

New Approaches to Marriage Preparation in the 1983 Code of Canon law.

Challenges to the Particular Church in Ghana

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INTRODUCTION

It is believed that the greatest tragedy for modern humankind could not be traced through most of the scientific development of our times but the more comprehensive and fundamental problems posed by the institution of marriage and family life. Attempt to cross-check the validity of the above declaration through formal and informal conversations with stakeholders led to the conclusion that the institution of marriage and family life is in crisis and has lost its “golden days”. One may ask: Has marriage indeed lost its Golden Age? Have the meaning and purpose of marriage been really threatened? Has the meaning and the purpose of marriage been drastically corrupted? Do people in the post-modern times marry out of love or just do so as a cosmetic accreditation for social recognition in the community of people? Or, do they marry just as a legal means to achieve and have access to certain benefits from the Church and state, for instance, tax benefits and to obtain a residence permit? Indeed, we could endlessly formulate questions of these kinds; however one point is of central importance: How can the real meaning of marriage again be restored?

On account of these critical questions there is the need for pastoral care to promote education and instruction as a means to rediscover the Christian and cultural values of the institution of marriage. This need also calls for collective responsibility of society, lineage and the Church towards the institution of marriage since marriage and family life are their power-line and foundation. If, however, the society and the Church fail in their responsibility, in the long run they will together, with couples, have to bear the grave consequences. In other words, marriage and family are the basis of society. Accordingly, if there is anarchy in marriage and family, it results in anarchy in the Church and Society.

This makes it incumbent on the Church and the society to ensure and take adequate measures to give absolute support to young people and those preparing for marriage by instructing them in the norms and values of Christian and traditional marriage. Besides, it is important to equip and educate prospective couples with the cultural and Christian values necessary to mould their mentality in a positive direction which will in turn give expression to those crucial values of marital life. Such Christian values of marriage may include mutual love and lasting bond, unity and indissolubility, procreation and education of children granting that these will seek to make their marital lives fruitful and acceptable to the Church and the society.

We do not pretend to know exactly how far the new approaches in pastoral care for marriage preparation in the 1983 code of canon law can prevent many pitfalls and sustain couples throughout life. We are however certain that when preparation for marriage is done with due diligence, it may lessen and contribute to insulating the institution of marriage from the “diabolism” of adultery, divorces and nullity of marriage, and also from polygamy.

The 1983 code of canon law, therefore, lays substantially more emphasis, in terms of contents in the legal provisions of the chapter on marriage preparation, on pastoral oriented preparation of prospective couples than the 1917 code did. Notwithstanding the “shift of emphasis”, sheer legal issues remain above all the pivot of celebration of marriage (*Eheschließung*). Thus, the reorientation of pastoral care is linked to marriage preparation. This study, therefore, examines the new approaches on pastoral care for marriage preparation in the 1983 code of canon law, which are confronted with the notions of marriage in African society to propose directives and programmes for marriage preparation in the Catholic diocese of Ho in Ghana.

The study will be in four chapters. We begin in chapter one with examination of various anthropological hypotheses about the genesis of marriage. These theoretical concepts and surveys are to help determine the interactive effects of the genesis of marriage and pastoral care for marriage preparation in the celebration of marriage. This would imply, necessarily, that in the pastoral care for marriage preparation in the Church, the legal issues embedded in the validity and licit celebration of marriage must take into account a wider range of contributions including anthropological, social, cultural and religious dimensions. In this chapter we shall also explore briefly how biblical usages and canonical codification contribute to the understanding of the institution.

The code of 1917 extensively sees marriage in terms of contract. Foremost, it is gearing towards procreation and the education of offspring, relegating mutual love and conjugal life to second place; but the code of 1983 does not differentiate between the ends of marriage. It defines marriage as a covenant established between man and woman, ordered both to the good of spouses and to the procreation and education of children¹. The expected pedagogical importance of the chapter would be the comprehension of the historical development of the institution of marriage. This development will support us to make rightful decisions and formulate useful orientations and teaching materials for couples preparing for marriage.

In chapter two we shall examine the notion and general characteristic features of customary marriage in Africa. These include the conception of family as a model for communitarian dimension of marriage: bride-wealth², fecundity, polygamy, monogamy, rights and dignity of spouses in context of the African Customary marriage. This will also include an example of customary marriage rites in Ghana, notably in the Fodome³ traditional area. We shall also discuss certain cultural tendencies seriously affecting the cultural values of marriage and

¹ Cf. canon 1055.

² Some scholars avoid using terms like *bride-price* and *marriage payments*, etc. since these terms draw attention to market transactions with the implication that spouses are being sold and bought. The term *bride-wealth* has been substituted as a more acceptable term, since it does not imply or connote purchase.

³ Fodome is a group of Ewe (Eve) tribe located east of the Volta Lake in Ghana. The Ewe tribes are found in West Africa more or less between the Rivers Volta and the Mono.

family life. In this regard we shall consider the phenomenon of inequality between husband and wife, inasmuch as a man assumed the right of dominion over his wife⁴. Polygamy is a practice which affects society, including Catholics. For instance, childlessness is invoked as a reason why people feel at home with polygamy in Africa, and yet it does not promote the good of marriage and the capacity to establish a community of life and love, and the equality of couples, which are all necessary to good marriage.

This chapter will also demonstrate that the Symposium of Episcopal Conferences of Africa and Madagascar (SECAM) reasserts certain hitherto unwavering traditionally acknowledged values highly esteemed, for instance the progressive nature of marriage, in the African Customs. While SECAM insists that marriage contract in Africa implies a personal consent and commitment of two individuals, marriage, nevertheless, profoundly affects parents, extended family, clan and society at large as well. The impact of the community involvement is significant because it aims at promoting and assuring the stability of marriage and family life. On the other hand, community involvement forbids becoming a tool of undue interference in the marriage⁵.

SECAM acknowledges many challenges hindering the realisation of effective pastoral care for marriage and family life. SECAM lists several factors but isolates the lack of proper preparation for marriage as one of the chief causes⁶. Consequently, SECAM calls for modern coercive policies and comprehensive programmes for enforcing pastoral care for marriage preparation. This complexity of challenges is aggravated by the fact that when it comes to the theme of marriage celebration, African culture clashes at the outset with Christianity. In fact, Christianity is suspected of being malicious towards certain world views of the culture, i.e., Christianity takes the risk of ignoring certain vital elements of African culture. This suspected ambivalence leads to the inability of the Church to have a firm grasp on the real world of evangelisation in Africa. For instance, many African Christians often find themselves standing astride two cultures and measures of value. There is therefore the need for an improvement upon African Christians' positive attitudes towards sacramental marriage in the form of synchronisation, which could eliminate the present dichotomy between the liturgical and the traditional forms of marriage celebration in Africa. This means religious, legal and the African traditional values must always be respected in the conclusion of the dynamic process of marriage in Africa.

⁴ C.f. G.J. Wanjohi, "African Marriage, Past and Present"
<http://www.dialogo.org/alien/2001/01/africa.htm> (Accessed: 25.06.2005).

⁵ Symposium of Episcopal Conferences of Africa and Madagascar (SECAM), *The Church as family of God: Instrumentum Laboris and Pastoral Letter*, SECAM Publication, Accra 1998, pastoral letter 4.1.4.

⁶ Stephen Naidoo, "The need for an obligatory, graded preparation for Marriage" in AFER, Special double issue 1980 Synod of Bishops, "African Bishops interventions", Eldoret, Kenya, Vol. 23, Nr. 1 and 2 (February-April, 1981), pp.50-51.

On the basis of the findings of chapter two, we seek in chapter three, the core of this thesis, to provide the canonical background to the directives and programmes of pastoral care for marriage preparation. As we have remarked above, the 1917 code of canon law on marriage preparation insisted on freedom to marry as the most important means of contracting and safeguarding marriage. For this reason, the 1983 revised norms on marriage preparation envisaged that there is a need of proper preparation for prospective couples to be objectively responsive with tasks and dilemmas of marriage and family life. Thus the new approach insists on integration of pastoral oriented preparation and legal requirements to act as collective force for effective pastoral care for marriage preparation. We argue that the reorientation of pastoral care which the 1983 code on marriage preparation suggests is very significant because authentic judicial consideration of marriage requires a metaphysical vision of the human person, distinctive set of values, conjugal relationship and educational endowment. Without these ontological and pastoral foundations the institution of marriage becomes merely an extrinsic superstructure, the result of the law and social conditioning, which limit the freedom of the couple to fulfil themselves in the truth of the essential aspects of marriage⁷. In this chapter therefore, we seek to explore this reason. We assert that modern mechanisms against the crisis of marriage and family must be seen increasingly in the general framework of pastoral preparation and the provisions of law oriented towards authentic marriage and family life. It is only this pastoral interpretation of the marriage laws which will help take care of the problems posed to marriage itself.

In the chapter, we shall critically assess the revision of the norms on marriage preparation in the 1917 code and trace how this revision has led to radical change resulting in the new methods of approach to pastoral care for those preparing for marriage and the newly wedded (1983 Code). Perhaps the most significant agents of the new approach are contained in the Apostolic Exhortation, *Familiaris Consortio*, in the marriage preparation canons (for instance, cc. 1063, 1064, 1065), especially canon 1063 of 1983 code of canon law and the 1996 document of the Pontifical council on pastoral care for marriage preparation.

Canon 1063 generally lists four important areas of the responsibilities for the pastors of souls. It is the pastor's principal function to foster an ecclesial life in the community, which will support Christian marriage and allow it to grow and develop. He must accomplish this goal in four specific areas: he must educate the community through various forms; the canon refers to marriage preparation in a more personal level; there must be effective liturgical celebration of the marriage ritual to bring out the true meaning of Christian marriage; furthermore, the canon speaks of an ongoing support for the couples.

⁷ Cf. John Paul II address to the members of the tribunal of the Roma Rota for the inauguration of the judicial Year, 29 Jan. 2004. http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/january/documents/hf_jp-ii_spe_20040129_roman-rota_en.html (Accessed: 26.11.2007).

Despite the insistence on instruction and education as the main persuasive process in the pastoral care for marriage preparation, it is also very necessary to create a legislative framework to regulate marriage in the society. In this chapter we also describe how the German Bishops' Conference and Ghanaian Bishops' Conference have provided for obligation of canons 1064 and 1067 by establishing their own directories and particular laws to facilitate the implementation of norms on pastoral care and the requirements for the celebration of marriage. In our concluding remarks on the chapter, we made a critique of the Ghanaian Bishops' Conference's interpretation of the respective canons. We argue that the Ghana Bishops treated pastoral care for marriage preparation as discrete legal events, (that is, only in pre-nuptial investigation) at the expense of compulsory pastoral oriented directives and programmes for marriage preparation.

On the basis of the findings in the previous chapters, in the final chapter, we shall determine how far the understanding of pastoral care in the new code of canon law is relevant to customary marriage of the Ho diocese in Ghana. To accomplish this aim we shall employ the provisions of canonical doctrine on marriage and the positive cultural values of marriage in Africa to suggest a pastorally orientated marriage preparation programme for Ho diocese in Ghana. This will also include the synchronisation of traditional and canonical marriages in the celebration of sacramental marriage. Synchronisation of marriage, that is, integrating the positive values of African culture into the principles of Christian marriage, should be a matter of interest for the diocese such that our people may no longer be seen as living in two "worlds of marriage".

The individual chapters therefore serve as a basis for the thesis that we propose in this study. These chapters are connected to give full understanding to the institution of marriage as human reality and to the pastoral care for marriage preparation particularly to the situation in the Ho diocese.

Chapter I

The genesis of marriage: Historical and Christian synopsis

1. The Anthropological theories of marriage

Before we take a look at the pastoral care for marriage preparation in a marriage celebration and to propose directives and programmes for marriage preparation in the Catholic diocese of Ho, the basis of this thesis, we must accordingly at least have brief idea about the evolution and understanding of the institution of marriage. This is important because the truth, which no historian, anthropologist, evolutionist, theologian or canonist can deny, is the fact that the institution of marriage remains one of the oldest institutions in the light of human existence. Moreover, it is not possible to understand Christian marriage simply on the statements found in scripture and the norms of the church. In any attempt to form a competence and operational laws on the Christian marriage it is important to relate it to what we know about marriage in the light of human experience in history and in the present.

In other words, the appraisal of marriage preparation in the legal issues of the Church must take seriously into account what human sciences, for instances, cultural, anthropology, sociology, ethnology, etc., have to say about the institution of marriage. This interdisciplinary approach using insights by various fields of study, from Anthropology to Zoology, tracing the roots of family relationship from mammalian mating through prehistoric man to the complex interrelationship among humankind today, offers the opportunity for comprehensive insight into differential and multiple-dimensional character of our social systems and institutions such as marriage⁸. The Church in her teachings may seem to distrust non-theological sciences and disciplines; however, *Humanae Vitae* acknowledges that to have a comprehensive treatment on marriage and family, there is the need to appreciate insights from other relevant disciplines such as biology, sociology, anthropology, medicine and so on⁹. It is only against this background that a productive Christian understanding of marriage can be reassessed¹⁰. It is for this reason that we have acknowledged that this thesis is neither anthropological nor sociological work per se but in order to arrive at any meaningful and

⁸ Cf. Jacob Hevi, *Cultural Values and the Family beyond year 2000: Principles, Policies and Reality*, Dissertation.com, USA 2002 p. 58. For detail readings see Marilyn French, *Beyond Power: Women, Men and Morale*, Jonathan Cape, London, 1985; Rudolf Cujes, *Ehe und Familie, Eine Gesellschaftsphilosophie, Glaubenstheologische Gesellschaftliche, und Gesellschaftspolitische Untersuchung*, Cujes Verlag, Graz, 1946; Janet Finch, *Family obligations and social Change*, Polity Press, Oxford, 1989; Erik Filsinger, *Biosocial Perspectives on the Family*, Sage, Newbury Park, 1988.

⁹ Cf. Paul VI, Encyclical Letter *Humanae Vitae*, 25.July 1968. no.10.

http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-paul_vi_enc_25071968_humanae-vitae_en.html (Accessed: 18. March 2005)

¹⁰ Cf. Walter Kasper, *Theology of Christian Marriage*, Burns and Oates, London, 1980, p.2.

effective programmes, directives and courses for those preparing for marriage, especially in the Ho diocese, it demands that anthropological and sociological views of the institution of marriage must be discussed and taken care of. In other words, our understanding of marriage would be impoverished without in the first place treating the subject matter of marriage from anthropological and sociological backgrounds.

Furthermore, deliberating on the origin and development of marriage, it is necessary, in the first place, to show the sexual condition of primitive man, that is, whether during the earliest period of humankind's history there was a marriage at all; or whether the sexes only lived together in a state of promiscuity. Consequently, the approach in this first section is largely anthropologic-sociological independent of the world great religions¹¹.

The perception is that the concept of marriage is as old as humankind. This assertion certainly confirms the fact that sexual relations existed in the primitive human societies. Even though the above assertion may have supplied some evidence of hard truth, it is not easy to say how it was like. How did the first cohabitation between man and woman originated at the beginning of humanity: with or without formal act, which can be characterised as marriage? In other words, in which form was marriage established or contracted? How was marriage arranged and celebrated among them? Was there any preparation prior to the celebration of the marriage?

As matter of fact, an attempt to cross-check the values and mores of the prehistoric or the primitive man, for that matter the question of the oldest and original form of marriage or sexual mating is a Herculean task to undertake. The effort of scholars to find out answers to this difficult prehistoric human attitude of marriage and family values led to different theories seeking to explain the unknown. On the other hand, some of these scholars drawing from difficult and the lack of empirical data to investigate on previous beliefs and cultural values resorted to the conclusion that in the earliest phase of human society marriage did not exist in any form¹². The tendency among these scholars presupposed that marriage, as a human reality did not come immediately with the infancy of human race. Marriage crept into man's history only at a point in time. The logical inference would then mean, "something like a promiscuity prevailed" and the primitive men "have no conception of marriage at all." One could say that such argument may be fallacious because it is probable that the first human beings might have cohabited as husband and wife. The fact that we do not know the exact time and mode it took is not a guarantee to say that at a point in time marriage was unknown.

¹¹ Anthony E. Harvey, *Marriage, divorce and the church*, Longman and Todd, Darton, London, 1997, p.1. According to Harvey, even though religion has made considerable contribution to the understanding and regulating marriage, the *locus contextus* of marriage as such is to be seen in social standards. Marriage as a connection between male and female existed before any of the world's great religions was born and had assumed great variety of forms both within and outside the spheres of influence of these religions. From the primitive times there were some rituals associated with marriage, which in effect makes religion inseparable from it. But we must acknowledge that the understanding of religion as compared to those primitive rites may not carry the same connotation as in the present time.

¹² Cf. J.F. McLennan, *Studies in Ancient History*, London 1876, pp. 71-74.

Though clear-cut answers of marriageability of the primitive man cannot be confirmed with certainty we could still hold the fact that the institution of marriage persists over the ages including the primitive man. Thus, we can cautiously say that marriage is everyday experience ubiquitous at all ages at all times of man's history though in varying forms. In other words, "marriage is a common human reality; it has existed through millennia of history in a variety of human cultures"¹³.

On the same theme, some writers also believed that marriage came about automatically¹⁴ because the sexual instinct observable in some animals and birds could be projected to include some kind of primitive relationship between the sexes. The differences in the sexes might also be the ground for evidence of marriage in some form. This means that marriage is inborn in human beings because nature is ordered in such a way to give perpetuity to species¹⁵. This perpetuation of species grounded in sexual relationship indeed is evidenced by the presence of alternative sexes¹⁶. But whether we should practically call this relationship with or without a formal act as a marriage or just as a mating is another confronting and inadequacies of the primitive history. For this reason, we can argue that "the sexual instinct of itself could not

¹³ Elisabeth Meier Tetlow and Louis Muylry Tetlow, *Partners in service – Toward a biblical theology of Christian marriage*, university press of America, New York, 1983, p. 3.

¹⁴Cf. Josef, Kohler, *On the prehistory of marriage: Totemism, Group Marriage, and Mother Right*. Translated from the German by R.H. Barnes and Ruth Barnes, Edited and with an Introduction by R.H. Barnes, University of Chicago Press, Chicago and London, 1975, p.93; Johann Richard Mucke, *Horde und Familie in ihrer urgeschichtlichen Entwicklung: Eine neue Theories auf statischer Grundlage*, Enke, Stuttgart, 1895, pp.113ff. Mucke for instance opined that marriage came about automatically. Due to certain psychological laws marriage had to be monogamous and, indeed, it had to be sibling marriage. It was a predetermined arrangement of nature that the brother automatically marry the sister. This doubtless requires us to assume that boys and girls were born in regular alternation. Kidnapping disrupted this pleasant order of things. A woman was abducted, but for use as slave labour and by no means for sexual purposes.

¹⁵Cf. Edward Westermarck, *A Short history of marriage*, Humanities Press, New York, 1968. P.2. Westermarck thought that the origin of marriage might most probably develop out of what he termed "primeval habit". This theory observed that in the primitive times, it was the habit for a man and a woman (or several women) to live together, to have sexual relations with one another, and to rear their offspring in common, the man being the protector and supporter of his family and the woman or women being his helpmate(s) and the nurse(s) of their children. See also Willstine Goodsell, *A history of marriage and the family* (rev. Ed.), The Macmillan company, New York, 1974 pp.2-3: According to Goodsell, the biological meaning of marriage among the prehistoric human proposes that the word has reference to a union of male and female which does not cease with the act of procreation but persists after the birth of offspring until the young are capable of supplying their own essential needs. This conclusion was drawn after observing the instinct behaviour among some animals and birds. To him the ability of birds to exhibit excellent example of parental care and affection indicates some resemblance of what might probably persisted among the prehistoric human beings. This habit is also traceable in many other species of the animal kingdom. This means that the idea of the early human marriage affairs was conducted after the pattern existing among some animals and birds. In other words, the sexual arrangement of the primitive man is judged from the conduct of the members of the animal kingdom the nearest to man in physical organisation. The early writers saw the relationship between these animals and birds to prove their theories that marriage might have also existed in the human sphere. In fact, this "comparison" became necessary due to the evolution theory developed especially by Darwin. Westermarck and Goodsell were of the opinion that marriage might have existed in a certain form among our ancestors. See also, F.X. Kaufmann, „Die Ehe in sozialanthropologischer Sicht“, in: F. Böckle (Hrsg.), *Das Naturrecht im Disput*, Düsseldorf 1966, 15-60.

¹⁶ Peter Sarpong, *Ghana in Retrospect: Some Aspects of Ghanaian Culture*: Ghana Publishing Corporation, Accra, 1974, p.77 According to him, a critical looks at the male and female organs simply reveals that those of the one are designed to be used with those of the other sex. Unlike other faculties such as the eye and the heart which may be employed exclusively for one's own benefit, they have altruistic utility.

have brought about permanent relationships between male and female”¹⁷. This suggests that the finding of mammalian mating as evidence of probable relationship between primitive generations is inconclusive in the search for when and how marriage between the opposite sexes as couple comes into existence.

From the above, we cannot affirm categorically that the results are favourable to the search for appropriate answers to the marriage behaviour of the primitive man. The search is as we already said is a Herculean task but finding probable solutions to these rhetoric statement and question; and identifying the probable actual genesis or the taproot of the human marriage¹⁸ in the primitive history is comparatively interesting for scholarship on human behaviour. As such some scholars have come up with some other hypothetical theories¹⁹ to propose practical answers to the investigation. Some of these theories, which we intend to discuss here, are theories of promiscuity (also known as group marriage or sex communism), marriage by capture, and marriage by purchase and pair marriage. Apparently, these theories are also based on probability. It is evident that no absolute certainty can be arrived at as to man’s earliest sexual activities. Therefore, whatever conclusions may be formed on this matter must be purely hypothetical, and at best one hypothesis can only be declared to be more probable than the other. Despite the above-mentioned difficulty, we cannot summarily suppose that in the earliest phase of human society marriage did not exist in any form²⁰. Even though, we cannot apply the term marriage to every union existing between males and females, it is equally wrong to consider the sexual union between the prehistoric males and females as mating.

1.1. The theory of promiscuity.

One of the theories put forward as the origin of marriage among the primitive man constitutes the theory of primitive promiscuity²¹. The best proof of the reality of marriage according to

¹⁷ Cf. Goodsell, *A history of marriage and the family*, p.3.

¹⁸ Cf. Hans Günther, *Formen und Urgeschichte der Ehe: Die Formen der Ehe, Familie und Verwandtschaft und die Fragen einer Urgeschichte der Ehe*, (zweite Auflage), J. Lehmanns Verlag, München/Berlin, 1941, p.18. The “taproot of the human marriage” would mean the origin and the essence of marriage.

¹⁹ Some of the theories may or may not be convincing but they came as a result of careful analysis of primitive symbols, folklore, ancient customs and institutions that were reminiscent among some races or tribes of today. Moreover, some of the accounts were in reference to ancient writings for example in Herodotus and Strabo, and novels such as Shakespeare and Chaucer.

²⁰ Cf. Staniland Wake, *The development of Marriage and Kinship*, edited with an Introduction by Rodney Needham, the university of Chicago Press, Chicago, London 1974 (originally published in 1889), p.14. See also Margaret Cole, *Marriage past and present*, J.M Dent and Sons Ltd., 1939, p.13f. Cole maintains that man in the age of cave dwelling, or the man who thousand of years previously made the first eoliths, there is really very little evidence, as far as social practices such as marriage are concerned. We cannot therefore accept these theories on the silver platter because the group activities of the cave man are not known, the primitive man has ceased to exist and the records of this savage race are few, scrappy and most parts unreliable.

²¹ Cf. George W. Stocking Jnr., *After Tylor*, Athlone Press, London, 1996, p.32ff.

this theory, commenced with a universal form of promiscuity, then continued as polygamous and group marriage, and ended as monogamy. The theory proposes that the human race must have originally lived in a state of promiscuity, where individual marriage did not exist. This suggests that all the men in a horde or tribe had indiscriminate access to all the women, and the children born of these unions belonged to the community at large. Explaining further, the theory insisted that the possible principle was a group of males and females living together, sharing labour, goods, and services, raising their children in common, and engaging in promiscuous sex relations, so that every male in the group could have intercourse, at one time or another, with every female in the group²². The theory also suggests that it is a condition in which all the men of a group maintain relations and live indiscriminately with the women irrespective of kinship, affinity and consanguinity²³. The logical conclusion to the theory will then suggest that in primitive times there was less social order and women had no other choice than to live in polyandrous situations. Moreover, it was also as it were, a disorientated condition, in which all the men in the group as it were maintains relations and having intercourse indiscriminately with all the women in the said group without considering consanguinity, affinity and other close family relations.

Bachofen, the chief architect of this theory believed that the reality of marriage commenced with a universal form of promiscuity, then continued as polygamous and group marriage, and ended as monogamy. For that matter, according to him promiscuity was the very first possibility of marriage among the primitives²⁴. He argued that aboriginal men lived in hordes like other gregarious animals and that complete promiscuity in sex relations prevailed such that sexual intercourse became unrestricted such that the fatherhood of children was undetermined. Invariably descent would have to be reckoned through females²⁵.

According to Goodsell, the proponents of the theory came to that conclusion based on some ancient authors and some modern travellers who described savages as being quite promiscuous in sex relations. They have also justify the theory on the argument that some surviving savage groups at present still have curious sexual practices, which may be reminiscent of a period of complete promiscuity. Some practices for instance; sexual hospitality (Eskimos), wife lending and giving a bride over to the priest or medicine man to be

²² The chief architect of this theory is J.J. Bachofen in his book *Das Mutterrecht*, (The mother's right) Benno Schwabe, Basel, 1962 (originally pub. 1861). Some of his prominent disciples are J.F. McLennan, *Studies in Ancient History, Primitive Marriage*, Macmillan, London 1886, p.87ff; Lewis H. Morgan, *Ancient Society*, Belknap Press, Cambridge, Mass., 1964; John Lubbock, *The origin of civilisation and the Primitive Condition of man*, Costetenoble, Jena, 1875.

²³ John A. Ryan, "History of Marriage", in: *The Catholic Encyclopædia*, vol. IX, Transcribed by Ginny Hoffman, <http://www.newadvent.org/cathen/09693a.htm> (accessed: 02 May, 2004).

²⁴ Cf. Goodsell, *A history of marriage and the family*, p.5; Claude Masset, "Prehistory of the Family", in André Burguiere et al.(ed.), *A history of the Family*. vol. I, Distant worlds, Ancients worlds, Polity Press, Cambridge, UK, 1996 p.72ff; Walter Kasper, *Theology of Christian marriage*, pp.5-6. See the various discussions on the *Mutterrecht: Das Mutterrecht von Johann Jakob Bachofen in der Diskussion*, H.J. Heinrichs (Hrsg.), Qumran im Campus verl., Frankfurt/Main, 1987.

²⁵ Goodsell, *A history of marriage and the family*, p.5.

deflowered (especially during religious rituals among the Murngin of Australia) before entering her husband's house were thought of as evidence of promiscuity in sexual relations²⁶. They also argued from the geological records point of view that since our ancestors were only naked hunters living in-group with the opposite sex, therefore the only possible union, which might have existed, was unrestricted freelance sex with anybody in the group²⁷.

The above theory has generated a lot of debates among scholars who have given counterarguments to suggest that the genesis of marriage cannot be traced to the promiscuity theory. Westermarck rejecting the theory states: "After examining in details all the cases which are known to me of people said to live in the state of promiscuity, I have arrived at the conclusion that it would be difficult to find a more untrustworthy collection of statements. Some of them are simply misrepresentations of theorists in which sexual laxity, frequency of separation, polyandry, group-marriage or something like it, or absence of a marriage ceremony or a word for 'to marry' or of a marriage union similar to our own, is confounded with promiscuity. Others are based upon indefinite evidence, which may be interpreted in one way or the other, or on information proved to be inaccurate. And not a single statement can be said to be authoritative or even to make the existence of promiscuity at all probable in any case. That no known savage people nowadays are, or recently were, living in such a state is quite obvious; and this greatly discredits the supposition that promiscuity prevailed among any of the peoples mentioned by classical or medieval writers in their summary and vague accounts"²⁸. Cole also maintains "the theory of an original state of promiscuity, a sort of glorious state of things where any man cohabited with any woman at will within, as it were, the twelve-miles, and any resultant children were put into a common stock if not a common stock-pot, has now ceased to be respectable"²⁹.

Accordingly, the unrestricted sexual relations suggested by the theory appear to legitimate the fact that there was total lack of customs and laws to control and regulate the sexual behaviour of prehistoric humans. We can therefore deduce that taboos safeguarding and controlling sexual behaviour on marriage were totally absent. Moreover, the theory suggests that the primitive man had no sense of jealousy in marriage and it was impossible for the cave men to ascend the throne of decency and unity in marriage. However, it can be argued that the idea of belonging to the opposite sex exclusively is a natural human trait including the primitive human beings too.

If the advocates of promiscuity theory took samples from the researches into the remains of the primitive races, for instance, the Aryan and Pygmies tribes, as having no particular marriage customs, do not prove the point even if these tribes certainly lost something that

²⁶ C.f. Victor J. Pospishil, *Eastern Catholic Marriage Law according to the Code of Canons of the Eastern Churches*, Saint Maron Publications, Brooklyn, NY, 1991, p.156; Albert Ellis, *Group Marriage: A Possible Alternative?* p.170ff.

²⁷ Ryan, *History of marriage*, loc. cit.

²⁸ Westermarck, *A Short history of marriage*, p. 7f.

²⁹ Cf. Cole, *Marriage*, p. 10f.

their ancestors possessed in the past³⁰. We may rather say that the promiscuity theory suggested the most libidinous forms of sexuality as developed in civilisation, but nothing of this kind may have occurred with brutes, and could not have been the case with primitive man, for physiological reasons. Men would rather have probably in primeval times lived either as polygamists or temporarily as monogamists and as such their sexual habits might not have been promiscuous judging that they would have been policed more by the innate propensity that persons closely related by blood may not form sexual alliances.

Moreover, the inferences from such social customs as the tracing of descent through the mother, religious prostitution, daughter and wife lending, unrestrained sexual mating, communal ownership of property; none of these conditions can be proved to have been universal at any stage of human development starting from the prehistoric man³¹. These conditions can be explained in present time more easily and more naturally on other grounds than on the assumption of promiscuity as generally accepted behaviour of the ancient race.³² Thus this general proclamation of the universality of promiscuity in human sexual behaviour is now shown and found to a construction based on liberal presuppositions, oversimplification at worst fanciful and sometimes absurd invention³³, which is in direct opposition to the modern analytical method of historical theories.

Finally, there is, in fact nothing in the present experience of humankind to militate the view that sexual habit of man has indeed passed through a stage of sexual promiscuity, although the phenomenal phases of marriage are varied and sometimes of an eccentric character. We should by now be convinced that the origin of marriage could not probably have originated from promiscuity.

1.2 “Theory of machoism”, as the probable origin of marriage³⁴

Our study of the notions and evolution of marriage among the primitive races would be incomplete without reference to the practices of crude coercion, which some scholars believed was the primary mode of obtaining wife among the primitive races. The main protagonist of

³⁰ Cf. Westermarck, *A Short history of marriage*, p. 9.

³¹ Cf. Pospishil, *Eastern Catholic Marriage Law*, p.154.

³² Cf. Ryan, *History of marriage*, loc. cit.

³³ Cf. Kasper, *Theology of Christian Marriage*, p.5f; J. Beattie, *Other Cultures: Aims, Methods and Achievements in Social Anthropology*, Routledge and Kegan Paul, London, 1964, p.6f; J. Hevi, *Cultural Values and the Family*, p.35.

³⁴ *Webster's New Encyclopaedic Dictionary*, revised edition, Könnemann Verlag, Cologne, 1995, defines macho as “aggressively virile” that is to show masculinity. The Theory of machoism is therefore a phrase coined to denote forceful marriages. Some people believed that marriage by capture or force goes back to primitive culture when tribal groups were hostile to each other. Consummation took place as the groom captured a desirable woman in the process of conquering and pillaging a rival tribe.

this field was McLennan³⁵. The theory presupposed that sexual union originated in marriage by captures, that is, raids by fierce males upon the females of other tribes³⁶ by force or theft. This might suggest that the first marriage took place when a primitive man in a cave, the first ever home of the pre-historic man, went into another cave and carried a woman off to be his mate or wife.

The vindication of the theory according to McLennan is that courtship was insignificant in the desire for marriage among the primitive race. Therefore, marriage by capture could not escape the social organisation of the primitive man. He made a famous statement to vindicate his proposal that capture was the original form of obtaining wife among the primitives: “We can now say we found the capture of women very extensively practised; and there can be no doubt that in most of the cases cited, the women captured were kept to be used as wives. In a number of well-marked cases we have found a system of capture- in the case of the Caribbean tribes of America, a system so general, that the women of a tribe were commonly not only of the same tribe with the men, but did not speak the same language”³⁷. The reaction to this statement would mean total anarchy prevailed among the savages. They had no sense of peaceful co-existence, which implies they were hostile to each other. They might have no ideas about how things are achieved through peaceful and rightful means. Their achievement models were functioned on machoism which in matters of marriage is the brute form of living.

Ryan, seconding the theory of marriage by capture as the probable original form of getting a wife among the primitive race came with little variation to it. He explains that, marriage by capture or force seems to have been regarded as means of getting a wife, rather than the formation of marriage union itself³⁸. It is not clear what he meant by “getting a wife” without involving oneself in a marriage relation. We may project that he seemed to say that “getting wife” is simply to satisfy the sexual desire and most probably to have offspring but intended not to be a permanent relationship. In our opinion, “getting a wife” is the same as forming a marriage union. Getting a wife is not just having “a cohabitational sex mate” instead to live in the totality of life. For a wife or a husband is the resultant effect of a marriage. Wife could only be obtained through marriage. If getting a wife is associated with a marriage by capture, then the act by all standards is truly a marriage union.

³⁵ John F. McLennan, *Primitive marriage an inquiry into the origin of the form of capture in marriage ceremonies*, edited and with an introduction by Peter Riviere, The university of Chicago Press, Chicago & London, 1970, p.12f. He emphasised that there is ample reason to believe that tribes have continually engaged themselves in warfare either on account of stolen women or with the object of stealing women. The conclusion to be drawn: “wives were almost invariably fought for and were wedded at the sword-point”. In all these instances marriage could not be divorced from brute-force. He came to this theory because of the symbolic capture of women in many existing tribes and cultures. In the final analysis, the symbolic form of capture being practised by some existing primitive tribes must so to say “in memory of the first marriages being brought about in a warlike manner”. See also Wake, *The development of Marriage and Kinship*, pp 402ff).

³⁶ Cf. Cole, *Marriage*, p. 11.

³⁷ MacLennan, *Primitive Marriage, an inquiry into the origin of the form of capture*, pp.37-38.

³⁸ Cf. Ryan, *History of marriage*, loc. cit.

Drawing together what has been stated about marriage by capture we might ask ourselves perhaps if “our shaggy progenitors dragging their captured mates to their caves”³⁹ really constituted a true marriage or just abduction. The rule of law that might have prevailed in such a Utopia state would be “the survival of the fittest”. Concretely, let us pose few questions. Did the primitive man have no idea about courtship? Were they ignorant of the significance of courtship? Did nature when providing for reproduction and the survival of the species by means of sexual urge ever intended that the action be accomplished only in machoism?⁴⁰ We cannot give satisfactory answers to the above; however, it is certain that the cognitive aspect of marriage would have to make the individual and the spouse more sublime, more truly living; and it is an instrument to create tender love, deeper understanding and sensitivity to nobler aspects of life. If this assertion is mirrored in truth, how then could “active force” in a union be termed marriage? The nobility to which marriage is supposed to be of primal importance is therefore sentence to the gaol of machoism. In such situation the necessary preparations need for a better life in marriage, may be totally lacking, thereby, denying the marriage the mutual choice and affection that are essential elements of any licit and valid union.

Naturally, marriage and sexual intercourse are sacred acts devoid of any brutality instead marked with strict discipline. It is a noble engagement qualified by strict organisation among all cultures. This noble and sublime institution has to endow the man and woman or women with qualities becoming of human beings instead of being done in “machoistic” manner.

In spite of the unsophisticated nature of organisational structures among the primitives, it would appear the so-called civilised man is not hedged about with more marriage and mating regulations than their primitive counterpart.⁴¹ Therefore, the practice of “active-forced marriage” could not have been the overall practice among the primitives. The early race might have rather been preoccupied looking for the essential commodities, food, which was their “live-saver” apparatus, rather than waging wars to capture women for wives.

On the other hand, the theory seem to be appealing and convincing because history tells us that there were instances in the olden days whereby women were captured in war and forced to become wives of their captors. Whatever argument we may put up the act “appears to be no well-established instance of a primitive tribe with whom wife capture has been the regular and habitual method of securing wives. No people could afford to sanction brute force as the recognised means of getting mates. Such a tribe, if it existed, would be involved in constant warfare within or outside its own community”⁴². It must be admitted, the symbolic bride seizure or capture of wives is found to be continued in many primitive cultures presumably

³⁹ Ray E. Baber, *Marriage and the family*, 2nd edition, McGraw-Hill Book Company, Inc., New York, 1953, p.48.

⁴⁰ Cf. Ibid.

⁴¹ Cf. Ibid.

⁴² Goodsell, *A history of marriage and the family*, p.23.

after the reality had ceased, however, this could not be said of other instances to be a universal practice. All the same, the primitive man had the sense of neighbourliness and might have respected their mating principles, which was the pivot of their every experience. From the evaluation above, “it is difficult to see how marriage as a social institution could have developed out of the capture of women”⁴³. Therefore, machoism or kidnapping cannot be a laid down norm by which our ancestors obtained their wives. The system could have been an exceptional case in some groups but not as the bedrock of the world behaviour of all the primitive societies.

1.3 Woman purchasing as mode of obtaining wife

We have seen that the theory of promiscuity could not be a trusted probable indicator of the genesis of marriage among the primitive cultures. Since the above theory lacks credibility, scholars have come out with another theory. This probable theory is called “marriage by purchase theory”. Marriage by purchase is considered to be probably the reasonable mode of obtaining a wife among the primitives because “the most widespread method of obtaining wives among the primitive tribes at present is purchase marriage”⁴⁴. The theory suggests that when the males of a group realised that the men of another group were willing to barter for women instead of fighting for them, they began to trade in their daughters. Women were therefore regarded merely as an article of exchange or sale. According to this theory, marriage is seen as an object of trade and it is a matter of “give and take”.

However, the purchase should be understood under this circumstance as different from the everyday usage, which “presupposes an impersonal market where a person with the right amount of money can buy anybody he wishes. This is not the case, for it would mean that anybody who buys a wife can thereby sell her to any other person of his choice and at any price satisfactory to the buyer and the seller”⁴⁵. The purchase does not give the man the guarantee to market the woman as if she were a good to be sold at will. There is no question of commercialisation of the woman even if cohabitation becomes impossible. The marriage by purchase rather denotes the giving of a bride price by the man to the woman’s family or clan. In some primitive societies it could take the form of exchanging gifts among the

⁴³ Ralph Linton, *The study of man, an introduction*, Appleton – century Crofts, 1964, p.180.

⁴⁴ Goodsell, *A history of marriage and the family*, p.23. See also Roger M. Keesing, *Cultural Anthropology, a contemporary Perspective*, Holt, Rinehart and Winston, New York, Chicago, London, Sydney, 1976, p.277. According to some studies, the marriage by purchase probably evolved from marriage by force. The bride was first stolen, and later compensation was provided to her family or tribe to escape their vengeance.

⁴⁵ Ebenezer Osei-Kofi, *Marriage and the family, A study of social change in Ghana*, Monograph from the department of sociology, university of Gothenburg, January 1974, no. 5:1; Similar idea was expressed by Goodsell that “probably the almost universal custom of purchase marriage should not be regarded as a degradation of the woman according to primitive standards. Her purchase in marriage does not involve the right to re-sell her as a mere chattel”.

families. Another variation of marriage by purchase is as marriage by service. This was a method of paying for a wife with labour when the bride price was too difficult to amass⁴⁶.

From the above contribution to the topic, could we say that this was the first and the original form of getting a wife among the primitives? It is very difficult to say if this was the unique and original form of getting a wife even though the practice is dominant in many modern societies including Ghana. Furthermore, this method might probably not be an original form of securing a mate because this would imply a higher degree of social and economic development than was reached by primitive peoples among whom the property sense is rudimentary⁴⁷.

The practice might be a later development in the course of history when the property consciousness became the aspect of valuing things. Moreover, it is very difficult to accept this theory despite it is an ancient practice and still taking hold in many societies but we cannot with certitude hold on to this theory as the original form of getting a wife. It seems to lack the role of mutual attraction and affection, which must characterise any marriage. According to Goodsell, Westermarck believes that at the beginning of human history, marriage was grounded in the mutual attraction and consent of the parties⁴⁸. According to him, if we compare the behaviour of some animals and birds to the behaviour of man, it is reasonable to say that mutual attraction and affection could have been the original form of securing a mate. This idea also clarifies the point that in primitive times, there might be a considerable degree of freedom of choice allowed to the woman but “with rare exceptions, the male among the rudest peoples appears as the wooer. The female, less dominated by sexual passion, must be courted; and thus, she plays a prominent role in sexual selection”⁴⁹.

In the similar vein, marriage among the primitives could not be refined as we have it today yet mutual love and attraction might have reflected the mode of obtaining wife among the primitives. A few examples from stories, legends and myths that have come down to us from ages past emphasis love, attraction and mutual affection as exercise their influence on marriage. It will be ungracious to conclude that our ancestors had no idea of mutual love and affection. Courtship in one form or another might certainly play a very important role in the history of obtaining wives among the rudest people before civilisation. We might also add that the so-called “civilised institution of marriage” of today, is nourished by the faint ideas we have about the rudimentary customs and regulations of the primitive institutions.

⁴⁶ Goodsell, A history of marriage and the family, p.24.

⁴⁷ Cf. Goodsell, A history of marriage and the family, p.19.

⁴⁸ Goodsell, A history of marriage and the family, p.19.

⁴⁹ Goodsell, A history of marriage and the family, p.19f.

1.4 Theory of Pair marriages

The final theory to be considered states that marriage could be traced to something else other than the above discussed theories. The present theory suggests that the origin of marriage might have originated in “pair marriages”, that is the pairing of one man and one woman in time. In other words, the original form of sexual union among the early races was the pair marriage – the union of one man and one woman for a period more or less transitory⁵⁰. We may call this type of marriage “transitional monogamy”⁵¹ or quasi-monogamous relationship⁵². The theory originated among scholars such as Starcke, Westermarck and Taylor among others, as an alternative to the polyandrous and promiscuous unions.

The arguments in favour of this theory could be summarised in the followings words: The first argument is based on animal experience. It was observed that pair marriage is occasionally found among beasts of prey. For example, some species of baboons and man-like ape, whose organs and nervous systems closely resemble those of the human beings, pairing is the usual order. This means, they appear to be rigidly monogamous though living in a group. It is also observable that if one male in the group tries to seize the female of another, others in the group will punish the intruder with beating and biting. So one would probable be safe to regard pair marriage in human race to be the outcome of animal experience. In the same way some birds, for instance, the hawk, possesses excellent example of fidelity to a single partner. Some of these birds are believed to pair for life⁵³.

Once again, the argument above should cast our mind back to confirm our earlier propositions on promiscuity theory. It is obvious that the strong feeling of jealousy rooted in the natures of men and beasts alike seems to make and defeat the theory of absolute promiscuity. Westermarck was therefore of the opinion that monogamy rested on male jealousy. The “jealousy theory” could probably not allow promiscuous behaviour to prevail among the group; hence pair marriage is more suitable and accepted. These arguments show that the conception of monogamic marriage for the whole life of the united pair arose very early from the instinct of races in the course of evolution, though the strict observance of monogamy may have rarely been general in all tribes. From this we may conclude that, polygamous instinct is not general among animals. Such a passion would tend to produce a modified form of monogamic family, even though such unions were probably transitory in character⁵⁴.

⁵⁰ Cf. Goodsell, A history of marriage and the family, p. 7. See also John Ryan, History of Marriage, loc. cit. He points out: “The researches of several recent writers, notably those of Starcke and Westermarck, confirming in part and further developing the earlier conclusions of Darwin and Spencer, have established a probability that marriage or pair between one man and one woman, though the union be often transitory and the rule frequently violated, is the typical form of sexual union from the infancy of the human race”.

⁵¹ The transitional monogamy may refer to the temporary union by which a man and woman live together until their newborn child is weaned and then the union is broken for each of them to seek a new partner.

⁵² Cf. Kohler, Prehistory of marriage, p.83.

⁵³ C.f. Westermarck, A short history of marriage, p. 18.

⁵⁴ Ibid.

It is also argued that pair marriage is plausible because the views held by some writers that promiscuous and polygamous forms of marriage might have preceded monogamy, is untenable since those situations seem to be the outcome of a more advanced social and industrial organisation than primitive man could have developed. Polygamous situation would have set some standards, which the primitive man could not have embraced because it is more of an investment, an economic speculation that is above the reach of the primitive man.

In this view, polygamy came to be identified with marriage only at the time of desiring to acquire property, large progeny and prestige. It also arose through the labour potentiality of women. If it persists at all then it might be forced upon the early human race through the scarcity of males. The reason being that an age dominated by hunting and fighting, men died in chase and the combat give rise to many widows who must be taken care of. On the whole, polygamy according to the study about the human race is the luxury of the prosperous and it stands for property-ownership. Therefore, the poor man is bound to practise monogamy⁵⁵.

Another argument put forward to boost the theory to be more likely states that, for the majority of mankind pair marriage must, perforce, have been the only form of union at all possible, owing to the fact that in most societies the male and female birth rate is more or less equal⁵⁶. In this case, if polygamy is the natural order then we may say that some gets more and others remaining celibates. Polygamy might not have been the normal condition since it would have condemned the poor and a part of the male population to involuntary celibacy.

However, Briffault believes that pair or individual marriage did not exist. Men are not naturally monogamous because the overwhelming majority of human societies either are polygamous or were polygamous prior to cultural homogenisation in recent years. The individuals are mildly polygamous, having evolved in a system in which one man maintains a harem. Men in an effort to keep track of their offspring enforce monogamy. It has progressed steadily from the loose and promiscuous mating of the herd that eventually culminated in the realisation of pair mating, the union of one man and woman. Pair marriage came to the scene due to poverty which characterised the life of the primitive man prevailed upon him to marry one woman because for a man to marry two or more he must at this rudimentary stage be successful in looking for food especially in hunting to maintain the household. For that matter, Briffault maintains that monogamy was rather uncommon and polygamy the alternative was rather general among the primitive man. He further argues that monogamy came to the scene only at the point of property awareness when man wished to be certain of the descent of his children, the future heirs of his property⁵⁷.

⁵⁵ Cf. Walter M. Gallichan, *Women under polygamy*, AMS Press, New York 1974, pp.21-23.

⁵⁶ Goodsell, *A history of marriage and the family*, p.7.

⁵⁷ Cf. Robert Briffault, *A study of the origins of sentiments and institutions*, vol. I, Johnson Reprint Coporation, New York, London, 1969, pp.740ff.

In fact, as we continue to say it is difficult to ascertain the development of marriage among the primitive, for instance, there might even probably be different modes of obtaining wife among the ancient races unknown to later generations. There might even be mother-son, daughter-father, brother-sister or the type which Morgan described as conjugal system being organised in such a way that one-quarter of all the males from one tribe are united in marriage with one-quarter of all the females of the other tribes⁵⁸. Monogamy is therefore highly probably a modern idea and residue of group marriage. Since polygamy is almost universally traceable in every tribe, we may probably say it was the common practice of obtaining wife until some societies abandon it and assume monogamous patterns.

The reason we are more sceptical about other theories stem from the fact that no legitimate basis can be given to the viewpoint of those rejecting “pair or individual marriage” as more probable. Pair marriage theory raises the point that the original form of sexual mating might be monogamous because experience and history of research are certain that the human individuals want to have a lifelong individual relationship, which is natural to his kind and for the sake of the offspring. Monogamy seems to be the yardstick that measures the sexual influence of the primitive man. It contributes to a delicacy of sentiment, a refinement of moral character of the primitive man, which is utterly impossible in other theories tackled. However, it is of course difficult to say anything conclusive about these extremely difficult things. Since at this stage social system is not so much developed so that social decision could be effective and binding but we can as well conclude that pair marriage i.e. the pairing of one man and one woman though the union may be transitory, divorce permitted and the norms of monogamy frequently violated, might have been the genesis of marriage from the infancy of the human race⁵⁹ because in cases where pair marriage does not cognitively prevail there are evidences that it once did exist and has been superseded by a laxer form of marriage⁶⁰. Researches have also revealed that it is rather a higher form of marriage that has constantly deteriorated to a lower form⁶¹. However, we cannot with certainty conclude that it was the universal practice and the root of the origin of marriage among the primitive generation.

⁵⁸ Cf. Lewis Henry Morgan, *Ancient society or Researches in the lines of human progress from savagery through barbarism to civilisation*, edited with introduction and annotations by Eleanor Burke Leacock, the world Publishing company, Cleveland, New York, 1969, p.52.

⁵⁹ Cf. Pospishil, *Eastern Catholic Marriage Law*, p.155.

⁶⁰ Cf. *ibid.*

⁶¹ *Ibid.*

1.5 Primitive race and marriage preparation

We cannot close this section without acknowledging that throughout the history of humankind many different answers have been provided by various cultures and societies as to the question of the origin, content and meaning of marriage⁶². Yet it is not easy at all to identify the exact form and origin of getting wives among the first ever human beings to settle on earth, because the institutions of the primitive man are not very clear to us and most of the materials gathered from the surviving primitive tribes are tainted with exaggerations and modernity. The obscurity that characterised the exact origin and form of marriage had given a *lacuna* to many researchers to think that marriage was a later development in the history of humankind. But as Kasper observed: “it would, however, be wrong to think of the modern understanding of marriage as a partnership as the norm, and to overlook the fact that married and family life have been regarded until only very recently in history in the context of the tribe, clan or extended family.”⁶³ The net result of all this interesting compendiums of establishing the actual origin and form of marriage has been painful in that no realistic answers could be arrived at. The theories put forward landed on the sphere of probability. The reason for the problem arises because there are no writing records left behind by the primitive man as criteria for us to access their institutions and customs. As we have already pointed out, in the face of these conflicting views of the origin and development of marriage among the human race we can only be satisfied with the fact that “no one theory has been satisfactorily established”⁶⁴.

The difficulties met in these theories might inevitably lead many sociologists; anthropologists and even canonists totally to avoid pondering on the possibility of the question on pre-marriage preparations in the primitive times. Certainly, we never heard of any concrete methodological means of preparation for marriage either remote or proximate in the life of the millennial man. We may therefore pose the question: was there any real and meaningful pre-marriage preparation among the primitives in their quest for marriage? This is a difficult question to answer because the theories we have examined give us no clues that there were proper co-ordinated steps taken in that direction of getting a wife in the life and day-to-day activities of prehistoric man. Marriage could be haphazardly employed with no real pre-marriage preparations. In the marriage by force, for example, there seemed to be a total lack of a humanly way of engaging the opposite sex. Women were captured in war only to be

⁶² Cf. Kasper, *Theology of Christian Marriage* p.5. See also the survey in H. Schelsky, *Soziologie der Sexualität. Über die Beziehungen zwischen Geschlecht, Moral und Gesellschaft* (Hamburg, 1955); F.X. Kaufmann, “Die Ehe in sozialanthropologischer Sicht,” *Das Naturrecht im Disput*, ed. F. Böckle (Düsseldorf, 1966) pp. 15-60; J. F. Thiel, “The Institution of Marriage: An Anthropological Perspective,” *Concilium* 5 (1970), pp. 13-24; D. Claessens, “Institution Ehe in einer sich wandelnden Gesellschaft. Soziologische und anthropologische Aspekte,” *Ehe und Ehescheidung*, (Munich, 1972) pp. 75-83.

⁶³ Kasper, *Theology of Christian Marriage*, p.5.

⁶⁴ Goodsell, *A history of marriage and the family*, p.8.

found in a strange home without prior knowledge of their destination and fate. For this reason, marriage might only be for the extinction of sexual desires or sexual thirst and the procreation of future generations to protect property rights. Though it is constantly repeated that there is no special golden key for us to open the gates of the primitive man's records to see exactly how things happened, yet there might be some sort of rudimentary ways of preparing for a better future in their marriage life. The importance of this conclusion is based on the fact that man and his institutions were not born in the world as a finished product⁶⁵. Hence we can argue with more probability that the existence of pre-marriage preparations evidenced in some traditional societies of today might be reminiscent of what might have existed among the primitive men.

Granting that marriage by force or capture was the origin of getting a mate, then we could as well say that since a man from cave A planned to attack cave B for a woman as a mating partner, it is an indication of an "innate concealed readiness" on the part of the man to do all things possible to let the woman stay with him to become the mother of his subsequent offspring. He might be aware of his duties for example as the potential breadwinner in the home. To say it differently, the foremost duty of the primitive man would probably be to protect the family against external aggression, and searching for food in order to feed the family. This may be far from our modern understanding of pre-marriage preparation with its sophisticated means of accomplishing it. What we know about marriage preparations today would certainly have its miniature form among the primitive peoples.

2. Scriptural notions of Marriage

In the preceding pages we have tried to find out how marriage originated using different anthropological theories given to us by the authorities from the field. Our next discussion in this chapter is to find out, or put the study of marriage preparation in the biblical and theological context and backgrounds. We can trace the institution of marriage from a time when Israel hardly differed from her neighbours down to the momentous connection made in the gospels in which Christ restored marriage to its original divine position; and in the letter to the Ephesians between marital love and Christ's self-sacrificing love and care for the Church⁶⁶. However, there are no concrete teachings about marriage readily available in the Scriptures. In spite of the above assertion, the central verses of the creation accounts bring to our attention the greatness and dignity of man. Speaking in collective terminology, the

⁶⁵ Cf. Charles B. Paris, *Marriage in XVIIth century Catholicism. The origins of a religious mentality: the teaching of "L'École française" (1660-1660)*, Desclée & Cie, Tournai, 1975, p.1.

⁶⁶ Cf. Jared Wicks, "Marriage: Historical and Theological overview" in, *The Sacraments*, edited by Michael Taylor, Alba House, New York, 1981, p.183.

creation narrative underscores, most emphatically, the worthiness and dignity of humankind. Nonetheless, the accounts did not mention anything about the sexual roles and the readiness of both to accept each other in their future role as husband and wife. The description of the relationship is geared towards the understanding of these persons more as a biological pair and not as a social partnership, that is, husband and wife⁶⁷.

Moreover, the statements about marriage in the OT never understood the relationship between man and woman with the instrumental significance of equality; rather its meaning is always presented within the framework of patriarchal values and social structures.⁶⁸ It had more to do with economic necessity and the procreation of children. In other words, marriage was fundamentally a vehicle for his clan's continuance and heritage⁶⁹. It was regarded as a social apparatus needed for the maintenance and continuation of families and there were no definite laws binding the formation of the union⁷⁰. Additionally, love as an instrumental binding force in marital relationship may have come to flourish at a later stage, but it was not according to the OT, a prerequisite for marriage. The subordination of women occupied the central point, which stretches its branches into the NT.

The whole of the Biblical instructions of marriage seem to maintain the status quo on male dominance. The authors of most of the OT and NT rather made great efforts to participate in the regulation of marriage with the intention of giving more favourable instructions but we would find out if those instructions were good enough, putting man and woman on the same scale.

2.1 Marriage and the Old Testament

2.1.1. "Taken" a wife

If we open the pages of the OT looking for the understanding, the instructions and the necessary procedures necessary for the preparations of marriage, it would surprise us to realise that even the word marriage has never been used. The lack of the word marriage would

⁶⁷ Cf. E. Schüssler Fiorenza, "Marriage" in P. I., Odozor (ed.), *Sexuality, Marriage and Family, Readings in the Catholic Tradition*, University of Notre Dame Press, Notre Dame, Indiana, 2001p.314. See also James Grantham Turner, *ONE FLESH Paradisal Marriage and sexual Relations in the Age of Milton*, Clarendon Press, Oxford 1987, p13-14; Phyllis Bird, "Male and female He created them: Gen. 1, 27b in the context of the Priestly account of creation", *Harvard theological Review* 74 (1981) p.155; Axel-Ivar Berglung, "the biblical concepts of man/woman relations", in T.D. Verryn (ed.), *Church and Marriage in Modern Africa*, Zenith Printers, Johannesburg, 2001, (1975), p.13.

⁶⁸ C.f. Eugene Hillman, *Polygamy Reconsidered African plural marriage and the Christian Churches*, Orbis Books, Maryknoll, N.Y., p.145. See also Waldemar. Molinski, *Theologie der Ehe in der Gegenwart*, Paul Pattloch Verlag, Aschaffenburg, 1976, pp.13-14.

⁶⁹ Cf. William J. Bausch, *A new look at the sacraments*, revised edition, Twenty-Third Publications Mystic Connecticut, 1992, p.214.

⁷⁰ Cf. Walter Gross und Gerfried W. Hunold, „Die Ehe im Spiegel biblischer und kulturgeschichtlicher Überlieferungen“, *ThQ* 167 (1987), pp.82-83.

immediately tell us that the Jews may have known no marriage or wedding as we have it now⁷¹. In place of the two people marrying as the cases may be we only come across some terminologies, which represent the fact that man and woman come into contact at least for purpose. For instance, phrases like “a man takes woman”; this man is the owner of this woman⁷², are the only words we meet. In some case, it is not this man taking a woman but that a girl’s father has “given” his daughter to a particular man (Cf. Dtn.22, 16). In other places, the woman is not “taken” nor “given” but captured to become a wife⁷³. Purchase-marriage may have also come to flourish as the custom and parents were allowed to sell their daughters as wives, concubines or maid-servants (Gen.29) and the price paid for a wife in the time of Hosea was fifteen pieces of silver and a homer and a lethech of barley (Hosea 3:2). Even though the word marriage did not come into play in the OT, there is no doubt that the terminologies such as “taken” or “given,” reflect a relationship between man and woman in a much deeper level outside biological ties. However the above terminologies depict polarisation. The means of carrying out such terminologies quite clearly show that it was only one-sided. It was a contradiction of a true marriage because in the relation the woman has only a passive voice and she is subjected to the man as her lord.

In spite of the contradiction, it is important to understand that before a man takes or is given a wife, he must satisfy a certain preparatory condition; that is, paying the marriage price to the girl’s father. This condition was highly regulated by the customary law (Cf.Ex.22, 16; Dt.22, 29). Sometimes, it would be in place to say that the marriage price is seen as a means of enriching the father of the woman but also as the payment for damages caused to the family of the girl because the family has lost a workforce in the person of the young girl. In some cases, the father of the bride can demand work from the man as substitute for money if the man is too poor to pay; or, in some cases the father of the girl demands that the boy shows a sign of bravery as we see in 1Sam 18, 25 in which King Saul demands the foreskins of one hundred Philistines from David before his daughter Michal would be given him in a marriage⁷⁴. Here,

⁷¹ Cf. Hans Walter Wolff, *Anthropologie des Alten Testaments*, Kaiser, Gütersloher 1994, p.243.

⁷² Cf. Sabine Demel, *Kirchliche Trauung- unerlässliche Pflicht für die Ehe des katholischen Christen?*, Verlag W. Kohlhammer, Stuttgart Berlin Köln, 1993, p.14.

⁷³ In the OT when Israelites fought the midianites, all the virgin women were considered the spoils of war along with the livestock and precious metal captured (cf. Num. 31:35). In the same way, the book of judges cited an incident of wife capture. In chapters 19-21, a Levite from Ephraim travelled to Bethlehem to bring his concubine back home. On his journey back, he decided to spend the night in Gibeah of Benjamin. But unfortunately some men of Gibeah gang-raped and killed the woman. When the other tribes of Israel demanded for the culprit for punishment, Benjamin refused leading to war. Accordingly 600 men of Benjamin we are told, survived the ensuing battles. But the other tribes of Israel suffered remorse over the almost total destruction of Benjamin, decided to see the tribe restored. Despite this, the tribes of Israel vowed not to allow their daughters to enter into marriage with the house of Benjamin. But the Israelites were able to obtain wives from Jabesh-gilead for 400 men leaving 200 men. The men of Benjamin were advised to hide outside the city of Shiloh because the inhabitants of Shiloh were about to celebrate a feast and the young women would be dancing outside the city. In the process, each of the 200 men captured one of the women of Shiloh as a wife. Compare Stephen Grunlan and Marvin Mayers, *Cultural Anthropology, A Christian perspective*, Zondervan Publishing House, Michigan, 1980, p.160.

⁷⁴ Cf. Wolff, *Anthropologie des Alten Testaments*, p.244.

it is very difficult to substantiate the nature of the contract. The state and the religious rites were also totally absent. It was private negotiations, which in some way ordered to have legitimacy through the presence of witnesses. The negotiations prior to the “given” were done independent of the couple themselves. Sometimes they only meet for the first time after everything was set for them to begin their marriage life. They have to work after they have been married to make their love grow as we can see from the example of Isaac and Rebecca (cf.Gen.24, 67).

Now we may ask, does “taking or given” to be a wife carry any legal obligation from this standpoint? We can answer this inquiry both in the affirmative and in the negative. . The “given or the taking” might not be a communal activity but sometimes an agreement between two families. However, the process could be understood from the domain of law, an action that carries legal consequences at least according to the customary law, even if the mentioning of a contract is a later development. In fact, the book of Tobit clearly gives us an idea that before a marriage takes place a contract would have to be signed: “Then Raguel called his daughter Sarah, and she came to him. He took her hand and gave her to Tobiah with the words: ‘Take her according to the law. According to the decree written in the Book of Moses she is your wife. Take her and bring her safely to your father. And may the God of heaven grant both of you peace and prosperity’. He then called her mother and told her to bring a scroll, so that he might draw up a marriage contract stating that he gave Sarah to Tobiah as his wife according to the decree of the Mosaic Law. Her mother brought the scroll, and he drew up the contract, to which they affixed their seals” (Tb.7:12-13). The above texts, the marriage between Boas and Ruth (Ruth 1-4) and the marriage of Rebecca (Gen 24) are little available information in the OT on the legal significance of marriage even though the texts did not mention any prior arrangement⁷⁵. It is also in place, now to say that in some situations marriage is sealed with a special agreement between two groups of people. The only difference between OT agreement and today’s contract is that the former was done mostly orally before witnesses while today the law takes effect only if it is written.

The lack of the word ‘marriage’ would immediately tell us that the Jews may have known no marriage or wedding as we have it now. However, there is no doubt that the OT phrases such as “a man takes woman”, this man is the owner of this woman, and a girl’s father has “given” his daughter to a particular man (Cf. Dtn.22, 16) or simply “Taken” or “given”, reflect a relationship between man and woman in a much deeper level outside biological ties.

⁷⁵ Cf. Demel, *Kirchliche Trauung*, p.16.

2.1.2 Love in the patriarchal marriage

What was the perception of love and equality between man and woman in the OT? Are these essential particles of marriage seen as secondary matters in the relationship between man and woman in the patriarchal age? No doubt, infertility and childlessness were regarded as great calamities because one's name would be blotted out of Israel. Although, fertility and procreation were given high prominence in marriage, love was never regarded as purely a secondary matter.

Anybody who reads the OT with genuine mind would agree with us that equality and love as bedrocks of marriage were not secondary matters at all; rather they were salient values that came with the creation of humankind in Genesis. The central position of the creation stories in Genesis' "one flesh", alluded to the fact that love was never lacking or relegated to the background. Furthermore, we know that Elkanah vehemently protested to his wife Hannah, who complained bitterly for childlessness: "Am I not more to you than ten sons?" (1Sam1: 5-8). Jacob in Gen.29: 20, instead of paying the normal marriage price for Rachel the daughter of Laban, served his future father-in-law for seven years but considered those years as few days because of the love he had for Rachel. It is also interesting to see how Raguel called his wife Edna, "my love"(Tobit 7:15). In the same way Tobiah called his wife my love (Tobit 8, 4)

The wisdom books in various terms also show how love and equality are indispensable of marriage and family life. For instance, the Song of Songs indicates the joy that surrounded marriage and the expressing of love to the beloved. It also shows the wonder of two human beings who decided to begin life as one. It describes the splendour of human love in the context of a beautiful countryside. Great value is placed upon the virginal state of the beloved, 4:12; 8:8-10 and true love is expressed as unshakable fidelity 8:6-7: for love is strong as death. In this way, the Song forms a healthy counterpart to the other OT tendencies to see the function of marriage almost exclusively as the perpetuation of the clan and the nation.

Significantly, it extols not fertility, but human love, a love between partners. It thus forms an idyllic commentary on what the oldest creation account in Genesis portrayed concerning the relationship between man and woman. This relationship is not necessarily to be seen in the fertility oriented concept of wife-husband relation⁷⁶. Similarly, the importance of love and woman were personified in Proverbs 1-5. These chapters openly use the language of love, for example, urging the young man to address wisdom with the intimate term 'my sister' to wait at her door, to keep away from other women, to share her life⁷⁷.

⁷⁶Cf. E. Schillebeeckx, *Marriage. Human Reality and Saving Mystery*, London, 1976, p.30.

⁷⁷ Cf. R. Murphy, "Wisdom and Eros in Proverbs 1-9", in CBQ 50 (1988), 600-603; W. Mckane, *Proverbs: A new Approach*, OTL: Philadelphia, Westminster 1970, p.94.

The imagery of love also plays a significant role in the prophetic books. The motif of Yahweh's love and Israel's love stands out clearly. This imagery of love stands out significantly in Hosea and Jeremiah. In the view of these prophets love in Jeremiah 2:2 and in Hosea chapters 1 and 3, has a very significant place, and the affection, which God always avails to Israel, is to be transported to a wife-husband relationship. So the context of love in a relationship is to go beyond the ordinary level of anticipating a punishment but to repair the damage by a new beginning and seeking reconciliation. Therefore, the "obedient side of love"⁷⁸ means that each party returns to the other with the motif of attacking the enemies to love from its roots.

