, vol. 1, no. 490, p. 290).

¹²² "Vir ante decimum sextum aetatis annum completum, mulier ante decimum quartum item completum, matrimonium validum inire non possunt" (CIC/17, c.1067, §1).

¹²³ CBCN, PCN, p. 36.

local ordinary. However, the use of the phrase “within his jurisdiction” in the decree, instead of “within his diocese,” suggests that it is left also to both the vicars general and episcopal vicars to establish a higher age for lawful celebration of marriage in their areas of jurisdiction. This assumption is informed by the fact that local ordinary is a generic term for the pope, diocesan bishops, those equivalent to diocesan bishops (c. 368), vicars general and episcopal vicars (c. 134, §2). The determination for a higher age is for lawful and not valid celebration of marriage. Thus, any local ordinary can issue a singular or general executory decree, in this regard, according to the provision of law.

One can appreciate better the decision by CBCN to leave the determination of a higher age for lawful marriage to individual bishops on the realisation that age limit varies from one region of the country to the next. The Nigerian law does not stipulate any minimum age for statutory marriage. However, the Marriage Act decree of 1971 requires the consent of parents or guardians of minors below twenty-one years before they can contract marriage.¹²⁴ Unfortunately, this *Marriage Act* made no provision for the minimum age during which time a minor can legally enter into marriage. The *Matrimonial Causes Decree* of 1970 prescribed that a marriage is void if either of the parties has not attained a “marriageable age” at the time of the marriage.¹²⁵ “But neither does the *Matrimonial Causes Decree* define what a ‘marriageable age’ is, nor does the *Marriage Act* prescribe a minimum age of those to be regarded as ‘minors below twenty-

¹²⁴ See FEDERAL REPUBLIC OF NIGERIA (= FRN), *Marriage Act (Amendment) Decree*, 14 (1971), no. 18. See also M.C. IWUJI, *Marriage Form in Nigeria*, JCD diss., Rome, Pontificia Università Lateranense, 1983, p. 76.

¹²⁵ See FRN, *Marriage: Matrimonial Causes Decree*, Lagos, Government Press, 1970, vol. 18, no. 3, Sec. 1(e).

one years of age.”¹²⁶ In various regions of the country, however, there are age-related regulations for marriage.

According to the customary law of Eastern States of Nigeria, a “marriage or promise of offer of marriage between or in respect of persons either of whom is under the age of sixteen shall be void.”¹²⁷ Minimum age has also been fixed in some Native Authority areas. Thus, in “the Northern States: Biu – fourteen years; Idoma – twelve years, Borgu – thirteen years and Tiv – age of puberty.”¹²⁸ Based on these differences in age, we are of the view that bishops of the same ecclesiastical region are better quipped to determine a higher age for the lawful celebration of marriage in their region because each region of the country has similar culture.

4.2.8 – Distinctive Rite for Marriage

Before the advent of Christianity, the use of customary rite was required for the contracting of a marriage, both in Nigeria and in some other countries. It is believed that people lived with and married among the members of their community. Recalling such practice in the first four centuries E. Schillebeeckx writes:

According to the views of ancient, primitive peoples, the solemnisation of marriage was a ‘sacral’ event. In the case of the Greek and the Romans, marriage was not originally based on interpersonal relationships ... but on the ‘religion of the hearth’, the *focus patruus* ... Thus each family had its own household liturgy with its own rites, prayers, hymns, and sacrifices. The domestic hearth was never allowed to go out; it was the providence of this particular family, and no other. Its priest was the paterfamilias of the domestic hearth.¹²⁹

¹²⁶ IWUJI, *Marriage Form in Nigeria*, p. 76.

¹²⁷ EASTERN NIGERIA, *Eastern Nigerian Age of Marriage Law*, Enugu, Government Press, 1956, no. 22, Sec. 3(1).

¹²⁸ IWUJI, *Marriage Form in Nigeria*, p. 20.

¹²⁹ E. SCHILLEBEECKX, *Marriage: Secular Reality and Saving Mystery*, translated by N.D. SMITH, London, Sheed and Ward, 1965, vol. II, p. 4.

Similarly, “Christian marriage was much the same as that of the pagans. As a general rule, Christians were bound to conform in this and similar matters to the pattern of life of their own environment.”¹³⁰ The Church accepted that “the marriages of baptized Christians were celebrated like those of unbaptized pagans.”¹³¹ Nevertheless, from the outset, it surrounded the civil and family marriages of the faithful with pastoral care. The letter of Saint Ignatius to Polycarp is the first extant and “explicit reference to the involvement of the Church in what was in the first centuries the family affair of contracting marriage.”¹³² In his letter, Saint Ignatius said that promises and engagements were to be made according to the judgement of the bishop, so that marriage might be according to the Lord and not according to the flesh. All things were to be done for the glory of God.¹³³

There was no indication that the Church provided any particular public rite for marriage during this period.¹³⁴ While the Church accepted the marriage of Christians patterned according to their environment, it did not approve of secret marriages. The emphasis was that marriages were to be public. If marriages were to be public, that is, before the family or group to which the persons belonged, then Christians were to celebrate their marriages before the Church as a family of God’s people. According to

¹³⁰ Ibid, p. 18.

¹³¹ Ibid, pp. 18-19.

¹³² D.R. ESPEN, *The Canonical Form of Marriage; Re-Evaluation*, CLS no. 462, Washington, DC, The Catholic University of America, 1968, p. 7.

¹³³ See SAINT IGNATIUS, *Epistola ad Policarpum*: “Decet vero, ut sponsi et sponsae de sententia episcopi conjugium faciant, ut nuptiae secundum Dominum sint, non secundum cupiditatem. Omnia ad honorem Dei fiant,” in J. MIGNE (ed.), *Patrologiae cursus completus, series Graeca* (= PG), Paris, Garnier Fratres, 1894, vol. V, chap. V, col. 723.

¹³⁴ See ESPEN, *The Canonical Form of Marriage*, p. 7.

Tertullian, secret marriages, not professed before the Church, were likened to adultery and fornication.¹³⁵ Nevertheless, according to the Council of Trent, secret marriages made with the free consent of the contracting parties were valid and true marriages, unless they were declared invalid by the Church. Those who held a contrary opinion were condemned with anathema.¹³⁶ The practice of secret marriages was seriously abused, as some left the first wife with whom they contracted marriage secretly and publicly married another.¹³⁷

The Council of Trent (11 November 1563), therefore, decreed that in the future, before a marriage is contracted, the proper pastor of the contracting parties was to announce publicly three times the names of those wishing to contract marriages. The announcements were to be made during Mass on three successive festival days.¹³⁸ Pursuant to the determination to curb the abuses resulting from secret marriages, the Council of Trent abrogated the custom of secret marriage with the institution of the marriage form when it decreed:

Those who shall attempt to contract marriage otherwise than in the presence of the parish priest or of another priest authorized by the parish priest or by the ordinary and in the presence of two or three witnesses, the holy council renders

¹³⁵ "... Ideo penes nos occultae quoque conjunctiones, id est non prius apud Ecclesiam professae juxta moechiam et fornicationem judicari periclitantur" (TERTULLIAN, *Liber de pudicitia*, in J. MIGNE [ed.], *Patrologiae cursus completus, series Latina* [= PL], Paris, Excudebat Migne, 1844-, vol. II, chap. iv, col. 987).

¹³⁶ "Tametsi dubitandum non est, clandestina matrimonia, libero contrahentium consensu facta, rata & vera esse matrimonia, quamdiu ecclesia ea irrita non facit, & proinde jure damnandi sunt illi, ut eos sancta synodus anathemate damnat, qui ea vera ac rata esse negant" (MANSI XXXIII, Session XXIV, *De reformatione matrimonii*, col. 152).

¹³⁷ "... quae ex eisdem clandestinis conjugiiis ortum habent, praesertim vero eorum, quae in statu damnationis permanent, dum prior uxore, cum qua clam contraxerant, relictam cum alia palam contrahunt ..." (ibid.).

¹³⁸ See ibid.

absolutely incapable of thus contracting marriage and declares such contracts invalid and null, as by the present decree it invalidates and annuls them.¹³⁹

The marriage form did not aim at negating the cultural as well as the customary aspects of the marriage rite. Its objective was to eliminate abuses associated with customary and cultural practices. Thus, the council decreed that if any provinces had other laudable customs and ceremonies, in addition to the aforesaid, they are by all means to be retained.¹⁴⁰ The Church's desire to preserve and advance the desirable elements of the marriage rite found in a people's culture, though not codified in the 1917 Code, is apparent in the Second Vatican Council (*SC*, nos. 37 and 77). It is in this same spirit that the 1983 Code prescribes that the bishops' conference, in keeping with the usages of the place and people, can draw up its own rite of marriage. The rite is to be adapted to the Christian spirit, observing the law requiring the person assisting at marriage to be present and to ask for and receive the consent of the parties (c. 1120).

In response to this prescript, CBCN declares, "The Conference has decided to refer this case to the Liturgical Commission and the Catholic Institute of West Africa (CIWA) for the deep study and adaptation it requires."¹⁴¹ This declaration was made about 21 years ago. Up to the time of this writing, the conference has not come up with any marriage rite for Nigeria. The delay could most probably be that CBCN intends to publish only one rite for the whole country. If this surmising were to be true, a uniform rite for the entire country would contravene the plurality of marriage rites in Nigerian

¹³⁹ Ibid.; English trans. in SCHROEDER, *Canons and Decrees*, p. 184.

¹⁴⁰ "Si quae provinciae aliis ultra praedictas laudabilibus consuetudinibus & caeremoniis hac in re utuntur, eas omnino retineri sancta synodus vehementer optat" (MANSI XXXIII, Session XXIV, *De reformatione*, ch. 1, col. 153).

¹⁴¹ CBCN, *PCN*, p. 36.

culture. The conference must accept this native diversity and allow rituals that are suitable to the needs of Nigeria. It seems that in Spain, there are three such rituals for marriage celebration;¹⁴² and we think Nigeria could consider such an approach. It is worth re-examining the “deep study” by the Liturgical Commission of CBCN and CIWA, which for 21 years has produced no result!

4.2.9 – Norms for Dispensing from the Canonical Form of Marriage

The competence to dispense Catholics from the canonical form of marriage was reserved to the Apostolic See¹⁴³ until the reform introduced by the *motu proprio Matrimonia mixta* of Pope Paul VI. With this reform, local ordinaries now have the right to dispense from the observance of canonical form for mixed marriages when serious difficulties stand in the way of its observance.¹⁴⁴ The *motu proprio* further determined that it belongs to the bishops’ conference to establish norms for a uniform and licit application of this dispensation and how it will be publicly celebrated in its territory.¹⁴⁵

This reform has been restated almost verbatim in c. 1127, §2 of the 1983 Code:

If there are grave difficulties in the way of observing the canonical form, the local Ordinary of the Catholic party has the right to dispense from it in individual cases, having however consulted the Ordinary of the place in which the marriage is celebrated; for validity, however, some public form of celebration is required.

¹⁴² See A.M. VEGA, Commentary on c. 1120, in *Exegetical Comm* III/2, pp. 1491-1492.

¹⁴³ Unless the power has been granted either by common law or by special indult of the Apostolic See (see *CIC/17*, c. 1040).

¹⁴⁴ “Si graves difficultates formae canonicae servandae obstant, Ordinariis locorum ius est dispensandi a forma canonica matrimonii mixti...” (PAUL VI, Apostolic Letter *motu proprio Matrimonia mixta*, 31 March 1970, in *AAS*, 62 [1970], p. 261; English trans. in *CLD* VII, p. 716).

¹⁴⁵ “Conferentiae autem Episcoporum est normas statuere, quibus praedicta dispensatio in sua regione vel in suo territorio concordati ratione ac licite, salva tamen aliqua publica forma celebrationis, concedatur” (PAUL VI, *Matrimonia mixta*, in *AAS*, 62 [1970], p. 261; English trans. in *CLD* VII, p. 716).

It is for the Bishops' Conference to establish norms whereby this dispensation may be granted in a uniform manner.¹⁴⁶

Responding to this prescript, CBCN determines as follows:

In accordance with the norms of Canon 1127, §2, the CBCN establishes the following norms:

- i. The dispensation from canonical form can only be granted where there is sufficient guarantee about the faith of the Catholic party. It is left to the local Ordinary to determine if the danger of defection from the Catholic faith exists or not.
- ii. Before the dispensation is granted, the Catholic community is to be prepared by good catechesis to bring out clearly that marriage outside the Catholic Church with dispensation from canonical form does not involve defection from the Catholic faith.
- iii. In the application for the dispensation from the canonical form, the Catholic party must indicate the form of the celebration that they intend to have.
- iv. The public forms of celebration acceptable in Nigeria for the validity of dispensation from form are still under further discussion.¹⁴⁷

Going through these norms, one can notice that the first norm is a repetition of the prescripts of cc. 1086, 1125 of the 1983 Code, which specify the conditions for dispensation from the canonical forms. The second norm addresses the catechesis regarding the Catholic teaching on the dispensation from canonical form. The Christian faithful do not have to know this teaching only when a dispensation is to be granted. They have the right to know the Church's teaching on issues which affect their life as Christians (c. 229, §1), including dispensation from the canonical form whether there is an impending dispensation or not. The third norm is very reasonable because the form chosen by the party must be in conformity with the public forms approved by CBCN. Unfortunately, the "public forms of celebration acceptable in Nigeria for the validity of

¹⁴⁶ "Si graves difficultates formae canonicae servandae obstant, Ordinario loci partis catholicae ius est ab eadem in singulis casibus dispensandi, consulto tamen Ordinario loci in quo matrimonium celebratur, et salva ad validitatem aliqua publica forma celebrationis; Episcoporum conferentiae est normas statuere, quibus praedicta dispensatio concordi ratione concedatur" (CIC/83, c. 1127, §2).

¹⁴⁷ CBCN, PCN, p. 39.

dispensation from canonical form are still under further discussion”¹⁴⁸ for more than twenty-one years. To avoid random unregulated public forms of marriage after the dispensation from canonical form, it is high time for CBCN to approve the public forms acceptable to it, because there are many public rites of marriage in Nigeria.

4.2.10 – Materials For Constructing Altar

There is consensus among historians that the material used in the construction of altars during the earliest period of Christianity was generally wood. If other materials were used, they were of rare occurrence.¹⁴⁹ The use of wooden altar during this period could be attributed to the absence of temples as places of worship:

The absence of temples in the early Church where Christians could celebrate the different religious functions, and, especially, the Eucharistic sacrifice, prompted the common practice of using a wooden table – what we would nowadays call, using the Code’s terminology, a movable altar – for the celebration of the Eucharist.¹⁵⁰

It was after a considerable period of time that the use of wooden altars became old-fashioned. Pope Sylvester (314-335) is viewed by some to be the first to make stone altars obligatory. This view is not convincing, both because no decree attributed to him could prove it and because wooden altars existed and were used even after his time.¹⁵¹ The first actual legislation against the use of a wooden altar was recorded in the Council of Epaon, in Gaul in 517, which forbade the consecration of any material for altars except

¹⁴⁸ Ibid.

¹⁴⁹ See N.M. BLILEY, *Altars According to the Code of Canon Law*, CLS no. 38, Washington, DC, The Catholic University of America, 1927, p 18.

¹⁵⁰ R. SCHUNCK, Commentary on c. 1236, in *Exegetical Comm III/2*, p. 1858.

¹⁵¹ See BLILEY, *Altars According to the Code of Canon Law*, p. 19.

stones.¹⁵² Another was the fourteenth chapter of the Capitularies of Charlemagne in 769 which “ordered that priests should not celebrate Mass unless ‘*in mensis lapideis ab Episcopis consecratis*’.”¹⁵³ With time, the use of stone for the altar became customary in various places. This is evident in the second letter of Pope Nicholas I to Emperor Michael in 869. In this letter, the pope stated that the holy altar, on which sacrifice is made to Almighty God, is naturally common stone, not at variance with other stones, which are found in the walls and pavements. He indicated that the stone is however made a sacred and holy table by the help of God and the blessing, which it received.¹⁵⁴ In Spain, the Council of Coyaca, in 1050, prescribed that the altar is usually of stone and consecrated by a bishop.¹⁵⁵ In England, the Synod of Winchester issued a similar prescript in 1076.¹⁵⁶ The discipline of using only stone for the construction of an altar was received into the 1917 Code, which prescribed that both the table of an altar and the sacred stone must consist of one natural stone that is not brittle.¹⁵⁷ Such emphasis was placed on the stone being single that the consecration of two or more stones joined together with cement to make them a single altar was considered invalid.¹⁵⁸

¹⁵² See *ibid.*

¹⁵³ *Ibid.*

¹⁵⁴ “Altare itaque sanctum, in quo Deo omnipotenti sacrificiorum vota persolvimus, lapis est naturaliter communis, nihil differens ab aliis tabulis, quae parietes nostros & pavimenta adornant. Quia vero sacratum est Dei adiutorio, & benedictionem suscepit, unde & mensa sancta efficitur...” (NICOLA I, Epistola II ad Michaellem Imperatorem, in MANSI XV, col. 166).

¹⁵⁵ “Altaris vero ara tota fit lapidea & ab Episcopis consecrata” (COUNCIL OF COYACA, chap. 3, in MANSI XIX, col. 787).

¹⁵⁶ “De Altaribus, ut lapidea sint” (CONCILIUM WINTONIAE, no. 5, in MANSI XX, col. 460).

¹⁵⁷ “Tum mensa altaris immobilis tum petra sacra ex unico constant lapide naturali, integro et non friabili” (CIC/17, c. 1198, §1).

¹⁵⁸ See SACRED CONGREGATION FOR RITES, Response on Invalid Consecration of a Fixed Altar (Private), 17 October 1931 in CLD II, p. 348.

With the *novus habitus mentis* ushered in by the Second Vatican Council, the liturgy of the “Church does not wish to impose a rigid uniformity in matters which do not involve the faith or the good of the whole community ... she respects and fosters the qualities and talents of the various races and nations.”¹⁵⁹ Consequently, the 1983 Code, while retaining the traditional practice of the altar stone, has made provision for the use of other worthy and solid materials according to the circumstances of various places:

In accordance with the traditional practice of the Church, the table of a fixed altar is to be of stone, indeed of a single natural stone. However, even some other worthy and solid material may be used, if the Bishops’ Conference so judges. The support or the base can be made from any material.¹⁶⁰

In response to this prescript, CBCN determines as follows: “The Catholic Bishops’ Conference of Nigeria judges it fit that, instead of a single natural stone for the table of [a] fixed altar, other worthy and solid material may be used. The support or the base can be made from any material.”¹⁶¹ The conference is aware that a single natural stone for altar is not available in all parts of the county. Thus, it judges that other worthy and solid material can be used for the construction of an altar. While we commend the awareness and judgement of CBCN, we must point out however, that it should have specified some worthy materials that are fitting for the base of an altar in Nigeria.

4.2.11 – Holydays of Obligation

The first Holyday of obligation among the early Christians was the Sabbath according to the culture in which Christianity was born; but as Christianity developed, the observance of Sunday as a holyday of obligation took the place of the Sabbath. The

¹⁵⁹ SC, no. 37, in FLANNERY1, p. 13.

¹⁶⁰ CIC/83, c. 1236, §1.

¹⁶¹ CBCN, PCN, p. 39.

custom of the observance of Sunday that time was noticeably in contrast to the other days of the week.¹⁶² Exhorting the Christians, Tertullian asked them to put aside worldly anxieties on Sunday and even to suspend business lest they give a place to the devil.¹⁶³ Although there was no extant written Church law at this earliest stage regarding Sunday as a Holyday of obligation, yet the edict of Constantine (a. 321) had established and recognised it as a day of special religious observances among the Christians:

Let all judges, the people of cities, and those employed in all trades, remain quiet on the Holy Day of Sunday. Persons residing in the country, however, can freely and lawfully proceed with the cultivation of the fields; as it frequently happens that the sowing of grain or the planting of vines cannot be deferred to a more suitable day, and by making concessions to Heaven the advantage of the time may be lost.¹⁶⁴

Eusebius Pamphilus believed this edict was ordained for religious observance and that Constantine had the Christians especially in mind as testified by his writing.¹⁶⁵ J.A. Abad also observed that no Church law regarding Sunday obligation existed for centuries:

No ecclesiastical law that forced the faithful to participate in the Eucharist and to rest from ordinary labors existed for several centuries ... Christians used to continue working on Sunday and, although they participated in the Eucharist

¹⁶² See J.J. GUINIVEN, *The Precept of Hearing Mass; A Historical Synopsis and Commentary*, CLS no. 158, Washington, DC, The Catholic University of America, 1942, p. 10.

¹⁶³ "... Nos vero, sicut accepimus, solo die dominico Resurrectionis non ab isto tantum, sed omni anxietatis habitu, et officia cavere debemus, differentes etiam negotia, ne quem diabolo locum demus" (TERTULLIAN, *Liber de oratione*, in MIGNE, *PL*, I, col.1191).

¹⁶⁴ EMPEROR CONSTANTINE, Edict to ELPIDIUS, in *Corpus iuris civilis*, vol. 2, *Codex Iustinianus*, bk. III, ch. XII, §2, p. 127; English trans. in S.P. SCOTT (ed.), *Corpus iuris civilis/The Civil Law*, Translated from the original Latin, edited, and compared with all accessible systems of jurisprudence ancient and modern, Cincinnati, The Central Trust Company, 1973, vol. VI, bk. III, ch. XII, §3, p. 275.

¹⁶⁵ "Atque ob hanc causam cunctis sub imperio Romano degentibus praecepit, ut Dominico die feriarentur ... Porro cum exercitum omnem ad salutis diei, qui lucis ac solis appellatur nomine, religiosum cultum institueret; iis quidem qui fidem divinitus inspiratam amplexi erant, exercendi se ex more institutoque Ecclesiae Dei tempus orationibus vacarent" (EUSEBI PAMPHILI, *De vita beatissimi imperatoris Constantini*, bk. IV, ch. 18, in MIGNE, *PG*, XX/2, col. 1166.). See also GUINIVEN, *The Precept of Hearing Mass*, p. 11.

regularly, they did so out of conviction and fervor. Nevertheless, for various reasons they began to be reluctant to participate and the fathers had to encourage the participation in the Eucharist although they did not initially think about the grave obligation for each and every Sunday.¹⁶⁶

Although there was no positive written law of the Church prescribing Sunday a Holy day of obligation, such obligation arose from the custom of the people. The *Didascalia*, bears testimony to this.¹⁶⁷ The first explicit legislation regarding Sunday Mass was by the Council of Agde in 506. It presumed the obligatory nature of Sunday Mass and prescribed that the entire Mass must be heard by the faithful.¹⁶⁸ The feast days recorded in the *Constitutiones Apostolorum* were Easter, Pentecost, the Ascension, Christmas, the Epiphany, the Feast of the Apostles, the Feast of Stephen the first martyr and those of other martyrs.¹⁶⁹ As bishops had the power to introduce Holydays of obligation in their dioceses, there were abuses and a proliferation of feast days. The situation necessitated the intervention of Pope Urban VIII in his constitution *Universa per orbem*,¹⁷⁰ as recorded by J. Guiniven in his work:

Confronted with this disturbing state of affairs, Pope Urban VIII finally deemed it necessary to prescribe a uniform discipline for the entire Church in the matter of Feast days, and to fix limits beyond which the local churches could not go.

¹⁶⁶ J.A. ABAD, Introductory Commentary to cc. 1244-1253, in *Exegetical Comm* III/2, pp. 1884-1885.