From these prophets, especially Hosea, the key to understanding the use of the marriage imagery is to bring into service of the covenant its proper content by enabling marriage couples to understand and experience the reality of the heartbreak of infidelity and the love that is engendered in the hope for reconciliation⁷⁹. Moreover, the love between lovers cannot be one-sided; it must come from both directions of the relationships. Hosea was very steadfast in the marriage for the love that he had for Gomer. He remained faithful to the marriage pact and his love remains undaunted and unshakable. This positive behaviour insists on forming moral and social conscience as the basis of marriage to educate the audience that love demands a great sacrifice to remain on course as relation, symbolising the relation between Yahweh and Israel. For that matter, the faithfulness displayed in Hosea challenges the Israelites who made permanent separation on the account of adultery almost a legal obligation.

It is true, as discussed above that marriage in OT was regulated by economic, social and familial considerations at the expense of personal, romantic or religious considerations;⁸⁰ but we can allude to the fact that "in Israel, too, the heavy stress on the family does not mean that married love was put right in the background, even though it was not regarded, at least in theme form, as the primary function in the institution of the family"⁸¹. Rather, many verses tell us that not only did love dominate the relation between man and woman, but was indispensable to it, thus diffusing the old idea that in the OT times men did not love their wives.

⁷⁸ Gary Hall, *The marriage imagery of Jeremiah 2 and 3: A Study of Antecedents and innovations in a prophetic Metaphor*, (Doc. Thesis), University Microfilms International, Union Theological Seminary, Virginia, 1980, p.153.

⁷⁹ Hall, *The marriage imagery*, p.160.

⁸⁰ Cf. Pospishil, *Eastern Catholic Marriage Law*, p.164.

⁸¹ Schillebeeckx, *Marriage*, pp.87-88.

2.1.3 Polygamy and monogamy in OT

In the age of the patriarchs the prevalent form of marriage was relative monogamy with a tendency towards bigamy, in which a man kept one chief wife and one concubine. The custom gradually became widespread in ancient Israel and, in the days of the judges and the kings, almost unrestricted polygamy prevailed, especially at the higher levels of society. In the same way polygamy played a significant role in the marital union in the lives of many holy patriarchs such as Abraham, Gideon, Elkanah, Jacob, David, Solomon, etc. For instance, in Gen.29: 15-30, Jacob married two sisters. Judges 8:30f establishes that the sons of Gideon were 70, which goes to say that he had many wives because common sense tells us that one woman cannot give birth to 70 children. Again in 2 Sam 5:13 we are told David had many women and his son, Solomon, the successor, apart from the official 700 wives also had 300 concubines (1Ch. 11:3). The numbers of wives and concubines quoted above may be disputable, but it still confirms that polygamy prevailed in the OT.

Now, if we rush to see the above examples as the standard form of behaviour, we may be tempted to conclude that polygamy is the noble form of marriage. But if we take the examples cited above in a context, it will not be difficult to see that polygamy was only a “situational matter” to solve a particular problem at a given time. For instance, one of the very important reasons why the Jews might have blended polygamy into their custom was the problem of barrenness. Barrenness was seen as an indelible stigma on the family. An Israelite cannot imagine a normal man having no child, since fatherhood is a very important aspect in their day-to-day organisation of the family and the family property. Due to barrenness, Abraham the father of Israel had no other choice but to accept and take a second wife given to him by his wife Sarah so that he might have a family (Gen.25, 6). Also, the man of faith, Elkanah with a similar problem according to 1 Sam 1, 2 had to take two wives: Hanna and Peninna.

Besides, Polygamy and the keeping of concubines were also ignorantly encouraged by the position of social inferiority occupied by women in the ancient Near East; and the possession of many wives was thought to be a sign of power, prestige and economic prosperity (2 Sam 5:13; 1Kgs 11:1-8) especially in the Jewish world. In this male civilisation much more was permitted in the sexual sphere to the man than to the woman, who was strictly bound to monogamy. In cases where a woman would have been punished for adultery, a married man was normally acquitted, so long as his offence was not committed with a woman who was subject to the authority of another man. The idea that the woman was there to bear children was, in this type of society, and certainly in the ideology of the people, an overriding importance. In certain respects this inequality between man and woman in married life reflects a lower appreciation of the woman’s role than that of the man. Another example of

this inequality is that divorce was possible for the husband, but not for the wife⁸². Even in such situations, that is, in a polygamous marriage one wife was regarded as the chief wife or beloved, where the other was regarded the hated, the less beloved (Dt.21: 15-17; Gen.29: 30) and occupied a position subordinate to that of the first wife, who automatically thought of her as her enemy (1 sam.1: 6; Gen.30: 1)⁸³.

Again, in Isaiah 4:1 we are told “Seven women will take hold of one man on that day, saying: we will eat our own food and wear our own clothing; only let your name be given us, put an end to our disgrace”. Ideally, it is not a point to say that polygamy was the order of the day, rather an abnormal circumstance in the face of the “situational deficiency” of disproportion of the sexes due to war that leaves the female population almost without male partners. The women are eager to marry, not for the fact that they glory in polygamy but to avoid the disgrace of being childless.

In the Genesis accounts, it is striking to see that God created only one woman for Adam not two or more women. It is said, “A man shall leave his father and mother and shall cleave unto his wife, and they shall be one flesh.” According to Berglung “the urgency to ‘cleave’ to one woman is underlined by the single persons used in J’s narrative. The language is a very clear symbol of unity, a belonging together, and a total committal to one another without interference caused by a second belonging elsewhere. Originally the man and the woman were one flesh, therefore they must come together again and thus, by divine will, they belong together⁸⁴. He again maintains: “Popular thinking sometimes finds encouragement and licence for polygamous marital concepts in Holy Scripture. It is true that polygamous marriages are accepted as having taken place including those of pious and God-fearing men such as the Patriarchs (particularly Jacob), Gideon, David etc. ... But accepting that Holy Scripture describes men as having more than one wife, it never describes the polygamous condition as either good or advantageous (other than in a procreative fashion). On the contrary, the polygamous marriages are always described as causing strife, anger and jealousy, hatred and bitterness, indeed bloodshed frequently. J is saying that in the eyes of God the woman is first and foremost a wife; thereafter she may perhaps be the mother of children. But the primary concern is that of being a partner in marriage, a wife, a co-human, belonging to another human, and so united with and to him, that nothing and nobody breaks that unity”⁸⁵.

Though polygamy was accepted into the society and customs in ancient Israel especially among the Patriarchs and leaders of society, however, it was a circumstantial situation because the core of OT accounts on marriage abounds in monogamy. Referring to the creation

⁸² Schillebeeckx, Marriage, p.91.

⁸³ Cf. Schillebeeckx, Marriage, pp.89-90.

⁸⁴ Berglung, The Biblical concepts of man/woman relations, p.19.

⁸⁵ Berglung, The Biblical concepts of man/woman relations, pp. 19-20.

account obviously insists that Adam was provided with one woman not just for a particular length of time but throughout his life. The shouts of joy that Adam greets the woman with, is no doubt a sign that he is perfectly satisfied with one wife. Therefore, we may conclude that monogamy was the most desirable situation, since all the polygamous marriages in the story were marred by strife⁸⁶.

In addition to the above, Wisdom literature also considered monogamous marriage as both normal and ideal. (cf. Prov.5: 15-19; 12:4; 18:22; 19:14; 31:10-13; Eccles.9: 9; Sir.26: 1-4) These books emphasised monogamy as the ideal type of relationship to strive for. While the law made provision for divorce by repudiation, Proverbs chapter 5 warned men to live in loving fidelity to the wife of their youth since conjugal fidelity and love for a wife only brings happiness and security (5:15-20). Moreover, while the prophet Malachi seriously protested against divorce as a practice hated by God (2:15), he took a significant step of calling marriage a covenant witnessed by God (2:14). So, if a marriage is a covenant, then mutual trust and sacred commitment must cluster around the relationship between husband and wife. As we shall see later, this covenant theme was the powerful purifying force that brought about the Christian ideal of marriage⁸⁷. In a further effort to consolidate monogamy and fidelity as ideal properties of marriage, the book of Tobit highlighted a highly spiritual picture of a couple saturated in prayer and fidelity, dedicated to the ideal of a lifelong and godly marriage (8:5-8)⁸⁸. Perhaps the most moving witness to an elevated sense of marriage and to the fidelity and tenderness of spouses is capitulated in Verse 7: “I take this wife of mine not because of lust but for a noble purpose. Call down your mercy on me and on her, and allow us to live together to a happy old age” (Tobit 8, 7)⁸⁹. To conclude, we can say that monogamy was the primitive law of marriage, and it can be inferred that all the other phases of marriage are marks of degradation resulting from the fall of man.

1.2.4 Equality as a trademark of marriage

The central verses of the first creation account bring to our attention the greatness and dignity of humankind. In other words, speaking in collective terminology, this creation narrative underscores most emphatically the worthiness and dignity of humankind: “Then God said, Let us make man in our image, after our likeness... So God created man in his own image, in the

⁸⁶ Cf. G. J. Wenham, *Story as Torah, Reading the Old Testament Ethically*, T and T Clark, Edinburgh, 2001, p.31.

⁸⁷ Cf. Wicks, *Marriage: Historical and Theological overview*, p.183f.

⁸⁸ *Ibid.*

⁸⁹ This prayer presented the example of two model couples, which must be example to all other couples in their preparation for marriage. Calling God to protect their marriage is a sign that marriage has a religious character even if the early Israel did not recognise it. Marriage must recognise the presence of God and the faith in God really protects marriage.

image of God he created him; male and female he created them”. It was a simultaneous effect of the creation of both man and woman. Both man and woman were boldly and bluntly given equal values and equal status in the ideal conditions of Paradise⁹⁰.

The second account contains the narration of the creation of male, the man and later the female, the woman, who is created from the man’s side in order to be his helpmate. Again, in the creation story, we are told the woman is said to be from perhaps Adam’s rib, which expresses in the first instance an inferiority and subordination in the relationship as husband and wife. The “subordination ideology” went on to say that the man gave his wife a name, an act that recalls his assumption of power over the animals by giving them names (Gen. 2:20). In effect, we can say that the woman is reduced to the status of an animal: The act itself faults the man for corrupting one flesh of equality, for asserting power over the woman and for violating the companion corresponding to him⁹¹ and the closeness of relationship between husband and wife⁹² is turned overboard. Moreover, in the Deuteronomical law, a husband could repudiate his wife for a number of defects (24:1-4) with impunity. Similarly, the law on adultery favours men. A husband did not violate the law by intercourse with outside marriage, except when he slept with another man’s wife and so violated the other husband’s rights⁹³.

Why should God choose the rib rather than the head or the foot? The answer is simple. The *head* is a sign of authority and the *heel* as suppression. He chose the rib out of his side as a symbol of equality with him, under his arm to be cared for, protected and near his heart to oblige the man to total love and meekness. This also stresses the fact that woman being created from a part of the man does not entail subordination anymore than man’s being created from the ground does. The man recognises that the woman addresses the stated need, and his exultation counts for a ‘good’ evaluation. The words in Genesis 2: 23 stress mutuality and equality with a new level of knowledge of his identity as a man in relationship to a woman. Furthermore, the concluding verses of chapter two do not mention children, but focus on the man-woman relationship; they are now ‘one flesh’, which refers to intimacy in the broadest sense of the term, not just sexual⁹⁴. In other words, Gen 2 implies that marriage is not just an arrangement for procreation, but husband and wife are entrusted to each other in

⁹⁰ Cf. Zenger, *Stuttgarter Altes Testament*, , *Einheitsübersetzung mit Kommentar und Lexikon*, Katholische Bibelanstalt, Stuttgart 2004, p.18.

⁹¹ Cf. John W. Rogerson, *Genesis 1-11 in: Genesis and Exodus*, with an introduction by John Goldingay, John W. Rogerson, R.W.L Moberly and William Johnstone, Academic Press, Sheffield, 2001, p.58.

⁹² Cf. Horst Birkhölzer, *Ehe kein Auslaufmodell: Lebensgestaltung zwischen biblisch Orientierter, christlicher Lebenssicht und Lebenskompromiss*, Claudius Verlag, München 1997, pp.56-58.

⁹³ Cf. Wicks, *Marriage: Historical and Theological overview*, p.183.

⁹⁴ C.f. Zenger, *Stuttgarter Altes Testament*, pp.20-21; Terrence E. Fretheim, *The Pentateuch*, Abingdon Press, Nashville 1996, p.76; P. Tribble, *God and the Rhetoric of Sexuality*, Fortress Press, Philadelphia, 1978, pp.79-81; Victor P. Hamilton, *Handbook on the Pentateuch, Genesis, Exodus, Leviticus, Numbers, Deuteronomy*, Baker Book House, Michigan 2001, pp.28-29; J. T.A. G.M van Ruiten Brill, *Primeval history interpreted, The Rewriting of Genesis 1-11 in the book of Jubilees*, Leiden, Boston, Köln 2000 pp.71ff.

intimate companionship. Each completes and supports the other as they live together and become one flesh⁹⁵.

It is clear enough to say that the phrase “one flesh” conveys and expresses in no small terms that man and woman have the same dignity and equality in marriage and before any law. No society on earth can prove with certainty that men in essence are superior to women. Men are not in any way superior to women because they are created to some extent from different materials but are equal and put on equal footing in all things except that they were male and female. However, a critical look at the words “She is bone of my bones and flesh of flesh” tell us that marriage initiates a relationship that should be as durable as that between relatives (a man cleaves to his wife) and be characterised by the mutual affection and protection that is expected in a strong family society. It was a simultaneous effect of the creation of both man and woman. Both man and woman were boldly and bluntly given equal values and equal status in the ideal conditions of Paradise⁹⁶.

Some of the fundamental prophetic verses on marriage in the OT are allegories to express the relationship between God and Israel. However, the impact of these allegories also affects the fundamental notion underlying the institution of marriage. These teachings of the prophets on marriage echoed that the relationship between husband and wife was marked by mutual obligations and mutual responsibilities, that both parties had tasks and responsibilities appropriate to their roles in the relationship; regrettably, their education was one sided in that they dwell more on the subordination of the woman in the marriage relationship while the prestigious male domination was displayed. It was important for the woman not to do anything that might be interpreted as an act of insubordination or of disrespect to the man. The wife has no excuse but to show honour to her husband. The failure by the woman to fulfil her responsibility virtually guaranteed punishment in the form of divorce or assault. Hence, the husband figure in the speeches of Hosea, Jeremiah and Ezekiel clearly had the upper hand in the marriage. It is the wife’s failures and indiscretions that are repeatedly elaborated upon. Jeremiah, on the hand, compared Jerusalem’s impending ruin to the humiliation a woman experiences when her skirt is snatched up over her head and her sexual parts are bared before the public (13:20-27). Prophet Ezekiel had a similar notion when he likened the recent ruin of Jerusalem to the downfall of a loose woman who, despite her husband’s love, compassion, and lavish indulgences, had betrayed her husband’s kindnesses, pursued lovers as dissolute as herself, and as a result rightly deserved to be left to the vilest impulses of her lovers (Ez.16: 23)⁹⁷. From this perspective, the prophets seemed to maintain that the relationship between man and woman was not an egalitarian one but was one of hierarchy and authority, which

⁹⁵ Cf. Wicks, *Marriage: Historical and Theological overview*, p. 183.

⁹⁶ Cf. Zenger, *Stuttgarter Altes Testament*, p.18.

⁹⁷ Cf. Renita J. Weems, *Battered Love: Marriage, Sex, and violence in the Hebrew Prophets*, Fortress Press, Minneapolis 1995, p.12ff.

would mean man and woman are not equals. Indeed, parallels existed between the man's rights over the woman and a superior's rights over a subordinate, and those rights were non-negotiable and firmly established⁹⁸.

2.2 Marriage and the New Testament

2.2.1 Jesus on marriage

The first attempted instruction on marriage in the NT came from Jesus. It was no formal intention to give a thorough and systematic instruction about marriage but rather issued from his reactions to the pertinent issues of divorce and adultery. In the OT as we have already seen, Malachi denounced divorce as hateful and insisted that marriage was a covenant witnessed by God. Ezekiel and Hosea urged forgiveness as an alternative to an unfaithful wife. Divorce, though still permitted, was frowned upon.

In this regard, it was Dt that caused some controversy. Chapter 24: 1 said that a man could give his wife a written note of dismissal if he found in her something indecent. ... It was precisely this dispute that the Pharisees brought to Jesus in Mk 10:2-12 and Mt. 19:3ff asking for his reaction on the matter if it is lawful for a man to put away his wife. Jesus, of course, bypassed the Dt controversy and stood in the reforming tradition mirrored in the books of Malachi and Tobit by reverting to the beginning of the creation of humankind. He appealed to the divine will and laid down the unqualified principle that what God has joined together man must not put asunder (Mt 19:6). This unqualified principle makes man and woman to live not as two but as one in a union consecrated by God himself⁹⁹. Moreover, in the gospel Mark, Jesus revoked the early false presumption inherent in the adultery policy. He insisted that a wife too has rights in marriage that are violated by the man's adultery: "Whoever divorces his wife and marries another commits adultery against her" (10:11). In this Jesus made it obligatory for his audiences to observe the unconditional fidelity in marriage. It is to be a divine institution established from the very foundation of the human race, binding at all times which does not leave room for re-marriage after divorce. St. Paul may later interpret this in the sense that neither party may send away the other; and in case this happens, there are only two possibilities left; that is, reconciliation or remaining unmarried (1Cor 7:10-11).

⁹⁸ Ibid.

⁹⁹ Cf. Bausch, A new look at the sacraments, pp.215-216; Wicks, Marriage: An Historical and Theological overview, p.184. See also Ladislav Örsy, Marriage in Canon law, Texts and comments, p.17.

2.2.2 Pauline Letters and marriage

The attitude of Paul to marriage in the NT is a complex one. This complexity came from his understanding of the theology of the resurrection at the time. In his early thought in 1Cor.7, Paul seemed to favour celibacy more than Christian marriage. In this context then marriage took on a somewhat provisional and relative character. Though Paul may seem to support and preferred celibacy, we nevertheless come to climactic biblical extracts in his later letters which supplied the Christian tradition in his later writings with two profound understandings of marriage. The principal and most significant teachings from the extracts concerning marriage and for that matter a hint on steps to be taken into account when preparing couples to appreciate their marriage life is set out in the so called “household codes”, which at a glance were intended to regulate the behaviour of the members of the family,¹⁰⁰ and is set out in the so called “household codes (Haustafeln) tabulated in Col. 3:18-4:1 and Ephesians 5:21-33. To be precise, the household codes were not the brainchild of Paul but are paralleled and reflected in the importance attached by Greco-Roman philosophers and Hellenistic Jewish writers to ‘household management’ as integral to the proper ordering of society¹⁰¹. However, the inclusion of these regulatory codes in the biblical passages on marriage may be seen as a way of coping with the delay of the *Parousia*; but we can assume that they prescribed a certain amount of knowledge concerning Christian and social behaviours in marriage and family life.

Meanwhile, in the above biblical passages, especially the Epistle to Ephesians (5:21-32), Paul explains the underlying meaning of Christian marriage. He insisted that “He who loves his wife loves himself. For no man hates his own flesh, but nourishes it and cherishes it, as Christ does the Church because we are members of his body. For this reason a man shall leave his father and mother and be joined to his wife, and the two shall become one. This is great and I take it to mean Christ and the Church” (5:28-32). The meaning of marriage, as it were, is the intimate joining together of two loves called to walk worthy in this great vocation, and prefigures the unity between Christ and his Church in one mystical body. In that sense the

¹⁰⁰ Cf. Schüssler, *Marriage*, p.317; Cf. Hans-Josef Klauck, „Die Familie im Neuen Testament, Grenzen und Chancen“, in: *Familie Leben, Herausforderungen für kirchliche Lehre und Praxis*, Gottfried Bachl (Hrsg.), Patmos Verlag, Düsseldorf 1995, pp.28-29. See also K. Müller, „Die Haustafel des Kolosserbriefes und das antike Frauenthema“, in: G. Dautzenberg u.a. (Hrsg.), *Die Frau im Urchristentum*, Freiburg 1983, pp.263-319.

¹⁰¹ Loren T. Stuckenbruck, “Colossians and Philemon”, in James D.G. Dunn (ed.), *The Cambridge Companion to St. Paul*, Cambridge University Press, Cambridge 2003, p.125. See also Ingrid Maisch, *Der Brief an die Gemeinde in Kolossa*, Kohlhammer, Stuttgart 2003, p.261ff; J.D. Dunn, “The household Rules in the New Testament”, in: S.C. Barton, ed. *The Family in Theological Perspective*, T&T Clark Press, Edinburg, 1996, pp.43-63; D. Balch, “Household Codes”, in: D.E. Aune, ed., *Greco-Roman literature and the New Testament*, Scholars, Atlanta, 1988, pp.25-50; J. Crouch, *The Origin and Intention of the Colossian Haustafel*, Vandenhoeck & Ruprecht, 1972, pp.74-101; J. Dunn, *the Epistles to the Colossians and to Philemon*, NIGTC, Grand Rapids/Carlisle, Eerdmans/Paternoster, 1996, pp.39-41.

two-in-one relation in marriage should be seen as oriented and penetrated by the reality of Christ's relation to his Church¹⁰².

However, in the organisation of the house according to these regulatory rules there was a degree of inequality. This means that the household codes are saturated not only with the good and equitable relation that ought to exist between husband and wife but also the unbalanced relation between man and woman. The first impression one can gather from these relations is portrayed by this master-slave relationship. The role of leadership and responsibility is accorded the man or the husband, as the head of the wife while the latter must submit in obedience paralleling on Christ as the head of the Church. The man represents the family in public. The woman on the other hand is responsible for bringing up and for the education of the children and with the slaves taking care of work. The woman is not allowed to be seen in public taking any leadership role¹⁰³.

According to some scholars too, the use of the image of the Christ-Church in Ephesians to interpret the relation between husband and wife as the basis of marriage being a sacrament indeed has unfavourable consequences for the institution of marriage. The Pauline analogy in the Christ-Church relation portrays Christ even though a loving son in the Godhead as the director and ruler, Saviour and the all-knowing doctor of the church. The Church on the other hand has no choice but to be obedient and to accept this freely given salvation and medication. In this symbolism then in the relation between husband and wife, the husband is seen as fulfilling the role of a ruler, dictator and Saviour. The woman on the other hand, is only seen in the role of subordinate, inferior and open to medication from the husband the chief doctor¹⁰⁴. If this is what Paul intended, then the Ephesians text is very problematic and has defeated the aim of God in the creation story.

Likewise, if the Christ-Church analogy should remain as described above, then marriage cannot be considered as a relation between equals, which may be tantamount to the growth in marriage as equal partners especially in our modern society in which women are no longer to be considered as mere tools in the hands of man. For this reason the interpretations of humankind being made in God's image such that as in 1Cor.11: 7 according to which only man is the image and glory of God and the woman is related to God only via man is to be rejected if the relationship in marriage is to be understood as among equals¹⁰⁵.

¹⁰² Cf. Leonardo Boff, "The Sacrament of Marriage" in, *The Sacraments*, edited by Michael Taylor, Alba House, New York, 1981, 199f; Wicks, *Marriage: Historical and Theological overview*, p. 184f.

¹⁰³ Cf. Stuckenbruck, *Colossians and Philemon*, p.125.

¹⁰⁴ Schüssler, *Marriage*, p.325.

¹⁰⁵ Rogerson, *Genesis 1-11*, p.54. See also Cynthia Eller, *The myth of Matriarchal Prehistory, why an invented Past won't give women a Future*, Beacon Press, Boston, 2000, p.30ff.

Unfortunately, the “theory of subordination” was not confined only to the letters of Colossians and Ephesians, but widely influences also the so-called pastoral letters. For instance, according to 1Tim.2, at the liturgical assembly the dress of women should be appropriate to the occasion (v.9); their chief adornment is to be their reputation for good works (v.10). Women are not to take part in the charismatic activity of the assembly (11f; cf. 1cor 14:34)¹⁰⁶; their conduct should not reflect authority but the role of man’s helpmate (v.13 cf. Gen 2, 18) thus reversing the relationship of Adam to the woman. Paul intended to emphasise the patriarchal and superiority of Men. The author of first Peter (3:7) did not also make it likely for women. He considers women to be a weaker sex, which need to submit themselves to the man¹⁰⁷. Therefore, if we take all these texts together, it becomes clear that instructions supposed to guide the life in marriage are “somewhat demeaning to women”¹⁰⁸ and are very much worrying to the standing of women. The texts seem clearly to make man the lord over the woman. In the final analysis, it is obvious that the imperative of the superiority of the husband to the wife presented in the household codes have had terrible consequences within the history and practice of marriage in our society. Furthermore, if the order is to be taken in its literal form, it is obvious that the household codes were the affirmation, reinforcement and reintroduction of the patriarchal order of the OT.

In spite of the conflict inherent in the household codes, reading the texts contextually reveals that it did not totally support male domination for that matter. From the very onset of the texts especially Colossians and Ephesians, Paul excellently dug out the details arising from the challenging teaching of concrete life. Hence, the texts in their contextual manner are not instructions to lay claim to the ambivalent nature of man and woman relationship, but that the “the entire system of social relationships is even held in check; submission in each of the relationships is to be adhered to in accordance with what is ‘fitting in the Lord’ (Col.3: 18- wives to husbands), ‘pleasing in the Lord’ (Col.3:20- children to parents), and showing respect and rendering service to ‘the lord’ (Col.3:22,23,24- servants to masters). Slave-owners are reminded that they are no different from slaves before God, who is impartial (Col.3:25) and to whom they must answer as their ‘master in heaven’ (Col. 4:1).

Thus, the household codes practically show us how instructions in relation to social institutions functioned as a means of articulating a Christian social identity by an author who is delicately negotiating between specific internal and broader external issues encountered by the community¹⁰⁹. He refers to various aspects of the husband-wife relationship such as mutual respect and fidelity, and the marital permanence among others. If the ideals presented

¹⁰⁶ Cf. Thomas D. Lea and Hayne P. Griffin, Jr., *1,2 Timothy and Titus, in The new American commentary* vol.34, Broadman Press, Nashville, Tennessee, 1992, p.93ff.

¹⁰⁷ Cf. Arne Duncker, *Gleichheit und Ungleichheit in der Ehe, Persönliche Stellung von Frau und Mann im Recht der ehelichen Lebensgemeinschaft 1700-1914*, Böhlau Verlag, Köln- Weimar-Wien 2003, pp.404-406

¹⁰⁸ Gordon D. Fee, *1&2 Timothy, Titus*, Hendrickson Publishers, Peabody, Massachusetts, 1984, p.74

¹⁰⁹ Stuckenbruck., *Colossians and Philemon*, pp.125-126.

in these texts are put into its practical terms, there will be no possibility of fighting over whom the head and leader of the household is, hence craving for authority rights.

Thus, craving for headship in the family must give way to a civilisation of equality and responsibility. Accordingly, within the household social differences may remain but are transformed through the distinctive motivation that comes from believers' recognition of the Lordship of Christ¹¹⁰. This recognition of the Lordship of Christ brings a new vision and life such that at the end of the tunnel, there is no longer female or male, master nor slave but we are all one in Christ. This is a motivation of equality and respect for one another thus placing man and woman in the same balance (cf. 1 Cor. 11: 1-7)¹¹¹. So in 1 Cor 11: 11 Paul maintains that even if the views of the custom which seem to lord man over woman is still ruling in the communities, this should not be among Christians because in the lord, woman is not independent of man nor man independent of woman. Woman was made from man, so man is born of woman. In the same way, both complement each other. There is no longer one submitting to another but both must in the true spirit of the covenant of love submit to each other far and above personal interests.

Similarly, some may interpret the Christ-Church analogy in terms of a marriage relationship not favourable to women or wives, but the basis for the formulation is to present a strong manifestation of the marital values such as love, trust and the bond of unity among couples. For that matter, Paul considers seriously that the marital relationship is the imitation and the likeness of the union of Christ and his Church. Obviously, the analogy implies that just as Christ loves the Church to the point of death so should it be reflected in marriage life of couples¹¹². With this thought provoking comparison, Paul is thinking that a sound foundation for marriage as in terms of a love relationship between man and woman and the outward sign of the loving union of Jesus and the Church in which Christ loves and cares for the Church must become the model for Christian spouses in their relationship to each other in a sensible way¹¹³.

Coupled with the instructions given in the household codes, Titus 2:3-6 profoundly credits and increases our knowledge on instructions to be given to those preparing for marriage. For instance in Titus, "The older women...by their good example must teach the younger women to love their husbands and children, to be sensible, chaste, busy at home, kindly, submissive

¹¹⁰ Andrew T. Lincoln, "Ephesians", in: J. D.G. Dunn (ed.), *The Cambridge Companion to St. Paul*, Cambridge University Press, Cambridge 2003, p.139.

¹¹¹ Cf. Eduard Lohse, *Theologische Ethik des Neuen Testaments*, Kohlhammer, Stuttgart, Berlin Köln Mainz, 1988, p.66.

¹¹² Cf. Stefan Saar, *Ehe, Scheidung, Wiederheirat, zur Geschichte des Ehe- und des Ehescheidungsrechts in Frühmittelalter (6-10 Jahrhundert)*, LIT Verlag, Münster, Hamburg, London, 2002, p.36ff; Peter Krämer, *Kirchenrecht I: Wort-Sakrament-Charisma*, Verlag W. Kohlhammer, Stuttgart Berlin Köln, 1992, p.105; Joachim Eder, *Der Begriff des "foedus matrimoniale" im Ehe recht des CIC*, EOS Verlag, St. Ottilien 1989, p.12.

¹¹³ Cf. William Bausch, a new look at the sacraments, p.218. See also Boff, *The Sacrament of Marriage*, p.200.

to their husbands. Thus the word of God will not fall into disrepute. Tell the young men to keep themselves completely under control and may you yourself not fail to set them good examples”.

In this text, which can be taken as an indication of instructing prospective couples even if it is one-sided, the author urges mature and more experienced women among the community to teach the young generation the virtues and values of marriage life. Young women in his view need good counsel on the burdens and problems of married life, on the nurturing of relationship. The young women are to be brought to their senses, counselled, advised, trained towards self-control and good discretion (v.4), by knowledgeable experienced women (cf.1Tim. 5:2). In fact, Paul believes without the right ordering of the domestic lives of younger women the whole society is likely to suffer profoundly. Seven aspects of moral education of young women were listed in the letter. Women would have to educate the young women on how to treat their husbands with affection. The same also applies with childcare. Women will also have to advise the prospective spouses on how better to love their children¹¹⁴.

They are to instruct them on how to be chaste, pure so as to secure the stability of the family. They are also to be taught how to become excellent cooks and housekeepers and home nurturers. This assumed an active life in governing, ordering and developing family and home, and the entire domestic sphere where young women preparing for marriage have unexcelled influence. They are also to be taught to be kind and good-natured. Lastly, women need the counsel of experienced women on problems connected with voluntarily submitting themselves to the order and welfare of the family. This is voluntarily ordering their lives in relations to the values of a stable family¹¹⁵.

Unfortunately, as usual with Paul, the word to young men was very briefly encompassed by a single broad moral instruction that they seek self-restrained temperance, passions, behave prudently and of course use good judgement (v.6)¹¹⁶. Whatever the case may be, though the instructions of the text seem to be wanting in regard to marriage equality, responsibilities and duties of both partners, it is needless to say that for a marriage to be successful young women and men have to take steps listed as yardsticks to guard their directions. These instructions might have also been directed to women because naturally they hold a very key position in the relationship and organisation of the family and home.

In our deliberations on marriage in the light of the bible, it becomes somewhat clear that polygamy and instructions about marriage were disadvantaged to the position of women in

¹¹⁴ Cf. Thomas C. Oden, *First and Second Timothy and Titus: Interpretation: A Bible commentary for teaching and preaching*, John Knox Press, Louisville, 1989. p116.

¹¹⁵ Oden, *First and Second Timothy and Titus: Interpretation*, p.117.

¹¹⁶Oden, *First and Second Timothy and Titus: Interpretation*, p.118.

society. As a result of these shortcomings, Mazor would end a deliberation on marriage in the bible with the following words: “What clearly emerges from the portrayal of women in the Bible is that they are intellectually inferior (deficient in comparison with males), morally deficient, lacking in integrity, and above all, they are subservient to man, his cattle and property. The Biblical text consistently belittles women and puts them down, stressing their insignificance and inferiority”¹¹⁷. These words of Mazor may be disheartening, but following the lines of some instructions about marriage in the Bible clearly show that the situation was not totally porous.

We may recall that in the teachings of the prophets, Jesus and other sources in NT, a kind of “positive change” was introduced to the understanding of marriage. Jesus’ reply to the marriage question and Pauline instructions, at least defeated the notion of seeing women just as “sexual merchandise”¹¹⁸ and the popular mentality that “woman is nothing but a womb”¹¹⁹ but rather as true partners in the relationship. The patriarchal marriage and other sexual relationships, which darkened the actual meaning of marriage for example, divorce (as quoted by Jesus in Mt.19), were protested against and the texts rather unequivocally affirm the equality of both wife and husband¹²⁰. Furthermore, notwithstanding some unpardonable mistakes of Pauline writers, most of his instructions to the communities were to break down the barriers that may hinder the true relation between man and woman. The instructions put man and woman as equal partners except that each player to the relation should identify his or her proper role in order to fulfil it with love and common interest.

3. Legalisation of the institution of marriage in the Church

We have seen in the previous section that the divine source and pastoral care for marriage preparation in the Church today may have its evolution and roots in scripture. Yet the actual transformation and organization of the themes into legal language start with the Romans who sought to define what makes marriages. The Romans came out with the first two ever-attempted legal definitions of marriage¹²¹. The objects of these definitions state: “Marriage is

¹¹⁷ Yair Mazor, “Cherchez La Femme, or Sex, Lies and the Bible, Exposing the Anti-Feminist face of the Biblical Text”, in *Scandinavian Journal of the Old Testament*, vol. 18 no.1 (2004), p.22.

¹¹⁸ Ibid.

¹¹⁹ Ibid.

¹²⁰ Cf. Ben Witherington, III, “Contemporary perspectives on Paul”, in: J. D.G. Dunn (ed.), *The Cambridge Companion to St. Paul*, Cambridge University Press, Cambridge 2003, p.261; E. Schüssler Fiorenza, *In Memory of Her Crossroad*, New York, 1983, p.235.

¹²¹ At first, marriage in the Roman society was family affair arranged by the father who possessed absolute rights over his children and wife. The man divorces the woman at will. Later marriage became part of centralised authority. Then certain marriages were no longer permitted such as marriage between citizen and slave, citizen and foreigner and between those of certain degrees of kinship. But the parties somehow permitted divorce, not by any special intervention of the state, but simply by the withdrawal of marital affection. The man’s family often took the lead in calling for the dissolution of the marriage. At this point, there was no specific marriage

a union of man and woman and a community of the whole of life, a participation in divine and human law”¹²². This definition was attributed to Modestinus¹²³. The other definition attributed to Ulpian found in the institutes of Justinian states: “Wedlock or marriage is a union of male and female involving an undivided habit of life”¹²⁴. Time and space will not allow us to go into the details of these definitions but there are few core themes we cannot overlook.

The definitions saw marital relationship foremost as between “man and woman”; “male and female”. These two phrases may have different interpretations; however, both indicated that marriage is strictly heterosexual union between man and woman; husband and wife with an intention of living together for the whole of life; and with sets of rights and obligations. Additionally, the definitions can be interpreted to mean that marriage comes about primarily as the result of a “will act”, that is, a presupposed intention of the parties to accept each other as husband and wife. We may infer from the above that marriage entails permanence and the full partnership of the whole of life in the spirit of complete sharing of all elements and experiences. The definition of Modestinus as quoted above presumed marriage both as human and divine realities¹²⁵. Nonetheless, the definitions do not necessarily exhaust all the characteristic features of what marriage in our understanding should be but as we shall see they become the source of reference and useful materials in canonical studies on marriage¹²⁶. Summarily, we can say that these definitions serve to focus attention on certain major strategies in the study of the canonical definitions in marriage.

3.1 Gratian’s attempted definition of marriage

In the course of the twelfth century, the Church began to develop an independent ecclesiastical legal system and the formation of marriage laws. From this point, the problem arose about what actually makes a marriage¹²⁷. The problem centred around two words: “Consent and consummation”, which were not stated in the definitions of Modestinus and

contract verbal or written. The central authority never touched the right of a man and woman to marry in whatever way they deemed fit. (Cf. William J. Bausch, *A new look at the sacraments*, p.215).

¹²² Charles Scicluna, *The essential definition of marriage according to the 1917 and 1983 codes of canon law: An Exegetical and comparative study*, University Press of America, Lanham, New York, London 1995, p.13; Paul Krueger and Theodore Mommsen (eds.), *Ex Corpore Iuris Civilis Editio Stereotypa Quarta Decima, Berolini*¹⁴ 1922 Digest (23,2,1); M Gerhard Höppler, *Nichteheliche Lebensgemeinschaften als Problem für das staatliche und kirchliche Recht*, Peter Lang, Frankfurt am Main 1999, p.15.

¹²³ Modestinus was Roman jurist and a student of Ulpian. He was one of the five jurists whose views considered decisive in resolving legal controversies under the Roman Empire.

¹²⁴ Charles Scicluna, *The Essential definition of marriage according to 1917 and 1983*, p.21.

¹²⁵ C.f. E. Albertario, *La definizione del matrimonio secondo Modestino*, Studi di diritto I (Persone e famiglia) Roma 1935, p.182.

¹²⁶ Cf. Thomas Doyle, “Marriage” in: J.A. Coriden, T.J. Green and D.E. Heintschel (eds.), *The code of canon law. A text and commentary*, study edition, CSLA, New York, 1985, p.740.

¹²⁷ Cf. Judith Walters Harvey, *The influence of the Reformation on Nürnberg marriage Laws 1520-1535*, The Ohio State University, 1972, pp.25-28; Rudolf Sohm, *Das Recht der Eheschließung*, Scienta, Aalen, 1966, p.109ff.

Ulpianus. They did not specify what actually makes marriage valid. The Church on the other hand was more interested in what actually makes a valid marriage with the knowledge that a mere coming together of man and woman to form a union or living under the same hut engaging in sexual intercourse cannot be deemed as a marriage. A valid marriage must point to something higher than mere union of man and woman.

Two schools of thought emerged in the process of determining what makes a valid marriage. We have the “consent school of thought” in Paris and the “consummation school of thought” in Bologna. The “consent school” which was represented by Paris jurists (Hugo St. Victor and Peter Lombard), maintained that marriage was brought into actuality by consent. This school maintains that consent of the partners given freely is required and is enough to bring an authentic marriage into existence. Without consent, even if sexual intercourse in human manner has taken place, marriage does not happen. The object of this consent was mutual love and help, not procreation of children. Consent alone makes a valid marriage¹²⁸.

The Bologna school on the other hand, represented by Gratian, the main architect of this school, contended that consent alone was not enough for marriage to come into existence. Sexual intercourse between the spouses was necessary as well. Gratian explained further that marriage becomes perfect and indissoluble when it is consummated. Consent at its best could only initiate a marriage because in a fragile situation, if a new union is formed with another person that was consummated, it supersedes a union made with consent alone. In that case the first one was cancelled out. According to Gratian then unconsummated marriage could conveniently be declared null and void but once it is consummated, it obtained a new status in the symbolism of the union of Christ to his Church and therefore could not be dissolved. This means that indissolubility is intimately linked to consummation¹²⁹.

According to this perception, it is only consummation that transforms the already consented union between woman and man into a formidable sacrament in which indissolubility becomes indispensable. In the final analysis, consent and consummation, that is, “consent-joined-to-coitus”¹³⁰ are two sides of the same coin. Eventually, Pope Alexander III (1159-1181) reconciled the dilemma of the two extremes into one whole. He agreed that the Gratian’s copulation theory and Peter Lombard’s consent theory¹³¹ are both important for the validity of marriage.

¹²⁸Cf. Ladislav Örsy, *Marriage in Canon Law: Texts and Comments, Reflections and Questions*, Michael Glazier, Wilmington, 1988, p.25; Carl Holböck, *Handbuch des Kirchenrechtes*, Bd.II, Gemeinschaftsverlag, Tyrolia Innsbruck / Herder Wien, 1951, p.605.

¹²⁹Cf. Örsy, *Marriage in Canon law*, p.25; Rainer Alfs, *Die außerordentlichen Formen der kanonischen Eheschließung im Licht der Lehre von der Sakramentalität der Ehe, Eine Untersuchung zur ekklesiologischen Bedeutung der Sakramentalen Eheschließung*, echter, Würzburg, 1993, pp.48-54; Markus Güttler, *Die Ehe ist unauflöslich! Eine Untersuchung zur Konsistenz der kirchlichen Eherechtsordnung*, Ludgerus Verlag, Essen, 2002, p.44ff.

¹³⁰Theodore Mackin, *What is marriage?*, Paulist Press, New York/Ramsey, NJ, 1982, p.163.

¹³¹ Cf. Richard Cunningham, “When Gratian worked for the Tribunal”, *The Jurist* 56 (1997), p.648.

The final synthesis of the debate considers mutual consent as creating a relationship between the couples that is incomplete, a relationship waiting to be completed in the immediate future when each party fulfils the promise made to convey to the other a good, namely, the right to sexual intercourse ordered to the procreation of children.¹³².

3.2 Definition of marriage in 1917 code

One of the earliest ideas in Christendom that influences tremendously the definition and teachings on marriage in the 1917 code was Augustine's doctrine on the goods of marriage. His doctrine was not so much a canonical definition of marriage but understanding the nature and the purpose of marriage. Nevertheless, the doctrine has greatly affected the canonical formulation of the 1917 code such that it cannot be left out in the discussion of the essential elements of the definition of marriage. For clarity we will briefly discuss the doctrine.

The first good of marriage is the *bonum prolis* (good of offspring). According to Augustine the purpose of marriage is the procreation of children. The intercourse between couples that goes beyond the need of procreation follows the dictates of lust but not of a reason. Moreover, the liberation from concupiscence does not belong properly to marriage. The good of marriage is that spouses are mandated to produce children and are obliged to give education that is suitable to their nature. This is presumed and identified as the primary end of marriage. The second good of marriage according to Augustine is the *bonum fidei*, the fidelity of the partners to each other. The violation of this fidelity, Augustine called adultery, in which one has intercourse with another man or woman contrary to the marriage agreement, either at the instigation of one's own libido or out of consent to another's libido. The spouses are obliged to be faithful to each other and forbidden to consent to the third party. Each of the spouses has a right to the body of the other in the manner suitable for marriage. This right to the body is in a way an obligation of the spouses to pay for the conjugal debt of marriage. This is also the protection of the marriage from the third party. The third good of marriage is the *bona sacramenti* (the indissolubility of marriage)¹³³.

Though the Augustinian teaching on marriage stresses the procreation as the major aim of marriage, the definitions we saw in Roman law on marriage, which we said, influenced the canonical doctrines on marriage left the procreative end of marriage unexpressed. Nonetheless, around the sixteenth century, the doctrine became more and more emphasised by canonists and moral theologians until the doctrine of mutual giving and acceptance of the

¹³²Cf. Cunningham, When Gratian worked for the Tribunal, pp.649-650.

¹³³ Cf. Elisabeth A. Clark (ed.), *St. Augustine on marriage and Sexuality*, The Catholic University of America Press, Washington D.C. 1996, p.32ff; St. Augustine. *De Bono Coniugali*. Trans. Charles T. Wilcox, The Fathers of the Church. The Catholic University of America Press, Washington, D.C. 1999, p.12ff.

right over the body of the spouses in function of the conjugal act became the normal way of explaining and formulation of the definition of marriage¹³⁴.

Moreover, the phrases “man and woman”; “male and female” used in the Roman definition become as it were in the canonical understanding as a declaration of the unity of marriage and also as an affirmation of the diversity of sexes essential to the conjugal bond in the 1917 code¹³⁵.

Another important terminology crucial to the formulation of the code was the *legitimacy* of marriage. The source of the term used in the code came from the definition of marriage by Peter Lombard¹³⁶. The “*vitae consuetudo*” is also used to legitimate marriage as sharing in the vicissitudes and fortunes of life together with the need to co-habit in one home. This phrase was then linked with particle *retinens* as a declaration of the indissoluble nature of the marriage, which the tradition of the Church deems as a fundamental element of marriage¹³⁷.

Unlike the Roman definitions of marriage which sleep over the procreation element of marriage, Thomas Aquinas in *Summa contra gentiles* on the other hand, goes back to Augustine’s good of marriage to stress the procreative end of marriage¹³⁸. To him also the union of man and woman in marriage is one of the highest expressions of friendship, and the only one ordained to procreation¹³⁹. He also teaches that marriage is a contract between man and woman such that the “contract” forms the source and basis of matrimonial union¹⁴⁰. The bond, which arises in marriage, signifies the union between Christ and his Church while the marital consent given in the marriage stands for Christ’s will to enter into such a union¹⁴¹.

Though the Roman law definition of marriage significantly influences the definition of marriage in the 1917 code, nevertheless, the 1917 canons with the help of later doctrines on marriage depart from Roman law model to introduce concepts such as *ius in corpus*, *dominium in corpus* and *ordinatio ad prolem*, while the Roman concept of individual

¹³⁴ Scicluna, The essential definition of marriage, p.37.

¹³⁵ Scicluna, The essential definition of marriage, p.38.

¹³⁶ Cf. Peter Lombard, *Sententiae in IV libris distinctae* (iv. Dist. XXVII, c.2). He defines marriage as “Sunt igitur nuptiae vel matrimonium viri mulierisque coniunctio maritalis inter legitimas personas, individuam vitae consuetudinem retinens”.

¹³⁷ Cf. Scicluna, The essential definition of marriage, p.39.

¹³⁸ Cf. . Scicluna, The essential definition of marriage p.40. See Thomas Aquinas, *Summa contra gentiles* 4,78: *Matrimonium, . . . , consistit in coniunctione maris et feminae intendentium problem aad cultum Dei generare et educare*”.

¹³⁹ Cf. Scicluna, The essential definition of marriage, p.37. Compare Thomas Aquinas, *Commentum in quartum librum Sententiarum magistri Petri Lombardi* d.27, q.1, a.1.

¹⁴⁰ Cf. Scicluna, The essential definition of marriage, p.41. Compare Aquinas, *Scriptum in IV libros Sententiarum* (d.31,q.1, a.2, ad 2 um *In matrimonio, cum sit quidam contractus, est quaedam promissio and coniunctio maritalis fit ad modum obligationis in contractibus materialibus* d.27,q1,a.2, q/a.3, sol.2.

¹⁴¹ Cf. Scicluna, The essential definition of marriage, p. 42. Compare Thomas Aquinas, *Summa contra gentiles*, 4,78; Thomas Aquinas, *quartum librum Sententiarum* d.27, q.1, a.2, q/a.3, ad 2um.

consuetudo vitae and *consortium vitae* tend to disappear¹⁴². In effect, we may say that the above clearly show how much the canonical development and doctrine owes to Roman law influence and terminology. However, in the course of generations the Roman definitions and formulations underwent textual changes and different interpretations with the purpose of transforming them to be more suitable to the canonical doctrine of the Church¹⁴³.

From the brief background given above, the 1917 code of canon law on marriage starts with the description of marriage as a sacrament, that is, a contract between two baptised persons (cf. 1012); the purpose and the essential properties of marriage (1013), declaring the presumption of the validity which marriage enjoys before the law. Jones defines the *contractus matrimonialis* as a “contract by which two competent persons of the opposite sex give to each other the exclusive and irrevocable right over their bodies (*ius in corpus*) for the procreation and education of children”¹⁴⁴. It is obvious that canon 1013 §1 adopts the distinction between primary and secondary ends already advocated by Augustine in his doctrine on the good of marriage¹⁴⁵. The first part of the paragraph limits marriage to the procreation and education of children while the second part considered to be secondary ends in marriage includes mutual help between the spouses and the remedy to concupiscence. As a matter of fact, there can be no classification of marriage into first and second classes. Remedy for concupiscence as stated in the canon classified marriage in abstract terms. Marriage on the other hand is a reality between parties. Hence, if we are speaking of marriage, we are speaking of persons in a particular relationship to each other rather than something beyond¹⁴⁶. We can also say that marriage per se does not exist. Man and woman do exist in space and time. It is man and woman who intelligently and freely create special relationship between themselves. Joint as one, the couple creates another relationship with their Creator who made them male and female, and thus made their married relationship possible¹⁴⁷. Marriage must have as its end the service of the human society.

Despite the insistence of the 1917 code on the procreation in marriage as primal, nevertheless, the spouses have as a duty to maintain the communion proper to conjugal life unless excused by some just cause (c.1128). According to canon 1086 §2, the exclusion of every right to the conjugal act invalidates marriage as a sacrament. In the function of the primary end, the marriage contract, according to the terms of canon 1015 §1, is expressly said to be ordained

¹⁴² Cf. U. Navarrete, “Influsso del Diritto Romano sul Diritto Matrimoniale Canonico” Atti del Colloquio romanistico-canonistico Roma 1979, 303-305.

¹⁴³ Cf. Scicluna, *The essential definition of marriage*, 40f.

¹⁴⁴ H. Jone, *Moral theology*, transl. U. Adelman, Westminster, Maryland, 1963, p.466

¹⁴⁵ Canon 1013 §1 states: “Matrimonii finis primarius est procreation atque education prolis; secundarius mutuum adiutorium et remedium concupiscentiae”.

¹⁴⁶ Cf. L. Ösry, “Christian Marriage: Doctrine and Law Glossae Canons 1012-1055”, *The Jurist* 40 (1980), p.302.

¹⁴⁷ *Ibid.*

towards the conjugal act which (on the first occasion after consent) consummates marriage and through which the spouses become one flesh¹⁴⁸.

4. The preliminary canons on marriage in the 1983 code

4.1. The focus of GS in relation to the revision of the 1917 code on marriage

One of the teachings of Vatican II which influenced greatly and has been a reference point for the revision of marriage laws in the 1917 code of canon law and the drafting of marriage laws in the 1983 code of the canon law is the pastoral constitution *Gaudium et Spes* (nos.47-52). It is in this document that the fathers of the Council actually give impetus to help us to understand the development of the Church's change of emphasis with regard to marriage and the family in the modern world¹⁴⁹. It has a pastoral orientation. Its primary purpose was not to enter too much into legal implications of marriages, but to educate the faithful to be more involved and to see the better part of marriage and family life in our turbulent world.

The section rather begins with the description of the gloomy picture that obscures the dignity of marriage and family in our modern world. It mentions polygamy, the plague of divorce and free love which disfigures the very nature of the institution of marriage. In addition, married love is too often profaned by excessive self-love, the worship of pleasure, and illicit practices against human generation. Furthermore, the council cited some external conditions, which may affect marriage and families beyond their good faith as modern economic, social, psychological, and the demands of civil society. Finally, in certain parts of the world problems resulting from population growth are generating concern. This entire unfortunate situation described above, according to the council fathers definitely produced anxiety of consciences and are detrimental to the expression and fostering of the good of marriage (cf. no. 47).

As we said earlier it was not the intention of the council to give a legal doctrine on marriage but to give a new meaning to the doctrine of marriage in the face of problems enumerated in no.47, such that the "teaching on marriage and the family in a clearer light in the hope of guiding and encouraging Christians and all others who are trying to preserve and foster the dignity of marriage and the family"¹⁵⁰ may be projected. They refer to marriage as the

¹⁴⁸ Cf. Scicluna, *The essential definition of marriage*, p. 85.

¹⁴⁹ Cf. Fintan Gavin, *Pastoral Care in Marriage Preparation (Can.1063). History, Analysis of the Norms and Its Implementation by Some Particular Churches*, Editrice Pontificia Università Gregoriana, Roma, 2004, p.47. See also J.A Renken, *the Contemporary Understanding of Marriage, An Historico-Critical Study of Gaudium et Spes 47-52, and its Influence Upon the Revision of the Codex Iuris Canonica*, Doctoral Thesis, Pontifical University of St. Thomas Aquinas, Rome 1981, pp.44-348.

¹⁵⁰ Gavin, *Pastoral Care in Marriage Preparation*, p.48.

intimate partnership of married life and love established by God and qualified it by his laws, duties and obligations. It is deeply rooted in the marital covenant of irrevocable and binding personal consent. It is a human act in which spouses mutually bestow and accept each other. The relationship that ensures and gives credibility by divine will and society is a lasting one (no.48). Gavin explains that since the message of the document is for all people and not just the Catholic faithful, the council fathers began by insisting that the natural dignity of marriage rendered *communitas vitae et amoris coniugal*, which comes from the fact that it is an institution of God, with its own regulations, norms, values and purposes¹⁵¹. In effect, God endorses marriage because the covenant does not depend on the capabilities of the couple alone. Kasper would insist that in the history of humankind, marriage may have taken many forms and may have had modes but its dynamic reality included both divine and human laws. Hence the good of the spouses and their offspring as well as of society, the existence of the sacred bond no longer depends on human decisions alone¹⁵².

It becomes clear according to the fathers of the council that “marriage is more than a social institution devised by man for his own convenience; marriage is an integral part of human existence, part of the creative plan of God designed to bring man to a unity of love. God is the author of the marriage institution as a human reality”¹⁵³. God Himself is the author of matrimony, endowed as it is with various benefits and purposes. All of these have a very decisive bearing on the continuation of the human race, on the personal development and eternal destiny of the individual members of a family, and on the dignity, stability, peace and prosperity of the family itself and of human society as a whole. Avoiding a hierarchy of ends, the fathers proclaim that marriage and marital love by their very nature ... are ordained for the procreation and education of children and it is in them that the ultimate crown of glory is found (no.48). Thus, it is seen that the council presents the procreation and education of children as an end connatural to marriage and love. In this relation then the good of marriage and family is that the procreative and personalistic aspects of marriage are intertwined¹⁵⁴. In other words, Vatican II corrected the classification of ends of marriage and put them rather in a unity form mutually completing and supporting each other.

Hence, in the revision of the 1917 code the question of ends stated in canon 1013 § 1 that “the primary end of marriage is the procreation and education of children; the second one is mutual help and remedy for concupiscence”¹⁵⁵ which has hitherto obscured the primal purpose of marriage has been addressed. The new approach in the revision perceives marriage as a

¹⁵¹ Cf. Gavin, Pastoral Care in Marriage Preparation, p.49.

¹⁵² Cf. Kasper, op. Cit. p. 73.

¹⁵³ H. LaCerte, “Theological Reflections on Marriage as a Humanizing Experience in a Dehumanizing world”, in: *Reflections in canon law and theology, Marriage Studies*, vol. II, Washington D.C., 1982, p.61.

¹⁵⁴ Cf. Scicluna, The essential definition of marriage, p.172.

¹⁵⁵ « Matrimonii finis primariae est procreation atque educatione prolis; secundariae mutuum adiutorium et remedium concupiscentiae“.

community of life and love, *communitas vitae et amoris coniugal*, for which the object of consent that institutes it is not simply the so-called *ius in corpus* (cf. CIC 1917 c.1081 §2), but rather the reciprocal gift of the couple themselves¹⁵⁶.

However, as Morris maintains, the new terminology *communitas vitae et amoris coniugal* is not a new formulation in the GS document. For instance, the definition attributed to Modestinus, contains the expression *consortium omnis vitae*. Peter Lombard chose the phrase ‘conjugal society’ (*coniugal* *societas*) and St. Thomas Aquinas referred to it as the ‘conjugal association’ (*associatio coniugal*). Two papal encyclicals also emphasised the significance of the partnership of conjugal love. Leo XIII includes within the ‘completeness of marriage... the mutual duties of husband and wife...to have such feelings for one another as to cherish always very great mutual love, to be ever faithful to their marriage vows, and to give another an unflinching and unselfish help’. Pius XI on the other hand presents an even more definitive statement regarding the spousal relationship as the formal object of marital consent. He explains that the mutual moulding of husband and wife, the determined effort to perfect each other, can be said to be the chief reason and purpose of matrimony. However, the difference by the new formulation directly equates the concept of partnership with the formal object of marital consent, which in the documents mentioned above did not. The concept, therefore, did not attain juridical status prior to the Second Vatican Council¹⁵⁷.

However, the good about the terminology in the present circumstance is that it brought an end to the avowed controversial classical presentation of the hierarchy of ends of marriage as procreation taking precedence and relegating mutual love to the background in the 1917 code. Mutual love is never again placed at the bottom of the ladder, but at par with procreation¹⁵⁸. Clearly, this is a major stride made by the fathers because “marriage is not just a remedy because it provides a legitimate forum for the release of sexual tension through sexual conjugal acts. Marriage, in so far as the spouses must provide for the bona, occasions opportunities for the exercise of virtue and releases the individual from the bondage of self, promotes one’s self-realisation (*bonum*) and one’s psychological and spiritual integration and

¹⁵⁶ Cf. Demel, *Kirchliche Trauung*, p.220; Libero Gerosa, *Canon Law*, Lit Verlag, Münster-Hamburg-London, 2002, p.190; U. Baumann, *Die Ehe- ein Sakrament?* Benziger Verlag, Zürich, 1988, p.134.

¹⁵⁷ Cf. Patrick S. Morris, *Alcoholism and Marital Consent: An Investigation of the Alcoholic’s Capacity/Incapacity to Exchange Valid Consent*, The Catholic Marriage Tribunal, London, 1999, p.126ff. Compare Thomas Aquinas, *quartum librum Sententiarum*, d.28, cc.3-4; Arcanum Encyclical of Pope Leo XIII on Christian Marriage, 10.02.1880 .http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_10021880_arcantum_en.html; C. Carlen (ed.), *the Papal Encyclicals, 1878-1903*, vol. 2, McGrath Publishing Company, Wilmington, NC, 1981; Encyclical of Pius XI, *Casti Connubi* 31 December 1930 http://www.vatican.va/holyfather/piusxi/encyclicals/document/hf_p-xi_enc_31121930_casti-connubii_en.html.(accessed: 15.7.2004).

¹⁵⁸ Cf. Örsy, *Marriage in Canon law*, p.36. We may add that with this teaching of Vatican II especially in *Gaudium et Spes*, the controversial Augustinian’s hierarchy of ends theory that haunted the Church for so long a time had been put to rest.

thus reverberates to the good of the other”¹⁵⁹. The partners are fruitful if they live and maintain that intimate partnership of life in a truly human manner.

Nevertheless, while the existence of a true marriage does not in any way depend on begetting children, since the aged and the sterile can marry, in context, it must be open to procreation as noted in the divine command: “Increase and multiply” (Gen. 1:28). In other words, the mutual love of the spouses is intrinsically linked to the reception of creation of new life¹⁶⁰. Additionally, natural reason and scientific knowledge also tell us that the meeting of a man and woman must produce the like if the spermatozoa and the ovum are active enough to form a zygote. Put differently, “the biological fact remains that marriage between a man and a woman will usually result in children. This fact remains a powerful human reality even if some married couples, by choice or circumstances, do not have children”¹⁶¹. Accordingly, marriage between man and woman sanctions not only the “intimate partnership of life”, but also the natural capacity of the couple to create and generate children¹⁶².

However, the most radical setback to the 1917 code’s definition of marriage was that it paid little attention to the legitimate desires and the needs of the individual persons as the fruits of the union, stressing rather the propagation of children as the primary end of the institution and making the acts apt for the generation of the offspring the principal object of the contract¹⁶³.

4.2 Covenant and Contract¹⁶⁴

In the revision of the 1917 code of canon law the members of the subcommittee (*coetus*) working on marriage unanimously agreed that to resolve the frustration in understanding the purpose of marriage a more suitable terminology is urgently needed to balance the “one-sided” contract terminology in the marital laws of the Church. The committee argued that *Contractus* seems to focus undue attention on a juridical notion of marriage as a source of rights and obligations¹⁶⁵. Theoretically, marriage as a contract is just a precise exchange of

¹⁵⁹ Patrick S. Morris, *Alcoholism and Marital Consent*, p.134.

¹⁶⁰ Cf. Augustine Mendonça and Patrick Morris, “Pathological Gambling and marital consent”, *Studia Canonica* 36 (2002), p.87.

¹⁶¹ *Marriage matters*, published by Catholic Organisation for Life and Family, Canada, 2004, p.4

¹⁶² *Ibid.*

¹⁶³ Cf. Norbert Lüdecke, *Genese und Exegese der Ehelehre der Konzilskonstitution “GS” in kanonistischer Auswertung*, Echter Verlag, Würzburg, 1989, pp.57-60; Örsy, *Marriage in Canon law*, p.35.

¹⁶⁴ For a concise treatment of Covenant and Contract see Peter Krämer, *Kirchenrecht I*, pp.102-103; Joseph Prader, “Die Ehe in der kirchlichen Rechtsordnung“ in: *Handbuch des katholischen Kirchenrechts*, Joseph Listl and Heribert Schmitz (Hrsg.), zweite grundlegend neubearbeitete Auflage, Verlag Friedrich Pustet, Regensburg, 1999, p.885ff.

¹⁶⁵ Cf. Thomas J. Green, “The revised Schema De Matrimonio: Text and reflections”, *Jurist* vol. XL (1980), p.66; Cf. A.T. Hanson and R.P. Hanson, *A survey of the Christian Faith*, Oxford University Press, Oxford, N.Y, Toronto, Melbourne, 1980, p.240.

rights, namely, the rights to each other's bodies for those acts needed for the procreation and education of children¹⁶⁶. Moreover, for the contract to be valid there had to be competent parties, pertinent matter, the proper intention, the ability to fulfil the terms of the contract, and an appropriate signing of the contract¹⁶⁷. For instance, a contractual agreement between a road construction Firm and a Government obliged the two parties to fulfil the elements in the pact but in certain cases a party can abrogate the pact if there is breach of contract. Each party is to fulfil the conditions set up in the agreement. In certain circumstances, both parties can call for the withdrawal of the agreement legally or through amicable means. In another way, the contract is terminated if the job is done or completed. From this point, the contractants have no longer any real relation in the foreseeable future.

Thus Palmer describes the difference between covenant and contract in the following: "Contracts deal with things, covenants with people. Contracts engage the services of people; covenants engage persons. Contracts are made for a stipulated period of time; covenants are forever. Contracts can be broken, with material loss to the contracting parties; covenants cannot be broken, but if violated, they result in personal loss and broken hearts. Contracts are secular affairs, covenant belong to the heart, the temple, or the Church. Lawyers, civil and ecclesiastical, best understand contracts; poets and theologians appreciate covenants better. People witness contracts with the state as guarantor; God with God as guarantor witnesses covenants. Contracts can be made by Children who know the value of a penny; covenants can be made only by adults who are mentally, emotionally, and spiritually mature"¹⁶⁸. In the same way, in a secular contract, a new status resulted, but in the Christian view of marriage, what results from the contract is something more than status - something akin to the relationship existing between parent and child or brother and sister. The relationship on this scale has new dimensions because the marriage is a God-given relationship¹⁶⁹. As a result of this inadequacy, the *coetus* settled on the covenant terminology of marriage.

Thus canon 1055 §1 of the 1983 code of canon law states: "The marriage covenant, by which a man and woman establish between themselves a partnership of their whole life, and which of its own very nature is ordered to the well-being of the spouses and to the procreation and upbringing of children, has between the baptised, been raised by Christ the Lord to the dignity of a sacrament". The covenant terminology in the context of the canon is an attempt to amend previously presumed understanding of marriage law, which saw the content of the contract as

¹⁶⁶ Cf. Bausch, A new look at the sacraments, p.229.

¹⁶⁷ Cf. Michael Place, "Familiaris Consortio: A review of its theology", in C. Curran and R.

McCormick (eds.), *John Paul II and Moral Theology*, Paulist Press, New York/Mahwah, N.J, 1998, pp.190-191.

¹⁶⁸ P.F. Palmer, "Christian Marriage, Contract or covenant?", *Theological Studies* 33 (1972) p.639.

¹⁶⁹ Cf. Timothy Briden and Brian Hanson, *Moore's introduction to English Canon law*, third edition, Mowbray 1992, p.72.

a right to acts fitting for procreation, while the good of the spouses, a vital aspect of marriage, declared a secondary end in the relation¹⁷⁰.

Gerosa, dilating on the conciliar text has this to say: “the accent on the personal character of this institution, at the base of every human society, casts a different light also on the traditional elements and is *in nuce* entirely contained in the idea of matrimonial covenant (*foedus coniugii*), that the fathers of the Council prefer to the traditional Latin concept of *contractus matrimonialis*”¹⁷¹. Again, he argued, “even if a more detailed analysis of the conciliar text shows that the terminological change does not mean a complete abandonment of the idea of contract, however, it cannot be denied that the term ‘covenant’ is theologically more adequate for expressing the personal and religious reality of marriage”¹⁷². It may be so because “this recaptures in itself and is also the elements that make of the institution of marriage a *sui generis* contract, that is to say a contract whose duration and whose essential juridical effects are removed from the whim of the contractants”¹⁷³. Explaining this discussion in other words, Gerosa contended that “the fact that according to the conciliar text those to be married do not stipulate a contract but a matrimonial law *contractus sui generis* is better expressed in the fuller concept of covenant, whose biblical origin better underlines that it is God himself who is the creator and founder of the institution of marriage: “*Ipsa vero Deus est auctor matrimonii, variis bonis ac finibus praediti*”¹⁷⁴. Thus the covenant terminology reassures and fully recaptures the divine character of the institution of marriage that also singles out the *proprium* that distinguishes marriage from any other contract and thus opens up the way towards a correct conception of marriage as sacrament of the Church¹⁷⁵.

In spite of the covenant terminology the 1983 code invariably retains the earlier criteria for the validity, sacramentality, and indissolubility of marriage. Covenant is mentioned only three times in the 1983 code. Canon 1055 mentioned *matrimonial foedus*; c. 1057 §2 mentioned it in relation to *foedus irrevocabilis* and in c. 1063 no.4 marriage preparation in relation to *foedus coniugalis*¹⁷⁶. Contract on the other hand was mentioned 40 times in relation to marriage. While admitting that with the covenant language in canon 1055, §1 of 1983 CIC, the legislator presumed to place the marriage law in a theological context, nevertheless the code never erodes or abrogates the contractual elements entrenched in the celebration of

¹⁷⁰ Cf. Bernard Häring, *Free and Faithful in Christ*, vol.3, St. Paul Publications, Middlegreen 1981, p.153.

¹⁷¹ Gerosa, *Canon Law*, p.190. For recent discussion on this theme see also J. Eder, *Der Begriff des “foedus matrimoniale” im Ehe recht des CIC*, EOS Verlag, St. Ottilien 1989; N. Lüdecke, *Eheschliessung als Bund. Genese und der Ehelehre der Konzilskonstitution “Gaudium et Spes” in kanonistischer Auswertung*, Würzburg 1989.

¹⁷² Gerosa, *Canon Law*, pp.190-191.

¹⁷³ Gerosa, *Canon Law*, p. 191

¹⁷⁴ Gerosa, *Canon Law*, p. 191.

¹⁷⁵ Cf. Gerosa, *Canon Law*, p. 191.

¹⁷⁶ Cf. Eder, *Der Begriff “foedus matrimoniale” in Ehe recht*, p.65.

marriage¹⁷⁷. What the legislator set off to do was to incorporate formally legal matter into the sacred context of marriage¹⁷⁸. We can only say that the terms covenant (c.1055, §1) and contract (c.1055, §2) refer to the same reality.

Besides, the relationship between contract and covenant could best be understood if we consider the replacing of contract in c.1055 with covenant as a move to a higher viewpoint. Therefore, writes O'Rourke: "In essence, therefore, there is no difference in saying that marriage is a contract or a covenant ... There is no doubt that the term 'covenant' has a more solemn ring to it than does the term 'contract', but whether one calls marriage a contract, a covenant or a compact, one is saying the same thing. Every covenant is a contract; every marriage is thus to be judged in contractual terms¹⁷⁹."

Similarly, it is being acknowledged that what the covenanting act creating a marriage creates is a 'contract' (a natural institution) and this contract between the baptised is a sacrament. The preference for the word covenant, in the opening paragraph of c.1055, is a reflection of a desire to express the dignity and sacredness of the marital state through the use of biblical language. The word "covenant" also captures the reality of the parallel between the Christ/Church relationship and the spouse/spouse relationship as expressed by St. Paul. The covenant between Christ and his people created the Church as a sacrament; the valid marital covenant between the baptised actualises marriage as a sacrament¹⁸⁰. This would imply that marriage is an entrenched juridical reality with rights and duties, grounded in the valid and legitimate celebration of marriage; however it must also reflect and express the dignity and sacredness of the marital state described in the vocation of married couples.

¹⁷⁷ Cf. Lüdecke, *Eheschließung als Bund*, p.257ff.

¹⁷⁸ Cf. Demel, *Kirchliche Trauung*, p.215. Demel seems to clarify the supposed contradiction between covenant and contract perceived in the 1983 code of canon law: Durch die Hervorhebung der Ehe als personale Lebens- und Liebesbeziehung der Eheleute zueinander ist es der Konzilsversammlung gelungen, denn vertraglichen Aspekt der Ehe ein dynamisches Gegenwicht zu geben, ohne deshalb den Vertragsgedanken aufzugeben. Denn auch nach der Lehre des II. Vaticanums kommt die Ehe durch den Konsensaustausch der Partner zustande; weil die Konzilsversammlung in ihrem pastoralen Bemühen mehr die menschliche Voraussetzung des Ehekonsenses, nämlich das personale Einverständnis der Ehepartner, im Blick hatte und weniger an der rechtlichen Ausgestaltung des Ehekonsenses interessiert war, zumal diese bisher zu einseitig betont war, hat es bevorzugt den mehr rechtlich gefärbten Begriff des Ehevertrages durch des biblisch geprägten und personal ausgerichteten Ehebundes ersetzt. Dieses Vorgehen ist für ein Pastorkonzil durchaus legitim, da es per definitionem die Ehe nicht als rechtliche Institution zu betrachten hat, sondern als personal-religiös zu gestaltende Wirklichkeit. Daher besagt der konziliare Austausch des Vertragsbegriffes durch den Bundesbegriff, dass die Vertragsvorstellung für den pastoralen Bereich der Ehe ungeeignet ist, nicht aber, dass sie damit auch in allen anderen Bereichen der Ehe, wie z.B. im Eherecht, nicht (mehr) zweckmäßig und daher generell abzuschaffen sei. To read more about this position see also: Krämer, *Kirchenrecht I*, p.104f.

¹⁷⁹ J.J. O'Rourke, "Thoughts on Marriage", *StudCan* 22 (1988), p.188.

¹⁸⁰ T. Mackin, *What is Marriage?*, Paulist Press, Ramsey, N.J., 1982, p.288; P.F. Palmer, "Christian Marriage: Contract or Covenant?", in: *Theologies Studies*, 33 (1972), p.636. See also Ignatius Gramunt, "The definition of marriage in the code of Canon Law", <http://www.catholic.net/RCC/Periodicals/Homilectic/06-96/2/2.html> (accessed 12.05.2005).

4.3 Why marriage is a sacrament.

We will begin to ask few hypothetical questions. How and when did marriage become a sacrament as instituted by Christ? Some believe that it is very difficult to trace the sacramentality of marriage to Christ, because Jesus Christ has never said anything about the matter and form of marriage¹⁸¹. Those who hold this view postulate that only a handful of modern day theologians will still hang on to the idea that Christ did intentionally, actually and personally raise the human institution of matrimony to the dignity of a sacrament. To speak of direct and immediate foundation of the sacrament by Christ will also be to stretch the historical evidence handed down so far. In addition, to postulate according to such opinions that the Lord raised the marriage of the baptised to the dignity of a sacrament (cf. c.1055, §2) may be an anachronistic form of a speech¹⁸². In the words of Bausch “marriage clearly existed before Christ, so how could there be a specifically Christian holiness attached to it”¹⁸³. We might therefore infer that “marriage as an institution is older than Jesus” because it predates the message carried by angel Gabriel to Mary. Above all the sacramentality of marriage was not considered until the eleventh century¹⁸⁴. It has been said that Christ’s participation in the marriage in Cana, and Paul as we have seen in Ephesians 5, comparing the union of Christ with the Church symbolises the union between husband and wife to concretise the biblical foundation of marriage as being a sacrament. Some may consider these propositions as nothing more than just good advertisements for marriage¹⁸⁵. These opinions somehow carried weight because in reality throughout his ministry Christ did not give any substantial and independent teachings on marriage to convince his hearers except on the question on divorce. His manifesto and agenda in Luke 4 did not suggest any searchlight on marriage. His focus did not centre on marriage and he did not explicitly declare marriage as one of those particular ritual actions (sacraments) through which his redemptive work is made fruitful to mankind.¹⁸⁶ Christ seems to consider marriage from a purely secular level and of human nature. In view of all this we may be tempted to conclude that marriage is a human reality since the dawn of human history. It became a sacrament bearing special graces in the era of Christianity¹⁸⁷.

¹⁸¹ Cf. Demel, *Kirchliche Trauung*, p.52. See also J. Ratzinger, „Zur Theologie der Ehe“, in: *Theologie der Ehe*, G. Krems und R. Mumm (Hrsg.), Regensburg 1969, p.82: „Die erste These, die sich von der katholischen Theologie ein Sakrament. Wenn man bei der klassischen Katechismusdefinition verbleibt, wonach Sakrament ein äußeres, von Christus eingesetztes Zeichen ist, das innere Gnade andeutet und bewirkt, besagt dieser Satz wenig, ja er ist in jeder Hinsicht fragwürdig: weder hat Christus die Ehe eingesetzt noch ihr ein bestimmtes äußeres Zeichen gegeben“.

¹⁸² Cf. Örsy, *Christian Marriage*, pp. 286-287.

¹⁸³ Bausch, *A new look at the sacraments*, p.230.

¹⁸⁴ Schillebeeckx, *Marriage*, p.330; Kasper, *Theology of Christian marriage*, p.32.

¹⁸⁵ Cf. Hanson and Hanson, *A survey of the Christian Faith*, p.238.

¹⁸⁶ Pospishil, *Eastern Catholic Marriage Law*, p.174.

¹⁸⁷ John T. Finnegan, “Marriage Law”, in: *A pastoral Guide to canon law*, ed. by George J. Dyer, Gill and Macmillan, Dublin, 1977, p.61.

In spite of the above perceptions, canon 1055 §1 teaches and recognises that the marriage between baptised man and woman is not only a covenant but also a sacrament instituted by Christ¹⁸⁸. In the plain words of the canon (c.1055 §1) the covenant, which the baptised couples establish between themselves, has been raised to the dignity of sacrament such that the understanding of marriage does no longer depend on human reality alone but has sacred dimension in relation to the saving work of Christ. While admitting that Christ did not make marriage a major topic in his doctrinal frameworks, we may also admit that his reactions and comments about the situation of marriage did revoke the old misunderstanding of marriage. Christ answers to his hearers emphasise love-saturated and valid marriage between man and woman is a sacred relation: divine handiwork of God. The presence of divine duties in marriage, which the entire community of people of God and partners must uphold, raises marriage above the level of a secular orientation into the status of a sacred alliance¹⁸⁹.

Besides, Christ may not have used the word ‘institution’ but the doctrine of the Church teaches that in a sense Christ instituted the sacraments of the Church¹⁹⁰. Therefore, we have a reason to re-examine this institution in the light of scripture. “Christ’s institution of marriage as a sacrament is found, rather, in those expressions of his will to ‘raise’ the natural law institution to the new order of grace ... by his active presence in Cana, by establishing a new people ruled by a new covenant and even more specifically, by abrogating the old law concerning divorce and re-establishing the original indissolubility of marriage”¹⁹¹. This means that we may not find scriptural evidence of direct institution of marriage by Christ, yet the sacramentality of marriage is grounded in his saving work¹⁹². This means that the redemption brought by Christ, which is continued here on earth now through ritual actions, makes it indispensable that Christ is legal author of marriage as a sacrament. Though, the institution of marriage as a sacrament by Christ is not very much glaring in the scripture, it is nonetheless implicit and founded in the fact of baptism (Cf. C.1055 §2) which initiates a person validly into the new dispensation. Thus, the totality of the relationship between husband and wife has been elevated to a sacrament of his redemption¹⁹³.

Moreover the sacrament of marriage is of its very nature of divine institution, yet the human will also enters into it and performs a most noble part. For the couples, inasmuch as it is a conjugal union of a particular man and woman, the sacrament arises only from the bond of

¹⁸⁸ Cf. GS 48.

¹⁸⁹ Cf. Andrew Mensah Amankwaa, *The Problematic of Divorce. A Dogmatic inquiry into the indissolubility of marriage, Extractum ex dissertatione ad Doctoratum in Facultate Theologiae*, Pontificia Universitas Urbaniana, Rome, 2002, p.44.

¹⁹⁰ Cf. J.S. Martins, *The Sacraments of the New Alliance*, Theological Publications in India, Bangalore 1988, pp.268-270.

¹⁹¹ Ignatius Gramunt, “The Essence of Marriage and the Code of Canon Law”, *Studia canonical* 25 (1991), p.369.

¹⁹² Cf. Doyle, *Marriage*, p. 741.

¹⁹³ Pospishil, *Eastern Catholic Marriage Law*, p.174.

love, free consent of each of the spouses; and this free act of the will, which each party hands “over and accepts” those rights proper to the state of marriage, is so necessary to constitute true sacrament of marriage that cannot be supplied by any human power. This freedom, however, regards only the question whether the contracting parties really wish to enter into matrimony or to marry this particular person; but the nature of matrimony is entirely independent of the free will of man, so that if one has once contracted matrimony he is thereby subject to its divinely made laws and its essential properties¹⁹⁴.

The Church did not only teach that marriage was instituted by Christ but that marriage as a sacrament has juridical significance. Canon.1055 §2 recognised that every valid marriage entered into between two validly baptised matured persons within or outside the Catholic Church is of its nature a sacrament. The canon did not make any distinction between the sacrament and contract. “This reflects the fact that a natural marriage contract becomes, by reason of the baptism of the spouses, a sacramental covenant”¹⁹⁵. We must understand that the earlier canonical doctrines on marriage did not talk about the relation between marriage contract and the sacrament. The emphasis placed on the identity of contract and sacrament carried over from 1917 code (cf. 1012 §2) came as a result of the eighteenth and nineteenth centuries secularisation and the increasing attacks of certain European civil governments challenging the Church’s jurisdiction over marriage. The intention behind these attacks was to gain total control over the institution of marriage.

However the Church came strongly to defend the fact that the contract of marriage cannot be separated from the sacrament. In fact the primary force of their argument focused on the sacramental reality as integral to the human institution of marriage; i.e., in sacramental marriage the sacrament is not merely extrinsic to marriage nor does it stand as an accessory to the contract of marriage. If marriage were a sacrament then the totality of marriage is sacramentalised¹⁹⁶. According to canon 1055 § 2 the sacramental character can exist only in a marriage in which both partners are baptized. Since marriage follows the contract, and the contract necessarily presupposes equal distribution of rights and duties upon either partner, sacramentality also has to exist for both or neither. Consequently the sacramentality can be verified only if both are baptized and thereby become capable of other sacraments¹⁹⁷.

In the discussion to follow, if canon law and theology see marriage as a sacrament, what are the form and the matter of it? In marriage, the couples are the ministers of the sacrament of marriage, the priest is the official witness of the Church, who receives the manifestation of

¹⁹⁴Pius XI, Enc. *Casti Connubii*, n. 6.

¹⁹⁵ Doyle, Marriage, p.741.

¹⁹⁶ Cf. Raymond Finn, “Faith and the sacrament of marriage: General conclusions from an historical study”, *Marriage Studies* 3 (1985), p.107.

¹⁹⁷ Pospishil, Eastern Catholic Marriage Law, p.176.

consent and confers the blessing (cf.c.1108). Leo XIII explains that marriage is a sacrament, because it is a holy sign, which gives grace, showing forth an image of the mystical nuptials of Christ with the Church. The form and image of the nuptials is the very bond of that most close union in which man and woman are bound together in one; which the bond is nothing else but the marriage itself. As a result, it is clear that among Christians every true marriage is, in itself and by itself, a sacrament; and that nothing can be further from the truth than to say that the sacrament is a certain added ornament, or outward endowment, which can be separated and torn away from the contract at the caprice of man¹⁹⁸.

Though Christ did not say anything about the form and matter of marriage, St. Thomas Aquinas in his treatment of sacramental sign gives us a help to understand why marriage is a sacrament on the basis of the understanding we get from the definition of sacrament as a sign. According to him the visible sign in marriage is made up of those sensible acts that take place with the exchange of vows or consent; the matter of this sign is the giving and accepting of each other as husband and wife, the ratification and consummation of the marriage, and the form is the external manifestation of consent. The things signified and contained in the sign is the bond that is established between the baptised and the bond is itself a sign of that indivisible union between Christ and the Church, the supernatural effect (grace), is produced¹⁹⁹. The interpretation of this in the real terms is that the sacramental sign in marriage consists of matter and form whereby the mutual and legal surrender of each partner of everything in the sphere of marriage indicated by words or signs expressing the consent from the interior is the matter of the sacrament of marriage. The form of the sacrament is mutual legal acceptance of their bodies for the purposes of all that marriage entails. Therefore the matter is the mutual offer made by the words or signs showing the genuine innermost consent to the bond²⁰⁰.

If all the important elements that qualify marriage to be a sacrament are present, what grace then does it give? The grace in the sacrament of marriage corresponds to the fruits of the marriage in that the marriage becomes the source of blessing and peace to spouse. As a saving reality, the grace will bring the spouses to holiness. Their love, manifested in fidelity, passion, fertility, generosity, sacrifice, forgiveness, and healing, makes known God's love in their family, communities, and society. This Christian meaning confirms and strengthens the human value of a marital union²⁰¹. As a sacrament, marriage reflects the covenant between Christ and his Church and is the efficacious sign of this New Covenant. It is symbolised in marriage by the reciprocal and indissoluble commitment of the spouses²⁰². This became an

¹⁹⁸ Leo XIII, Enc. Arcanum, no.24.

¹⁹⁹ Cf. St. Thomas Aquinas, *Summa Theologiae*, Supplementary, q.42,a.1.

²⁰⁰ Cf. Siegle, *Marriage According to the new code*, p.11.

²⁰¹ CCC. nos. 1612-1617; 1641-1642.

²⁰² Cf. Doyle, *Marriage*, 750.

outward sign of his inner love, and the grace derived from the sacrament was to assist the couple to grow in that vocation of holiness and the performing of their married duties and obligations in line with the divine demand²⁰³. Consequently, the couple in marriage receive in this institution a special mission of the Church to co-operate in the fulfilment of salvation by those actions, which are proper to the nature of marriage²⁰⁴.

Moreover, the salvation and grace efficaciously transferable by the sacrament of marriage, in fact, encourages the Church to protest against and consider it invalid, a marriage validly contracted which went through a civil or customary among baptised persons however deep and real their love might be. Therefore, it is acceptable according to the Church to break the validly civil or customary bond and the existing families in order to celebrate a sacramental marriage. Only then, do the couple come under the norm that what God has joined together, must not separate²⁰⁵.

4.4 Unity and indissolubility of marriage

Unity and indissolubility are identified to be essential properties of marriage and according to c.1056 they acquire in Christian marriage a distinctive firmness by reason of the sacrament. Marriage of every kind is foremost exclusive and permanent as a demand of natural law. But in the Christian marriage, these properties acquire a special firmness in that their absence readily makes the contract invalid²⁰⁶. In any case, these properties are the life-soul of a Christian marriage ordered to be permanent, watertight and totally sealed against the third party. For this reason, if through a positive act of the will either or both parties should exclude marriage itself, some essential element or an essential marriage, then it is invalidly contracted (cf. c.1101 §2).

In the same way, the code indemnified these essentials of marriage to say, “A person who is held to the bond of a prior marriage, even if it has not been consummated, invalidly attempts marriage. Even if the prior marriage is invalid or dissolved for any reason whatever, it is not on that account permitted to contract another before the nullity or the dissolution of the prior marriage has been legitimately and certainly established” (c.1085). Again, the code maintained that the primary effect of marriage, i.e. the bond, is of divine law in the sense that no amount of witchery can prevent or negate its permanency: “From a valid marriage arises a bond between the spouses which by its very nature is perpetual and exclusive; furthermore, in

²⁰³ Cf. Bausch, *A new look at the sacraments*, p.231.

²⁰⁴ Cf. Pospishil, *Eastern Catholic Marriage Law*, pp.174-175.

²⁰⁵ Cf. Juan Segundo, *The Sacraments today*, transl. By John Drury, Gill and Macmillan, Dublin, 1973, pp.81-82.

²⁰⁶ Whether marriage from the very beginning was a union between a man and a woman, and indissoluble is another matter.

a Christian marriage the spouses are strengthened and, as it were, consecrated for the duties and the dignity of their state by a special sacrament” (c.1134)²⁰⁷. The exclusiveness and indissolubility of the relationship that binds the spouses (cf.c.1056) are required, as the Church has always taught, by the good of the spouse as well as the good of the children.

Indissolubility as one of the essential properties of marriage means that the matrimonial bond which is the core of the union is permanent for life. It is believed that a marriage legally and validly celebrated creates a covenant between the parties which cannot intrinsically or extrinsically be put asunder. The intrinsic indissolubility means that the couples are not allowed to dissolve the contract by themselves. They cannot terminate the bond either by a party or both parties. In short, the contract cannot be terminated from within the parties. The extrinsically indissolubility means that the bond cannot be dissolved by a third party. No authority either civilly or ecclesiastical in anyway even if the request comes from the parties themselves can terminate the bond²⁰⁸.

Marriage, therefore, properly celebrated and consummated created an indissoluble metaphysical bond between man and woman. The bond had been created by God and therefore could in theory under no circumstances be broken. The Church from the beginning had done everything under her power to protect this divine law and had disliked divorce, and tried to avoid its occurring when possible, but she had in the early centuries never regarded divorce as metaphysically impossible, but as simply something that could not happen²⁰⁹.

However, theology and Canon doctrine constantly maintain that it is simply not within the Church’s competence to recognise a divorce as something which sets the parties free to contract new marriages with other partner. No matter how great the powers delegated to the Church by our Lord, the Church’s authority is still only a delegated authority and cannot be exercised outside the framework of the divine law. It is never within the competence of the Church to declare that a man and woman who contracted marriage validly ceases to be husband and wife just as it is not within her competence to declare that the relationship of parent and child is dissolved. Law may destroy the legal nexus between parent and child, but the natural bond as parent and child still remains. Similarly, the secular courts may dissolve the legal nexus of sacramental marriage; still the parties remain husband and wife in the eye of the divine law. None of the parties to a contract is incapable during the lifetime of the other

²⁰⁷ Cf. Krämer, Kirchenrecht I, p.109ff; Klaus Mörsdorf, *Lehrbuch des Kirchenrechts, auf Grund des Codex Iurius Canonici*, Band II, Verlag Ferdinand Schöningh, München, 1967, p. 138f.; U. Luz, *Das Evangelium nach Matthäus (1-7)*, Zürich-Einsiedeln-Köln 1985, 268-279; H. Schürmann, „Neutestamentliche Marginalien zur Frage nach der Institutionalität, Unauflöslichkeit und Sakramentalität de Ehe“, in: *Kirche und Bibel. FS für E. Schick*, Paderborn 1979, 409-430; Zapp, *Kanonisches Eherecht*, 35f.

²⁰⁸ Cf. Matthäus Kaiser, „Grundfragen des kirchlichen Eherechts“, in : *Grundriss des nachkonziliaren Kirchenrechts*, Joseph Listl u.a (Hrsg.) Verlag Friedrich Pustet, Regensburg 1980, pp.541f.

²⁰⁹ Cf. Hanson and Hanson, *A survey of the Christian Faith*, p.238.

to contract a true and valid marriage with a new partner²¹⁰. A marriage once validly regularised without no dubious intention persists the whole life, and the power of love though invisible, makes it impossible for one partner to enter a new union thus short-circuiting the possibilities of a love given forever to someone through covenantal behaviour who is still alive²¹¹.

Even though canonical doctrine has always been pious to the teaching that marriage which has been ratified and consummated (cf. C.1062 §1; C. 1141) is indissoluble, today's jurisprudence of the tribunal concept of declaring marriage "void and null" has elastically stretched to cover so many possibilities that it looks as if the Church might as well recognise the possibility that marriage can ever cease to exist. It may appear so because judges seem to be discovering all sorts of new reasons for deciding that marriages have in fact never taken place²¹². Moreover, it appears we cannot speak of "absolute indissolubility" of marriage because in some way the Church has had recourse to the so called Pauline and Petrine privileges (cf. cc.1142, 1143) to dissolve marriages.

However, we should bear in mind that though "absolute indissolubility" seems to be a mere phrase, if one considers the replacement of the term "dissolution" with the phrase "null and void", it does not mean that the Church freely allows dissolution of marriages. There are some marriages in fact, which did not exist or happen because they lack the impetus of a real and valid marriage. The nature of marriage "is a reality that either exists or does not exist"²¹³. It exists if it is legally and validly contracted and it does not exist if its important elements are defective before the marriage was seemingly celebrated.

²¹⁰ Cf. Briden and Brian Hanson, Moore's introduction to English, p.73.

²¹¹ Cf. Segundo, The Sacraments today, p.83.

²¹² Cf. Hanson and Hanson, A survey of the Christian Faith, p.238.

²¹³ Francisco Javier Urrutia, "The Internal forum solution, some comments", Jurist XL (1980), p.135.

Chapter II

Customary marriage in Ghana

In the preceding chapter we made the effort to tackle the question of the genesis of the institution of marriage outside and within Christianity; and how the Church formally enacts laws to regulate it. The above first chapter was to serve as a general knowledge and background to understanding the institution of marriage in anticipation of how effective pastoral care for marriage preparation can be achieved especially in Ho Diocese. In this chapter, we shall look at the notion of marriage from an African perspective²¹⁴ and some of the urgent pastoral problems related to it.

Urrutia, in an article, establishes that the perception from many quarters in recent times, especially from African canon law students, theological researchers and social writers is that the Church's laws regulating marriage do not take the principles that guide African cultural perspectives of marriage into account in the formulation of the universal marriage laws of the Church²¹⁵. Unfortunately, as he observes, these upheavals and claims of these African researchers and writers "do not seem to have had a visible influence either on academic teaching on marriage or on the official teaching of the Church"²¹⁶. This can clearly be seen in the revision of the 1917 CIC and the promulgation of the 1983 code²¹⁷, which made no substantial inroads to settle the crisis between the African customary marriage and the Christian marriage in a more suitable way to allow the Catholic faith to have a solid ground among the people of Africa. Logically, we can infer from this notion that Traditional African ideals of marriage seem to be opposed to the principles of canonical laws on marriage²¹⁸. Likewise, the conclusion to be drawn is that traditional African marriage might be thought to

²¹⁴ We intend to dilate more on customary marriage from the Ghanaian perspective but from time to time references will be made to include the whole of Africa especially sub-Saharan African. The reason being that the core elements in the traditional African marriages are almost the same everywhere but the mode of celebrating may differ from country to country, society to society and even in the same ethnic group.

²¹⁵ Francisco Urrutia, "The Challenges on Canonical Doctrine on Marriage Arising from Africa", *Studia canonica*, 23 (1989), p.5f; T.P. Kolisang, *Matrimonial Consent Among Southern Basotho (Southern Africa)*, excerpta ex dissertatione ad doctoratum in Facultate iuris canonici Pontificiae Universitatis Gregorianae, Romae, 1988, p.1. Kolisang maintains that "the canonical concept of marriage does not quite correspond to the African concept"

²¹⁶ Urrutia, *The Challenges on Canonical Doctrine on Marriage Arising from Africa*, p.6.

²¹⁷ In the revision of marriage laws, the coetus on several occasions specifically refers to concerns expressed by African bishop conferences as regard to the impact of Church law on the African socio-cultural situation. In the can 295 §1 schema 1975 (can. 1081 §1 1917 CIC) on the notion of marital consent, one African episcopal conference stated that African marriage is a progressive event involving the prospective couples and their families; accordingly it is difficult to determine precisely at what moment consent is definitely expressed. However the coetus ignoring the matter respond that there is a point at which one can verify true marital consent in relationship to which the other marriage rites are preliminary in character. See Green, *The revised Schema: De Matrimonio*, p.67.

²¹⁸ In recent times Benedict XVI made similar comments to Ghana Bishops in the 'Ad Limina'. We will take up these comments in the last chapter of this work.

have been inadequate or rather to be in a confused state and therefore has been left out in any serious deliberation in the formulation of regulations in the Church.

It must be remembered that as far back as the 1980 synod of bishops, and more recently in the 1994 African synod, the question about how to raise African customary marriage to become a truly sacramental celebration of marriage was vigorously pursued; however, to the surprise of many, the matter was again left to the African hierarchy to come back home and decide once more what to do; which is a nice way for the Church to delay the necessary reforms still needed to make the marriage laws in the Church take on a global face. In the same vein, the Symposium of Episcopal Conferences of Africa and Madagascar (SECAM) could also not effectively address the issues of traditional or customary marriages on the continent.

The above remark about the Church's stand to alienate African traditional marriage should not be seen or considered as suggesting that a chapter should be inserted or opened in the code just to deal with related African marriage issues because we are aware that the structural reality of marriage is neither African, Asian, American nor European. It is a human reality, the same everywhere. The human person, in its essential objective elements and demands, is identical everywhere. Nevertheless, the expression of this reality varies from culture to culture without obliterating the fact that marriage is an alliance between man and woman. This alliance between man and woman can be defined differently in cultures²¹⁹. This differential variety gives us the reason why each culture is to be studied carefully in order to synthesise the major elements into one reasonable entity caring for all. If this fact is ignored we may end up forming biased laws that relegate some important values in some cultures to the periphery.

The issue of African customary marriage is to be once again opened to study so that the necessary studies are made in that some kind of allowance is given for the integration of all people to the faith, because all said and done, the African despite rapid social change and Christianity still hold on to fundamental values inherent in the customary marriage.

For instance, the problem of polygamy²²⁰ should not be totally relegated to the background as a phenomenon to be indexed in the archive of the unknown. Other values of the culture such as bride-wealth and the preparation and celebration of marriage in the African traditional system must be of great concern for the Church.

²¹⁹ Cf. Urrutia, *The Challenges on Canonical Doctrine on Marriage Arising from Africa*. p.10.

²²⁰ Polygamy is used henceforth to mean a man with many wives since its opposite is not an African phenomenon. There is no known case in Africa where a woman may validly marriage to two or more men simultaneously. However, we cannot deny the fact that some women have two or more sacred lovers at the same time.

In this part of the work we shall therefore be dealing with the above raised issues in the African system of marriage²²¹. We shall also try to find out how these value systems can help the African to be more accessible to the demands of effective marriage life as demanded by the Church. The understanding of the African marriage system is obligatory because it is unlikely that marriage preparations would be effective in Ho diocese, for that matter Ghana and Africa, if customary marriage and other related issues of the African culture are not seriously reconsidered not forgetting the Christian message. The treatment of the notion of marriage in the African context, we believe, will help animators or those to be in charge of preparing prospective couples for the celebration of marriage in the diocese to have a better idea and understanding of value systems of the traditional society.

We will also tackle different positions of the African woman. We believe that cultural practices and doctrinal issues in African traditional society in which women are subjected to inhuman practices can have no positive bearing on effective marriage life and as such must be eliminated. Women are not to be subordinated, or denied their natural rights, but we must also respect the division of labour which characterises the African home thus giving a kind of tranquillity in the family. Division of labour is very much esteemed in African societies. This is not to suggest that “helping-hands” are to be denied in times of difficulty in one’s performance of his or her duty. SECAM described the division of Labour as follows: “The principle of the division of labour within the family ensures that idleness is reduced to a minimum. Men know exactly what the lineage expects of them and try to be faithful to it. Women have their work and do it honourably and joyfully. Boys know what is expected of them and try not to be found wanting. Girls are trained to do their chores well. The combination of performances of the duties of the different groups makes an ideal family”²²².

²²¹ We can summarise the traditional African views on marriage as follows: Ehe dient einem Bund, der nicht nur einen Mann und eine Frau, sondern auch die Großfamilien oder die Stämme der Gatten verband. Die Großfamilie oder Stamm des Mädchens gab das Mädchen als Frau der Großfamilie oder dem Stamm des Bräutigams. Die Hingabe des Brautpreises durch die Familie des Bräutigams diente einem doppelten Zweck: Einmal bestätigte sie die Übernahme der Verantwortung für das Mädchen durch die Familie des Bräutigams; zum anderen diente sie der Solidarität der Mitglieder der Familie der Braut, denn jedes Familienmitglied erhielt einen Anteil des Brautpreises. So wurde ein Bund zwischen den zwei Gruppen und nicht zwischen den Partnern geschlossen. Die Ehe diente der Begründung größerer, friedentiftender Familienbeziehungen. Sie humanisierte und personalisierte die Beziehungen zwischen den Völkern und hob die Feindschaft zwischen verschiedenen Stämmen auf. Die Ehe verband als Vertrag aber auch den Mann und die Frau und legte ihre Ansprüche und ihre Verpflichtungen gegenüber dem Partner fest. Dieser Vertrag definierte die Zwecke der Ehe für den Mann und für die Frau. Der Mann heiratet, um eine Frau zur Verfügung zu haben, die seine sexuellen Bedürfnisse befriedigt und für ihn arbeitet. Für den Mann ist die Ehe die gesetzliche Einrichtung für die Erzeugung von Nachkommen. Die Frau heiratet, um von dem Mann geschützt und versorgt zu werden. Ihre moralische, wirtschaftliche und gesellschaftliche Sicherheit wird durch den Mann gewährleistet. Die Frau trägt auch, manchmal mehr, zu dem moralischen und wirtschaftlichen Leben der Familie bei. Wenn die Monogamie die Idealform der Ehe war, so war die Polygamie die logische Konsequenz der traditionellen Eheauffassung: Für die Frau ist sie eine Befreiung; dank ihrer Mit-Ehefrauen könne sie sich von Zeit zu Zeit aus der Fron des Ehelebens lösen und sich mit ihren persönlichen Angelegenheiten und eigenen Wünschen befassen. See Jean Masamba Mpolo, „Polygamie und Familie Identität und Seelsorgeprobleme der Afrikanischen Kirchen“, in Hanns Engelhardt (Hrsg.), *Die Kirchen und die Ehe, Beiheft zur Ökumenischen Rundschau*, Nr. 46, Verlag Otto Lembeck, Frankfurt Am Main, p.78.

²²² SECAM, Inst. Lab. n.63.

We will so discuss the understanding and positions of SECAM in respect of African customary marriage.

1. The conception of marriage in Ghana.

There is no universally accepted definition of customary marriage in Africa. Fundamentally, as we have already hinted, marriage is the accepted institution by which a family life is established and maintained all over the world. African customary marriage is no exception since the ideals about marriage are almost the same for all people. However, although marriage creates a contractual status, the validity of that contract depends upon the personal law of the parties or upon statute; there are cultural differences as regards to a particular people or societies.

Since marriage as an institution is not easy to define without entering into unfinished debates and controversies, our attention will be turned to an overall understanding of marriage in Ghanaian society. However, the word for marriage in Ewe (Ewe) language²²³ is *srɔɖɛɖɛ*. The root verb *srɔ* means “to learn”. Therefore *srɔɖɛɖɛ* literally means to be in position to learn. Therefore *srɔɖɛɖɛ* is a learning process. The couple must continue to discover each other everyday in their marital and family life until death separates them. In other words, marriage is a “learnt-process” to cover the whole of life.

Thus, prior to the Marriage Ordinance 1884 (based significantly on the law of England) and the Marriage of Mohammedans Ordinance 1907 amended in 1951, there was only one legally recognised marriage in Ghana: marriage under customary law, i.e. the personal law of the Ghanaian. Therefore there are three systems of marriage recognised by the family law of Ghana. These are: a) customary law marriages, which the sovereign state of Ghana recognises as a valid marriage provided the laid down laws and regulations have been followed²²⁴, which

²²³ Ewe is the language spoken by the Ewe tribes in Ghana, Togo and Benin.

²²⁴ Customary Marriage and Divorce (Registration) Law 1985 (P.N.D.C.L. 112). Amended 1991 P.N.D.C.L. 263. In the revision of the laws of Ghana this becomes part one of Marriages Act 1884-1985 (cap 127). This Law provides for the registration of customary marriages. On the commencement of this Law any marriage contracted under customary law before or after the commencement shall be registered (S.1)

Either party to the marriage or both parties shall apply to the Registrar of Marriages of the District in which the marriage was contracted for the registration of the marriage in the register of marriages. (S.2 par. 1).

The application shall be made within three months of the marriage, and an application for the registration of a marriage contracted before the commencement of this Law shall be made within three months of such commencement. (S.2 par. 29)

Customary Marriage and Divorce (Registration) Law 1991 P.N.D.C.L. 263.

This Law that came into force on 20th August 1991 makes it no longer compulsory to register a marriage contracted under customary law before or after the commencement of P.N.D.C.L 112. Section 1 of P.N.D.C. L. 236 states that the word *shall* in P.N.D.C. 112 should be amended to read *may*.

vary from society to society or ethnic group to ethnic group; b) Marriage Ordinance and c) Marriage of Mohammedans Ordinance. Although these three types of marriage are distinct and have different implications, a marriage between two Ghanaians under either of the two enactments (Marriage Ordinance and Marriage of Mohammedans Ordinance), can properly be described both socially and legally, as combined customary and statutory marriage. This is so because there is hardly a case of a marriage celebrated in Ghana under any of those two Ordinances or in a foreign country under some other law, which is not preceded or followed afterwards by performance of all the essential rites of a valid marriage under customary law²²⁵.

However, ordinance marriage, that is marriage celebrated according to “Register’s certificate” or marriage officer’s certificate (in this case Church marriage)” or according to the Principal Marriage Officer’s Licence” is strictly monogamous. Accordingly, any person married under Ordinance is legally barred and shall be incapable during the continuance of such marriage of contracting a valid marriage under customary law. The offenders are to be punished by imprisonment. Nevertheless the actual enforcement of the penalty remains a paper work. According to Allot: “the restriction merely represents the attitude of Western or Westernised legislators or Judges; and there appear to be practically no prosecutions under the criminal code for this sort of offence. Africans married under the marriage ordinance do in fact continue to exercise their customary power to take additional wives by native law and custom; and the people recognise such customary unions as valid, despite the legislator”²²⁶.

In the revision of marriage and family Laws of Ghana in 2005 these three types of marriage were no longer seen as different entities such as “Customary marriage and Divorce (Registration) Law 1985 (PNDCL 112); the marriage of Mohammedans ordinance (1907) and the marriage ordinance, 1884 (cap 127) but grouped under one umbrella called “Marriages Act, 1884-1985 (cap 127)”. However, they were separated into parts 1 (customary marriage sections 1-19), part 2 (Moslem marriages sec. 20-34) and part 3 (Christian and other marriages, sec. 35-85). We must also add that though the state recognises these three types of

Whilst S.2 (1) of P.N.D.C.L. 112 states that where a marriage has been contracted under customary law, either party to marriage shall apply to the Registrar for registration of the marriage, S.2a of P.N.D.C.L. 263 says that either party may do so.

Section 2(2) of P.N.D.C.L 263 is as follows:

Application for the registration of the marriage may be made any time after the marriage except that the minister of Justice any time prescribes periods within which failure to register customary marriages contracted before or after the commencement of this law shall be an offence. The registration requires an affidavit to be sworn by the family heads or their representatives of parties to the effect that the marriage has taken place and the necessary customary rites had been duly performed. These affidavits are to be filed with the proper district or municipal or metropolitan council upon a payment of a fee and the issuing of certificate of marriage.

²²⁵ Cf. N.A. Ollennu, “Family law in Ghana”, in *Association Internationale des Sciences Juridiques*.

International Association of Legal Sciences. Le Droit de la Famille en Afrique noire et a Madagascar. Surveys made at the request of UNESCO. Directed by Kèba M’baye, editions G.P. Maisonneuve et Larose, Paris 1968, p.160.

²²⁶ Antony Allott, *Essays in African Law*, Butterworth, London, 1960, p.214.

marriage, which follow the laid down procedures as valid, the Church on the other hand, accepts customary and civil marriages as legal but considers them invalid. The Church in Ghana does not admit the couples in the latter category to the Eucharist²²⁷ and they are sometimes forbidden to hold a responsible position such as *Hamedada* (Christian mother), *Hamemega* (Head Christian or Church President) or catechist in the Church. Nonetheless, among these three types of marriage found in Ghanaian society the customary marriage forms the basis of all.

Customary marriage has all elements, which make a marriage legitimate and valid. In the customary marriage there is a distinction between “constitutive acts” and “declaratory acts” just as in all laws of marriage. This makes customary marriage as good and valid as any other marriage. The “constitutive acts” are those acts without whose performance a marriage cannot be said to come into existence in legislation. The “declaratory acts” are those whose performances only go to publish an already existing marriage to the community at large²²⁸. The above classification of marriage acts applies equally to all customary marriages in the Ghanaian societies. As we shall see later in an example of customary marriage of Ghana, it is the presentation and acceptance, of the “head rum” (*Tabiaha*) among the *Ewe* tribe of Ghana that actually proves whether there is a valid marriage or not.

This presentation made by the man’s family and accepted by the girl’s family is that which constitutes a valid marriage. In this case if a man and woman are cohabiting under the same roof in the absence of the presentation and acceptance of “head rum” or the performance of the constitutive act of marriage then they are living in concubinage²²⁹. Thus the validity of marriage in Ghanaian society depends solely on the presentation of *Tabiaha* and the subsequent bride-wealth, either in the presence of the couple or their accredited representatives, and the acceptance by the bride’s family. Even today in canonical law the absence of a partner or both does not invalidate or illegitimate the marriage since the partners could be validly represented by their families especially the family who acts as proxy, although the consent of the partners is sort in advance²³⁰.

²²⁷ As we have already seen, In Ghana there are three types of marriages recognised and acceptable to the State. These are the Church marriage, Customary and Statutory marriages. In principle the Church in Ghana accepts and recognises these marriages but considers Church marriage as only valid and only condition for spouses to be admitted to the sacraments especially the sacrament of the Eucharist. The bishops insist though ordinance marriage and customary marriage (registered or not) is recognised means of contracting marriage, still they need to solemnise in the Church for validity. The Church’s insistence on the sacramental solemnisation of marriage is the belief that marriage is divine mystery that should not be tempered with through easy divorces as the ordinance and customary marriages permitted. They also believe that canonical marriage is the only unquestionable way to ensure that marriage vow can persist till death separates the couple.

To explain further, the church in Ghana fully accepts the implications of rites of customary marriage to the faithful but thinks it falls short of the essential elements and properties of marriage.

²²⁸ Cf. Enoch D. Kom, *Inheritance, Marriage and Divorce*, Asempa Publishers Accra 1999, p.59.

²²⁹ C.f. Kom, *Inheritance, Marriage and Divorce*, p.59f.

²³⁰ Cf. Jonathan Ankrah, *How Africans marry in the Church*, Accra, 2007 p.25f.

Some legal consequences of the performance of the constitutive act of marriage are: the couples are regarded as husband and wife from the moment of performance even though some declaratory acts are yet to be performed; the man can claim an “adultery fee” (*Asiyɔga* or *Ayefare*) or damages from any man who engages in a marital relation with the woman²³¹. On the other hand, the man can approach other unmarried women without incurring displeasure of the society. Furthermore, in patrilineal societies such as the Ewes, the woman becomes a member of the man’s family and either spouse is entitled to inherit the other in case of death, under the Intestate Succession Law of Ghana, 1985 (PNDC LAW 111)²³². The performance of these acts gives the man and woman a new status, responsibilities and duties.

1.1. Features of customary marriage

The African marriage rites are very important to the celebration of marriage. These rites are followed strictly and are very traditional. Marriage involves not only interpersonal relations but also intercommunity relations. It implies that the survival of kinship in the social structure depends on marriage between man and woman; such that marriage always establishes very strong bonds between the individuals belonging to different families and clans. Therefore it is the recognized social institution, not only for establishing and maintaining the family, but also for creating and sustaining the ties of kinship. Without the institution of marriage there would be no family, nuclear or extended, and therefore no kinship ties. Marriage is thus essential to the development and enlargement of kinship ties, which are a characteristic feature of African

²³¹ Cf. William E. Offei, *Family Law in Ghana* (2nd edition), Sebewie Publishers Accra, 2001, p.172f; Kom Inheritance, Marriage and Divorce, p.59 See also J.B Danquah, *Cases in Akan Law*, Routledge and sons, London 1928, pp.142-143; L.K. Agbosu, “Seduction Actions in Ghana: *Benya v. Lawani*”, in: *Review of Ghana Law*, Vol.XVI 1987, pp.171-190. According to customary law, *Asiyɔga* is the satisfaction fee paid by a third party to husband for committing adultery with his wife or wives. We must also understand that the adultery has a connotation of an offence, which on the face of it, seems to be treated in the case of *Asiyɔga* as an infringement of a legal right and less as an immoral or social evil. This interpretation to adultery would seem to arise from the fact that polygamy being a legal institution in Ghana, the only way in which divorce cases could be prevented was to allow a legal fee fixed sum of money or other commodities payable to a husband any of whose wives’ chanced to have illegal intercourse with another man. Such an amount or drinks, sheep or other things which the society must guarantee is called adultery fee, satisfaction money or *Asiyɔga*, is payable by the *adulterous man*. The adulteress may usually escape blame and is receive back to the arms of the forgiving husband. The woman may escape blame because it is believed that he was being seduced by the adulterer. The penalty is very important in our custom because seducing another man’s wife causes injury to the husband feelings, honour and pride.

²³² C.f. Kom, *Inheritance, Marriage and Divorce*, p.60. Even though the State Law of Ghana provides that if the constitutive acts of marriage have been performed, it is important to register the marriage under Customary Marriage and Divorce (Registration) Law 1985 PNDC LAW 112 Section 15, it is very difficult to identify the number of families which have done so. The Intestate succession law means a person who dies without a will especially in customary marriage.

society. And, every man or woman who reaches adulthood is expected to marry and bear children²³³.

A marriage ceremony takes place over a certain period of time. It is also remarkable that marriage in Africa is not just simply saying a few words in a ceremony. Marriage is a step-by-step process taken on by the entire community, including the living and the deceased²³⁴. Several ceremonies and rituals are performed over time and at different locations. There is also the payment of bride-wealth. Traditionally, the bride-wealth differs from society to society and sometimes within the same ethnic group, local differences are found. Among the Ewe tribes of Ghana drinks, money, personal effects, etc constitute the payment. The formal establishment of marriage results from the payment of things by the groom and his people (lineage head and parents)²³⁵. Without a bride-wealth, no man can claim any child as his.

There are also different forms of marriage in Africa. The commonest are monogamy and polygamy. However, polygamy in various forms is in the ascendancy. The more children a man may give birth to becomes, as it were, a sign of success and a mark of importance²³⁶. The

²³³Cf. Kwame Gyekye, *African Cultural Values: An Introduction*, Sankofa Publishing Company, Accra 2003, p.76.

²³⁴ Cf. Mpolo, Polygamie Familie Identität und Seelsorgeprobleme der Afrikanischen Kirchen: „Die Ehe war für den Afrikaner im Grundsatz mehr als eine Einrichtung zur Fortpflanzung und zur Befriedigung sexueller Bedürfnisse. Sie stellte ein komplexes Beziehungssystem zwischen Lebenden sowie zwischen Lebenden und Vorfahren dar. Sie heiligte die profane Welt und vermenschlichte heilige. Die Soziologie der Familie war nur eine Widerspiegelung der Psychologie des Menschen in dem Gesamtzusammenhang seines Seins als solcher und seines Seins für andere“(p.78).

²³⁵ Cf. G.K. Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology*, 2^{ed}, Ghana Universities Press, Accra, 2003, p.42.

²³⁶ We must understand that in the African societies both monogamy and polygamy are accepted and recognised as such. According to Mpolo, Polygamie Familie Identität und Seelsorgeprobleme der Afrikanischen Kirchen, p.78ff, die Polygamie nahm an der soziokulturellen Dynamik der Afrikanischen Völker teil. In ihr stellt sich die Art dar, in der die Afrikaner in der traditionellen Gesellschaft nicht nur die praktischen Lebensprobleme, sondern auch die Tiefen Dimension des Menschen verstanden. Die Ehe war nicht nur eine Form der biologischen Beziehungen zwischen zwei Personen verschiedenen Geschlechts; sie brauchte auch eine ganze Reihe von bewussten und unbewussten, profanen und religiösen Empfindungen der traditionellen Afrikaner zur Darstellung. Statt die Polygamie allein auf den Wunsch nach zahlreicher Nachkommenschaft oder ein ausgeprägtes Streben des Mannes nach sexueller Befriedigung oder die Beherrschung des Mannes durch die Frau zurückzuführen, muss man die Polygamie als ein unfassendes System ansehen, das den gesellschaftlichen und menschlichen Bedürfnissen der afrikanischen Gemeinschaften entsprach. . Anders gesagt, die traditionelle Gesellschaft achtete den Mann, der viele Kinder hatte. Die Kinder sind Sozialversicherung für die Eltern besonders, wenn sie älter werden. Am Tag seines Todes würde er umgeben sein vom Glanz seiner Kinder. Deshalb nahm ein Mann mehrere Frauen, um mehr Kinder zu bekommen. Dieses Bestreben besteht auch im gegenwärtigen Afrika. Die Ehe ohne Kind wurde als unvollständig, nicht gesegnet durch die Vorfahren. Anders gesagt, man wurde eine vollständige Person nur, wenn man Vater wurde. Der Mann oder die Frau definierten sich als Person größtenteils in bezug auf ihre Kinder. Vater oder Mutter zu sein ist eine große Ehre in der Gesellschaft. Man wird nicht mehr bei dem eigenen Namen genannt, sondern „gehört“ mit der Bezeichnung „der Vater des...“ oder „die Mutter des...“ In Afrika dagegen ist das größte Unglück, das einen Menschen treffen kann, weder Armut noch früher Tod, sondern das Scheiden aus dieser Welt ohne Nachkommenschaft. Deshalb ist Unfruchtbarkeit in manche Fälle auch ein Scheidungsgrund. Deshalb wird jeder Ehegatte versuchen zu beweisen, dass nicht er für die Kinderlosigkeit verantwortlich ist. Für den Mann ist das sehr einfach, da die Sitte ihm erlaubt, weitere Frauen zu nehmen. Die unfruchtbare Frau ist sehr unglücklich. So wurde auch die Ehelosigkeit als ein gesellschaftliches Übel angesehen. Sie widersprach den sozio-kulturellen und religiösen Werten der traditionellen Gesellschaft und war Faktor der Entfremdung und Isolation nicht nur von den Genossen in der Gesellschaft, sondern auch von den Ahnen. Auch die Periode der Enthaltensamkeit vor und nach der Niederkunft der Frau war ebenfalls ein Faktor, der nicht nur eine doppelte Moral – Toleranz gegenüber

husband is expected to love all of his wives equally but the first wife or the senior wife is given preferential treatment.

a. Marriage as a sacred and religious duty.

Before the coming of Christianity, the African believed in the sacredness of marriage and strictly adhered to the laws and taboos guiding and guarding the institution. In addition, in many African societies, marriage is seen as one of the crucial rites of passage and is analogous, to birth, puberty and death rites²³⁷. Until recently, most African peoples expected every normal individual to marry at some point and to have children. Similarly, almost everywhere in Africa until perhaps recently, to attain adulthood and grow to old age without entering a marriage union was considered abnormal²³⁸. Quite often then, the first marriage for most individuals symbolised a transition from irresponsible adolescence to mature and respectable citizenship. Marriage thus transformed the status of those entering this institution for the first time; and marriage was one of the necessary criteria in the definition of total social personhood among African peoples. Consequently, in some societies a person who dies prior to marriage had his or her funeral rites curtailed²³⁹. Furthermore, marriage in Ghanaian societies is found to be very important and a sacred institution because it confers tremendous respect upon the people who enter into it. It is a well known behaviour in our societies that 'if you are of age and you do not marry, you lose your self-respect'²⁴⁰

This reality in African societies compels especially women to want and hope to be married; in fact, an unmarried woman is almost an anomaly. Marriage is a requirement of the society, an obligation every man and woman must fulfil, a drama of life in which every man and woman

außerehelichen sexuellen Aktivitäten des Mannes – sondern auch die Polygamie rechtfertigte. Nach der Tradition mehrerer Afrikanischer Gesellschaften gab es keine sexuellen Beziehungen zwischen den Ehegatten vom siebten Schwangerschaftsmonat bis zum Ende der Stillzeit, d.h. zwischen zwei und drei Jahre nach der Geburt des Kindes. See Mpolo, Polygamie und Familie Identität.

²³⁷ Cf. Jonathan Thomas Ankrah, *How Africans marry in the Church*, p.25; John Kuada and Yao Chachah, *Ghana, understanding the people and their culture*, Woeli Publishing services, Accra, 1999, p.58ff.

²³⁸ The man who does not seem to want to marry, however, is not necessarily looked upon or suspected of being homosexual. Most Africans would want to deny the existence of homosexual practices in traditional African societies. Homosexuality is considered taboo and would be outlawed on moral as well as social grounds, because the continuity of the family and, indeed, of the human species would be most seriously affected if homosexuality were practiced. The concept of artificial insemination, which could be used to bring children into a family composed of a homosexual couple, is far removed from the ideas and practices of child birth in the traditional African society.

²³⁹ Cf. A.K. Awedoba, *Culture and development in Africa with special Reference to Ghana*, Institute of African Studies, University of Ghana, Legon, 2002, p.117.

²⁴⁰ Cf. John K. Anarfi, "Talking and deciding about sex and contraception in Ashanti towns" in: *Sex and Gender in an era of AIDS, Ghana at the turn of the millennium*, edited by: Christine Oppong, M. Yaa P.A. Oppong, Irene K. Odotei, Sub-Saharan Publishers, Legon-Accra, 2006, p.170.

must participate. Traditionally in many African societies, a young man who has gainful employment of any kind and earns some income is expected, in fact urged, to marry. Any undue delay on the part of the young man to marry will cause his parents or the elders in the lineage to worry and even to interfere in his private life in order to advise and encourage him to marry²⁴¹.

As a sacred duty to be performed, Mbiti also has the following to say: “Therefore marriage is looked upon as a sacred duty which every normal person must perform. Failure to do so means in effect, stopping the flow of life through the individual and hence the diminishing of mankind upon the earth... Therefore anybody who, under normal condition, refuses to get married is committing a major offence in the eyes of the society and people will be against him. In all African societies, everything possible is done to prepare people for marriage and to make them think in terms of marriage”²⁴². It is a religious obligation by means of which the individual contributes the seeds of life towards man’s struggle against the loss of original immortality. For in some societies it is believed that the living-dead that is, the ancestors²⁴³ are reincarnated or re-born, in part, so that aspect of their personalities or physical characteristics are re-born in their descendants. A person who therefore has no offspring in effect quenches the fire of life, and becomes forever dead since his line of physical continuation is blocked if he does not get married and bear children. Therefore, this sacred understanding and obligation in the African mind must neither be abused²⁴⁴. It is therefore a religious obligation to marry²⁴⁵. In line with this religiosity of marriage, several ceremonies and rituals are performed before a marriage is said to have received the blessings of the ancestors.

²⁴¹ Gyekye, *African Cultural Value*, p. 76.

²⁴² John Mbiti, *An introduction to African Religion*, Heinemann, London 1975, p.98.

²⁴³ The living-dead in this context means that in African philosophy the dead continue to exist among the living. It is believed that the living person has the innate longing to exist perpetually. However death is unavoidable the dead prolong their existence as living persons in their descendants. It is only when the ancestors have no further living descendants are they completely dead. For further discussion on the role of ‘ancestors’ see Harry Sawyerr, *Creative Evangelism: Toward a New Christian Encounter with Africa*, Lutherworth Press, London, 1968, p.25ff; Bolayi Idowu, *African Traditional Religion: A Definition*, Orbis Books, Maryknoll, N:Y, 1975, 184ff; John Pobee, *Toward an African Theology*, Abingdon Press, Nashville, 1979, p. 46ff; Gwinyai Muzorewa, *The origins and development of African Theology*, Orbis Books, Maryknoll, N.Y., 1985, pp.11-15; Gotthold Hasenhüttl, *Schwarz bin Ich und Schön. Der theologische Aufbruch Schwarzafrikas*, Wissenschaftliche Buchgesellschaft, Darmstadt, 1991, p.50.

²⁴⁴ John Mbiti, *African religions and Philosophy*, second revised and enlarged edition, Heinemann, Oxford, Melbourne, Auckland, Johannesburg, Blantyre, Gaborone, Chicago, 1990 (Reprinted 1999), p.130.

²⁴⁵ Hasenhüttl, *Schwarz bin Ich und Schön*, p.66: Über die Eheschließung selbst entscheidet nicht der einzelne, sondern die Familie, der Clan. Auch die wirtschaftlichen, sozialen und religiösen Aspekte spielen eine bedeutende Rolle. Grundlegend ist die Vorstellung, dass der Mensch Mann und Frau ist. Der ist unvollständig ohne Frau und umgekehrt. Da nur in der Beziehung beider Leben weitergegeben werden kann, ist Ehe zugleich zutiefst eine religiöse Pflicht. In der Ehe wird die ursprüngliche Unsterblichkeit neu geschenkt. Jeder ist daher religiös dazu verpflichtet, zu heiraten und Nachkommen hervorzubringen. Mann und Frau in ihrer Relation stehen im Dienst des Lebens. Wer unverheiratet und kinderlos stirbt, ist losgelöst von der menschlichen Gesellschaft. Er wird als gemeinschaftsschädigend empfunden und bleibt für immer abgeschnitten vom Heil, weil er kein Leben weitergeben hat.

b. Fecundity

In African societies procreation is directly linked to the sacred bond of marriage. Without procreation, logically, marriage in the African mind is incomplete. Traditional Africans see the bearing of children as a religious obligation and the main objective for her folks to enter into marriage because it is the means by which the individual contributes the seeds of life towards man's struggle against the loss of original immortality. As a result, one of the great striving of husband and wife is to attain personal immortality, which is achieved through having children within the framework of marriage²⁴⁶.

Until the promulgation of the 1983 code of canon law the official position of the Church was not different from the African mind that procreation was the main reason why people should marry. However, the Church's position in the new code polarised the "immunity of priority" enjoyed by procreation among the essential properties of marriage. The new approach insisted that marriage is both for the good of the spouses and the capacity of the couple to create and generate children. In this case, procreation remains absolutely an essential property in marriage (cf. can. 1055 §1; 1096 §1); however, the "genuinely" lack of it is not a ground for dissolution or annulment. Interestingly, this new position of the Church and canon law does not deter the African mind to believe and hold on to tradition that offspring is the proof of a true marriage. It appears that this entrenched position of African people on procreation might irritate some people because in the present circumstances one can acquire a child through adoption. Nevertheless, for Africans, the idea of adoption is deceptive because such a relation is only simulated blood relationship and therefore is only metaphorical in a family relationship.

The African still maintains the historical approach to marriage that unless a person has a close relative that is a real blood child to remember him, when he has physically died, then he is nobody and simply vanishes out of existence like a flame when it is extinguished. Thus, it is a duty, religious and ontological for everyone to get married, especially males. Moreover, in the traditional theory, if a husband has no children or only daughters, he takes another wife so that children or sons may be born who would survive him and keep him in personal immortality. Procreation is in a sense the absolute way of insuring that a person is not cut off from personal immortality. Biologically, both husband and wife are reproduced in their children, thus perpetuating the chain of humanity²⁴⁷.

From these observations it is understandable to hear that if the ordinary Ghanaian man or woman is asked why he or she desires to marry, comes the spontaneous answer: "to make a family". Viewed in its totality, the Africans believe that the biological fecundity must be used to its fullest end. Häring has this to say: "Generally speaking, the biological fecundity of

²⁴⁶ cf. Mbiti, *African religions and Philosophy*, p.130.

²⁴⁷ cf. Mbiti, *African religions and Philosophy*, p. 130.

woman had to be used to the full because of the high rate of infant mortality and the frequent epidemics that decimated the population. To live out old age with dignity, there was no other hope than to have enough offspring. Further, in a culture of sustenance farmers, children were important helpers for they returned to the family, in material help, all that they received. Within this context a great love for children could and did frequently develop which, in turn, could strengthen the affection between the spouses. They honoured each other gratefully as father or mother of their children”²⁴⁸.

Since procreation is still perceived as the main objective in marriage, fecundity inquiries are made during the period of preparation for marriage into the family background and the character of the prospective wife before the marriage is finally contracted. For this reason a woman suspected of being barren has a little chance of proposal. Gyekye remarks that this is an indication of how African parents and their blood relatives are anxious to see to it that their sons marry good and fruitful women. Unfortunately, in traditional African societies the real cause of infertility in the marriage could likely be on the part of the man, but the searchlight is almost always directed on the woman²⁴⁹. Man in African society is always considered to be viable and active except in the case of impotence. This unfortunate imbalance is propagated because “the assumption is probably based on the special status of a woman in a marriage: the woman’s primary role in marriage is to bear children. If through her behaviour before marriage she has done anything to jeopardize her ability to bear children, she cannot satisfactorily fulfil her primary role and, in a relationship in which the birth of children is held as of primary importance, the marriage will not succeed. The man will either divorce her or take a second wife”²⁵⁰. The position of a wife in her husband’s family remains shaky and unpredictable until she begets a child. She becomes really secure after the birth of a male child. At this stage she is especially welcome as a responsible housewife in her husband’s extended family. In fact the birth of the child gives her the title of wife; before this time she may be said to be a wife only in anticipation²⁵¹.

²⁴⁸ Bernard Häring, *Free and Faithful in Christ, Moral Theology for Priests and Laity*, Vol. 2 St. Paul Publications, Middlegreen, 1979, p.518.

²⁴⁹ cf. Gyekye, , *African Cultural Value*, p.8.1

²⁵⁰ Gyekye, *African Cultural Value*, p. 82.

²⁵¹ Hasenhüttl, *Schwarz bin Ich und Schön*, p.66-67: He writes: Was der CIC 1983 aufgegeben hat, nämlich die Lehre des katholischen Eherechts, dass der finis primarius, das Grundziel der Ehe die Zeugung von Kindern sei, ist in afrikanischer Auffassung der Ehe noch lebendig, ja überhaupt der zentrale Punkt, eine Ehe verstehen zu können. Das bedeutet, obwohl die Hochzeitsfeier ein zentrales Ereignis ist, ist damit die Ehe nicht vollendet. So wie es möglich ist dass das Paar vor der Hochzeit bereits Kinder hat, so ist die Ehe erst wirklichendgültig, wenn ein Kind geboren wird. Ehe ist nicht ein einmaliger Akt, der durch die Feier und das Jawort besiegelt ist, sondern Ehe ist ein Prozess, ist ein Geschehen, die sich erst im Vollzug bewahrheitet. So können eben die Brautleute in der ‚Verlobungszeit‘ bereits zusammenleben, und oft gehen sie, wenn kein Kind kommt, wieder auseinander. Von meisten Stämmen wird dies als richtig und gut angesehen. Aber auch wenn sich nach der Hochzeit eigen sollte, dass keine Kinder kommen, wird sie rückgängig gemacht. Eine Kinderlose Ehe ist keine Ehe. Wo die Kinderlose Frau jedoch beim Mann bleibt, ist es auch ihr Wunsch, dass er eine zweite Frau nimmt, damit sie durch diese Kinder bekommt.

As such, the fate of a sterile woman is a very hard one indeed. It is frustrating to wives and as a cause of worry for both families. It is also not uncommonly in Ghanaian societies that she is made the object of conversation and ridicule by some of her female neighbours. If an occasion for a quarrel arises, she gets the most painful telling off. In the far distant past women in this category of childlessness, an irrevocable scourge, never get tired of going to the native doctors who sometimes can only give a psychological help. She is condemned to a diet of medicinal roots and herbs; ritual baths, exorcisms and other forms of spiritual satisfactions. This is understandable since the fundamental causes were not and could not have been known by the native doctors²⁵². On the other hand, those who intentionally refused to give birth are seen by the society as witches. In certain Ewe societies for instance, it is a grievous sin to cause abortion. The culprits are always brought before the traditional court to be punished. This punishment is inflicted not so much because of the living but because the ancestors have been offended who wish that the community increased and for this reason they must be pacified.

c. The Community influence on marriage in Africa

The common knowledge in Ghana and for that matter Africa is that marriage is primarily a union between two families, rather than a contract between man and woman²⁵³. In the marriage preparations the man and the woman are made aware that they are not being married to an individual but to a family. Hence the marriage is said to be a union of families rather than of just two individuals. Actually, the above formulation is only to express the viewpoint that “marriage is usually a group affair and the ceremony involves, besides the couple and their immediate relations, distant kinsfolk, neighbours and friends”²⁵⁴. Nukunya explains further that this factor can be said to influence the contract of marriage such that in Ghanaian society marriage is said to be between families and not individuals²⁵⁵. To some extent this viewpoint is in the right direction because in the extended family system of Ghana, the interest of relatives in the marriage means that two families have become *affinal relations* and the children born out of the marriage become real kin of the two sides²⁵⁶. Moreover, the success of marriage in our society, despite the explosion of Christianity and modernity, depends to a considerable extent, on whether or not the two families are agreeable to the union, otherwise the several occasions, such as a child-naming ceremony, a wedding or a

²⁵²Cf. Celestine Obi, “Marriage among the Ibo of Nigeria”, <http://codewit.com/igbomarriage.php>. (Accessed: 14.07.2008).

²⁵³Cf. Florence Abena Dolphyne, *The Emancipation of Women: An African Perspective*, Ghana Universities Press, Accra, 2005, pp. 1-2; William E. Offei, *Family Law in Ghana*, pp.1-20; Kuada and Chachah, *Ghana understanding the people*, p.59.

²⁵⁴ Nukunya, *Tradition and Change in Ghana*, p. 42.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

funeral, during which the two families will have to interact, may very well become a serious source of irritation and conflict that may sometimes result in the breakdown of the marriage²⁵⁷.

For this reason, even today, the educated urban young man and woman, who believe they are in love and would like to get married would do all they can to persuade their parents to agree to the union, that is if the parents are opposed to the relationship, rather than go to the marriage registrar's office or the priest to get married or legalise the union against the wishes of their parents and lineage²⁵⁸. In the same way, a young Ghanaian man and a woman living in Germany, Europe, America or anywhere else outside the country, would not normally go through with a marriage ceremony until the man's parents have gone to ask for the woman's hand from her family. However, it is not strange to hear about cases in which Ghanaian young couples that meet while studying or working abroad get married without their parents' formal consent. However, before they return to Ghana, or, as sometimes happens, soon after returning home, the man asks his relatives to go to the woman's family to perform the necessary marriage customs so that the marriage would be recognised by the two families, and their children accepted by both families. If this is not done, and there is a funeral in, say, the woman's family, the man will be treated as an outsider and not as an in-Law, and the same will apply to the woman if there is a funeral in the man's family²⁵⁹. In most cases if the woman dies the man is forced to pay the bride-wealth or perform the customary rites before he is allowed to participate in the funeral rites. He may also be fined for not performing the necessary customary rites earlier. In this way, the society ensures that every marital union is properly a union between two families.

It has to be noted that although families have great responsibilities in the marriage it does not mean that there is going to be constant invasion of the privacy or the interpersonal relationship of the married couple by the members of the two families. The brain behind the family influence in the marriage could be argued from the responsibilities the couple has towards the family. In simple terms, this responsibility means that the man should - and is expected to - show interest in the affairs of his wife's family, and the woman in those of her husband's family, to the extent possible. This is because if the couple becomes cocooned in, or consumed with, their own affairs and the affairs of their nuclear family or household they would be branded as selfish. The couple could, by their egoistic conduct, not only invite the moral and social disdain of their families, but also cause a denial of the goodwill and needed assistance that could have come to them from their families. Hence it can be seen that the

²⁵⁷ Dolphyne, *The Emancipation of Women*, p.2.