¹⁶⁷ "... Christum enim caput habentes secundum promissionem ipsius praesentem et communicantem vobis, nolite ipsi vos neglegere nec alienare salvatorem a membris suis nec scindere nec spargere corpus eius nec praeponere Dei verbo necessitates temporariae vitae vestrae; sed die dominica omnia seponentes concurrere ad ecclesiam. Nam qualem excusationem daturus est Deo, qui non convenit in eodem die audire salutare verbum et nutrir: alimento divino in aeternum manente?" (F.X. FUNK [ed.], *Didascalia et Constitutiones Apostolorum*, Paderbornae, in libraria Ferdinandi Schoeningh, 1905, vol. 1, bk. II, chap. LIX, p. 170-172). See also GUINIVEN, *The Precept of Hearing Mass*, p. 21.

¹⁶⁸ See COUNCIL OF AGDE, 3 September 506, c. 47, in MANSI VIII, col. 332.

¹⁶⁹ See FUNK, *Didascalia et Constitutiones*, vol. 1, bk. VIII, chap. XXXIII, pp. 539-541.

¹⁷⁰ URBAN VIII, Constitution, *Universa per orbem*, 13 September 1642, in *Fontes*, vol. I, no. 226.

This he did on the 13th of September, 1642, in the important constitution '*Universa per orbem*'.¹⁷¹

It is interesting to note that the thirty-five holydays of obligation contained in this constitution was a reduction from the numbers of holyday of obligation, which were prevalent in various places before its promulgation. With this constitution, the power of bishops to establish feast days of precepts was proscribed.¹⁷² Because of social situations, many local Churches could not observe all the obligations in *Universa per orbem*. Thus, Pope Pius X prescribed that only eight were to be observed as holy days of obligation in the universal Church.¹⁷³ The 1917 Code reproduced all the holy days of obligation listed in the constitution of Pius X with an addition of two, namely, the feasts of *Corpus Christi* and Saint Joseph,¹⁷⁴ maintaining the discipline which reserves the establishment, transfer or abolition of holydays of obligation, only to the supreme ecclesiastical authority (*CIC/17*, 1244, §1). The 1983 Code retains the holydays of obligation as they appeared in the 1917 Code. Nevertheless, in the spirit of the Second Vatican Council (see *SC*, no. 22, §2), it empowers the bishops' conference to suppress some of them or transfer them to a Sunday (c. 1246, §2).

In response, CBCN transferred all the feast days of precept, "except Christmas, to the Sunday before or after the day when the feast actually falls."¹⁷⁵ This was approved but later reviewed by CBCN, at the request of the Holy See, as follows:

¹⁷¹ GUIVINEN, *The Precept of Hearing Mass*, p. 46.

¹⁷² See the Response *Concordiae* of the SACRED CONGREGATION FOR RITES, 23 June 1703, in *Fontes*, vol. VII, no. 5728.

¹⁷³ See PIUS X, *Motu proprio Supremi disciplinae*, nos. 1, 2 & 3, 2 July 1911, in *AAS*, 3 (1911), p. 306.

¹⁷⁴ See *CIC/17*, c. 1247, §1.

¹⁷⁵ CBCN, *PCN*, p. 40.

i. The following celebrations are to be retained as Holydays of obligation: the Nativity of Our Lord Jesus Christ, the Ascension of Our Lord Jesus Christ, the Assumption of Our Lady, and the feast of All Saints.

ii. The following celebrations are transferred to a Sunday before or after the days on which they fall: the Epiphany and the feast of the Body and Blood of Our Lord.

iii. The following celebrations are suppressed as holydays of obligation and are to be celebrated as solemnities on the day in which they fall: the feast of Mary the Mother of God, the feast of St. Joseph, the feast of Apostles Peter and Paul and the feast of Immaculate Conception.¹⁷⁶

It is quite surprising that CBCN, in its first decree, suppressed the four customary holydays of obligation in Nigeria. The intervention of the Holy See reminds us that the custom of the people, which does not go contrary to the teaching of the Church, must be given precedence whenever the conference legislates. It has been customary to celebrate Christmas, Ascension, Assumption, and All Saints on the day they fall in Nigeria.

3.2.12 – Abstinence and Fasting

The Church has practiced from its very beginning, the discipline of abstinence from various kinds of foods as an expression of penance. Before the 1917 Code, the law concerning the foods permissible during the time of fasting and abstinence admitted of many variations. Apart from meat, eggs and all types of milk products were forbidden, since they traced their origin to animals.¹⁷⁷ Later, church law forbade the eating of meat and fish at the same meal on a day of fasting.¹⁷⁸ It was the 1917 Code that established a uniform practice of abstaining from meat and soups made of meat and specified the days

¹⁷⁶ Ibid.

¹⁷⁷ See J.J. SULLIVAN, *Fast and Abstinence in the First Order of Saint Francis: A Historical Synopsis and Commentary*, CLS no. 374, Washington, DC, The Catholic University of America, 1957, p. 66.

¹⁷⁸ See *De observatione ieiunii et abstinentiae*, §524, in F.X. WERNZ, *Ius canonicum, ad Codicis normam exactum, opera Petri Vidal*, Romae, Apud Aedes Universitatis Gregorianae, 1927-1938, vol. IV/1, p. 617-618.

for fasting and abstinence for the Church (*CIC/17*, cc. 1250 and 1252). The 1983 Code has reduced the days for fasting and abstinence, but it prescribes abstinence from meat every Friday, except when a solemnity falls on Friday, while abstinence and fasting are on Ash Wednesday and Good Friday. In the place of meat, some other food, determined by the bishops' conference, can be abstained from (c. 1251). The Code allows the bishops' conference to determine particular ways fasting and abstinence may be observed (c. 1253). We examine here nos. 2 & 3 of CBCN response to the prescript of this canon:

2. In Nigeria the Catholic Bishops' Conference lays down that abstinence from meat or favourite dish or drink or smoking is to be observed on all Fridays, except when a solemnity should fall on a Friday. Abstinence and fasting are to be observed on Ash Wednesday and Good Friday.

3. In addition, the Catholic Bishops' Conference of Nigeria recommends other forms of Penance, such as, regular attendance at morning Mass, Stations of the Cross, an hour of adoration, help to the poor, visit to the sick and prisons or free service to the needy¹⁷⁹

We have only chosen these two articles of the norms because we do not consider the others as that relevant to this analysis (see Appendix II for the rest of the norms). The prescript of c. 1253 empowers CBCN to determine some other food, not foods, in place of meat, if it so chooses. The no. 2 norm as reproduced above prescribes that meat or the other items listed therein be abstained from on the days determined by the universal law. However, a favourite dish would have been a more appropriate optional item for abstinence, since various ethnic groups in Nigeria have their favourite dishes. Alcohol and cigarettes could have appropriately fitted into the recommended list of items for other forms of penance in norm no. 3 above. Commendably, CBCN provided for variety of options for abstinence, nevertheless, it fails to mention the use of raw tobacco popularly

¹⁷⁹ CBCN, *PCN*, p. 41.

known as “snuf” in Nigeria. The number of people who smoke is insignificant compared to the “snuffers”.

4.3 – ON TEMPORAL GOODS OF THE CHURCH AND PROCESSES

As indicated above we shall treat the cases in Books V, on *The Temporal Goods of the Church*, and VII, on *Processes*, together. These cases are questing, appointment of laypersons as judges, mediation and recourse against administrative decrees.

4.3.1 – Rules Regarding Questing

Questing or begging for alms is a custom that has long been practiced in the Church. Alms gathering by religious were commonly called *quaestutio* or *quaestutio religiosa*, while those assigned the office of seeking alms were called *quaestuarii* or *quaestores*. These titles were in a more generic sense also applied to those who begged for money but belonged to no religious organisations.¹⁸⁰ This practice was gravely abused in the course of ecclesiastical history and the Church has always been concerned about its regulation.¹⁸¹ To forestall the abuse of questing, the 1983 Code prescribes that the bishops’ conference can establish norms which must be observed by all, including those who, by their foundation, are called and are mendicants (c. 1265, §2). In response to the prescript of c. 1265, §2, CBCN determines, among other things, that:

¹⁸⁰ See L.G. MEYER, *Alms-Gathering by Religious: An Historical Conspectus and Commentary*, CLS no. 220, Washington, DC, The Catholic University of America, 1946, p. 3.

¹⁸¹ Many remedies applied by different councils (the Lateran Council, the Council of Lyons and the Council of Vienne) regarding this abuse were helpful. The depravity of those questing for alms not only caused great scandal but also attracted a lot of complaints from the faithful (see MANSI XXXIII, Session XXI, *De reformatione*, ch. IX, cols. 127-128). See also *CIC/17*, c. 1503.

1. There shall be no un-authorised collection in the name of or on behalf of the Church.
2. As much as possible schedules and time for collections shall be carefully prepared (on a national, regional, diocesan, and parochial basis) and copies of the same made available for the local Ordinaries, parish priests or mission superiors, chaplains, and the finance committee of the Church bodies concerned.
3. All collections shall be made after a prior information or notice of at least two Sundays before the actual collection day. Such information or notice shall include the auspices under which such a collection is to be made, and the purpose for the same.¹⁸²

It is obvious that CBCN has mistaken the provision of c. 1265, §2 of 1983 Code for cc. 1262 (which requires the bishops' conference to lay down norms for the support of the Church by the faithful in response to appeals) and 1266 (regarding the possible special collections in all churches and oratories open to the faithful) of the same Code. The conference starts with a wrong translation of c. 1265, §2 when it writes, "The Episcopal Conference can draw up rules regarding collections..."¹⁸³ In its preamble, CBCN also writes, "The scope of these norms is to draw up rules regarding collection."¹⁸⁴ Canon 1265, §2 is not about collection but about questing for alms (*de stipe quaeritanda*) or begging for alms. The conference continues with this error in the use of the word "Church" in its no. 1 norm above, as though the word "Church" stands for both the public and private juridical and physical persons that may be questing for alms. By inference, it means that there can be "un-authorised collections" in so far as they are not made in the name of the Church. The response of CBCN to the provision of c. 1265, §2 ought to have been anchored on the provision of §1 of the same canon which forbade all private juridical and physical persons from questing without permission. The second and third

¹⁸² CBCN, *PCN*, p. 42 (see the rest of the norms in Appendix II).

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

norms above are sound norms for collections but they are wrongly applied here because c. 1265, §2 is not about collections. It is very clear that CBCN has failed to determine what rules should be followed by those begging for alms in the Church. It has neither established rules to be followed by all private juridical and physical persons, including the mendicants, for questing for alms, nor has it addressed the issue of begging for alms by public subscription as provided in *Ecclesiae sanctae*.¹⁸⁵

4.3.2 – Appointment of Laypersons as Judges

The Church had a discipline of not permitting laypersons to serve as judges until the *motu proprio Causas matrimoniales*, of Paul VI, which permitted the appointment of a layman as judge for lack of clerical judges. The *motu proprio* gave the bishop's conference the faculty to permit the constitution of a panel of judges consisting of two clerics and one lay man (not a woman) in the first and second grade of trial in both the diocesan and regional tribunals.¹⁸⁶ The 1983 Code has extended the scope of this permission to accommodate both laymen and women endowed with the requisite knowledge, of good repute, and possessing a doctorate, or at least a licentiate, in canon law. It prescribes that the "Bishops' Conference can permit that lay persons also be

¹⁸⁵ "Conferentia Episcopalis cuiusque nationis potest, auditis Superioribus religiosis quorum interest, normas de stipe quaeritanda statuere, quae ab omnibus Religionibus servari debent, iis non exclusis quae ex instituto mendicantes vocantur et sunt, salvo tamen earundem mendicandi iure" (PAUL VI, Apostolic Letter *motu proprio Ecclesiae sanctae*, no. 27, §2, 6 August 1966, in *AAS*, 58 [1966], p. 770).

¹⁸⁶ "Si nec in Tribunale dioecesano nec in Tribunale regionali, ubi erectum sit, collegium trium iudicum clericorum efformari possit, Conferentia Episcopalis facultate instruitur permittendi in primo et secundo gradu constitutionem collegii ex duobus clericis et uno viro laico" (PAUL VI, Norms for expediting marriage cases *motu proprio Causas matrimoniales*, 28 March 1971, in *AAS*, 63 [1971], no. V, §1, p. 443; English trans. in *CLD* VII, p. 971).

appointed judges ... one of these can be chosen in forming a college of judges” (c. 1421, §2).

In response to this prescript of c. 1421, §2, CBCN says the “Catholic Bishops Conference of Nigeria fully accepts this legislation where the necessity suggests.”¹⁸⁷ At present, the conference gives no general permission for the appointment of lay judges. It however grants permission to the competent authority who applies for it through the Canon Law Commission that is responsible for granting them in individual cases. In our opinion, CBCN has not fulfilled the requirement of c. 1421, §2. The phrase “where necessity suggests” as appears in c. 1421, §2, is addressed to the diocesan bishops and not to the conference. Granting the permission in individual cases, in our view, weakens the power of the diocesan bishop.

4.3.3 – Mediation and Recourse against Administrative Decrees

The Church prizes greatly mediation between parties over litigation. It encourages the faithful, especially bishops, to strive earnestly to ensure that lawsuits among the people of God are as far as possible avoided. To achieve this, the 1983 prescribes that settlement or reconciliation can profitably be adopted or the controversy can be submitted to the judgement of one or more arbiters (c. 1713). For mutual promises to abide by an arbiter’s award, the norms for the settlements are to be selected by the parties. If they have not chosen any, they are to use the law established by the bishops’ conference, if such exist, or the civil law in force in the place where the pact is made (c. 1714). In a spirit of reconciliation, which mediation seeks, persons injured by the decree of an

¹⁸⁷ CBCN, *PCN*, p. 46.

authority are to seek with that authority an equitable solution by using mutual consultation (c. 1733, §1). To realise this objective, the Code further provides that the bishops' conference can prescribe that each diocese should establish a permanent office, which, with the norms laid down by the conference, would have the duty of seeking and suggesting equitable solution (c. 1733, 2).

In response to the precepts of cc. 1714 and 1733, §2, CBCN determines thus:

The Catholic Bishops Conference of Nigeria hereby provides the following norms for agreement, mutual promises and arbitral judgement: The Board of Arbitration and Administrative Board of Review are henceforth established and these shall comprise of Parochial, Diocesan, Regional and National levels. The terms of service of the members shall depend on the duration of their offices in the case of those ex-officio memberships, and all others shall be for five years.¹⁸⁸

It further states that the process of arbitration shall be offered to all disputes concerning an ecclesiastical matter including those in which a member of the Church contends that an act or decision of an administrator has violated a Church law or threatens to violate the lawful exercise of a subjective right. Cases beyond the scope of this process are those concerning the validity of marriage, civil cases, religious communities in their strictly internal affairs, legislation of competent ecclesiastical authority, infliction of penalties by judicial sentence and cases requiring a special process (cc. 1671-1731).¹⁸⁹ The composition of the various arbitration boards from the parochial to the national level as well as the procedure to be followed in the adjudication of cases by the arbitration board or by the administrative board of review is also determined by CBCN.¹⁹⁰ According to the information available to us, of all the bishops' conferences that considered c. 1714 in

¹⁸⁸ Ibid.

¹⁸⁹ See *ibid.*, pp. 46-47.

¹⁹⁰ See *ibid.*, pp. 47-48.

their complementary norms to the 1983 Code, only CBCN prescribed a procedure to be followed in arbitration.¹⁹¹ Rafael Rodríguez-Ocaña, is of the opinion that the structure of the procedure of arbitration by CBCN is inspired by the one outlined by the Code for the oral contentious trial (cf. cc. 1656-1670).¹⁹² Though the procedure determined by CBCN might have been inspired by the oral contentious trial outlined in the 1983 Code, yet it remains very remarkable because it provides ample prospects for settling controversies outside of litigation, which the Church in Nigeria needs so much. However, the application of this process for only “disputes between individuals, or groups, where the controversy concerns an ecclesiastical matter,”¹⁹³ is not advantageous to the faithful, since most litigation in Nigeria are on non-Church related issues. In our view, the provision of CBCN should go beyond ecclesiastica matters (see c. 1714).

CONCLUSION

In chapter IV, we have critically reviewed the general executory decrees of CBCN in the matters it is competent to make provisions but have the option not to do so according to the list of the Secretary of State, Cardinal A. Casaroli (see Appendix IV). In our review, we observed that the conference has made some commendable provisions for some matters but failed to rise up to the expectations in some others.

Thus, for example, CBCN’s provision for the retirement of the diocesan bishops can be viewed as an act of foresight. In the same breath, we could say that the conference

¹⁹¹ See Á. MARZOA, et al. (eds.), *Exegetical Comm* V, pp. 309-479.

¹⁹² See R. RODRÍGUEZ-OCAÑA, Commentary on c. 1714, in *Exegetical Comm* VI/2, p. 1973.

¹⁹³ CBCN, *PCN*, p. 46.

has failed to provide for the retirement of coadjutor and auxiliary bishops. With regard to the retirement of priests, CBCN speaks of retirement homes for priests in the dioceses; but these have not been put in place twenty-one years after the promulgation of the decree. Instead, houses are built for some retired bishops in a couple of dioceses in Nigeria. This type of arrangements does not reflect the economic reality of the Church in Nigeria today, irrespective of the financial sources for the construction of such edifices.

The decree of CBCN on the term of office of the parish priest runs contrary to the prescript of c. 522 of the 1983 Code, and, in our opinion, it should not have been accorded *recognitio* by the Holy See. If the decree reads with a clause thus, “the appointment of parish priests shall be *ad tempus* or for a specified period of time, as determined by the diocesan Bishop,” then one could assume that CBCN has decreed that the diocesan bishop is to determine the number of years for the appointment of a parish priest. However, no similar clause is added. With the *recognitio* the decree received, it is very difficult to classify whether it is according to the law, apart from the law or contrary to the law.

The conference has issued a good decree on ecumenism; however, it is necessary and important to make compulsory the study of ecumenism in all the ecclesiastical institutes of learning in Nigeria.

The prescript of CBCN on preaching by the laypersons in the church or oratory is in conformity with the teaching of the Church but lacks the extensive interpretation the conference gives to c. 766 in the introduction of this decree.

The decree on catholic religious education is rich but lacks precision. It is very difficult to distinguish the commentaries from the norms in this decree. The conference

would have done well to state the norms briefly, leaving the specifications for their application to the education committee of CBCN.

As regards the Sanctifying Function of the Church, CBCN leaves to the judgment of the diocesan bishop the administering of some sacraments to baptised non-Catholics. It also leaves to the diocesan bishops the determination of the age for confirmation. Fittingly, the Nigerian bishops do not tie the reception of this sacrament more to the age than to an appropriate preparation for it. The diocesan bishops are also to establish a higher age for the lawful celebration of marriage in their jurisdictions, either as a rule or in individual cases.

The conference's prescript of infusion (pouring) for baptism gives due consideration to the Nigerian culture that could easily interpret immersion as a mere purification rite. However, it fails to provide for marriage rite(s) for Nigeria and to determine the public form(s) (for the celebration of marriage) for those dispensed from the canonical form of marriage. Unregulated individual choice of public form of marriage can bring disrepute to the sacred nature of marriage.

The only matter on the temporal goods of the Church that CBCN was to make a determination is begging for alms (c. 1265, §2). Unfortunately, the provision of CBCN on this issue is very misleading. Its provision on the appointment of lay judges needs serious assessment. On the contrary, the conference's norms on mediation are commendable.

The only concern that can be raised regarding the prescript of CBCN on mediation is that while it is well articulated, it does not make any provision for issues that are not "ecclesiastical." Furthermore, this provision is rarely used because the majority of

the faithful are unaware of it. Consequently, litigations, which this decree intends to forestall among the faithful, are still prevalent.

GENERAL CONCLUSION

The primary goal of this study was to examine the relationship between universal law and particular law and to analyse the particular complementary norms promulgated by the Catholic Bishops' Conference of Nigeria. The study could be summarised as follows:

Law in any human society is not an end in itself. Its end, whether civil or ecclesiastical, is the common good of society, which includes also the good of its individual members. However, ecclesiastical law is different from other laws because of the unique nature of the Church. Unlike the civil law, which has for its end the common temporal good of a society, canon law transcends such an end. Ecclesiastical law has the role of delineating not only rights and obligations but also of maintaining order. Over and above these, it is to assure the primacy of justice and equity.

The Church is both a society and a *communio*. The societal and *communio* aspects of the Church do not make it two realities. It is an indivisibly structured reality, in which the adjectives "universal" and "particular" qualify the same Church. In the realm of these qualifications, we have both universal law and particular law. The *communio* aspect of the Church does not contradict its need for law as a structured body.

Since the relationship between the universal Church and the particular Church is that of mutual interiority, universal law and particular law are mutually related, and they complement each other. Nevertheless, by virtue of their authors and extension, particular law is subordinate to universal law. The relationship between them is clearly articulated in c. 135, §2 of the 1983 Code (cf. *CCEO*, c. 985, § 2), in which a lower legislator cannot validly make a law which is contrary to that of a higher one. Consequently, particular law

cannot go contrary to the universal law, without a special intervention of the higher legislator.

To this effect, having carefully analysed the particular complementary norms enacted by the Catholic Bishops' Conference of Nigeria, we note that the statutes of CBCN, which define the constitution and organs of the conference, were promulgated in 2003 while the *Particular Complementary Norms to the Revised Code* prepared by CBCN were published in 1985. Both the statutes and the particular complementary norms of the Catholic Bishops' Conference of Nigeria received the *recognitio* of the Holy See.

There is no doubt that the conference has done a commendable work. The very fact that CBCN put together its particular norms within a considerable short period is noteworthy. It had in fact published complementary norms on almost all the cases it was obliged to do so as early as 1985; a feat which few conferences of bishops have accomplished to date in a comprehensive manner.

One unique norm issued by the conference constitutes bishops *emeriti* as full members of the conference. This shows, on the part of the conference, a creative approach to the issues that reflect the national culture in which elders are not left out in matters requiring vital decisions.

There is no doubt that the conference has made adequate provision for its day-to-day administration through various organs. It has issued relatively adequate norms governing the temporal goods of the Church, including acts of extraordinary administration, alienation, and leasing of ecclesiastical goods. However, the sums for alienation, which are presently ₦50,000 (minimum) and ₦1,750,000 (maximum), need

urgent review because of the unstable value of the Nigerian currency and other changing economic circumstances of the country.

In our considered opinion, the conference has issued appropriate norms for mediation and recourse against administrative decrees. It is one of the very few, if not the only conference, that has made provision for arbitration.

Despite these positive aspects, there are cases in both the statutes and the complementary norms of the conference, which constitute some problems and call for appropriate review. It is not possible to address all the problem areas here; nevertheless, we will highlight some of them.

First, the particular complementary norms to the revised Code affect the lives of the Christian faithful. However, the majority of the faithful in Nigeria, through no fault of their own, have virtually no knowledge of them. In other words, the majority of the faithful are unaware of the documents that affect their faith-life in so many aspects. A very few priests know of the existence of the document.

Second, there is a notable omission in the complementary norms, that is, the lack of provision for the programme of priestly formation in the seminaries in Nigeria, as prescribed by c. 242, §1. This omission calls for very urgent action by CBCN and the Congregation for the Evangelisation of Peoples.

Third, there is a clear discrepancy between the departments of the Catholic Secretariat of Nigeria, as listed in the statutes of CBCN, and the ones noted in the new “Manual of Executive Instructions” for the Catholic Secretariat of Nigeria. The statutes state in art. 54, that CSN shall have the following departments: pastoral, justice and peace, education, social communications, health, legal, lay apostolate, and the

consecrated life; eight departments on the whole. However, the “Manual of Executive Instructions” for the CSN has noted only four departments and one directorate, all with different names. The departments in this manual are pastoral affairs, pastoral agents, Church and society, and mission and dialogue. The fifth is the directorate for social communication (see art. 2, in Appendix III).

Fourth, these inconsistencies, and many others, in both the statutes and the complementary norms suggest they were published in hurry, leaving in them typographical errors and poor arrangement.

Fifth, it is difficult to determine when the conference is enacting a decree, presenting a commentary, or simply making suggestions. This scenario only creates confusion. Such is the case in the conference’s response to c. 496 in which it is required to determine the norms for the council of priests. The response of the conference – a six-page “sample constitution and commentary” – is too long to summarise here (see Appendix II). This prolixity hardly qualifies as a decree.

Sixth, the *motu proprio Ministeria quaedam* of Pope Paul VI abrogated minor orders with the statement: “The Orders which up to this time were called minor are hereafter to be called ‘ministries’.”¹ The idea of “major orders” as used in the complementary norms, in response to the prescript of c. 1031, §1 suggests something about the preparedness of those who put the norms together. It tends to suggest that abrogated institutions were still considered even after the 1983 Code, which does not qualify the sacrament of orders with either “major” or “minor”.

¹ PAUL VI, *Ministeria quaedam*, p. 531, English trans. in *CLD* VII, p. 693.

Seventh, the same outlook is reflected in the impression a norm of CBCN creates of the office of the bishop in which he is seen as a “chief” in “the African context,” rather than a servant and a shepherd after the mind of Christ and the teaching of the Second Vatican Council. By likening a bishop to a chief in its response to c. 230, §1, in our considered opinion, the norm of CBCN seems to compromise the teaching of the Church on humility and selfless service with the pomp and pageantry of chieftaincy in the Nigerian context. A chief in the Nigerian context today does not reflect an elder, who is a head of a community, more than it reflects supremacy and dominance. The ways and means by which various chieftaincy titles are given and taken in Nigeria today have very much compromised the integrity of the institution, and could be summarised in the saying that “money does everything.”

Eighth, the most notable discrepancies in both the statutes and the complementary norms of CBCN when compared to the universal law are those cases, which at a glance, one could conclude are contrary to the universal law. It is of interest to identify a few of them here.

a) The law stipulates that the president and vice-president of the conference must be chosen only from among the members who are diocesan bishops. However, the statutes of CBCN provide that coadjutor bishops, auxiliary bishops and bishops emeriti can be president or vice-president of the conference (see arts. 8, 15).²

² *Apostolos suos*, no. 17, states that the “president and vice-president of the episcopal conference must be chosen only from among the members who are diocesan bishops.” See *Origins*, 28 (1998-1999), p. 114. See also, the negative response of the Commission for the Authentic Interpretation of the Code of Canon Law to a *dubium* on the same subject, in *Comm.* 20 (1988), p. 155; English trans. in *Exegetical Comm V*, p. 295.

b) Canon 451 of the Code prescribes that the permanent committee (which is the administrative board in the case of CBCN) of a conference of bishops is to be composed only of bishops (see also c. 457).³ Contrary to this prescript, the statutes of CBCN constitute the secretary general of CSN, who is not a bishop, a member of the administrative board (see arts. 36, §6, 40). The same statutes provide, however, that permanent commissions of the bishops' conference are to be composed only of bishop members (see art. 49, §1).

c) The most confusing among the norms of CBCN is the decree of the conference implementing the prescript of c. 522 (*CCEO*, c. 284, §3) regarding the term in office of a parish priest. This canon determines that a parish priest is to be appointed for an indeterminate period of time. The diocesan bishop may appoint him for a specified period only if the conference of bishops has, by decree, allowed this. What is required of CBCN here is a general executory decree specifying the number of years sufficient to constitute stability for a parish priest in the Nigerian situation.

Unfortunately, CBCN has not determined a fixed number of years for such an appointment. Instead, it "decrees that the appointment of parish priests shall be '*ad tempus*' or for a specified period of time."⁴ The general executory decree of CBCN in response to c. 522 has provided nothing but only a scenario in which diocesan bishops appoint parish priests without a specified number of years and remove them at will

³ The Congregation for Bishops, explaining the episcopal nature of permanent commissions and committees, notes that these commissions or committees are to be constituted only by bishop members of the conference or by those equivalent to them in law (cf. c. 381, §2). See CB, "Doctrinal Declarations by Bishops' Conferences," no. 9, in *Origins*, 29 (1999-2000), p. 114.

⁴ CBCN, *PCN*, p. 22.

without due process. This decree goes contrary to the spirit of c. 522 requiring that a parish priest be stable in his office because of the pastoral benefits stability offers. Canon 33, §1 has prescribed that general executory decrees do not derogate from the law, and any of their provisions which are contrary to the law have no force. Surprisingly, this general executory decree received the *recognitio* of the Holy See.

Because of the *recognitio* of the Holy See, we can only say that this complementary norm is contrary to law but not contrary to the law. This is so because the only possible explanation to this norm could be that CBCN might have received a special indult to promulgate its decree in response to c. 522. The efforts we made to ascertain whether CBCN had such special permission to promulgate this decree did not yield any positive result. We know that the dicasteries of the Roman Curia cannot derogate the provisions of the law promulgated by the Supreme Pontiff, without specific approval. However, they can grant dispensations in individual cases, according to the norms of the law.⁵ We are of the candid opinion that dispensing from the stability of the parish priest, if that is the case, does more harm than good.

The bishops' conferences that have responded to the provision of c. 522, except CBCN, have either determined the number of years that constitutes stability for a parish priest in his office or allowed the *ad tempus indefinitum* tenure in office for a parish priest as prescribed by c. 522 of the 1983 Code.

Faced with the apparent contradictions in the statutes and the complementary norms of CBCN, an immediate reaction would be to consider some norms of CBCN as

⁵ See Regolamento generale della Curia Romana, art. 25, §2, p. 679; English trans. in *Exegetical Comm V*, p. 232.

contrary to the provisions of the universal law. In this regard, the general executory decree of CBCN regarding the tenure in office of a parish priest is contrary to the prescript of c. 522. However, since both the statutes and the particular complementary norms of CBCN received the *recognitio* of the Holy See, we cannot categorically state that they are contrary to the universal law. At best, we can say that some of the particular complementary norms of CBCN are *praeter legem*. To this effect, the decree of CBCN regarding the tenure in office of a parish priest is apart from the law.

Although *recognitio* has been given to the statutes and the particular complementary norms of CBCN, the inconsistencies and confusions they have created are not to be overlooked. In the light of these, for a better service to the Church in Nigeria and for the good of the faithful, the following proposals could be considered by CBCN:

a) The statutes and particular complementary norms of CBCN should be reviewed and revised, as soon as possible, in light of the provision of the universal law.

b) Such a revision of the particular complementary norms of CBCN should not be presented in a book form; rather, each decree should be reviewed and sent for *recognitio* individually or in small numbers, so that they can receive adequate attention at the level of the competent dicasteries of the Holy See.

c) The norms should be precise and clear without the ambiguity that plagues the present statutes and complementary norms of CBCN. It is better to follow the canons and enact decrees related to them; rather than make decrees that serve no evident purpose. An example of this may be found in the decree implementing the prescript of c. 1262. This canon requires of the faithful to support the Church in response to appeals in accordance with norms laid down by the bishops' conference. In response to this, CBCN decrees:

“The Catholic Bishops’ Conference of Nigeria from the wide investigations conducted into the matter [is] satisfied and gives approval to the various methods adopted in the country as of now.”⁶ Even though, according to its decree, the conference has made wide investigations, and consequently must have found several methods in use in the country, it has not mentioned any of them in the said decree.

d) It would be helpful for everyone if the conference were to provide some commentary on the norms, separating it from the decrees. This would be useful to interpret them and enable the reader to know when CBCN is enacting decrees, giving advice, or simply making ordinary suggestions.

e) It is a matter of great urgency to plan and immediately provide a proper programme for priestly formation in the seminaries in Nigeria. This programme is very vital to an integral priestly formation in Nigeria. Because of the diverse situations in the country, the programme could allow for adaptation to the needs of the various ecclesiastical regions of the country. In view of the shortage of priests in some ecclesiastical regions, the diocesan bishops may require a minimum number of years for the formation of their priests. However, this minimum number of years must be in conformity with the universal law of the Church; any departure from this, even with dispensation from the Holy See, will not be for the interest of the Church in Nigeria.

f) The review and revision of the particular complementary norms of CBCN should be done by experts in diverse fields. It should involve both clergy and laypersons.

g) The Catholic Bishops’ Conference of Nigeria should designate a proper medium for the publication of its decrees. The Newsletter of the Canon Law Society of

⁶ CBCN, *PCN*, p. 42.

Nigeria could serve this purpose. The decrees could also be printed in small pamphlets and made available to people through parishes and bookstores.

h) Finally, there is no way to identify the decrees of CBCN if one wants to refer to any of them individually. It would therefore be very helpful if the decrees were serially numbered.

The promulgation of particular complementary norms by conferences of bishops is an expedient way of applying the universal law of the Church to concrete situations. It is our hope that our study will create greater awareness with regard to these complementary norms of CBCN in Nigeria. We hope that it will also spur interest for further research in which the complementary norms of various conferences of bishops could be examined and analysed in the light of the universal law.

APPENDIX I

STATUTES¹

OF THE

CATHOLIC BISHOPS' CONFERENCE

OF

NIGERIA

¹ The Appendixes are reproduced as they are; any correction is indicated by a block bracket. Some capital letters are changed to small letters in some cases to conform to the style of the thesis. Since the Catholic Bishops' Conference of Nigeria is shortened to CBCN or C.B.C.N. in the writings of the conference, we have chosen to use only CBCN to maintain uniformity. Some words are written in the original documents, sometimes beginning with capital letters and some other times with small letters, irrespective of where they fall in a sentence; we have in some cases, where necessary, changed that style. Further, for consistency with the style of the thesis we have used bishops' conference or conference of bishops instead of episcopal conference.

PROT. N. 3237/02**CONGREGATIO PRO GENTIUM EVANGELIZATIONE****DECRETUM**

Nigeriae Sacrorum Antistites ab Apostolica Sede postulaverunt ut Statuta Nigeriae Episcoporum Conferentiae, a conventu plenario ipsius Conferentiae, iuxta normas Litterarum Apostolicarum motu proprio datarum "*Apostolos Suos*" mutata, rite recognoscerentur.

Congregatio pro Gentium Evangelizatione, vi facultatum a Summo Pontifice Ioanne Paulo II sibi tributarum, nova Statuta memoratae Conferentiae Episcoporum, prout in adnexo exemplari continentur, iuri canonico universali accomodata repperit et rata habet.

Quapropter eadem Statuta, modis ac temporibus a memorata Conferentia determinatis, promulgari poterunt.

Datum Romae, ex Aedibus Congregationis pro Gentium Evangelizationae, die XI mensis Iulii anno Domini MMII.

Ernestinus Card. Lepe
Praefectus

+ Robertus Sarah
a Secretis

PRESENTATION OF CBCN STATUTES FOR PROMULGATION

1. Towards the end of 1996, CBCN submitted to the Holy See its statutes duly revised for review.
2. The review was carried out by the Pontifical Council for the Interpretation of Legislative Texts. With its letter No.1833/99 dated 30 November, 1999, the Apostolic Nunciature in Nigeria sent to the CBCN President the revised text of CBCN statutes.
3. Together with the text, the Nunciature also sent [to the president] a copy of the circular letter of the Congregation for the Evangelisation of Peoples (CEP), on the implementation of certain parts of the [*Motu proprio Apostolos suos*] on "The Theological and Juridical Nature of Episcopal Conferences" published on 21 May, 1998.

The CEP asked that the new revised text of the statutes of the CBCN take into consideration both the [*Motu proprio Apostolos suos*] and the circular letter.

4. The passages of the CBCN Statutes affected by the review by the Holy See are printed in bold dark letters. The passages are: articles 1, 2, 3, 5, 6, 8, 16, 17, 18, and 20 also articles 22, 23, 26, 27, 28, 31, 32, 36, 45, 49, [§§1, 2], 50, 52, 55, 60, and 69.
5. We must remark that the review carried out by the Holy See was extra ordinarily thorough and meticulous. We express profound gratitude for this.

The new text we have presented to Your Excellencies for promulgation followed seriously and meticulously the 39 points raised as directives by the Pontifical Council for the Interpretation of Legislative Texts.

6. The Episcopal Commission of CBCN on Canon Law, after serious work in accordance with the observations by the Holy See, now presents the reviewed statutes of the CBCN for your promulgation. The statutes shall come into effect immediately without a *vacatio legis*

+ Anthony Ggbuji
Bishop of Enugu.
15-3-2000.

**CATHOLIC BISHOPS CONFERENCE OF NIGERIA**

*Postal Address:**Your Ref:**Our Ref:***DECREE OF PROMULGATION**

The Statutes of the Catholic Bishops Conference of Nigeria (CBCN), approved by the unanimous votes of the Bishops at the Plenary Meeting held at on Ikeja 26th February, 1999, was reviewed by the Holy See by the Prot. Letter No. 3237/02 dated 11th July, 2002.

We hereby decree that the Statutes thus reviewed shall become binding with effect from the Second Plenary Meeting of the Catholic Bishops' Conference (CBCN), September 4th, 2003.

Given at Owerri, 4 September. 2003.

Most Rev. John Onaiyekan
President CBCN
Archbishop of Abuja

Most Rev. Lucius Ugorji
Secretary CBCN
Bishop of Imo

President: MOST REV. JOHN O. ONAIYEKAN
Vice President: MOST REV. FELIX A. JOB

Secretary: MOST REV. LUCIUS UGORJI
Assistant Secretary: MOST REV. ALFRED MARTINS

CHAPTER ONE: GENERAL

NAME AND ESTABLISHMENT

[Arts:]

1. The Catholic Bishops' Conference of Nigeria, (hereinafter referred to as "THE CONFERENCE"), is an **assembly** of the bishops of Nigeria established by the Holy See. (cf. c. 447, 449 §1).

AIM

2. The conference shall have as its purpose, consultation on policies affecting the interests of the Church in Nigeria and the unification, co-ordination and organisation of the Church's activities **especially in the areas of the formation of pastoral agents, pastoral affairs, mission and dialogue, of Church and society as well as of social communications.**

MEMBERSHIP

3. By virtue of the law, the following persons in Nigeria belong to the conference: all diocesan bishops and those equivalent to them in law, all co-adjutor bishops, auxiliary bishops and other titular bishops who exercise in Nigeria a special office assigned to them by the Apostolic See or the conference (c. 450 §1). Retired bishops resident in Nigeria are members of the conference **by virtue of these statutes.**

ORGANS OF THE CONFERENCE

4. The conference shall function through the following organs:
 1. Plenary meeting of the conference
 2. The administrative board
 3. Episcopal commissions and committees
 4. The Catholic Secretariat of Nigeria
 5. The provincial and regional offices
 6. Other agencies that may be created by the conference

CHAPTER TWO: PLENARY MEETING

ATTENDANCE

5. All members of the conference have the right to attend all plenary meetings of the conference. Any member who is a local ordinary and unable to attend the meeting is to send a priest representative. **A priest representative shall act in accordance with the prescriptions of the CIC/83. (cf. cc. 455, §2; 167, §2; 454, §§1, 2; 135, §2; 30).**

6. The **Legate of the Roman Pontiff** in Nigeria shall be invited to the opening session of each plenary meeting.

QUORUM

7. Two-thirds of the members of the conference shall constitute a quorum.

VOTING RIGHTS OF MEMBERS

8. Without prejudice to the prescription of c. 454, §2, all members of the conference shall have both active and passive voice in the plenary meetings. A Priest representative, however, shall have active but not passive voice **in accordance with the prescriptions of the CIC and these statutes** (cf. art. 5).

TIME AND PLACE

9. A plenary meeting shall ordinarily be held twice a year. An extraordinary meeting can be called whenever the president and one-third of the members of the conference or the president and all the metropolitans consider it necessary.
10. The first plenary meeting of the year shall ordinarily be held in the city where the general secretariat of the conference is located.
11. It shall usually open on the first Tuesday of Lent.
12. The second plenary shall be held in the provinces in rotation in the alphabetical order.
13. It shall usually open on the second Tuesday of September.
14. The date and venue of plenary meetings shall be agreed upon at the preceding plenary meeting.

OFFICERS

15. The plenary meeting shall choose from its members president and vice-president (cf. c. 452 §1), the secretary and assistant secretary, who shall hold office for a period of three years. They can be re-elected for another term but not for a third term without an interval.

DUTIES OF OFFICERS

16. The president shall preside over the plenary meetings of the conference or in the case of his absence, the vice-president (**cf. c. 452, §2**).
17. Where the president resigns or dies or loses office or is permanently impeded, **a new president shall be elected.**

18. **If the vice-president resigns, dies, loses office or is permanently impeded or if he is confirmed to assume the presidency in accordance with art. 17, the office of the vice-president shall remain vacant until the next plenary meeting elects a new vice- president.**
19. The secretary shall record the proceedings of the plenary meetings of the conference. He shall send a copy of the minutes to all members of the conference.
20. The assistant secretary shall assist the secretary. He shall succeed the secretary for the interim if the latter resigns, or dies or loses office, or is permanently impeded, until the next plenary meeting confirms him in office or elects a new secretary.

AGENDA

21. The administrative board is to prepare the agenda for the plenary meeting (cf. c. 457). A steering committee composed of three members of the administrative board shall be charged with the responsibility of the well-informed treatment of the agenda, the timetable, and is also responsible for the orderly progress of the plenary meeting.
22. The first plenary meeting of each year shall have a theme **to be determined by the plenary assembly.**
23. The plenary meeting shall commence with a concelebrated pontifical mass. The homily shall ordinarily be given by the **diocesan bishop** of the place of the meeting.
24. Each member of the conference has the right to submit within a reasonable time beforehand subjects or matters he wishes to place on the agenda of the meeting.
25. All issues placed on the agenda should fall within the purpose of the conference as laid down in art. 2.
26. The secretary shall send the agenda of the meeting to each member and to the **Legate of the Roman Pontiff**, together with a notice of convocation to reach them at least three weeks before the meeting.

ADDITIONS TO THE AGENDA

27. With the consent of the president, any member present may submit to the meeting a particular question not on the agenda, provided that the question conforms with the provision of art. 25. This question may be treated only after the prepared agenda has been covered.

DOCTRINAL DECLARATION

28. **“In order to constitute authentic *magisterium* and be published in the name of the Conference, doctrinal declarations must be approved in the Plenary Assembly by unanimous vote of the Bishop members, or by a majority of at least two thirds of the bishops holding a deliberative vote. In the latter case, the ‘recognition’ of the Holy See must precede promulgation”** (cf. *Apostolos [suos]*, 22, in the circular letter of the Congregation for the Evangelization of People (CEP) Prot. 243 2/99 art. 3 of June 9, 1999).

MANNER OF VOTING

29. For elections, the vote shall be by secret ballot. In other matters, it is by open ballot, unless two members present ask for secret ballot.
30. The required majority in elections shall be as follows:
1. In the first ballot, an absolute majority of valid votes is required.
 2. If no candidate obtains a majority in the first ballot, a second ballot shall be held in which an absolute majority of valid votes is required.
 3. If there have been two inconclusive votes, a vote is to be taken between the two candidates with the greatest number of votes, or if there are more than two, between the two senior by age. (cf. c. 119, 1°).
 4. After a third inconclusive voting, that person is deemed elected who is senior by age.
31. Decisions on other business are made by a relative majority **except in those cases in which the universal law of the Church provides to the contrary.**

BINDING FORCE OF THE GENERAL DECREES OF THE CONFERENCE

32. General decrees or decisions of the conference have juridical binding force only in those cases:
1. Prescribed by the universal law of the Church (cf. cc. 230, 236, 455, § 1, 538 §3, 1126).
 2. Determined by a special mandate of the Apostolic See, given either on its own initiative or at the request of the conference itself (c. 455, §1).
 3. These decrees must be discussed and approved at the plenary session of the conference. Two-thirds of the votes of those who belong to the conference with a deliberative vote are required. These decrees do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated (c. 455, §2).

COMPETENCE

33. The plenary meeting has the power:
1. To constitute the administrative board, the episcopal commissions and committees and other agencies of the conference and to determine their mandate.
 2. To elect the members of the administrative board and of the episcopal commissions and committees and other agencies.
 3. To approve the reports of the administrative board and the episcopal commissions and committees and other agencies.

MINUTES

34. When the minutes of the meeting have been approved, six copies shall be sent to the representative of the Holy See.

CHAPTER THREE: THE ADMINISTRATIVE BOARD

FUNCTION

35. Administrative board shall have the responsibility to prepare the agenda for the plenary meeting, to execute the decisions of the conference and to direct the executive secretariat, and in general to see to the continuance of the work of the conference (c. 457).

COMPOSITION

36. The administrative board is composed of:
1. **Any cardinal member of the conference.**
 2. The president and secretary of the conference.
 3. The vice-president and the assistant secretary.
 4. All residential archbishops.
 5. The episcopal [chairmen] of the departments through which the work of the catholic secretariat is carried out.
 6. the secretary general of the Catholic secretariat of Nigeria shall be an ex-officio member.
37. It is advisable that the composition of the administrative board should reflect the provincial and international component of the Nigerian hierarchy.
38. If a member dies, resigns, or is otherwise incapacitated or impeded before the expiration of his term of office, the board chooses a substitute to complete the term.

OFFICERS

39. The president and vice-president of the conference shall be the chairman and vice-chairman of the administrative board (c. 452, §2).
40. The secretary general of the conference secretariat shall be the secretary of the administrative board.

MEETINGS OF THE ADMINISTRATIVE BOARD

41. The administrative board shall ordinarily meet twice a year.
42. An extraordinary meeting can be called whenever the chairman and two other members consider it necessary.
43. At least half of the board members must be present to constitute a quorum.
44. The meeting shall ordinarily be held at the general secretariat of the conference.
45. **When it is not possible to convene an extra-ordinary meeting in accordance with art. 9, all the extraordinary decisions or urgent public declarations made by the administrative board or by the committee for public pronouncements outside the plenary meeting shall be communicated to the Holy See.**

MAJORITY

46. For decisions and elections in the administrative board, a simple majority is required.

MANNER OF VOTING

47. For elections, the vote is secret; in other matters, it is by open ballot unless two members present ask for a secret vote.

MINUTES

48. When the minutes of the meeting of the administrative board have been approved, a copy shall be sent to each member of the conference.

CHAPTER FOUR: EPISCOPAL COMMISSIONS AND COMMITTEES

49. 1° **The permanent commissions of the episcopal conference and those constituted “ad hoc” and denominated episcopal are to be constituted only by bishop members of the conference or by those [equivalent] to them in law (cf. circular letter of the CEP Prot. 2432/99 art 9, 9 January 1999; CIC/83 c. 381).**

2° With a bishop presiding, committees may be formed of priests consecrated persons and members of the laity who are experts on the issues to be dismissed [discussed] (cf. circular letter of the CEP Prot. 2432/99 art. 9, 9 January 1999).

50. The commissions and committees mentioned above in article 48 [49], §§1, 2 may be set up for the purpose of studying important and special problems. They shall examine questions submitted to them by the conference, make recommendations, and report conclusions reached.
51. Every episcopal commission and committee shall meet at least once a year and failure to do so shall render the commission or committee defunct.

CHAPTER FIVE: CATHOLIC SECRETARIAT OF NIGERIA

LOCATION

52. The catholic secretariat, which is the **executive organ** of the activity and **information** of the conference, shall be located in the federal capital.

COMPOSITION

53. The catholic secretariat shall have the office of the secretary general (cf. c. 451).
54. The catholic secretariat shall also have the following departments:
 1. Pastoral department
 2. Justice and peace department
 3. Education department
 4. Social communications department
 5. Health department
 6. Legal department
 7. Lay apostolate department
 8. The consecrated life department
55. The terms of reference of the secretary general's office and of each department shall be spelt out in the job description of the Manual of Executive Instruction **prepared by the administrative board of the conference.**
56. Other departments may be established as the need arises.
57. Each department shall have an episcopal chairman, who is elected at a plenary meeting of the conference for a term of three years. The episcopal chairman can be re-elected for another term but not for a third term without an interval.

OFFICERS

58. The catholic secretariat shall be administered by the secretary general, two deputy secretaries general, and secretaries of its various departments.