²⁵⁸ *Ibid.*

²⁵⁹ Dolphyne, *The Emancipation of Women*, pp.2-3.

African idea and practice of marriage are clearly inspired by the communal ethos of the traditional society and its social ethics²⁶⁰.

In this connection we could also mention that there are definitely some disadvantages associated with this communal ethos of our society. One may conclude that there is a definite possibility of interference in the affairs of the couple by the family members. On account of these interferences, union could be nettling to the couple. This can sometimes be detrimental to the marriage or ruin it, if adequate patience and understanding are not demonstrated by either of the couple²⁶¹. Sometimes the number of demands made on the couple by family members can be disheartening. They vary from general financial help, assistance in looking for a school for relatives' children, paying the tuition fees and apprenticeship bills, and assistance in looking for employment for relatives' children, to endless contributions toward defraying hospital, burial and funeral expenses. Although it may happen that the couples are middle-income earners or wealthy, however these endless demands, even if they can be met, can bite at their financial position and make living itself very hard for them. Even though in the circumstances of the extended family system and its concomitant obligations, such demands may be understandable, they can, nevertheless, become burdensome for the couple creating suspicion of exploitation of the other partner²⁶².

In spite of these disadvantages enumerated above on the couple, without any biased tendencies we shall also see that there are some advantages as well. The advantages may be said in the long run to outweigh the disadvantages. It must be mentioned, first, that the interest shown in the marriage by lineage members and the goodwill demonstrated from the onset generally continues after the marriage is contracted and in many cases translates into financial, psychological, or emotional assistance for the couple. Just as the couple may be called upon to give assistance, they are also made to feel that other members of the two lineage groups are always prepared to come to their aid. Besides, within the framework of the familial type of marriage arrangement in which the success of the marriage becomes a concern for the other members of the two lineage groups, there are always at hand men and women of goodwill ready to counsel the couple, to help them to sort out their marriage problems, or patch up quarrels, and so help to bring harmony back into the marriage. These men and women serve as marriage or family counsellors offering advice, admonition, and giving encouragement based on their experiences in the practice of marriage. The main objective as far as the family members are concerned is that they do not "interfere"; rather they merely show interest in the couple's welfare and to support them in difficult times. Moreover, the community performs a function that in other, mostly Western societies, is performed by professional family or marriage counsellors and therapists. But, as lineage

²⁶⁰ Cf. Gyekye, *African Cultural Value*, pp.79-80.

²⁶¹ Cf. Gyekye, *African Cultural Value*, p.80.

²⁶² Cf. Gyekye, *African Cultural Value*, pp.80-81.

members, they would be more involved emotionally in their counselling duties and are likely to be more effective and of much help to the couples. Any couple can benefit immensely from the counselling interventions of such experienced kinsmen. Many African marriages have been strengthened or saved from shipwreck by the appropriate and timely interventions of such experienced lineage members²⁶³. Thus, marriage in the African culture must receive the sanctions of parents and the approval of both families. There is no way one can marry in our society neglecting the supportive role of the parents and relatives of the other partner.

From the preceding points we may conclude that it is therefore regrettable that GS and many other canonical writings see marriage in only interpersonal relationship between man and woman independent of any outside influence. We must again emphasise that even though African marriage seems to have had the influence of both families and the involvement of the whole of the community, this does not mean that they have kidnapped the privacy of the couple. The generally accepted understanding of customary marriage in African tradition is that marriage is nothing more than a union between man and woman (or women) with the knowledge of both families.

In the validation of the above, Mbiti argued that “For African peoples, marriage is the focus of existence. It is the point where all the members of a given community meet: the departed, the living and those yet to be born. All the dimensions of time meet here and the whole drama of history is repeated, renewed and revitalized. Marriage is a drama in which everyone becomes an actor or actress and not just a spectator. Therefore, marriage is a duty, a requirement from the corporate society, and a rhythm of life in which everyone must participate. Otherwise, he who does not participate in it is a curse to the community, he is a rebel and a law-breaker, and he is not only abnormal but under-human”²⁶⁴. All this can be summarised in the words without risking the accusation of exaggeration that marriage is not simply an affair between individuals who have fallen in love. It is a matter in which the lineages of the contracting parties are greatly interested and supportive.

d. Courtship procedures

Different customs are observed in the matter of finding partners for marriage in the Ghanaian society. In selecting and accepting a potential spouse certain qualities and conditions have to be met. In some societies the parents make the choice, and this may be done even before the girl child reaches puberty. This mode of contracting marriage in our custom is known as

²⁶³ Cf. Ibid.

²⁶⁴ Mbiti, *African Religions and Philosophy*, p.130.

infant betrothal²⁶⁵. This means that if in one household there is a young boy, his parents go to another household where there is a young girl or where there is a nursing mother and put in an ‘application’ for the girl²⁶⁶. According to Abotchie this infant betrothal (*atsunana*) of marital arrangement is known to have worked out satisfactorily in traditional society because special efforts were made by parents on both sides to develop mutual acquaintanceship between the betrothed children in the early stages of their lives and, through the ensuing close companionship, the couple develop affection for and mutual understanding of each other. Thus, when they come of the marrying age, little or no difficulty is experienced in formally consummating the already nurtured relationship²⁶⁷. It will appear that this mode of contracting marriage is no longer seriously taken if it still exists at all at least in the northern *Ewe* society.

Another mode of contracting marriage effective until recent times may be termed as “arranged marriage” which parents desiring to find a suitable girl for their son take a decision in consultation with the family head, on a girl in their calculation who will be the appropriate bride-to-be without seeking the son’s prior approval of their choice, and thereupon initiate consultation with the girl’s family. Such marriages sometimes do not have the blessings of the couples themselves but the circumstances may force them to accept the supposed wisdom of the progenitors²⁶⁸.

The most and the finest way of contracting marriage in the Ghanaian society could be described as “preferential marriage”²⁶⁹. When an adult traditional *Ewe* man decides to marry a particular woman he tells his parents about it. It is now the responsibility of his parents and the elders of the lineage to ask for the woman’s hand from her parents and family²⁷⁰. These people are expected to assume the responsibilities of investigating the backgrounds of the girl. They would wish to find out whether the targeted individual and her family background are without reproach. The family would want to be fully informed about the family background of the prospective wife: whether there are some chronic or hereditary diseases such as epilepsy, lunacy, leprosy, Tuberculosis and in the present STD, HIV/AIDS in the family; whether they are not noted to be notorious criminals or witches and evil magicians²⁷¹; whether the prospective spouse is respectful and hardworking, whether there are burglars and murderers in

²⁶⁵ Cf. Chris Abotchie, *Social Control in Traditional Southern Eweland of Ghana: Relevance for Modern Crime Prevention*, Ghana Universities Press, Accra, 1997 (reprinted 2000), p.32.

²⁶⁶ Mbiti, *African Religions and Philosophy*, p.132.

²⁶⁷ Chris Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p.32.

²⁶⁸ Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p.33.

²⁶⁹ *Ibid.*

²⁷⁰ In some cases parents may suggest particular girl to their son to marry. It is left to the son to accept it or not.

²⁷¹ Cf. Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p.87: According to him the most abhorrent stigma in traditional Ghanaian society are the indelibly denigrating stigmas carried by the labels

Adzet, witch or wizard, or *Dzo quamet*, practitioner or evil magic. The anti-social witchcraft is looked upon as an abomination, the devil itself, a curse to society, a person to be feared, shunned or removed from society. The witch and evil *Juju man* are supposed to be reputed to have the power to cause the death of other people, both children and adults, cause accidents, and cause all manner of mysterious afflictions.

the family, whether the woman is morally good, whether her mother was known to be a flirt or adulterous, whether the woman's family is harbouring any secret misdeeds, are not given to quarrelling and so on.

The investigations are not one-sided. The girl's family must also make their own investigation to ascertain the suitability of the prospective husband and his lineage. Coupled with the above-mentioned problems, the girl's family must be particular about this important issue: whether the man can really look after the woman. If the boy is too weak to work then the girl's family has every reason to suspect that their daughter may not be taken good care of. In other words, courtship in Ghanaian society involves a kind of "mutual spying"²⁷² before the marriage is considered. These investigations are necessary because each party makes sure that their potential in-Laws do not have any socially unacceptable behaviour. It is only when the families' heads are satisfied on these points that a proposal is made or acceptance is given. If any of the parties to the marriage finds the background of the other objectionable by reason of some of the ill heritages mentioned above, then the clan out of concern for the well-being of her members advises against the marriage²⁷³.

Today with western cultural influence these important preparations towards marriage seem to be seen as outmoded. But these are steps taken in the traditional Ghanaian society to safeguard marriage and prevent possible clues for divorce. Divorce is abhorred as unusual and theoretically forbidden in African societies²⁷⁴. Moreover, the traditional practice of making discreet preliminary investigations into the background of potential brides and groom is very important because it concerns personal and group security. We may discard these investigations as overemphasising demands for marriage but for the African these are important matters that are known to ensure the stability of a marriage.

e. The minimum age of marriage

There is no minimum age for marriage under customary law, although it is rare for spouses to live together before the girl reaches the age of puberty. Therefore among all Ghanaians the age at which a person marries is a matter of the physical and psychological development of the persons in conjunction with adolescence²⁷⁵. At the age of adolescence, the girl's breasts

²⁷² Sarpong, Ghana in retrospect, p. 81.

²⁷³ Cf. Abotchie, Social Control in Traditional Southern Eweland, p.103.

²⁷⁴ Cf. Daryll Forde, *The Benin Kingdom and the Edo speaking peoples of south-western Nigeria*, Ethnographic survey of Africa, Western Africa, International African Institute part XIII, London 1970, p.61.

²⁷⁵ See Nukunya, Tradition and Change in Ghana, pp.152-153. Nukunya explains that in the pre-colonial era, age of marriage followed biological development and certain customary requirements. For girls, apart from their physical maturity, the performance of puberty rites, where applicable, was the principal consideration. For boys, whose qualification normally did not include any puberty rite as such, social maturity meant attainment of certain positions determined by the society. Thus among the *Dagomba*, one such requirement was the ability to

begin to enlarge. She starts to grow hair under the armpits and the pubic. The hips begin to widen and she commences to menstruate. At this stage the girls become attractive to the opposite sex. Again a state of awareness is created in them and special attention is paid to their appearances. Most of them also develop shyness and behave in such a way so to display their maturity. The boys on the other hand also start to grow hair at private parts. Their voices deepen and become hoarse. They also start to produce sperm as a sign of being potential fathers²⁷⁶.

In practical terms, the boy must be fit to hunt, and farm to feed her wife. He must also have his hut or house. In some cases if the father has enough rooms, he can allocate one to him until such time that he must get one himself. Even though the boy might live in his father's house he must have a separate kitchen for his wife. The girl on other hand must know how to cook, sweep the house, and fetch firewood and water. In some communities, for instance in Fodome, the girl must know how to pound "Fufu" (dough made from yam, plantains or cassava) without lump in it. It must be noted that these values are learnt from the mother. This is why if the mother is cooking the girl is expected to be around always. She cannot be playing outside during cooking hours. A girl who does not know how to cook rarely finds peace at a marital home if not divorce. She must show signs of ability to respect and be obedient to her husband, in-laws and his folks. Never can the woman insult her husband without being punished in one form or the other. Her family background and the character of the mother have a lot to add or to subtract as the case may be.

Nevertheless the age a person can give consent and marry in the ordinance marriage was set at 21 years in Ghanaian marriage laws. This age limit hitherto had never regulated the validity of customary law. Customary marriage is concluded in terms of what description we gave in the beginning of the discussion. However, in the Children Act 1998 (sec. 14, par 2) the age of consent and marriage was reduced to 18 years for all forms of marriages²⁷⁷. However, the law was not clear if this age limit has to do with the validity of the marriage. The section 15 of the Children Act only postulates a punishment for offenders²⁷⁸.

make one hundred mounds of yam a day. Among *Anlo-Ewe* it was necessary to display the ability to pursue adult economic activities, which were required to support a family. On the whole, however, marriages for both sexes took place much earlier than obtains today. Since puberty rites for the most part followed the menarche, which may usually occur soon after fourteen, most girls married in their teens. In case of boys, the social and economic maturation expected of them pushed their marriages some years backwards but not far beyond twenty. It is generally agreed that girls married earlier than boys and age differences of between three and five years between husband and wife were considered the norm though additional marriages enabled men to marry women many years their juniors. In fact, it was not surprising to find men of seventy or more marrying girls in their twenties or even younger.

²⁷⁶ Cf. Stephen Asumeng, *The Game of marriage and how to play it*, 2ed. St. Mary's Press, Mampong 1993, p.16.

²⁷⁷ The first paragraph of the section regulates the right to refuse betrothal and marriage: "No person shall force a child: a) to be betrothed; b) to be the subject of a dowry transaction; or c) to be married".

²⁷⁸ Section 15: Any person who contravenes a provision of this sub-Part commits an offence and is liable on summary conviction to a fine not exceeding 5 million Cedis or to a term of imprisonment not exceeding one year or to both.

f. Legitimacy of Children

Another marriage-related issue that may be mentioned here is that of the legitimacy of children born outside marriage. It has been stated above that a man may opt for one of three types of marriage. Customary marriage and Moslem marriages are potentially polygamous, while Ordinance (including Christian) marriage is monogamous. If a man opts for monogamy, he cannot have another wife while the marriage persists. However, any children that the man may have outside the wedlock are considered legitimate, for in African societies legitimacy is determined by paternity. In view of this the act of Ghanaian parliament enacted a provision in the Children Act of 1998 (sec 6 par.1) that “no parent shall deprive a child his welfare whether: a) the parents of the child are married or not at the time of the child’s birth; or b) the parents of the child continue to live together or not”. This means that the concept of the “illegitimate child” sometimes seen as stigmata in the western world and other societies does not generally exist in the traditional African society; for this reason, any child born of unwedded parents will be fully and joyfully welcomed into the family. They are recognised as legitimate children in the standing of the society whether the parents are validly married or not (cf. can.1137-1140).

According to Oppong “The absolute prerequisite to legitimate childbirth is the performance of a nubile girl’s public puberty ceremony, in which both her paternal and maternal kin play a part. After this has been performed she may marry, but whether she formally marries or not, her children will be socially acceptable lineage members”²⁷⁹. Since most marriages in African cultures are potentially polygamous though the parents may not have received bride-wealth or engage in any official contract between the boy and the girl the public recognition of paternity on the father’s part may give the child full birth status rights²⁸⁰. He has the same rights as other children.

However, the concept of illegitimacy is not totally strange in our culture. An ‘illegitimate’ child accordingly is one whose putative father refused to accept responsibility for the pregnancy that brought him into the world. This worrying situation may arise if the putative father believed the mother had played a “double game”. One would also say that the situation just described is not a serious problem for the African traditional society because the structure of African society is such that a child is born into an extended family and the fact that he does not have a father does not normally create for him or her the complex problems experienced in the western world. This is because there is nothing in African societies like the stigma that goes with illegitimacy as in the western societies. In other words, in the Ghanaian context, a child is born into a family of persons who may reckon their relationship with one another on

²⁷⁹ Christine Oppong, *Middle Class African Marriage*, George Allen and Unwin, London, Boston; Sydney 1981, p.30.

²⁸⁰ Oppong, *Middle Class African Marriage*, p.32.

the basis that they are lineally descended from a common ancestor. Therefore relationship and the full participation in the family (*Dzotinu* or *Fometɔ*) arise by birth but not because of the legality or validity of marriage²⁸¹. If we consider matrilineal societies for example, the Ashanti's of Ghana, illegitimacy is of little significance because children born are supposed to be incorporated into the woman's family, which actually makes it easier for those children to be readily integrated.

In recent years however, the question of illegitimacy is being discussed in some African countries. Some women who married under ordinance or Church's law feel that children born outside wedlock should not be accorded the same rights as those born within it. This position is immediately rejected. The opponents argue that the concept of illegitimacy is foreign to African culture, and that it should not be introduced into the legal system, especially since it is known that, in some cultures, the stigma of illegitimacy has very serious adverse effects on children so regarded²⁸². In Ghana, the Law on Intestate Succession, passed in 1985, confirms the traditional view on the legitimacy of children and stipulates that all children that a man has, inside and outside wedlock, have equal interest in his property. This provision is again repeated in the Children Act section 7 stating "No person shall deprive a child of reasonable provision out of the estate of a parent whether or not born in wedlock"

Despite the fact that illegitimacy is not so much a problem in Africa, it is considered proper for a man and woman to get properly married before having children. Moreover, a growing child whose parents are not married may lack the social standing or respect normally accorded to children of married couples. Such a child may occasionally suffer ridicule from peers or even relatives within the lineage who may have knowledge of his or her background. This treatment may affect the mental health or emotional stability of the growing child²⁸³. The best thing to do is avoiding situations that may in the long run put stigmata on children.

1.2. Customary marriage in Fodome Traditional Area

The preparation and celebration of customary marriage in the Ghanaian society differ from ethnic group to ethnic group, yet the most essential requirement found among all ethnic groups is the presentation of bride-wealth, which legitimises the marriage in the eyes of the families and ancestors. Moreover, there are certain rituals and dynamic processes held in high esteem because they contribute to the success of the marriage.

²⁸¹ Cf. Ekow Daniels, "Development of Customary", in: *Review of Ghana Law* (1991-92) Vol. XVIII, 68-94.

²⁸² Cf. Dolphyne, *The Emancipation of Women*, 6-7.

²⁸³ Cf. Gyekye, *African Cultural Value*, pp.76-77.

As explained earlier, the most and the finest way of contracting marriage in the Ghanaian society nowadays, although “arranged marriages” and “infant betrothal (*atsunana*)” still exist in certain tribes, is the “preferential marriage” in which the prospective husband makes his own choice and afterwards informs his parents about it. Then the parents and, relatives begin the betrothal and marriage negotiations. It is important to emphasise that whether the parents or someone else made the choice the commonest thing is that in all African cultures the search for a marriage partner is the prerogative of the man or his relatives. Invariably, in Fodome traditional area for that matter Ghana, it is considered abnormal and disgraceful for a woman to look for a man more so to express openly her interest in a man. Moreover the search for partner is a communal one. Since the individual exists only because the corporate group exists, it is vital that in this most important contract of life, other members of that corporate community must get involved in the marriage of the individual. We must now look briefly at how marriage is courted and celebrated in Fodome traditional area in the Volta Region of Ghana²⁸⁴.

In Fodome traditional area if a young man desires to marry a girl he informs his father about it. The father conducts an investigation into the background of the girl’s family. He would want to find out if there are some bad diseases such as leprosy, cancer or tuberculosis in the girl’s family: whether there are witches in the girl’s family, whether the girl’s family is hard working and the women in that family are reputed to be good wives, and whether if the girl’s family was at any time in conflict with the young man’s family. If the father is satisfied with the investigation, he will send emissaries in the person of a good couple (*Asiɖea*) from the clan or the village to go to the girl’s parents and ask for her hand in marriage. The couple must be of good repute in the village, must have children and must have had a peaceful uninterrupted marriage²⁸⁵.

The male *Asiɖea* chooses a Thursday (*Agbleamigbe*) on which he visits the girl’s parents in the early hours of the morning. He takes along a small gourd of palm wine (*Goevi-meha*)²⁸⁶ or two bottles of schnapps. This drink is also known as “door-knocking” (*Uɔfofo*) and symbolises in the cultural context the mollification of the family or lineage head for disturbing his sleep at the meditative hour of the dawn²⁸⁷. He tells the parents that he wishes to ask for the hand of their daughter for such a young man. Abotchie explains that the provision of ‘door-knocking drinks’ *Uɔfofo* is considered the necessary mollification of the lineage head for disturbing his sleep at the ‘meditative’ hour of dawn²⁸⁸. The *Asiɖea* does not

²⁸⁴ The researcher hails from this area which goes to say that most of the things to be said are largely personal experience, observations, interviews and discussions. See also the discussion on the topic in Offei, *Family Law in Ghana*, pp. 58-60.

²⁸⁵ Cf. Offei, *Family Law in Ghana*, p.58.

²⁸⁶ Palm wine is a white sap that is extracted from raffia and palm tree as alcohol.

²⁸⁷ Cf. Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p.33.

²⁸⁸ Cf. *Ibid.*

ask for an immediate answer. This may allow the parents and their families (i.e. of the girl) to undertake their part of the investigation about the suitability of the boy and his family background. This allows the family time to ask their daughter about the man. The *Asiḍea* visits the parents a second time and a third time, and when the girl's parents and her family are pleased with their investigation, give him a favourable answer, and then the customary process begins.

The male *Asiḍea* informs the boy's parents of the girl's parents' answer, and the boy begins to visit the house of his proposed father-in-law and does odd jobs for the girl's parents in the farm and elsewhere. The boy's father gets palm wine ready and the male *Asiḍea* takes three pots thereof to the family of the girl's father on three different Thursdays (*Agblemasigbe*). He then takes three pots of palm wine to the family of the girl's mother, also on three different Thursdays. This is known as *Sa-ha*.

The purpose of this ceremony is to announce the proposed marriage to and to notify the men of the village of the impending marriage of their daughter. Moreover, it is a way of telling the young men to keep away from the girl. In legal terms it amounts to the publication of the banns. The consent of the girl is not sought officially but it is inferred from her conduct. After about 4-6 months²⁸⁹ of investigations and consultation, the male *Asiḍea* takes to each of the families of the girl's parents a pot of palm wine. This is called *Akpedaha* i.e. thanksgiving wine. A date is appointed for the marriage (*Agbleamigbe*). The male and female *Asiḍea*, with the help of some young girls, carry the following materials to the house of the head-of the girl's-family: A wooden box or trunk box which will contain 2 pieces of cloth, a hand woven piece of cloth (*Ɖoyi*), another hand woven piece of cloth (*Dogbodoe*), "shame cloth" (*Gototsi*), a pair of China plates, a dish, a mirror, soap, pomade, comb, thread for plaiting hair and a certain amount of cash, a wooden stool (*Ɖeḍezi*), a mat, a head load of yams, a whole smoked meat of Antelope (*Ahlɔe*) and a pot of palm wine and hot drinks. In the present day soft drinks, Guinness, beer and other drinks are also provided depending on the income of the boy's family.

At a large gathering of the families of the two parties in the house of the family head of the prospective wife, the items enumerated above are checked before the ceremony begins. It must be noted that formerly all the items are brought before the whole gathering to see but in modern times most of the items are no longer brought before the gathering but are kept in a room. Thereafter reputed persons are chosen from both families to go to the room and find out what the groom's family brought for the bride-wealth according to the approved custom. My investigation reveals that the items are no longer brought before the gathering, first, because

²⁸⁹ We must note during this period the boy and the girl are supposed to behave well and to internalise the duties and responsibilities of marriage life.

of the fear of thieves and, secondly, because Juju (*Voodoo*) men and women out of envy can cast spells on the woman to be barren. My personal opinion is that the things are hidden from the public in order not to put fear in the young men who may be contemplating marrying.

If the items are accepted, a bond has been established; the man's family immediately demands that their precious bead, that is, the girl should be given to them. The man begins a pseudo-search into the crowd of girls for his wife who is at this time placed in a room. A group of women will deliberately present to the man's family a pseudo-wife who they will reject and demand to see their wife. The women will then say that she is far away so they needed money to go and bring her. The man of the family readily gives a token money to the women. This is repeated three times before the real wife dressed in her best traditional cloths is brought to the gathering with pomp and joy. In the past the girl would walk to her father who asks her to show him the man she has intended to marry and she is also asked whether her family should accept the bride-wealth on her behalf. Automatically, she replies in the affirmative. This means that the consent of the couple is highly relevant to the seal of the marriage in the Fodome traditional area.

Merry-making follows. Everyone who is near and dear to the two families is invited either orally or with the sound of traditional music. It is therefore unthinkable in the African mind to celebrate a feast without the participation of the whole village²⁹⁰. The bride's home will be bustling with people preparing food and bringing wine of all sorts. Dance groups may also be invited. This is an evening affair, and when the music begins, all roads will lead to the bride's family because both families will be related in marriage. Libation is poured and the blessings of the ancestors called upon the new couple to let their children be like the sand at the seashore and live to see their great great grandchildren.

Later, *Fufu* (pounded yam or cassava) is prepared out of the yam and smoked meat. The food is dished out in the china plate and sent to the bridegroom in his house. The bridegroom's aunts first taste the food to satisfy themselves that the newly wedded girl knows how to cook. In the evening a special dish of brown rice porridge and African spinach called *Amafafe* is prepared by the aunts of the bridegroom. There will be no pepper in the food. At about 7.p: m the bride is brought to the house of the bridegroom amid merry-making (*Heimführung*)²⁹¹. All the materials sent to the bride in the morning are brought along with her. On their arrival a special ceremony is performed in the bedroom of the bridegroom.

²⁹⁰ Cf. Peter Chidi Okuma, *Towards an African Theology, the Igbo context in Nigeria*, Peter Lang, Bruxelles, Bern, Berlin, Frankfurt/M, N.Y., Oxford, Wien 2002, pp.56-57.

²⁹¹ We must understand that this rite as it were does not mean that the woman is delivered to the man for safe-keeping but should be seen as entrusting both the man and woman into each other's care.

The marital mat is spread on the floor. The female *Asidea* seats the bride on the mat thrice and says, “This is your bride bed provided by your husband. Never in your lifetime should you defile it. She is not supposed to commit adultery. The female *Asidea* takes the cloth *Ɖoyi*, puts it thrice round the waist of the bride and says: this is your cloth, a sign to show that you are, today married before you bear a child”. The female *Asidea* takes the cloth (*Dogbodoe*), shows it to the bride and says: "children you must bear in abundance. Use this cloth “to carry them at your back”.

After this, the female *Asidea* and the bride come out to join the crowd outside. Merry-making goes on deep into the night and finally an *Asidea* calls for attention for the performance of the final ceremony. The bride is seated on her marriage stool (*ƉeƉezi*) facing the east. The bridegroom is also seated facing the bride. Then the *Asidea* says: “Woman put your feet together. Man, put your feet on her feet as a symbol of authority over her. The two of you put your hands together”. The *Asidea* then puts into their hands the cooked food (*Amafafe*) three times which they eat. Then she puts it on their feet, which are still together, thrice. She then proclaims: “I, today according to the custom of our ancestors, declare you a married couple. Barrenness is a taboo. Bear children. Man, it is your duty to clothe her and look after her and the children she will bear. Woman, it is an offence not to feed the man who takes care of you. I wish you well²⁹².

During eight days after marriage, the bride is not supposed to do any household chores. The bridegroom is also not expected to go to the farm and work or do any manual work. On the eighth day the married couple put on their best attire and, followed by their relatives, they go round the village and thank the people for their contribution towards the success of the marriage²⁹³.

To conclude, it must be pointed out that though the core elements of the rites remain essentially unchanged, the social change in the traditional society has left its impact on marriage rites in response to the so-called enlightenment and sophistication of the modern girl. For instance, wood boxes and “shame cloth” etc. are replaced with modern items such as beautiful bags and pants. Moreover, the Christian indoctrination and western cultural sophistication has also lead to the presentation of a bible and a ring to the prospective wife²⁹⁴.

²⁹² . Cf. Offei, Family Law in Ghana, p.60.

²⁹³ Cf. Offei, Family Law in Ghana, p.61.

²⁹⁴ Cf. Abotchie, Social Control in Traditional Southern Eweland of Ghana, 127ff.

1.3. The essence of Bride-wealth

A very well known characteristic of African marriage is the payment of bride-wealth. Unlike in other cultures where a dowry is paid by the parents of the prospective wife to the family of the prospective husband, in Sub-Saharan Africa it is vice-versa. It is the parents of the boy who pay bride-wealth to the parents of the girl as we have seen in the customary marriage in the Fodome traditional area.

In actual terms, bride-wealth refers to the property transferred to the parents or family of the bride. This may be a piecemeal transfer or transfers made in instalments spread over a time rather than by one bulk transfer. In some societies, bride-wealth is claimed after the wife has her first issue and her reproductivity has been demonstrated. Among the Kasena-Nakana of the Upper East Region of Ghana, the main bride-wealth of the first cow (a maximum of two may be required) can be delayed. It is not uncommon for a husband or his children to settle it even after the death of the mother²⁹⁵.

The bride-wealth may be much higher in patrilineal societies because it is considered that the woman's family is going to lose her services, for example, on the farm, and she is also going to have children for the man's family to ensure its continuity, so in a sense, the man has to compensate her family adequately for these services that she would be performing for him²⁹⁶. In some circumstances, the bride-wealth especially in matrilineal societies is nothing more than a gift. This marriage gift is a token of gratitude on the part of the bridegroom's people to those of the bride, for their care over her and for allowing her to become his wife. At her home the gift replaces her, reminding the family that she has left and yet she is not dead. At marriage she is not stolen but is given away under mutual agreement between the two families, the gift elevates the value attached to her both as a person and as a wife. She is a valuable person not only to her family but also to her husband's people. This kind of analysis may lead to misunderstanding that African marriage has no value of love as some missionaries certainly have portrayed of the African custom²⁹⁷. In addition, many outsiders, especially Westerners, have misunderstood this old cultural practice to mean that women are being bought. This unfortunate interpretation came as a result of the fact that the items that are transacted constitute a fortune. Under no circumstances is this custom a form of 'payment', as outsiders have so often mistakenly said. African words for the practice of giving the marriage gift are different from words used in buying or selling something in the market place²⁹⁸.

²⁹⁵ Awedoba, Culture and development in Africa, p.138.

²⁹⁶ Dolphyne, The Emancipation of Women, 7-8.

²⁹⁷ Cf. Muzorewa, The origins and development of African Theology, p.32.

²⁹⁸ Mbiti, op. cit. p. 137.

Moreover, in many African languages, what translates, as bride-wealth does not usually make reference to purchase or buying and selling of humans²⁹⁹. Consequently, Zonabend insists that even if marriages are also accompanied by bride-wealth, whether large or small, material or symbolic, which bring them into the real, tangible world, there is no society in which the institution of marriage can be reduced to mere economic exchange³⁰⁰. Finally, let us be reminded that the bride-wealth may be so widely shared out among the family and clan such that at the end of the day no one person is enriched.

The Bridewealth strictly as it were is a seal to the marriage bond, the documentary evidence that the marriage has taken place³⁰¹. It legitimises marriage and “the key to full recognition that the marriage has actually taken place”³⁰². In many societies the distinction between marriage and cohabitation is based on bride-wealth. It is a means of keeping the relations between the two families alive and strong³⁰³. Besides, it is the bride-wealth that legalises the marriage. If a man does not pay the bride-wealth though he may be living with the woman and even have children with her, nevertheless, the woman is not his wife. If a bride-wealth is paid and another man commits adultery with his wife the adulterer must pay compensation. In the olden days “if a man impregnates a woman in respect of whom the bride-wealth has not been paid, the child born as a result of that act belongs not to him, the natural father, but to the man who has paid the bride-wealth in respect of that woman”³⁰⁴. In some societies the bride-wealth stabilises the marriage. It represents security for the good conduct of husband and wife in marriage or in a political terms check and balance on the marriage. If a husband mishandled his wife to the extent that she returns to her father or family, then the man forfeits both the bride-wealth and the woman³⁰⁵.

If the marriage breaks down completely and there is divorce, the husband may get back some of the gifts he had given to the wife’s people; but in other societies, nothing is returned to him. If it is the fault of the woman that causes the break down of the marriage then the woman, that is, the woman’s family must return the bride-wealth. If, on other hand, the fault comes from the man the bride-wealth is not returned. Sometimes it is very difficult to get the

²⁹⁹ Awedoba, Culture and development in Africa, p.137f; Jean-Pierre Dozon, Africa: “The Family at the Crossroads”, in *A history of the Family. Anthropological Perspective of Kinship and the Family, The Impact of Modernity* vol. II, translated by Sarah , Polity Press, 1996, p.313.

³⁰⁰ Françoise Zonabend, “Anthropological Perspective of Kinship and the Family”, in André Burguière et al.(ed.), *A history of the Family*. vol. I, Distant worlds, Ancients worlds, Polity Press, Cambridge, UK, 1996, p.27.

³⁰¹ Peter Sarpong, *Dear Nana: Letters to my Ancestors*, Franciscan Publications, Takoradi, 1998, p.174.

³⁰² Ankrah, How Africans marry in the Church, p.25.

³⁰³ Cf. G.J. Wanjohi, African Marriage, Past and Present, loc. cit.

³⁰⁴ Ibid.

³⁰⁵ Cf. David Chidester, *Religions of South Africa*, Routledge, London, New York 1992, p.24.

bride-wealth back since it is shared among her family. In that case the woman will make what it takes that the marriage does not break because of her behaviour³⁰⁶.

In almost all African societies, it appears that what the man gives as bride-wealth is determined by various factors. One of these factors is the status of the woman or status of her family in a particular community, whether she is a queen mother or from a royal family. Even though the status of the woman may determine the bulk of the bride-wealth, in Ghanaian societies it is the same for everyone. However, the society does not reject any other offer above the stipulated custom since wealthy or affluent personalities may want to add something above the normal bride-wealth to show the bride's family that their daughter will be well catered for.

Unfortunately, in societies where the bride-wealth is considerably high the women in such marriages have very little power. If they are ill-treated, they cannot normally ask for divorce because their parents will have to give back to the man the total herd of cattle that he gave as bride-wealth, and invariably the family would not be in a position to do so. Since they usually have no property of their own, and they cannot expect any protection or support from members of their own family, they may suffer in silence, or, as sometimes happens, commit suicide. It must be mentioned, however, that in those patrilineal societies, such as the *Ga* and the *Ewe* tribes of Ghana, where the woman does not become a member of her husband's family, the bride-wealth given is not very substantial, and the women in these societies have greater freedom when it comes to divorce³⁰⁷.

Though we repeatedly maintained that bride-wealth is never buying women into slavery, nevertheless we must admit that in some cases the bride-wealth is so high that many men found it very difficult to work their way through to getting a wife. Again due to the individualism and selfishness, which have accompanied modern life, some parents ask too much money as bride-wealth. One very serious result of this is to make nonsense of the original aim of the institution of bride-wealth, which may even compel the outsiders to say that it is a commodity-exchange, a wife-buying activity³⁰⁸. According to Dolphyne, many women from different parts of Africa generally agree and criticised overpricing of the bride-wealth in certain societies. As such many of them would want to see some restriction on the total value of the bride-wealth, whether in cattle, in gifts or in cash, for with the introduction of a cash economy into African societies, parents, especially those in urban centres, often ask for the cash equivalent of the bride-wealth, *and this* can be very high indeed. In spite of this, many women do not want to see an end to the practice because they feel that it is a source of

³⁰⁶ Sarpong, *Dear Nana*, p. 175.

³⁰⁷ Dolphyne, *The Emancipation of Women*, p.8.

³⁰⁸ Cf. Wanjohi, *African Marriage, past and present*, loc. cit.

disgrace for a woman to contract marriage without some bride-wealth being given to her and her relations³⁰⁹.

Since apart from its legitimisation role, bride-wealth also confers prestige and statuses or denies these to the spouses and their offspring co-wives are known to ridicule those wives on whose behalf the husband has not yet made a settlement of the bride-wealth³¹⁰. A wife is also ridiculed by the society as not being of much value in the eyes of her family for the same reason. In the long run, it is the man, who has been saved the expenditure, who will at a later date turn round and insult her as having been given away for free by her relations because they felt she was either a burden or not of much value to her family. If no bride-wealth is given it would be a denial of a woman's worth to her husband in terms of the services she is expected to give, and the woman could be held up for ridicule³¹¹. The position women hold about bride-wealth suggest to us that bride-wealth has an important role to place in the social order even if it is widely criticised in the press within and outside Africa.

However, in recent times many women are agitating for the abolishing of bride-wealth since it amounts to enslavement and exploitation of women. Bride-wealth can also tempt parents in some African societies to marry out their daughters earlier than expected in anticipation of the wealth, which the institution brings in. Such premature marriages can be disastrous for the young bride and her children. She may not be physically and emotionally developed for childbirth and child support. Bride-wealth can lead to exploitation. Where it is variable, it could be raised to as high a level as suitors can possibly afford taking into consideration a girl's desirable qualities. Wife-givers may hand the bride over to the highest bidders who may not necessarily make the best husbands. The result is the exploitation of pubescent girls and suitors by wife-givers. Dolphyne however insists that those women who resent bride-wealth are still in the minority and are usually Western-educated elite women. While this group is resentful of the practice a new trend is emerging whereby some women either assist their husbands to meet the bride-wealth or settle it entirely from their own means.³¹².

Consequently, it appears that no matter how bride-wealth is criticised and resented in African societies, its abolition is unforeseeable in the immediate future. If governments were to legislate on its abolition, it would be impossible to enforce it, especially in the rural areas where people have very strong attachment to tradition. Thereupon, the educated and the urban dwellers cannot escape it. What can be done at the moment is to appeal to traditional rulers in conjunction with heads of religious bodies to use their influence to stipulate what the bride-wealth should consist of, so that an upper limit can be set. In appealing to such leaders

³⁰⁹ Dolphyne, *The Emancipation of Women*, p.9.

³¹⁰ Awedoba, *Culture and development in Africa*, p.141.

³¹¹ Dolphyne, *The Emancipation of Women*, p.9.

³¹² Awedoba, *Culture and development in Africa*, p.145.

in the society, the argument should not be that the bride-wealth system is a form of slavery or servitude because the high value of some bride-wealth seems to imply that the woman has been bought. Such an argument would be considered foreign to African thinking and way of life and may be western-inspired ideology. What is more likely to receive sympathetic hearing is the argument that it is not healthy for a couple to start off married life with a debt on their hands, since very often people have to borrow money in order to obtain the appropriate type of bride-wealth, or give the cash equivalent of what is considered adequate and proper³¹³. So, we agree with Sarpong that “the institution of bride-wealth is a wonderful institution that should not be regarded in the negative way”³¹⁴.

1.4. Preparation for marriage

In Africa preparation for marriage begins with a ‘search’. Therefore if parents or family seek out a wife or a son-in-law, they are looking for somebody that will live up to their expectations. The person must have good moral qualities, industrious in physical work, respectful towards elders especially respect of in-laws and the observance of distance between in-laws and a good reputation. It may sound absurd but in preparation towards marriage among the *Ewe* of the good olden days, beauty and physical attractiveness do not play a major role as far as the family and clan expectations are concerned. From all we have seen so far, there is no doubt that a Ghanaian does not step into marriage without some sort of preparation. It also indicates the value and importance attached to preparing and celebrating marriage in Ghanaian societies. It is a step which calls for all necessary attention.

In what therefore does the preparation consist? In other words, what education is a young man or woman given as a preparation for his or her marriage and family life? What should he or she know and how should he or she behave himself or herself when grown to the age of marriage? Preparation for marriage in the traditional set up begins in the early stages of child development with certain key moments marked with rituals. Abotchie explains, “These rites constitute the traditional processes of socialisation, by which an individual, inexperienced in the traditional culture is taught the norms and values of the traditional society as an aspect of his behaviour”³¹⁵. The whole process, which is the “rites of passage”, begins with the rite of out-dooring of a newly born child. That is to say, the African traditional society believes that when a child has been born physically, it must also be born ritually or religiously in order to make it a social member of the community. At a later age, it goes through a series of initiation rites, specifically puberty and marriage rites. These initiation rites are like the birth of the

³¹³ Dolphyne, *The Emancipation of Women*, p.10.

³¹⁴ Sarpong, *Dear Nana*, p.176.

³¹⁵ Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p.19.

young people into the state of maturity and responsibility. Initiation rites dramatise and effect the incorporation of the young into the full life of their nation. Only after initiation, where this is observed, a person ceases to be child, born religiously and socially into full manhood or womanhood with all its secrets, responsibilities, privileges and expectations.

One of the educational purposes of initiation rites is to introduce young people to matters of sex, marriage, procreation and family life. One could say then that initiating is a ritual sanctification and preparation for marriage, and only when it is over may young people get ready for marriage. Since the whole community participates in the initiation rites, it is therefore the entire corporate body of society, which prepares the young people-for marriage and family life³¹⁶. We may want to ask, what is the fate and how are young men and girls preparing for marriage in the societies that have no initiation rites or are no longer taken seriously? In societies with no particular initiation rites, or where they are fading out due to modernity, technology, etc., parents and other relatives gradually educate their children on morality and values necessary for marriage and family stability. For instance, girls are taught how to prepare food or cook delicious meals, how to behave towards men, how to care for children, how to receive guests at home, how to keep the body and the surroundings clean, how to look after the husband and other domestic affairs. The boys are taught what most concerns men, like looking after cattle, farm, fish, to tap palm trees for wine, behaving properly towards one's in-Laws, how to acquire wealth which one would give to the parents of a girl as part of the engagement and marriage contract, and how to be responsible as the leader of the family. In some cases he must now build his own separate hut in his father's compound. If he cannot do this at this time he must at least have his own kitchen.

Among the *Ewe* tribe of Ghana, before marriage takes place, experienced persons especially those who tasted long marriage lives and are known to be beyond reproach in the community are called upon to give exhaustive and thorough implications, duties and obligations of marriage life to the couples. In the good old days farm implements and gun were given to the man; and the woman receives cooking utensils as symbols of their future obligations in the family. In the Anlo-Ewe traditional areas according to Abotchie during the confinement period, "re-orientation courses" are organised by an elder kinswoman on the duties and obligation of a married woman for the girl. Most emphatically, she is made aware of the "sacred" virtues of fidelity, humility and obedience to her husband. The consequences of disobedience and particularly of infidelity are brought home to the bride in no uncertain terms. For example, she is made aware that adultery constitutes the most serious violation of the marital code of ethics. She is told that if such an act of infidelity was perpetrated, she would be ignominiously exposed by the special hex of chastity (*gbolo magba or adema*) buried in the compound of the husband's home. Under the power of this charm, the wife

³¹⁶ Mbiti, op. Cit. pp.131-132.

committing adultery, on the day of the event, finds the normal act of re-entering her husband's house no longer possible, because the charm keeps her arrested (transfixed) at the entrance, until she makes a confession and is ritually purified³¹⁷.

One of the main handicaps in African culture about preparing young adults for marriage is about sex education. Sex knowledge is often difficult to impart from parent to child because sex is a taboo theme in our tradition. "So parents do not give their children sex education in the strict sense of the word. The best some parents, mainly mothers, do is to warn their daughters against unwanted pregnancy... Fathers are particularly passive about the education of their children on sexuality"³¹⁸. The African believes that sex is sacred and it should be handled as such. Children are not supposed just to talk about sex in public or even in private. For this reason sex information is only gathered from fellow young people and peers; and most often it is only a mixture of truth, myth, ignorance, guesswork and jokes.

According to Mbiti, formal schools and universities in modern Africa have contributed greatly to the confusion because they become often centres of even greater ignorance of these matters, such that young people go through them knowing, perhaps, how to dissect a frog but nothing about either their own procreation system or mechanism, or how to establish good marriage and family life. In this respect, surely traditional methods of preparing young people for marriage and procreation are obviously superior to what schools and universities are doing for our young people³¹⁹. Nevertheless, in the absence of any formal sex education certain entrenched regulations and values in the Ghanaian societies seem to have powerful influence on the younger generation's sexual behaviours³²⁰. Additionally, young adults may have a bit of sex education at home. Girls are probably more advantageous in this respect than boys, since they spend more time with their mothers and older women relatives than boys may spend with their fathers. Responsible mothers and aunts teach young girls how to keep and wash their private parts especially during bathing. With the severity of STDs, abortion and HIV/AIDS in our African societies, there is the need for parents and lineage members to embark on serious sex education of their children and young people.

1.5. The fallacy of Rights and Obligations

In all African societies, marriage confers a number of rights, duties and obligations on the spouses and their kin groups. However direct observable phenomenon, we must admit, is that there is imbalance in respect to these duties and rights in marriage. The traditional position is

³¹⁷ Cf. Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p.36.

³¹⁸ Anarfi, *talking and deciding about sex*, p.182.

³¹⁹ Cf. Mbiti, *op. cit.*, p. 132.

³²⁰ Cf. Anarfi, *talking and deciding about sex*, p.182.

that women are never wholly independent. A woman must always be under the guardianship of a man, and when she marries, her original guardian, which is her father or clan head, hands over some or all of his responsibility to her husband.

The father of the home is regarded as the head of the family and he has the last word in almost all matters. Sometimes instead of the wife or wives coming next in importance, as one would expect, they come only after the father's kin that is his immediate brothers and sisters. In most families, in fact, even the first son had greater authority in the house than any of the wives and sometimes than his mother. Within the hierarchy certain conventions and courtesies are observed. The father is the object of great respect, often verging towards reverence both by the children and even by wives. The folks believe that love and respect are the most important things which keep the African traditional married life going³²¹. Nukunya explains this position that the woman's guardian, usually a father or lineage head, gives to the husband the rights to which he is entitled. For this alienation the husband and his lineage must make some returns in the form of marriage payment³²².

The woman is responsible to the husband but not vice-versa. We have also seen that in the preparation process, especially among the *Ewe-Anlo*, the girl is threatened with certain consequences if she should commit adultery or anything unbecoming of her state while boys have no such fear loaded in their education about the marriage life. The importance of sex in the marital relationship also has some adverse effect on the part of the woman in the tradition. The traditional expectation is that women should play a passive role in the initiation of, and participation in the sex act. Anarfi insists further that "Men expressed certain anxieties about women who call for sex, fearing that such women cannot remain faithful when their husbands are away. Although it came out that both men and women experience orgasm during sexual intercourse, men tend to achieve theirs more often than women. While both parties make the effort to bring each other to the climax, women do not seem to have their way quite as often as they feel embarrassed to urge the men on. The fact that the women cannot determine when to have sex, as well as the fact that they cannot compel their male partners to bring them to the climax, put them in an awkward position in the sexual relationship"³²³.

Of course, a wife is also entitled to sexual satisfaction from her husband and failure to fulfil this aspect of his obligations may also be a cause for the woman to seek divorce or quit the house indefinitely. Theoretically, the man has no moral and legal right to refuse his wife this gratification but the inequality between man and woman in the traditional society actually

³²¹ Cf. J.O. Kayode, "The Contribution of African Traditional Religion and culture to Marriage in Nigeria", in E.M. Uka (ed.), *Readings in African Traditional Religion: Structure, Meaning, Relevance, Future*. Peter Lang, Bern, Berlin, Frankfurt a.M, New York, Paris, Wien, 1991, p.235.

³²² Nukunya, *Tradition and Change in Ghana*, p.46.

³²³ Anarfi, *Talking and deciding about sex*, pp.183-184.

may deny the woman to have sufficient grounds to enforce her right to sexual satisfaction because “her sexual rights in him are not absolute since in Ghana almost all marriages are potentially polygynous”³²⁴.

Thus, the husband can seek sexual gratification by taking another wife. Yet it is emphasised in many traditional societies that for the sake of a harmonious polygynous compound, he must inform, and sometimes seek approval from his present wife or wives before taking an additional one even though it is not binding on him, since the husband’s extra-marital affairs by themselves do not concern her so long as he is able to fulfil his sexual obligations to her³²⁵.

In almost all Ghanaian societies the woman is not expected to call or address her husband by his personal name but as ‘master’ or by some other title that duly reflects his superior position. She may, however, get around this by calling him her children’s father. But first name relationship, for example, Peter, John, Paul etc between spouses is usually not allowed. She never calls him by his name³²⁶. If she does, then she must qualify it with the appropriate word which shows respect, for instance, in *Ewe* society, she must say “*Fo*”³²⁷ Peter or “*Fo*” *Kwame*. It is also a common knowledge to refer to the man as “lord” (*Afetɔ*). Sometimes visitors and relatives who visit the house intending to know the whereabouts of the husband may simply say, “Where is your *Afetɔ*? (Master)” rather than simply asking where your husband is. Against this, however, the husband as the master may call or address her by her personal name.

The customary rule pertaining to male-female relationship in the traditional African societies is not only limited to the issues of married women but also for the girl-child. It is argued that the girl-child grows up as an African girl and later becomes a woman through the process of enculturation, that is, the context of a process in which the African woman is taught and she herself consciously and unconsciously learns the derogatory-positive components of life in the culture of African womanhood. This learning process takes place through example, direct teaching and in patterns of behaviour, in songs, proverbs, wise sayings and folktales. What is learnt directs towards corresponding patterns of behaviour³²⁸. This learning process later affects the girl in her actions and behaviours. It is very difficult to part with it.

According to Minkah-Premo when children are growing up, male children are fed better, do less housework and have better opportunities to go to school and to stay in school as against

³²⁴ Nukunya, *Tradition and Change in Ghana*, p.46.

³²⁵ *Ibid*.

³²⁶ Cf. Dolphyne, *The Emancipation of Women*, p.18.

³²⁷ “*Fo*” literally means somebody is older than me and must be given respect. In short, it is a word used as a sign of respect accord someone. The feminine form of this word is “*Da*”. However, husbands are not obliged to use it as a prefix to the name of their wives.

³²⁸ U.E. Umorem, “Enculturation and Inculturation: The Gospel of Liberation and the Culture of African Womanhood”, www.SEDOS.org (Accessed: 14.03.2006).

their female counterparts. Besides even when girls get the opportunity to go to school, they are more likely to be sexually harassed by their teachers than their male counterparts and this may affect their performance in school. This means that men again take the little opportunity available to them away. In some cases, it results in teenage pregnancy, curtailing their chances of completing school, not mentioning achieving a high education³²⁹.

In some parts of Ghana where customary servitude is the norm, a young female child (never a male one) stands the risk of being placed by her family in ritual servitude to appease for the sins of other family members. Unfortunately, the ritual servitude does not only destroy her future ability to acquire skill and to live a decent life but she is also subjected to many human rights abuses in the shrines in which she is placed. These include rape, forced labour and other forms of exploitation. A typical example of such dehumanised system is “*Trɔkosi* system” (the slavery of young girls) practiced mostly among the southern Ewes in Ghana. *Trɔkosi* is a combination of two Ewe words namely *trɔ* and *kosi*. *Trɔ* means deity and *kosi* is a slave. *Trɔkosi* therefore means, “Slave of a deity”. In its commonest and most humiliating form a virgin who is yet to experience the menarche is given to a deity to atone for the sin or offence committed by a relative. She thus becomes a slave of the deity, though euphemistically she is called the deity’s wife (*Fiasidi*). She remains in the shrine serving the priest and other functionaries of the deity for a period ranging from a few years to life and is often used as the sexual partner of the priest. In some cases even after her death another girl from the family has to replace her in the shrine³³⁰. The system cannot achieve anything for the girls but result in injuring them or destroying their future³³¹.

Again, before girls are old enough to make their own choices for their marital partners, they are sometimes compelled by their families to marry older men against their will. Such girls become mothers whilst they are still practically children themselves. Once married, women suffer many acts of violence at the hands of their husbands and his family members. Husbands are more likely to beat their wives and to subject them to different forms of psychological distress as well as economic deprivation. Young girls married too much older men cannot negotiate with their partners when it comes to sexual matters and are therefore open to the risk of having to give in to their sexual demands, irrespective of her circumstances³³².

General upkeep of the home is the responsibility of the wife, including preparation of food for the family and caring for the children. According to Nukunya, sanction against breaches of these inter-personal domestic rights, duties and obligations are generally flexible but can also

³²⁹ Cf. Sheila Minkah-Premo, *Coping with Violence against Women*, Asempa Publishers, Accra, 2001, p.4.

³³⁰ Nukunya, *Tradition and Change in Ghana*, p.243.

³³¹ In June 1998 the criminal code of 1960 Act 29 was amended to outlaw harmful traditional practices including *Trokosi* system.

³³² Minkah-Premo, *Coping with Violence against Women*, p.5.

jump over the fence. In most cases the man's physical advantage may compel him to take 'unilateral' action by beating the woman. Wife-beating is quite a common form of penalizing women in many Ghanaian societies and may be applied in the face of her adultery, failure to cook for the husband on time and anything he considers to merit such a treatment. But it is expected of a reasonable man to exercise moderation in beating his wife so as not to hurt her. Moreover, the love for the wife may compel the man to reconsider some times the drastic actions he might wish to take³³³.

In spite of the unhappy situation of women in the traditional society and the dominating influence of the male partner, the latter is also expected to provide for the house and treat his wife with love, kindness and understanding. We must emphatically state that it is not true that African husbands do not love their wives because the woman is inferior to him³³⁴. The African husband's love for the wife is translated in the actions of regular gifts to the wife and taking responsibility for all her troubles including debts. He provides for her daily needs, defends her dignity before the public and from the external aggressor. Thus, although adultery may be a cause for divorce, a man may not take this step because of his love for the wife. This is not to say that divorce is not rampant in Ghanaian societies.

We can explain further that in the traditional African family there is a division of labour between man and woman. The man must feed his wife or wives and children and provide also for their health needs. He must constantly provide clothing for the woman especially during occasions such as pregnancy, out-dooring and naming of a child, traditional festivals, Christmas, Easter, etc. The woman on the other hand must cook for the man and children. No matter how one labels these arrangements within the domestic life and whatever level of education or profession a woman achieves, it is a common knowledge that these duties are pertinent to women in our societies. She does not normally expect her husband to share the household chores with her. If the husband enjoys cooking and chooses to cook breakfast or dinner one day, she appreciates the fact that he is being helpful, but she does not expect him to do so as a matter of course. It cannot be his every day assignment as found in the western world. Moreover, she must wash the man's and children's clothing. As a matter of fact, a husband may willingly do the washing or the laundry, cleaning, baby-sitter or cooking when they were living in Europe or America but he is expected to put an end to that as soon as they return to Ghana. The wife, if an African, does not normally protest because she knows her society does not expect a man to do such chores. If such women dare their husbands they will not receive a sympathetic hearing even from their own relations³³⁵. However, due to

³³³ Nukunya, *Tradition and Change in Ghana*, p.47.

³³⁴ Some people came to such conclusions because they do not see couples holding hands and kissing in parks, buses or in the middle of the road. Traditionally kissing is not a custom of African life but there other forms which love is expressed.

³³⁵ Dolphyne, *The Emancipation of Women*, p.5.

urbanisation and professionalism of women in our current Ghanaian societies, most professional women employ house-helps³³⁶ to do the basic chores in the home before they return from work. Very often, the salary of a house-help according to Dolphyne is the responsibility of the woman, for it is taken for granted that the person or the house-help is there to do her job for her. It is therefore not surprising that many professional women do not make a complaint about this, because they know the wider society is not yet ready to see any change in the present domestic arrangements. They cannot, therefore, expect sympathy or support for any move for such a change, especially when there are more important issues that affect the status and welfare of women. It must be mentioned, though, that with urbanization and the need for a man and his wife to be working full-time in order to have a reasonable standard of living, one finds that husbands in lower-income homes who cannot afford to engage the services of a house-help, are helping their wives with such chores as doing the laundry at the week-end or taking care of the children when the wife is cooking. Such people constitute only a small fraction of the population, but it is an encouraging trend, even though it is bound to remain a limited urban phenomenon for many generations to come³³⁷. However, from the fact that African culture and society respect the division of labour within the context of husband-wife relationship in the domestic unit nonetheless men have the “lion share” with the women being subordinate.

Besides the above, some women are refused the right to be gainfully employed and some men deny wives the right to own property in their own names because traditionally males are expected to be the primary income earners and to provide for their wives, and many women expect this when they get married. The economic reality of today however is that it is difficult for many men to live up to this traditional responsibility. This often brings tensions in relationships, which sometimes leads to frustrations resulting in acts of violence against female partners. A man whose income is meagre and who is expected to take primary responsibility for the upkeep of the home may show the pressure on him by attacks on a wife who comes to him for “chop money”. However in marital relationships where the couples are economically independent from each other, there is more respect for the females, less tensions and a reduced likelihood of violence.

Another area of dehumanisation for the African woman is the issue of fidelity. A husband can commit adultery many times over and get away with it without being divorced or subjected to public ridicule³³⁸. In view of this, when a man commits adultery, he does not wrong his wife, for it is the husband in our society who chooses a woman for marriage; but he does so against

³³⁶ In most cases these househelps turn to become “husband snatchers” in the home. Many men develop sexual relations with these girls, which sometimes become the source of trouble in the home. In the present times, to forestall this many women will bring their relatives or the man’s relatives to check the occurrence of unpleasant situation of separation or divorce.

³³⁷ Cf. Dolphyne, *The Emancipation of Women*, p.5.

³³⁸ Umorem, *Enculturation and Inculturation*, loc. cit.

the husband of the wife with whom he has committed an adultery. The wrong that he has done is to plant his seed where he ought not to have done. But as a matter of fact, he incurs no condition of guilt or shame in regards to his wife because he has deprived her of nothing. The adulterous woman on the other hand is considered to commit a serious sin for receiving foreign seed. She wrongs her husband, family and the community³³⁹. Connecting this fact, it is clear, that both the man and the woman were guilty of the offence, but they were judged on different levels on the basis of their gender. In case of divorce she is not given a fair share, if anything at all, of the wealth or property acquired with her as a contributor.

It is interesting to know that a little misfortune which a woman experiences is sometimes interpreted to be a punishment from the ancestors. For instance, if a pregnant woman has difficulties in labour the immediate conclusion is that she had committed adultery. Therefore, to have a peaceful delivery she is forced to name any man or all the men who had slept with her. Unfortunately, due to the pain, the woman is forced to mention names, which may sometimes not be true. Her guilt is publicised. Moreover, women are tested at the death of their husband if during the marriage she had committed adultery. If the woman refuses to wash the dead body of her husband then the conclusion is that she had committed adultery. In some cases, she is not allowed by the man's family to perform or participate in the funeral rites for her husband. In our tradition it is an indelibly mark which indicates that the woman and her family are tainted.

A woman whose husband dies in the course of a marriage is made to suffer dehumanising acts and dubbed as widowhood rites³⁴⁰. Furthermore, her deceased husband's relatives are likely

³³⁹ Cf. Sam J. Obianim, *Eve Kɔnuwo*, Sedco Publishing limited, Accra 1998, p.92.

³⁴⁰ When a man dies it is because his wife is an unlucky woman whose ill-luck has caused her husband's death. In some communities in Ghana, it is this belief that underlies the treatment that a woman goes through at the death of her husband. In these communities, there is a strong belief that such a woman is likely to bury a second and a third husband, after which the fourth, if she can find one, will survive her. She must, therefore, purge herself of the ill-luck that is dogging her. The period for such purging varies from one society to another, but what runs through most of the widowhood rites is that the woman must be put through a certain amount of discomfort. If her in-Laws do not like her, the sisters-in-Law in particular make it their business to generally make life unpleasant for her, especially if they believe their brother had been extremely good to her and, as a result, had neglected them. She is not normally supposed to sleep in a bed till after the fortieth day of the death of her husband, and she sleeps on a mat on the floor. During the first forty days, the widow is confined to the house, usually that of the husband's family, unless special permission is given for her to continue with the widowhood rites in her own house. She cannot engage in any economic activity for a considerable length of time, and she may have to wait for six months or even a year before going about her normal business, especially if she is self-employed.

On the first anniversary of the husband's death, the widow discards her mourning clothes and starts normal life again. In some communities, there is an end-of-widowhood ceremony at this time, involving the slaughtering of a sheep and feasting. A widow in such a community cannot discard her mourning clothes until she has performed this ceremony. If she cannot afford a sheep, drinks and the other things needed for the ceremony on the anniversary of her husband's death, she continues in mourning clothes until she is able to do so.

The practice of widowhood rites is again one of the traditional practices that clearly show the inequality between the sexes. A man is never responsible for his wife's death unless there is very clear evidence that she died as a result of physical violence on her by the husband. Even in such a situation, the woman may be blamed for being difficult and insubordinate, thus forcing the husband to be violent towards her. A widower must also undergo

to throw her out of her matrimonial home and take over the assets she may have solely acquired or acquired jointly with her deceased husband. Once they grow old, females are more likely to be branded witches than their male counterparts and suffer many atrocities including ostracism as a result of these allegations³⁴¹.

Under customary law, widows are expected to observe mourning rites which however are much more restrictive for women than for men³⁴². In the customary marriage women have no entitlement to alimony payments in case there is divorce; rather, in many situations the bride-wealth has to be returned by the woman's family. This situation creates a pressure for women to remain in the intolerable marriage thus making her a sad and unhappy woman the rest of her life. No doubt, many things have changed in the contemporary African world with respect to marriage and womanhood. The feminist movements have led to rejection and revocation by women of the patriarchal model of marriage in which they are made legally dependent on a man. The entry of women into the career market has led to their economic independence and changed attitudes toward marriage³⁴³. In recent times, as means to enforce improvement of the status of African women, the African Union (AU) on 11th July 2003 adopted the Protocol to the African Charter of human and People's Rights on the Rights of women in Africa (ACHPR)³⁴⁴, which came into force on 25 November 2005.

certain rites to rid himself of the ill-luck and the contamination that death is generally considered to bring. But these are done with the minimum of discomfort, the worst being confinement to the house for about a week or two.

In Ghana, after considerable debate, a law was eventually passed banning widowhood rites. However, women who had been pressing for such a law realized, to their dismay, that so strong is the belief that a widow may be haunted by the ghost of her husband if she does not perform these rites, that there are widows who are still willing to go through with them, in spite of the law. Some widows also feel that if they refuse to perform these rites, it will be an insult to the memory of the husband who, in his lifetime, had been so good to them. Of course, the law ensures that widows who do not wish to perform the rites are protected. But what is abundantly clear is that while such progressive laws reflect the society's desire to break away from undesirable aspects of its culture, they are only effective to the extent that the wider society is prepared to conform to the provisions contained in them. In the case of the widowhood rites, enforcement of the Law banning them depends primarily on the willingness of the women whom the law seeks to protect to be so protected. This means that while laws aimed at the eradication of certain traditional practices may be desirable and necessary, what is more important is a systematic programme of education to make the society as a whole, and the women in particular, appreciate the need for a change in attitude to those traditional practices.

The only way to put an end to such a practice is, as suggested under polygamy, to give women skills that will make them economically independent, so that marriage will not be the only avenue open to them in their search for economic security. See Dolphyne *The Emancipation of Women*, p.23ff; Hasenhüttl, *Schwarz bin Ich und Schön*, p.67.

³⁴¹ Cf. Minkah-Premo, *coping with Violence against Women*, p.5.

³⁴² Bridge (development – gender), *Background paper on gender issues in Ghana*, report no. 19 by Sally Baden, Cathy Green, Naana Otoo-Oyortey and Tessa Peasgood Institute of Development Studies, University of Sussex, January 1994, p.56.

³⁴³ Cf. Michael G. Lawler, "Changing Catholic Models of Marriage", <http://www.americamagazine.org/gettext.cfm?articleTypeID=1&textID=1796&issueID=336#>. (Accessed: 09.06.2008).

³⁴⁴ "Protocol to the African Charter of human and People's Rights on the Rights of women in Africa (ACHPR)", <http://www.achpr.org/english/women/protocolwomen.pdf>. (Accessed: 11.12.2008).

The adoption of the Protocol was a major a landmark step in enhancing the status of women and eradicating and eliminating inferiority complex in women as well as promoting and protecting women's human rights and dignity on the continent through providing a comprehensive legal framework for holding African governments accountable for their violation. It covers a broad range of women's issues. Some of these issues comprise widow and property inheritance, equal participation of women in economic and political decision-making, equal representation of women in the judiciary and law enforcement agencies. It also entrenches sexual health and reproductive rights of women to medical abortion when pregnancy results from rape or incest or when the continuation of pregnancy endangers the health or life of the mother. It also calls upon States to play a proactive role in order to eliminate, eradicate and legally prohibit female circumcision or genital mutilation, forced marriage, widowhood practices and the eradication of all other harmful cultural, traditional practices that dehumanise women on the African continent³⁴⁵.

Articles 6 specifically on marriage requires that marriages take place with the free and full consent of both parties who must be at least 18 years of age. This means that consenting to a marriage shall not be based on the physical development of the girl but solely on age and maturity. It endorses equal rights between a couple in a marriage in choosing the matrimonial regime and place of residence. The protocol encourages monogamy as the preferred form of marriage but insists on protecting the rights of women in polygamous unions. It gives married women the right to retain her maiden name and her nationality if she so chooses. It also gives her the right to acquire her own property and to administer and manage it freely. The Protocol further requires that national laws take measures to ensure that women and men enjoy equal rights and are regarded as equal partners in marriage, jointly contribute financially, materially and morally to the upkeep of the matrimonial home thus avoiding the stereotyped roles for men as the sole head of the family³⁴⁶.

This protocol has significantly contributed to the achievement of women in Ghana. Following from Article 5 of the Protocol, the NDC in her manifesto for General Election December 2008 in Ghana, has promised to give women significant positions in the development of the country. The 100 days administration of the NDC government has indeed chalked lot of successes for women in the ministerial and other relevant posts. For instance, the minister for Tourism, minister for Justice and Attorney General, minister for information, minister for children and woman affairs, minister for Central Region and a couple of ministers of State are all women. Moreover, certain highest posts in the Land, for example, the acting Inspector General of Police (IGP), the Chief Justice and the Speaker of Parliament are also women.

³⁴⁵ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 1-32.

³⁴⁶ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, art. 6.

In spite of these significant breakthroughs and achievements, the majority of African women still continue to live in the ghetto of inferiority, low self image, cultural political, economic, religious intolerance and exploitation, which deny them the chances to develop their full human potentials.

On account of this, it seems appropriate to emphasise that the traditional codes and *status quo* that seem to perpetrate these outmoded ideas would have to be eliminated such that men and women are seen as equal partners in marriage. In another sense the state and the Church must make provisions to empower women to fight for and maintain partnership with the men within the marriage bond. Similarly, the society as a whole has the responsibility to promote continuing relationships within the traditional system which in itself needs being transformed to acknowledge or even promote the equal dignity of partners³⁴⁷. In the final analysis unless these intolerant and exploitative attitudes that discriminate against women are revised or eliminated the situation in African marriage homes may be devoid of the equality of the partners. A fruitful pre-marriage preparation can only be achieved if these vices against women are eradicated. It is therefore an absolute necessity on the part of those responsible for marriage preparations, particularly pastors, to educate them concerning the rights and duties of couples. They are obliged to educate couples and society against the evils of polygamy, ill treatment of wives and widows, and other social and religious forms of human degradation unbecoming to the status and the dignity of women.