APPOINTMENT OF OFFICERS

59. The secretary general and the deputy secretaries general shall be appointed by the plenary meeting of the conference. Secretaries of the departments shall be appointed by the administrative board. All are appointed for a term of three years and can always be re-appointed.

SCHEDULE OF DUTIES

60. The schedule of duties of the officers of the catholic secretariat is to be spelt out in the Manual of Executive Instruction for the Catholic secretariat of Nigeria.
61. 1° In the exercise of his functions, the secretary general who is the chief executive officer of the secretariat and the co-ordinating authority of its various departments shall be immediately responsible to the chairman of the administrative board.
- 2° The deputy secretaries general shall be immediately responsible to the secretary general.
62. The departmental secretaries shall be immediately responsible to the secretary general. In matters of importance, they may not act except after consultation with their respective department chairman.

FUNCTIONS OF THE SECRETARIAT

63. The functions of the Catholic Secretariat are:
1. To provide for the conference and its agencies such secretariat services as the collection and preparation of documentation and the custody of records.
 2. To serve as administrative intermediary for the conference with public authorities, civic organisations and private persons.
 3. To facilitate communication among agencies of the conference and to assist in the co-ordination of the activities.
 4. Officially, to communicate or disseminate decisions and declarations of the conference and its agencies as may be appropriate.
 5. To undertake such other tasks as the conference may direct.

FINANCE

64. The catholic secretariat shall be financed by the contribution[s] of the ecclesiastical jurisdictions of Nigeria. The amount to be contributed by each

jurisdiction shall be fixed at a plenary meeting of the conference and shall be subject to review.

65. For the purpose of budgetary preparation and control, the administrative board may appoint a finance committee with the following functions:
 6. To undertake the preparation of the comprehensive budget for the conference.
 7. To employ ways and means of raising revenues for the conference.
 8. To conduct regular review of the yearly revenues and expenditures.
 9. To receive, consider, and comment on external auditor's report.
 10. To carry out such other functions of financial and budgetary nature as may from time to time be assigned by the administrative board.

CHAPTER SIX: PROVINCIAL AND REGIONAL OFFICES

66. The location, composition, officers, and functions of the offices shall be determined by the local ordinaries of each ecclesiastical province or region in accordance with the constitution and objectives of the Catholic Bishops' Conference of Nigeria.

CHAPTER SEVEN: OTHER AGENCIES

67. The conference may set up other agencies as the need arises and such agencies shall function in accordance with the terms of reference given to them by the conference.

CHAPTER EIGHT: REVIEW OF THE STATUTES

68. The statutes are to be reviewed every five years.
69. The provisions of these statutes may be changed by the votes of at least two-thirds of those members of the conference who are diocesan bishops or equivalent to them in law or co-adjutor bishops. Any amendments to these statutes are to be reviewed by the Apostolic See.

APPENDIX II

PARTICULAR COMPLEMENTARY NORMS

TO THE REVISED CODE



BY

THE CATHOLIC BISHOPS CONFERENCE

OF

NIGERIA

1985

FOREWORD

It gives me great pleasure to be invited by the chairman of the Canon Law Commission of the Catholic Bishops' Conference of Nigeria (CBCN) to write a foreword to this book containing particular complementary norms to the revised Code of Canon Law.

A comparative study of the old Code of Canon Law and the revised Code of Canon Law shows that the later has 1752 canons as against 2414 of the former. The reason for this is the fact that the Second Vatican Council urged for less centralisation, in other words directed that more matters should be left to be decided at the local level for determination of details. This book then contains such details as they affect the Church in Nigeria.

Much painstaking and time-consuming work went into the preparation of this book as numerous meetings, consultations at the parish, diocesan, provincial and national level went into what you now have in your hands. On behalf of the Catholic Bishops' Conference of Nigeria, then, I congratulate His Lordship, Most Rev. Dr. Anthony Gbuji, D.C.L., bishop of Issele-Uku, and chairman of the Canon Law Commission and members of the commission for their hard and patient work in providing this book. The book should be in the hands of all clerics, religious, and laity to be thoroughly informed of and uphold the complementary norms.

+Gabriel Gonsum Ganaka, OFR
Bishop of Jos & President
Catholic Bishops' Conference of Nigeria.
4 November 1985.

INTRODUCTION

On 25 January 1983, Pope John Paul II promulgated the revised Code of Canon Law with the Apostolic Constitution *Sacrae disciplinae leges*. In it, the Holy Father repeated the expectation of Popes John [XXIII] and Paul VI, that the revised Code would be an important element in implementing the spirit and teachings of the Second Vatican Council. The revised Code, he pointed out, is distinguished by its spirit of collegiality. The Code is meant to be an instrument to promote the communion of the Church at its various levels and in its many members. He emphasised that "it was for this reason that the bishops and bishops' conferences were invited to collaborate in preparing the new Code, so that, over such a long course, with a method as collegial as possible the juridical formulas would little by little come to light which would then be for the use of the whole Church."

This collaboration and collegiality did not stop with the preparation of the Code; it went much further and deeper into the entire legal system of the Church. Now the revised Code has given to episcopal conferences very extensive legislative powers in particular cases (c. 455). In fact, there are forty-five cases where episcopal conferences either must or can issue particular complementary norms. These norms form the subject matter of this text. Thus the provisions of the common law have made it possible for the conferences to provide as much as possible a real service to the people of God in particular Churches. This service is given by further determining those canons that are meant to be an effective instrument for renewal and for the ecclesial life, adapting them to actual local conditions.

The Catholic Bishops' Conference of Nigeria has therefore issued and promulgated these norms in accordance with the demands of the revised Code. It can be said that without the complementary norms contained in this text the revised Code is incomplete for the Church in Nigeria. As particular laws, they bind only and all Christ's faithful, who possess a domicile or quasi-domicile as long they are actually present in Nigeria (cc. 12-13).

In the drafting and passing of these laws, the Catholic Bishops' Conference of Nigeria adopted a process similar to the conciliar model. A Commission of Canon Law experts, drawn up from the various ecclesiastical provinces in the country, was set up in 1983 to study the complementary norms. The commission immediately went to work and drew up a draft of the relevant norms. This was followed by a widespread consultation with bishops, priests and the laity through questionnaires covering the entire spectrum of the laws to be enacted. Seminars were organised for the bishops and, in some dioceses, for the diocesan clergy, religious, and laity. The results were compiled and presented to the bishops. At their plenary meetings in 1983, 1984, 1985, and 1988, the Bishops' Conference discussed and voted on the norms in accordance with c. 455 §2. The decrees contained in this text have been subsequently reviewed by the Apostolic See and in some cases the laws have been promulgated; e.g. the law on fast and abstinence (c. 1253) and Holy days of obligation (c. 1246, 2). The bishops shall at a later date promulgate all the laws contained here. After a period of about 30 days the laws shall become binding everywhere in Nigeria as stated already.

Only in two cases, action has not been taken because deeper research and study, as well as wider consultations and further reflection are required: e.g. c. 1120 has been referred to the Catholic Institute of West Africa (CIWA) and c. 1127, §2, to the Canon Law Commission.

It is hoped that the publication of the particular complementary norms will be welcomed by the entire Church in Nigeria. The clergy, religious, and the laity, will find them useful in discovering how those laws till now undetermined are applicable to their own life situations. For our students in theological studies this publication offers an answer to many of the questions being asked in canon law lectures.

Let us hope that these particular norms will enhance the renewal efforts, which Vatican II ushered in this country over two decades ago.

+Anthony O. Gbuji
Bishop of Issele-Uku
Chairman Canon Law Commission.
29 October 1985.



CATHOLIC BISHOPS CONFERENCE OF NIGERIA

Postal Address:

Your Ref:

Our Ref:

PROMULGATION OF "PARTICULAR COMPLEMENTARY NORMS TO THE REVISED CODE" BY THE CATHOLIC BISHOPS' CONFERENCE OF NIGERIA

On January 25, 1983, His Holiness Pope John Paul II promulgated, for the Latin Church, the revised Code of Canon Law. That revised Code gave to episcopal conferences very extensive legislative power in particular cases (c. 455). There are forty-five cases where episcopal conferences must or can issue particular norms. Thus the provisions of common law have made it possible for the conferences to provide as much as possible a real service to the people of God in particular Churches. This service is given by further determining those canons which are meant to be an effective instrument for renewal and for ecclesial life, adapting them to actual local conditions.

Accordingly, the [Catholic] Bishops' Conference of Nigeria has, in the *Particular Complementary Norms to the Revised Code*, provided the required legislations. Only in two cases (cc. 1120 and 1127, §2), action has not been taken because deeper research, study and reflection are required. In these cases, to ensure that there is no legislative vacuum, the norms contained in the revised Code of 1983 remain in force.

Relying, therefore, on the help of divine grace, supported by the authority of the Blessed Apostles Peter and Paul, we, the Catholic Bishops of Nigeria, hereby decree and promulgate the norms in the *Particular [Complementary Norms to the Revised Code]*, as it has been compiled by the Catholic Bishops' Conference of Nigeria, and reviewed by the Holy See. We order that henceforth it is to have the force of law for the Christ's faithful, who possess a domicile or quasi-domicile as long as they are actually present in Nigeria (cc. 12-13).

In order, however, that all may properly investigate these norms and intelligently come to know them before they take effect, we decree and command that they shall come into fore on Thursday 29 June 1989. We exhort all the Christ's faithful under our pastoral care to observe with sincere mind and ready will, all the precepts laid down in it.

May God grant that joy and peace, justice and obedience may commend this Code and that from it the salvation of souls will be ever more effectively promoted with the assistance of the Blessed Virgin Mary, queen and patroness of Nigeria.

Given at Lagos on the 17th day of February, 1989.

+Anthony O. Okogie
President CBCN.

+Francis F. Alonge
Secretary CBCN.

GUIDELINES FOR MINISTRIES OF LECTOR AND ACOLYTE

Canon 230, §1: Laymen, whose age and talent meet the requirements prescribed by decree of the bishops' conference, can be given the stable ministry of lector and of acolyte through the prescribed liturgical rite. This conferral of ministry does not, however, give them a right to sustenance or remuneration from the Church.

The Catholic Bishops' Conference of Nigeria prescribes and decrees the following prerequisites for laymen to be installed formally in the ministry of lector and acolyte:

A — General Guidelines for Both Lector and Acolyte

1. He must have a good reputation in the community, and be free of qualities that would cause scandal if later detected.
2. He must be properly married or, if single, a fully mature adult. It would not be wise to install a man a lector or acolyte who may later put himself in a condition in which he could not receive the sacraments.
3. Number 2 sets the minimum age well enough. The maximum age for installation permitted for [ministry] should be 60 years.
4. Not to be conferred on anyone just to honour him or reward him for long service to the community. Conferral of ministry must be an upgrading for the whole community and be conferred on a man so he can serve the community better.
5. Not to be conferred just so my parish will have one. Some parishes may need Acolyte(s) another Lector(s), another both, another neither, depending on circumstances prevailing at parish level.
6. Formation programme: Since men chosen for installation will surely have been performing all or most of the respective ministry on a temporary basis, and have indeed been selected because of their above average performance, little formal training will be needed for the work of the ministry as such.

However, all candidates for ministry should have a minimum of twenty lectures, each of which will entail outside reading on the following subjects, to be determined on a more particular '*ratio studiorum*' in the near future:

- The nature and history of ministry in the Catholic Church
- Canonical parlance; office, power of ruling, ordinary power, dispensation, validity etc
- The theology of liturgy and theology of preaching
- Ecclesiology; namely, the mystery of the Church
- Some basic things about scripture studies.

Candidates are to make a three-day retreat shortly before installation day. This retreat can be of any style, but must be with a director. No 'private' retreat should be allowed in this case.

7. Those to be installed are to freely draw up and present to the local ordinary a signed petition to be so installed. The ordinary has the right of acceptance.
8. Before installation, each candidate is to sign a document in the presence of the ordinary or his delegate and two witnesses, in which he states that he shall never seek or demand any form of remuneration for services rendered to the Church as a minister.
9. Although any priest can be delegated to install men into ministries, it is preferable in the African context that the ordinary, the 'Chief' comes to the parish church to install them.
 - Calling men to be installed at a ceremony at the diocesan level is less acceptable than at the parish level.
 - However, there could be one ceremony in the central parish church if men from various outstations of that parish are to be installed.
10. A formal certificate, signed and sealed by the ordinary is to be given to each minister, preferably as part of the ceremony itself.
11. A parish social celebration following the installation is to be encouraged.

B—THE MINISTRY OF LECTOR (see *Ministeria quaedam*, §5)

1. Ability to speak or read the English Language should not be an absolute requirement or *criterium* of suitability for this ministry.
2. He must have sufficient background and mental coordination to read the language to be used in a manner that is above the average reader.
3. He must have a singing voice good enough to sing responsorial psalm and the Alleluia verse, and to direct the singing for the whole liturgical action if the need should arise.
4. He must be able to give instructions to the faithful on the worthy reception of the sacraments, both in an informal manner and in a classroom setting.
5. He must be able to conduct series of instructions for those who are appointed to read by temporary appointment, and be able to correct and encourage these temporary readers in a charitable manner.

C—THE MINISTRY OF ACOLYTE (see *Ministeria quaedam*, §6)

1. A catechist who has been serving mass and setting up the altar or a sacristan with sufficient mental coordination and physical presence is 'a natural' candidate for installation as an Acolyte.
2. An Acolyte is *ipso facto* in charge of training mass servers. Therefore, those who are psychologically unable or unwilling to do this work should not be chosen for this ministry.
3. Before installation, it must be ascertained that he is familiar with everything that pertains to divine worship, and should be taught the liturgical, as well as the

symbolical meaning of all these things. This may be in addition to the instructions noted in A-6.

4. Once installed, a specific role should be assigned to the acolyte, so that it is obvious to the faithful that the acolyte's role in the liturgy is more intimate and important than that of ordinary mass-servers.
5. During ceremonies and in exercising his ministry outside liturgical actions, he should wear a distinctive garb, which is different from that of priests and deacons and also different from that which the mass servers in that place wear.
6. He should be called upon to distribute communion at all public Eucharistic celebrations at which his assistance would lessen the overall time of the ceremony.
7. He should be called upon to expose the Blessed Sacrament for adoration and to repose it (without giving the blessing) whenever the priest or deacon is physically or morally unavailable

D—Dismissal

Any minister who is found unworthy of his ministry shall be dismissed and prohibited from exercising his office.

General Notes:

1. Although c 230 is concerned with lectors and acolytes, and these guidelines cover only these two, the Canon Law Commission puts forth the possibility of inventing a ceremony for Roman approval to install CATECHISTS into a canonically recognised ministry. However, see B-4 and C-1 of this document.
2. The faithful will also need instruction so they can appreciate these official ministers in their midst. They must be taught to accept the functions of ministers, especially the distribution of communion, as an uplifting of the whole community, and not an imposition or a case of 'acceptance of persons'.

THE FORMATION OF PERMANENT DEACONS

Canon 236: Those who aspire to the permanent diaconate are to be formed in the spiritual life and appropriately instructed in the fulfilment of the duties proper to that order, in accordance with the provisions made by the bishops' conference:

- 1° young men are to reside for at least three years in a special house, unless the diocesan bishop for grave reasons decides otherwise;
- 2° men of more mature years, whether celibate or married, are to prepare for three years in a manner determined by the same bishops' conference.

Where the pastoral needs of the Church dictate the need for the permanent diaconate in the diocese, the following norms are to be followed.

As with lectors and acolytes, the candidates must have a good reputation. However, since diaconate is a sacramental ordination and implantation of sacramental character, the following stricter requirements should be observed:

- 1 The man must have a good reputation in the community and be free of qualities that would cause scandal if later detected.
- 2 He must be fully mature. To this end, the canonical requirement of 35 years of age for ordination to the permanent diaconate for married men should be observed even if a non-married man is accepted.
- 3 If married, the man must have been so married for ten years, have a settled and exemplary married life, and have the consent of his wife before being accepted (of course, married 10 years means 10 years from marriage in church).

Educational Background:

Lectors and acolytes need not speak English or be 'international men', but deacons must. To this end, candidates need, as a minimum, W.A.S.C. with a credit in English or the equivalent as minimum academic requirement.

Training Program:

A three-year program is suggested, which would be full time. It would have to be decided in individual dioceses how support for the candidate would be provided during this period. The candidate could be paid as a catechist or perhaps be a primary school teacher in a school very near the venue of the training program and still be available enough hours a week to be considered a 'full time candidate'.

Required courses would be:

- a) Scripture, since these men are preachers and give homilies as part of their office.
- b) Liturgy, since the deacon is not just *ad bene esse* in a liturgical action, but forms integral part of it when present.
- c) Dogmatic theology, especially christology, without which he cannot understand the sacraments that he is dispensing.
- d) Catechetics, since he will be, after the priest(s) of the parish, the most respected and sought after teacher and "proclaimer" of the Good news.
- e) Many other subjects, church history, canon law, principles of moral theology as found in any major seminary programme should be offered, as teachers for such subjects are available in the diocese or inter-diocesan training programme.

Spiritual:

Candidates should be formed in a regular and habitual prayer life without which their ministry would surely fail: To this end:

- a) Morning prayer and evening of Liturgy of Hours is to be required. Communal celebration of these hours is to be encouraged.

- b) Meditation, spiritual study periods, rosary are to be built into a daily programme.
- c) If not already installed in the ministries, they should be during the three-year programme, and exercise these ministries often, especially at daily Eucharist.
- d) On Sundays they should attend the parish benediction of the Blessed Sacrament, do the readings during this ceremony, if possible; or in those parishes with solemn vespers on Sundays, lead the people in the psalms etc.

Admittance to programme:

Minimum age, 32; and minimum time married, seven years, so as to be 35 and 10 by ordination time. Final word on acceptance and continuance in programme depends on the local ordinary, who should delegate a priest of the diocese to be in charge of the training programme, both academic and spiritual.

OBSERVATION

Most bishops, and even some lay people would want the Church in Nigeria to “be [cautious] in introducing Married Deacons” to Nigeria. They are of the opinion that it will kill vocations to the ministerial celibate priesthood. They say that serious thought should be given to nationwide “even” distribution of the priests being ordained. Hence, the National Missionary Seminary situated at Iperu in Ijebu-Ode diocese and at Gwagwalade in the apostolic jurisdiction of Abuja (now archdiocese of Abuja), should be massively encouraged, and that this was bound to be a very effective solution to the scarcity of priests in most parts of Nigeria. It is argued also that the financial burden of married ministers should be enormous.

PROGRAM OF PRIESTLY FORMATION IN SEMINARIES

Canon 242, §1: In each country, there is to be a programme of priestly formation. It is to be drawn up by the bishops’ conference, taking account of the norms issued by the supreme ecclesiastical authority, and it is to be approved by the Holy See; moreover, it is to be adapted to new circumstances, likewise with the approval of the Holy See. This programme is to define the overall principles governing formation in the seminary and the general norms, which take account of the pastoral needs of each region or province.

§2. The norms of the Programme mentioned in §1 are to be observed in all seminaries, whether diocesan or inter-diocesan.

A programme of priestly formation drawn up by the Catholic Bishops’ Conference of Nigeria is yet to be approved by the Holy See.

DEACONS AND OBLIGATION OF THE LITURGY OF THE HOURS:

Canon 276 §1, 3°: Priests, and deacons aspiring to the priesthood, are obliged to carry out the liturgy of the hours daily, in accordance with their own approved liturgical books; permanent deacons are to recite that part of it determined by the bishops’ conference.

The Catholic Bishops' Conference of Nigeria directs that permanent deacons shall recite morning and evening prayers of the liturgy of the hours daily.

NORMS ON CLERICAL DRESS

Canon 284: Clerics are to wear suitable ecclesiastical dress, in accordance with the norms established by the bishops' conference and legitimate local custom.

On the issue of clerical dress, the Catholic Bishops' Conference of Nigeria directs as follows:

1. Diocesan clerics are to wear a white soutane; and clerics of religious institutes and societies of apostolic life are to wear their distinctive habits.
2. The proposal by the Episcopal Commission on Canon Law that the clergy may alternatively wear grey French suit with a cross or a black suit with a Roman collar is acceptable.
3. The Catholic Institute for West Africa (C.I.W.A.) has been mandated to carry out further research into other possible alternatives.

NORMS FOR ADEQUATE MAINTENANCE OF RETIRED DIOCESAN BISHOP (BISHOP EMERITUS)

Canon 402 §2: The bishops' conference must ensure that suitable and worthy provision is made for the upkeep of a bishop who has resigned, bearing in mind the primary obligation which falls on the diocese which he served.

The Catholic Bishops' Conference of Nigeria directs as follows:

1. Assistance from the Holy See to supplement the maintenance of a bishop emeritus shall be solicited by the appropriate juridical person.
2. The diocese where the bishop emeritus has served most years shall have the primary obligation for his suitable and worthy maintenance (c. 402 [§] 2).
3. Upon acceptance of his resignation by the Holy See, the bishop emeritus must put all his legal and financial affairs in order, and preferably make a new will, which will be recognised in civil law.
4. The bishop emeritus shall preferably reside in the diocesan retirement home, the parish house of his choice, or any other house provided by the diocese.
5. If the bishop emeritus prefers to retire to his own house among his relations, or if a particular parish or diocese should build such a house for him, the following are to be observed:
 - (a) The house is to be modest in size and furnishing.
 - (b) Ownership of this house must be clearly established in civil law, and publicly known by the community.
 - (c) In the case of a house of the bishop emeritus belonging to a parish or diocese, an agreement as to the upkeep, repairs, taxes etc., must be made between the bishop emeritus and the juridical person concerned.

- (d) Adequate spiritual care should be provided for each bishop emeritus.

GUIDELINES ON THE NORMS FOR PRESBYTERAL COUNCILS

Canon 496: The council of priests is to have its own statutes. These are to be approved by the diocesan bishop, having taken account of the norms laid down by the bishops' conference.

The Catholic Bishops' Conference of Nigeria directs as follows:

1. Every diocese should set up a presbyteral council if there is none already in existence.
2. In drawing up statutes, existing samples in our country or outside it may be used.
3. The following sample may be adapted:

SAMPLE CONSTITUTION AND COMMENTARY

PREAMBLE

The bishop and the priests of this diocese share in the one priesthood of Jesus Christ by their baptism and, in a special way, by their call to Holy Orders. While all members of the church belong to the one Body of Christ, priests, by their ordination, are called to a unique ministry in the Church. The bishop and the priests are called to the same purpose: to proclaim the kingdom of God and to build the Body of Christ.

The presbyteral council will be a place for mutual, open reflection and fraternal dialogue between the bishop and the priests of the diocese.

Conscious of our responsibility to the diocese and the communion of the Catholic Church; aware of the bonds of fraternity among all priests of this diocese, diocesan and religious; seeking to strengthen and promote the bond of unity and affection among all the people of God of this diocese; mindful of the Second Vatican Council and in conformity with the revised Code of Canon Law; we the bishop and presbyters of the diocese of New Hope, do hereby establish the presbyteral council of the diocese.

COMMENTARY

The preamble sets forth the theological and canonical basis for the establishment of the council. It needs not to be in legal form, and does not have legal effect, but should reflect the ecclesiology of the diocese in question.

While this is a sample, local [various] dioceses are encouraged to reflect and to design a preamble suited to their needs.

ARTICLE I: NAME

The name of this body shall be “The Presbyteral Council of the Diocese of New Hope”.

This article is fundamental. No attempt at elegance or rhetoric is in place here; best just to substitute the name of the diocese in the place of “New Hope”.

ARTICLE II: PURPOSE

The purpose of this presbyteral council shall be:

1. To provide a forum for the full and free discussion of all issues of pastoral concern in the diocese

2. To aid the diocesan bishop in the governance of the diocese according to the norm of law so that the pastoral welfare of the people of God committed to the bishop with the cooperation of the presbyters may be carried forward as effectively as possible

3. To search for and to propose ways and means for effective pastoral ministry

4. To be representative of the unity and diversity of the priests of the diocese.

This article sets out the purpose of the organisation. No action outside the purpose stated by the constitution is allowable, so the purpose should be stated as broadly as possible as in this example.

ARTICLE III: MEMBERSHIP

Sec. 1: The membership shall consist of the diocesan bishop, *twelve* elected members, *four* ex-officio members, members of the college of consultors sitting in accordance with section 3 hereof, and *five* appointed members.

Sec. 2: The elected members shall be elected by mail ballot by and from among the priests of the ten vicariates of the diocese (one each) and the priests engaged in special ministry (one) and the retired priests (one), each for a term of five years and until their successors are chosen.

Elections shall be held by *mail* ballot in *December* of each year, and terms shall begin *January 1*. A plurality of the votes

This article sets out the membership of the council. Canon 497 specifies that there are to be the three classes of members specified here, but leaves it to each council to determine how large the council should be (though it may not be less than three), and how many members there should be of each class. Each diocese should set a number appropriate for its circumstances. The cursive type [*italicised word*] in this and the following paragraphs indicates material that needs especially to be varied according to local needs.

Each diocese may vary the number of elected members and the way the diocese is divided into electoral constituencies,

cast shall elect. Terms shall be staggered so that vicariate terms and not more than one other term expire each year. Each priest of this diocese, each priest of another diocese living in this diocese, and each religious priest living in this diocese and exercising some office for the good of the diocese shall be eligible to vote and to be elected, each in his respective constituency. Disputed cases concerning eligibility to vote and to be elected shall be decided by the Elections and Membership Committee. The vacancy of any elected member's seat shall be filled by a special election in his constituency for the unexpired portion of the term.

provided that at least "about half". (c. 497) of the total membership be elected and that the drawing of the constituencies provides for the full diversity of ministry and various regions of the diocese, insofar as possible (c 499). Canon 497 seems to set a minimum rather than a target: there would be nothing to prevent a diocese from having substantially more than half the members elected, but to have fewer than about half elected appears to be proscribed.

The constitution should also specify the time and manner of election, and the length of term. Time and manner of election are up to each diocese. Term of office is a matter for each to decide provided that the council is renewed in whole or in part not less often than every five years (c 421). Canon 498 requires active vote (ability to vote) and passive vote (ability to be elected) for all incardinated secular priests, non-incardinated secular priests and religious priests living in and exercising some office for the good of the diocese, leaving open the question of other priests with domicile or quasi-domicile; within these restrictions, dioceses may make different decisions about who may vote or hold office, and should specify their decision in a section such as this.

Sec. 3. The ex-officio members shall be *the auxiliary bishop, the vicar general, the chancellor, the episcopal vicar for the West*, and any member of the college of consultors whose term on the council shall otherwise expire while he is still a consultor, for the duration of his term as a consultor.

Ex-officio members may vary in number and office from diocese to diocese, and each diocese should specify in a section such as this those particular offices chosen for automatic membership.

Sec. 4. The appointed members shall be appointed by diocesan bishop for a term of five years, which can be renewed upon expiration at the discretion of the bishop. Terms shall be staggered so that only one

appointment is made each year. The vacancy of any appointed member's seat shall be filled by an appointment by the bishop for the unexpired portion of the term.

ARTICLE IV: OFFICERS

Sec. 1. The officers of the presbyteral council shall be the president, the chairman, the vice-chairman, the secretary and the treasurer.

Sec. 2. The president of the council shall be the diocesan bishop. The president shall have the right to call meetings of the council to preside over meetings of the council, to place matters of concern on the agenda of the council, to accept or reject (except where otherwise provided by Canon Law) the results of the council's deliberations, and to promulgate officially decisions arising there from.

Sec. 3. The chairman shall preside at meetings of the council not presided over by the president, shall be the chief executive officer of the council, and shall have the duties prescribed for this office by the parliamentary authority and by such standing rules as the council shall adopt.

Sec. 4. The vice-chairman, the secretary, and the treasurer shall have the duties prescribed for their respective offices by the parliamentary authority and by such standing rules, as the council shall adopt.

The distinction between the president and the chairman is based on canon law and customary interpretation.

Canon 500 says that it is for the diocesan bishop to preside over the council, hence the title of the office. Normally, the bishop will "preside over" the council in the same way that Pope usually "presides over" an ecumenical council, i.e., without actually being in the chair, and perhaps even from a distance. The bishop may preside from the chair if he chooses, however, he may call meetings and may put items on (but not keep items off) the agenda (c. 500). He also has the duty to listen to the council, and the right to decide to accept or reject its advice except in certain cases and to promulgate decisions based on its work (c. 500).

The chairman should be given all usual rights and duties of the person described in parliamentary law general as the president or chairman, except for those cases presided in person from the chair.

Unless an individual diocese chooses to fix by constitution some particular duty for one of these offices, a reference such as this is sufficient.

Sec. 5. The officers other than the president shall be elected by and from among the members of the council for a term of two years beginning on *January 31 of each even numbered year*, and until their successors are elected. No member shall hold more than one office, or be re-elected to the same office for more than two consecutive terms. In the event of a vacancy in an elected office, the council shall elect an officer to fill the unexpired portion of the term.

ARTICLE V: MEETINGS

Sec. 1. The council shall meet not less often than every three months, on an annual schedule to be adopted by the council, and [at ...?] the president, the chairman, or any four members.

Sec. 2. A simple majority of the members including a majority of the elected members shall constitute a quorum.

Sec. 3. The rules contained in the current edition of Robert's Rules of Order newly revised shall govern the council in all cases to which they are applicable and provided they are not contrary to the provision of the Code of Canon Law, this constitution, and any special rules of order the council may adopt.

ARTICLE VI: COMMITTEES

Sec. 1. The council shall have an executive committee, an election and membership committee and such other standing or special committees as shall be necessary to carry on the work of the council.

Dioceses are free to choose the manner of election, terms, etc. of officers of the council, there being no directives from the Code on this point. Pertinent permanent decisions should, however, be recorded in a section such as this.

Number and timing of meetings may vary from diocese to diocese, but the seriousness of the charge given in c. 495 suggests that meetings be reasonably regular and frequent.

Unless a quorum required a majority of the elected as well as total members, the spirit of c. 497 would be in jeopardy.

A parliamentary authority should be specified to cover rules and controversies not settled by the constitution and not decided on by the council by standing rule. It may perhaps be noted that any standing rule that limits free exercise of the rights of a member (e.g., by making it easier to cut off debate) itself requires a two-thirds vote for adoption.

Committees may be, but need not be, specified in the constitution. In the interest of simplicity and generality, no specifics are given here except those committees referred to else where in this document. Whether by constitution or pursuant thereto each council will need to create such committees as priestly life and ministry, justice and peace, personnel, etc.

Sec. 2. The executive committee shall consist of the officers of the council. This committee shall prepare the agenda for meetings of the council, and shall coordinate where necessary, the work of the other committees. The executive committee shall not have the power to act in the name of the council except as specifically authorised by the council.

Sec. 3. The elections and membership committee shall consist of not fewer than three members appointed by the chairman and confirmed by the council. This committee shall have supervision over matters pertaining to eligibility to vote and to be elected, and shall conduct the elections for elected members of the council.

Sec. 4. Other committees may be created by the council, and shall have the rights and duties that the council shall from time to time specify. Their members shall be appointed by the chairman and confirmed by the council.

ARTICLE VII: FINANCES

Sec. 1. The operating budget for the council shall be prepared by the treasurer and approved by the council. The budget shall then be included in the diocesan budget preparation process, and ultimately approved by the diocesan bishop.

Sec. 2. The operating budget shall provide for necessary funds to be provided by the diocese to cover the expenses of the council.

The language here delegates very little power to the executive committee in view of the serious responsibilities of the council itself.

The constitution may also provide for the president, chairman, and/or executive committee to name such *ad hoc* committees as may from time to time be needed for the short-term needs of the council.

Where there is a stable method of preparing and adopting the diocesan budget, a diocese might choose to be more explicit here. In the interest of generality, and because such things seem to change frequently even in any one diocese, the process here has been laid down only in general terms.

If the council envisions soliciting contributions from the priests to make up all or part of its budget, provision for this should be included here.

ARTICLE VIII: AMENDMENTS

Sec. 1. This constitution may be amended by a vote of two-thirds of the members of the council, if the amendment has been submitted in writing at the previous meeting of the council, and subject to the concurrence of all those eligible to vote in council membership elections and to the approval of the diocesan bishop.

Sec. 2. This constitution shall be adopted by a two-thirds mail ballot of the presbyterate of the diocese and the subsequent approval of the diocesan bishop, and shall become effective ten days after the date of such approval.

Note that under this rule, two-thirds of all the members (not just those present at the time) must vote to approve an amendment, but only a majority of those voting (not of all the priests eligible) need concur. Dioceses may choose a stricter or a looser standard.

Note here that two-thirds of those voting are needed to ratify the constitution. If there were 500 eligible, and by the cut-off date only 300 had responded, of which 200 were in favour and 100 opposed, it would be ratified. Dioceses may choose a stricter or a looser standard. Dioceses may prefer to adopt the same standard for adoption and for amendment.

**TO DETERMINE THAT CATHEDRAL CHAPTER
FUNCTIONS AS COLLEGE OF CONSULTORS**

Canon 502 §3: The bishops' conference can determine that the functions of the college of consultors be entrusted to the cathedral chapter.

The Catholic Bishops' Conference of Nigeria does not consider this option necessary in Nigeria.

LIMITED PERIOD OF TENURE OF OFFICE OF PARISH PRIEST

Canon 522: It is necessary that a parish priest have the benefit of stability, and therefore he is to be appointed for an indeterminate period of time. The diocesan bishop may appoint him for a specified period of time only if the bishops' conference has by decree allowed this.

The Catholic Bishops' Conference of Nigeria directs and decrees that the appointment of parish priests shall be "*ad tempus*" or for a specified period of time.

ADDITIONAL PARISH REGISTERS

Canon 535, §1: In each parish there are to be parochial registers, that is, of baptisms, of marriage and of deaths, and any other registers prescribed by the bishops' conference or by the diocesan bishops. The parish priest is to ensure that entries are accurately made and that the registers are carefully preserved.

The CBCN prescribes the addition of catechumenate registers according to the following guidelines:

**GUIDELINES ON CATECHUMENATE REGISTER
(c. 535, §1)**

PRE-CATECHUMENATE	CATECHUMENATE PART ONE	CATECHUMENATE PART TWO
	Enrolment of Candidates	Period of the Scrutiny
1. Registration in an ordinary big note book	1. For the catechumenate special school register	1. Another register for those elected for initiation at Easter Vigil ceremonies
2. Attendance cards are issued	2. Catechumen cards are issued	2. Post Initiation Period: Names of those initiated are entered into the usual parish baptism and confirmation registers 3. If possible, those initiated should be enrolled in the church societies of their choice for Christian life in action.

NORMS FOR MAINTENANCE OF RETIRED PARISH PRIESTS

Canon 538 §3: A parish priest who has completed his seventy-fifth year of age is requested to offer his resignation from office to the diocesan bishop who, after considering all the circumstances of person and place, is to decide whether to accept or defer it. Having taken account of the norms laid down by the bishops' conference, the diocesan bishop must make provision for the appropriate maintenance and residence of the priest who has resigned.

The Catholic Bishops' Conference of Nigeria directs as follows:

1. The *Opus securitatis* of the *Pontificium opus a S. Petro Apostolo pro clero missionum* should be carefully implemented and adopted by all dioceses. By virtue of this arrangement, individual dioceses and priests contribute a determined proportion to the fund raised by the pontifical work of St. Peter the Apostle for the indigenous clergy.
2. There should be an insurance plan at the diocesan level. The presbyteral council should work out such plan.
3. A special house for retired priests should be provided in each diocese. Care should be taken not to encourage priests to retire to their relations. If they do, adequate spiritual care should be provided such priests.
4. Priests should look ahead and act maturely.
5. As in the case of a retired bishop (c. 402), every priest shall make a will in accordance with the general format already approved by the bishops' conference.

NORMS ON ECUMENISM

Canon 755 [§1: It pertains especially to the entire college of bishops and to the Apostolic See to foster and direct among Catholics the ecumenical movement, the purpose of which is the restoration of unity between all Christians which, by the will of Christ, the Church is bound to promote.]

§2: It is a matter for bishops and, in accordance with the law, for bishops' conference, to promote this same unity and, in line with the various needs and opportunities of the circumstances, to issue practical norms, which accord with the provisions laid down by the supreme authority of the Church.

The Catholic Bishops' Conference of Nigeria directs as follows:

1. Bishops have a duty to foster ecumenism, which is a seeking of unity in:
 - a) faith
 - b) church governance
 - c) sacraments
2. Bishops are to regard non-catholics and non-baptised in a human and charitable way. Dialogue should be established with them.

3. The above stipulates respect for those, who are not in full communion, as persons who need the attention of bishops, who must base their relationship with them upon the fundamental rights of people as human beings.
4. Also socialising with non-Catholics, especially their clergy and leaders; as, for example, inviting them to our celebrations, visiting them, and attending their own celebrations.
5. When the need to offer charity arises, there should be no discrimination on the basis of differing beliefs or church affiliation.
6. Ecumenism should be practical. We should not be critical in our sermons or public talk of what others hold to be true. In other words, we should have positive doctrinal preaching.
7. Associations that favour ecumenism such as CAN at all levels should be prudently encouraged.
8. The Bible Society of Nigeria should be patronized.
9. With regard to liturgical celebrations, we must be attentive to and study the situations in the Nigerian context in order to avoid scandal. Pastors should discourage ecumenical charismatic movements in the country.
10. The norms on mixed marriage as directed by this conference should be observed scrupulously. Dispensation from the canonical form of marriage, although a means of ecumenism, should be judiciously granted and properly executed (c. 1127, §2).
11. Our special care and vigilance for those children in mixed marriages should be considered a form of ecumenism. This care needs special study because of prevailing situations in our country.

GUIDELINES FOR PERMITTING LAY PEOPLE TO PREACH IN A CHURCH OR ORATORY

Canon 766: The laity may be allowed to preach in a church or oratory if in certain circumstances it is necessary, or in particular cases it would be advantageous, according to the provisions of the bishops' conference and without prejudice to c. 767 §1.

Christ, the Lord has sent out his Church to preach to all nations (Mtt. 28:19). This mandate is given to the whole people of God and all God's people are bound to participate in the mission of the Church, however, each according to his condition or state. The sacred hierarchy has the primary responsibility of proclaiming the word of God (cf. Acts 6:2-4; *LG*, 25, 28, *AA*, 2). The laity share in this work (cf. *AA*, 2). Wishing to involve the laity more with the work of preaching, the new Code establishes: "The laity may be allowed to preach in the church or oratory if in certain circumstances it is necessary, or in particular cases it would be advantageous, according to the provisions of the bishops' conference and without prejudice to c. 767, §1" (c. 766).

The Catholic Bishops' Conference of Nigeria hereby gives the following norms:

1. The homily is reserved to a priest or deacon (c. 767 §1). Therefore, no layperson is to give the homily during a Eucharistic celebration.
2. In celebrations in which there is no priest or deacon, the catechist or any other layperson approved by the parish priest may preach.
3. Laypersons of proven ability or special competence may be allowed to preach to the gathered faithful on special occasions, such as feast of family, Fathers' Day, Mothers' Day, celebration for fostering works of charity or missions, provided their exhortations are considered to be very opportune and they are given at the completion of the Eucharistic celebration;
4. Laypersons who may be permitted to preach in the church or oratory should, in addition to due knowledge, lead exemplary christian life and be docile to the magisterium and legitimate local pastors.

**NORMS FOR EXPOUNDING CHRISTIAN TEACHING ON RADIO AND TELEVISION (c. 772 §2)
AND FOR THE PARTICIPATION OF [CLERICS] AND RELIGIOUS
IN RADIO AND TELEVISION PROGRAMMES (c. 831, §2)**

Canon 772, §2: In expounding Christian teaching on radio or television, the provisions of the bishops' conference are to be observed.

Canon 831 §2: It is for the bishops' conference to lay down norms determining the requirements for clerics and members of religious institutes to take part in radio and television programmes which concern catholic doctrine or morals.

The Catholic Bishops' Conference of Nigeria directs as follows:

1. Because of the impact of radio/TV and the written word on the society, it is necessary that each diocese should have a team carefully selected for the mass media. At least one cleric or religious should be well trained in this field and assigned to this job full time.
2. Notwithstanding the government directive banning private radio and T.V., studios should be established in dioceses or regions to facilitate making radio and T.V. programmes.
3. As much as possible, dioceses should make use of the time allocated to them for programmes on government radio/TV
4. The existing catholic newspapers must be improved in quality and circulation, and work towards a daily or twice weekly newspaper.
5. Priests and religious and knowledgeable lay people should be encouraged to write religious articles in Nigerian daily newspapers.
6. To ascertain the doctrine and quality of radio/T.V. programmes and also articles for the press, the people who are in charge of communications must preview, and where necessary, correct and edit these before releasing them to the public.

7. There should be an immediate counter programme should anyone slander the Church or distort catholic teaching through the media.
8. Catholic publications and cassettes in the vernacular should be given important attention in each diocese.

GUIDELINES FOR THE ADULT CATECHUMENATE

Canon 788 §3: It is the responsibility of the bishops' conference to establish norms regulating the catechumenate, determining what should be done by catechumens and what should be their prerogatives.

The Catholic Bishops' Conference of Nigeria directs that the norms issued by it in the *National Directory for Christian Initiation* published in 1981 shall be followed.

NORMS FOR CATHOLIC RELIGIOUS EDUCATION IN SCHOOLS AND MEDIA

Canon 804 §1: The formation and education in the catholic religion provided in any school, and through various means of social communication, is subject to the authority of the Church. It is for the bishops' conference to issue general norms concerning this field of activity and for the diocesan bishop to regulate and watch over it.

1. All Christians have a right to christian education which apart from giving other benefits of education ensures that those who have been baptised are gradually introduced to knowledge of the mystery of salvation, and thus daily become more appreciative of the gift of faith which they have received, and be able to make their contribution to the growth of the mystical Body. The Pastors of souls have very grave obligation to do all in their power to ensure that Christian education is enjoyed by all the faithful and especially by the young who are the hope of the Church (cf. Vatican II, Christian Education (*Gravissimus educationis* [= GE], no. 2; *CIC/83*, cc. 229, §1, 217, 528, §1).

SCHOOLS:

2. Among the foremost means of advancing catholic education are catholic schools, since they are the principal means of helping parents to fulfil their role in education (c.796, §1). Where possible catholic institutions of learning should be established on all levels. There are no substitutes for them, (cf. cc. 799 ff; *GE*, no. 5). The great advantage of the catholic institutions of learning, is that, they enable the young people while developing their personality, to grow at the same time in the new life, which has been given them in baptism (cf. *GE*, no. 8).

THE TEACHERS:

3. The Teachers have a very highly important vocation of helping the parents in carrying out their duties of educating their children. The teaching career requires special qualities of mind and heart. Teachers need careful training in

principles and methods of teaching according to the demands of the times (cf. *CIC/83*, c. 803, §3).

4. Teachers who teach in non-catholic schools where children of catholic parents attend, should be the special concern of the Church. The pastors should see that these teachers are organised and powerfully assisted to take charge of the religious and moral education of the catholic pupils. The pastors should secure suitable periods for religious instruction in these schools and should carry out the instructions by self, or through others who are well equipped to do it. Association of volunteer religious teachers should be organised and trained through seminars and the like.
5. Teachers must remember that it depends chiefly on them to make the catholic school system achieve its purpose. They should therefore be qualified in both religious and secular learning. They should be possessed of [imbued with] charity both towards each other and towards their pupils and inspired by an apostolic spirit. Their lives must be such as can inspire the pupils to goodness and creativeness. They must be willing and capable of working in close cooperation with the parents of the children.
6. Sufficient material and moral incentives must be provided to the teachers. It may be in the nature of good organisation, congenial atmosphere, dialogue, good textbooks as guides, and any other helps that are possible and useful, which will make them appreciate their roles.

PARENTS

7. Christian parents have the primary responsibility of giving their children christian education. It is a most serious obligation (c. 226, §2).

Vatican II says that as it is the parents who have given life to their children, on them lies the gravest obligation of educating their family. There can be no adequate substitute. The family is therefore the principal school of the social virtues, which are necessary to every society. Their children should be taught to know and worship God and to love their neighbour from their earliest infancy. These duties and rights are primary and inalienable. The public authority should acknowledge and respect them and make the necessary provision to enable parents to discharge this duty and exercise their legitimate rights (cf. *GE*, nos. 3, 6, 9).
8. Between the pastors, the parents, the teachers and instructors there must be an intimate cooperation and collaboration for a maximum result in this field.
9. Account should be taken of norms and guidelines established by the bishops' conference on c. 772, §2.

**DETERMINATION OF CONDITIONS OF GRAVE NECESSITY FOR
COMMUNION TO NON-CATHOLICS**

Can. 844. §4: If there is a danger of death or if, in the judgement of the diocesan bishop or of the bishops' conference, there is some other grave and pressing need, catholic ministers may lawfully administer these same sacraments to other Christians not in full communion with the Catholic Church, who cannot approach a minister of their own community and who spontaneously ask for them, provided that they demonstrate the catholic faith in respect of these sacraments and are properly disposed.

The Catholic Bishops' Conference of Nigeria leaves the judgement of the existence of such grave or urgent need to the diocesan bishop.

NORMS ON CATECHUMENATE OF ADULTS

- Canon 851: The celebration of baptism should be properly prepared. Accordingly:
- 1° an adult who intends to receive baptism is to be admitted to the catechumenate and, as far as possible, brought through the various stages to sacramental initiation, in accordance with the rite of initiation as adapted by the bishops' conference and with the particular norms issued by it.

This issue has already been treated in c 788 §3.

BAPTISM BY IMMERSION OR BY INFUSION [POURING]

Canon 854: Baptism is to be conferred either by immersion or by pouring, in accordance with the provisions of the bishops' conference.

The Bishops' Conference upholds baptism by infusion [pouring]. However, baptism by immersion may be allowed by the local ordinary by way of experiment.

NOTATIONS IN BAPTISMAL REGISTERS ON ADOPTION

Canon 877 §3: In the case of an adopted child, the names of the adopting parents are to be registered and, at least if this is done in the local civil registration, the names of the natural parents in accordance with §§1 and 2, subject however to the rulings of the bishops' conference.

The Catholic Bishops' Conference of Nigeria directs as stipulated in the Code that:

In the case of an adopted child, the names of the adopting parents are to be registered and the names of the natural parents as well in accordance with §§ 1, 2 of this canon.

DETERMINATION OF AGE OTHER THAN THAT OF DISCRETION FOR CONFIRMATION

Canon 891: The sacrament of confirmation is to be conferred on the faithful at about the age of discretion, unless the bishops' conference has decided on a different age, or there is a danger of death or, in the judgement of the minister, a grave reason suggests otherwise.

The Catholic Bishops' Conference of Nigeria leaves the determination of age other than that of discretion for confirmation to the discretion of the local ordinary.

POSSIBLE DETERMINATION OF PARISH CONFIRMATION REGISTER

Canon 895: The names of those confirmed, the minister, the parents, the sponsors and the place and date of the confirmation are to be recorded in the confirmation register of the diocesan curia or, wherever this has been prescribed by the bishops' conference or by the diocesan bishop, in the register to be kept in the parochial archive. The parish priest must notify the parish priest of the place of the baptism that the confirmation was conferred so that it may be recorded in the baptismal register, in accordance with c. 535 §2.

The Catholic Bishops' Conference of Nigeria noted that many dioceses in the country already keep parish confirmation registers and directs that all dioceses do the same.