2. The implications of Polygamy and Monogamy in African marriage

2.1 Polygamy as socio-cultural value in Africa

There are some reasons put forward why polygamy came to the scene or is still tolerable in African societies. Some of these reasons, which could be acceptable ethically, are diverse and include political, economic, and religious reasons; and these could be broken down to include a surplus of women due to death of males in warfare or conflict, the sexual prowess of a man, the possibility of widows being cared for, and for the reason of prestige.

As we have already seen, to die without children is regarded as a terrible calamity in African societies. The fear of this catastrophe readily encourages many men to settle for more than one woman. In fact, the African man does not only marry to have children but a son. So an African man may decide to marry another wife for the lack of the birth of a son. The demand for a son is still the urge to maintain the family name. The woman who has not produced a

³⁴⁷ Cf. Hevi, *Cultural Values and the Family*, p. 266.

son has two alternatives: either she continues giving birth in succession until a male is born or he allows the man to try his luck elsewhere³⁴⁸.

In many Ghanaian societies, despite widespread polygamy, few men get more than five wives. The common figures range between two and three with two the most frequent. It is interesting to note that a wife in some societies may ask her husband to take an additional wife to give her a companion and also to help her with the domestic chores. Sometimes these suggestions are made so that the additional wife can supplement her barrenness. Such a wife may even woo a girl of her liking for her husband. It is also said that a man who finds one wife unsuited to his needs may also try to add to this number as a means of curbing the wife's excesses or as a way of getting assistance for her. Men sometimes claim that women in monogamous unions are not as obedient as those in polygamous ones. It is said that the latter compete for the love of the husband and do everything possible to win his favour³⁴⁹.

Further, it is an African belief that the ritual prohibitions associated with menstruation, pregnancy, childbirth etc. lead to a temporary loss of sexual access to the wife in many societies. A mother could breast-feed her child for up to two years and so long as the infant was unweaned a husband could not approach her for sex. This is important because of "the custom of long female postpartum sexual abstinence that is believed to be able to reduce infant mortality"³⁵⁰.

In the same way, Nukunya explains the situation further that despite the emphasis on large families, there were also a number of taboos, injunctions and practices, which helped to control sex life, thereby limiting the reproductive capacity. By far the most widespread among these regulative practices was the weaning taboo found in almost all African societies. The taboo stemmed from the erroneous belief, which is still prevalent, that the semen contaminates the mother's milk, making it dangerous for the child's health. It was therefore imperative for the mother of a young one to avoid sex throughout the period of breast-feeding which ranged from about eighteen months to three years. The effect of this taboo was to prevent close spacing of children and reduce the potential fertility of the wives. It is also a fact that though large families were cherished, too close spacing of children was not encouraged. Mothers weaning their children too early and having children in quicker succession than was deemed culturally acceptable in the society were derided and blamed for threatening the

³⁴⁸ This is not a sound argument because who knows if the second wife will also carry only female seed.

³⁴⁹ Cf. Nukunya, *Tradition and Change in Ghana*, p.45. See also Dianne Naden and Tony Naden, "Polygyny: Further factors from Mamprusi", *American Anthropologist* Vol. 93, no. 4, p.948-950. The conclusion drawn from this study is given by the authors as: As the family grows, the first wife may find the burden of the women's work from the whole house excessive, especially if there is no other adult women... and if she has no daughters or the daughters are still small. Then the wife begins to urge the husband to marry another wife.

³⁵⁰ Yasuko Hayase and Kao-Lee Liaw, "Factors on polygamy in Sub-Saharan Africa: Findings based on the Demographic and health surveys", *The Developing Economies*, XXXV-3 (September 1997), p.295.

health of their children. Among the *Ewe* such a woman is nicknamed *kpedevinɔ*, which connotes among others, frequent childbirth and disregard for traditional guidelines for spacing of children³⁵¹. The solution to this insight was found, not in going against this custom but taking another wife.

The wives and their numerous children as it were, have a political and an economic benefit to the husband as well. Traditionally, the position of chiefs compelled them to have several wives in some cases not necessarily by choice. Chiefs received wives in the context of reciprocity; some of their wives may be inherited from previous incumbents and are only wives in name. Sections of the chiefdom would also show their allegiance to a new incumbent by presenting him with their daughters to wed. This action in a context equates women to a gift. Whatever way we may see this value it symbolises an offer of goodwill, which the chief was not, entitled to refuse. Refusal may be considered ingratitude and in some circles will inadvertently sow the seeds of discontent. Political alliances were thus forged through marriages³⁵². From this evaluation one could also say that polygamy could be used as a unifying factor among different groups and chiefdoms. Africans are by nature very hospitable, therefore there was the need of chiefs to have a large household, capable of extending hospitality to a larger number of persons.

Another important fact that stimulates polygamy is economical. The survival of the traditional economy depended greatly on the viability of farms. Accordingly, having many wives means more women and children for farm work. In Africa where land was easily available and technology simple, labour availability sometimes made a difference in wealth between individuals. The man who had many wives and numerous children could extend his farms and produce surpluses. For instance, if a man gets a new wife, he clears a field for her and later her children. Men are therefore motivated in the primitive system of agriculture, to have two or more wives and many children to serve as a form of cheap labour and as a means to expand ownership of farmland cleared from communally owned land³⁵³. Thus, over the years, the number of wives a man had was seen as a reflection of his affluence.

However in recent times, formal education has meant a reduction in the labour provided by children from certain societies, and hired labour has also meant a reduction in the value of the labour provided by wives, although their condition may change in the form of useful supervisors of the hired labour. In addition to enhancing agricultural productivity, which justifies the system, it also has the purpose of security. Where there are many wives, often there are also many children granting parents assured hope of efficient social security at old age and a most resounding funeral ceremony - an honour that parents in Africa so much

³⁵¹ Nukunya, *Tradition and Change in Ghana*, pp.197-198.

³⁵² Awedoba, *Culture and development in Africa*, p.129.

³⁵³ Cf. Yasuko Hayase and Kao-Lee Liaw, *Factors on polygamy in Sub-Saharan Africa*, p.296.

cherished and looked up to. In connection to this solidarity approach Häring noted, “The large family unit is still operative; the transmission of life has still a transcendental right. Life beyond the grave and the desire to be always honoured by the offspring still form a synthesis. And although infant mortality is already reduced, there is no system of social security; hence only offspring can give security”³⁵⁴. With the above we could say that due to the economic value of the system in many African settings family sizes are unlikely to decrease significantly in the foreseeable future³⁵⁵.

We must however agree that there are some problems such as male dictatorship, the inferior position of women in the relationship, the possibility of HIV/AIDS, population explosion in families etc, related to polygamy need to be addressed. We can argue that polygamy is useful economically but we must not forget that wives and offspring are not only producers but also consumers³⁵⁶. The consequence of multiple wives may represent a substantial financial drain on a man’s resources because he has many mouths to feed and many bodies to cloth and find shelter for. Furthermore, the belief that polygamy leads to a high birth rate may represent a confusion of an individual (male) viewpoint with a society-centred viewpoint being bound up with male strategies of household formation and the high value placed on children in this context³⁵⁷. On account of these limitations, many have come to conclude that polygamy is an affront to society, a disregard for the feelings of women and an indication of a weak sexual morality.

Polygamy among African people does not necessarily mean that their sexual morality is low. Moreover, we must indicate that in the traditional African society no matter how much polygamy is analysed both at home and abroad, polygamous marriages duly contracted according to customary law are valid and official. The man therefore has obligations towards his wives and children. It is not a condition of mishap or moral evil in the African mind as some may want us to understand³⁵⁸. Polygamy is not an undesirable social system, but a well developed, coherent, and even preferred way of life for many Africans since pre-colonial times³⁵⁹.

We have seen that several views have been proposed to explain the occurrence of polygamous marriages in African societies. Some people have suspected and think scientifically that a

³⁵⁴ Häring, op. Cit. pp.519-520.

³⁵⁵ Cf. Philip Burnham, “Changing themes in the analysis of African marriage”, in: Transformations of African marriage, p.45. See also John Cadwell, *Theory of fertility Decline*, Academic Press, London 1982, pp.12-14.

³⁵⁶ Awedoba, Culture and development in Africa, p.130.

³⁵⁷ Cf. Philip Burnham, Changing themes in the analysis of African marriage, p.47; P. Burnham, *Opportunity and Constraint in a Savanna Society*. Academic Press, 1980, p.228; Rémi Clignet, *Many wives many Powers*, Northwestern University Press, Evanston, 1970, p.28.

³⁵⁸ Cf. Zekeh Gbotokuma, “Polygyny in Africa: A male’s Post-Original Sin or Rejection of the Primeval Monogyny and affirmation of sexual Inequality”: <http://www.bu.edu/wcp/Papers/Afri/AfriGbot.htm>. (Accessed: 20.11. 2005).

³⁵⁹ Cf. Yasuko Hayase and Kao-Lee Liaw, Factors on polygamy in Sub-Saharan Africa, p.294.

desire for numerous sex partners is built into basic human biology, a factor that explains its almost universal occurrence, but with exceptions or variations. Other theories based on population and ecological factors explain it as a response to lengthy periods of sexual abstinence that women must follow after childbirth in some cultures. This practice reduces the number of children one woman must give birth to but drives husbands to acquire additional wives to meet unfulfilled sexual needs. Demographic theory suggests that polygamy may occur because of a surplus of women that results from a high incidence of male warfare and deadly ventures. However some of the factors as we have discussed them above may have had their usefulness in the past but are no longer considered to be valid today as a result of the development of modern alternative forms of social behaviour, especially the influence of Catholicism, economic values and the emancipation and self-reliance of women. In spite of that the “practice is quite alive in some African communities”³⁶⁰ and it is unlikely to dissipate significantly in the foreseeable future.

The effort to render polygamy useless on the continent leads to another form of “mono-polygamy” described in the following words by Ankrah: “One fact which appears indisputable is that today a man, who may not be engrossed in typical African traditional lifestyle, may clandestinely engage in a relationship with another woman outside wedlock, and end up having children with her. The intruder’s family may then pressurize him to declare his intentions regarding the woman he has taken outside customary law and her children. He would usually accept paternity, even if reluctantly, and take on a second wife having performed the required customary rites for her. In traditional society his action is acceptable and that is the reason for the prevalent phenomenon of men having one official and two or more unofficial wives”³⁶¹. This phenomenon described by Ankrah above reinforces the fact that the customs and traditions continue to be observed in one way or other even in the “new African lifestyle”. Although every great African is proud of his/her customs and cultural heritage, and willing to defend them, yet common sense also demands that if there are some provisions in the customs that contravene natural justice, equality, and are vulnerable to the dignity of women, then we have no other choice in good conscience but to oblige to introduce remedies in the customs in accordance with the principles of justice and a right to better marriage and family life.

2.2 Polygamy and women

With regards to women in polygamous relationships there is a lot of emotional violence as a result of rivalry between the women, and this sometimes erupts into physical and psychological harm. Whilst the man has a choice of many women, the women have to share

³⁶⁰ Ankrah, *How Africans marry in the Church*, p.30.

³⁶¹ *Ibid.*

one man. Polygamy leads men to believe that they have a right to have as many women as they want irrespective of the wishes of their female partner. One other consequence is the acceptance by society of multiple partners by men even when they are legally married under the Marriage Ordinance, which requires monogamy. In recent times, many writings and cases clearly endorse the fact that polygamy is a challenge to social realities and contravenes the ideals of marriage because it is against the dignity of women and “increase women’s insecurity and vulnerability in married life”³⁶². For that matter, it must be abolished. For instance, in the recommendation of the Committee on the Elimination of Discrimination against Women, it calls upon the Ghanaian state to implement measures aimed at eliminating polygamy as a step towards equality in marriage and family relations³⁶³.

In spite of many degrading and negative practices associated with polygamy many believe that it is a necessary social evil, which cannot at least at moment be eradicated from the continent. In the discussion on polygamy and women we would like to examine and dwell heavily on the remarks of a female professor who has championed the emancipation of women in the Ghanaian societies.

Notwithstanding the gloomy situation labelled against polygamy in regard to women, yet the rule of the game in Ghanaian societies expect a woman to be married since marriage confers on her a high degree of respectability in her community, even if she has to suffer the burden of inequality in the marriage. According Dolphyne, despite a woman’s level of education, professional status or economic independence, no African woman would normally choose to remain single, even though it is also true to say that higher education and professional status do confer a very high degree of respectability on a woman, irrespective of her marital status³⁶⁴. In the same way, a Ghanaian woman is also expected to have children to prove her womanhood because in whatever way we see it the belief is that the respect and status that motherhood confers on a woman is greater than the type of marriage involved. This is not to say that the custom condones teenage pregnancies or unmarried mothers, rather a young woman who has children outside marriage is generally regarded as a disgrace to herself and to her family. Thus, for a woman to have children, she must be married but of course theoretically it does not matter how many wives the man already has in his household³⁶⁵. For these reasons, Dolphyne concluded that one may find out that some of the strongest opponents to any legislation banning polygamy are women, including in some cases, highly educated women³⁶⁶.

³⁶² WiLDAF/FeDDAF, “Actual Women Situation in Ghana”: <http://www.wildaf-ao.org/eng/srticle.php?id-article=43> (accessed 18.12.2006).

³⁶³ Cf. Universal Human Rights Index of United Nations Documents, Committee on the Elimination of Discrimination against Women, Thirty-sixth session (7-25 August 2006): “Concluding comments of the Committee on the Elimination of Discrimination against Women: Ghana”, no.36 <http://www.universalhumanrightsindex.org/documents/826/986/document/en/text.html> (Accessed: 11.11.2008).

³⁶⁴ Dolphyne, *The Emancipation of Women*, p.16.

³⁶⁵ Cf. *ibid.*

³⁶⁶ *Ibid.*

Dolphyne goes further to give more reasons why many women find polygamy a convenient arrangement. According to her, as a result of polygamy some women have been able to carry on with their education and have professional training after marriage and the birth of one or two children because as the second or third wife, they found willing and competent mothers for their children in the senior co-wives. However, this is under the condition that the junior wife gives them due respect, and there is harmony in the home³⁶⁷. She goes on to say that polygamy also makes possible for women the freedom of movement especially in the activities of market women. In Ghana, women dominate the retail trade in agricultural produce and in manufactured goods. They have full control over the money accrued, and many of them have, without the help of husbands, brothers or other male relations, been able to give their children education and professional training. Therefore in some respect, many of these women may be comfortable with polygamous systems as a very convenient arrangement, since a woman can travel for days buying goods from one part of the country and transporting them to the market centres without having to worry about children, house chores and a husband whose meals have to be ready at specific times. The other wife will take care of that while she is away³⁶⁸.

Some of these women can be away from home many days if not weeks especially taking the nature of our roads, which may hinder the fast movement of vehicles. Steady also sees some positive elements in polygamy in relation to the market economy of women in the following words: "Polygamy can contribute to an increase in female status and economic independence. This is likely to be more evident in societies where farming is not the major economic activity and where women are more directly involved in the distribution of goods outside the domestic group. Full-scale integration in the global market economy in African communities has taken the pattern primarily engineered by colonisation in the diversion of male labour from subsistence agricultural production to cash crop production and wage labour. In this scenario, women are primarily responsible for the subsistence and reproductive spheres in which they generated use-values"³⁶⁹. Again it is argued that some educated women, especially those of the Moslem faith, whose religion does not give any protection against polygamy because it allows a man up to four wives, will tell you that they would not mind being the second, third or fourth wife. Their reason is that they will have time to concentrate on their profession when it is not their turn to keep house for the husband. Because of this, the cynics among them will

³⁶⁷ Ibid.

³⁶⁸ Dolphyne, *The Emancipation of Women*, 16-17; Hasenhüttl, *Schwarz bin Ich und Schön*, p.68: "Meist ist es der Fall, da dies für die Ehefrau eine Arbeitserleichterung bedeutet. Sie wird entlastet, und zugleich kann sich die Familie wirtschaftlich dadurch verbessern. Es ist außerdem eine erwiesene Tatsache, dass bei diesen traditionellen Strukturen die Prostitution kaum eine Chance hat.

³⁶⁹ Filomina Chioma Steady, "Polygamy and the household Economy in a Fishing village in Sierra Leone", in: D. Parkin and D. Nyamwaya (eds), *Transformations of African Marriage*, University Press, Manchester, 1987, p.211.

add that while monogamy does not guarantee a husband's fidelity, in a polygamous marriage, a woman at least has some idea of where her husband is likely to be when he is not with her³⁷⁰. In addition, some women who support polygamy have even argued that it is justified on account of the ratio of women to men in their countries, although one is yet to find an African country whose census figures show that women are around 65 per cent of the population, which will be a basis for at least some of the men being entitled to no more than two women each³⁷¹.

For the present, again according to this learned female professor Dolphyne, most African women, especially the rural majority, believe that polygamy as practised in African societies, is to be preferred to the situation one finds in Western societies where, in the strict monogamous system, a man may be married to one woman but keeps one or more mistresses. This situation led Karanja in a study to make a distinction between public polygamy and private polygamy. The public polygamy according to him is an institution practised in African traditional structures and the private polygamy on the other hand represents outside an wife, i.e. a woman whose monogamous man has regular sexual relations for a relatively long period and whose child or children have the man's paternity acknowledged³⁷². This is what is happening in many monogamous marriages among educated Africans as well.

There is also the modern trend of successive monogamy where a man in his life-time may be married to several women, only that he divorces one before he marries the next - a system that creates problems for children born in each succeeding marriage. We must admit that this type of monogamy is not limited to Africa but exists even stronger in the western world. Theoretically, in traditional African societies a polygamous man is obliged to give equal status to wives, although usually the most senior commands respect and the newest wife is naturally the favoured one.

Nevertheless Dolphyne also recognises the emotional strain that individual women go through in polygamous marriages, especially in modern times. In the past, a woman may marry for economic security, i.e. in the primitive economy women can have a livelihood only if they form part of the household of a man, for that matter a woman would put up with infidelity and other forms of cruelty on the part of her husband as long as he provided for her and her children. Now that women are becoming economically independent, they have other expectations in marriage, the major ones being affection and companionship. This is particularly true of educated women. When these expectations are not fulfilled because a husband is seriously involved in extramarital relations, some women may decide to break off

³⁷⁰ Dolphyne, *The Emancipation of Women*, p.17.

³⁷¹ Dolphyne, *The Emancipation of Women*, p.18.

³⁷² Cf. Wambui Wa Karanja, "'Outside wives' and 'inside wives' in Nigeria: A study of Changing perceptions in marriage", in: *Transformations of African marriage*, pp.247-258.

the marriage, especially if they can, on their own, take full responsibility for the upbringing of their children. This has led to the creation of the impression that education, especially higher education, for women is responsible for the increase in breakages and divorce rate in marriage. Moreover, men and women of the older generation, in particular, cannot appreciate the feeling of betrayal that a woman who has had a happy marriage with her husband and shared confidences with him for many years, has when her husband decides to take on another wife, or when he starts having children outside his officially monogamous marriage³⁷³.

In Ghanaian societies it is suggested that a woman who decides to divorce her husband because he has a serious relationship with another woman is, therefore, considered to be over-reacting, and she cannot normally expect much sympathy from either friends or relations, especially if there are children in the marriage. She will be told that divorce is bad for the children. Older women in her family will tell her about several instances in which a woman had patiently tolerated her husband's infidelity, and then several years later he had come back to her, having realized the uselessness of those other relationships. In other words, if the woman waits long enough, she will have her husband back, and the marriage will be as good as new. Of course, they never tell of those cases where the women have stayed on and suffered in silence, ending up growing old prematurely, losing their interest in life and, sometimes, even losing their minds. They do not also complain of the rivalries that can and do develop between brothers and sisters from different mothers, not to mention the rivalries between co-wives and the effect they have on their children³⁷⁴. Sometimes it is logical to blame women for the polygamous behaviour. Some women really know or are aware that the man has already got a wife or wives but never refuses the approach of the man. Therefore we can say that women (though not everybody will agree with us) are also accomplices to the problem.

Contrary to our suggestion some African women theologians see polygamy as part of an African oppressive structure against women, constructed primarily for the benefit of men. These theologians say that the polygamous social structure confers on men more than women, social, political, economic, even sexual gains. Polygamy denies women the human right to the undivided love of a husband. While the wife cannot share her love with other men, the man can share his with other women in the system. It turns women into an appendage, a property of the man - one of the man's labourers³⁷⁵.

In this context one may remark that one of the root causes of polygamy is the promotion of cultural values and ideology, which opposes or underestimates girl-child education in many

³⁷³ Dolphyne, *The Emancipation of Women*, p.19.

³⁷⁴ *Ibid.*

³⁷⁵ Cf. M.A. Odoyoye and M.K. Kanyoro (eds.) 1990 *'Talitha Qumi' Proceedings of the Convocation of African Women Theologians*, Day Star Press, Ibadan 1989, pp. 208-209.

African societies. It is therefore logical to say that since most women do not have any formal education, and since they do not need to undergo any formal vocational training, having learnt whatever trade their mothers are engaged in from observation and participation, there are, at any given time, more girls who are ready for marriage than marriageable men. The young men of their age or a little older will still be in school or will be struggling to acquire some property, such as their own farms, which will enable them to pay for the bride-wealth required, and also make them capable of maintaining a wife and children. Girls, therefore, marry men, who are often many years older than they are.

Furthermore, it does sometimes happen that there are too many women for one man to cope with, so that, they have no other choice than to seek lovers outside the marital home to cater for their sexual needs. According to certain cultures the other wives of the polygynous household, are subordinate not only to the husband but also to the 'chief wife'. Being a second wife has other disadvantages. For instance, the co-wives are not admitted to baptism as long as their husband is alive and cohabits with them. This creates a highly embarrassing situation for the clergy and for the women who after attending catechism and bible classes in preparation for baptism which will usher them into Christian life, have to be turned down because it is against the laws of the Church for a polygamous person to be admitted to baptism³⁷⁶.

Having assessed the implication of polygamy we realised that it is very difficult at present to eradicate it especially from the traditional society even though the rate of it has reduced. Contributing to the law on bigamy, Nukunya says a judge was reported to have said that the bigamy law is a legal provision catered for in Ghanaian law books but not made to be enforced³⁷⁷. What then can be done to further reduce the trend or minimise polygamy? We have observed that one of the structural factors to militate against polygamy is raising the educational levels among girls especially in the rural communities. This may influence and delay the age at which girls marry, and so lessen the pool of young girls and women available to those greedy men to take advantage.

2.3 Monogamy

In practical terms polygamy affects the position of women within the household. The position of women varies according to seniority. The first wife is usually the senior wife with a higher status, with a recognised authority, and responsible and greater control over the junior wives.

³⁷⁶ Cf. Emmanuel Martey, "Church and Marriage in African Society: A Theological Appraisal", in Elisabeth Stuart and Adrian Thatcher (eds.), *Christian Perspectives on Sexuality and Gender*, Eerdmans, Grand Rapids, Mich., 1996, p.201

³⁷⁷ Cf. G.K. Nukunya, *Tradition and Change: The case of the family*, Ghana Universities Press, Accra 2000, p.21.

She usually has an egalitarian relationship with her husband and is financially autonomous. In this case the first wife is the “foreman” of the labour force. She sometimes makes all decisions and also organises the household and directs the day-to-day domestic activities. She may, according to some societies, assign responsibilities for cooking, laundry, cleaning, and childcare on a daily basis to junior wives, adolescents, younger relatives and children³⁷⁸. The above brief described position of a senior wife seems to suggest a tradition of monogamy. In the same sense, we can say that monogamy is also a cultural value of African marriage.

The definition of monogamy is per se difficult since there are many features to it. Some may want to differentiate between serial monogamy and original monogamy. However, the general understanding of monogamy is the voluntary union for life of one man and one woman to the exclusion of all others. The presumption in this definition is that the union is definite for life on account that the essential elements in it are taken care of. So, “while a marriage is subsisting, neither spouse can legally marry another person. A spouse can marry another person only when the first spouse dies or the first marriage is dissolved or annulled”³⁷⁹. It has been said that the African customary marriages are potentially polygamous. This conception that marriages in Africa are potentially polygamous creates the impression that all marriage in African societies must necessarily be polygamous; that monogamy is a strange phenomenon on the continent. This has been the conclusion of most westerners and some Africans as well. Unfortunately, this position may not be the total truth if the implications of taking a second wife or a third wife is analysed in some societies in Ghana.

We may give some reasons why it is believed marriage in its original form was monogamous in Africa. As a custom, if a man wants to marry a second wife or third in some societies, he must seek the permission from the first wife. From this experience it is reasonable enough to say that technically the first wife as we have said above, is the genuine and natural wife since her consent must be sought in the resolve to take another wife³⁸⁰. Whether the permission is granted or not the man can act without impunity to marry the woman but must pacify the first wife in a reasonable way. Moreover, this permission is not sought from the second or the third wife but must always be obtained from the first wife. This evidence is taken as a proof to affirm the fact that polygamy did not originate with marriage in African society but might have been introduced or forced on the society by some external factors. Some people may dispute this position. Yet the argument is straightforward because nobody asks for permission to perform a value system deemed to be acceptable socially or to pacify somebody one has not offended.

³⁷⁸ Steady, *Polygamy and the household Economy*, p.219.

³⁷⁹ Offei, *Family Law in Ghana*, p.83.

³⁸⁰ Cf. Ankras, *How Africans marry in the Church*, p.29.

According to Sarpong the fact that one needs permission from one's wife, that is, the first wife and even if the permission is granted he must do pacification reveals that in some way our culture believes that one wife is the ideal form of marriage. Since it is only from the first wife whom the permission is obtained and who must be pacified, it indicates that the first wife is the real wife, or the only wife³⁸¹. Therefore the conclusion to be drawn is that polygamy is an injustice to one's wife. Of course in societies like the Ashantis and Ewes of Ghana where ancestral cult plays a vital role, Sarpong told us that the ancestors are supposedly living with their first wife not with all the wives he might have had in life. For that matter it is a disadvantage to be the second or the third wife. He also argued that polygamy is foreign to the ancestors in the sense that it was forced upon generations by factors beyond their control such as the super-abundance of women over men due to warfare and other dangerous ventures undertaken by men; and by human nature, religious and psychological factors in the course of time. Social and economic factors such as children providing security in the old age³⁸² might also form part of the situation.

Some also believe that the practice of polygamy emerges because of the serious concerns for the high mortality rate caused by unfavourable climate, deadly diseases, wars, and low population density for centuries, and decimation of whole tribes. Therefore the values and customs, which promote reproduction, becomes the core of the culture³⁸³. Since "sterility is not only undesirable but also evil"³⁸⁴, polygamy became the pursuit of personal immortality through procreation, as we have already seen.

Sarpong also analysed some proverbs and wisdom sayings in the African cultures that never say anything reasonable or good about polygamy. These proverbs and wise saying used by our ancestors are supportive of cultural practices and value systems but none seems to support or justify polygamy although there are many proverbs that spoke about the existence of co-wives. For instance, some of these proverbs, which work against polygamy, declare, "Multiplicity of wives is nothing but poverty"; "when you have several wives you have several tongues". The "multiplicity of tongues" according to Sarpong refers to a liar; so if you take many wives the resultant effect is that one becomes a liar. Today you say to one "I love you" more than the others. The next time you meet the other wife you repeat the same "I love you" to her³⁸⁵. Some of these proverbs suggest that monogamy was the original practice among the primitive humans and in our culture monogamy is upheld rather than polygamy.

³⁸¹ Cf. Sarpong, *Dear Nana*, p.71, p. 169.

³⁸² Cf. Sarpong *Dear Nana*, p.71.

³⁸³ Cf. Hayase and Liaw, *Factors on polygamy in Sub-Saharan Africa*, p.295.

³⁸⁴ *Ibid.*

³⁸⁵ Sarpong, *Dear Nana*, p.169f. For further readings on proverbs see Mineke Schipper, *Source of All Evil: African Proverbs and sayings on Women*, Ivan R. Dee, Chicago, 1991; N.K.Dzobo, *African Proverbs, The moral value of Ewe Proverbs, Guide to conduct* vol. II Bureau of Ghan Languages, Accra, 1997; R.S. Rattray, *Ashanti Proverbs*, Clarendon Press, Oxford University Press, Oxford, New York 1979.

In all Ghanaian societies, it appears that these arguments are reasonable enough because in many of our villages today some uneducated men still hold on with one wife as the reminiscent of monogamous marriage that might have existed at the time of our ancestors. Furthermore, it is also never heard in our society or culture that a man no matter how rich he might be simultaneously marries two women. The society does not guarantee that a man presents two women at the same time for marriage rites to be performed for the two on the same day. No reasonable society in Africa will even allow it. A man can marry more women but he cannot do that at the same time. This is also a proof that the primitive type of marriage in Africa might probably be monogamy.

Even though the above arguments give us some logical certainty that monogamy is not an imported phenomenon or later development in African culture some have disputed these facts. The counter arguments say that monogamy could never be the original form of marriage in Africa. It is argued that if polygamy is favourable to the point of immortality then such a practice is “pleasing to the ancestors”³⁸⁶. Since Africans, no matter their background, revere the ancestors, then it is logical that something, which is pleasing to them, should not be abhorred by the living. Another argument against the perception of using proverbs to substantiate monogamy as the original form of marriages is also seen as an *ad verecundiam* argument or false appeal to authority. Proverbs on the continent did not only support one wife but also co-wives. Moreover proverbs are human sayings and as such some of them may not be suitable methods of ascertaining the validity of a system.

In fact, Gallichan, citing Schopenhauer, assumed that every normal man desires more than one wife³⁸⁷. This argument may not be totally correct but more often than not we hear in our society, even in Western societies that give no legitimacy to polygamy engaging in open concubinage and having mistresses. Therefore it will not be gainsaid, to conjecture that about 50 percent of the sexual intercourse that occurs in the so-called monogamic western nations is outside the bonds of matrimony³⁸⁸. These men are practising secret polygamy, thus preserving their so-called monogamous marriage. Consequently, we may probably say that the craving for variety in sexual union is deep-rooted in human nature. This leads also to suggest that every African man in his deepest self longs for a belongingness to community, a community of women. It is only in the frustration of western culture and Christianity very much saturated in the doctrine of the Church does he give up the idea of a polygamous life. Never can

³⁸⁶ Philip Kilbride, *Plural Marriage for our Times: A Reinvented Option?* Berginand Garvey, Westport, Connecticut, 1994, p.110.

³⁸⁷ Cf. M.W. Gallichan, *Women under polygamy*, AMS Press, New York 1974, p.11

³⁸⁸ Hasenhüttl, Schwarz bin Ich und Schön, p.68: Von vielen Schwarzafrikanern wurde immer gefragt, was wohl besser sei, nur eine Frau zu heiraten und nebenbei Beziehungen zu haben, wie viele europäische Christen, oder den beiden Frauen wirklich treu zu sein, wie dies die Regel in Afrika ist. Durch die von der katholische Kirche geforderte Einehe werden viele Christen veranlasst, ein sog. ‚2. Büro‘ zu unterhalten.

traditional the African isolate himself from this situation even though physically, he may try to crystallise it in the milieu of being accepted in the western culture and Christianity but at last he is miserable because he tries to endure the humiliation of dragging his prestige among the big world society in the mud³⁸⁹. However, many see this kind of speeches as a blatant smearing of African people as perpetually polygamous. People point accusing fingers at missionaries of being perhaps too quick in outrightly condemning the traditional values in Africa³⁹⁰. Some may even go as far as to suggest that it is the missionaries who despised polygamy so much that African converts began to condemn it too³⁹¹. We may conclude this section to say that although polygamy is decreasing in Africa its potential vulnerability is still evident in our localities. Similarly monogamy in practice is equally full of many defects and scandals in the world of today but in principle it is a lofty ideal of marriage, which all people must aspire to.

3. SECAM overview on marriage in Africa

In this section we shall be looking at two documents which the Symposium of Episcopal Conferences of Africa and Madagascar (SECAM) have introduced into the topic of marriage in Africa. These are the recommendations and conclusions on the working-paper entitled: “Christian Family life and Marriage in Africa Today” in the sixth Plenary Assembly held in Yaoundé, Cameroon from 29th June – 5th July 1981; and the theme “The Church as family of God” in the Plenary Assembly held in Midrand, South Africa, from 22nd to 28th September, 1997. By the mandate of the plenary Assembly, the standing Committee of SECAM gave

³⁸⁹ Cf. Micheal Goonan, *A community of Exiles, Exploring Australian spirituality*, St. Pauls Publications Homebush 1996, p.87.

³⁹⁰ Cf. Mwizenge S. Tembo, “Traditional Family patterns in Africa”

<http://www.bridgewater.edu/~mtembo/africantraditionalfamily.html>. (Accessed: 12.4.2005): Couple with the absurdity which the missionaries treated issue of polygamy, many Africans also believe that her culture has been adulterate if not almost removed from the people or has been characterised as fetishism. The people also think that Christianity did not come as a new culture to help the indigenous developed spiritually and materially but as a tool to subdue the African for a greater obedience to the Westerners. The presentation of the gospel message did not come to enable them see light at the end of the tunnel, but just as hypnosis for perpetual obedience to the masters. This attitude has given a reason to Africa to suspect that the Church in Africa is only “Europeanisation” instead of Christianisation. The observation may somehow contain an amount of truth because it is believed that the written, the descriptions and the perceptions of the traditional African family were also a victim of the European colonial cultural bias and Christian values. In a more obvious way, this Eurocentrism did not treat polygamy, the African marriages and extended family as social phenomena that were legitimate and workable in its own African social circumstances and environment. But rather as curiosities that were to succumb to the superior European monogamous marriage values legitimated by Christianity. Many have come to the conclusion that failure to see truth in the above assertions may of course stem from the fact that all of us have been one way or the other be brainwashed such that we have come to accept the “transfigured colonialism” as the only accepted form of living. Christianity as a new culture per se is not a problem to other cultures but its presentation especially to the Africa has done more harm than good. The presentation has helped the Africans more to rest on their oars than reaching and accepting the true gospel message: The liberation from the bondage of injustice, sin and poverty; and equality for all people. Moreover the joy, peace and love, which were culturally associated with marriage in Africa, has been eroded and replaced with the scourges of family divisions: Men are forced to dismiss their wives for the sake of baptism. This has led to perpetual enmity between children of the same father.

³⁹¹ Cf. Gwinyai Muzorewa, *The Origins and development of African Theology*, Orbis Books, Maryknoll, N.Y. 1985, p.31.

final touches to the Midrand-text during her ordinary meeting in Cairo, Egypt from 12th to 16th March 1998.

Nevertheless, the first ever-comprehensive discussion on the African system of marriage was carried out in the 1980 Synod of Bishops. Some of the interventions raised clearly define the concept of marriage in Africa. Bishop after bishop representing SECAM insisted, above all, that a strong bond exists among the extended family and the family is not a reality closed in itself. For that matter a marriage relationship is not just a private one which concerns only the couple, but also the affair of the whole extended family. They also discussed the traditional institution of bride-wealth, the importance associated with fecundity, the long and comprehensive preparation required by the traditional celebration of marriage and the celebration being an event of the whole village or community. However, the synod may well go down in the history of the Church, not so much with respect to whether SECAM's position on marriage and family life is relevant for the evangelisation or in concomitance with the doctrine of the Church, but more for the clearest and most forceful way in which African bishops spoke with one voice on African culture. The strongest call for that matter was on the need for the Church to incorporate the values of African family life, and especially customary marriages into her pastoral and liturgical activity. The bishops pointed out that there is a serious and phantom gap between the traditional celebration of marriage and the Church celebration, with its heavy dependence on a different cultural framework and on a different code of law³⁹². The question which SECAM put to the synod was, 'how can African customary marriage be raised to become a truly sacramental celebration'? Unfortunately the question was put back onto the plate of the African bishops without presenting any clues and methods to execute the project³⁹³.

In the aftermath of the synod, African bishops accepted the challenge in some of their plenary assemblies. This challenge precisely is to express and explain the fundamental understanding of the "unknown Africa culture" especially on marriage and family in relation to the fundamental framework of evangelisation. SECAM, therefore, referring to the depth of evangelisation as 'meeting humankind where he is with a feeling of deep esteem and respect'³⁹⁴, judges that "it is necessary to have a thorough knowledge of at least essential elements of the conception of marriage and of the family that pertains to the different peoples of Africa, Madagascar and the Islands. Accordingly, the bishops encourage researchers to study different traditions on the continent; as well they invite priests, lecturers, formators and students in the seminaries and other institutions of high education to give an important place to this research, both in the courses given and in their personal study³⁹⁵.

³⁹² Cf. Brian Hearne, "The Christian Family and the Kingdom of God", in *AFER* 23 (1981), p. 2ff.

³⁹³ Brian Hearne, "The Christian Family and the Kingdom of God, p.5.

³⁹⁴ Cf. John Paul II, *Redemptor Hominis* no. 12.

³⁹⁵ Cf. SECAM, "Recommendations and conclusions on Marriage and Christian Family life of Africa", in *AFER*, 23 (1981), pp. 370-371.

In order to make the process effective SECAM encourages the use of the mass-media and other forms of communication mechanisms to make known as widely as possible the fundamental structures and richness of African customs³⁹⁶. On account of this SECAM provided valuable insights on certain fundamental aspects of marriage which had been dealt with sufficiently in the 1980 synod of bishops with the purpose of its compatibility with the Gospel of Jesus Christ as interpreted by the teachings of the Church.

The bishops also acknowledged certain modern thoughts and behaviour distorting the African traditional view on marriage. In other words, due to the breakdown of the traditional social structure, ill effects can be noticed: This is because one ran the big risk of arranged marriage, which may lack individual consent. Some marriages are contracted for material and social reasons or gains. Some parents would want their children to be in a materially comfortable status, whatever the price, with no regard for moral standards. Many have also been discouraged from marriage by the huge bride-wealth system, which can be financially crippling to the couples involved. They believe these factors are consequences that have caused many people to reject traditional, civil and religious marriages in favour of common law marriages and other less binding unions such as remaining in perpetual concubinage. Moreover due to the breakdown of the traditional social structure, couples are often unprepared for their future marital obligations. Besides, current socio-economic constraints in most African countries prevent the couples from being responsible and fulfilled³⁹⁷.

Finally, the bishops hinted on some pastoral guidelines and concrete points of action such as the preparation for marriage and the celebration of marriage such that African Christians can live their conjugal and family alliances as a sacramental epiphany of the union between Christ and the Church, thus transfiguring these fundamental human realities from within³⁹⁸. We have already discussed some of these points in the preceding sections; for that matter there is no sense in reviewing the issue, but our main objective is to examine the positions of SECAM in relation to some of those important points in Traditional African marriage.

3.1. Personal-communitarian character of marriage

The bishops revisited the personal and communitarian dimensions of marriage in Africa in the 1980 synod, during the Yaoundé Assembly and a Pastoral letter was written after the *Instrumentum Laboris* on the above mentioned document “the Church as family of God”³⁹⁹

³⁹⁶ SECAM, “Recommendations and conclusions, p.371.

³⁹⁷ SECAM, The Church as family of God, pastoral letter, 4.1.2.

³⁹⁸ Cf. SECAM, Recommendations and conclusions, p.370.

³⁹⁹ SECAM in 1998 document described what family is in African context. By vocation, the family is a point of love and communion. It starts from a man and a woman, who normally loves one another and wants to spend

given on 15 August 1998, written four years after the particular synod for African Church (Ecclesia in Africa).

The bishops reiterated and insisted that the fundamental concept of African marriage is at once personal and communitarian; and it is brought about by a series of dynamic steps. Moreover, the bishops expressed that marriage in Africa aims at fecundity. According to SECAM these views are very fundamental to marriage in Africa because it prevents marriage from being too individualistic as it is obvious in the western world⁴⁰⁰. What the bishops seem to propagate is that although the personal dimension of marriage may be less prominent in the African mind, the African has the right to insist upon the communitarian dimension of marriage because it is so much emphasised in our traditional celebrations of marriage. The bishops reiterated our earlier assertion that marriage is seen as a union of two individuals in relation to two families whose members, visible and invisible all have a role to play. This means the African family does not only consist of the living members of the lineage who may be scattered far and wide. It comprises also the dead and the unborn reflecting the well-known duality of the material and the immaterial, the spiritual and the bodily, the sacred and the profane that characterizes African philosophy of life⁴⁰¹. What the bishops seem to say is that in African societies holding individualistic tendencies above the common good is detrimental to the traditional code. The cardinal principle that governs the society is nothing more than solidarity and the collective. There is sharing and caring. Clan members share both blessings and difficulties. There is love and affection, especially for the sick, disabled and the aged. Duties are distributed and accepted just as much as rights⁴⁰².

The aim of African the family does not differ from the ministry of Church. “The African family stands for what the Church stands for – fraternal life of sharing, value of life, collective responsibility, support, encouragement, mutual understanding and mutual inspiration, common destiny and ancestry”⁴⁰³. In this sense, “to the African, there can never be a time when one is without relatives to provide comfort, care and concern”⁴⁰⁴. So within this positive socio-cultural life John Paul remarked that “African cultures have an acute sense of solidarity and community life. In Africa it is unthinkable to celebrate a feast without the participation of

their lives together. This is a joint endeavour to support one another, establish a home, and have children who would grow up to live independent lives. This union and lifelong promise is called marriage; an institution that gives rise to the family. The family, in turn, would extend into time and space, creating new generations. Within marriage and family, many interpersonal relations are nurtured: spouses, father, mother, children, brother and sister. It is through these relationships that each person becomes a member of the human family.

In spite of its definition, the family is not normally restricted to the nuclear unit of parents and children. The union between a man and a woman is actually a union of two families. The importance of this union of families is easily seen at family reunions. The family is the centre of many special events, e.g. marriage, birth, initiation, anniversaries, jubilees, death, in which the extended family members also take part. (pastoral letter 1.2,1.4.)

⁴⁰⁰ SECAM, Recommendations and conclusions, p.371.

⁴⁰¹ SECAM, The Church as family of God, Inst. Lab. no.48.

⁴⁰² SECAM, The Church as family of God, no.57.

⁴⁰³ SECAM, The Church as family of God, p.16.

⁴⁰⁴ SECAM, The Church as family of God, p.17.

the whole village. Indeed, community life in African societies expresses the extended family. It is my ardent hope and prayer that Africa will always preserve this priceless cultural heritage and never succumb to the temptation to individualism, which is so alien to its best traditions”⁴⁰⁵. It seems to us that the summary given to the understanding of marriage by SECAM is that in the African society marriage implies the commitment of the society in the union of two persons. In spite of the crucial communal identity of marriage SECAM also strongly acknowledges the deep inter-personal relationship in marriage. As such SECAM insists that in spite of the good things associated with the communitarian aspect of marriage it must be balanced by the independence of the couple⁴⁰⁶. The destiny of the couple cannot be hemmed in by the limitations imposed by the interests of their respective families, for in the light of the paschal mystery the promises of life for a couple are much wider than the hope of continuing the family line; their vocation is to love for each other, as well as to a universal love, and this goes far beyond the demands of extended family and lineage⁴⁰⁷.

Nevertheless, since human liberty is fragile, a couple needs to be guided and strengthened. This is why the role played by the family in the entering into a consolidation of marriage is of immense importance to the African⁴⁰⁸. According to SECAM, due to the positive role played by the lineage in the entering and consolidation of marriage while emphasising the primacy of love and the importance of personal consent in the contract, those engaged in pre-marriage preparations of youth should not over-stress freedom in the choice of one’s partner in opposition to the sense of community that exists in Africa. Hence the intervention of the family in the consent of the young persons is not necessarily a cause of invalidity of the marriage⁴⁰⁹. There is no hostage taking of the privacy of partners because in canonical or ordinance marriages a certain amount of community involvement takes place. The Christian marriage as usual takes place before a representative of the Christian community, that is the communities of two families, and sets of friends come together in the preparation for the marriage. Yet we may argue that the presence of these representatives do not have any prominent influence on the marriage as it is sometimes alleged to be glaring in Ghanaian marriages. Moreover, if we agree that marriage is primarily a commitment to a community, a continuation of the community of a particular family and also as the beginning of a new community that is a new family, then we must accept that marriage entails a combination of personal and impersonal relations. The two must go together. This commitment in marriage to community implies that the impersonal as well as the personal, objective as well as the subjective become the object of discourse and of life’s energy of the union. One develops a

⁴⁰⁵ The Church in Africa. Post-Synodal Apostolic Exhortation: Ecclesia in Africa (EIA), Paulines Publications Africa, Nairobi, 1995. no.43.

⁴⁰⁶ Cf. SECAM, Recommendations and conclusions, p.37.1

⁴⁰⁷ Ibid.

⁴⁰⁸ Ibid.

⁴⁰⁹ SECAM, Recommendations and conclusions, p.372.

relationship not simply as an intimate relation to a private other, but rather as a community of intersecting relationships and interests⁴¹⁰.

This remark suggests that the African insisting on commitment to a community in marriage does not totally diverge from the dialectic of partnership between man and woman, the “profound I-Thou relation between two individuals”⁴¹¹. We may therefore summarise the position of the bishops in the following words: “The external family has without doubt certain abuses that we must be frank enough to reject: interference, pressure, manipulation, etc. But we must also recognise the important values of the extended family. Many young couples in our country would have been able to overcome their crisis if they had not been cut off from this family community which has often shown itself to be capable of real support, deeply human as well as moral and spiritual, in moments of difficulty. To give back to this family community a place more in line with new conditions of life is a pastoral necessity. The synod should open the way to integrating the extended family in the preparation for and celebration of marriage: for one reason, if the whole family community is officially involved in the marriage liturgy, it will feel a stronger commitment to help the young couple. The simplest and most natural way of involving the extended family is, ... to restore customary marriage to its proper place, through raising it to the level of a sacrament; this means obviously, finding an adequate canonical form, while preserving the essential elements of unity and indissolubility. In this way the law of the incarnation would be respected, according to which everything is to be renewed in Christ. Some kind of solution would also be given to pastors who are embarrassed by the accumulation of three marriages, for in some places the future partners have to pass through customary and civil marriage, before arriving at Christian marriage, with the huge difficulties brought by these parallel ceremonies”⁴¹². From this consideration “our pastoral practice and theology...have to favour and strengthen the symbiosis between the African conjugal ‘yes’, since both commitments have essentially the same objective, i.e., to create the great family of the children of God, the ECCLESIA DEI”⁴¹³. From this perspective then, marriage though an affair between a man and woman, is a community affair which the totality of the community partakes in. It involves not merely interpersonal relations but also intercommunity relations because in Africa the socio-cultural values of marriage always establish very strong bonds between the individuals belonging to different families and clans especially when children are born.

⁴¹⁰ Cf. Schüssler, Marriage, pp.327-328.

⁴¹¹ Schüssler, Marriage, p.329. For a broader views on this the following literature are worth reading: Theodore Mackin, *The marital sacrament*, Paulist Press, New York 1989; Herberts Doms, *The meaning of marriage*, sheed and ward, London, 1939; Dietrich von Hildebrand, *Marriage*, Longman, Green and Co., London, 1942; Michael Lawler, *secular marriage, Christian marriage*, Twenty-third Publications, mystic, Conn., 1985; Lenore J. Weitzman, *the marriage contract: spouses, Lovers and the Law*, Free Press, New York, 1981

⁴¹² Bernard Yago, “Marriage and Family in the Modern world”, in AFER 23, p.18.

⁴¹³ Robert Sarah, “Polygamy”, in AFER 23, p.102.

3.2 Procreation as the aim of marriage

In the 1980 synod of bishops and the subsequent plenary meetings, SECAM confirmed the fact that fertility is one of the fundamental issues in the African marriage because the desire for a child is very great in the traditional society. This traditional view on fertility is often seen as a participation in the great mystery of life, as a force that runs from one generation to the other, as indeed a divine force⁴¹⁴. According to the bishops “in traditional society the love for life is manifested in the desire to have many children and see them well-brought up and educated. Childless people therefore are pitied for they may spend their old age in solitude, insecurity, rejection and neglect because they have no children to give them care and protection”⁴¹⁵. As we have already reiterated, it links the family generations, not only those actually living, but also those of the ancestors. Life is thus the basis for the virtue of piety that binds children to their parents and to their elders in the large family, as well as to the divinity. Fertility is then a question of life and death for the lineage⁴¹⁶. Furthermore, “in some societies the family names must be kept and passed on. In any case, whether in patrilineal or matrilineal societies the family must not die out. It must continue. A Person who is unable to procreate commits what is tantamount to genocide. A person useful to the clan must contribute to the permanence of the clan by giving birth. And that is why African families cherish life so much. They want to communicate life”⁴¹⁷. SECAM reaffirmed again that family allegiance accounts in part for the love of children and respect for life that are found all over Africa. Life must continue to be transmitted. In the process, the lineage continues to exist. Each member of the family must be part of this life-transmission duty that results in the continuity of the clan.

This positive value was reiterated in the post-Synodal Apostolic Exhortation *Ecclesia in Africa* of the John Paul II as follows: “In African culture and tradition, the role of the family is everywhere held to be fundamental. Open to this sense of family of love and respect for life, the African loves children, who are joyfully welcome as gifts of God”⁴¹⁸. The African family is not supposed to die out. It must necessarily continue so that the lineage may not be interrupted. This legacy of procreation readily assures the traditional society to hold in horror, in aversion and contempt homosexual tendencies, as well as pornography, paedophilia and incest⁴¹⁹. Accordingly, anything done artificially to hamper procreation is strongly rejected⁴²⁰. We must confess that it hardly needs pointing out that in the mind of Africans, “sterility is

⁴¹⁴ Cf. Urrutia, *The challenges of canonical Doctrine on marriage Arising from Africa*, p.14.

⁴¹⁵ SECAM, *Church as family of God* no. 4.4.2.

⁴¹⁶ Cf. Urrutia, *The challenges of canonical Doctrine on marriage*, pp.14-15.

⁴¹⁷ SECAM, *Church as family of God*, Inst. Lab. No.64.

⁴¹⁸ *Ecclesia in Africa* (EIA), 43.

⁴¹⁹ SECAM, *Church as family of God*, PL 4.4.1

⁴²⁰ *Ibid.*

considered as a curse”⁴²¹. As such both the common folks and elites, the desire for children is imperative, which will appear that fertility must justify the existence and validity of marriage. A condition that militates against the wisdom and dignity of African women, since, in practice, they are usually blamed for the fruitlessness of a marriage.

As far as fecundity is concerned, SECAM did not deny the traditional view on the absolute desire for children in the African mind, nonetheless they ultimately reject it as a condition for validity of marriage in Africa. In other words, the bishops wish to evoke the positive human and Christian values embodied in the traditional view about the importance of fertility, since marriage in itself is ordained to procreation. At the same time, they felt the need to sound a warning note to the faithful against a unilateral emphasis on procreation as though without it marriage can never be realised. The love for children should by no means be projected as the ground for making fertility a vigorous condition for marriage. Therefore, “if this desire to transmit life and to have children is so imperative that the man or woman who cannot have children is held in disgrace and accounted as accursed, as indeed is the case, then it has gone too far. For, after all, fathers’ brothers and mothers’ sisters are also fathers and mothers”⁴²². Again, “the worth of human beings, for that matter a couple, cannot simply be judged by their ability to bear children. As a result, if desire is made absolute, then, this otherwise beautiful value becomes a disvalue. Again, if the value means that unproductive marriages cannot last but must be broken, then it has become seriously exaggerated”⁴²³. The Gospel message implored Africa to discover other values in the institution of marriage such as the value of spiritual fecundity; the necessary perfecting of procreation in the proper education of the values is also present in a marriage which does not receive the blessing of children since marriage is no less ordained to mutual help, support, and enrichment of the spouses themselves. In such a marriage, is also the opportunity offered to childless couples of devoting themselves to spiritual and social works, the Christian calling to all Christians, to participate in our Saviour’s cross⁴²⁴. SECAM believes that the value of spiritual fecundity is essential for marriage because procreation alone cannot be considered to be the only divine blessing for a Christian couple⁴²⁵.

On another level, SECAM reckons that the love for life must rather encourage the society to fight for the dignity and respect for the pregnant woman. The same fight must also ensure a strong sense of responsibility in educating couples in social, professional, political and religious promotion. However, the bishops are of the opinion that the fight for love of life is self-contradicting by showing irresponsibility in bringing forth children. The cause of such a

⁴²¹ Ibid.

⁴²² SECAM, Church as family of God, Inst. Lab. 77.

⁴²³ SECAM, Church as family of God, Inst. Lab. 76.

⁴²⁴ Urrutia, The challenges of canonical Doctrine on marriage, p.15

⁴²⁵ Urrutia, The challenges of canonical Doctrine on marriage, p.17

situation is that one has more children than he can care for hence others must care for them⁴²⁶. This means that polygamy and also divorce are the unacceptable extremes against the love for life in the traditional society because they are against achieving the call to sanctity in marriage and family life. It is against human dignity to see the worth of a woman (or of a man--for the matter of that) as merely consisting in procreation, that is, considering a woman just as a “baby-making machine”⁴²⁷. The latter is only a small part of what it means to be human. It is against Christian love -and even against the wish of the ancestors- to reject a childless woman⁴²⁸.

Last but not the least, SECAM also insisted that only natural family planning methods may be used. For that matter the call on the people of good will to help parents through services and programmes that will help them to achieve the sanctity of marriage and family life. The most radical aim for marriage preparation in Ho diocese is to promote, acknowledge and respect the traditional values of marriage and family but also see to it that they necessarily conform to the essential dimensions of marriage in the teachings of the Church.

3.3 The dynamic Steps in African marriage

One of the problematic issues of traditional African marriage is the question of validity. At what point in the complex celebration does the marriage become valid? In other words, when does exchange of consent really take place?

We have already pointed out that marriage alliance in Africa is a very gradual and a living process, unfolding stage by stage, each one following on the preceding one, right up to the arrival of the bride at the home of the bridegroom. Indeed, SECAM vigorously attached a great amount of importance to this dynamic process⁴²⁹. From the evaluation above, one could say that marriage, in the African mind, does not take place at one single moment of time, it has no precise moment of beginning or end, but comes into being across a series of meetings, negotiations, and ceremonies. The ritual is spread out over a long time, and even in space: certain stages are celebrated at certain times in the home of the future bride’s relative, at other times in the home of her maternal uncle (in matrilineal societies), at other times again in the home of the young man. Each of these stages has its specific reason, and is a constitutive part of the gradual elaboration of the marriage bond. At each stage, the two parties acquire a

⁴²⁶ SECAM, Church as family of God, PL. 4.4.2

⁴²⁷ Rosemary Radford Ruether, “Misogynism and Virginal Feminism in the Fathers of the Church”, in Rosemary Radford Ruether (ed.), *Religion and Sexism. Images of woman in the Jewish and Christian Traditions*, Simon and Schuster, New York, 1974, p.162

⁴²⁸ Cf. Bénédet Bujo, *African theology in its social context*, St Paul Publications-Africa, Nairobi 1992, pp. 120-121

⁴²⁹ “African Marriage as a dynamic process” in AFER 23, pp.40-49; pp.372-373.

certain status, with special rights and duties culminating in the birth of a first child⁴³⁰. In principle the essence of a valid marriage would seem to have consisted in: the consent of those involved and their parents, the handing over of gifts from the bridegroom to the bride's family, and the blessing and ceremonies surrounding the handing over of the bride to the bridegroom. For an African then it is very difficult to pin point the exact moment at which the couple exchanged consent.

However, Urrutia is critical about the concept of progressive dynamism of the African concept of marriage and declares that the fact that consent in African customary marriage is made of different imperfect and integrating ones so that the final consent has dynamically grown over a long period of time through the different ceremonies that are performed, is contrary to western and canonical concept of marriage⁴³¹. He justifies his criticism based on the canonical concept of marriage that, "One cannot say that, before a given 'punctual' moment, the man and the woman are not yet husband and wife, and then, at the next moment, they are already such"⁴³². He insists "this way of thinking implies once more a regrettable confusion between what is the human and Christian reality of marriage, an alliance and a commitment to each other, that either exists at a given moment or does not exist, and the way of its celebration, or of bringing it about, seems to entirely escape those who insist in the peculiarity of African marriage on this score"⁴³³. In spite of this controversial criticism, Urrutia agrees with African sensitivity that before the celebration of marriage the psychological awareness and preparation for the mutual commitment of couples must grow, well before the parties consent to such a total, exclusive, permanent, mutual giving of self⁴³⁴. This awareness in itself according to him, of course, justifies "the different traditional steps in marriage play a tremendously important role"⁴³⁵. Paradoxically, Urrutia reiterates that "but at some given moment or point, the parties either have already given their consent to such total, exclusive, and permanent commitment, and then they are married, or they have not yet given it, and then they are not yet husband and wife, however close, emotionally or otherwise, they may be to each other"⁴³⁶. Therefore a particular moment of consent should be perfectly discernible among the various stages of the dynamic process. He indicates that the precise discernible moment can be pointed to namely when mutual relationship changes its character, so that the man has the exclusive right of conversation with the woman and the woman will have the distinctive duty of preparing meals for the man⁴³⁷. In fact, we can allow a measure of disagreement and argument with Urrutia but what remains significant, of course, is that these

⁴³⁰ Andreas Kaseba, "The Marriage bond as the result of a process", in AFER 23, p.40.

⁴³¹ Urrutia, The challenges of canonical Doctrine on marriage, p.12.

⁴³² *ibid.*

⁴³³ Urrutia, The challenges of canonical Doctrine on marriage, p.13.

⁴³⁴ *Ibid*

⁴³⁵ *Ibid.*

⁴³⁶ *Ibid.*

⁴³⁷ *Ibid.*

stages may be irrelevant and superfluous in the eyes of the westerners, but for Africans, this process is a dynamic whole which creates and makes the marriage a reality and it is through ritual process that the marriage bond is matured⁴³⁸. The different ceremonies or moments are considered inseparable in the formation of the marriage bond because in the African mind both the constitutive and declaration acts as we described above, are very necessary to establish marriage.

3.4. Preparation for marriage

The above presentation of SECAM's views on matters of marriage and family life in Africa provide a deeper insight into the nature of customary marriage in Africa and the need for the Church to formally integrate the values of customary marriage and family life into its pastoral and liturgical activities to bridge the gap between traditional and Church celebrations of marriage. However, another important recommendation of SECAM in the 1980 Synod and Yaoundé assembly was the call to formulate policies and work out comprehensive programmes for the preparation of marriage⁴³⁹. SECAM acknowledges that despite the real solidarity characterising family life in Africa there are challenges which call for adequate instructions and preparation for marriage. While the challenges for instance, lack of peace in many families, breakdown of marriages and family life, parents neglecting education of children, polygamy and divorces, non-sacramental marriages, etc may be traced to the social and economic conditions prevailing, it is also morally certain that lack of proper preparation for marriage is one of the chief causes⁴⁴⁰. In this connection, they demanded that the key of success for young people in their marriage is to ensure adequate moral, spiritual and physical preparation. This necessity is urgent because today's African milieu does no longer prepare young people for marriage and the responsibilities of family life. Moreover, many Christians and the traditional forms of life that had built into them a time-tested and graded method of preparation for marriage are under attack, rejected, being secularised, changed or even destroyed completely⁴⁴¹. As such the Church as a family of God must do all that it takes to contribute to the stability and success of marriage especially for young people by promoting in an efficient manner, a family ministry, responsible for the family pastoral care in general, and, in particular, exemplary and experienced couples to monitor other couples in their encouragement and fulfilment⁴⁴².

⁴³⁸ Cf. Kaseba, *The Marriage bond as the result of a process*, p.40f.

⁴³⁹ SECAM, *Recommendations and conclusions* p.373; James Chiona, *Pre-marriage and marriage Catechesis*, Stephen Naidoo, *The need for an obligatory, Graded preparation for marriage*, Albert Setele, *Catechesis for marriage and family life*, in AFER 23, pp.49-56.

⁴⁴⁰ Naidoo, *The need for an obligatory, Graded preparation for marriage* p.50f.

⁴⁴¹ Naidoo, *The need for an obligatory, Graded preparation for marriage*, p.52.

⁴⁴² SECAM, *Church as family of God*, PL. 4.1.4.

Moreover, as response to what has been described in the previous section the bishops insisted that the different stages of traditional marriage highlight and protect the seriousness of marriage. Accordingly, they must help pastors to work out credible programmes based on the values of these dynamic traditional processes. In other words, the successive stages of African marriage readily outline the ground work for possible ways of ensuring that prospective couples are taken through the essentials of the sacrament of marriage and the demands of marriage life before being admitted to marriage. In this vein SECAM recommended that all Episcopal conferences must deepen the study of the different forms of traditional celebrations of marriage and to incorporate all that could be valuable in the celebration of marriage in the African manner. This study can help to create individual liturgical rituals in accordance with the local social patterns, since customs on the continent vary from locality to locality, however in a spirit of ecclesial solidarity. SECAM also warned that the study regarding the dynamic progression of the marriage process to be incorporated into the mainstream of pastoral care for those preparing marriage do not deviate from the Church's understanding of sacrament of marriage but are evaluated in the light of the Gospel⁴⁴³. Similarly, SECAM calls for an urgent need for an obligatory and graded preparation for marriage. They admitted that if adequate stress is laid on the preparation of candidates to the priesthood, then marriage which is both a vocation and a sacrament should be preceded by a careful, graded and obligatory preparation⁴⁴⁴.

Although SECAM did not follow classical stages of marriage preparation as described in FC and PCF, they did in fact deal with it under what they called "graded preparation"⁴⁴⁵. The graded preparation has three major phases: Remote preparation, proximate preparation and On-going formation. According to the graded preparation, remote preparation involves the role of general catechesis to children about the meaning of traditional family and the Christian ideal of family. Of course, according to the document the starting point is the family of God: "the fatherhood of God, how this comes across in revelation, the sonship of Christ and how this is manifested in the paschal mystery and the object of eschatology, which is the final incorporation of mankind into God's eternal family. The human family can be seen then as the context in which this great drama is both manifested and actualised". At this stage various life situations must be examined and its consequences presented. They mentioned casual relationships, indiscriminate sexual relations, the break down of family bonds and structures as some of elements for the instruction. Furthermore, the remote preparations call for drawing teenage programmes especially in the schools so that young people are instructed about biological, psychological, medical, legal, traditional cultural and evangelical aspects of marriage⁴⁴⁶. The remote preparation did sufficiently clarify who should be responsible; nevertheless SECAM observes that preparation for marriage is the collaboration of pastors,

⁴⁴³ SECAM, Recommendations and conclusions, p.373.

⁴⁴⁴ Naidoo, The need for an obligatory, Graded preparation for marriage, p.52.

⁴⁴⁵ Ibid.

⁴⁴⁶ Naidoo, The need for an obligatory, Graded preparation for marriage, pp. 51-53.

the extended family and the whole Christian community. This integration of roles highlights the value of consciousness that a marriage preparation needed. 'In addition, SECAM requires that "preparation for marriage should take place in the peaceful atmosphere of the family. Where possible, schools should collaborate with parents, while respecting the principle of subsidiarity. The importance of the parents' involvement in all forms of preparation for marriage cannot be sufficiently stressed"⁴⁴⁷. Similarly, SECAM insisted that the families of the prospective couple be "encouraged to participate in their preparation for marriage so that they may bring to it their contribution, they should be taught how to carry out their traditional role in a Christian way" because "Christians should be invited to conversion, not only in their personal conduct but also in their way of living as a family"⁴⁴⁸. According to the document proximate preparation begins during the months preceding the celebration of the marriage. It takes place when people become prospective couples.

Proximate preparation insists that the engaged couple must be instructed in the theology of marriage. The course content should explain the splendour of their vocation, the meaning of marriage in terms of covenant and as a sacrament and as oriented towards the transmission of life which is in line with participation in the creative power of God⁴⁴⁹. The proximate preparation must also give information on marriage as a human reality that requires a set of relationships such as love and respect for one another, deep communication, conflict resolution, companionship, demonstrated affection, and self-sacrifice. The couple should be aware and be sensitive to the differences that exist between them, in thinking, emotions, sense of humour, keeping secrets, adaptability, moods, shyness, and devotion to God. And the best way they can lead their children to an appreciation of the beauty and dignity of married life is by their own example of mutual trust, caring and sharing. They must also learn to help one another in ordinary things, in the house, food, furniture, clothing, fieldwork, and the care of children. The mutual support will make their marriage a partnership in the real sense⁴⁵⁰. More over, there are certain practical issues about home management which cannot be taken for granted since this can cause friction and unnecessary crises in the marriage. As such a competent team on various practical disciplines like budgeting, housekeeping, health and child care will be useful for the couple⁴⁵¹.

In the same way, engaged couples must also be taught the meaning of sexuality in marriage, responsible parenthood and education of children⁴⁵². The bishops seem to have had in mind the delicate issue of sex education in African societies. They also called for responsible practical education on Christian and traditional values of sexuality to the younger generation.

⁴⁴⁷ SECAM, Recommendations and conclusions, p.374.

⁴⁴⁸ SECAM, Recommendations and conclusions, p. 372.

⁴⁴⁹ Naidoo, The need for an obligatory, Graded preparation for marriage, p.53.

⁴⁵⁰ Naidoo, The need for an obligatory, Graded preparation for marriage, p.51.

⁴⁵¹ Naidoo, The need for an obligatory, Graded preparation for marriage, p.53.

⁴⁵² Ibid.

They insisted that the education should not degenerate into training in techniques of pleasure, anti-human attitudes as the refusal of life, abortion, contraception and sterilisation. Rather, the ultimate aim should be education towards legitimate natural methods of birth control and responsible parenthood, a reminder of the traditional role of parents. More over, the education should emphasise the unity of body and spirit, and human sexuality should be understood as an instrument for the gift of self⁴⁵³.