CRITERIA FOR GENERAL ABSOLUTION

Canon 961, §2: It is for the diocesan bishop to judge whether the conditions required in §1, 2° are present; mindful of the criteria agreed with the other members of the bishops' conference, he can determine the cases of such necessity.

- i. The judgement about the existence of the required conditions for granting general absolution, that is, grave necessity, is left to the diocesan bishop. Priests are not free to presume the existence of such grave necessity.
- ii. The CBCN determines the following criteria for judging the grave necessity of c. 961 §1, 2° for general absolution:
 - a. Genuine pastoral needs of stable nature arising from the size of a parish or catholic community and insufficient number of priests can be sufficient grave necessity, if the priests available cannot be reasonably expected to provide individual and integral confessions for the penitents within three months.
 - b. Other situations, except those of major feasts or pilgrimage, may arise in which the faithful could be unduly deprived of the sacrament for a lengthy period of time because there is an unavoidable shortage of confessors and the time available to the confessors present makes individual confession impossible.

- iii. The participants of such penitential services have to be instructed to make an individual confession of their grave sins in due time before receiving another general absolution. Moreover, the confessors should also offer opportunity for individual confession to those who wish to do so.
- iv. After observing the above conditions, the diocesan bishop can permit the granting of general absolution, which is to be imparted after a well-prepared and celebrated penitential rite.

NORMS ON CONFESSIONALS

Canon 964, §2: As far as the confessional is concerned, norms are to be issued by the bishops' conference, with the proviso however that confessionals, fitted with grille between the penitent and the confessor, always be available in an open place, so that the faithful who so wish may freely use them.

The [Catholic] Bishops' Conference of Nigeria directs as follows:

- 1. Grates as of now are to be used and are to provide adequate privacy.
- 2. Other places may be used for a reasonable and just cause provided due precautions are taken. Causes are, for example, sickness, old age of the penitent.

POSSIBLE RAISING OF AGE FOR MAJOR ORDERS

Canon 1031, §1: The priesthood may be conferred only upon those who have completed their twenty-fifth year of age, and possess a sufficient maturity; moreover, an interval of at least six months between the diaconate and the priesthood must have been observed. Those who are destined for the priesthood are to be admitted to the order of diaconate only when they have completed their twenty-third year.

[§3: Bishops' conferences may issue a regulation, which requires a later age for the priesthood and for the permanent diaconate].

The conference retains the age limits stipulated in this canon, namely, the priesthood may be conferred only on those who have completed their twenty-fifth year of age. Those who are destined for the priesthood are to be admitted to the order of diaconate only when they have completed their twenty-third year.

POSSIBLE REGULATIONS ON ENGAGEMENTS

Canon 1062 §1: A promise of marriage, whether unilateral or bilateral, called an engagement, is governed by the particular law, which the bishops' conference has enacted after consideration of such customs and civil laws as may exist.

The stipulation of this canon does not apply in Nigeria.

NORMS CONCERNING THE PRE-MARRIAGE ENQUIRY AND PUBLICATION OF BANNS

Canon 1067: The bishops' conference is to lay down norms concerning the questions to be asked of the parties, and concerning the publication of marriage banns, and the other appropriate means of enquiry to be carried as a prerequisite for marriage. When he has carefully observed these norms, the parish priest may assist at a marriage.

Marriage is a lifelong partnership of life and love founded on the irrevocable consent of the partners. It is a sacrament of the Church showing the love existing between Christ and the Church his bride. As an indissoluble union and as a sacrament, christian marriage demands that much care should go into preparation and celebration (cf. c. 840). The ministers of the Church are urged to see that every condition required for the valid and lawful celebration of marriage is met before the celebration of marriage (c. 1066).

The Catholic Bishops' Conference of Nigeria lays down the following norms concerning the enquiry and other modes of investigations to ascertain the freedom of the parties and fulfilment of the requisite conditions for the lawful and valid celebration:

Norm for questioning of the parties:

1. When the parties come for the registration for marriage, the parish priest or his assistant is personally to interview the intending spouses separately.
2. They are to answer the questions under oath, unless it is certain that they are truthful and trustworthy.
3. The parish priest or his assistant is to record the answers as accurately as possible. This record is to be signed by the interviewed party and preserved in the parish archives.
4. The interviewing priest is to question the parties on these and other points:
 - i) Name, date and place of birth, religion, date and place of baptism, religious practice – first holy communion, confirmation, Easter duty (these could be unnecessary, if the baptismal card with the relevant information is available), communion with the Church (any excommunication or interdict)
 - ii) Address, domicile or quasi-domicile (hometown or parish)
 - iii) Names and addresses and religion of parents
 - iv) Freedom to marry:

Impediments – impotence and sterility (not an impediment but very important for Nigeria under fraud/deceit and error of quality); vows of celibacy; consanguinity or affinity, crime and public honesty; previous marriage, either christian, civil or customary;
 - v) Due knowledge – What do the parties understand christian marriage to be? Are they aware that marriage is between one man and one woman and that it is indissoluble? Any conditions attached?
 - vi) How long have they known each other and how well?

vii) Parental and family support for the marriage

5. A form of these questions can be prepared by each diocese.
6. A period of three months pre-marriage instruction is obligatory. A certificate of the completed instruction should be demanded.

Norms for publication of banns:

1. The publication of banns is the traditional way of making the catholic community aware of the coming marriage and of giving the community the opportunity of manifesting reasonable objections to the marriage and of informing the pastor of any impediment.
2. The banns are to be sent to the home parish of the parties and are to be published for at least three consecutive Sundays in the church of the town of origin of the parties; also in the church of the place where the parties are actually residing.
3. Publication of the banns in the bulletin satisfies the obligation in no. 2. Also fixing the names on the notice board is acceptable.
4. Parish priests and vicars are to be punctual in replying to banns and should not use the banns to extort the payment of levies and other contributions.
5. After 6 weeks of sending out banns and no reply comes, a reminder is to be sent. At the expiry of another 6 weeks, the priest can approach the local ordinary for permission to go ahead with the marriage.
6. The reply to the banns should be made with an authentic document, duly signed and sealed with parish stamp by the parish priest or vicar.

Norms for Other Means of Enquiry:

1. If after the pre-marriage investigation by means of questioning the parties and by the publication of banns, doubt remains about the freedom of the parties to marry or there is a doubt about the success of the marriage, the parents of the parties are to be interviewed, under oath.
2. The parish priest or his assistant is to use any other opportune and prudent means to satisfy himself about the requirements for a valid and lawful celebration of marriage and about the reasonable hope of the success of the marriage.

POSSIBLE RAISING OF AGE FOR LICIT CELEBRATION OF MARRIAGE

Canon 1083 §1: A man cannot validly enter marriage before the completion of his sixteenth year of age, nor a woman before the completion of her fourteenth year.

§2: The bishops' conference may establish a higher age for the lawful celebration of marriage.

The Catholic Bishops' Conference of Nigeria accept the ruling of c. 1083 §1 regarding the age for the validity of marriage but leaves it to the judgement of each local

ordinary to establish a higher age for the lawful celebration of marriage either in general or for individual cases within his jurisdiction.

POSSIBLE DISTINCTIVE RITE FOR MARRIAGE

Canon 1120: The bishops' conference can draw up its own rite of marriage, to be reviewed by the Holy See, in keeping with the usages of the place and people, adapting these to the christian spirit; however, the law must be observed which requires that the person assisting at the marriage, being present, is to ask for and receive the expression of the contracting parties' consent.

The conference has decided to refer this case to the Liturgical Commission and the Catholic Institute of West Africa (CIWA) for the deep study and adaptation it requires.

FORMALITIES ON CAUTIONS IN MIXED MARRIAGE

Canon 1126: It is for the bishops' conference to prescribe the manner in which these declarations and promises, which are always required, are to be made, and to determine how they are to be established in the external forum, and how the non-catholic party is to be informed of them.

In accordance with the prescription of c. 1126, CBCN determines as follows:

1. The catholic party is to make the declaration and promise required by cc. 1125 and 1086, §2 in writing in the presence of the parish priest or his representative and of the non-catholic party and at least a parent or a very close relation of both the Catholic and non-catholic parties. The declaration and promise are to be read out by the Catholic with his or her hand on the bible.
2. The parish priest or his representative, together with the non-catholic party and the parents or close relatives mentioned above are to sign as witnesses after the document signed by the catholic party has been clearly explained to them.
3. The declaration and promise can be done with the following format:

I, the undersigned Catholic, wishing to contract marriage with a baptised/an un-baptised non-catholic do hereby declare that I am prepared to remove all dangers of defecting from my catholic faith. I also sincerely promise to do all in my power to have all the children born of this marriage baptised and brought up in the Catholic Church. So help me God and the Holy Gospel which I touch with my hand.

.....
The Catholic Party

The above declaration and promise made by, a Catholic, have been done in my presence. I am aware of the declaration and promise.

.....
The non-Catholic Party

The above declarations and promise have been witnessed by:

1.
(Parish Priest or Parish Vicar)
2.
(Parent/close relation of the Catholic/responsible witness)
3.
(Parent/close relation of the non-catholic party)
4. The original of the document is to be preserved in the parish archives while an authentic copy is to accompany the application for the permission or dispensation for a mixed marriage.

For mixed marriages, disparity of cult or mixed religion banns must be published, and due investigations carried out.

Form for Application for Dispensation from the Impediments of Disparity of Cult

I, a Catholic, living at (parish), son/daughter of
(father) and (mother) wishing to marry a non-baptised
person, humbly begs a dispensation from the impediment of disparity of cult.

The reasons are:

1. Cessation of public concubinage
2. Removal of grave scandal
3. The danger of a civil marriage only
4. The danger of a native law and custom marriage only
5. The suspicion of dangerous familiarity
6. Difficulty for the Catholic party
7.

NB. If any of the above reasons do not apply, cancel those inapplicable and add any others, which do apply.

NORMS [FOR] DISPENSATION FROM FORM

Canon 1127, §2: If there are grave difficulties in the way of observing the canonical form, the local ordinary of the catholic party has the right to dispense from it in individual cases, having however consulted the ordinary of the place of the celebration of the marriage; for validity, however, some public form of celebration is required. It is for the bishops' conference to establish norms whereby this dispensation may be granted in a uniform manner.

In accordance with the norms of c. 1127, §2, CBCN establishes the following norms:

1. The dispensation from canonical form can only be granted where there is sufficient guarantee about the faith of the catholic party. It is left to the local ordinary to determine if the danger of defection from the catholic faith exists or not.
2. Before the dispensation is granted, the catholic community is to be prepared by good catechesis to bring out clearly that marriage outside the Catholic Church with dispensation from canonical form does not involve defection from the catholic faith.
3. In the application for the dispensation from the canonical form, the catholic party must indicate the form of celebration, which they intend to have.
4. The public forms of celebration acceptable in Nigeria for the validity of dispensation from form are still under further discussion.

USE OF MATERIAL OTHER THAN STONE FOR ALTAR

Canon 1236 §1: In accordance with the traditional practice of the Church, the table of a fixed altar is to be of stone, indeed of a single natural stone. However, even some other worthy and solid material may be used, if the bishops' conference so judges. The support of the base can be made from any material.

The Catholic Bishops' Conference of Nigeria judges it fit that, instead of a single natural stone for the table of fixed altar, other worthy and solid material may be used. The support or the base can be made from any material.

ABOLITION OR TRANSFER OF HOLY DAYS OF OBLIGATION

Canon 1246 §2: However, the bishops' conference may, with the prior approval of the Apostolic See, suppress certain holy days of obligation or transfer them to a Sunday.

In order to ensure greater participation in the celebrations, the Catholic Bishops' Conference of Nigeria applied and obtained permission from the Apostolic See to transfer all these preceptive feasts, except Christmas to the Sunday before or after the day when the feast actually falls. (cf. Prot. N. 451 2/83, Sacra Congregatio pro Gentium Evangelizatione seu Propaganda Fide, 22 August 1984). Later however, on the receipt of a letter Prot 1213/86 from the Congregation for the Evangelization of Peoples, dated 30 April 1986, CBCN reviewed this position and made another provision as follows:

HOLY DAYS OF OBLIGATION (c. 1246, §2)

In accordance with the prescription of c. 1246 §2, the CBCN hereby provides as follows subject to the approval of the Apostolic See:

- i. The following celebrations are to be retained as holydays of obligation: the Nativity of Our Lord Jesus Christ, the Ascension of Our Lord Jesus Christ, the Assumption of Our Lady, and the feast of All Saints.

- ii. The following celebrations are transferred to a Sunday before or after the days on which they fall: the Epiphany and the feast of the Body and Blood of Our Lord.
- iii. The following celebrations are suppressed as holydays of obligation and are to be celebrated as solemnities on the day in which they fall: the feast of Mary the Mother of God; the feast of St. Joseph; the feast of the Apostles Peter and Paul; and the feast of Immaculate Conception.

**POSSIBLE DETERMINATION OF FOOD OTHER THAN MEAT, FOR ABSTINENCE
ON FRIDAY (c. 1251) AND SUBSTITUTE FORMS OF PENANCE FOR FASTING AND
ABSTINENCE (c. 1253)**

Canons: 1251: Abstinence from meat, or from some other food as determined by the bishops' conference, is to be observed on all Fridays, unless a solemnity should fall on a Friday. Abstinence and fasting are to be observed on Ash Wednesday and Good Friday.

Canon 1253: The bishops' conference can determine more particular ways in which fasting and abstinence are to be observed. In place of abstinence or fasting, it can substitute, in whole or in part, other forms of penance, especially works of charity and exercises of piety.

1. All Christ's faithful are obliged by divine law, each in his or her own way, to do penance. However, so that all may be joined together in a certain common practice of penance, days of penance are prescribed. The days and times of penance for the universal Church are each Friday of the whole year and the season of Lent.
2. In Nigeria, the Catholic Bishop's Conference lays down that abstinence from meat or favourite dish or drink or smoking is to be observed on all Fridays, except when a solemnity should fall on a Friday. Abstinence and fasting are to be observed on Ash Wednesday and Good Friday.
3. In addition, the Catholic Bishops of Nigeria recommend other forms of penance, such as, regular attendance at morning mass, Stations of the Cross, an hour of adoration, help to the poor, visits to the sick and prisons or free service to the needy.
4. Pastors and confessors should give adequate instructions to Christ's faithful entrusted to their care to communicate to them the genuine concept of penance.

NORMS ON CHURCH SUPPORT BY THE FAITHFUL

Canon 1226 [1262]: The faithful are to give their support to the Church in response to appeals and in accordance with the norms laid down by the bishops' conference.

The Catholic Bishops' Conference of Nigeria from the wide investigations conducted into the matter [is] satisfied and gives approval to the various methods adopted in the country as of now.

RULES REGARDING COLLECTION [QUESTING] OF MONEY

Canon 1265 §2: The bishops' conference can draw up rules regarding questing, which must be observed by all, including those who from their foundation are called and are 'mendicants'.

PREAMBLE:

The scope of these norms is to draw up rules regarding collections. It is expected that the question of the projected amount, percentage expected to be remitted to the destined office, reporting back to the body from which such collections is made, all these would be looked into through other administrative acts and body.

The Catholic Bishops' Conference of Nigeria hereby legislates as follows:

1. There shall be no unauthorised collection in the name of or on behalf of the Church.
2. As much as possible, schedules and times for collections shall be carefully prepared (on a national, regional, diocesan, and parochial basis) and copies of the same made available for the local ordinaries, parish priests or mission superiors, chaplains, and the finance committee of the church bodies concerned.
3. All collections shall be made after a prior information or notice of at least two Sundays before the actual collection day. Such information or notice shall include the auspices under which such a collection is to be made, and the purpose for the same.
4. The finance committee, or the parish priest with at least two members of the Church, shall supervise and handle such collections.
5. The proceeds from such collections shall be duly receipted by the treasurer and the financial secretary of the body, or the parish priest or mission superior or chaplain, and two other members.
6. The sum realised shall be despatched by the treasurer or the parish priest or mission superiors or chaplain, within seven days.

SUPERVISION OF SYSTEM OF BENEFICES

Canon 1272: In those regions where benefices properly so called still exist, it is for the bishops' conference to regulate such benefices by appropriate norms, agreed with and approved by the Apostolic See. The purpose of these norms is that the income and as far as possible the capital itself of the benefice should by degrees be transferred to the fund mentioned in c. 1274 §1.

The conference notes that benefices properly so called do not exist in Nigeria.

**DETERMINATION OF CRITERIA FOR EXTRA ORDINARY ACTS OF ADMINISTRATION (c. 1277)
DETERMINATION OF MAXIMUM SUM BEYOND WHICH AUTHORIZATION OF THE HOLY
SEE SHALL BE REQUIRED FOR ALIENATION (c. 1292 §§1 &2) AND DETERMINATION
OF NORMS FOR LEASING CHURCH PROPERTY (c. 1297)**

Canon 1277: In carrying out acts of administration, which in the light of the financial situation of the diocese are of major importance, the diocesan bishop must consult the finance committee and the college of consultors. However, in addition to the cases specifically expressed in the universal law or in the documents of foundation, for acts of extraordinary administration, he needs the consent of the committee and of the college of consultors. It is for the bishops' conference to determine what are to be regarded as acts of extraordinary administration.

Canon 1292, §1: Without prejudice to the provision of c. 638 §3, when the amount of the goods to be alienated is between the minimum and maximum sums to be established by the bishops' conference for its region, the competent authority in the case of juridical persons not subject to the diocesan bishop is determined by the juridical person's own statutes. In other cases, the competent authority is the diocesan bishop acting with the consent of the finance committee, of the college of consultors, and of any interested parties. The diocesan bishop needs the consent of these same persons to alienate goods, which belong to the diocese itself.

§2. The permission of the Holy See also is required for the valid alienation of goods whose value exceeds the maximum sum, or if it is a question of the alienation of some thing given to the Church by reason of a vow, or of objects, which are precious by reason of their artistic or historical significance.

Canon 1297: It is the duty of the bishops' conference, taking into account the local circumstances, to determine norms about the leasing of ecclesiastical goods, especially about permission to be obtained from the competent ecclesiastical authority.

1. Acts of Extraordinary Administration (c. 1277)

The Catholic Bishops' Conference of Nigeria determines acts of extraordinary administration in c. 1277 as follows:

- i. Transactions involving 10% of the Annual Revenue of Diocese or juridical body
- ii. Any transactions not in the approved annual budget

2. Minimum and Maximum [Sum] for Alienation (c.1292, §1)

The Catholic Bishops' Conference of Nigeria establishes the minimum and maximum sum for alienation in the light of c. 1292, §1 thus:

The minimum sum is N50,000 and the maximum is N1,750,000.

3. LEASING OF ECCLESIASTICAL GOODS (c. 1297)

In accordance with c. 1297, CBCN determines as follows:

- i. Leasing of ecclesiastical goods which diminishes or worsens the economic situation of the Church cannot be validly done without a grave reason and the written consent of the competent superior.
- ii. Leasing of ecclesiastical goods whose value is more than 25% of the fixed asset of the diocese cannot be validity done unless with the consent of the Apostolic See. In the case of other juridical bodies subject to the bishop, the written consent of the diocesan bishop is required.
- iii. Ecclesiastical goods cannot be validly leased for more than 10 years without the written consent of the competent superior. In case of the diocese, the diocesan bishop needs the consent of both the finance committee and the college of consultors.
- iv. Ecclesiastical goods valued at less than 25% of the fixed asset of the juridical body and whose lease is not for over 10 years may be leased with the written consent of superior, which is given after consultation with the body's finance council.
- v. Leasing of ecclesiastical goods must be by contract according to the provisions of Nigerian civil law.

**TO PERMIT LAY PERSONS BE APPOINTED JUDGES
ALSO TO BE A JUDGE IN COLLEGIATE TRIBUNAL**

Canon 1421, §2: The bishops' conference can permit that laypersons also be appointed judges. Where necessity suggests, one of these can be chosen in forming a college of judges.

The Catholic Bishops' Conference of Nigeria fully accepts this legislation where the necessity suggests.

**POSSIBLE DETERMINATION OF NORMS FOR MEDIATION AND ARBITRATION (c. 1714)
AND POSSIBLE ESTABLISHMENT OF NORMS FOR MEDIATION AND
ARBITRATION OFFICE IN EACH DIOCESE (c. 1733 §2)**

Canon 1714: The norms for settlement, for mutual promises to abide by an arbiter's award, and for arbitral judgements are to be selected by the parties. If the parties have not chosen any, they are to use the law established by bishops' conference, if such exists, or the civil law in force in the place where the pact is made.

Canon 1733, §2: The bishops' conference can prescribe that in each diocese there be established a permanent office or council which would have the duty, in accordance with the norms laid down by the conference, of seeking and suggesting equitable solution. Even if the conference has not demanded this, the bishop may establish such an office or council.

The Catholic Bishops' Conference of Nigeria hereby provides the following norms for agreement, mutual promises, and arbitral judgement: The board of arbitration

and administrative board of review [are] henceforth established and [these] shall comprise of parochial, diocesan, regional, and national levels. The terms of service of the members shall depend on the duration of their offices in the case of those ex-officio memberships, and all others shall be for five years.

THE PROCESS OF ARBITRATION SHALL BE OFFERED TO:

1. All disputes between individuals, or groups, where the controversy, concerns an ecclesiastical matter.
2. To all disputes between a member of the Church and a church administrator or church administrative body, where it is contended that an act or decision (including administrative sanctions and disciplinary actions) has violated church law or formal policy, or where it is contended that an administrative action violated (or threatens to violate) the 'legitimate exercise of a legitimate right.

The Process of Arbitration shall not extend to:

- 1 Cases involving the validity of marriage
- 2 Civil cases
- 3 Cases involving religious communities in their strictly internal affairs
- 4 Cases involving the legislation of competent ecclesiastical authority
- 5 Cases involving the infliction of penalties by juridical sentence and those requiring a special process according to cc. 1671-1731

A part[y] can always appeal to a higher board or an administrative board of review.

PAROCHIAL ARBITRATION BOARD SHALL CONSIST OF:

- 1 The parish priest/mission superior/chaplain
- 2 The executive of the parish council
- 3 Parties or their representatives

DIOCESAN ARBITRATION BOARD SHALL CONSIST OF:

- 1 Bishop or his delegate
- 2 The executive of the senate of priests
- 3 The executive of the diocesan laity council
- 4 Parties or their representatives

REGIONAL LEVEL ARBITRATION BOARD SHALL CONSIST OF:

- 1 President and secretary of the regional conference of bishops
- 2 Priest-chairman of the presbyteral council and the chairman of the diocesan laity council of each diocese in the region (excluding the diocese involved in the case)

3 Parties involved or their delegates

NATIONAL ARBITRATION BOARD SHALL CONSIST OF:

- 1 The president of bishops' conference and the executive of the Catholic Bishops' Conference of Nigeria
- 2 Two priests and one layman from each ecclesiastical province
- 3 Parties or their representatives

PROCEDURE:

- 1 The parties shall submit to the arbitration board the written statements setting forth the nature of the dispute.
- 2 The arbitration [board] shall appoint a time and place for hearings, and notify the parties not less than 5 days before each hearing.
- 3 The arbitrators shall hear and determine the controversy upon evidence produced. Parties may offer such evidence as they desire and shall produce such additional evidence as the arbitrators may deem necessary to an understanding and determination of the dispute. All evidence shall be taken in the presence of all the arbitrators and all of the parties except where any of the parties is absent in default or has waived his right to be present.
- 4 Order of proceedings: A hearing shall be opened by the recording of the place, time and date of hearings, attendance, and the receipt by the arbitrators of initial statements setting forth the nature of the dispute and the remedies sought. The arbitrators shall afford full and equal opportunity to all parties for presentation of relevant proofs.
- 5 In the course of the hearing, all decisions of the arbitrators shall be by a majority vote. These votes shall be by secret balloting.
- 6 All agreements and mutual promises shall be awarded promptly by the arbitrators; not later than thirty (30) days from the date of closing the hearing.

ADMINISTRATIVE BOARD OF REVIEW:

This shall consist of three members to be appointed by the competent ecclesiastical authority. It shall be within the competence of the administrative board of review to:

Render decisions on appeals or complaints.

APPENDIX 2¹

A WILL – GENERAL FORMAT

1. THIS IS THE WILL AND TESTAMENT OF ME (Rt. Rev., Very Rev. Msgr.; Rev. Fr.) XYZ, priest of the arch/diocese ofof No Road /P.O. Box in State of the Federal Republic of Nigeria and also of (here the Priest should put down his home/permanent address)
2. I hereby revoke all Wills and Codicils or otherwise all testamentary dispositions by me at any time heretofore made and declare this to be my Last Will and Testament.
3. I appoint XY of and CZ of to be the executors and trustees of this my Last Will and DECLARE that the expression “my trustees” shall, where the context so admits include the said XY and the said CZ.
- [4]. I declare that the said XY or CZ and any executor or trustee for the time being hereof or of any assent for carrying into effect the provisions hereof who is a legal practitioner of or engaged in any professional business shall be entitled to charge and be paid for usual professional and other charges for work or business done or transacted by him or his firm in proving my Will or in the execution of or in connection with the trust hereof or any such assent aforesaid.
5. (Here come the specific gifts, legacies, devises or dispositions of personal properties and effects completely and on entirely as the testator pleases)
viz: I GIVE, DEVISE AND BEQUEATH Aa, b, c, to e, f, g, h, i, j, k, eg.
 - a) I Give, Devise and Bequeath all my Real Property (lands, buildings) etc., situate and known as Nos. 5 and 17 Benson Lane Ikoyi in the Lagos State of the Federal Republic of Nigeria to my nephew Felix of 5 Tete Lane Uwani Enugu.
 - b) I leave all my personal Books – all stamps marked – found in my library at the time of my demise to my Sister’s youngest son Kelechukwu of the same address – No. 5 Tete Lane Uwani aforesaid and all my personal clothes, trunk boxes, suitcases etc. to the Hopeville Rehabilitation Centre, run by the Marist Brothers of the School at Uturu in the Okigwe Local Government Area of Imo State.
 - c) I leave and devote all money accruing to me as gratuity or death benefits and the residue if any of all my entitlements and property to the parish priest of my hometown for the time being for charity, as he would determine.
 - d) I give all the money found in my personal account with the Union Bank, New Cemetery Road Ajegunle in Lagos State of Nigeria to the arch/bishop of Ajao

¹ Appendix 1 of these complementary norms is omitted because it is a reproduction of the cases in the list of the Secretariat of State in Appendix IV of this work.

arch/diocese in Ogunle State of the Federal Republic of Nigeria for founding an organisation for the prevention of cruelty to aspirants to the religious life.

e) I give and leave my television set, stereo equipment, camera, watch, videocassette to...etc.

6. Subject to the foregoing, should any of the devices, specific bequests or legacies, herein set up, made or established by me in this my Will and Testament for any reason fail or lapse; such devise, bequest or legacy and/or any other portion of my residuary estate or property shall fall into residue – all which shall be devoted to charity as shall be determined by the parish priest of my home parish at the time of my demise.

7. IN WITNESS whereof, I, the said have to this my Will and Testament in this and the preceding sheets of paper herein contained set my hand and seal this day of 19

Signed by the above-named as and for his last Will in the presence of us both being present at the same time who at his request in his presence and in the joint presence of each other have hereunto subscribed our names as witnesses.

Signed 1) Name:

Address:

Occupation:

2) Name:

Address:

Occupation:

Nota bene: A local ordinary or vicar, and a fortiori, the pastor, cannot dispose of the property of the diocese or the vicariate, or parish by Will, since these, automatically devolve on his successor in office by operation of law. It is therefore understood that any property of any kind, which an (ecclesiastic) testator purports to dispose by Will, *must be one that completely belongs to him the testator*, personally and exclusively.

It is also to be noted that the disposal of property held under customary law is governed by the principles of the particular brand of customary law and often are not subject to testamentary disposal in English form – especially where the testator does not have a separate estate in the property in question. Otherwise, all personally acquired property and all property of every kind owned, “*intuitu personae*”, by the (priest), may be freely disposed by the Will as he pleases.

The above are the formal parts of a typical Will. Always consult a legal adviser and make sure that he sees and approves the will, before it is signed and sealed.

APPENDIX III

MANUAL

OF

EXECUTIVE INSTRUCTIONS

FOR

THE CATHOLIC SECRETARIAT

OF

NIGERIA

Revised and Updated According to the New Structure
(2003)

THE CATHOLIC BISHOPS' CONFERENCE OF NIGERIA**OUR IDENTITY**

We are a forum wherein the collegiality of Nigerian bishops as successors of the Apostles in union with the pope is expressed and the idea of the Church as a family is witnessed to. In this forum, we reach out in unity, communion, and solidarity first to our flock of over 20 million Catholics, then to the Nigerian people, and to all the men and women of our generation. The Catholic secretariat of Nigeria as the administrative headquarters of the CBCN remains the most visible symbol of the unity of the Catholic Church in Nigeria.

OUR VISION

We want to see all men and women from within and outside Nigeria led to the abundant life that is available in Christ's kingdom of peace.

OUR MISSION

We exist to spearhead and facilitate the teaching, prophetic and pastoral care ministries of the Catholic Church in Nigeria, and to promote Christ's civilization of love in our country and in the whole world.

OUR STRATEGIES

In order to fulfil our mission, we will commit ourselves to praying together, studying together, working together and speaking together through the following strategies:

- a) Coordinating theological reflection, pastoral and liturgical practice, religious education, biblical apostolate, the application of canon law, the task of inculturation and translation, and the organisation of pilgrimages, congresses, synods and jubilees (Department of Pastoral Affairs)
- b) Coordinating the life and activities of the clergy, seminaries, religious and lay apostolate organisations (Department of Pastoral agents)
- c) Coordinating the work of the Church as it relates to human society in general and specifically as it promotes integral human development, democracy, justice reconciliation and peace (Department of Church and Society)
- d) Coordinating the Church's missionary initiatives, including monitoring and sending of priests, religious and lay missionaries to the needy parts of our country and of the world, and promoting dialogue among Christians of various denominations, and between Christians and adherents of other religions (Department of Mission and Dialogue)
- e) Coordinating all communication activities within the Church, evangelising the mass media and ensuring that all the above stated activities are widely known through a prudent use of the media (Directorate of Social Communications).

1. SECRETARY GENERAL'S OFFICE

Units: Administrative Secretary, General Administration, Accounts Section and Immigration /Protocol Section.

2. DEPARTMENTS AND THEIR COMMITTEES**I. Pastoral Affairs Department**

- a) Pastoral/Liturgical Committee
- b) Religious Education/Catechetical Committee
- c) Biblical Committee
- d) Theological Committee
- e) Canon Law Committee
- f) Inculturation/Translations Committee
- g) Synods Committee
- h) Jubilee Committee
- i) Eucharistic Congress/Pilgrimages Committee
- j) Migrants, Refugees Committee

II. Pastoral Agents Department

- a) Clergy Committee
- b) Seminary Committee
- c) Lay Apostolate Committee
- d) Committee for the Religious

III. Church and Society Department

- a) Justice Development and Peace Committee
- b) Health Committee
- c) Education Committee
- d) Family and Human Life Committee
- e) Caritas Office

IV. Mission and Dialogue Department

- a) Missions Committee
- b) Ecumenism Committee
- c) Dialogue Committee

V. Directorate for Social Communications

- a) Social Communications
- b) Publications, Documentation, and Archives

3. DIRECTORS/SECRETARIES

The four departments and the directorate of social communications shall be headed by "Directors." Four secretaries shall work in the department of pastoral affairs. They are: the secretary, pastoral, theological and liturgical committees, the

secretary, religious education, catechetics, and biblical apostolate committees, the Secretary, organisation of pilgrimages, synods, and congresses committee, the secretary, canon law committee; and the secretary, inculturation and translation committees.

Three secretaries shall work in the department of pastoral agents. They are: the secretary, seminary and clergy committees, the secretary, lay apostolate committee, and the secretary, religious committee.

Four secretaries and an officer shall work in the department of Church and society. They are: the secretary, justice, development and peace committee; the secretary, health committee, the secretary, education committee, the secretary, human life and family committee, and the officer, CARITAS Nigeria.

One secretary shall work in the department of missions and dialogue along with the director.

Secretaries of the various committees or combination of committees in the departments are answerable to the bishop chairmen of the committees, and to the directors, who have the responsibility of coordinating the activities of all the committees in their departments. The directors are in turn answerable to the secretary general who moderates the various programmes and projects of the departments, and ensures that they are in line with the overall vision and interest of the Catholic Bishops' Conference of Nigeria. The terms of reference are as determined by the very nature of the committees, and as determined by the conference from time to time.

4. CONTRACT TERMS

For Priest or Sister Directors and Secretaries:

1. A three-year renewable contract is to be signed in respect of a priest or religious who comes into the service of the secretariat. Such contracts could be renewed by the administrative board upon the recommendations of the secretary general, and with the permission of the candidate's local ordinary or major superior.
2. While in the service of the secretariat, priest directors/secretaries shall be required to undertake pastoral ministration at weekends and as much as possible, spend part of their annual leave in their dioceses (or with their religious communities).
3. The conditions of service for priests and religious directors and secretaries working in the secretariat shall be reviewed from time to time.

5. JOB SPECIFICATION

5.1. Secretary general's office

Job title: The Secretary General

Job purpose: To facilitate effective management of the catholic secretariat as the working arm of the Catholic Bishops' Conference of Nigeria

Job profile: The secretary general is the chief executive of the secretariat of the Catholic Bishops' Conference, and the image-maker of the conference. He is the symbol of the conference when it is not in session and the legal holder of the archives, the properties, and projects of the conference. All legal documents of the Bishops' Conference are authenticated by the secretary general.

Specific duties:

- a) To develop a comprehensive, coherent and implementable plan (based on the deliberations of the CBCN and its organs for facilitating the work of the secretariat and all the departments.
- b) To prudently use his resources of nature, acquirement and grace to tackle many problems that may arise, in the exercise of his office in relation to the universal Church, local Churches all over the world, the government and non-governmental organisations.
- c) To advise the conference on any social, religious or political development that may affect the Church.
- d) To facilitate the organisation and financing of the meetings of episcopal commissions and committees; He is the secretary of the administrative board. He must work closely with the chairman of the board and be sure to obtain his approval for whatever he does on behalf of the conference when the board cannot seat. All plenary sessions are organised and facilitated by him.
- e) To assure the CBCN that every department functions well, within the overall vision of the conference and its secretariat. To this effect, every letter that issues from any department of the secretariat should have the approval of the secretary general. If the secretary general does not approve of any letter, it must be altered or stopped according to his directives.
- f) To ensure that all major programmes and projects to be undertaken by the director of any department are approved by him, apart from a director or secretary being in agreement with his chairman. No departmental director or unit secretary should act independently of the chairman.
- g) To be responsible for staff discipline at the secretariat, as well as to intervene in the problems or affairs of any department or unit.
- h) To ensure that expenses incurred by any worker in the Catholic Secretariat of Nigeria are in line with the approved budget and have his approval.
- i) To supervise the immigration/protocol section. Working through the protocol officer and the staff of the immigration section, the secretary general has the overall responsibility for immigration matters, which he handles on behalf of the conference. He issues visa recommendation letters for various embassies, coordinates expatriate quota allocations for dioceses, and processes residence

permits with the immigration department of the federal ministry of internal affairs. He arranges for, and facilitates payment of fare of anyone representing the conference at meetings within and outside the country.

- j) To facilitate preparation of annual statutory reports of all departments and ensure that these are shared with the relevant stakeholders.

Accountability:

The secretary general is answerable to the administrative board of the Bishops' Conference, while maintaining a working relationship with the departmental chairmen. He should seek the approval of the chairman of the administrative board before undertaking any major projects when the board cannot meet.

Job demands:

- a) The secretary general should be a mature priest of proven integrity and commitment and be willing to go an extra-mile in performing the duties assigned.
- b) The secretary general should be well grounded in the doctrinal, moral, and social teachings of the Church, as well as be familiar with the socio-political, economic, and ecclesiastical configurations and dynamics of the country.
- c) The secretary general has to be willing to use his resources of nature, acquirement and grace to tackle many problems issues and challenges that will arise in the exercise of his office in relation to the universal Church, local Churches all over the world, the government, and non-governmental organizations.
- d) The secretary general should be a priest with a post-graduate degree in any of the sacred sciences. Additional qualifications in management and administration will be an advantage. He or she should have worked in some capacity at the national level of the Church for at least three years.
- e) The secretary general should have the necessary drive, motivation, and creativity to perform his or her duties with minimal supervision.
- f) The secretary general should not only be computer literate, but also be able to keep abreast with the changes in information technology and be able to use such tools as are available on the internet to enrich the programmes and projects of the secretariat.

5.2. Department of pastoral affairs

Job title: Director Pastoral Affairs

Job purpose: To coordinate and facilitate the pastoral, theological and liturgical aspects of the Church's mission in Nigeria

Specific duties:

- a) To develop a comprehensive, coherent and implementable plan (based on the deliberations of the CBCN and its organs) for facilitating the work of the Church on issues relating to pastoral, liturgical and theological activities including canon law, religious education, biblical apostolate, catechetics, enculturation, and translation, the organisation of pilgrimages congresses, synods and jubilees.
- b) To direct the production and printing of the annual liturgical calendar and other important liturgical materials.
- c) To act as MC at all national liturgical celebrations, including the prayers and liturgies during bishops' meetings.
- d) To maintain steady correspondence with the following: The Congregation for the Doctrine of the Faith, Congregation for Divine Worship, Pontifical Commission for Pastoral Tourism, Pontifical Council on the Family, International Commission on English in Liturgy, etc.
- e) To co-ordinate the work of the diocesan spiritual directors and writes reports to Rome annually on the seafarers apostolate.
- f) To order mass wine for the dioceses of Nigeria, and for the Catholic Secretariat of Nigeria, the Nunciature and army chaplaincy. This also includes arranging the supply of altar bread for Catholic Secretariat of Nigeria.
- g) To arrange for daily mass and prayers at the secretariat and supervise the care of the sacristy.
- h) To facilitate all arrangements for international and national pastoral and Eucharistic congresses, as well as coordinate all jubilee celebrations on the national level.
- i) To organise national pilgrimages and co-operates with the organisers of provincial or diocesan pilgrimages.
- j) To facilitate the study and dissemination of new papal encyclicals, pastoral and liturgical documents from the Holy See, and similar documents on pastoral matters emanating from the CBCN.
- k) To coordinate the work of the various secretaries in the department and ensure that there is coherence in what is going on.
- l) To keep the minutes of the department's meetings and ensure that actions arising from such meetings are followed up.
- m) To prepare periodic final narrative and financial reports of activities of the department and ensure that this is shared with the relevant stakeholders.

Accountability:

The director is answerable to the office of the secretary general while maintaining a working relationship with the bishop chairman.

Job demands:

- a) The director must be a priest of proven integrity and commitment and must be willing to go an extra-mile in performing the duties assigned.
- b) The director should possess a post-graduate degree in any of the sacred sciences with relevant experience in pastoral work, and the administration of pastoral projects and programmes.
- c) The director should have the necessary drive, motivation and creativity to perform his duties minima supervision.
- d) The director should not only be computer literate but be able to keep abreast with the changes in information technology and be able to use such tools as are available on the internet to enrich the programme and projects of his department.

5.3. Department of pastoral agents

Job title: Director Pastoral Agents

Job purpose: To coordinate activities of the committees for the clergy, religious, seminaries and the laity

Specific duties:

- a) To develop a comprehensive, coherent and implementable plan (based on the deliberations of CBCN and its organs) for facilitating the work of the Church in matters relating to clergy, religious, seminaries and the laity.
- b) To facilitate cooperation with the pontifical commissions for clergy, religious, seminaries and the laity.
- c) To facilitate mutual relations and cooperation with the national council of men and women religious and be informed of their operations and how these contribute to the overall mission of the National Church [Church in Nigeria].
- d) To consult regularly with and be familiar with the workings of the major seminaries and formation houses in the country, their staff and their formation programmes.
- e) To facilitate national exchange meetings at which contemporary issues affecting pastoral agents are discussed.
- f) To coordinate the work of the various secretaries in the department and ensure that there is coherence in what is going on.
- g) To keep the minutes of the department meetings and ensure that actions arising from such meetings are followed up.
- h) To prepare periodic and final narrative and financial reports of activities of the department and ensure that this is shared with the relevant stakeholders.

Accountability:

The director is answerable to the office of the secretary general while maintaining a working relationship with the bishop chairman.

Job demands:

- a) The director should be a priest or religious of proven integrity and commitment, who is willing to go an extra-mile in performing the duties assigned.
- b) The director should possess a post-graduate degree in any of the sacred sciences with some training and experience in formation and chaplain work, and with adequate knowledge of the dynamics of pastoral agents in the Church.
- c) The director should have the necessary drive, motivation, and creativity to perform his or her duties with minimal supervision
- d) The director should not only be computer literate but also be able to keep abreast with the changes in information technology and be able to use such tools as are available on the internet to enrich the programme and projects of the department.

5.4. Department of Church and society

Job title: Director Church and Society

Job purpose: To coordinate on the national level the Church's involvement in integral human development

Specific duties:

- a) To come up with a comprehensive, coherent and implementable plan (based on the deliberations of CBCN and its organs) for facilitating the work in the various programmes including formal and informal education, health care, HIV/AIDS awareness prevention and care, agriculture, rural community development, civic education/political awareness programmes, rights and welfare, shelter rights, environmental rights, women and children's rights, the rights of minority groups, care of refugees and emergency.
- b) To facilitate the work of the diocesan and provincial coordinators of health, JDPC, CARITAS, education, family and human life, through coordination and sharing of latest developments in the relevant fields, and through the hosting of appropriate workshops designed to empower and boost the capacity of these functionaries.
- c) To facilitate research and use the results to keep the CBCN informed of latest developments in the field of Church and appropriate areas of intervention.
- d) To coordinate the work of the various secretaries in the department and ensure that there is coherence in what is going on.

- e) To keep the minutes of the department meetings and ensure that actions arising from such meetings are followed up.
- f) To prepare periodic and final narrative and financial reports of activities of the department and ensure that this is shared with the relevant stakeholders.

Accountability:

The director is answerable to the office of the secretary general while maintaining a working relationship with the bishop chairman.

Job demands:

- a) The director should be well grounded in the social teachings of the Church, and in the socio-political and economic dynamics of the country.
- b) The director should be a man or woman of maturity and proven integrity and commitment, and must be willing to go an extra-mile in performing the duties assigned.
- c) The director should possess the ability to relate well with local and international partner agencies and be able to put together funding proposals for programmes and projects in the various areas covered by the department.
- d) The director should possess a post-graduate degree in any of the sacred sciences, with some training in the Church's social teachings. Additional qualification in civil law, sociology, education, or political science will be an advantage. Above all, he or she should have some practical experience of social development work gained from a diocesan, provincial or congregational environment.
- e) The director should have the necessary drive, motivation, and creativity to perform his or her duties with minimal supervision.
- f) The director should not only be computer literate, but also be able to keep abreast with the changes in information technology and be able to use such tools as are provided by the internet to enrich the programme and projects of the department.

5.5. Department of mission and dialogue

Job title: Director Mission and Dialogue

Job purpose: To coordinate and facilitate effectively the activities of CBCN committees on missions and missionary animation, ecumenism and dialogue

Specific duties are:

- a) To develop a comprehensive, coherent and implementable plan (based on the deliberations of CBCN and its organs) for facilitating the work of the Church in matters relating to missions and missionary animation, ecumenism and inter-religious dialogue.

- b) To work out, in consultation with the appropriate ordinaries and superiors, a plan for “missioning” Nigerian clergy, religious and lay volunteers being sent out on mission.
- c) To promote the various aspects of missionary work in Nigeria in collaboration with the national director of Pontifical Missionary Societies (when the two positions are not occupied by the same person).
- d) To promote dialogue and conflict resolution in the country in collaboration with the justice and peace unit of the Church and Society department.
- e) To facilitate national exchange meetings at which contemporary issues affecting missionary work are discussed.
- f) To coordinate the work of the various secretaries in the department and ensure that there is coherence in what is going on.
- g) To keep the minutes of the department meetings and ensure that actions arising from such meetings are followed up.
- h) To prepare periodic and final narrative and financial reports of activities of the department and ensure that this is shared with the relevant stakeholders.

Accountability:

The director is answerable to the office of the secretary general while maintaining a working relationship with the bishop chairman.

Job demands:

- a) The director should be a priest or religious of proven integrity and commitment and should be willing to go an extra-mile in performing the duties assigned.
- b) The director should possess a post-graduate degree in any of the sacred sciences, with some training in missiology. Additional qualification in protestant theology and/or Islam, as well as practical working experience in these areas will be an advantage.
- c) The director should have the necessary drive, motivation and creativity to perform his or her duties with minimal supervision.
- d) The director should not only be computer literate but also be able to keep abreast with the changes in information technology and be able to use such tools as the internet to enrich the programme and projects of the department.

5.6 Directorate of social communications

Job title: Director Social Communications

Job purpose: To facilitate and promote effective evangelisation and utilisation of the instruments and media of social communication in furtherance of the Church’s overall mission in Nigeria, as well as to publicise the programmes and projects of the various organs of the Church through the media.

Specific duties:

- a) To develop a comprehensive, coherent and implementable plan (based on the deliberations of CBCN and its organs) for facilitating the work of communication within the Church and its various organs.
- b) To arrange meetings of the committees in the department in consultation with the bishop chairman and the secretary general.
- c) To maintain proper records and correspondence pertaining to the directorate.
- d) To carry out the functions of the department by projecting the image of the Catholic Church through the effective use of the modern tools of mass communication for evangelization i.e. radio, television, internet, newspapers and magazines, audio-visuals, films, slides and advertisements.
- e) To facilitate production of programmes both for the radio and television.
- f) To facilitate preparation of press releases and religious broadcasts for the religious and secular media.
- g) To facilitate procurement of audio-visuals and such other material which will help to feed the nation with truth and ensure that Catholics in the media are aware of their responsibilities to evangelise the media as well as use their tool of trade to promote evangelisation.
- h) To arrange for television and radio broadcasts of Vatican programmes especially at Christmas and Easter.
- i) To write articles and correcting erroneous publication in print-media. It is very necessary that any article written on behalf of the directorate should have the approval of the secretary general before it is sent to the press; for the secretariat takes full responsibility of what may happen as a result of the published article, e.g. libel, which is possible.
- j) To facilitate radio and television programming with radio and television authorities. This might entail a good amount of the director's leisure hours.
- k) To act as editor of the Catholic Secretariat Newsletter. He will seek out adequate material for the newsletter, and ensure that it reaches all dioceses, religious congregations, major lay apostolate organisations, and international partner organisations.
- l) To facilitate close touch with the Pontifical Commission on Social Communications, and send copies of important publications and releases to the Holy See.
- m) To facilitate coordination of activities of all international catholic media organisations, such as SIGNIS and UCIP.
- n) To facilitate national exchange meeting at which contemporary issues affecting missionary work are discussed.
- o) To coordinate the work of the various secretaries in the directorate and ensure that there is coherence in what is going on.

- p) To keep the minutes of the directorate meetings and ensure that actions arising from such meetings are followed up.
- q) To prepare periodic and final narrative and financial reports of activities of the department and ensure that this is shared with the relevant stakeholders.

Accountability:

The director is answerable to the office of the secretary general while maintaining a working relationship with the bishop chairman.