SECAM insisted that pastoral care for marriage preparation should not end at the altar. Systematic continuous supportive pastoral care is needed to assist the newly married because the first years of marriage are crucial for the survival of the new status⁴⁵⁴. In line with post-marital preparation SECAM proposed certain pastoral follow-up programmes for newly wedded couples. Some of these on-going formation programmes suggested in the document include marriage Encounter programmes in which couples mutually help each other, the basic Christian communities, the extended family, different associations, Sunday homilies with a catechesis on marriage and the renewal of marriage vows on certain occasions, feasts, etc. Since problems are bound to happen SECAM encouraged Episcopal conferences to establish ecclesiastical tribunals and marriage counselling clinics to assist families and couples solve their marriage problems⁴⁵⁵.

As a further insight into the dichotomy of celebration of marriage in Africa, the Yaoundé Assembly, re-emphasising the proposals in the 1980 Synod of bishops, appealed to Episcopal conferences on the continent to examine and come out with practical solutions about how the dynamic process of traditional marriage in Africa could be celebrated in a Christian way and at what particular moment the canonical form could be inserted in order to eliminate the present dichotomy between the liturgical and the traditional forms of marriages⁴⁵⁶. However, if we critically analyse the assembly's communiqués in relation to present circumstances on the ground, we may come to the conclusion that some pertinent related issues relating to the celebration of marriage in African culture still remain unresolved. We shall return to this important issue in more details in the last chapter of the thesis.

SECAM also acknowledges that in many societies in Africa, cultural imperatives as it were result in insensitivity, especially in the rights of women. It is obvious that in Ghanaian society cultural norms endorse male supremacy over females especially in marriage. This means that the woman in the family is not always treated on equal terms with the man. For this reason the Synod of Africa affirms strongly the rights and duties of women in building up the family and in taking full part in the development of the Church and society⁴⁵⁷. However, the common

⁴⁵³ SECAM, Recommendations and conclusions, p.374f.

⁴⁵⁴ Naidoo, The need for an obligatory, Graded preparation for marriage, p.53.

⁴⁵⁵ SECAM, Recommendations and conclusions, p.376.

⁴⁵⁶ SECAM, Recommendations and conclusions, p.373.

⁴⁵⁷ Cf. SECAM, Inst. Lab., 88. See also Ecclesia in Africa, no. 121.

trend in our modern society in Ghana is that there is evidence of men steering away from the traditional hard-line of male supremacy. Increasingly, the relationship between married couples is becoming closer and on the basis of reciprocity. It is believed that this is happening due to the education of the girl child, awareness being created about some despotic cultural practices and the increasingly substantial contributions of married women to family finances. This means that economic empowerment of women in Africa may go a long way to improve the condition of women on the continent⁴⁵⁸.

We have to remark that SECAM estimated that pastoral care for marriage should begin in childhood, intensify during puberty or adolescence and must reach its culmination in the immediate preparation and celebration of marriage. In addition, there should be continuous formation for those recently married on such matters bordering on how humankind's relationships and married couples can grow, change, improve or deteriorate, therefore developing indicators which will accommodate living their daily life as couple and family in a generous and realistic manner. Accordingly, one would have thought the documents and the solid proposals would mean more to various dioceses and bishops' conferences to promote and attach seriousness to it, but unfortunately, over the years the proposals remain archived in many dioceses. Unfortunately, these handsome recommendations and proposals that raised interest have never materialised in most parishes in Ghana because there is no elaborate directive and programmes on marriage preparation. Moreover the lack of success may be partly due to conflicts of interest which lay more emphasis on marriage counselling rather than on a qualitative approach to pastoral care for pre-marriage preparation.

⁴⁵⁸ Cf. John Anarfi, Talking and deciding about sex and contraception, p.184.

Chapter III

Analysis and Critique of marriage preparation canons (cc.1063-1072)

In the previous chapters we have examined the institution of marriage in a broad sense because we think such an approach may provide a deeper and meaningful insight for prospective couples and agents involved in pastoral care for marriage preparation to promote and stimulate effective measures of realising an informed understanding and living a successful marriage and family life in Ho diocese. In this chapter of the work we shall put the study in perspective by critically analysing the canonical approach to pastoral care for marriage preparation in the 1983 new code of canon law. However, for the purpose of thesis we shall give more attention to pastoral oriented norms relevant to marriage preparation especially c.1063, which deals more specifically with the pastoral care of marriage preparation. Additionally, at the final section of the chapter we shall evaluate how the provisions of canon 1063 have been taken care of by the German and Ghanaian Bishops' Conferences in particular reference to canons 1064 and 1067 in the context of pastoral care for marriage preparation.

1. Marriage preparation canons in the 1917 code

The canons (1019-1034) associated with the marriage preparation in the 1917 Code are found in chapter I under the title *De iis quae matrimonii celebrationi praemitti debent et praesertim de publicationibus matrimonialibus*⁴⁵⁹ in book III *De rebus*, part I *De Sacramentis*, title IV *De Matrimonio*. Canons (cc. 1012-18), which immediately preceded it deal with the general canonical and theological nature of marriage. However the last canon in those introductory canons (cc. 1012-1018) cannot escape our attention as far as pastoral care for marriage preparation in 1917 code is concerned. Canon 1018 obliged the pastor of souls to instruct his parishioners on the sacramentality of marriage and the impediments associated with it⁴⁶⁰.

As the title denotes, pastoral care for marriage preparation in the 1917 CIC was essentially consigned to those things which need to be done before prospective couples can be permitted to marry validly or lawfully in the Church, drawing particular attention to the marriage banns⁴⁶¹. This legacy was emphasised especially in the tone of canon 1019 §1, which expresses grave admonition that the pastor must be morally certain (*constare debet*) that

⁴⁵⁹ “The preliminary acts that must precede the celebration of marriage especially the marriage banns”

⁴⁶⁰ Thomas Doyle, “The canonical foundations for Pre-marriage preparations Guidelines”, in *Marriage Studies* I (1980), p.66.

⁴⁶¹ Cf. James Provost, „Marriage Peparation in the New Code: Canon 1063 and the *novus Habitus Mentis*, in: *Studies in Canon Law presented to P.J.M Huizinga*, ed. J.H. Provost and K. Walf, Leuven University Press, 1991, p.174; Gavin, Pastoral Care in Marriage Preparation, p. 24.

prospective spouses are capable of valid and licit marriage (cf. c.1019 §1)⁴⁶². He must remain resolute to determine that nothing stands in the way or prevents a valid marriage. The purpose of the investigation is to be certain that a) the spouses are not bedevilled with impediments b) that the spouses are consenting to marriage freely and willingly, that it is not due to any external pressure or a circumstance, and c) to see that the parties have sufficient knowledge of Christian doctrine⁴⁶³. This canon paved the way for the seriousness of the investigation as stated in the canon to follow. Canon 1020 insists that the responsibility for the conducting of the investigation rests with the parish priest who has the mandate to assist at the marriage of his faithful. This responsibility remains absolute even if another person is delegated to assist. The investigation to ensure the validity and the licitness of the marriage celebration means that marriage must at all cost be preceded by the publication of banns. It is also to take place before the parties are instructed in the Christian doctrines on marriage. This means that it is only after a successful conclusion of the canonical investigation to determine the free state of prospective couples is the parish priest obliged to instruct the prospective spouses on the nature of Christian marriage.

We also mentioned the publication of banns as the part of the demands of canon 1019 §1. The canons on the banns (1022-1030) have taken more than half of the canons under this section⁴⁶⁴. It ranges from the obligation of the parish priest to make the names of the spouses, the way and the manner in which the banns should be published in relation to time and space, to the assembling of documents and the elapse of three days after the publication of the banns⁴⁶⁵. Canons (1031, 1032, 1034) deal with the procedure in doubtful marriages. These are the marriages, for which the parish priest should consult with the ordinary. “The procedure to be followed if a doubt arises is set out in canon 1031. If, after further investigation, a doubt continues to exist, the parish priest must consult the ordinary before assisting at the marriage. If on the other hand, he actually discovers an impediment he must, if it is occult, refer the matter to the local ordinary or to the sacred penitentiary while withholding the names. If the impediment is public he must not proceed with the banns until the impediment is removed. If it is discovered after the first or second publication, he should continue the publications while referring the matter to the ordinary. The particular case of the marriage of vagi, that is, of persons with no fixed abode is dealt with in canon 1032. A parish priest is not to assist at the

⁴⁶² “Antequam matrimonium celebretur, constare debet nihil eius validate ac licitae celebrationi obsistere”

⁴⁶³ Cf. Provost, marriage preparation, p.175; Gavin, Pastoral Care in Marriage Preparation, 24ff; F.X. Wernz – P. Vidal, *Ius Canonicum*, vol. V, *Ius Matrimoniale*, editio tertia, Apud Universitatis Gregorianae, Romae, 1946, pp. 143- 144; S. Congregatio de Disciplina Sacramentorum, instruction Sacrosanctum, 29 June, 1941: AAS 33 (1941), p.301.

⁴⁶⁴ Cf. Provost, marriage preparation, p.174f; Ulrich Mosiek, *Kirchliches Eherecht, unter Berücksichtigung der nachkonziliaren Rechtslage*, Verlag Rombach, Freiburg, 1972, pp.97-100.

⁴⁶⁵ Cf. Hartmut Zapp, „Eheversprechen, Vorbereitung der Eheschließung, Trauungsverbote“, in *Grundriss des nachkonziliaren Kirchrechts*, Joseph Listl, Hubert Müller, Heribert Schmitz (Hsgr.), Verlag Friedrich Pustet, Regensburg, 1980, p.553: Nach Beendigung des Aufgebots kann die Eheschließung nach drei Tage stattfinden, wenn weiter alle erforderlichen Urkunden vorliegen.

persons who are *vagi* without the permission of the ordinary or a priest delegated by him”⁴⁶⁶. The only canon among the 15 canons mentioned above refers to the particular instruction of the pastor to the couple before the celebration of marriage is found in canon 1033. It is clear from the above that in the pastoral care for marriage preparation great emphasis is placed on ensuring the validity and licit celebration of marriage. However, we did also mention two canons that at least are of interest to us as far as pastoral care for marriage preparation is concerned in the 1917 code. These are c.1018 on general instructions and c.1033 on the particular instructions in which the parish priest is obliged to tell his people about the necessary and essential elements of marriage. In spite of this, the parish priest is admonished to instruct the people regarding the sacrament of matrimony and its impediments. This general canon 1018 also does not specify when and how the instruction should be carried out and details of the content are not given⁴⁶⁷. However, it is presumed that this general instruction is to be taken in the context of canon 1332, which obliges parish priests to hold a catechetical instruction for adults on Sundays and holydays of obligation, and canon 1334, which actually imposes obligation on parish priests to announce the word of God in the customary homily⁴⁶⁸.

Although catechism in Sunday mass and homilies may not be the appropriate places to effectively instruct prospective couples on the sacrament of marriage, the code envisages that the content of the instruction should be directed towards the nature of marriage, its beautiful elevation to the dignity of a sacrament by the Lord himself, and the graces that accompany its fruitful celebration. It must also show the jurisdiction of the Church on marriage, the necessity of her laws, the primary purpose of marriage as procreation, and the sin and social plague of birth prevention. Furthermore, the instruction must ensure the mutual help of husband and wife, marriage as a state of consecration to duty and to God, Christian example as the best antidote for the prevalent vices against marriage, Catholic education of children and the impediments, especially that of mixed religion⁴⁶⁹. Again, as far as a proper pastoral care for marriage preparation is concerned, those provisions in canon 1018 do not suffice because the obligation in the canon in certain respects is one of the normal and moral duties of any parish

⁴⁶⁶ Gavin, *Pastoral Care in Marriage Preparation*, p.28.

⁴⁶⁷ Cf. *ibid*.

⁴⁶⁸ *Ibid*

⁴⁶⁹ T.L. Bouscaren – A.C. Ellis, *Canon Law: a Text and Commentary*, Milwaukee, 1955², p.465; Carl Holböck, *Handbuch des Kirchenrechts*, p.621: „Die Belehrung soll sich vor allem auf das Sakrament der Ehe erstrecken, auf ihr Wesen, ihre Zwecke, ihre Eigenschaften und die Gnaden, welche sie vermittelt. Die Behandlung des Wesens der Ehe wird immer wieder Gelegenheit bieten, über die Pflichten der Eheleute untereinander und den Kindern gegenüber zu sprechen, über die rechte Gattenwahl, über die rechte Vorbereitung der Ehe durch wirtschaftliche Sicherung der Grundlagen der Familie, über die Form der Eheschließung und über die standesamtliche Eheschließung. Es wird sich Gelegenheit bieten, zu warnen vor jeder Herabwürdigung der Ehe zu bloßen Sinnegenuss, vor der Ehescheidung, vor Beschränkung der Kinderzahl und vor der Vernachlässigung der Erziehung. Auch über die wichtigsten Ehehindernisse wird der Pfarrer gelegentlich zu sprechen haben. Diese allgemeine Eheunterweisung muss in kluger Weise erteilt werden, damit sie keinen Anlass zu Angriffen gegen die Kirche biete. Sie soll allen Gläubigen erteilt werden. Sie kann erteilt werden in der Jugendseelsorge, in der Schule, in der Christenlehre, in der Predigt. Besonderen Anlass zur Eheunterweisung bietet die Brautprüfung. Doch ist an dieser Stelle die Rede von der allgemeinen, nicht aber von dieser besonderen Unterweisung über die Ehe“.

priest to educate his faithful on the Christian doctrines and this does not in any way require “extra special” attention of the listeners.

Moreover, Canon 1033 on the other hand deals with the particular instruction to be given. This particular instruction must be directed towards the prospective spouse in a face-to-face manner with the parish priest who is to instruct them in such a way that they will receive the sacrament of matrimony in a pious and worthy manner. The instruction is to ensure that the spouses may live out their future marriage life in a Christian fashion as opposed to the pagan marriages. Furthermore, the content of the instruction to the spouses is foreseen to include the sanctity of the sacrament, the mutual obligation of married people and the duties of parents towards their children⁴⁷⁰. Jones also suggested that the prospective couple must also be taught to avoid *Onanismus* and in some cases the obligation of observing the weaning period of the mother (*Stillepflicht der Mutter*) in the marriage⁴⁷¹. Though the canon did mention specific times when the personal instruction should occur, Gavin observes that the referral of canon 1019 to “*antequam matrimonium celebretur* and canon 1020 §1 to *Parochus ... opportune ante tempore (assistendi matrimonio) diligenter investiget*” suggest that the instruction should take place well before the celebration of the marriage⁴⁷². The suggestion of Gavin and other commentators that the instruction should not be deferred to the days just before the wedding (as a kind of addendum or obnoxious necessity) but that it should rather take place immediately before the proclamation of the banns or at least before the period of the banns has elapsed⁴⁷³ might seem to be a more possible solution to the timeframe. Nevertheless, it is not clearly untenable if enough time could have been available between the investigations or the banns and the actual date of the wedding for the priest to have allowed any composite instruction.

The addendum to c.1033 addresses itself to the spiritual preparation of the prospective spouses. It is recommended that the parish priest must exhort the parties to receive the sacraments of penance and holy Eucharist before the celebration of the marriage. This admonition becomes necessary because marriage is a sacrament of the Church and to receive it one must be worthy and be in the state of grace. However, the lack of these of sacraments do not make the celebration of the marriage illegal or invalid since it is only a strong exhortation rather than a rule. According to Jones, the parish priest can demand that the prospective spouses must receive absolution especially in cases where its omission would cause public scandal. For instance, if it is known publicly that the man was living in concubinage or did not fulfil his Easter obligation⁴⁷⁴.

⁴⁷⁰ Doyle, Canonical foundations, p.72; Holböck, Handbuch des Kirchenrechts, p.632.

⁴⁷¹ Cf. Heribert Jone, *Gesetzbuch der lateinischen Kirche*, Zweite, vermehrte und verbesserte Auflage, Verlag Ferdinand Schöningh, Paderborn, 1952, p.253.

⁴⁷² Gavin, Pastoral Care in Marriage Preparation, p.32.

⁴⁷³ Cf. Doyle, Canonical foundations, p.72; Gavin, Pastoral Care in Marriage Preparation, p.32.

⁴⁷⁴ Cf. Jone, *Gesetzbuch*, p.253.

2. Marriage preparation in the new code of 1983

2.1 The Revision of the 1917 canons

The revision of the 1917 code came as a result of John XXIII *Aggiornamento* (up dating) declaration on 25 January 1959. In his view the face of the Church needed to be renewed to be at par with the challenges in the modern world. Based on the above considerations John XXIII, on the feast day of the conversion of Paul, outlined the programmes he intended to follow in his pontificate. Besides the calling of a diocesan Synod of Rome and an Ecumenical council, his third priority in the *aggiornamento* – effective renewal – was the revision of the code of canon law⁴⁷⁵. However, we must admit that the idea of the revision of the code was not new and did not emanate from him. It is true that immediately after the promulgation of the first ever codification of all the laws in the life of the Church into a single document, the 1917 code of canon law, Benedict XV established a commission, which should see to the widening or revision of the code if there is the need⁴⁷⁶. The establishment of this commission came as a result of the fact that though the 1917 code helped the Church greatly by sorting out and organising its multitude of laws so that they could be known with greater ease and certainty⁴⁷⁷, it became apparent that the code was somehow too legalistic such that it diverged from the essential pastoral identity of the Church.

In spite of the possibility of revision given by Benedict XV, one could maintain that John XXIII's declaration is seen as a way forward in the canonical history of the Church because he did not only demand that the code should be revised to correct the incompatibilities, to reconcile certain canons and to improve the canonical language; or to integrate merely the legislation enacted since the promulgation of 1917 code but insisted that the whole code should be put in another perspective. Yet we must understand that with the terminology *Aggiornamento*, John XXIII did not intend to change the underlying teachings of the Church and in her laws but rather as already stated above that the laws should be revised such that it adjusted to demands of the modern times⁴⁷⁸, more or less in a pastoral tone favourable to the

⁴⁷⁵ Cf. John XXIII, Speech to the Roman cardinals, 25th January, 1959, AAS LI (1959) 68: „auspicato e atteso aggiornamento del codice di Diritto Canonico“ meaning „the desired and long awaited aggiornamento of the code of canon Law“. See also Lawrence Molmby, “The Christian minister is among us as one who serves. The teaching of the constitution on the Church and its implications for the Reform of canon law”, *The Jurist* 26 (1966), p.426; Heinrich Flatten, „Der Eheprozess im Entwurf zum künftigen Codex iuris Canonici“, *AfkKR* (1977), p.36.

⁴⁷⁶ Cf. Benedict XV, *Motu proprio* “Cum iuris Canonici”, 15th September, 1917 http://www.vatican.va/holy_father/benedict_xv/motu_proprio/documents/hf_ben-xv_motu-proprio_19170915_cum-iuris-canonici_it.html (Accessed: 15.7.2004); see also Georg May, “Kirchenrechtsquellen”, *TRE* 19 (1990), p.38; S. Kuttner, “The code of canon Law in Historical Perspective”, *The Jurist* 28 (1968), p.129ff.

⁴⁷⁷ Cf. J.D. Conway, “Law and Renewal”, *The Jurist* 26 (1966), p.415.

⁴⁷⁸ Cf. James Provost, „Der revidierte Codex Iurius Canonici, Erwartungen und Ergebnisse“, *Concilium* 17 (1981), p.534.

Church. He subsequently announced the formation and the establishment of the Pontifical Commission for the Revision of the 1917 code of canon law. This commission was to be responsible for the total revision of the code.

It is noteworthy that the call for the “effective renewal” of the code demanded by John XXIII did not end with his death. His successor Paul VI in a similar manner told the code commission that the revision of the canon law will have to be accommodated to the new mentality of Vatican II with its new emphasis on pastoral concern and the needs of the people of God⁴⁷⁹ such that the laws of the Church are based on the principle of love rather being punitive in nature.

2.2 The 1975 Schema on marriage preparation

In the revision of sacramental laws none of the sacraments receive more attention and canons other than marriage law. In this connection, among the sixteen groups of consultors responsible for the revision of the code, two groups were allocated to the revision of the sacramental law alone. Interestingly, one of these two groups was given the sole task of revising and drawing of a schema of marriage law⁴⁸⁰. Moreover, out of the 361 canons of the schema on sacramental law sent to bishops and certain universities in March 1975, 119, a reduction of 12 canons in the 1917 code, dealt with marriage law (242-361 of the 1975 schema)⁴⁸¹.

After briefly discussing the road map of the revision, it is now appropriate to turn our attention to the canons (248-257) of the Schema on the pastoral care for marriage preparation itself. Although we added can. 248 to the category about to be reviewed, it is worth noting that the original 1975 schema did not include it in the chapter; what must precede the celebration of marriage, but just repeat the sequence as was found in the 1917 CIC. This canon equivalent to canon 1018 in 1917 code which reads as follows: “Pastors of souls are bound in virtue of their office to fulfil the function of providing catechetical instruction on the sacrament of matrimony according to norms issued by ecclesiastical authority”⁴⁸², an obligation to give a general catechesis on the sacrament of marriage to parishioners was given as a conclusion to the general introduction on marriage canons (1012-1018, 1917 CIC).

⁴⁷⁹ Cf. Paul VI, Speech to the commission for the Revision of the code of Canon Law, 20th November 1965.

⁴⁸⁰ Cf. Thomas J. Green, “The Revision of the Code: the First Decade”, *The Jurist* 36 (1976), pp.353-355.

⁴⁸¹ Cf. P. Wirth, „Das neue Kirchliche Eherecht: Kurzer Überblick und Kritische Würdigung“, *Österreichisches Archiv für Katholisches Kirchenrecht* 26 (1975), p.326; Thomas J. Green, “The Revision of Marriage Law: An Exposition and Critique”, *Studia Canonica* 10 (1976) p.363f; *Communicationes* 6 (1974), pp.199-220.

⁴⁸² “Pastores animarum vi officii sui tenentur, ut munus impertiendi cateheticam instructionem de matrimonii sacramento adimpleant, secundum normas ab auctoritate ecclesiastica tradendas” Can. 248 Schema 1975 (can. 1018, CIC 1917).

The chapter on what must precede marriage in the 1975 schema actually begins with can. 249. According to this canon, it is the responsibility of a parish priest to see to it that nothing prevents the valid and lawful celebration of marriage (1975 Schema can. 249; the original canon 1019, 1917 CIC). This is followed by a norm on the competence of bishops' conferences to specify certain formalities in order to determine a person's freedom to marry (1975 Schema, can. 250; can.1020 1917 CIC). Prospective spouses are encouraged to receive confirmation before marrying (1975 Schema, can. 251; can. 1021 1917 CIC). The people of God are obliged to inform the proper authorities of impediments to marriage (1975 Schema, can. 252; can. 1027, 1917 CIC). Canons on the detailed prescription and dispensation from the banns have been dropped, leaving this to particular law. This suggested that the dispensation from the banns was left to the discretion of the local ordinary (1975 Schema, can. 253; can. 1023-1025, 1917 CIC). The local ordinary of the parties may, for a just cause, dispense from making the publications. If there is more than one ordinary, then it is the ordinary in whose diocese the marriage is to be celebrated who has the right to dispense. If the priest carrying out the investigation into the couple's freedom to marry is not the person authorised to assist at the marriage, he must notify the parish priest responsible about the results of his investigations (1975 Schema, can.254; can. 1029, 1917 CIC). Special permission of the bishop is required before assisting at the marriage of migrants (1975 Schema, can.255) and those persons committing adultery during a prior marriage and attempting to marry under civil ordinance (can. 256). Canon 257 stresses the educational and liturgical duties of the pastor. This canon in two paragraphs originated from canon 1033 of the 1917 code. Clause 1 states, 'the pastor is to teach the spouses, in keeping with the condition of various persons, about the sanctity of matrimony, the mutual obligations of spouses, and the obligations of parents towards children. Clause 2 states, the pastor is to take care to prepare the celebration of matrimony that its sacramental dignity will shine forth and the spouses and those present will participate actively in the sacred rite'⁴⁸³.

Finally we would like to remark that though the chapter lacks the satisfaction and newness of a serious policy on pastoral care for marriage preparation; nonetheless can.248 (schema 75) mentioned in the beginning of this section and can. 257 (Schema 75) became the backbone of canon 1063 in the promulgated 1983 code.

2.3 The revision of the 1975 schema

Between 21st February 1977 and 2nd February 1978 the coetus met several times to discuss and evaluate the schema in the light of the reactions received from the various Episcopal

⁴⁸³ Cf. Green, *The Revision of Marriage Law*, pp.368-369; Gavin, *Pastoral Care in Marriage*, p.73f.

conferences and consultative groups⁴⁸⁴. Cardinal Felici, the president of the commission, reporting on the feedbacks on the Schema said that the schema generally met the satisfaction of most respondents especially in its systematic organisation comparable to the code and the general thrust of the individual institutes. However, some respondents felt that the schema concentrated too much on marriage as a contract and therefore lacking in the truly ecclesial dimension of matrimony. In other words, it focuses too much on jurisdictional issues related to marriage rather than the wealth of biblical and theological insights painstakingly worked out and presented in the documents of Vatican II. Further observation also indicated that the schema dwelt very much on hierarchical ecclesiology and pays insufficient attention to the communal dimension of the Church. The coetus also reported that only three respondents rejected the Schema outright on the grounds that it contains very few significant innovations or did not really take cognisance of the new theology of marriage that was evolving, or that it was too much dependent on the ecclesiastical situation in Europe and North America which did not satisfactorily attune to the experience of the Church in mission lands⁴⁸⁵. Interestingly, the respondents to the marriage Schema paid little attention to the section on pastoral care for marriage preparation because in their judgement the section should be limited to particular rather than universal law due to the diversity of socio-cultural circumstances of various regions of the world. Thus it should be left to the initiative of bishops' conference to organise since such particular initiatives would intensify a responsible pastoral approach to marriage preparation for prospective couples in various situations⁴⁸⁶.

In spite of the limited attention given to pastoral care of marriage preparation, many respondents also suggested that it should be treated more completely and concisely. Accordingly, the coetus asked the relator, Peter Huizing, with the help of another consultor, to draft a new canon altogether, integrating the material from the canon on catechesis (can 248, 1975 schema) and other canons on pastoral care for marriage taking into consideration the recommendations from the various consultative groups⁴⁸⁷. Before considering drafting a new canon to suit pastorally oriented preparation for marriage they began by reworking the title of

⁴⁸⁴The deadline for the receiving of the feedback to the schema was September 1975 that is a period of six months is given to the study of the schema. There were critical study and reactions on the schema from many experts of different parts of the world. For the detail reactions to the schema see: P. Huizing, „Alternativentwurf für eine Revision des Kanonischen Eherechts“, in: Für einen neue Kirchliche Eheordnung, ed. By P. Huizing, Patmos Verlag, Düsseldorf, 1975, pp.83-105; P. Wirth, Das neue kirchliche Eheerect, pp.324-344; Report of a Special Committee of the Task Force of the Canon Law Society of America on the marriage Canons proposed Schema Documenti Pontificii quo Disciplina Canonica de Sacramentis Recognoscitur, “in Proceedings of the 37th Annual Convention of the Canon Law society of America, 1975, pp.205-217; U Navarrete, “Schema iuris recogniti ‘De Matrimonio’. Textus et observations”, *Periodica* 63 (1974), pp. 611-658.

⁴⁸⁵ Cf. Comm. 9 (1977), p.117. See also Green, *The revision of marriage law*, pp.373-374; Green, *The revised Schema: De Matrimonio*, p.61f; Gavin, *Pastoral Care in Marriage*, p.75.

⁴⁸⁶ Cf. Green, *the revision of marriage law*, p.384.

⁴⁸⁷ Cf. Gavin, *Pastoral Care in Marriage* 75; Comm. 9 (1977), pp.131-132

the section⁴⁸⁸. They settled on a new title, which reads: “Pastoral care and the prerequisites for the celebration of marriage”. The title was unanimously approved. The text of the proposed new canon read as follows:

Can. 249. The Christian faithful have the right that the Church and specifically their own ecclesial community provide effective assistance so the matrimonial state may be preserved and progress in a truly Christian spirit.

- 1) by instruction in the meaning of Christian marriage and the functions of spouses and Christian parents, through preaching, through the use of the media, and through the appropriate catechising of children, youth and adults;
- 2) by personal preparation for entering marriage, so that the spouses will be disposed for the duties and sanctity of their new state;
- 3) by a liturgical celebration of their matrimonial covenant in which "the saviour of men and women and the spouse of the Church comes into the lives of married Christians through the sacrament of matrimony" (GS 48);
- 4) by pastoral aid to married persons so that “they increasingly advance their own perfection, as well as their mutual sanctification, and hence contribute jointly to the glory of God” (GS 48); and especially by expert and effective matrimonial and familial assistance⁴⁸⁹.

The above-proposed revised canon seems in line with the canon 2 of Huizing alternative marriage law schema on marriage preparation:

It is a fundamental right of Church members that the community and especially their own local church provide them with active support for the realisation of Christian marriage. This support will above all be provided through:

- appropriate enlightenment concerning the meaning of Christian marriage in catechesis for children, youth, and young adults, and in preaching;
- personal preparation for marriage;
- a pleasing celebration of the wedding;

⁴⁸⁸ Cf. Zapp, *Kirchliches Eherecht*, mit dem Entwurf der CIC-Reformkommission, neu bearbeitete 5. Auflage, Verlag Rombach, Freiburg, 1981, pp.73-74; Zapp, „Eheversprechen, Vorbereitung der Eheschließung, Trauungsverbote, p. 553ff.

⁴⁸⁹ The English translation is taken from Gavin, *Pastoral Care in Marriage*, pp.75-76. The original text in Latin reads: “Christifidelibus ius est, ut Ecclesia et in specie propria communitas ecclesialis efficacem assistentiam praebeant ut status matrimonialis in spiritu vere christiano conservetur et progrediatur.

Haec assistentia imprimis praebenda est:

- 1) institutione de significatione matrimonii christiani ac de munere coniugum ac parentum christianorum in praedicatione, in usu instrumentorum communicationis, in catechesi minoribus, iuvenibus et adultis aptata;
- 2) praeparatione personali ad matrimonium ineundum, ita ut sponsi ad novi sui status officia et sanctitatem disponantur;
- 3) liturgica foederis matrimonialis celebratione in qua “hominum Salvator Ecclesiaeque Sponsus per sacramentum matrimonii christifidelibus coniugibus obviam venit” (GS 48);
- 4) auxilio pastorali pro coniugatis ut “magis ac magis ad propriam suam perfectionem mutuamque sanctificationem ideoque communiter ad Dei glorificationem accedunt” (GS 48); et maxime assistentia matrimoniali et familiari perita et efficaci. (Can. 249)”. Comm. 9 (1977), p.137.

- pastoral accompaniment of married persons and especially through active and competent help when they experience difficulties in married life⁴⁹⁰.

With regard to the drafting of the canon, the problem of inserting the word *ius* gave rise to a fierce debate among the coetus. The bone of contention as it were, centred on the proposition, ‘if one could speak of a basic Christian right to the Church’s pastoral assistance in entering marriage’. The relator, Huizing, felt that couples had a basic right to the pastoral assistance of the Christian community. His argument follows the simple logic that since the Church imposes so many laws and certain burdensome formalities on the people of God before the celebration of marriage is permitted according to the rituals of the Church, reciprocally the couple had a right to be assisted with sufficient instructions to meet these obligations. However, one consultor was reluctant to speak about a strict right (*ius*) of the faithful because he feared that if the faithful had a right to pastoral care, there is a possibility of a couple’s instituting court action against the community or the local church if she fails to guarantee such pastoral assistance, which they are entitled to. One of the consultors on the other hand was in favour of retention of the notion of right but felt that instead of holding the community responsible, the representatives of the community should be held accountable to such negligence. To avoid the risk of any future legal wrangling for the Church, one consultor preferred to speak of a ministerial obligation to offer pre-marital pastoral care. According to his view, instead of referring to the “rights of the faithful”, the canon should instead refer to the obligations of the pastor. He argued that it was more appropriate for a legal text to speak foremost of obligations, and from these rights could be deduced. The matter could not be settled on consensus among the coetus and therefore a vote was cast and with a margin of four to three, the latter viewpoint, which speaks of the obligations of the pastors rather than the rights of the faithful prevailed⁴⁹¹.

Even though the revised canon⁴⁹² rejected incorporating the phrase “right of the faithful”, in to the canon schema, obviously the phrase was not entirely excluded from the 1983 code. The

⁴⁹⁰ Huizing, Alternativentwurf für eine Revision des Kanonischen Eherechts, p.86: This proposed canon seems to be in line with the canon 2 of Huizing alternative marriage law schema: “Es ist ein Grundrecht der Kirchenmitglieder, das die Kirchengemeinschaft und besonders auch ihre eigenen Ortskirchen der christlichen Verwirklichung der Ehen ihre tatkräftige Unterstützung angedeihen lassen.

Diese Unterstützung soll vor allem gegeben werden durch

- entsprechende Aufklärung über die Bedeutung der christlichen Ehe in Jugend-, Jugendlichen- Erwachsenen Katechese und in der Verkündigung;
- die persönliche Vorbereitung auf die Ehe;
- die ansprechende Feier der Trauung;
- pastorales Geleit der Eheleute und ganz besonders in der tatkräftigen und sachkundigen Hilfe, wenn sich im Eheleben Schwierigkeiten ergeben“.

⁴⁹¹ Cf. Comm. 9 (1977), pp.138-139. See also Gavin, Pastoral Care in Marriage, 78; Green, The Revised Schema: De Matrimonio, p.73; Hartmut Zapp, *Kanonisches Eherecht*, 7., neubearbeitete Aufl., Verlag Rombach, Freiburg 1988, pp.76-77.

⁴⁹² Comm. 9 (1977), p.139: The revised canon reads : “Pastores animarum obligatione tenentur curandi ut propria ecclesialis communitas christifidelibus assistentiam praebeat qua status matrimonialis in spiritu christiano servetur et in perfectione progrediatur.

Haec assistentia imprimis praebenda est:

phrase in canon 682 of 1917 CIC was repeated in the schema *De Populo Dei*. It becomes canon 213 in the 1983 CIC. Canon 213 states, “The Christian faithful have the right to receive assistance from the sacred pastors out of the spiritual goods of the Church, especially the word of God and the sacraments”. The construction of canon 213 stipulated that the faithful have a right; meanwhile the words used in the canon are not strong enough to have any serious legal imperative or consequences for the pastor or the Church since it is stated in more general terms. It refers to this right as only a right to spiritual goods and to the most powerful helps necessary for salvation⁴⁹³. However, what constitutes these spiritual goods is still debatable.

In order to ensure that the new formulated canon was a viable alternative and corresponds to the revision of the code the coetus presented it to the code commission for their comments. The code commission made two proposals to that effect. The first asked that something be added to the obligations or duties proper to spouses, such as education of children; that mention is made of help to be given to Catholics entering mixed marriages, and that something is said about Catholics who lack faith when entering marriage⁴⁹⁴. The second proposal called for an additional canon, which would ask pastors to exclude from marriage those who had only mundane or purely social reasons for marrying. The secretariat rejected both sets of proposals. It rejected the first suggestion on the ground that it was already contained in different canons or belonged more properly to particular law, and the second because it more properly belonged to particular law, if in any law at all⁴⁹⁵. There was only one minor change made to the text of this proposed canon, as it appeared in the 1982 schema. Instead of reading *communitas ecclesialis*, as in the proposed canon, the final text read *communitas ecclesiastica*. This signalled an emphasis on the particular community of the pastor rather than the more vague general reference to the ecclesial community. With this minor change, canon 1063 of the 1983 code was promulgated, with no other changes to the proposed canon 249 of the earlier draft⁴⁹⁶.

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- 1) praedictione, catechesi minoribus, iuvenibus et adultis aptata, imo usu instrumentorum communicationis socialis, quibus christifideles de significatione matrimonii christiani deque munere coniugum ac parentum christianorum instituantur;
 - 2) praeparatione personali ad matrimonium ineundum, qua sponsi ad novi sui status sanctitatem et officia disponantur;
 - 3) fructuosa liturgica matrimonii celebratione; qua eluceat coniuges mysterium unitatis et foecundi amoris inter Christum et Ecclesiam significare atque participare;
 - 4) auxilio coniugatis praestito, ut foedus coniugale fideliter servantem atque tuentes, ad sanctiorem in dies pleniorumque in familia vitam ducendam perveniant.

⁴⁹³ Cf. James H. Provost, “The people of God”, in J.A. Coriden, T.J. Green and D.E. Heintschel (eds.), *The code of canon law. A text and commentary*, study edition, New York 1985, p.147.

⁴⁹⁴ Gavin, *Pastoral Care in Marriage*, p.79.

⁴⁹⁵ Cf. Comm. 15 (1983), 225.

⁴⁹⁶ Gavin, *Pastoral Care in Marriage*, p.79.

The question of drafting a new canon on pre-marriage preparation was not only limited to the revised canon 249. Canon 1064 in the 1983 code is totally a new canon that has no equivalent in the original 1975 schema or in the 1917 code of canon law but rather takes its source from the alternative marriage law schema of Huizing⁴⁹⁷. The initial draft of this canon⁴⁹⁸ proposed that both the bishops' conference and individual bishop must give high pastoral priority to pre-marriage preparation. Moreover, they must regularly evaluate the adequacy of the efforts, programmes and directories on the marriage preparation. Later, the role and consultation with bishops' conference was dropped, and the diocesan bishop in his own right was given the primary responsibility to see to it that pastoral care for marriage preparation is properly taken care of⁴⁹⁹. Despite elimination of bishop's conferences from the canon, local ordinaries might still be assisted with input from the Episcopal Conference. The canon also stresses the importance of lay expertise to reflect and implement such pastoral priorities in the diocese.

Meanwhile, canon 252 in the revised schema reintroduced the recommendation that spouses receive the sacrament of reconciliation and the Eucharist before and after the celebration of the marriage. However in the 1917 code recommendation was only an addendum to the canon 1033. The reintroduced recommendation stated above was given a separate canon but only as paragraph 2 of the canon on receiving of confirmation before marriage⁵⁰⁰ in the canon 1065 of the 1983 code. Canons 253 and 254 (the equivalent of can. 249 schema 1975) restate that it is a pastoral obligation to ensure that nothing precludes a valid and lawful celebration of marriage. The revised canon omitted the provision in the 1975 schema on an oath affirming one's baptismal status and freedom to marry if no other proofs can be reached and it is a case of an urgent celebration of the marriage⁵⁰¹.

Another significant development in the revision of the code was the drafting of a new canon to close the section. Even though this canon seems to be new, yet, it is a conglomeration of various provisions of canons 255-6, 258, 281 of the 1975 schema (can. 1032, 1034, 1065,

⁴⁹⁷ Statute 3 of the Huizing alternative marriage law schema reads as follows: "Die Bischofskonferenzen und die Diözesanbischöfe sollen sich mindestens einmal in Jahr gründlich über den in Kanon 2 gemeinten Beistand beraten und ihm in der pastoralen und personalen Leitung ihrer Gebiete und Diözesen hohe Priorität verleihen. Sie sollen sich darin durch sachkundige und erfahrene Männer und Frauen helfen lassen.

⁴⁹⁸ Comm. 9 (1977), p.138. The initial formulation of canon 250 reads as follows: "Conferentiae Episcoporum et Episcopi dioecesanī saepius deliberationem instituendam current de assistentia praedicta, illique in cura pastoralī, sive regionali et dioecesanē, sive personali prioritatem tribuant. In hoc munere exsequendo adiutorium quoque adhibeant virorum et mulierum experiential et peritia probatorum".

⁴⁹⁹ Cf. Thomas Green, "The Church's Sanctifying Mission: Some aspects of the Normative Role of the Diocesan Bishop", *Studia Canonica*, 25 (1991), p.268 ; Green, *The Revised Schema De Matrimonio*, p. 75.

⁵⁰⁰ „Canon 252. §1 Catholici qui sacramentum Confirmationis nondum receperunt, illud, antequam ad matrimonium admittantur, recipiant, si id possint sine gravi incommodo. §2 Ut fructus sacramentum matrimonii recipient, enixe commendatur ut sponsi ad sacramenta paenitentiae et Ss.mae Eucharistiae accedant". Comm. 9 (1977), p.140-141.

⁵⁰¹ Green, *The revised Schema: De Matrimonio*, p.72.

1917 CIC). The canon lists some situations⁵⁰², in which the pastor is obliged to ask permission from the local ordinary before assisting in the celebration of the marriage. This canon was the most discussed text in the section. The coetus did not encounter major canonical issues in the drafting; however, a few reflections seem in order, particularly to clarify changes from the original text presented to the coetus. The question of permission appropriateness of referring to the local Ordinary the marriages of migrants, those experiencing some difficulty related to civil law's recognition or celebration of their marriage, or those entering marriage by proxy did not pose difficulties to the coetus. The difficulties encountered by the coetus in the revision attested in those situations mentioned in canon 1075, §1 CIC 1917 (consummated adultery during valid marriage and pledge of marriage or attempted marriage). The original canon 256 of the 1975 schema had indicated that such a situation would no longer technically be the diriment impediment of crimen but rather a matter to be referred to the local Ordinary. However, the coetus agreed to omit this canon because of the difficulty in proving adultery⁵⁰³.

There was a significant debate on §1, 4^o (norm 17 of the revised 1975 schema) about those notoriously abandoning the faith or joining a forbidden society (ca.1065, 1917 CIC). Some consultants proposed that a baptised notoriously leaving the Church be regarded as an impediment; in this case a dispensation must be granted before a valid and licit marriage can be celebrated. However, the coetus rejected the proposition on the account that such a situation does not change the basic right to marry. They argued further that if such an individual married another baptised person it would be a sacramental marriage because of the inseparability of the sacrament from the contract among the baptised. This is another instance of the problematic stance of the coetus relative to the faith dimension of a sacramental union⁵⁰⁴.

In any event, the coetus feels that the concept of notoriety is clear enough in law to serve as an apt criterion for judging those individuals to whom the norm applies. Interestingly enough, the coetus did reflect a proposal to extend the canon to those who have not been educated in

⁵⁰² The original canon proposed to the coetus for discussion reads: Parochus, excepto casu necessitates, matrimonio ne assistat nisi re ad Ordinarium delata, licentiam assistendi obtinuerit, quando agitur:

- 1) de matrimonio vagorum;
- 2) de matrimonio quod, quacumque ex causa, civiliter agnosci vel celebrari nequit;
- [3) de matrimonio eorum qui perdurante priore matrimonio adulterium inter se consummaverunt et matrimonium per civilem actum attentaverunt];
- 4) de matrimonio eius qui notorie aut catholicam fidem abiecerit, etsi ad communitatem non catholicam non transierit, aut societati ab Ecclesia prohibita adscriptus est; [Ordinarius vero licentiam ne concedat, nisi servatis normis de quibus in can. 277, ad singulos casus (convenienter) aptatis];
- 5) de matrimonio filiorum familiass minorum, quodd parentes abnuerint; Parochus vero minores hortetur ne in sciis aut rationabiliter invitis parentibus nuptias ineant;
- 6) de matrimonio per procuratorem contrahendo ; Ordinarius autem licentiam ne concedat nisi adsit iusta causa et de authenticitate mandati, ad normam can. 306 dati, dubitari nullo modo liceat. (Comm. 9 [1977], p.143).

⁵⁰³ Green, The revised Schema: De Matrimonio, p.76.

⁵⁰⁴ Ibid.

the faith. The problem or the difficulty encountered in this debate focuses on two positions: lack of education in the faith and positively abandoning it. The coetus rejects the debate because in their view a significant number of prospective spouses would probably fall into the category of lack of education in the faith and its inclusion in the canon might be imposing too much burden on the parish priest which could be seen in the obligation of seeking the bishop's permission to marry such couples on a case-by-case basis⁵⁰⁵. There was much debate on the question of forbidden societies and the coetus could not reach a consensus on the issue. Some consultors preferred that the clause be omitted since forbidden societies are difficult to determine. Besides, such people would fall under the general formula of those abandoning the Catholic faith. Other consultors, including the President of the commission, favoured the retention of it, but when the vote was cast reference to forbidden societies was rejected by a margin of 4-3.

Some respondents on the schema 1975 had also expressed pastoral concern about proper provision for the spouse and children of a prior civil marriage. In view of this, these concerned respondents suggested that the canon refers to those who had been civilly married and divorced. The coetus took the issue up and discussed several possibilities and inserted a new clause that became norm 17, §1,3^o of the revised 1975 schema. This is comparable to the concern expressed in norm 344, 2 of the original 1975 schema (can. 1125 1917 code). This text stressed the responsibility of the bishop to see to it that the polygamist taking advantage of the Pauline Privilege provides for the wife (wives) he was leaving in accordance with the norms of justice, Christian charity and natural equity (new norm 95, § 4)⁵⁰⁶.

To conclude this long-winded discussion on the permission of the bishop, the canon on minors marrying against the will of their parents or without the knowledge of their parents is somewhat modified to conform more closely to canon 1034, CIC 1917 and canon 258 of the original 1975 schema⁵⁰⁷. In addition, canon 282, 3 of the 1975 schema (CIC 1917, c.1067, §2)

⁵⁰⁵ Cf. Comm. 9 (1977), p.144.

⁵⁰⁶ Norm 95 is the redraft of canon 344 schema 1975. The revision reduced the various provisions of the so-called papal constitutions of canon 1125 CIC 1917 to one juridical construction. The unbaptised polygamist man who is converted can keep any of his wives while others must be dismissed. The first paragraph of the revised canon deals with the privilege to the woman who has several husbands. The coetus thinks this is logical because the law of the Church should treat both sexes equally. The second and the third paragraphs deal with the problems of verifying the departure of the unbaptised spouse and the renewal of marital consent respectively. In redrafting of this canon the issue of the impact of African socio-cultural factors was raised especially in connection with polygamy. Some respondents demanded that the issue of polygamy be re-examined such that the baptised man need not necessarily have to make a choice between his wives. Their point was that the dismissal of other wife or wives would needlessly disrupt the family life and would be very unjust and wickedness to the dismissed wives and their children. The consultors did not totally dismiss the issue but felt clearly it was a doctrinal subject beyond their competence. Consequently, they referred the matter to the competent authority, the congregation for the Doctrine of the Faith for her reaction. See Green, *The Revised Schema: De Matrimonio*, pp.113-118.

⁵⁰⁷ The revised canon 17 now reads as follows: §1. Excepto casu necessitates, parochus nisi de licentia Ordinarii ne assistat:

1) matrimonio vagorum;

of dissuading young people from marrying before the customary age in a given region was transferred to this section to become norm 18 of the revised schema, which concludes the chapter on pastoral care for marriage preparation.

2.4. Reflections on marriage preparation canons in the new code

The significant breakthrough in the 1983 code is about the new orientation given to pastoral care to be provided for those preparing for marriage and those newly wedded. This significant development could be viewed in the first place in the formulation of the title itself: “pastoral care and what must precede celebration of marriage”⁵⁰⁸. The title of the present code shows a great amount of shift in emphasis. While the 1917 code (cc.1019-1034) emphasised the determination of freedom to marry and the things that had to be done before a marriage could validly be celebrated (c. 1033), the title of the 1983 code on marriage lays an immediate emphasis on the proper pastoral care which must be given to prospective spouses preparing to marry for fruitful celebration of the sacrament and only in the second place does it refer to the things (legal requirements) that need to be completed before the celebration of marriage⁵⁰⁹. It has to be noted that nothing is lost of the Church’s insistence on, and pre-occupation with a valid and legitimate celebration of marriage; on the contrary, the emphasis is now broader, with specific reference to pastoral care⁵¹⁰.

The chapter consists of ten canons (1063-1072), which can be divided into categories. The canons presented before us, primarily consist of two major categories (1063-1065 and 1067-1070) and two other individual canons (1071 and 1072). Canons 1063-1065 per se speak of proper and intense pre-marriage preparation. Canons 1063-1065 advocate that the concern for modern pastoral care for pre-marriage preparation involves more than just insisting on the valid exchange of consent. Besides, faithful execution of these canons depends on the goodwill of the pastor and the Christian community to honour “serious obligation” to insure that various forms of assistance are provided for prospective spouses and for those already married. For that matter, “it is a pastoral challenge to ensure that these canons are well

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- 2) matrimonio quod ad normam legis civilis agnosci vel celebrari nequeat;
 - 3) matrimonio eius qui obligationibus teneatur naturalibus erga aliam partem filiosve ex praecedenti unione ortis;
 - 4) matrimonio eius qui notorie catholicam fidem abiecerit, etsi ad communitatem vero ecclesiam non catholicam non transierit;
 - 5) matrimonio eius qui censura innodatus sit;
 - 6) matrimonio filii familias minoris, inscius aut rationabiliter invititis parentibus;
 - 7) matrimonio per procuratorem ineundo, de quo in can. 306

§ 2. Ordinarius licentiam assistendi matrimonio eius qui notorie catholicam fidem abiecerit ne concedat, nisi servatis normis de quibus in can. 277, congrua congruis referendo. (Comm. 9 [1977] p.146).

⁵⁰⁸ De cura pastorali et iis quae matrimonii celebrationi praemitti debent

⁵⁰⁹ Cf. Gavin, Pastoral Care in Marriage, p.80.

⁵¹⁰ Cf. Ibid.

implemented in each diocese and parish, for the good of those receiving the sacrament of marriage and for the good of the entire Christian community”⁵¹¹. Canons 1066-1070 are mainly concerned with ensuring that the canonical requirements for a valid and licit celebration of the sacrament are carried out through the pre-nuptial examinations and investigations. Canon 1071 is “a taxative list of marriages”⁵¹² in which no one is to assist except in case of necessity without the permission of the local ordinary. Finally, Canon 1072 speaks of the concern that pastors should have for the marriages of young people and those who are under the customary age for marriage in a given region⁵¹³. We shall now examine and evaluate the canons in some detail. However c.1063 will be given a separate section later.

2.4.1. Exposition on canons 1064-1072

In keeping with the extensive concern for new approaches in pastoral care for marriage preparation, canon 1064 which has no equivalent in the 1917 CIC, obliged the local ordinary with the responsibility of ensuring that the pastoral care for prospective and married couples stipulated in canon 1063 is fully appreciated and provided for in his territory or diocese. The indicators of the canon admit that the bishop is the architect for pre-marriage preparations and chief catechist. As chief catechist, he is responsible for fostering the spiritual life of the people of God (c.387) and he is to protect the integrity of sacramental celebration in his area of jurisdiction (c.835, §1). He coordinates and gives directives to the programmes of his territory, taking the “various ethnic and social groups”⁵¹⁴ into consideration. This is to be done through establishing local directories and formulated programmes on pre-marriage preparation for the area of jurisdiction. It may also signify that he coordinates and gives directives to the programmes and ensures that this is strictly followed in all levels of the diocese even if he has delegated someone else to be the Charge d’Affair.

However, such obligations must be situated within the broader context of the responsibility of the whole Christian community to care for the quality of Christian marriage. As a general principle, formulation of policies and decrees in a given institution demands some background knowledge of experts relating to the subject matter. On account of the above, the canon practically states that the local ordinary should consult. This means that the local ordinary with appropriate consultation with the experts such as marriage counsellors, psychiatrists, psychologists, economists and sociologists, and diocesan and parish leadership, must structure

⁵¹¹ Cf. L.A. Robitaille, “Commentary on canons 1063-1072, Pastoral Care and what must precede Celebration of Marriage”, in J.P. Beal, J.A. Coriden and T.J. Green (eds.), *New Commentary on the Code of Canon Law*, New York 2000, p.1261.

⁵¹² Doyle, Marriage, p.753.

⁵¹³ Cf. Robitaille, “Commentary on canons 1063-1072, p.1261.

⁵¹⁴ Doyle, Marriage, p.749.

a programme enabling those entrusted with pastoral activity to provide the various types of pastoral assistance to prospective and married couples as envisioned in c. 1063. Each of this group of professionals has an important part to play in the formation of marriage programmes. Green noted that such professionals have helped to develop contemporary marriage nullity jurisprudence especially in the area of psychic incapacity for marriage. One might reasonably expect similar contributions in other areas of pastoral care for marriage⁵¹⁵.

Furthermore, the input of Anthropologists and social workers might help to clarify societal trends affecting marital commitments. This is to say nothing of the indispensable input of theologians, religious educators, liturgists, and married couples themselves in addressing different aspects of the sacrament from more practical ways. The most forgotten topic is about the economic factors. Economists are also very important to teach the spouses how to balance the economic affairs of the house. The house management is very important for the sustainability of the marriage⁵¹⁶. He should ensure that assistance appropriate to the situation of the people living in the diocese is provided; the courses and assistance should be updated regularly to keep in touch with any changing issues that should be addressed⁵¹⁷.

The first paragraph of canon 1065 recalls can. 1021 § 2 in the 1917 CIC which recommends that Catholic couples who have not been confirmed should receive confirmation before entering marriage provided this will not inconvenience the celebration of the marriage.

Although this recommendation does not and cannot invalidate sacramental matrimony, it is urged in virtue of the faith dimension of marriage and the crucial obligation to complete with the seal of the Spirit, the fulfilment of one's commitments and responsibilities of Christian vocation received through baptism to strive for the building up of the people of God through their marriage and family⁵¹⁸. In line with the above, Paul VI exhorted that: "In humble obedience then to her voice, let Christian husbands and wives be mindful of their vocation to the Christian life, a vocation which, deriving from their baptism, has been confirmed anew and made more explicit by the sacrament of matrimony. For by this sacrament they are *strengthened* and, one might almost say, *consecrated* to the faithful fulfilment of their duties, to realising to the full their vocation, and to bearing witness, as becomes them, to Christ before the world"⁵¹⁹. Moreover, the vocational sacrament of matrimony confers the 'state of grace' that is, the grace to carry out the duties and responsibilities both in society and in the

⁵¹⁵ Cf. Thomas J. Green, "The Church's Sanctifying Mission: Some Aspects of the Normative Role of the Diocesan Bishop", *Studia Canonica* 25 (1991), p.267.

⁵¹⁶ Green, *The Church's Sanctifying Mission*, p.268.

⁵¹⁷ Robitaille, *Commentary on canons 1063-1072*, p.1264.

⁵¹⁸ Cf. John P. Schanz, *Introduction to the Sacraments*, Pueblo Publishing Company, N.Y. 1983, p.112; Doyle, *Marriage*, p. 749f.

⁵¹⁹ Paul VI, *Enc. Humanae Vitae*, no.25.

See also *Gaudium et Spes*, n.48; Dogmatic constitution on the Church *Lumen Gentium*, 21. November 1964, n.35, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html (Accessed: 18. March 2005); canon 1134.

ecclesial community⁵²⁰. This special marriage vocation⁵²¹ charges couples to be “witnesses of their faith and love of Christ to each other and to their children”⁵²²; and the family as the “domestic church”, exhorts the couples to be the first preachers of the faith to their children by word and the example of their lives⁵²³. There can be little doubt that the confirmation received by the couples enriches them with gifts to help them to communicate their faith and holiness to their children.

The second part of the canon corresponds to the addendum of canon 1033 in the 1917 code which speaks of “strongly exhort” to dispose oneself for the sacrament of reconciliation and to receive Holy Communion before marriage. The new code rather uses somehow a stronger language of “strongly recommended”. While the exhortation to participate in the blessed Eucharist is more a pastoral than legal priority, it is included under proximate for marriage because of the importance of spiritual preparation for marriage⁵²⁴. This spiritual preparation for marriage as it were, is very important for the celebration of marriage such that marriage does not remain only a social event and as a right-duty situation but as participation and sharing in the mystery of Christian marriage which has been instituted by Christ. Despite this strong language penance is not an absolute prerequisite for the celebration of matrimony⁵²⁵. This is not to say that the couples should not strive to avail themselves to the sacrament because marriage is a central moment in the life of the couples, and since the marriage covenant requires proper dispositions and selfless commitment of the parties, it is fitting that they are inspired by love (contrition and conversion) and by a satisfaction that makes themselves readily available by being fully belonging to God and the ecclesial community in the sacrament of reconciliation⁵²⁶. It also helps them to count on the mercies of God in their marriage life and also as a sign for them to learn the value of forgiving each other in the spirit of understanding.

The receiving of the Eucharist may have nothing to do with the validity of marriage especially if we think of marriages outside the mass. However, the reception of the Eucharist by Catholic couples reminds them of the love between Christ and the Church (Cf. c. 987). Doyle emphasises that: “Marriage is a human reality founded on reciprocal love. As a sacrament, marriage reflects the covenant between Christ and his church and is the efficacious sign of this New Covenant. It is a symbol-commitment of the spouses. Since the Eucharist is the nuptial banquet of those sharing in the covenant between Christ and his Church, it is fitting

⁵²⁰ Cf. Schanz, Introduction to the Sacraments, p.112.

⁵²¹ Cf. LG 35; GS 48, 49, 52.

⁵²² LG 35.

⁵²³ LG 11.

⁵²⁴ Doyle, Marriage, p.750.

⁵²⁵ Cf. Lüdicke, Münsterische Kommentar, 1065/1; Doyle, Marriage, p.750.

⁵²⁶ Cf. William H. Woestman, *Sacraments. Baptism, Confirmation, Eucharist, Reconciliation and Anointing of the Sick. Commentary on Canons 840-1007*, Theological Publications in India, Bangalore, 1999, p.219; Gavin, Pastoral Care in Marriage, p.83; Doyle, Marriage, p.750.

that Catholic spouses partake in it at their wedding since they are committing themselves to a life which should reflect the reality of the union of Christ and his Church”⁵²⁷. This may not in some circumstances be possible especially if we may think of the synchronisation of canonical marriage and traditional marriage, which we will later suggest for Ho diocese. However, the couple must avail themselves for the least chance they might have to receive the Eucharist, because it is the central and uniting factor of the Church and the focal point of the family.

In short, the reception of the sacraments of confirmation, penance and the Eucharist is strongly recommended for Catholics who enter a sacramental marriage (including a mixed marriage) as well as those who enter a disparity of cult marriage in virtue of the faith dimension of marriage, the fruitfulness of marriage and the ecclesial obligations that necessarily follow; nevertheless the recommendation is not necessary for the validity of the marriage⁵²⁸.

Canon 1066 repeats canon 1019 § 1 of the 1917 code, and requires that, before a marriage takes place, the pastor witnessing the marriage is ultimately responsible for the preparation of the couple and for completing the pre-nuptial investigation and must be morally certain that nothing impedes a valid and lawful celebration. The purpose of the pre-nuptial investigation before the celebration of a marriage is a reminder that the right to marry (according to canon 1058) is subjected to fulfilling certain pastoral and legal prerequisites laid down by the Church. Besides, for a marriage to be valid, the parties must be canonically free to marry one another, that is non-existence of impediment (cc.1083-1094); parties marry freely without force, or coercion and giving true matrimonial consent (1095-1107) and the marriage celebrated with the proper canonical form (c.1108). On the other hand, for a marriage to be celebrated lawfully the prescriptions of canons 1067-1072; 1102 §3 as well as the particular diocesan regulations and decrees should be followed⁵²⁹.

We will see later in this work that the revision undertaken in the canons on pastoral care for marriage preparation in the 1983 Code brings the pre-nuptial investigation more in line with the pastoral realities of marriage in today’s world. It is for this reason that the German Bishops’ Conference recommended in the pre-nuptial enquiry, namely, marriage preparation protocol (*Ehevorbereitungprotokolls*) that the investigation should not just be seen as a legal requirement but also as pastoral exercise to deepen the understanding and values of marriage of the couples⁵³⁰.

Canon 1067 makes more explicit the means for establishing how to fulfil the general principle of canon 1066. The Episcopal conference is to lay down norms on the manner in which the examination of the parties, the publication of marriage banns, and the other appropriate means

⁵²⁷ Doyle, Marriage, p.750.

⁵²⁸ Cf. Doyle, Marriage, p.749; Robitaille, Commentary on canons 1063-1072, p.1264.

⁵²⁹ Cf. Robitaille, Commentary on canons 1063-1072, p. 1265.

⁵³⁰ We shall give details to this topic in the course of the work.

of enquiry to be carried out before marriage is celebrated. Only when he has carefully observed these norms may the parish priest assist at a marriage. The obligation and the purpose of the canon are to find out impediments or other circumstances which would impede a valid and licit marriage. It is a fact-finding mission to determine whether one is eligible for marriage. This canon no longer requires the detail legislation on banns in the 1917 code (can. 1023-1028) but leaves the option to local bishops conferences, if deemed necessary and useful, to decree law regulating banns⁵³¹. Meanwhile, if the conference can use other means and proofs that no invalidating factor enters the process, then banns can be omitted. The canon does not state that a recent baptismal certificate must be produced to testify to the unmarried status of the parties. However, some Episcopal Conferences of bishops' norms have prescribed it. A recent baptismal certificate is a useful tool for ascertaining the freedom of the parties to marry since it contains other vital information regarding a person's canonical status, such as reception of confirmation, nullity or dissolution of previous bond, reception of sacred orders, perpetual religious profession, proper dispensation from the obligation of celibacy, change of *sui iuris* church⁵³².

For instance the complementary particular legislation on Canon 1067 for the Church in Germany does not highlight the necessity for the publication of banns before the celebration of marriage but insisted on the proof of unmarried status through the presentation of a baptismal certificate.

Catholic partners must furnish proof of unmarried status usually by the copy of a baptismal certificate (not older than six months) „for the purpose of the marriage ceremony “. If due to some grave reason the Catholic parties cannot submit a baptismal certificate of newer date and if it concerns the proof of unmarried status of non-Catholics, an oath of unmarried status (*Ledigeneid*) can be received from the partners concerned. Information on unmarried status could also be verified: Residence and unmarried status certificates from the appropriate residents' registration office, information from the office of the Registrar for civil marriage or statements from reliable and unsuspecting witnesses. If the pastor or the delegated personally knows the partners and there is no doubt about unmarried status, then the marriage can be celebrated without the oath of unmarried status, testimonies and civilian documents. However, if doubts still exist about unmarried status then the *Nihil Obstat* should be sought from the office of the Vicar General/Bishop's secretariat⁵³³.

Regarding the process to be followed in establishing the freedom of Catholic parties who have attempted marriage without following the canonical Form, the Pontifical council for the interpretation of legislative Texts, on 7 August 1984, published a response to the following

⁵³¹ Cf. Siegle, Marriage according to the new code, p. 35.

⁵³² Robitaille, Commentary on canons 1063-1072, p.1265.

⁵³³ Ehevorbereitungsprotokoll (Niederschrift zur kirchlichen Ehevorbereitung und Eheschließung, Amtliches Formular der Deutschen Bischofskonferenz), Fulda 2008. Anmerkungstafel, no.7 (The translation is mine)..

question: “Whether in order to prove the state of freedom of those who, although bound to the canonical form, attempted marriage before a civil official or a non-Catholic minister is the documentary process mentioned in canon 1686 necessarily required, or does the pre-nuptial investigation dealt in canons 1066-1067 sufficient?” In that regard the council’s reply to the above indicates that the process outlined in canons 1066-1067 would suffice to prove the freedom to marry of someone who was bound to the canonical form of marriage yet who contracted a marriage without observing this form⁵³⁴. In regard to canon 1686, it implies that in the situation where the parties, at least one of whom was bound to the canonical form married before a civil official or non Catholic minister without dispensation, such cases merit no judicial process, even a documentary one, because the nullity of the marriage may be declared administratively⁵³⁵. For this reason many diocesan bishops have reserved the determination of freedom to marry in these cases to the chancery or to the *officialis* to handle⁵³⁶.

Canon 1068 states that in danger of death, if other proofs are not available, it suffices, unless there are contrary indications, to have the assertion of the parties, sworn if need be, that they are baptized and free of any impediment. This canon provides an alternative method for examining the parties in cases where one or both of the parties is in danger of death. If both parties affirm that they are baptised and not impeded by impediments to marriage, then the pastor may continue to assist at the marriage. The danger of death could be intrinsic, for example, serious illness or extrinsic due to war, impending surgery, natural disaster, exile, imposed death sentence etc. The danger is presumably grave enough that there is not enough time to proceed with the usual proper and full preparations and investigations for the marriage, only a little information about their freedom to marry is required. However, the canon requires that the statement of the parties regarding their baptismal status be made under oath only where there is real doubt about the truthfulness of the parties⁵³⁷.

In another context, a true urgent situation could arise other than the danger of death mentioned above. An impediment is discovered after all wedding preparations have been made and it is too late to defer the marriage without causing serious harm to the parties. Canon 1080 states that dispensation should be granted if it will be to the spiritual benefit of the couple and the other conditions are met. However, the probable danger of grave harm in delay should be judged on its merit. In this view, the possible loss of time, money and material items already invested in the wedding preparations or the fear of temporary embarrassment are not sufficient reasons to grant dispensation from an impediment especially

⁵³⁴ L. Wrenn, *Authentic Interpretations on the 1983 Code*, Washington DC, CLSA, 1993. pp.13-14;

⁵³⁵ Cf. L. Wrenn, “Processes”, in: J.A. Coriden, T.J. Green and D.E. Heintschel (eds.), *The code of canon law. A text and commentary*, study edition, New York, 1985 p.1015.

⁵³⁶ Cf. Robitaille, “Commentary on canons 1063-1072”, p.1266.

⁵³⁷ *Ibid.*

if it shows that the relationship is not secure and will be imperilled⁵³⁸. It must be affirmed however that unless noted otherwise, the Local ordinary, or the others mentioned in canons 1079 and 1080 can dispense in danger of death and *omnia parata* cases, from any impediment.

Canon 1069, a repetition of canon 1027 of the 1917 code, obliges all the faithful, especially the nucleus family and close acquaintances, to reveal to the parish priest or local ordinary any impediments of which they are aware. It includes impediments as well as any other invalidating factors such as serious mental illness, polygamy, previous bond, an established history of serious personal immaturity, a manifestly serious problem with alcohol or drugs and indications that one or other of the parties may be agreeing to marry only under duress. The obligation does not apply to those who hear of the impediment or invalidating factor in sacramental confession. They can speak to the penitent about it only in the context of the confessional unless the penitent brings it up again outside the sacramental forum⁵³⁹. Even so problems may arise in case of professional persons, e.g. Lawyers, doctors, and psychotherapists, who are in possession of confidential knowledge about their client customer. They should not breach confidentiality, unless they are dispensed from it by their clients and patients with a written permission. But they may, or must professionally advise their client to be honest in the matter⁵⁴⁰. We have already noted that those who discover such information confidentially, especially doctors, lawyers and councillors may not be free to reveal what they know. However, some people believe that extreme circumstances may arrive in which these latter class of people may be excused from this obligation of upholding a confidential relationship as important if the good of the person who is perhaps unknowingly entering a dangerous and invalid marriage must be protected⁵⁴¹.

This obligation is envisioned not only for the good of the couple and their families but also the good of the community, since marriage affects the entire community. If an impediment is revealed then it is up to the priest or local ordinary to act on the information after having considered the nature and gravity of what he has learned, who informed him of it, how the information was acquired, and whether it can be corroborated. In such a case, the priest and the local ordinary need to speak with the parties, their parents or guardians to understand the situation clearly⁵⁴².

Canon 1070, essentially repeating canon 1029 of the 1917 code, states that if a priest other than the priest who is to assist at the marriage has conducted the investigation, he must notify the parish priest of the parish where the marriage is to take place of the results as soon as possible, by means of an authentic document. If the priest witnessing the marriage is not the

⁵³⁸ Cf. John Huels, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, The Franciscan Herald Press, Chicago, 1986, p.177ff.; Doyle, *Marriage*, p.763f.

⁵³⁹ Cf. Gavin, *Pastoral Care in Marriage*, p.85.

⁵⁴⁰ Örsy, *Marriage in Canon Law*, p.80.

⁵⁴¹ Robitaille, *Commentary on canons 1063-1072*, p.1267.

⁵⁴² *Ibid.*

parish priest of the Catholic party or parties he should consult with the appropriate parish priest. Canon 1111 states explicitly that a priest who witnesses a marriage outside his jurisdiction without the delegation of the proper priest of the parish where the marriage takes place, does so invalidly.

It should be added that some prospective spouses often live in different parishes or live in parishes other than the one in which they will be married; it is necessary to inform the pastor of the parish where the marriage is to take place of any preparations occurring outside his parish. In this way, he will be assured that the appropriate preparation and investigation have been accomplished. Since the priest is responsible for the fostering of spiritual welfare of his parish, he is responsible for ensuring the proper preparation for marriages that take place in his parish. Even if he does not personally prepare the couple for marriage, he must be informed that all the prerequisites for a valid and lawful celebration have been fulfilled. Therefore the pastoral minister responsible for witnessing the wedding should be informed by an authentic document which is a document that has been dated, signed by the person who conducted the investigations and sealed with the parish seal⁵⁴³.

Canon 1071 lists a number of situations in which the person who assists at a marriage must first get the permission of the local ordinary except in the case of necessity. This taxative list of marriages does not constitute impediments because they do not change the basic right to marry except that they may possibly endanger the prospective couple, their children or society and community⁵⁴⁴. Moreover, the canon is directed to the pastoral ministers witnessing to the celebration of the marriage and not the spouses. The prescriptions of the canon should be followed even when only one party is affected. In all these instances refusal to follow does not affect the validity of marriage; referral to the local ordinary is obligatory except in case of necessity and danger of death⁵⁴⁵. The purpose of this canon is to ease the burden on the local parish priest in these particularly delicate situations in which it is considered necessary to have the advice and sanction of the local ordinary. These delicate situations need the local ordinary's permission to do so. They require special pastoral care when the prospective couple is being prepared for marriage⁵⁴⁶. The seven cases requiring the local Ordinary's permission for the lawful celebration of the marriage are:

1. A marriage of Vagi (transients), those who have no domicile or quasi-domicile or permanence residence, that is, no fixed abode but in habitual transient. Those who could fit into this category are perpetual wanderers, sports men and women, athletes, the homeless, migrant workers, immigrants, students on exchange programmes, asylum seekers and illegal aliens

⁵⁴³ Cf. Robitaille, "Commentary on canons 1063-1072, p.1266; Doyle, Marriage, p.753.

⁵⁴⁴ Doyle, Marriage, p.753.

⁵⁴⁵ Lüdicke, Münsterische Kommentar, 1071/1

⁵⁴⁶ Gavin, Pastoral Care in Marriage, p.86.

who may not have any fixed address⁵⁴⁷. The domicile in canon law is acquired by residence within the territory of a certain Parish which is either linked to the intention of remaining there permanently if nothing should occasion its withdrawal, or in fact protracted for a full five years (c. 102 § 1). The quasi-domicile is acquired by residence in the territory of a parish, which is either linked to the intention of remaining there for three months if nothing should occasion its withdrawal, or in fact protracted for three months (c. 102 § 2). Domicile and quasi-domicile are lost by departure from the place with the intention of not returning, without prejudice to the provision to the c. 105 (cf. c. 106). However, canon 1115 indicates that if the parties have a month-long residence in the parish, the local ordinary's permission is not necessary. The norm sees the danger inherent in such marriages because the background of such people may be obscure in regard to suffering from mental or physical illness which requires thorough examination and preparation regarding their stability and freedom to marriage⁵⁴⁸.

2. A marriage which cannot be recognized by the civil law or celebrated in accordance with it. The canon was introduced explicitly to avoid the unnecessary conflict between the ecclesiastical law and civil legislation. Ordinarily, certain impediments in civil legislation, for example, residency requirements, civil law's recognition of alien status, the lack of minimum age by at least one of the parties, do not invalidate a marriage since civil law has no jurisdiction over canonical law and sacrament of marriage.

Canon 1083 §1, says a minor can marry validly. A male can validly marry at the age of sixteenth and female at the age of fourteen even though §2 of the canon 1083 insists that bishops' conferences have the power to establish an older age taking the civilly minor age to marry in to consideration (cf. cc.98 §2; 1072). However, it is internationally accepted in most countries that the minimum age regarding marriage for all persons is pegged at the age of 18. Although in some circumstances the local ordinary, with good judgment, can allow a marriage to be celebrated in contravention of civil law, yet to avoid legal complications, such civilly prohibited marriages should not be admitted by the Church until the impediment ceases or the marriage is allowed by court order⁵⁴⁹.

3. A marriage of a person for whom a previous union has created natural obligations towards a third party or towards children. The primary concern of the canon is based on the natural obligations towards ex-spouse and children. The person entering a new bond because of a previous marriage and who is officially dissolved or declared invalid due to certain invalidating factors must take the necessary steps to ensure that the proper provisions are

⁵⁴⁷ Doyle, Marriage, p. 753; Siegle, Marriage according to the new code, p.38; Gavin, Pastoral Care in Marriage, p.86.

⁵⁴⁸ Cf. Doyle, Marriage, p.753.

⁵⁴⁹ Cf. Doyle, Marriage, p.53f.; Lüdicke, Münsterische Kommentar, 1071/4.

made to support the ex-spouse and children from a previous relationship both financially and emotionally. These moral obligations to assist the former spouse may include responsibility for a serious illness or financial destitution, and the legal obligations such as the payment of alimony and child support (*Kindergeld*). This canon becomes necessary only if the party to the prior bond is still alive or the children are still dependent and the pre-marital investigation has revealed that the natural obligations had been neglected or would be seriously endangered by the new marriage⁵⁵⁰.

According to the marriage preparation protocol (*Ehevorbereitungprotokolls*) in Germany, natural obligations normally correspond to regulations in the decree of divorce and the subsequent civil decisions and agreements notwithstanding, should a pertinent occasion arise, the natural obligations must go beyond those civil laid down regulations. This obligation should also consider children born outside the marriage. The bishops insisted that if during the pre-marriage preparation nothing seemed to suggest that the intended marriage would seriously endanger the fulfilment of the legal or moral obligations to partner or children of a previous union, then the marriage permission stipulated in this canon is deemed to be granted, otherwise the matter should be submitted to the office of the Vicar General/Bishop's secretariat (see Anm. 12c)⁵⁵¹.

4. A marriage of a person who has notoriously rejected the Catholic faith. This norm is further highlighted in the paragraph §2 of canon 1071. The local Ordinary is not to give permission to assist at the marriage of a person who has notoriously rejected the Catholic faith unless, with the appropriate adjustments, the norms of Can. 1125 have been observed. The notorious rejection of the faith stipulated in §1 4^o and §2 pertains to a person who has formally joined another cult or religion or by an outright and public declaration that one is not Catholic and refuses to obey the Church and its laws. The presumption is that the person has rejected the faith and is hostile to it. The law presumes that such a person is no longer considered a member of the Catholic Church and marriage to a Catholic partner is considered a mixed marriage⁵⁵². The canon directs the local ordinary to handle the marriage as a mixed marriage: before permission is granted the priest must ensure that the statements and promises prescribed in canon 1125 must be made. The canon is not applicable when both parties have notoriously abandoned the Catholic faith. In that case the couple are not eligible to marry as Catholic⁵⁵³. However, we must be cautious in judging non-practicing Catholics and those who legally left the Church because of Church tax (*Kirchensteuer*) as being notoriously rejecting and hostile to the faith. In case of non-practicing Catholics who have not notoriously rejected

⁵⁵⁰ Cf. Huels, *The pastoral Companion*, p. 165; Doyle, *Marriage*, p.754; Siegle, *Marriage according to the new code*, p.38.

⁵⁵¹ Cf. *Ehevorbereitungsprotokoll*, Anm., no. 9.

⁵⁵² Huels, *The pastoral Companion*, p.165; Doyle, *Marriage*, pp.754-755

⁵⁵³ Ösry, *Marriage in Canon Law*, p.83

it, the local ordinary's permission is necessary; however, special pastoral attention such as marriage seminars and additional catechesis may be required for such couple⁵⁵⁴.

5. A marriage of a person who is under censure; the norm states that persons who are under a bond of Excommunication or interdict are prohibited from celebrating or receiving any of the sacraments (cf. can. 1331 §1, 2; 1332). These canons give us the indication that the solution to prohibition depends on the nature of the censure and the offence upon which it is based. In this case, if the censure is remitted prior to the marriage and the person reconciled with the Church, then the situation is rectified. However, if the rectification of the situation is impossible the local ordinary may only grant permission for the marriage in the most exceptional circumstances, taking into consideration not only the spiritual status of the censured party but also the danger to the faith of the innocent party⁵⁵⁵.

6. A marriage of a minor whose parents are either unaware of it or are reasonably opposed to it. This canon upholds the right of minors to marry but it emphasises their duty to parents and pastors. As already noted, canon 1083 §1 states a male can validly marry at the age of sixteenth and female at the age of fourteen. However, canon 97 §1 in the 1983 code says that a person who has completed his or her eighteenth year is an adult and below this age a person is a minor. Under normal circumstances a minor remains a subject to the authority of his parents or guardians in the exercise of his or her rights. This means that minors lack the basic capacity of rightful judgment associated with adulthood (cf. c.98 §2). In this case a minor cannot take decision relating to a serious issue, for example marriage without the concern of the parents. For that matter, pastors are morally obliged not to proceed with the marriage of a minor if the parents are not informed of the intended marriage. Parents are to be informed of the impending marriage and their advice taken into consideration. If the minor has a serious reason against the parental consultation, the pastor should weigh the matter carefully before deciding to proceed without the parents' knowledge. In case the pastor doubts the maturity of one or both parties, the prudent approach would be to submit the matter to the local ordinary⁵⁵⁶.

While the legislation seems to mitigate parental influence on children, nonetheless, the parents have reasonable cause to oppose the marriage, if in their good judgement the marriage cannot be worth it. It is also helpful that the bishop should use his good advice to give the matter close consideration, because even though minors have a right to marry, it is not always wise for them to use this right for economic, psychological and spiritual reasons⁵⁵⁷. The best answer to this situation is often deferment of the marriage to a later time.

⁵⁵⁴ Cf. Huels, *The pastoral Companion*, p.165

⁵⁵⁵ Cf. Gavin, *Pastoral Care in Marriage*, p.88.

⁵⁵⁶ Cf. Doyle, *Marriage*, p.754f.; Huels, *The pastoral Companion*, pp.166-167.

⁵⁵⁷ Cf. Siegle, *Marriage, According to the new code*, p.41.

7. A marriage to be entered by proxy, as mentioned in Can. 1105. A proxy marriage is one which takes place in the physical absence of one or both parties but duly represented by persons mandated to exchange consent on behalf of them according to the prescription of can 1105. Proxy marriages are rare, but situations do occur when the parties cannot be personally present at the wedding, for instance, in danger of death, in military service or when it might be necessary for immigrants to be present elsewhere in order to obtain a visa⁵⁵⁸. Since proxy marriage can pose pastoral difficulties, it is necessary that steps are taken to determine if the parties really know each other, eligibility for marriage, their freedom and genuineness of consent because permission for proxy marriage does not constitute an exemption from natural obligations mentioned in canon 1071 §1 3^o and any other requirements for a valid and licit marriage. In addition, the pastor must see to it that the parties are properly prepared before the celebration of the marriage⁵⁵⁹.

The final canon in this section on marriage preparation is 1072, which expresses a particular concern for the marriages of the young. We recognised that according to canons 1071 §1 6^o and 1083 § 1 minors can validly marry; however, canon 1072 warns pastors of souls to take care to prevent youth from celebrating marriage before the age at which marriage is usually contracted in accord with the accepted practice of the region⁵⁶⁰. Although teen marriages may be customary in some regions and acceptable in some lineages and families, this in itself does not justify such marriages⁵⁶¹. Although in our view this is not an absolute prohibition, but Siegle insists that since most teenage marriages do not succeed it is necessary to promulgate more stringent laws to deter minors from marrying before accepting the responsibilities and duties of married and family life⁵⁶². This conclusion does not mean that all young people lack the maturity for marriage; however, experience has shown that there are worrisome pastoral realities in which many young people are forced into marriage because of pre-marital pregnancy, rebellion against parents or authority in general, defective and false belief of marital happiness and success, reaction to an unhappy home life, peer pressure, poverty in the family, to acquire necessary documents for travel and as a means to prevent deportation⁵⁶³. In some circumstance young people, especially the females, enter marriage to acquire property. It is no secret nowadays that some people intentionally initiate divorce on the slightest

⁵⁵⁸ Doyle, Marriage, p.754.

⁵⁵⁹ Cf. Gavin, Pastoral Care in Marriage, p.89; D. Kelly, Commentary, p.588, Siegle, Marriage, According to the new code, p.40; Doyle, Marriage, p.754.

⁵⁶⁰The canon did not give us, which age group constitute youth but according to Doyle, 'marriage of the young' in the law would mean minors and marriages entered before the customary age of the region. He explains further that though in almost all part of the world the adulthood is reached at age of eighteen, local custom or opinion may hold that marriages of those who are a few years older than eighteen are still marriages of the young (Doyle, Marriage, p.756).

⁵⁶¹Doyle, Marriage, p.757.

⁵⁶² Siegle, Marriage according to the new code of canon law, p.41.

⁵⁶³ Cf. Doyle, Marriage, p.757.

misunderstanding so that they can get rich over night. In the light of this, Thurmaier refers to divorce especially in the industrialised world, in his doctoral thesis as “Milliarden-industrie” (multi-million industry)⁵⁶⁴.

Doyle also indicated that the reason for dissuading or delaying the marriage of young people arises from the isolation of the individual and a breakdown of the true sense of community intervention. “The resulting cult of individualism makes it all the more difficult for young persons to grasp the meaning of the unqualified gift of the self-needed that mandates marriage. Materialism and excessive economic demands have caused many to define themselves and their personal success in terms of possessions or economic power”⁵⁶⁵ rather than dialoguing with the essence of the human person. He also observes that coupled with the failure of many young couples is the societal mobility and occupational pressures promoting frequent moves that make it difficult for many of them to establish roots in a community. Consequently, they do not benefit from the support that can come from the family, elders and other close relationships since these young spouses must now meet a wider and more complex variety of emotional and psychological needs in each other. As a result, many marriages of the young often break down rapidly and end in divorce if they have not fully attained matrimonial maturity to grapple with the situation. In the good olden days these needs were provided to a certain degree by the extended family and the community⁵⁶⁶.

The above recommendation is needed because “marriage entails serious responsibilities - moral, spiritual, sexual, familial, financial and societal. It takes a certain minimal level of maturity to fulfil those responsibilities. One who gives positive indications of possessing this minimal maturity should not be excluded from marriage. Anyone who does not give positive indications of possessing such minimal maturity is precluded by the natural law from marrying, since no one has a right to enter a contract which he or she is incapable of fulfilling. The fact that the individual believes himself to be capable or insists that he is so does not relieve the Church of the obligation to make its own judgement in individual cases”⁵⁶⁷. Therefore those entrusted to give pastoral care to prospective couples are not merely to propose to minors of postponing the wedding but must urge that they do so. Even though the canon in the present does not absolutely forbid ‘marriage of the young’ there seems to be no doubt that the local ordinary can for a serious reason, temporarily forbid minors and young people to marry.

⁵⁶⁴ Franz Thurmaier, *Ehevorbereitung – ein Partnerschaftliches Lernprogramm (EPL): Methodik, Inhalte und Effektivität eines Präventiven Paarkommunikationstrainings*, Dissertation von naturwissenschaftlichen Fakultät der Technischen Universität Carolo-Wilhelmina, 1997, p.1.

⁵⁶⁵ Doyle, *Marriage*, p.756.

⁵⁶⁶ *Ibid.*

⁵⁶⁷ Siegle, *Marriage according to the new code of canon law*, p.43.

2.4.2 The nature of canon 1063 in 1983 code

The gloomy picture described in the GS 47 created the awareness that something more must be added to the juridical dimension in providing assistance to prepare prospective couples for Christian marriage. As has been mentioned already, *Gaudium et Spes* has greatly influenced the doctrinal notion of marriage in the 1983 code of canon law. Significantly, *Gaudium et spes* recovered a richer understanding of marriage as an interpersonal covenant; however, preparing prospective couples for marriage as such, was given little attention at the expense of stress on support which must be provided to married couples and family (GS 52). In spite of the above shortfall, it did encourage parents and guardians to instruct young people about the dignity, rights and responsibility and the expression of conjugal love (cf. GS 49). Likewise, the family itself is expected to carry the main responsibility for marriage preparation in its fullest sense (GS 52). Similarly, pastors have a subsidiary role to nurture the vocation of spouses and supporting family life (GS 52)⁵⁶⁸.

In effect, the possible way to realise this urgent need was to emphasise pastoral preparation for marriage. As a result, in the revision of the rite for the celebration of matrimony renewed emphasis was given to pastoral attention. It insists that priests must strengthen and nourish the faith of those about to be married, to discuss with the couple the fundamentals of Christian doctrine especially Catholic teachings about marriage and family culminating in a meaningful celebration of the wedding ceremony itself⁵⁶⁹. This recognition of supplementing the legal provisions with pastoral stimulation influenced canonists such as Peter Huizing and Wrenn, which was also evident tremendously in the 1981 Apostolic Exhortation issued after the 1980 Synod of Bishops on the Family. In the Exhortation, John Paul II stresses the need for marriage preparation drawn out in various stages (remote, proximate and immediate) and demands greater pastoral efforts from parish priests and those charged with pastoral care to organise these steps effectively⁵⁷⁰. No doubt, pastoral perspective, which is the ultimate objective of this study, finds expression within the revised norms on marriage preparation in the 1983 new code of canon law. However, the pastoral perspective on marriage preparation and even in the “presentation of marriage in a covenantal framework”⁵⁷¹ did not in the slightest manner envisage rethinking the legal propositions of marriage.

We have shown already, however, that the 1983 code of canon law lays substantially more emphasis, in terms of contents and in the legal provisions, on the pastoral care for marriage preparation than the 1917 code which was more concerned with the determination of freedom

⁵⁶⁸ Cf. Provost, *Marriage preparation*, p.176; Gavin, *Pastoral Care in Marriage Preparation*, p.46.

⁵⁶⁹ Cf. *Ordo celebrandi matrimonium*, *Typis Polyglottis Vaticanis*, Vatican City 1991, nn. 5-7; See also Provost, *Marriage preparation*, p.176.

⁵⁷⁰ Cf. Provost, *Marriage preparation*, p.179; FC nn. 65-69.

⁵⁷¹ Provost, *Marriage preparation*, p.178.

to marry and the things that had to be done before a marriage could validly be celebrated. The objective of broadening the emphasis in 1983 CIC with specific reference to pastoral care is to ascertain more strongly the proper pastoral care which must be given to prospective spouses preparing to marry. Thus, the realisation of this new horizon is enshrined in canon 1063. In other words, pastoral care for marriage preparation in the 1983 code of canon law draws heavily from canon 1063 in particular, to develop a positive awareness of the human person, the obligatory contribution of those who are entrusted with pastoral offices, especially the parish priest, to ensure that proper assistance in various forms are provided for young people, prospective couples and for those already married.

In this regard, canon 1063 perhaps intends to emphasise strongly the diligent attention which must also be paid to pre-matrimonial pastoral care because administrative or judicial preparation alone cannot bring the purpose of marriage to light and ensure the stability of marriage save by preventing the entering into unlawful or invalid marriages⁵⁷². From the criterion above, Pospishil declares that “the run on Church tribunals all over the world in our days by divorced Catholics in unheard of numbers, demanding and receiving annulments of their marriages, is proof that no bureaucratic measure can divert people from marrying foolishly, even if it were possible for a pastor to discover infallibly factors predicting failure and confront the parties with them”⁵⁷³. He did not seem to discourage the legal issues of celebration of marriage. Surely, celebration of marriage should be centred on freedom to marry in anticipation of rights and duties that are mutually given and accepted⁵⁷⁴; however the desire to ensure the freedom of couples about to marry through matrimonial investigation must be simultaneous with the need to instruct them in Christian doctrine and precepts. Having described briefly the purpose of pastoral care on marriage preparation in the 1983 code, it is now appropriate to exploit the significance of the canon (c.1063) itself.

Canon 1063 generally lists four important areas of the responsibilities for the pastors of souls⁵⁷⁵. It is the pastor’s principal function to foster an ecclesial life in the community, which

⁵⁷² Cf. Pospishil, *Eastern Catholic Marriage Law*, p.251.

⁵⁷³ Ibid.

⁵⁷⁴ Cf. Urrutia, *The internal Forum solution some comments* p.134

⁵⁷⁵ For various interpretations of the text of the canon, see Klaus Lüdicke, in *Münstericher Kommentar zum Codex Iuris Canonici*, ed. Klaus Lüdicke, Essen, Ludgerus Verlag, 1987; Hans Heimerl und Helmut Pree, *Kirchenrecht: Allgemeine Normen un Eherecht* Springer-Verlag, Wien New York, 189-190; Hart Zapp, *Kanoisches Eherecht*, 7., neubearbeitete Auflage, Verlag Rombach, Freiburg, 1988, 76-77; Ernst Pucher, *Ehevorbereitung und Kirchenrecht*, *Österreiches Archiv für Recht und Religion* 50 (2003), 367-372; Reinhold Sebott, *Das neue kirchliche Eherecht*, 2., neue bearbeitete Auflage, 1990, Verlag Josef Knecht, Frankfurt-am-Main, pp.51-52; Thomas Doyle, *Marriage*, in: *The Code of Canon law, A text and commentary*, 1985 pp. 746-749; James Provost, „*Marriage Peparation in the New Code: Canon 1063 and the novus Habitus Mentis*”, in: *Studies in Canon Law presented to P.J.M Huizing*, ed. J.H. Provost and K. Walf, Leuven University Press, 1991, 173-192; D. Skillin, *Marriage in the year 2000: Canonical-Pastoral Considerations*, in *CLSA Proceedings* 52 (1990); John Huels, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, The Franciscan Herald Press, Chicago 1986, p.161-162; Federico Aznar, in *Código de Derecho Canónico: Edición bilingüe commentada*, ed. Lamberto de Echeverría, Madrid: BAC, 5th ed. 1985, pp. 509-510; Reinhold Sebott and Corrado Marucci, *Il Nuovo Diritto Matrimoniale della Chiesa: Commento giuridico e teologico ai can. 1055-*

will support Christian marriage and allow it to grow and develop. He must accomplish this goal in four specific areas.

Canon 1063, 1^o prescribes that the pastor is obliged to educate the community through various forms corresponding to different stages of life. He must perform this obligation comprehensively through preaching and religious education adapted to children, young people and adults, and the full use of the media of social communication in order to explain the meaning of Christian marriage, and the responsibilities of couples and parenthood so that the matrimonial state is maintained and progresses in a Christian spirit.

The canon did not give any detailed instructions about the manner or how preaching could be used to prepare prospective couples for marriage, which goes to say that everything is left to the initiative and creativity of those entrusted with the pastoral activities of a given community⁵⁷⁶.

On the other hand, the canon seems to emphasise that the traditional ways of preaching, especially in the mass in the fast changing and secularised world will not be enough for a proper pre-marriage preparation even if the items of the preaching dwell on marriage and family life. More acceptable means and techniques must be applied to proclaim the word competently. In such a proclamation the primary focus should be on scriptural sources, sound theological reflections and the cultural values of marriage.

In addition, the relevant rules of morality are also to be explained⁵⁷⁷. Örsy thinks “such proclamation is all the more needed because the beauty and the richness of the scriptural doctrine has been obscured by the Augustinian tradition that has so closely identified ‘concupiscence’ with original sin and explained the normal sexual instinct as an expression of this concupiscence, and therefore tainted with sin and leading into sin. Logically, marriage had to become an ‘inferior’ state of life, the same marriage that Paul identified as the symbol of the love of Christ for his Church. He could not have bestowed a higher praise on it”⁵⁷⁸. Therefore, everything is to be done according to this canon such that the sanctity and dignity of Christian marriage be preached *opportune et importune* to make up for the loopholes created in the previous teachings on marriage⁵⁷⁹.

Experience shows that 8 to 15 minutes isolated sermons or the examination of couples in seating can no longer be sufficient to prepare couples for marriage⁵⁸⁰. The sermons are also

1165 del nuovo CIC, Naples, Edizioni Dehoniane, 1985, pp.63-65; Siegle, Marriage: According to the New Code of Canon Law, pp.28-32; Örsy, Marriage in Canon Law, pp.71-76.

⁵⁷⁶ Cf. Örsy, Marriage in Canon Law, p.76.

⁵⁷⁷ Cf. Örsy, Marriage in Canon Law, p.75.

⁵⁷⁸ Örsy, Marriage in Canon Law, pp.75-76.

⁵⁷⁹ Örsy, Marriage in Canon Law, p.76.

⁵⁸⁰ Cf. Rudolf Schunck, „Aufwertung der Ehevorbereitung“, *Ius Ecclesiae* V (1993), 729-730: “wenn man sich vor Augen führt, dass deutsche Automobilhersteller der gehobenen Marken ihren Käufern einen Monat vor

not an effective way to have a good dialogue about marriage. Moreover, the traditional method of the sermons cannot guarantee young persons to ask questions about pertinent issues on marriage. Hence, general preparation must not be limited to an isolated sermon at mass or liturgical celebrations but should be an integral part of catechetical, youth and adult educational programmes, Catholic school curricula, and other forms of parish and diocesan programmes⁵⁸¹. This obligation to provide for sound catechetical formation for adults, the young and children are clearly stated in cc. 773, 776, 777. The catechetical instructions are to deal with some fundamental issues that might lead couples to understand the expectations of one another; getting to know the other person on a much deeper level including strengths and weaknesses; accepting of faults and shortcomings and the ability to enunciate and evaluate the reasons for marriage⁵⁸². Catechesis should not be treated as a religion lesson in a school as the case used to be. Rather, the canon calls for catechesis to be adapted to the capability of the audience. Even if this canon does not mention marriage as a vocation, still the awareness is that Christian marriage is a sacrament and a vocation. Therefore marriage preparation would require that the couples be led to a deeper understanding and appreciation of their role in helping the Christian community to grow. This will include the procreation and education of children as well as service to the community especially with the example of a well-ordered Christian life⁵⁸³. The effectiveness of the catechetical instruction must be of most concern to all of us.

Canon 1063, 1^o has also called for the use the media of social communication (cf. cc. 747 §1; 761) in pastoral care for marriage preparation. The canon highlights that despite the challenges posed by the modern-day media pastors must utilise whatever means of communication is at the disposal of the Church to promote better understanding of Christian marriage, the responsibilities of Christian spouses and the values of parenthood. Paul VI insists that the church “would feel guilty before the Lord if she did not utilize these powerful means”⁵⁸⁴ to teach people the values of marriage and family life.

Erhalt des Neuwagens eine Videoaufnahme über die Handhabung des neues Gefährts liefern, dann erschient eine langfristige Vorbereitung auf das Institut Ehe viel notwendiger“.

⁵⁸¹ Cf. Doyle, Marriage, p.747.

⁵⁸² Cf. Doyle, Marriage, p.748.

⁵⁸³ Ibid.

⁵⁸⁴ Paul VI, Ap. Exh. *Evangelio Nuntiandi* (December 8th, 1975): AAS 68 (1976), 45. See also: Pastoral Instruction, “*Communio et Progressio*”, On the means of Social Communication.

http://www.vatican.va/roman_curia/pontifical_councils/pccs/documents/rc_pc_pccs_doc_23051971_communio_ge.html (Accessed: 23.06. 2007), no.48: “The means of social communication have an ever-growing role to play in the vast field of human education. In many places audiovisual aids, the new videocassettes and the regular use of radio and television have become accepted teaching instruments. They make the work of experts in different fields accessible to more and more people. Elsewhere the means of social communication are used to complement the established ways of teaching. As far as possible, this use of the media for education should have a creative quality and elicit an active response. In this way, the pupil is not only led to knowledge but learns to express himself by using the media”; John Paul II Apostolic Letter: *The Rapid Development to those responsible for Communication*, 25. January 2005, no.7.

http://www.vatican.va/holy_father/john_paul_ii/apost_letters/documents/hf_jp-ii_apl_20050124_il-rapido-sviluppo_en.html (Accessed: 23.06. 2007). See also Decree on Media of Social Communication: *Inter Mirifica*,

The canon did not mention the tools of the communication, but alongside the traditional ones, the internet, telephone, post, daily and weekly newspapers, publications of all types, and Catholic television and radios still remain highly useful means within the Church communication capacity. Nowadays, in advanced countries, hotline services and the Internet are used to help people. In a similar manner, these hotlines could be used to inform people and disseminate materials about the pre-marriage preparation. While the content being communicated must obviously be adapted to the needs of different Groups, the goal must always be to make people aware of the ethical and moral dimension of the information. In the countries where the above tools are lacking or still hold on to ancient national inheritance, the traditional folk arts and cultural potential of the media such as riddles, stories, plays, song and dance can be of service to the people. Pastors and the Christian communities are therefore obliged to actively and creatively use these instruments, in exploring the potential of the media to assist in the tasks of evangelisation and educating people on marriage⁵⁸⁵

Secondly, 1063, 2^o refers to marriage preparation at a more personal level. It is the duty of the pastor to prepare couples not merely in a theoretical way but in a pastoral manner, which helps to bring about an appreciation on their part of the holiness of the state of life they are choosing and of the responsibilities they must undertake. The ecclesial community must organise courses and seminars to give opportunities for adult Christians to delve more deeply into the vocation of Christian marriage.

Thirdly, canon 1063, 3^o states there must be effective liturgical celebration of the marriage ritual to bring out the true meaning of Christian marriage. The canon invites the pastor to use the wedding ceremony itself as an opportunity for teaching the couple and those present about the mystery of the unity and fruitful love of Christ for his Church, which the couple themselves signify and in which they share.

Fourthly, in 1063, 4^o the canon speaks of an ongoing support for the couples. The canon does not forget those who are already married, because they need to have continued pastoral care in order to sustain them in this vocation, to help them live it in an ever more fruitful manner. This is especially important during the first five years of married life as the couple are adjusting to their new responsibilities as married people and as potential parents⁵⁸⁶.

As a preface to the four points mentioned above the canon stresses the importance of marriage preparation and the obligation of the pastor of souls and the entire community to support prospective spouses in fostering happy marriages. This canon recalls the conciliar constitution

04. December, 1963. http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19631204_inter-mirifica_en.html. (Accessed: 23.06. 2007).

⁵⁸⁵ John Paul II, *The Rapid Development*, no.9.

⁵⁸⁶ Cf. Robitaille, "Commentary on canons 1063-1072, p.1264.

GS 66-67 and John Paul's Apostolic Exhortation FC 70. The preliminary note insists that pastors do not only have an obligation but a most "serious obligation" to insure that various forms of assistance are provided for prospective spouses and for those already married. According to Gavin, "by examining how this phrase *obligatione tenentur* is used elsewhere in the code it becomes clear that we are dealing with a most serious obligation, one which the Church expects to be observed"⁵⁸⁷. Provost, in a similar manner, says that "to say that 'pastors of souls are obliged to see to it ...' is saying something quite serious, essential to what is expected of parish priests (can 528 § 1), and therefore not something optional or secondary"⁵⁸⁸. The seriousness of the obligation will suggest that a pastor who has not faithfully discharged this obligation must be reprimanded because if the pastors of souls fail to effectively and seriously give instruction and inform a society on Christian marriage, then the resultant effect is that other vocations in the Church would suffer a decline in their spiritual vigour and, consequently, also in their numbers. In other words, the Church cannot exist without priests, without men and women who follow Christ in institutes of consecrated life, or without married persons⁵⁸⁹.

We insisted that the phrase *obligatione tenentur*⁵⁹⁰ used in the canon expresses the most serious obligation on pastoral agents; unfortunately this serious duty most often is ignored with indemnity. In fact in the Church "there is no way of ensuring that pastors of souls fulfil it"⁵⁹¹. Unlike the civil society, the bishop or the Church has no law enforcement agencies to enforce or monitor the pastors that the obligation is executed. This means that the Church cannot do much if it comes to probity and accountability of pastors. In fact, the Church cannot behave otherwise because it is not keen to penalise offenders; rather, the church counts on the "essential goodwill" of the pastors to perform their responsibilities. The point should be clear by now that the Church is not an organisation first and foremost to punish offenders⁵⁹². Although the Church cannot police the pastors on this serious responsibility, the seriousness of pre-marriage preparation stipulated in canon 1063, nevertheless, requires that an effective system of accountability be demanded⁵⁹³.

⁵⁸⁷ Gavin, Pastoral Care in Marriage, p.96.

⁵⁸⁸ Provost, Marriage Preparation in the New Code, p.184.

⁵⁸⁹ Cf. Law, Christian Marriage, loc. cit.

⁵⁹⁰ Cf. Canons 387, 396 §1, 400 §3, 402 §2, 429, 437 §1, 528 §1, 533 §1, 534 §1, 549, 550 §1, 983 §2, 988 §1, 989, 916.

⁵⁹¹ Gavin, Pastoral Care in Marriage, p.96.

⁵⁹² Cf. Winfried Aymans et al.,(Redaktionskomitee), *Codex des Kanonischen Rechtes, Lateinisch-deutsche Ausgabe*, 5. neu gestaltete und verbesserte Auflage, Verlag Butzon & Bercker, Kevelaer, 2001, Vorrede XXXV; The code of canon law, text and commentary, CLSA, General introduction, p.6: Hence it was not surprising that the bishops in October 1967 synod unanimously recommended that the revision of the code should try as much as possible to avoid severe and harsh laws rather the laws should favour admonitions, warnings and recommendations.

⁵⁹³ Cf. Gavin Pastoral Care in Marriage, p.97; H.D Skillin, "Marriage in the Year 2000: Canonical-Pastoral considerations", in CLSA Proceedings 52 (1990), p38; Provost, marriage preparation, 184; Provost insists: "Although theoretically the bishop's visitation should assure that the obligations in canon 1063 are being fulfilled, and his own periodic accountability to the Apostolic See should assure the same for the diocesan church, in practice there seems to be little attention paid in accountability structures to marriage preparation as a

As already stated, the obligation is not only limited to pastors. It also binds pastors to ensure that the Church community takes part in providing assistance to prospective spouses. The canon is therefore maintaining that although the ultimate accountability lies with the pastors, the community also has a responsibility to do whatever it takes to help and contribute to the success of the process. Therefore, it is a duty of the community including its various groups and societies, to assist in the process. It is not a secondary obligation on the community in that the pastor can only involve the community at his discretion. Contrarily, both pastors and the community must share this obligation jointly. It must be emphasised, however, that pastors have a special duty to show leadership role in carrying out this obligation⁵⁹⁴.

To support our position, the canon utilised the phrase “*propria ecclesiastica communitas*” as responsible for the organisation of the preparation. This phrase strengthens our argument that the community is not an intruder but part and parcel of the organisation. Therefore the pastors must draw on the resources of the entire Catholic community and civil society to furnish prospective couples with the right information to the values pertaining to marriage and family life. The involvement of the community is not borrowed because by the virtue of baptism ecclesial community has a fundamental call to exercise the mission which God has entrusted to the Church to fulfil in the world (c.204, §1), and which is further specified in terms of promoting the growth of the Church and its continual sanctification (c.210), working to spread the divine message of salvation (cc.211; 781); and to promote apostolic works even with their own particular initiatives (c.216) and to promote social justice (c. 223)⁵⁹⁵. Furthermore, the responsibility of the community is indispensable because “only through other members of the community is it made possible for the full import of the gospel to become evident. Practical experience has indicated the wisdom of involving a cross-section of the community in marriage preparation: old and young, married and single, clergy and laity, etc”⁵⁹⁶. This obligation cannot be enforced. However, unless the community recognises this moral obligation, its own future is at risk⁵⁹⁷.

priority for pastoral activity. It is true that many people are actively engaged in furnishing this assistance to the Christian faithful; but it is also true that many couples marry in the church today without having received this service, and it is not clear that much is being done to remedy that situation” p.191.

⁵⁹⁴ Cf. Gavin, *Pastoral Care in Marriage*, p. 95; Provost, *Marriage Preparation in the New Code*, p. 183ff.; V. Fagiolo, “La preparazione al matrimonio: normativa canonica per una pastorale matrimoniale comunitaria”, *MonEcc* 119 (1994) 10-11; V. Fagiolo, “Commentary on canons 1063-1072, De Cura Pastoralis et de iis quae matrimoni celebrationi praemitti debent”, in P.V. Pinto (ed.), *Commento al Codice di Diritto Canonico*, Libreria Editrice Vaticana, 2001, p. 631.

⁵⁹⁵ Cf. Provost, *Marriage Preparation in the New Code*, p. 185.

⁵⁹⁶ Provost, *Marriage Preparation in the New Code*, p.185. See also: Michel Legarin, “Attentes pastorales et canoniques des responsables de la préparation au mariage”, in: *Revue de Droit Canonique* 36 (1986) 92 ; David O’Rourke et al., *Preparing for marriage : A study of marriage Preparation in American Catholic Dioceses*, St. Meinrad, Abbey Press, IN, 1983, pp. 16-17.

⁵⁹⁷ Provost, *Marriage Preparation in the New Code*, pp.185-186.

In a nutshell, both the pastors and the community are obliged to put their efforts together to help prospective couples attain at least the fundamental values of marriage and the Catholic teachings on marriage⁵⁹⁸. This cooperation between the pastor and the community can only be fruitful if there is a reasonable amount of trust, openness, understanding and the ability to accept strengths and weaknesses irrespective of who has the authority. The *Apostolic Exhortation Familiaris Consortio* pointed out that: "...the changes that have taken place within almost all modern societies demand that not only the family but also society and the Church should be involved in the effort of properly preparing young people for their future responsibilities. (...) The Church must therefore promote better and more intensive programmes of marriage preparation in order to eliminate, as far as possible, the difficulties that many married couples find themselves in, and even more in order to favour positively the establishing and maturing of successful marriages"⁵⁹⁹ (FC 66). Moreover, FC made it clear that neither the pastor nor the community alone can accomplish and fulfil the pastoral care for pre-marriage preparation. Therefore, the pre-marriage preparation directives in the Church should oblige pastors to involve the Christian community and the civil community⁶⁰⁰.

2.4.3. Stages of marriage preparation

As already hinted, the norms so prescribed in canon 1063 are partly the embodiment of John Paul II's proposed plan of concrete measures to be taken in order to promote better, thorough, comprehensive and more intensive pastoral programmes for marriage preparation (cf. FC 66). Thus the Pope insists that marriage preparation should be seen and put into practice as a gradual and continuous process consisting of three main stages namely remote, proximate and immediate preparations. Remote preparation and proximate preparation match up with general education and catechesis of all the faith on marriage (c.1063, 1^o); immediate preparation corresponds to special preparation for individual spouses preparing to marry (c. 1063, 2^o).

Remote preparation commences in infancy in the family, focusing especially on a sound psychological environment and in a Christian indoctrination communicable through spiritual exercises and catechism. Proximate preparation which begins at a suitable age with adequate catechesis, as it were, in the catechumenal process, involves a more specific preparation for the sacraments, in which the sacrament of marriage will be assigned its proper place. Thirdly, immediate preparation of the prospective couples leading up to the celebration of the marriage should take place during the last months and weeks immediately preceding the wedding, so as to give a new meaning, content and form to the so-called pre-nuptial investigation required by canon 1067 (cf. FC 66).

⁵⁹⁸ Cf. Pucher, *Ehevorbereitung und Kirchenrecht*, p.368.

⁵⁹⁹ FC 66.

⁶⁰⁰ Cf. Doyle, *Marriage*, p.739.

The evolution of these stages of marriage preparation to meet the picture described in *Familiaris Consortio* was forcefully exploited and expanded by the Pontifical Council for the family (PCF) through the document: “Preparation for the Sacrament of marriage”. This document will remain a motivation factor in our quest to propose directives and programmes for pre-marriage preparation for the Ho diocese in the last chapter of this work. It is therefore perhaps worthwhile at this juncture to take a cursory look at the determinants of the structure of the stages, the provisions for liturgical celebration of the proposed marriage (c.1063, 3^o), and post-marriage assistance and support (c.1063, 4^o) discussed in the document.

a. Remote preparation (c.1063, §1)

This stage is not directly linked to pre-marriage preparation itself but as the period of personal formation that occurs in the earliest stages of life that contributes in major ways to a person’s readiness to marry later in life. However, canon 1063,1^o insisted that Homilies and catechetical instruction should be adapted to children and young people such that already at the tender age they might begin to acquire the Christian and moral values of marriage. In connection with this purpose, remote preparation for marriage is basically to admit that minors and young people are potential wives and husbands and therefore the gradual process of making available to them the understanding of Christian and traditional values of marriage and the duties and responsibilities of marriage life and parenthood are necessary. Thus, it is also a formation period in which respect for all authentic human values both in interpersonal and social relations is transmitted and instilled, with all that this implies for the formation of character, self-control and self-esteem, the proper use of one’s inclinations, and respect for persons of the other sex. Likewise, it is important especially for Christians, to acquire a solid spiritual and catechetical formation⁶⁰¹ as well as moral behaviours, that is, in consonance with faith, moral values and right judgement⁶⁰².

Remote preparation naturally takes place in the home in early childhood as the child from a very young age observes how his or her parents and immediate family members interact and like sponges, children soak up nearly everything around them⁶⁰³. In our culture the ultimate responsibility falls on parents, family and the clan to form children to become responsible husband and wife in the future. In this regard the council echoes the GS that “Parents are the first and most important educators of their own children, and they also possess a fundamental competence in this area: they are educators because they are parents” (GS 16). Although this responsibility cannot be left to this category of people, due to tremendous negative and absurd

⁶⁰¹ PCF, Preparation for the Sacrament of marriage, n.21.

⁶⁰² PCF, Preparation for the Sacrament of marriage, n.26.

⁶⁰³ Cf. Janet E. Smith, “The challenge of marriage preparation”,

http://www.ignatiusinsight.com/features2007/jsmith_marriageprep_oct07.asp (Accessed: 11.01.2009).

effects of human behaviour evidenced in our modern cultures, and vigorously propagated mostly through the communication media, proper education in “secular value systems on the formation of marital and family values”⁶⁰⁴ as well as Catholic morality are made a difficult challenge, but it stands to reason that since parents and family members are especially influential at this stage, it must necessarily fall to fathers, mothers and grandparents, uncles Aunties, etc. to take an active role in forming the moral conscience of their children. In addition to that, parents have no other choice than to learn how to prepare their children for marriage, and to help them think about marriage as a natural and divine venture to undertake. They must help children in the development of self-awareness and facilitate the skills necessary for future interpersonal and social relationships. Moreover, parents must take special interest in their children’s spiritual and Catechetical formation as it is the basis from which a child will choose a vocation in life. It is above all through the Catholic witness of their parents that children learn and experience the value of genuine marital love⁶⁰⁵.

These moral obligations become stronger if we think of the family, as it were, the “domestic church” and the first school for the child to learn values and Christian principles. According to Örsy, when a couple marries, a domestic Church comes into existence⁶⁰⁶. In other words parents are the first witnesses and educators of the children both in the growth of principles of the faith and marriage and in each child’s discovering his or her own vocation⁶⁰⁷. Canon 1136 considers this obligation very serious. This canon and other canons⁶⁰⁸ in the code emphasise the obligation of parents since marriage couples are obliged to assume the responsibility of properly raising any children born out of the marriage. As Doyle puts it “they cannot absolve themselves of this responsibility”⁶⁰⁹.

The conclusion to be derived from these tasks would suggest that, parents and the family system need suitable and adequate assistance⁶¹⁰. Parents and the family system can only implement this enormous task if they are well equipped. This support to parents must be the

⁶⁰⁴ Doyle, Marriage, p.747.

⁶⁰⁵ Cf. Bernard Law, Christian Marriage: a Covenant of love and life, A Pastoral Letter, Archdiocese of Boston, March 25, 1998:
<http://www.catholicculture.org/culture/library/view.cfm?id=458&CFID=21161011&CFTOKEN=26016221>.(Accessed:12.7.2009)

⁶⁰⁶ Örsy, Marriage in Canon Law, p.73. He explains further that the issue of marriage, whether in canon law or theology, should be seen always within the broader issue of the Christian family. To let both doctrine and practice develop, the insight that the family is the smallest of Christian churches, a domestic church, can be helpful. He insists that such churches need also express themselves in home liturgies.

⁶⁰⁷ PCF, Preparation for the Sacrament of marriage, n.28.

⁶⁰⁸ C. 793: obligation to form children in the faith and in the practice of the Christian life; c. 797: right and obligation to educate children and to choose appropriate means for Catholic education; c. 798: parents should choose Catholic schools or if possible they are bound to provide Catholic education; c. 867: parents’ obligation to provide for baptism for children; c. 890: obligation to provide preparation for confirmation; c. 914: obligation to provide preparation for first communion.

⁶⁰⁹ Doyle, Marriage, p. 809.

⁶¹⁰ PCF, Preparation for the Sacrament of marriage, n.28.

responsibility of the parish, deanery or diocese organising meetings, information conferences or support groups for parents to enable them to be apt to the task⁶¹¹.

Besides the family, the parish carries a great responsibility because it is the first place of Christian ecclesial formation and therefore has a fundamental role in the remote preparation of young people for marriage⁶¹². In the parish then, the “educational process must also be taken to heart by catechists, animators of the pastoral care of youth and vocations and, above all, pastors who will take advantage of homilies during liturgical celebrations and other forms of evangelization, personal meetings, and ways of Christian commitment, in order to stress and highlight the points that contribute to a preparation directed toward possible marriage”⁶¹³. In our modern culture, this home (remote) preparation is often counterproductive because children spend their earlier years with squabbling parents and their teen years shuttling between parents who are trying to get their lives together⁶¹⁴. In this regard the council insists that the school, other educational institutions, movements, groups and Catholic associations and, of course, associations of Christian families have roles to play in educating young people towards marriage⁶¹⁵.

PCF believes that if remote preparation is carried on successfully, a Catholic approaching the celebration of marriage will seek more than the technical information “to get married”. However, the remote preparation can only be successful if parents and the family are ready to share their faith with the children by word of example.

b. Proximate preparation (c.1063, §1)

Proximate preparation compliments the remote preparation and intertwines with the provisions of canon 1063 2^o which takes place as one moves into adulthood and begins to think seriously about choosing a life partner⁶¹⁶. This might include the period of engagement⁶¹⁷ but it generally coincides with the period of youth. It is a period that habits are acquired. The manners in which the habits are acquired affect the totality of the personhood, his reasoning, and the way of acting and accepting facts. Marriage preparation cannot overlook this crucial stage. It is very important because it is the time in which the youth are able to

⁶¹¹ Cf. Gavin, Pastoral Care in Marriage, p.105.

⁶¹² PCF, Preparation for the Sacrament of marriage, n.28.

⁶¹³ PCF, Preparation for the Sacrament of marriage, n.30.

⁶¹⁴ Cf. Smith, The challenge of marriage preparation, loc. cit.

⁶¹⁵ Cf. PCF, Preparation for the Sacrament of marriage, n.29.

⁶¹⁶ Cf. Smith, The challenge of marriage preparation, loc. cit.

⁶¹⁷ Cf. PCF, Preparation for the Sacrament of marriage, n.32.

see the reality of life. This is the time catechism about marriage is to be intensified in preparation towards the marriage life.

The council makes it clear that “the pastoral care of youth cannot be separated from the framework of the family as if young people make up a kind of separate and independent ‘social class. It should reinforce the young people’s social sense, first with regard to the members of their own family, and orient their values toward the future family they will have. The young people should have already been helped to discern their vocation through their own personal efforts and with the aid of the community, and above all the pastors. This discernment must take place before any commitment is made to get engaged. When the vocation to marriage is clear, it will be sustained first by grace and then by adequate preparation. The pastoral care of youth should also keep in mind that, because of various kinds of difficulties — such as a ‘prolonged adolescence’ and remaining longer in one’s family (a relatively new and troubling phenomenon), young people today tend to put off the commitment to get married for too long”⁶¹⁸. The preparation at this stage should not be limited only to the biblical understanding of marriage but the sociological, biological, psychological, economical exigencies, conjugal sexuality and responsible parent-hood. Preparation of this sort should introduce individuals to the basic requisites for a well-ordered family life, especially, stable work, sufficient financial resources, sensible administration, and notions of housekeeping⁶¹⁹.

As we have said, young people in particular, according to the council should also be helped to become aware of any psychological and /or emotional shortcomings they may have, especially the inability to open up to others, and any forms of selfishness that can take away from the total commitment of their self-giving. This help will also aid in discovering the potential and the need for human and Christian growth in their life. For this purpose, the persons in charge of marriage preparation should also be concerned with giving solid formation to the moral conscience of the youth so that they will be prepared for the free and definitive choice of marriage which is expressed in the mutually exchanged consent before the Church in the marriage covenant⁶²⁰.

c. Immediate preparation (c.1063 2^o)

Following the conditions of the evidence produced in the previous two stages, it is certain that immediate preparation depended largely on them. However, in practical and concrete terms canon 1063, 2 corresponds to immediate preparation in which prospective couples through marriage seminars (*Brautleutekurs*) and other diocesan specific programmes and courses are encouraged with resources to understand the commitments and implications of marriage. We

⁶¹⁸ PCF, Preparation for the Sacrament of marriage, n.33.

⁶¹⁹ Cf. Law, Christian Marriage, loc. cit.

⁶²⁰ Cf. PCF, Preparation for the Sacrament of marriage, n.36.

have noted in our introduction that the ‘greatest tragedy for the modern humankind’ could be traced in the institution on marriage which requires that preparation of individual couples planning to marry must be given a paramount consideration. In that determination canon 1063, 2 insists that pastors of souls are obliged to offer assistance in personal preparation for entering marriage by which the couple is disposed for the holiness and duties of their new state.

On account of this the council insists that prospective couples should receive instruction regarding the natural requirements of the interpersonal relationship between a man and a woman in God’s plan for marriage and the family. This must essentially include awareness regarding freedom of consent as the foundation of their union, the unity and indissolubility of marriage, the correct concept of responsible parenthood, the human aspects of conjugal sexuality, the conjugal act with its requirements and ends, and the proper education of children. All of this is aimed at knowing the moral truth and forming the personal conscience⁶²¹. It should also ensure that Christian engaged persons have correct ideas and a sincere ‘*sentire cum ecclesia*’ regarding marriage itself, the mutual roles of a woman and a man in a couple, the family and society, total self-giving and responsible procreation, sexuality and openness towards others⁶²². All this includes certain fundamental questions about the interpersonal dimension for marriage such as personal goals in marriage, expectations of one another, real awareness of the other party including strengths and weaknesses, acceptance of faults and foibles, and the ability to enunciate and evaluate reasons for marriage⁶²³. The final result of the preparation according to the council, should be a clear awareness of the essential characteristics of Christian marriage: unity, fidelity, indissolubility, and fruitfulness And other essential characteristics such as the conscience of faith regarding the priority of the sacramental Grace which associates the spouses as subjects and ministers of the sacrament to the love of Christ, the Bridegroom of the Church and the willingness to carry out the mission proper to families in the educational, social and ecclesial areas should emerge as a final result of these preparations⁶²⁴.

Having explained some of the tenets of the contents of the stage, the council turns attention to the means by which those recommendations and teachings could be carried out. First, it proposes diocesan and parish programmes as well as the formation of pastoral teams on different levels; (diocesan, and deanery, parish and outstation levels) composed of Christian married couples in particular, and includes experts possibly in medicine, law, and psychology, with a priest who will prepare them for the roles they will play. It insisted that before a multifaceted and harmonious preparation can carry in a diocese or a parish, those persons who

⁶²¹ PCF, Preparation for the Sacrament of marriage, n.35.

⁶²² *ibid.*

⁶²³ Doyle, Marriage, p.748

⁶²⁴ PCF, Preparation for the Sacrament of marriage, n.45.

will be in charge would have to be given thorough and adequate formation⁶²⁵. The stage also involves a wide range of diocesan and parish programmes exploiting the talents of the clergy, religious, lay married couples, marriage team and professionally trained councillors⁶²⁶.

These courses may vary according to regional needs. Moreover, the terms of duration of the courses, and its animators may vary from place to place depending on the culture and place. The council however warns that the courses to be offered during this stage should not be so brief as to reduce them to a mere formality of giving information to couples what they must do in order to get married. However, the courses must go beyond that to enable them to discover the depth and richness of the vocation to marriage⁶²⁷. The courses must be simple and flexible taking into account each individual capacity. Because the more tailor-made the courses are to the needs of the individual couples and their past experiences, the more effective they are likely to be⁶²⁸.

Therefore, it insists that those pastoral workers and persons in charge chosen must have a solid doctrinal preparation and unquestionable fidelity to the Magisterium of the Church so that they will be able to transmit the truths of the faith and the responsibilities connected with marriage with sufficient in-depth knowledge and life witness. Subsequently, these pastoral workers, as educators, should also be capable of welcoming the prospective couples, whatever their social and culture extraction, intellectual formation and concrete capacities may be⁶²⁹.

The seriousness of the situation implies that the pastoral workers ought to receive their formation in special Pastoral Institutes and be carefully chosen by the local ordinary⁶³⁰. PCF also suggested that the course on marriage preparation can be carried out in the individual parishes, if there are enough prospective persons and well-prepared collaborators, in the Episcopal or forane Vicariats, or in parish coordinating structures. Or they sometimes can be given by persons in charge of family movements, associations or apostolic groups guided by a competent priest. This is an area which should be coordinated by a diocesan organism that works on behalf of the Bishop. Without neglecting the various aspects of psychology, medicine and other human sciences, the content should be centred on the natural and Christian doctrine of marriage⁶³¹. Finally, we should add that immediate preparation is not only limited to producing the mandated documents and the completion of pre-nuptial investigation forms, but to recognise that the engagement period is not simply for wedding but a true moment of

⁶²⁵ PCF, Preparation for the Sacrament of marriage, n.42.

⁶²⁶ Cf. Doyle, Marriage, p.748.

⁶²⁷ Cf. Gavin, Pastoral Care in Marriage, p.109.

⁶²⁸ Ibid.

⁶²⁹ PCF, Preparation for the Sacrament of marriage, n.43.

⁶³⁰ PCF, Preparation for the Sacrament of marriage, n.44.

⁶³¹ PCF, Preparation for the Sacrament of marriage, n.48.

preparation for marriage. In that sense, it must take few weeks or months before the actual date of the wedding⁶³².

d. Liturgical celebration (c.1063, 3^o)

Viewed from the pedagogical perspective, with regards to the sacrament we can say that a fruitful liturgical celebration of marriage referred to in canon 1063 3^o is a means of sanctification and consent of the prospective couple. However, for the simple reason that canon 1063 mentioned it, highlights that it is also to be a source of instruction and catechism-stipulated in canon 1063, 1^o - for the couple and those present in the theological significance of the marriage covenant⁶³³. Similarly, the entire liturgy must be an occasion of “deepening the Christian doctrine on marriage and the family with particular attention to moral duties”⁶³⁴. On account of this, the council asserts that the preparation for marriage leads to married life through the celebration of the sacrament which is the culmination of the journey of preparation which the spouses have made, and the source and origin of their married life. Therefore, the celebration cannot be reduced only to a ceremony, the product of culture and sociological conditioning. Nevertheless, praiseworthy traditional customs and values of various peoples or ethnic groups can be brought into the celebration provided that they express above all the coming together of the ecclesial assembly as a sign of the faith of the Church, which recognizes in the sacrament the presence of the Risen Lord uniting the spouses to the Love of the Trinity⁶³⁵.

It must be emphasised that though the celebration should strongly manifest the link between the marriage and the paschal mystery, this must not erode the important elements of the composition of the marriage rite. For this reason different elements of the marriage rite must be utilised to teach those preparing for marriage. This must be done by explaining different parts of the marriage liturgy, such as welcoming and greeting ceremony, the liturgy of the word with obligatory homily, the reception of consent, the exchange of rings, prayer of the faithful and so forth⁶³⁶.

In order to have a suitable, worthy and fruitful liturgical celebration the council encouraged prospective couples and those who will take an active part in the liturgy, especially witnesses,

⁶³² Doyle, Marriage, p.748.

⁶³³ Cf. Ibid.

⁶³⁴ PCF, Preparation for the Sacrament of marriage, n.52.

⁶³⁵ Cf. PCF, Preparation for the Sacrament of marriage, n.60; Constitution on Sacred Liturgy, Sacrosanctum Concilium, 4. December 1963, no.77:

[http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19631204_sacrosanctum-concilium_en.html)

[ii_const_19631204_sacrosanctum-concilium_en.html](http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19631204_sacrosanctum-concilium_en.html) (Accessed: 12.06. 2007); Familiaris Consortio, 67.

⁶³⁶ Cf. PCF Preparation for the Sacrament of marriage, n.66.

to prepare themselves properly for the sacrament of Reconciliation and the Eucharist. It should be explained to the witnesses that they are not only the guarantors of a juridical act, but also representatives of the Christian community which, through them, participates in a sacramental act relevant to it, because a new family is a cell of the Church⁶³⁷.

Similarly, the celebrant of the liturgical celebration of the marriage has to motivate the couple together with their relatives, the witnesses and all those present to comprehend the structure of the rite and actively participate in it⁶³⁸.

The council also wishes that the whole parish or the local community takes active part in the liturgical celebration such that it is not seen as a celebration centred on the families and friends of the couple⁶³⁹. We have to reiterate that it is important that the organisation of the liturgical celebration of marriage itself would not lose sight of the community involvement. Celebration of marriage by definition is a community event in which the whole body of the Church, makes it, and affects it (c.837, §1). It is not a private action. For that matter without any grave reason it should be celebrated with the presence and active participation of the Christian faithful (c.837 §2)⁶⁴⁰. Provost goes to explain that the celebration of marriage as a liturgical action in which there is total participation of the community helps to build up the matrimonial state in a Christian spirit, rekindling an awareness of their own commitment and helping those yet to marry come to understand more richly the mystery of God's love present and active in this sacramental event⁶⁴¹.

The council also refers to the importance of the solemn blessing of the spouses in the celebration. The solemn blessing recalls that the gift of the Holy Spirit is invoked in the sacrament of Marriage. Through this gift, the married couple are made more constant in their mutual concord and spiritually sustained in carrying out their vocation as married couple as well as to sail through the difficulties of marital commitment in the future life⁶⁴².

e. Post marriage preparation (c.1063 4^o)

First of all, as was observed above, pastoral care for marriage preparation is drawn on three stages: remote, proximate and immediate preparations. However, canon 1063 4^o included an element considered to be the fourth stage of marriage preparation. This is known as continued pastoral care after the celebration of marriage. Strictly speaking, this paragraph 4 of the canon 1063 is actually outside what must precede the celebration of marriage. As a result of

⁶³⁷ Cf. PCF, Preparation for the Sacrament of marriage, n.55.

⁶³⁸ Cf. PCF, Preparation for the Sacrament of marriage, n.66.

⁶³⁹ Cf. PCF, Preparation for the Sacrament of marriage, n.54.

⁶⁴⁰ Cf. Provost, Marriage Preparation in the New Code, p.189.

⁶⁴¹ Ibid.

⁶⁴² Cf. PCF, Preparation for the Sacrament of marriage, n.72.

this PCF did not say much about it. Rather, it links post marriage with immediate Preparation: Immediate preparation is a favourable occasion to begin the on-going pastoral care of marriage and the family. From this point of view, the preparation needs to be carried out so that spouses know their mission in the Church. Here they can be helped by the richness offered by specific family movements, so as to cultivate a spirituality of marriage and the family and the way they fulfil their tasks within the family, the Church and society⁶⁴³.

However, in the Conclusions of the 15th Plenary Assembly in October 2002 the PCF insists vigorously on an ongoing support of newly-weds. It is desirable that the married couples who accompany the engaged couples in their immediate preparation for marriage, will continue to follow them in the first years of their union to help them face tensions and misunderstandings before they degenerate into a crisis. Couples who have benefited from this kind of support will in turn be able to offer it to others. Preventive pastoral care demands that throughout their married life, couples be offered possibilities and opportunities to go back in spirit to the beginning for their reflection and inspiration. This guidance should take such forms as encounters with other families, recollection, retreats or other meetings. Parishes and apostolic movements must be able to ensure they take place. In this preventive pastoral approach, one must foster all that can reinforce cohesion and communication in the family⁶⁴⁴.

Thus, in view of the preventive pastoral approach canon 1063, 4 insists that the continuation of support to be given to newly married spouses may help them day by day to achieve a holier and fuller family life. It is no gainsaying that “those therefore obliged to provide pre-marriage preparation are also obliged to provide this post-marriage pastoral care”⁶⁴⁵. In connection with this the pastor is also responsible for developing in the community means of encouraging, supporting and helping married couples to grow in their special vocation. That is, after the wedding ceremony itself the pastors of souls must maintain contact with the couples in order to help them to grow in their covenant of love and lead them to grow in their vocation of sanctification as a married couple⁶⁴⁶.

Nonetheless, this paragraph of the canon 1063 on the pastoral care for marriage preparation is most difficult to implement: An initial difficulty arises in attempting to reach newly married couples⁶⁴⁷. Often they move to a different parish or location from the original place of the marriage. A further problem, which may hinder post marriage support, is the fact that some couple isolate themselves from active participation in the parish life. However this is the most

⁶⁴³ Cf. PCF, Preparation for the Sacrament of marriage, n.57.

⁶⁴⁴ Cf. Pontifical council for the family Conclusions of the 15th plenary Assembly, Rome, 17-19 October, 2002. http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20021019_xv-plenary-conclusions_en.html. (Accessed: 26. November 2008).

⁶⁴⁵ Gavin, Pastoral Care in Marriage, p.115.

⁶⁴⁶ Cf. John Alesandro, “Preparation for marriage”, CLSAP 42 (1980), p.84.

⁶⁴⁷ Cf. Provost, Marriage Preparation in the New Code, p.190.

crucial time for assisting the newly married couple in negotiating the early difficulties on which many marriages are wrecked today.

What kind of help can be given to the newly married couple? The first consideration is linked to immediate preparation. To forestall early difficulties in marriage, those responsible for preparing prospective couples must work assiduously in the programmes for pre-marriage preparation such that couples could have a firm ground to stand on during those critical earlier years of marriage, especially the first five after the marriage. In addition to this the parish must have institutions that can give support to the newly married. We must again stress that it is the Church community, and not just its pastors, which has an obligation to fulfil the post marriage support. The support can be done to the new couples through organised lay groups such as the Christian Family Movements, Catholic women, Kolping Family or marriage encounter⁶⁴⁸. Provost believes that lay involvement in the post marital support could be useful because “at other times the sensitive caring of individual Christian couples for other couples is an effective means”⁶⁴⁹ to safeguard the possibility of early troubles in familial relationship.

According to Gavin, an effort to find various means of supporting this newly married couples encouraged Andrea Fontana to suggest marriage preparation programmes referred to as ‘matrimonial catechesis’ that bridge the period before and after the marriage ceremony. The programme suggests a catechumenate-style preparation, which presents this moment of marriage life as a time to discover or deepen the couple’s faith in Christ⁶⁵⁰.

According to the programme, the preparation begins around a year before the marriage. The programme discriminates between those who are and have been actively involved in their parish community and those who have very little or no contact at all with the parish. This discrimination is necessary to allow those entrusted with the pastoral care to design a programme according to the needs of individual couples. These same groups continue to meet together after their marriages as a group of recently married spouses. They live together as a group verifying their faith in the lived experience of each day, by sharing their experience and their difficulties as new Christian couples, confronting the same or similar situations, and supporting one another. The programme insists that this journey from an individual who marries in Church to a group of young married Christian who in turn become a Christian community and live their vocation in the community, is not easy, but that it is possible with the right couples, who have been trained, animating the groups. The programme also suggests

⁶⁴⁸ Ibid. See also FC 69.

⁶⁴⁹ Ibid.

⁶⁵⁰ Cf. Gavin, *Pastoral Care in Marriage*, p.117. See also A. Fontana, “Per iniziare un cammino di fede con i fidanzati. Evangelizzare i fidanzati a partire dalla loro esperienza di coppia”, *Catechesi* 62/7 (1993) 32-40.

that after three or four years this group should be helped to disband and the individual couples find ways of entering into and participate in their own local parish communities⁶⁵¹.

The difficulty about the proposed “matrimonial catechesis” programme to be implemented is the unpredictable number of couples at a given time. In our opinion, the programme can prove to be untenable if there are not enough prospective couples and newly married couples to form the groups. It can only be practical, for instance, with mass weddings as being done sometimes in the Ho diocese. Since in mass weddings the couples were prepared together before the marriage, there is the possibility to maintain the group after the celebration of the marriage.