Job demands:

- a) The director must be a man/woman of proven integrity and commitment and be willing to go an extra-mile in performing the duties assigned.
- b) The director may be a priest, religious, or layperson with a post-graduate degree in social communication, mass communication or journalism. He or she must have at least five years' post-qualification experience as a catholic media practitioner, with talents in both print and electronic media.
- c) The director should have the necessary drive, motivation, and creativity to perform his or her duties with minimal supervision.
- d) The director should not only be computer literate, but also be able to keep abreast with the changes in information technology and be able to use such tools as are available on the internet to enrich programmes and projects of his/her directorate.

5.7. Administrative secretary

The executive secretary functions directly under the secretary general and assists him in the internal administration of the secretariat. He shall assist the secretary general in the following assignments:

- 1 Recruitment and appointment of lay staff
- 2 General discipline of staff in matters concerning:
 - a) conduct and discharge of duties
 - b) attendance of duty and punctuality
 - c) termination of appointment
- 3 Fixation of salary and scales of salary of lay staff
- 4 Grant of increment and promotion of lay staff with relevant correspondence
- 5 Preparation of leave roster for staff and grant of casual and annual leave
- 6 Supervision of cleaners and gardeners with regard to the general cleanliness of Catholic secretariat inside and outside
- 7 Sorting and distribution of incoming mails
- 8 Supervision of the opening of and recording of files for the secretary general's department and the other departments
- 9 Supervision of and deployment of drivers
- 10 Arrangement of logistics for the hosting of CBCN plenary meetings and administrative board meetings

- 11 Other miscellaneous duties which the secretary general may assign from time to time.

6. APPOINTMENT OF PRINCIPAL OFFICERS

6.1. The secretary general

The secretary general is appointed for a renewable term of three years. The appointment is done by a two-third majority vote of the plenary session of the Bishops' Conference, after the candidate has been duly interviewed and recommended by the administrative board. The president of the conference signs his letter of appointment, along with the vice-president who authenticates the letter.

6.2. Directors and secretaries

The appointment of departmental directors and secretaries of committees is done by administrative board at the recommendation of the secretary general. Their letters of appointment are signed by the chairman of the board and the secretary general.

6.3. Other categories of staff:

The secretary general appoints other categories of staff in consultation with the directors. He sees to their general welfare, salaries and conditions of service, discipline and termination when necessary. He is assisted in this work by the administrative secretary.

7. ASSISTANT SECRETARIES GENERAL

The assistant secretaries general shall assist the secretary general in all the tasks enumerated above. They shall also deputise for him when he is away.

8. THE ACCOUNTS SECTION

The Catholic secretariat shall have an accounts section under the secretary general's office. A qualified accountant is to head the section, and works with a team of accounts' clerks, all under the supervision and control of the secretary general who is the chief accounting officer, but who is himself accountable to the finance council of the Bishops' Conference. The accounts section shall execute the following duties:

- 1 Receipts and payments of money
- 2 Keeping records of the above
- 3 Keeping financial records of projects in operation
- 4 Maintaining debtors and creditors accounts
- 5 Making contact with banks for funds
- 6 Keeping Christian Association of Nigeria accounts
- 7 Banking and keeping banking records
- 8 Paying salaries and allowances of staff
- 9 Paying and keeping records of P.A.Y.E. income tax of staff

- 10 Ensuring that expenditure is in order before paying out
- 11 Controlling of limited finances of the secretariat
- 12 Preparing bank reconciliation statements
- 13 Preparing final accounts
- 14 Preparing annual budget, etc.
- 15 Buying and supplying stationery to all staff
- 16 Operating CSN Health Insurance Scheme
- 17 Doing other duties as directed by the secretary general

General procedure

1. There shall be a general account known as the secretary general's account. This account will finance the overall running of the secretariat.
2. Recurrent expenditure shall be channelled for approval through the secretary general by each department for payment by the accountant.
3. The secretary general may not embark on any capital expenditure outside the approved budget without the expressed permission of the chairman of the administrative board and that of the finance council.
4. Details of expenditure shall be made in writing, for money received supported by receipts.

The secretary general's account

1. The money in the secretary general's account shall be the budgeted estimate for the year, agreed upon at the second plenary meeting of the Bishops' Conference. The finance council shall therefore propose the budgeted estimate for the approval of the Bishops.
2. All other secretariat monies shall be held in the in fixed deposits – long-term or short-term. These monies deposited should not be touched [be used] unless an extra ordinary expenditure unbudgeted and unforeseen occurs and the finance council approves the disbursement of a particular sum to meet the occasion.
3. An audited statement of accountant of the secretariat, duly vetted by the finance council shall be made available annually to the members of the Catholic Bishops Conference of Nigeria.

9. TRANSPORTATION

All directors and full time secretaries are provided with a car for their use by the secretary general, in consultation with the administrative board. A specified sum of money, approved by the board, is given to each director or secretary for the maintenance of the cars per annum. Thereafter the individuals are fully responsible for the use of, the care of and the repair of the cars throughout the period of their engagement with the secretariat. Directors and secretaries are ordinarily expected to drive their own cars. They are to ensure that the documents pertaining to the cars are up-to-date.

The secretary general is to maintain a few cars in the pool with drivers that are available for long-distance travels of secretaries and directors. These cars are to be kept in top shape and properly maintained for this purpose.

Duties and Responsibilities of Drivers

1. A driver is permitted to convey in his vehicle only such passengers as are authorised by the secretary general, the executive secretary, a director, secretary or the chief accountant.
2. Drivers are prohibited from stopping on the road to pick passengers except where such stoppages are authorised or in genuine emergency.

Accidents:

The following procedure is to be adopted in case of accidents:

1. If the accident occurs in a town or in the vicinity of a police station, the driver should report to the police. If however, it occurs where no police stations are available, the driver should stop at the next police station on his route and make a formal report of the accident.
2. While the attitude of a driver involved in an accident should be courteous and co-operative, he should beware of offering an apology or making any statement which might imply that the secretariat accepts responsibility for any damage or injury sustained by the other party; otherwise the insurance company may refuse to take up the case.

10. LEAVE

It is essential in the interest of health and efficiency that all directors and secretaries enjoy their vacation at or as near as possible to the date on which it is due. After serving in the secretariat for one calendar year, they are entitled to one month's annual leave (for every calendar year). Priest and religious directors and secretaries are encouraged to spend part of this leave in their dioceses or with their congregations, and in the case of laypersons, with their families.

Other categories of staff are entitled to leave with pay for each calendar year that they work in accordance with the stipulations in the approved conditions of service for the staff of the secretariat.

Recuperation leave

Recuperation leave, which is primarily to allow a brief period of rest and relaxation, would be justifiable on grounds of health. Ordinarily, such recuperation leave will not be expected to extend beyond thirty days.

APPENDIX IV

THE LETTER OF THE SECRETARY OF STATE

(Cardinal A. Casaroli)¹

To

THE PRESIDENTS OF CONFERENCES OF BISHOPS

AND THE LIST OF CANONS REQUIRING

PUBLICATION OF COMPLEMENTARY

NORMS

¹ The English translation of the letter of Cardinal Casaroli (8 November 1983, Prot. No. 120.568/236) and the accompanying lists are courtesy *CLD* XI, pp. 5-8; while the original French texts are from *Comm.* 15 (1983), pp. 135-139.

THE LETTER OF THE SECRETARY OF STATE AND
THE ACCOMPANYING CANONS

The Letter

Some episcopal conferences have made it known to the Holy Father that they have been finding it difficult to decide in an opportune time, before the new Code of Canon Law goes into effect, the complementary norms which belong to their competence.

After studying the problems and predicting that other episcopal conferences could experience the same difficulty, the Holy Father has asked that the following be communicated to the episcopal conferences:

1. The particular legislation which the code has entrusted to episcopal conferences is an expression of the apostolic solicitude for the particular churches which form the conference; but above all, this is the offering of a true service on behalf of the people of God, a service which is realised in a definitive way by determining discipline, which ought to be an efficacious instrument of renewal and of ecclesial life, thanks to adaptation to local, concrete situations.
2. Therefore, the Holy Father recommends maximum diligence, so that this legislation will be accurately studied and prepared in due time, with the help of experts as needed, and organising, if necessary, extraordinary sessions for preparation and approval. Even if the importance of the topic and the conference's method of working does not permit more rapid procedure, the work should not be deferred beyond what is necessary; instead precedence should be given to this work ahead of other less urgent business.

La Lettre

Certaines Conférences épiscopales ont fait savoir au Saint-Père qu'il leur était difficile de préciser en temps opportun, avant l'entrée en vigueur du Code de droit canonique, les normes complémentaires qui sont de leur compétence.

Le Saint-Père, après avoir étudié le problème et prévoyant que d'autres Conférences épiscopales pourraient éprouver les mêmes difficultés, a demandé que soit communiqué à toutes les Conférences épiscopales ce qui suit:

1. La législation particulière confiée par le Code aux Conférences épiscopales est l'expression de la sollicitude apostolique pour les Églises particulières qui forment la Conférence; mais elle est surtout la prestation d'un véritable service à l'égard du peuple de Dieu, et ce service se réalise en définitive par la détermination de la discipline qui doit être un instrument efficace de renouveau et de vie ecclésiale grâce à son adaptation aux situations locales concrètes.
2. Le Saint-Père recommande donc la plus grande diligence, afin que cette législation soit étudiée soigneusement et préparée en temps voulu, avec, le cas échéant, l'aide d'experts, et en organisant au besoin des sessions extraordinaires pour sa préparation et son approbation. Même si l'importance du sujet et la méthode de travail de la Conférence ne permettent pas de procéder plus rapidement, on ne doit pas pour autant différer ce travail plus qu'il n'est nécessaire; il faut au contraire lui donner la priorité sur d'autres tâches moins urgentes.

3. If it should become impossible to publish these complementary norms before the code goes into effect, it is important to avoid producing a legislative vacuum. For this reason, it is advised that transitory norms be published, which are to be approved according to the procedures anticipated by c. 455, §2, for example; concerning canons that entrust to the episcopal conference the task of deciding norms on a certain matter (enumerating these canons or indicating the material being treated); it would be stated that, until said norms are published, the present norms shall remain in effect, either from those in the 1917 Code, or from those contained in post conciliar documents of the Holy See, or from those already legitimately established by the episcopal conference.

4. The provisional norms prepared in this way need not be reviewed by the Holy See in order to be promulgated by the episcopal conference. They however, will cease to have their force on 1 January 1985.

To facilitate the work of the episcopal conferences I send the attached list indicating the canons asking for promulgation of particular norms by the episcopal conferences.

Accept the assurance of my devoted feelings.

A. Card. CASAROLI

3. S'il s'avérait impossible de publier les normes complémentaires avant l'entrée en vigueur du Code, *il faudrait éviter que ne se produise un vide législatif*. A cette fin, il est conseillé de publier des *normes transitoires* approuvées selon la procédure prévue au canon 455, §2, dans lesquelles on décrète, par exemple, que pour ce qui concerne les canons qui confient à la Conférence épiscopale le soin de préciser des normes sur telle matière (en énumérant ces canons ou en indiquant la matière dont il s'agit), tant que les susdites normes complémentaires ne seront pas publiées, resteront en vigueur les normes actuelles, qui peuvent être celles du Code de 1917, ou celles qui sont contenues dans les documents postconciliaires du Saint-Siège, ou celles qui ont déjà été légitimement établies par la Conférence épiscopale.

4. Les normes provisoires préparées de cette façon n'ont pas besoin d'être revues par le Saint-Siège pour pouvoir être promulguées par la Conférence épiscopale. Elles cesseront d'être en vigueur le 1^{er} janvier 1985.

Pour faciliter le travail des Conférences épiscopales, je vous envoie ci-joint une liste indicative des canons qui requièrent des normes particulières promulguées par les Conférences.

Veuillez agréer l'assurance de mes sentiments dévoués en N. S.

A. Card. CASAROLI

List indicating those cases for which the episcopal conferences can publish particular norms to complement the Code of Canon Law:

1. Canon 502, §3: to decide if the tasks of the college of consultors will be given to the cathedral chapter;
2. Canon 522: to admit the naming of pastors to a fixed term;
3. Canon 535, §1: to prescribe particular parochial registers;
4. Canon 755, §2: to establish practical norms on ecumenism;
5. Canon 766: to provide norms on admission of laity to preaching;
6. Canon 804, §1: to establish norms on catholic religious education in schools;
7. Canon 844, §4: to provide norms on administration of sacraments to non-catholic Christians;
8. Canon 854: to publish norms on the method of administering baptism;
9. Canon 891: to determine the age for confirmation;
10. Canon 895: to prescribe a parochial register for recording confirmations;
11. Canon 1031, §3: to establish an older age required to receive presbyterate or permanent diaconate;
12. Canon 1083, §2: to fix an older age for licit celebration of marriage;
13. Canon 1120: to draw up its own marriage ritual;
14. Canon 1127, §2: to establish norms for dispensation from form in mixed marriages;
15. Canon 1236, §1: to decide the possibility of using materials other than stone to construct altars;

Liste indicative des cas dans lesquels les Conférences épiscopales peuvent publier des normes particulières, en complément du Code de droit canonique

1. Canon 502, §3: Décider que les tâches du collège des consultants soient confiées au chapitre cathédral.
2. Canon 522: Admettre la nomination de curés « ad tempus ».
3. Canon 535, §1: Prescrire des registres paroissiaux particuliers.
4. Canon 755, §2: Établir des normes pratiques sur l'œcuménisme
5. Canon 766: Donner des normes sur l'admission des laïcs à la prédication.
6. Canon 804, §1: Établir des normes sur l'éducation religieuse Catholique dans les écoles.
7. Canon 844, §4: Donner des normes sur l'administration des sacrements aux chrétiens non catholiques.
8. Canon 854: Publier des normes sur la façon d'administrer le baptême
9. Canon 891: Déterminer l'âge de la confirmation.
10. Can. 895: Prescrire un registre paroissial pour l'inscription des confirmations.
11. Canon 1031, §3: Établir un âge plus avancé pour recevoir le presbytérat et le diaconat permanent.
12. Canon 1083, § 2: Fixer un âge plus élevé pour la célébration licite du mariage.
13. Canon 1120: Rédiger un rite propre du mariage.
14. Canon 1127, §2: Établir des normes pour la dispense de la forme dans les mariages mixtes.
15. Canon 1236, §1: Décider de la possibilité d'utiliser d'autres matières que la pierre pour la construction d'autels fixes.

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| <p>16. Canon 1246, §2: to suppress certain feasts or transfer them to Sundays;</p> <p>17. Canon 1251: to determine the matter of abstinence;</p> <p>18. Canon 1253: to decide the method of observing fast and abstinence, or of substituting other works;</p> <p>19. Canon 1265, §2: to establish norms for fund-raising;</p> <p>20. Canon 1421, §2: to permit certain laypersons to be appointed judges;</p> <p>21. Canon 1714: to provide norms for settlements, compromises, and arbitration;</p> <p>22. Canon 1733, §2: to decide on the establishment of a diocesan office for avoiding trials.</p> | <p>16. Canon 1246, §2: Supprimer ou transférer au dimanche certains jours de fête.</p> <p>17. Canon 1251: Déterminer la matière de l'abstinence.</p> <p>18. Canon 1253: Préciser la manière d'observer le jeûne et l'abstinence, ou les remplacer par d'autres œuvres.</p> <p>19. Canon 1265, § 2: Établir des normes pour les quêtes.</p> <p>20. Canon 1421, § 2 Permettre que les fidèles laïcs soient institués juges.</p> <p>21. Canon 1714: Donner des normes sur la transaction, le compromis ou l'arbitrage.</p> <p>22. Canon 1733, § 2: Décider la constitution d'un office diocésain pour éviter les procès.</p> |
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List indicating those cases in which, according to the new Code of Canon Law, episcopal conferences must publish particular complementary norms, if they have not already done so, or if those already issued are contrary to the new code:

1. Canon 230, §1: to determine the age and qualifications required for candidates to the ministries of lector and acolyte;
2. Canon 236: to establish norms for the formation of aspirants to the permanent diaconate;
3. Canon 242: to prepare a program for priestly formation;
4. Canon 276, §2, 3°: to determine which hours of the liturgical office must be recited by permanent deacons;
5. Canon 284: to determine ecclesiastical dress;
6. Canon 496: to provide norms for the statutes of presbyteral councils;

Liste indicative des cas dans lesquels, selon le nouveau Code de droit canonique, les Conférences épiscopales doivent publier des normes complémentaires particulières, si elles ne l'ont pas encore fait ou si les normes déjà établies sont contraires au nouveau Code

1. Canon 230, §1: Déterminer l'âge et les qualités requises pour les candidats aux ministères de lecteur et d'acolyte.
2. Canon 236: Établir des normes pour la formation des aspirants au diaconat permanent.
3. Canon 242: Préparer la « Ratio institutionis sacerdotalis »
4. Canon 276, §2, 3°: Déterminer quelles sont les heures de l'office liturgique qui doivent être récitées par les diacres permanents.
5. Canon 284: Déterminer l'habit ecclésiastique.
6. Canon 496: Donner des normes pour les statuts des Conseils presbytéraux.

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| <p>7. Canon 538, §3: to provide norms for the support of retired pastors;</p> <p>8. Canon 772, §2: to establish norms for presentation of christian doctrine on radio and television;</p> <p>9. Canon 788, §3: to establish statutes for the catechuminate;</p> <p>10. Canon 831, §2: to provide norms for participation of clergy and religious in radio and television broadcasts;</p> <p>11. Canon 851, §1: to adapt the Order of Initiation of Adults;</p> <p>12. Canon 877, §3: to provide norms for recording the baptisms of adopted children;</p> <p>13. Canon 964, §2: to publish norms on the place of confession;</p> <p>14. Canon 1062, §1: to regulate the engagement;</p> <p>15. Canon 1067: to establish norms for the pre-matrimonial investigation and the publication of matrimonial banns;</p> <p>16. Canon 1126: to establish the methods of making declarations and promises before mixed marriages;</p> <p>17. Canon 1262: to publish norms for the financial contributions of the faithful;</p> <p>18. Can. 1272: to regulate administration of benefices where they exist;</p> <p>19. Canon 1277: to define acts of extraordinary administration;</p> <p>20. Canon 1292, §1: to fix the maximum and minimum amounts for alienations;</p> <p>21. Canon 1297: to establish norms for leasing church goods.</p> | <p>7. Canon 538, §3: Donner des normes pour la subsistance des curés retirés.</p> <p>8. Canon 772, §2: Établir des normes pour la présentation de la doctrine chrétienne à la radio et à la télévision.</p> <p>9. Canon 788, §3: Établir des statuts pour le catéchuménat.</p> <p>10. Canon 831, §2: Donner des normes pour la participation des clercs et des religieux aux émissions radio-télévisées.</p> <p>11. Canon 851, §1: Adapter 1' « Ordo initiationis adultorum »</p> <p>12. Canon 877, § 3: Donner des normes sur l'inscription des baptêmes des enfants adoptifs.</p> <p>13. Canon 964, §2: Publier des normes concernant le lieu des confessions.</p> <p>14. Canon 1062, §1: Réglementer les fiançailles.</p> <p>15. Canon 1067: Établir des normes concernant l'interrogatoire des futurs époux et la publication des bans.</p> <p>16. Canon 1126: Établir la façon dont doivent être faites les déclarations et les engagements avant les manages mixtes.</p> <p>17. Canon 1262: Publier des normes sur la contribution financière des fidèles.</p> <p>18. Can. 1272: Réglementer l'administration des bénéfices, là où ils existent encore.</p> <p>19. Canon 1277: Définir quels sont les actes d'administration extraordinaire.</p> <p>20. Canon 1292, §1 Fixer les sommes maximum et minimum pour les aliénations.</p> <p>21. Canon 1297 Établir des normes pour la location des biens de l'Église.</p> |
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APPENDIX V

OTHER CASES REFERRING TO THE CONFERENCE OF BISHOPS

Apart from the cases contained in the lists of the Secretary of State and cc. 447-459, some other places the conferences of bishops are mentioned are as follows:

- 1 Canon 237, §2: to establish inter-diocesan seminaries for its territory with the approval of the Apostolic See;
- 2 Canon 294: to be consulted before the Apostolic See erects a personal prelature in its area;
- 3 Canon 312, §1, 2º: to erect national public associations for its territory;
- 4 Canon 320, §2: to suppress national public associations;
- 5 Canon 322, §1: to grant juridical personality to a private association by a formal decree;
- 6 Canon 326, §1: to suppress private associations erected by the conference;
- 7 Canon 346, §1: to elect representatives to the synod of bishops;
- 8 Canon 364, 3º: to receive assistance from the papal Legate;
- 9 Canon 372, §2: to be consulted by Holy See before erecting particular churches;
- 10 Canon 377, §2: to draw up every three years by common accord and in secret, only when circumstances suggest it, a list of priests suitable for the episcopate;
- 11 Canon 402, §2: to ensure that suitable and worthy provision is made for the upkeep of a retired bishop;
- 12 Canon 433: to propose to the Apostolic See the creation of ecclesiastical regions in its territory;
- 13 Canon 439, §1: to receive approval of the Holy See before calling a plenary council, for all the particular Churches in its territory;
- 14 Canon 441: to convene a plenary council; to choose a place within its territory for the celebration of the plenary council; to elect, from among diocesan bishops, a president for the plenary council; to determine the order of business, the matter to be considered and announce when a plenary council will begin and how long it will last; to transfer, prorogue, or dissolve the plenary council;

- 15 Canon 443, §3, 2º: to determine the number of major superiors (with only consultative vote), to be called to the plenary council;
- 16 Canon 467: to receive copies of declarations and decrees from diocesan synods;
- 17 Canon 708: to cooperate with major superiors;
- 18 Canon 753: to exercise authentic magisterium;
- 19 Canon 775, §2: to publish catechisms for its territory, with the approval of the Holy See;
- 20 Canon 775, §3: to establish a catechetical office to assist individual dioceses in catechetical matters;
- 21 Canon 792: to establish and promote means by which those who come to their territory from the missions (for purpose of work or study), are to be given fraternal welcome, and helped with suitable pastoral care;
- 22 Canon 809: to provide for catholic universities or at least faculties in which various disciplines, while retaining their scientific autonomy, may be researched and taught in the light of catholic doctrine;
- 23 Canon 810, §2: to see to it that, the principles of catholic doctrine are faithfully observed, in the catholic universities in its territory;
- 24 Canon 821: to establish higher institutes for religious studies, in which are taught theological and other subjects pertaining to christian culture;
- 25 Canon 823, §2: to exercise vigilance concerning publications and media in order to safeguard the integrity of faith and morals;
- 26 Canon 825, §1: to approve the editions and translations of the sacred Scriptures;
- 27 Canon 825, §2: to permit ecumenical translation (with sufficient explanatory notes) of sacred Scriptures;
- 28 Canon 830, §1: to draw up a list of censors or establish a commission of censors whom the local ordinaries can consult;
- 29 Canon 838, §3: to prepare vernacular translations of liturgical books with appropriate adaptations and, with prior review of the Holy See, publish the same;
- 30 Canon 844, §5: to develop general norm on sacramental sharing after consultations with the appropriate authorities of other churches;

- 31 Canon 1112, §1: to determine if laypersons can assist at marriage with due respect to the provision of law;
- 32 Canon 1121, §1: to determine the manner marriages are to be recorded in a marriage register;
- 33 Canon 1231: to approve a shrine to be described as national;
- 34 Canon 1232, §1: to approve the statutes of a national shrine;
- 35 Canon 1274, §2: to see that a fund is established, which will furnish adequate social security for the clergy, where there is yet no properly organised system of social provision for them;
- 36 Canon 1425, §4: to permit that in a trial of first instance a bishop may entrust cases to a sole clerical judge as long as it is impossible to constitute a college of judges;
- 37 Canon 1439, §1: to constitute a tribunal of second instance, with the approval of the Holy See, for inter-diocesan tribunal of first instance serving dioceses that are not suffragans of the same archdiocese;
- 38 Canon 1439, §2: to constitute tribunals of second instance, with the approval of the Holy See even when there are no inter-diocesan tribunals of first instance in its territory.

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