One other way of maintaining contact and support for the newly married couples would be to involve them in parish activities and also encourage them to join various groups already existing in the Church because through these groups and societies they can find support and nourishment to sustain the marriage and family life.

Apart from such organised groups, we may also suggest that each parish or deanery organises post-marriage courses and set counselling centres to help these new couples to continually discover values and meaning in their lives. It is an obligation for a parish to provide for its members resources in times of trouble for all types of counselling (family, financial, etc., as well as spiritual), and support them in times of grief and tragedy⁶⁵². We know of on-going formation for the clergy, likewise this must be seen as very important for the laity as well.

A final point that must be made about providing support to married couples is more practical. In this category, liturgical celebration of significant anniversaries in the parish such as Holy Family, Valentine day, Mothers’ day, fathers’ day and so forth must be celebrated in such a way to bring out the true meaning of marriage and family life, which may give a sense of renewing vows to couples. Another significant way to organise support and sustainability to both old and newly married couples is inviting them to the celebration of wedding anniversaries. This should not only be limited to Silver or Golden marriage jubilees. A good example of celebrating marriage anniversaries as motivation and support can be found in some parishes in Germany (for example, Saint Leonhard Parish, Viehhausen). In these parishes a particular Sunday in each year is set aside for the celebration of marriage anniversaries. Those married for 5, 10, 15, 20, 25 etc are invited to take part in the celebration. After the homily the couples are invited to come forward, and the priest lays hands on them and blesses them. We may also suggest since the first five years of marriage is

⁶⁵¹ Cf. Gavin, *Pastoral Care in Marriage*, pp. 117-118; PCF, *Preparation for the Sacrament of marriage*, n. 73; FC 66.

⁶⁵² Cf. Provost, *Marriage Preparation in the New Code*, p.190.

critical those married between a year and four should also be included in this annual celebration.

3. Assessment of Discrepancies in the pastoral oriented canons (cc.1063-1065)

In evaluating the chapter on ‘pastoral care and what must precede celebration of marriage’ which canons 1063-1072 amalgamated, we noticed certain discrepancies in the legislative material. Although we have given a great amount of credibility to the new formulation of the title and the chapter as a whole, a critical investigation of the wording of the above ten canons reveals that the chapter is blended with proper pastoral care to prospective spouses with the administrative requirements for the celebration of a lawful and valid marriage. It combines two things, which are both necessary for the laws on marriage preparation; however the canons could be put under separate categories. These canons should have been given two divisions: canons of pastoral nature (cann.1063-1065) and the norms of a juridical nature (1066-1072)⁶⁵³.

Of course, it is not a question that the pastoral and the juridical natures of marriage preparation are two separate unrelated processes but two parts of that same pastoral process⁶⁵⁴, which might guarantee stability of marriage and family life. Yet, the spirit of Vatican II and the subsequent Apostolic Exhortation FC implies that quality care for marital issues in our changing world properly requires that the pastoral nature of pre-marriage preparation be given its rightful place in the requirements for the valid celebration of marriage. Meanwhile, Cardinal Staffa, a former Prefect of the *Signatura Apostolica*, was quoted as remarking on the culture of divorce in our modern world in a letter to the Bishops that “in its anxiety to defend the sacred bond and safeguard the administration of justice, the *Signatura Apostolica* wonders whether preventive measures of a pastoral nature might not be adopted with advantage during the period of marriage preparation, so that the incapacity of such persons could, in many cases, be detected before marriage is attempted”⁶⁵⁵. For these

⁶⁵³ Cf. Gavin, *Pastoral Care in Marriage Preparation*, p.80; Harmut zapp, *Kanonisches Eherecht*, 76ff; Reinhold Sebott *Das neue kirchliche Eherecht*, 3. völlig neu bearbeitete Auflage, Verlag Josef Knecht, Frankfurt am Main, 2005, p45: Sebott is slightly different from the above given division. He transferred canon 1072 from canons of juridical nature to the norms of pastoral nature. His transfer is also reasonable because the can.1072 looks more of pastoral than juridical.

⁶⁵⁴ A couple of writers believe that such a division of the canons could give rise to misunderstanding of considering them to be independent of each other. See the comments from the followings: Gavin, *Pastoral Care in Marriage Preparation*, p.80; F.R Aznar Gil, *Derecho matrimonial canónico. Vol. I: cánones 1055-1094*, Salamanca 2001, 221-222; Aznar Gil, F.R. – Olmos Ortega, M.E, *La preparación, celebración e inscripción del matrimonio en España*, Salamanca 1996, p.130; García, L.M. *La función del párroco en la preparación del matrimonio*, *IusCan* 58 (1989), 529.

⁶⁵⁵ Thomas Milton, *Preparation for Marriage, An Analysis and Critique of Marriage Preparation Programs*, in : *Marriage Studies, Reflections in Canon law and theology*, vol. I, Thomas Doyle (ed.), CLSA, 1980, p.3

reasons the effort of the Church should concentrate more on the help and care to spouses whereas the legal requirements remain above all the axis of celebration of marriage⁶⁵⁶. Hence the primary obligation of priests and pastoral agents should be to promote and concentrate on pastoral oriented education on Christian and cultural values of marriage. Doyle also maintains, “The historical evolution of Christian marriage clearly shows that education and catechesis is more effective in bringing about the acceptance of Christian value systems than legislation. Given the seriousness of the current crisis in marriage and family life, one must conclude that the force of the obligation to offer general instruction on marriage is stronger than ever before”⁶⁵⁷. From the above it can be argued that to empower prospective couples through effective education and catechesis to understand the traditional values and dignity of marriage can in some way maintain tranquillity in the relationship instead of giving too much energy to the determination of invalidating factors in marriage.

Even though the legal framework for celebrating a valid marriage cannot be divorced from pastoral preparation, yet we suggest that in order to realise the seriousness of pastoral oriented preparations, the canons of juridical nature (1066-1072) and pastoral contents (cc.1063-1065) which are contained in chapter I (in the book IV, part I, title VII) of 1983 code of canon law should be separated from each other; i.e. the contents of each part should be placed in a chapter of its own, e.g. chapter I could be under the title “Pre-marriage pastoral care” providing developed and completely devoted for pastoral orientated canons. Chapter II could be under the title “Requirements for celebration of marriage” providing for canons of juridical nature. Other available canons on marriage through corresponding numbering move backwards in that order.

In addition to separating the title from each other there are certain canons which need to be placed in their proper context. Canon 1063 is the first on the list. Canon 1063 hammers on the nature in which the clauses are combined. In our opinion clauses 1 and 2 should be separated from clauses 3 and 4. This division in our opinion is reasonable because clauses 1 and 2 actually deal with pre-marriage preparation while clauses 3 and 4 are “post-preparation”⁶⁵⁸. The clause 3 of canon 1063 insisted on the liturgical celebration of marriage. As we have

⁶⁵⁶ CF. Huizing, Alternativentwurf, p.86-87. He explains: „Die kirchliche Bemühung um die Ehe soll sich vor allem auf diese Hilfe und Sorge konzentrieren, viel mehr als auf die kirchliche Rechtsprechung bezüglich der Ehen, die übrigens auch selbst einen viel stärkeren pastoralen Charakter annehmen sollte. Die kanonische Eheordnung wird sich bewusst werden müssen, dass sie in erster Linie ein Dienst an der realen christlichen Verwirklichung der Ehe der Kirchenmitglieder ist und nicht ein – übrigens in der Praxis in verschiedenen Kirchengebieten der Welt äußerst mangelhaftes und oft sogar bedenklich funktionierendes - System von Urteilen über Ungültigkeit und Auflösbarkeit von Ehen. Die Sorge der Kirchengemeinschaft für die grundsätzliche Unauflöslichkeit der Ehe –jeder Ehe! – wird sich viel deutlicher und aufrichtiger in dem wirksamen, sachkundigen pastoralen Dienst an der in Wirklichkeit erfahrenen Unauflöslichkeit manifestieren als in mangelhaften, oft sogar zwar nicht subjektiv, aber doch objektiv unaufrichtigen oder unwahrhaftigen juristischen Urteilen über Ungültigkeit oder Auflösbarkeit“.

⁶⁵⁷ Doyle, canonical foundation, p.71.

⁶⁵⁸ Milton, Preparation for Marriage, p.15.

seen, the liturgical celebration of marriage must also be an occasion for pastoral ministers and co-workers to deepen the knowledge of the couple in the Christian doctrine on marriage and the family; but we think it is only the end result of marriage preparation. The major focus should be directed to instructions and teachings which will enable prospective couples to understand the salient points of marriage and be able to have the ability to adjust themselves to the “shocks” of future marriage and family life. So our main concern under this title is about educating the prospective spouses to have successful marriage thereafter.

A clause 4 of canon 1063 has similar assessments just as we have said about clause 3. It is a recognisable fact that “marriage is the most difficult undertaking in life because it involves the life-long partnership of two persons who continue slowly the normal human process of maturation”⁶⁵⁹ and newly married couples cannot be left in isolation as if they can stand-alone. Moreover, the absence of societal supports for marriages⁶⁶⁰ can have dangerous consequences especially in our over civilised age in which individualism seems to be on the ascendancy; coupled with many challenges facing persons and their families at a fast rate⁶⁶¹. Therefore, “post-marital support”⁶⁶² is of paramount importance to families in order to avert marriage crises, which might cause early strains and stresses in the marriage. Besides, the increasing rate of separation from board and bed; and the rabbit-like speed of divorce everywhere in the globe demand that every support be offered to new couples and the already long married couples that will make it easier to overcome all the external and internal differences which are a concomitant of such a close relationship⁶⁶³.

This idea was vividly formulated in one of the interventions by bishop Yago in the 1980 synod of Bishops in Rome. He believes that a ‘culture of maintenance’ should be introduced into the pastoral care of marriage. He insisted that “concerning pastoral care for families, we have a lesson to learn from trades-people, who, knowing that tools and machines are not adjusted and regulated once for all provide servicing after the sale. We put a lot of stress on the duty of Christians to get married properly: but once the marriage has been celebrated, we leave them to their own devices. We have very little to say about the pastoral care needed by families that have been set up! This is a great gap that must be bridged. How many families have we not seen crumble before our eyes – even some we thought to be the most solid! It often appears that these families have never, or hardly ever, stopped to recollect themselves, to reflect, to pray, to ask where they are. Remote, proximate and immediate preparation, of which much has been said in the synod, is absolutely necessary. But the fruits of such a preparation may never reach maturity if the partners are left to themselves, if there are no

⁶⁵⁹ Pospishil, Eastern Catholic Marriage Law, p.247.

⁶⁶⁰ Cf. Doyle, Marriage, p.749.

⁶⁶¹ Ibid.

⁶⁶² Ibid.

⁶⁶³ Cf. Pospishil, Eastern Catholic Marriage Law, pp.247-248.

pastoral structures to welcome families – even those who are allergic to movements – to help them to live fully the grace of their marriage and to fulfil their mission as married companions and as Christian parents. We organise sessions, retreats and ongoing formation for priests. We need to do the same thing for families, and more priests should be fulltime workers in the family apostolate. If the family is the vital cell of the Church, we must do everything we can to keep this cell healthy and living”⁶⁶⁴. There is no confusion in our mind that “culture of maintenance” is indispensable for married life.

However, experience shows that many couples after marriage do not normally show up for ‘further studies’ as it may be called. The couples may only come to the parish priest when serious problems begin to show in their marriage life. In most cases they call on the priest not for counselling but to seek his approval for them to divorce. This is a rather hopeless time to help a couple and is precisely why pre-marriage preparation must be of great concern to canon law and the Church. Post-preparation is often not effective because the spouses tend to put things off⁶⁶⁵. Thus, the possible regulative function to be imposed and arrest the situation in our opinion should be foremost to ensure effective pastoral care on pre-marriage preparation rather than making the post marriage preparation a major security to help couples.

In addition to the above, canon 1064 insists that it is the duty of the local ordinary to see to it that the assistance proposed in canon 1063 are duly and diligently offered to those preparing for marriage. However, when the second part of the canon is studied carefully, it would seem that the bishop could only involve the laity in the whole spectrum of pastoral care for marriage preparation if he deems it fit. In other words, the bishop is encouraged, if it is considered opportune to him, to consult with people who possess particular expertise in this area for advice.

It is true to say that, in general, the canon emphasises the importance of lay expertise in reflecting on and implementing such pastoral priorities; nevertheless, the canon seems to place sole responsibility on the diocesan bishop. As we have seen in the drafting of this canon it is a welcome shift of emphasis; however, the diminished emphasis on lay involvement (*...si opportunum videatur ...*) is a cause for worry. Several respondents had already criticised the original schema as an overly clerical approach to pre-marriage preparation. This implies that the original reformulation of this norm seemed much more sensitive to such legitimate expectations of a broader community involvement in such a significant ecclesial event⁶⁶⁶. In fact, the last part of the canon should have remained as proposed by Huizing. He used the verb “shall” (*sollen*) instead of “*si opportunum videatur*” being used in the final draft⁶⁶⁷. We

⁶⁶⁴ Bernard Yago, “Marriage and Family in the Modern world”, in AFER 23, p.18.

⁶⁶⁵ Milton, Preparation for Marriage, p.15.

⁶⁶⁶ Cf. Green, Revised Schema: De Matrimonio, pp.74-75.

⁶⁶⁷ Canon 3 reads: “... Sie sollen sich darin durch sachkundige und erfahrene Männer und Frauen helfen lassen“.

think the “*si opportunum videatur*” phrase falls short of the spirit of Vatican II. Vatican II emphasised the active participation of all Christ’s faithful in the life of the Church.

In relation to the above, we may ask: should the participation of the laity in the marriage preparations only be at the discretion of the local ordinary? Unfortunately, the opposite seems to be the case. Again, using the phrase “*si opportunum videatur*” in the canon is rather slipping back to what we must call “mission hierarchy”⁶⁶⁸ and defeats the prescriptions of canons 212, §3, 225, §1 and 228, §3, 781 which explicitly emphasise that the lay people do not only have a right but an obligation to offer advice and assistance to the leaders of the diocese and contribute their part to the mission of the diocese⁶⁶⁹. If the Church is seen as a “communion” as alternative to “*one man show*” in the diocese then this canon needs a revision to conform to the realities of Vatican II which calls for the real and effective participation of all Christ’s faithful (both lay and clergy) in the life of the Church. We are of the opinion that the canon should rather make it an obligation for the bishop to seek the help of those expertises of the laity.

The active participation of all the faithful obliges the local ordinary unequivocally to involve the faithful in the pastoral activities of the diocese. The inclusion of the lay people in the drawing of programmes for marriage preparation is not a matter of choice but an obligation. In other words the search for marriage preparation programmes must not create the impression that the bishop alone can do it all by himself or the bishop is “*master knows all*” but should devolve on a teamwork including all the stakeholders in the formation of the human person.

We would recall that receiving of confirmation before the celebration of marriage in canon 1065 is recommended only if it will not inconvenience the celebration of the marriage. We can rewrite the canon in this way: “the non-confirmed catholic couple can validly marry, since the obligation to receive the sacrament is only a recommendation”. If canon 1033 1983 CIC insists “only one who has received the sacrament of sacred confirmation may licitly be promoted to orders”, then it stands to reason that receiving confirmation prior to marriage should not only be a recommendation.

Naturally, the celebration of marriage belongs to the field of maturity. Only those who are psychologically balanced can enter marriage. The doctrine of the Church teaches that confirmation strengthens Christians to be witnesses to Christ by word and deed and to spread and defend the faith (cf. can.879). Thus, those entering marriage are taking special vocations

⁶⁶⁸ See Sabine Demel, Von der Kulturmission zur Glaubensmission. Der Auftrag des Zweiten Vatikanischen Konzils in: StdZ 224 (2006), p. 442.

⁶⁶⁹ Cf. Ibid.

that need mature decisions and strength to accomplish. This special marriage vocation⁶⁷⁰ obliges couples to be “witnesses of their faith and love of Christ to each other and to their children”⁶⁷¹ and the family as the “domestic church”, should be the first preachers of the faith to their children by word and the example of their lives⁶⁷². In other words, confirmation received by the couples enriches them with gifts to help them to communicate their faith and holiness to their children. Accordingly, one can deduce from the point made above that the recommendation to be confirmed does not only in principle emphasise the maturity of the spouses but stresses that the marriage of a Christian demands a responsible faith. Hardly can faith be separated from marriage. Therefore if the celebration of confirmation is possible without endangering the celebration of the marriage, it should not be intentionally omitted⁶⁷³. On the contrary, if the prospective spouse should consciously refuse to receive the sacrament of confirmation before the celebration of the marriage, how should the pastor react? The law has not made provision for such situations; and the pastor cannot refuse to assist at the marriage, but should such a behaviour be considered as excluding some essential element, in this, the faith dimension and ecclesial obligations in the celebration of sacramental matrimony?⁶⁷⁴. Spouses are not precisely rejecting marriage by a positive act of the will or causing a “responsible faith loss” to the marriage but failed to include a true understanding of marriage and the necessity of faith for the marriage⁶⁷⁵.

However, we insist that lack of confirmation and the refusal to dispose oneself for the sacraments of reconciliation and Eucharist are not invalidating instruments of the celebration of marriage, and therefore cannot be the ground for prohibiting or delaying marriage; but it is the duty of the pastoral minister to carefully examine the issue and also assess the overall readiness for marriage.

4. Distinction between CIC with CCEO on marriage preparation

⁶⁷⁰ Cf. LG 35; GS 48, 49, 52.

⁶⁷¹ LG 35.

⁶⁷² LG 11.

⁶⁷³ Cf. Lüdike, Münsterisch Kommentar, 1065/1: “Die Forderung, dass Katholiken als Gefirmte die Ehe eingehen sollen, betont, dass nicht nur die Mündigkeit des Lebensalters notwendig ist, sondern für die Ehe der Christen auch die Mündigkeit des Glaubens”.

⁶⁷⁴ Canon 1101 § 2 reads “But if either of both parties through a positive act of the will should exclude marriage itself, some essential element or an essential property of marriage, it is invalidly contracted”.

⁶⁷⁵ Cf. Doyle, Marriage, p.785. See also: Augustine Mendonca, Exclusion of the Sacramentality of Marriage: Recent Trends in Rotal Jurisprudence, *Studia Canonica* 31 (1997), p.7; Lawrence G. Wrenn, “Sacramentality and the invalidity of Marriage”, *Jurist* 60 (2000), 221ff; Doyle, A new look at the „Bonum Fidei”, *Studia Canonica* 12 (1978), p.25; “The Rite of Marriage”, introduction, n.7, in *The Rites of the Catholic Church*, vol.1, Pueblo Publishing Company, N.Y. 1976, p.535; Walter Mixa, “Geligen der Ehe in Glaube, Hoffnung and Liebe”, in: *Ist die Liebe noch zu retten? Brennpunkt Partnerschaft, Sexualität und Ehe*, p.11.

Beside the 1983 new code of canon law (*Codex Iuris Canonica in short "CIC"*) the Church has another code, namely, "the Code of canons of the Eastern (Catholic) Churches" (*Codex Canonum Ecclesiarum Orientalium*, in short CCEO). John Paul II promulgated the CIC on 25 January 1983 for the Latin Church and the CCEO on October 18, 1990 for those autonomous or *sui iuris* Eastern Churches that are within the full communion of the Catholic Church, and especially in full communion of the Roman See.

Someone may ask why two different codes for the same Catholic Church. The answer is not far-fetched. The Catholic Church is one but it becomes necessary to have two different codes because of the differences in traditions between the Western and Eastern Catholic Churches. However, there is a kind of interconnection between them. CCEO may be directly and greatly influenced in perhaps half of its 1546 canons by the 1983 revised code of canon law of the Latin Church. Nonetheless the Eastern canonical traditions express different theologies and Church order, diverse ritual and cultural patrimonies, and the like, which were clearly and explicitly respected and embodied in the canons⁶⁷⁶. It will be difficult for us to go into reasonable discussion on the tenets of CCEO but the main objective is to obtain assessment of the comparison in pastoral care for marriage preparation between CIC and CCEO.

The canons on marriage preparation in CIC as we have already seen consist of canons 1063-1072 while CCEO has canons 783-789. CIC has more canons on pastoral preparation than CCEO. As CIC gives more canons (1063-1065) to pastoral preparation, CCEO has only one, canon 783; and more canons were given to administrative preparation. Canon 783 CCEO has taken most of her paragraphs directly from the CIC. CCEO has not given a separate canon to the recommendation of receiving the Eucharist in the celebration of marriage as is done in CIC canon 1065; but rather ignores the recommendation in canon 1065 §1 and leaves out the recommendation on the sacrament of penance in the §2 completely, then integrated the recommendation to receive Eucharist to become §2 of canon 783. Canon 783 CCEO defines the responsibility of "pastors of souls" before and during marriage in §1: "Pastors of souls are obliged to see to it that the Christian faithful are prepared for the matrimonial state".

The Canon said nothing about the responsibility of the whole Christian community, the families and friends of the prospective spouses. Moreover, the canon did not consider Media of social communication as important tools for marriage preparation as is mentioned in CIC. In view of this, McManus insists that, "the Latin canons seem richer concerning catechesis, preparation, and celebration of marriage. This pastoral concern is supplemented in the liturgical law of the Roman rite, namely, in the ritual book for marriage, *ordo celebrandi matrimonium*,..., in its *praenotanda* or introduction, nn. 12 (the responsibility of the whole

⁶⁷⁶ Frederick McManus, "Marriage in the Canons of the Eastern Catholic Churches", *The Jurist* 54 (1994), 57-59.

ecclesial community in the preparation for marriage) and 26 (again, the ministry of the whole church and, in particular, of lay members)⁶⁷⁷.

On the contrary, canon 1063 CIC begins with the pastors' responsibility 'to see to it that their own ecclesia community furnishes the Christian faithful assistance so that the matrimonial state is maintained in a Christian spirit and makes progress toward perfection'. From all this, we may conclude that CIC in a context is more consistent than CCEO. Our judgment is based on the principle that preparing prospective couples for marriage should not be the sole responsibility of the pastor as we have all along hammered in the study. Rather, the whole of the ecclesia community including the clergy and laity has the responsibility to assist prospective couples to achieve a better marriage and family life. In addition, the families and relatives of the couples entering upon the marriage cannot be left out in the preparation process; rather, they should be made to play an active role in it because the cultural realism of the family especially in African societies is based on the principle of "be rest assured of my concern and support". This principle demands the participation of families, relatives and the ecclesia community in the marriage preparation. Furthermore, in our more changing and complicated world of today in which certain important moral values of marriage and society are being neglected by the younger generation, it demands that the responsibility of the community and of families in marriage preparation of couples can no longer be taken for granted⁶⁷⁸.

As we have said earlier, CCEO did not mention the use of media of social communications as a tool in the pastoral care for marriage preparation. However, Pucher commented that CCEO did not think the use of social communication is important for marriage preparation because the situation of that society is different from the West. Instead, CCEO considers preaching and Catechesis as more sufficient methods of preparing prospective couples for marriage even though it considers also personal preparation as indispensable of marriage preparation⁶⁷⁹.

In spite of the above shortcomings that "only" pastors of souls are obliged, the community and the family may have "no" responsibility' to see to it that the Christian faithful are prepared for the matrimonial state; canon 783 CCEO on the other hand also expresses a considerable and significant material lacking in the CIC canons on marriage preparation.

For instance, canon 783 CCEO §1 states: "Pastors of souls are obliged to see to it that the Christian faithful are prepared for the matrimonial state: and 1^o says that can be achieved "by preaching and catechesis adapted to youths and adults, by which the Christian faithful are instructed concerning the meaning of Christian marriage and the obligations of spouses to

⁶⁷⁷ McManus, *Marriage in the Canons of the Eastern Catholic Churches*, p.76.

⁶⁷⁸ Cf. Pucher, *Ehevorbereitung und Kirchenrecht*, pp.371-372.

⁶⁷⁹ *Ibid.* CCEO nimmt keinen Bezug auf die Bedeutung der sozialen Kommunikationsmittel bei der Vorbereitung auf Ehe und Familie. Mag sein, dass der CCEO doch noch andere gesellschaftliche Umstände in Blick hat. So bleiben Predigt und Katechese als die Methoden der Ehevorbereitung. Aber 3 1, 2^o weist analog dem CIC auf die Wichtigkeit der persönlichen Unterweisung der Brautleute hin.

each other, as well as of the primary right and obligation which the parents have to take care by all means of the physical, religious, moral, social and cultural upbringing of the children”. On the other hand, canon 1063, §1 only stated that the assistance should be furnished through “preaching, catechesis adapted to minors, youths and adults, and even the use of the media of social communications so that through these means the Christian faithful may be instructed concerning the meaning of Christian marriage and the duty of Christian spouses and parents”. It would be true to say that CCEO is more challenging in that; it opens more opportunities on the duties and obligation of parents on how to give a total education to their children⁶⁸⁰. The CCEO included all the areas of formation by which parents are obliged to offer education to their children.

The mention of educating children in cultural values is very significant because every culture has some specific values, which may be used for instance, as checks and balances on the institution of marriage. Most of the problems that the institution of marriage is facing today arise from the fact that these cultural values are sometimes trampled upon. For instance, the rite of puberty in the Ghanaian society in olden days served as a pride to the family and also held as a check on the promiscuous life. Therefore such cultural values must be revived in our societies especially those which have to do with marriage and family life to help couples in pre-marriage preparation. On the contrary care must be taken to avoid those cultural values which are truly outmoded in our times.

Notwithstanding the fact that CCEO elaborated on the primary right and obligation of parents to see to “physical, religious, moral, social and cultural” upbringings of children, yet it is important also to remind us that the 1983 code of canon law does not totally leave out the issue of duties of parents toward their children. Canon 1136 explicitly mentions or rather uses a strong phrase, “*officium gravissimum et ius primum*”⁶⁸¹ to express this obligation. As far as marriage preparation is concerned, we think that canon 1136 has not been properly positioned as CCEO does.

Another critical area which must receive our attention deals with the recommendation of receiving confirmation and approaching the sacrament of penance in canon 1065 CIC before the celebration of marriage. As already said, these recommendations are absent in CCEO. In the Latin Church confirmation is delayed until the seventh year or at the age of discretion. Moreover, in the Latin Church baptism is normally separated from confirmation. This is because most people are baptised as infants and as such excluded from the sacrament of

⁶⁸⁰ Cf. Ibid. Pucher observes „Can 783 CCEO fast zusammen, was in CIC in drei Canones geregelt ist. Wichtig erscheint der Hinweis in § 1, 1^o auf die Vorbereitung der Brautleute dann als Eltern für die physische, religiöse, moralische, soziale und kulturelle Erziehung der Kinder nach Kräften zu sorgen. Dieser Hinweis fehlt im CIC, ein Manko“.

⁶⁸¹ Can. 1136 “Parents have the most serious duty and the primary right to do all in their power to see to the physical, social, cultural moral and religious upbringing of their children”.

confirmation. It is only adults, that is, “all who are no longer infants but have attained the use of reason” (can.852 §1), that must receive baptism and the sacrament of confirmation at the same time unless serious reasons prevent this⁶⁸². The ordinary minister of confirmation in the Latin Church is a bishop. A presbyter can also validly confer this sacrament if he has the faculty by virtue of the universal law or a special concession of the competent authority (cf.c.882). Oftentimes, prospective spouses preparing for marriage were baptised as infants. It is therefore logical that some of these persons may not be confirmed at the time of preparing for marriage. In such cases, if it is opportune CIC has recommended the receiving of the sacrament before the celebration of marriage.

However, in the Eastern Churches the priest administers confirmation as a rule together with baptism. The reason for this, according to the tradition of Eastern Catholic Church, states that administering the sacrament of *chrismation* as it is called, with holy Myron to newly-baptised, reborn by water and the Holy Spirit, participates in the reign of Christ (the Anointed one) and its gifts, and therefore a more suitable witness and co-builder of the reign of Christ. Hence the newly baptised anointed with holy Myron is signed and sealed with the gift of the Holy Spirit (cf. c. 692 CCEO). Again, CCEO combines the two sacraments because of the promises often repeated by Christ to the apostles of sending the Spirit upon those who believe in him are realised vis-à-vis the community at Pentecost and individually by anointing with chrism. Therefore the Eastern tradition prescribes that confirmation or *chrismation* with holy Myron is conferred immediately after baptism otherwise it is incomplete (cf. c.695 CCEO)⁶⁸³.

With respect to those Eastern Catholic Churches who followed the Latin practice of separating the two sacraments and reserved as it were the confirmation to the bishop, Vatican II strongly reaffirmed and ordered that regarding the minister of confirmation the practice existing in the Eastern Churches from the most ancient times is to be fully restored. Priests, therefore, using chrism blessed by a patriarch or bishop, are empowered to confer this sacrament⁶⁸⁴. For the reasons stated above, CCEO dropped the recommendation of receiving confirmation before the celebration of marriage.

In the Eastern tradition Eucharist and penance literally are separated from the celebration of marriage. According to Pospishil, the reception of the Eucharist by all (baptised) members in every Sunday liturgy was a normal practice in the ancient Church. The marriage rite however was not connected with the liturgy of the Church, but was performed as a private affair of the

⁶⁸² RCIA. 34.

⁶⁸³ Cf. George Neddungatt (ed.), *A Guide to the Eastern Code, A Commentary on the Code of Canons of the Eastern Churches*, Pontificio Istituto Orientale, Rome, 2002, p. 508f. Canon 693 CCEO explains the term Myron as a perfumed ointment, made from olive oil or other plants and from balsam, mixed with various aromatic substances used for the administration of chrismation.

⁶⁸⁴ Decree on the Catholic Churches of the Eastern rite, *Orientalium Ecclesiarum*, 21. November 1963, no.13 http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19641121_orientalium-ecclesiarum_en.html (11.11.2006.)

family separately from the community⁶⁸⁵. Marriage rite came to be associated with a liturgical rite only centuries later. It is then logical that the sacraments of penance and Eucharistic celebration were less considered as part of the wedding liturgy. Therefore, if canon 783 §2 CCEO expresses the wish that couples should receive communion “in” the celebration of marriage, this means that it could be done in conjunction with the marriage rite, preferably prior to it. However, under the influence of the Latin Church after Vatican II, some Eastern Catholic Churches have introduced the celebration of marriage within the Eucharistic liturgy. Because this is opposed to Eastern tradition, some bishops have explicitly prohibited it. In reality the Catholic marriage partners cannot be compelled to receive the sacraments of penance and Eucharist, although pastors will strongly suggest it⁶⁸⁶.

In conclusion we can say that in spite of significant differences between CIC and CCEO due to cultural background, yet still both presented the common pastoral orientations for effective preparation for marriage. Where one falls short the other should complement it such that marriage preparation can be effective.

5. Particular legislation on marriage preparation

One of the unique characteristics of the 1983 code on marriage laws is the autonomy given to individual bishops and the local bishops’ conferences to establish their own directories and particular laws⁶⁸⁷ on pre-marriage preparation for their area of jurisdiction.

The formulation of particular laws and legislative framework of marriage is very necessary for the reason that though marriage, as it were a personal partnership of two persons, nevertheless it is not a private possession of the two of them but a matter of public interest in which the relationship can have a detrimental effect on the welfare of parties, possible children, family life and the community as a whole. Therefore to safeguard marriage from being a chaotic instrument in the society, both the ecclesial and civil societies would have to enact legislation concerning basic requirements for marriage⁶⁸⁸. In this regard canon law has charged the individual bishops and Episcopal conferences in canons 1064 and 1067 to draw programmes and issue norms on pastoral care for marriage preparation

⁶⁸⁵ Pospishil, *Eastern Catholic Marriage Law*, p.247.

⁶⁸⁶ Ibid.

⁶⁸⁷ As noted earlier, canon 1064 obliged the local ordinary with the responsibility of ensuring that the pastoral care for prospective and married couples stipulate in the canon 1063 is fully appreciated and provided in his territory or diocese. Canon 1063 so to say has general character, which must be particularised to the situation of every region or diocese such that programmes for marriage preparation are modelled to the easy understanding and relevant to the particular situation and circumstances of the locality concerned. Gavin explains: “Canon 1063 is part of the universal legislation, therefore must find application in the concrete realities of the different cultures and traditions which are found in the different countries and dioceses that make up the universal Church. In order to facilitate the application of canon 1063 many bishops have promulgated particular laws that help in the implementation of this general legislation” Gavin, *Pastoral Care in Marriage*, p.132.

⁶⁸⁸ Cf. Gavin, *Pastoral Care in Marriage*, p.132.

Canon 1064 as we have seen obliged the local ordinary to formulate directives and programmes for effective implementation of canon 1063. Canon 1067 on the other hand, specifically stipulated the role of the Episcopal conference in laying down norms for the precise manner in which the pre-nuptial inquiry is to be carried out such that the prospective spouses' freedom to marry is clearly established; so that the institution of marriage is safeguarded and protected against what might make its celebration invalid or illicit⁶⁸⁹. It must also establish norms for the publication of banns of the proposed marriage or any other inquiry to determine that the prospective spouses are free from impediments and to satisfy that the consent is free from any internal or external pressures. It is also to ascertain that the couple grasp the true understanding of the nature of marriage and the rights and obligations associated with the marriage state⁶⁹⁰.

5.1 Marriage preparation in Germany

a. Response to canon 1064.

In September 2000 the German bishops conference responding to demands of canon 1064 for the implementation of canon 1063 for pastoral preparation of couples for marriage, published a handbook on pre-marriage preparation and the celebration of marriage under the title "On the way to the Sacrament of marriage - reflections on the marriage pastoral in transformation"⁶⁹¹ prepared by the commission for marriage and family. However, the original response of the conference to the demands of new ways in pastoral care for marriage preparation goes back to the general synod for the dioceses in the Federal Republic of Germany between 1971 and 1975. On the chapter dealing with "Christian marriage and the family" (*Christlich gelebte Ehe und Familie*), the synod deals with pastoral care for marriage preparation. It describes the Christian understanding of marriage and the importance that should be attached to the preparation before the celebration of it. The Synod emphasised that to ensure its effectiveness family, parents, schools, pastors and the faithful as a whole are to initiate responsible programmes and instructions to help young people and those preparing for marriage to understand the values and consequences of Christian marriage⁶⁹².

⁶⁸⁹ Cf. Provost, marriage preparation, pp.174-175.

⁶⁹⁰ Cf. Gavin, Pastoral Care in Marriage,132.

⁶⁹¹ „Auf dem Weg zum Sakrament der Ehe: Überlegungen zur Trauungspastoral im Wandel“ (The english translation is mine).

⁶⁹² *Gemeinsame Synode der Bistümer in der Bundesrepublik Deutschland (1971-1975)*, Verlag Herder, Freiburg in Breisgau, 1976, 411-457. According to no. 3.1.2.1.1: „Eine zeitgerechte Ehe- und Familienpastoral muss Brautleutetage, Brautleutewochenenden, Brautleutewochen oder ähnliche Veranstaltungen anbieten, die Inhalte

We will turn attention to the context of the handbook “On the way to the Sacrament of marriage...”, since it is almost a replica and expansion of the chapter on “*Christlich gelebte Ehe und Familie*” of the Synod document.

The handbook is a pastoral resource guide substantially formulated in non canonical language and devoid of any legal framework on marriage but written to help clergymen and those directly or indirectly, i.e. full-time and voluntary co-workers, to be familiar with the new trends and demands related to pre-marriage preparation as stipulated by church documents and canon 1063. Furthermore, the handbook is designed as a tool for those co-operators in the pastoral field to lead and help prospective couples to come to a better understanding of their faith or deepening their faith and how to live out the marriage life and to bring to them the Church’s understanding of marriage. Moreover, the understanding of marriage preparation should not be narrowed down to the sacramentality on marriage, but must also respond to those pertinent questions of young people about love, sexuality, partnership, marriage and family especially in the school, parish or community catechetical and youth work⁶⁹³.

The handbook contains six chapters. Before briefly examining the marriage preparation itself, which is chapter four of the document, we will in few sentences review the contents of the remaining five chapters. The individual chapters analyse the present situation of pastoral care of marriage, today’s situation of young partners, exploiting the Catholic marriage understanding of experiences of the marriage couples, identifying goals and ways of Church marriage preparation and the fruitful organisations of the liturgical celebration of the marriage. At the end of the document the bishops remind those responsible for the preparation that the care and support of the Church for the couple do not end with the celebration of the marriage but aid and support must be offered and available to married couples in different situations and stations of their life and also in time of crisis.

Chapter 1 describes the point of departure in pastoral care for marriage preparation for both the prospective couple and the *Seelsorger* (pastoral minister). In the view of the bishops, the initial reaction of the *Seelsorger* should be the expression of joy for courage and step taking by the couple. This is important because the fact that the couple decides to ask for Church

und Form genügend Anreiz geben, vom dem Angebot Gebrauch zu machen. Es ist sehr zu begrüßen, wenn befreundete und verlobte Paare möglichst früh an einem Brautleuterkurs teilnehmen, um aufgeworfene Fragen in Ruhe bedenken und sich gegenseitig prüfen zu können“. More over no. 3.1.2.2. insisted that “die Gemeinden sollten die unmittelbare Ehevorbereitung stärker als bisher mittragen; etwa durch Gesprächskreise für Verlobte und befreundete Paare, an denen auch Verheiratete teilnehmen. Auch Familiengruppen sollten Verlobte zu ihren Veranstaltungen einladen“. See also, P. Wesemann, „Zur Pastoral der Ehevorbereitung – Gedanken eines Eherichters“, in: *Pastoralblatt für die Diözesen Aachen, Berlin, Essen, Köln, Osnabrück* 33 (1981), 53ff.; Ehrenfried Schulz, “Ursachen und Triebkräfte für die Neukonzeption einer Gestuften Ehevorbereitung”, in: Ehrenfried Schulz (Hrsg.), *Neue Wege in der Ehevorbereitung: Ein umfassendes Konzept der Pastoral zur Befähigung von jungen Menschen für ein Ehe- und Familienleben aus dem Glauben*, Seelsorge Verlag Echter, Würzburg, 1983, 24ff.

⁶⁹³ Deutsche Bischofskonferenz, *Auf dem Weg*, p.9.

marriage means, in principle they are conscious and accepting the fact that the celebration of civil and other profane feasting on the day of their marriage do not attain the height and standard of Christian marriage. For that matter it is essential for pastors to strive to help the couple to achieve their feat irrespective of dead faith or active faith. The basic option here for the pastor is to discover and strengthen faith, and not the examination and judging of the faith of the couple should be his priority. This will therefore be in line with the declaration of *Familiaris Consortio* that rejects a rigoristic position as regards pastoral care for marriage preparation⁶⁹⁴.

Chapter 2 wishes to contribute to the situation of young couples. It acknowledges the apparent unfavourable conditions characterising various institutions including Religion and marriage in the society. It mentions some of these unfavourable conditions as excessive individualism and the false interpretation given to marriage or falsifying the fundamental understanding of marriage. This is a culture in which young partners find themselves. The chapter therefore wishes that pastoral care especially to young prospective couples should help them rediscover the fundamental understanding and values of marriage⁶⁹⁵.

Chapter 3 emphasises that pastoral care for marriage preparation should provide prospective couples an opportunity for a sound theological understanding of sacramental marriage and its celebration. It also insisted on the important task of organising seminars and courses to prospective couples. These courses should be able to provide a certain amount of room for discernment in which the yearnings and fears characterising marriage relationships are illuminated with sound religious and theological convictions of life and marriage. This must enable them to see and have decisive knowledge of marriage as an intimate covenant relationship which God has with human beings. For this reason the document insists that it is not enough for those preparing couples for celebrating sacramental marriage just to give the summary of the church's official teachings on marriage, but must provide an opportunity to share with prospective couples the true vision and heritage of Catholic teaching on marriage⁶⁹⁶.

Chapter 5 expounds on the liturgical celebration of marriage. It requires a careful organisation with the couples such that the celebration is not perceived as a matter for the civil society, but as marriage before God and Christian community. It must also be fruitfully celebrated (cf. c.1063, 3^o) such that the link between the marriage and paschal mystery is drawn out. The organisation of the celebration of the marriage must also take into consideration the inter-faith situation of the couple⁶⁹⁷.

⁶⁹⁴ Deutsche Bischofskonferenz, *Auf dem Weg*, pp.10-13; *Familiaris Consortio* no. 68.

⁶⁹⁵ Deutsche Bischofskonferenz, *Auf dem Weg*, p.14ff.

⁶⁹⁶ Deutsche Bischofskonferenz, *Auf dem Weg*, pp.24-31.

⁶⁹⁷ Deutsche Bischofskonferenz, *Auf dem Weg*, pp.49-52.

Chapter 6 turns attention to the continuous pastoral care after the celebration of the marriage. The document maintains that it is an obligation of those responsible for the pre-marriage preparation also to provide the post marital pastoral care. It insisted that the pastoral care and support of the church for couples should not end with the celebration of the marriage, but aid and support must be offered and available to married couples in different situations and stations of their life and in times of crises⁶⁹⁸. Having briefly reviewed the contents of the document as far as time and space allow, we will now turn our attention to chapter 4 of the booklet, which interests us most.

According to the document, pastoral programmes for marriage preparation takes place at different times, at different places and are carried out by different persons. Since there are divergent pastoral situations in relation to marriage in the country, programmes must be drawn on individual bases. Consequently, the conference admits that the document is not intended to be an exhaustive uniform pastoral programme for the entire dioceses but to be an appraisal for drawing unique pre-marriage preparation programmes relevant to the needs of each ethnic group, for the west and East. The concrete implementation of programmes remains the task of each diocese and the respective parishes, however it encourages all to grant especial place to it⁶⁹⁹.

In a certain way the chapter follows the outlines on pastoral care for marriage preparation found in John Paul's apostolic exhortation, *Familiaris consortio* and the Pontifical Council for the Family's 1996 document on marriage preparation.

The initial comments outline the goals of the Church's pastoral care for marriage preparation. It insists that if the marriage of Christians is perceived as a sacrament of the living God, then there should be a great and responsible concern for its success⁷⁰⁰. The fundamental goal of the marriage preparation should be an opportunity for the prospective couples to see the link between faith and the realities of every day's journey in marriage and family life⁷⁰¹. It also insisted that for couples to sustain themselves under the unfavourable conditions of the complex modern and technical-industrial culture, it is not just sufficient to love each other. The couple can only withstand the unfavourable conditions if they have the technical know-how about how to grow in a relationship⁷⁰².

Furthermore, the bedrock of a successful marriage is the readiness and abilities of adjustment of oneself to correspond with modern marriage as personal partnership, thus being open to one's own feelings and those of his or her partner, noticing and renouncing of personal

⁶⁹⁸ Deutsche Bischofskonferenz, *Auf dem Weg*, pp.52-54.

⁶⁹⁹ Deutsche Bischofskonferenz, *Auf dem Weg*, p.8.

⁷⁰⁰ Deutsche Bischofskonferenz, *Auf dem Weg*, p.36.

⁷⁰¹ Deutsche Bischofskonferenz, *Auf dem Weg*, p.36.

⁷⁰² Deutsche Bischofskonferenz, *Auf dem Weg*, pp. 37-38.

doubts, readiness for devotion, renouncement and assumption of responsibility, openness for tenderness and erotic desire, readiness for co-operation and reconciliation, not the least openness for new life and hope for future with its still hidden Possibilities⁷⁰³. The methods of marriage preparation mentioned in the document avoid - what it deems the work of various dioceses - to go into any details of structures and organisation of marriage preparation programmes.

Remote preparation: The handbook acknowledges that remote preparing for marriage begins in the family. It is in the family that the child acquires various experiences crucial and fundamental to his future social relationship and faith. For that matter according to the bishops the child must be told and experience that he is accepted and loved irrespective of his achievement and capability. He must experience that he can rely on his parents and others; he must be told and be taught that effort and achievement are necessary in order to organise one's own life, and to be able to reach goals and develop values. He must learn in increasing measure to fathom liberty, independence and responsibility. Nonetheless, the bishops maintain that marriage preparation in the family is essentially implicit, because the experiences and learning processes are not particularly geared towards the life of marriage and family⁷⁰⁴. However, they were quick to add that it is to be underscored that sometimes the capacity for partnership and relationship for the future are already strongly portrayed for instance, in the development of the sexual identity and in the sex education in the family. This happens where parents and children freely discuss with one another questions of love, longing and primary partnership experiences⁷⁰⁵.

The document did not mention categorically proximate preparation of marriage as found traditionally in the *Familiar Consortio* but touches on the situation and education of juveniles and young adults. It insisted that those responsible for marriage related issues are to draw on the healthy relation developed by Juvenile and young adults in their experiences in friendship and love, values and attitudes which at least agree with the values of Christian marriage to give them the appropriate sex education. These experiences of the young people are to be serving as a starting point for sexual pedagogical work and for preparing for marriage in the future⁷⁰⁶. Consequently, the handbook insisted that teachers and educators couldn't escape topics on sex, marriage and family life in the schools. Teachers must get involved to give

⁷⁰³ Deutsche Bischofskonferenz, *Auf dem Weg*, p.38.

⁷⁰⁴ Deutsche Bischofskonferenz, *Auf dem Weg*, p.41.

⁷⁰⁵ Deutsche Bischofskonferenz, *Auf dem Weg*, pp.41-42.

⁷⁰⁶ Deutsche Bischofskonferenz, *Auf dem Weg*, p.42. See also Brief der Jugendkommission der Deutschen Bischofskonferenz an die *Verantwortlichen in der kirchlichen Jugendarbeit zu einigen Fragen der Sexualität und der Sexualpädagogik*. Hrsg. Vom Sekretariat der Deutschen Bischofskonferenz, Bonn 1999 (*Arbeitshilfen* 148), n.1.2; n. 2.1.

appropriate sex education and be ready to contribute to discussion concerning how these potential adults are to live their sexuality⁷⁰⁷.

Addressing the immediate preparation or what they called preparation for wedding without going into any formal programme, the handbook explained that in many dioceses it is expected from partners who ask for Church wedding to participate in a marriage preparatory course. While the courses are necessary to foster in the partners the sense of living the marriage as permanent community of life and love (cf. c.1055), it is by no means permitted to make those seminars and courses obligatory. It also observed that compulsory participation in the course could awaken resistances and cause difficulties especially for those in the initial phase. In the footnote to the above assumption the document made it clear and insisted that it is not permissible to make the participation in marriage preparation as the condition to marry in the Church⁷⁰⁸.

However, the document observes that as a rule immediate preparation for marriage should take place in recognised institutions because in such establishment qualified persons can be found to carry out discussion on the issue at hand. In spite of that the document insisted that though marriage preparation seminars in such recognised institutions may be more satisfactory and desirable, partners must remain in contact with their own parishes which must also not deny them the chance of offering them catechesis or courses on the values of marriage. This is very important because the partners at long last may return to the parish for the celebration of the marriage. In addition, a conscious parish catechesis in which young couples have the chance to discuss questions on their expectations and experiences about Christian life can go a long way to contribute to the welfare of the society⁷⁰⁹. The last part of the chapter stipulates that before the marriage is celebrated *Traugespräch* (wedding dialogue), which will be examined in some detail in the next section, should take place between the prospective couples and the priest or pastoral minister.

It is significant to note that with the publication of the handbook on pastoral care for marriage preparation the German bishops' conference has not pretended to develop a national directory for marriage preparation. What we can say is that the handbook is more inspirational than being a strictly juridically binding document. The bishops conceded that the handbook has pastoral, no dogmatic or judicial character but a pastoral one. Therefore it does not deem it opportune to bring out all necessary differentiations contained in canon law⁷¹⁰. Rather the

⁷⁰⁷ Deutsche Bischofskonferenz, *Auf dem Weg*, p.42.

⁷⁰⁸ Deutsche Bischofskonferenz, *Auf dem Weg*, p.43.

⁷⁰⁹ Deutsche Bischofskonferenz, *Auf dem Weg*, p.44.

⁷¹⁰ Deutsche Bischofskonferenz, *Auf dem Weg*, p.9: „Die Handreichung hat pastoralen, nicht dogmatischen oder kirchenrechtlichen Charakter. Deshalb kann sie nicht alle notwendigen Differenzierungen des Kirchenrechts darlegen: Sie geht beispielsweise in ihren Darlegungen vom Normalfall aus, dass die kirchliche Eheschließung im Rahmen eines katholischen Traugottesdienstes erfolgt, ohne zu übersehen, dass mit Dispens

document is intended to be the collective response of the bishops to their canonical obligation to help individual dioceses to draw up their own pastoral directories to suit them. However, a critical analysis of the document will show that the document does not offer a good point of departure from which individual dioceses and local parishes can begin to develop their own particular directories and programmes⁷¹¹. If the handbook is non-binding, then it can be ignored with impunity therefore ignoring the demands of canon 1063 on marriage preparation.

b. Particular law of the German bishops' conference

As a response to canon 1067 many particular churches have decreed norms in order to ensure the freedom of prospective couples to marry and the requirements with regard to marriage preparation in these churches⁷¹². The obligation of providing for 1067 was no exception to the German bishops' conference. Hence, the conference introduced a new pre-nuptial enquiry called marriage preparation protocol (*Ehevorbereitungprotokolls*) in 1990. The plenary assembly on 24 September 2002 decided on a new updated version of marriage preparation protocol (*Ehevorbereitungprotokolls*) with Annotations (*Anmerkungstafel*). On 22 February 2003 this new version was recognised by the Congregation for the bishops and came into force on 1 November 2005 for the reunified German bishops' conference⁷¹³.

von der Formpflicht auch eine standesamtliche Eheschließung oder die nichtkatholische kirchliche Trauung eine kirchlich gültige, sakramentale Ehe zwischen einem Katholiken und einem nicht-katholischen Christen begründet. Ebenso geht die Handreichung davon aus, dass in einer kirchlichen Feier der Trauung zumeist eine sakramentale Ehe zwischen Getauften geschlossen wird, ohne zu übersehen, dass die Ehe mit einem Nichtgetauften kein Sakrament ist“.

⁷¹¹ Cf. Gavin, *Pastoral Care in Marriage Preparation*, p.162.

⁷¹² National Conference of Catholic Bishops of America approved complementary legislation for canon 1067. Complementary Norm: The National Conference of Catholic Bishops, in accord with the prescriptions of canon 1067 and with due regard for canon 1068, hereby decrees that the following norms shall be observed in preparation of a couple for marriage:

- 1) The couple should receive appropriate education and pastoral preparation through participation in a marriage preparation programme approved by the diocesan bishop;
- 2) Parties should be questioned as to their freedom to marry;
- 3) Baptised Catholics should present a recently issued annotated baptismal certificate;
- 4) Where necessary, additional documentation (such as affidavits of parents) attesting to a Catholic party's freedom to marry should be presented;
- 5) Baptised non-Catholics should present satisfactory proof of baptism and freedom to marry;
- 6) Unbaptised persons should present satisfactory proof of freedom to marry;
- 7) Preparation for marriage should be in conformity with the prescriptions of Canon 1063 (regarding what must precede marriage) and Canons 1064, 1071, 1072, 1086.2 and 1125, which entrust certain situations to the special care of local ordinaries;
- 8) Preparation for marriage should be in compliance with appropriate civil laws. >>NCCB-USCC, „Index of complementary Norms. Canon 1067 – The Investigation of Freedom to marry”, www.nccbuscc.org/norms/1067.htm. (accessed: 30.06.2004)<<.

⁷¹³Cf. Heinrich Reinhardt, *Die kirchliche Trauung: Ehevorbereitung, Trauung und Registrierung der Eheschließung im Bereich der Deutschen Bischofskonferenz, Texte und Kommentar*, BzMK, Ludgerus Verlag, Essen 2006, p.3.

The annotations (*Anmerkungstafel*) as it were, give detailed explanations to the prenuptial processes in the marriage protocol and also indicate and explain important canons with regard to pastoral care for marriage preparation⁷¹⁴ and the celebration of valid and licit Catholic marriages in the Federal Republic of Germany. In addition, the annotation presented the church's teaching on the celebration of marriage and the particular rules guiding the publication of banns. It also envisaged the responsibilities binding pastoral ministers to prepare prospective couples adequately who approach the church for the celebration of marriage. As a subtitle to the *Ehevorbereitungsprotokoll* the bishops insisted the document is set out to assist pastoral ministers both for church's pre-marriage preparation and the celebration of marriage⁷¹⁵.

Time and space will not allow us to go into the details of the whole of the protocol and the annotations but we shall look briefly at the recommendation to participate in marriage preparation seminars and courses, *Traugespräch* and the publication of the banns.

It is stated in the document on pastoral care for marriage preparation (*Auf dem Weg...*) as we have already discussed above, that participation in marriage preparation seminars and courses should by no means be made a condition for admitting prospective couples to the sacrament of marriage. In spite of this the Church leadership in Germany has recognised the need for prospective couples, especially young partners to make themselves available to resources in the dioceses in order to prepare in a responsible manner for the task of marriage and family life. They are encouraged to make use of institutions of formation available to them. Clearly, the bishops see the participation in the marriage preparation seminars as part of a moral obligation to be fulfilled for a better future especially for young couples that would have to battle with the realities of the changing world in which the traditional structures supporting families are gradually eroding.

As a result of this moral obligation it is an intrinsic recommendation that without any serious reasons prospective couples should not refuse to attend those seminars and courses available to them⁷¹⁶. The *Ehevorbereitungsprotokoll* per se did not recommend directly the participation in seminars; however, the first instruction on the protocol (*Ehevorbereitungsprotokoll*) invokes

⁷¹⁴ In the Press report following the autumn plenary assembly in Fulda of 23 - 26 September 2002, "Neufassung der Normen zur Ehevorbereitung und Eheschließung", <http://www.dbk.de/aktuell/meldungen/2995/index.html> (Accessed: 26.November 2005). Cardinal Lehmann the president of the Conference reiterated that the main objectives and goals of the Protocol is to support dialogue in marriage preparation by which the expectations and questions, experiences and motives of the couples are taken care of. It is also to serve as a forum in which prospective spouse can discuss the marriage promise and fully be conscientised about the sacramentality of marriage: "Eines wichtiges Ziel dieses Protokolls ist es, das Traugespräch zu unterstützen, bei dem das Brautpaar seine Erwartungen und Fragen, Erfahrungen und Beweggründe zur Sprache bringen kann. Es dient auch dazu, mit den zukünftigen Eheleuten über ihr Eheversprechen und den sakramentalen Charakter der Ehe ins Gespräch zu kommen. Wir haben in dem Wort der deutschen Bischöfe".

⁷¹⁵ The subtitle of the document attested to this. „Niederschrift zur kirchlichen Ehevorbereitung und Eheschließung. Amtliches Formular der Deutschen Bischofskonferenz“.

⁷¹⁶ Cf. Reinhardt, *Die kirchliche Trauung*, p.4.6

this moral obligation. Before the minister begins to take data and information from the couple in filling out the form he is obliged to ascertain from the couple whether or not they have participated in a marriage preparation course or seminar. The response in either way is to be noted but as already said it has no influence on the celebration of the marriage.

Furthermore, it is to be observed that the *Brautleutekurs* (marriage seminar) in some dioceses are limited to just a day over the weekend. In fact, we consider this to be insufficient because a thorough preparation for marriage cannot be undertaken just a few hours in a day. We therefore recommend that this should be reviewed and advocate that the preparation should take at least three months. In this case we envisage three seminars before the celebration of the marriage.

Related to participation in marriage preparation seminars in the protocol is the *Traugespräch*, which we have mentioned already. It is very difficult to be concrete on the actual motive of *Traugespräch*. However, it is obvious that the background approach of *Traugespräch* is to enforce an interaction between the pastoral minister and the prospective couple for the purpose of filling out the marriage protocol and to discuss the celebration of the wedding. In spite of this critical observation the document maintains that *Traugespräch* could be a moment for filling out and signing the marriage protocol; however, the discussion on values of marriage as such should not be pushed to the background⁷¹⁷. It is to be understood, in the normal circumstances, as the prospective couple meeting with the pastoral minister or a delegated layman to discuss the contents and the requirement of marriage in the marriage preparation protocol.

However, it is to be noted that the *Traugespräch* is more than just filling out the form or just discussing the various parts of the liturgical celebration with the couples. It is an opportunity for the pastoral minister to deepen the understanding and values of marriage of the couples. In other words, the document is insisting that though *Traugespräch* could be the time of taking information and making inquiries about the pending marriage, it is also to be an occasion in which the expectations, uncertainties, experiences and motivations of prospective couples are freely brought to the floor for discussion. In this sense, *Traugespräch* should be in the form of dialogue rather than a one-sided form of educating partners about marriage⁷¹⁸.

Consequently, if for whatever reason the prospective couples do not attend or avail themselves for the *Brautleutekurs*, then in the *Traugespräch* the pastoral minister has the obligation to instruct and teach them about those important things which have to do with marriage especially regarding the Christian marriage and the expression of consent, which

⁷¹⁷Deutsche Bischofskonferenz, *Auf dem Weg*, p.45. “ auch wenn es zum Traugespräch gehört, dass das Protokoll zur Eheschließung ausgefüllt und unterschrieben wird, darf dies doch nicht im Vordergrund stehen“.

⁷¹⁸ Deutsche Bischofskonferenz, *Auf dem Weg*, p.45.

must correspond to the act of the will. However, the execution of the discussion and the exhaustion of the marriage protocol should normally take place within a sitting⁷¹⁹. Reinhardt explains that if the *Traugespräch* is carried out by lay co-workers, then the date and his/her name should be entered in the space provided for on the protocol⁷²⁰. Nevertheless the protocol presumed that it is the responsibility of the pastoral minister who completes the marriage preparation protocol to ensure that the couple either take part in a pre-marriage course or receive alternative instruction⁷²¹. Moreover, the document *Auf dem Weg...* required that during *Traugespräch* the priest is obliged to explain plainly and clearly all the legal regulations and ramifications of marriage in a friendly manner. It also emphasised that the discussion on consent requires special care and attention. The Pastoral minister must also express clearly in the discussion that the exclusion of any essential properties of marriage according to the regulation of the Church makes the marriage invalid⁷²². In other words, it is a juridical requirement that a man and woman who enter into a marriage should have the correct understanding, an evaluative knowledge about freedom of choice and the maturity to give and accept rights and obligations concerning this interpersonal relationship. Marriage, which is substantially different from these essential elements and essential properties of marriage, nullifies a marriage.

The document *Auf dem Weg...* insisted that faith and religious differences can give rise to emotions and tensions within marriage. Therefore marriage between a Catholic and a person of other confessions or religion should be given a special attention in the *Traugespräch*⁷²³. In connection with this document, it emphasises that the *Traugespräch* should also be an occasion and an opportunity for the pastoral minister to explain and instruct couples about the similarities and dissimilarities regarding the teaching on marriage in various inter-faith Churches⁷²⁴. It also suggested that, if possible, before the celebration of the wedding, in spite of particular regulations of the individual church, it is very important that the couple of a mixed-marriage discuss and agree on which particular church should children be baptised and educated. They must also agree on the church, which will be the mother church for the family. The wedding as a matter of fact should then be celebrated in the Church in which the family would be practicing their faith⁷²⁵.

The impression gathered from the *Traugespräch* approach to pastoral care for marriage preparation could suggest that it suffices to admit prospective couples to the celebration of marriage irrespective of whether or not the couple attend pre-marriage preparation courses.

⁷¹⁹ Ibid

⁷²⁰ Ibid

⁷²¹ Cf. Gavin Pastoral Care in Marriage Preparation, p.156.

⁷²² Deutsche Bischofskonferenz, *Auf dem Weg*, p.45. See also c. 1101.

⁷²³ Cf. Gavin, Pastoral Care in Marriage Preparation, p.177.

⁷²⁴ Deutsche Bischofskonferenz, *Auf dem Weg*, p.46.

⁷²⁵ Ibid.

We therefore wish to ask few questions. The basic question is: can the discussion taken within 30 minutes or one hour in *Traugespräch* actually evoke better results on the values of marriage, considering the problems facing the institution of marriage in our complex world? To put the question in another way, would it not be more conducive and beneficial to devote a little more time and days to participation in marriage seminars? We think that *Traugespräch* is not enough to do this, as such the bishops must encourage couples, especially young people, to devote more time to marriage preparation courses and seminars.

Banns

The actual response to the canon 1067 by bishops' conferences to establish laws in order to ensure the freedom of the parties pertains to the publication of Banns. The Decree begins with the interpretation or what is meant by banns. This is followed by where the banns can be published and the time of its publication. It ended with who should dispense from the banns if the need arises. We shall now turn to the contents of the decree.

i. Form of the Banns

The Banns, i.e. the public publication of an intended marriage to determine that the parties are free of impediments or to expose an existing impediment, is done through announcement in the Sunday masses or through posting on notice boards indicating the surname, the first name and the domicile of the two spouses. The decree also says that the decision either to announce the banns in the mass or to paste it depends on the pastor in charge.

ii. Place of the Banns:

It also decrees that the banns are to be published in the parish church where the catholic bridegroom and/or the catholic bride presently have domicile. If the domicile lies within another filial church, then the banns can instead be published in the filial Church. If they have no domicile, then it can be published where they presently live.

The pastor who is responsible for the preparation for the celebration of the marriage may ask the pastor of another parish to publish the banns, but the pastor of that parish is only obliged to give immediate reply when during the publication of the banns an impediment is discovered.

Time of the banns:

If the publication of the banns is to take place in the mass, it shall be announced only on one Sunday in all the masses including the Saturday evening mass (*Vorabendmesse*). On the contrary, if the banns are to be pasted on the notice board, then it shall start from Saturday afternoon till Monday morning. We shall remark here that the publication of the banns is no

longer in many parishes announced in the mass or pasted on the notice board but only written in the parish bulletin.

Dispensation from the banns:

The pastor who is responsible for the marriage with general faculty to assist at marriages has, if no justifiable doubt exists regarding the *status liber*, the power to dispense from the publication of the banns. However, the dispensation from banns should be indicated in the marriage preparation protocol as stated in no. 24a.

Much cannot be said about the publication of banns because as we have already seen in the revision of the 1917 code of canon law, the title on banns (*praesertim de publicationibus matrimonialibus*) is completely dropped. It is now up to local bishops conferences, if deemed necessary and useful, to decree law regulating banns. It is necessary according to canon 1066 that before partners can celebrate canonically it must be proved that nothing stands in the way of its valid and licit celebration. However, if the conference can use other means and proofs that no invalidating factor enters the process, then banns can be omitted. For instance the complementary particular legislation on Canon 1067 for the Church in the United States eliminates the necessity for the publication of banns before the celebration of marriage. Other means of establishing a couple's ability to contract valid and licit marriage are given⁷²⁶. It is to be noted that in Germany marriage celebrated without the publication of banns or dispense from it is still valid. This in effect, according to the 1983 code, the publication of banns has nothing to do with the validity of marriage.

5.2 Marriage preparation in Ghana

a. Response to canon 1064.

Research has revealed that in Ghana, the bishops' conference and most individual dioceses have meaningful directives and detailed programmes for marriage preparation as a response to the obligation of canon 1064 on how the prescriptions of canon 1063 are to be carried out. Ankrah cleverly insisted that he was not sure if parishes in Ghana have developed programmes and institutions which provide a comprehensive guide for marriage preparation⁷²⁷. We do admit that the Church's main focus of determining the freedom to marry, her desire to heal broken marriages and to determine whether a failed marriage could be declared null and void or in the extreme cases, annulled, have a great amount of influence

⁷²⁶ See NCCB-USCC, complementary on canon 1067, loc. cit.

⁷²⁷ Cf. Ankrah, How Africans marry in the Church, p.43.

on the local church in Ghana. Ankrah observes that the whole idea of prenuptial counselling is quite recent in Ghana and is not even required by some dioceses and parishes as obligatory for prospective couples. This attitude toward pastoral care for marriage vindicates pastoral ministers to be more preoccupied with the canonical obstacles that might render a marriage invalid rather than assisting prospective couples to understand the values and rigors of marriage and family life⁷²⁸. In spite of the conservative trend of the Church to spend more energy on the determining of freedom to marry instead of devoting more energy on pastoral orientations to help prospective couples to have a stronger and fruitful marriage life, the 1983 code of canon law, nevertheless, did as we have already at length discussed, add new guidelines on the pastoral preparation for prospective couples⁷²⁹. The fact remains that the application of canons 1063 and 1064 to suit the particular circumstances of local churches remains in the law book in many African Churches and as we have indicated above, Ghana is no exception.

Although the bishops' conference has no official collective response to canonical obligation in canons 1063 and 1064 to assist the pastoral ministers in preparing prospective partners for the celebration of marriage, yet the diocese of Sunyani in Ghana has indeed made some effort⁷³⁰ and some other individual dioceses in their recent local synods did not ignore the obligation completely.

For instance in chapter five of the promulgated "Acts of the First diocesan synod of Ho diocese" on marriage and family, the following decisions were taken and recommended in regard to pastoral care for marriage preparation. The synod decided and recommended that:

- There shall be effective pastoral ministry for couples preparing for marriage.
- There shall be continuous counselling and other relevant programmes that enhance marriage.
- Marriage counsellors shall be trained and counselling Centres shall be established in every deanery to make available counselling Centres to couples in need.
- Partners of broken marriages shall be offered counselling services and, as much as possible, efforts shall be made to reconcile them.
- They shall be helped through guidance and counselling
- Through catechesis and the sharing of their faith experience family members should seek renewal and strengthen their bond of family life.
- Parents, as first teachers, must instil right values in their values in their children and give them the appropriate sex-education.
- Catholic men and women in parishes shall be called upon to help confirmation candidates, who are being initiated into adulthood, with sex-education with the consent of their parents.

⁷²⁸ Cf. Ankrah, *How Africans marry in the Church*, p.20.

⁷²⁹ Cf. Ankrah, *How Africans marry in the Church*, p.21.

⁷³⁰ See Diocese of Sunyani, *Preparation and Ongoing Formation for Christian Marriage*, Diocesan Catechetical Office, Sunyani, Ghana, 1993. We must comment that the booklet has some useful teaching on the sacrament of marriage but has not given any proper lay down functional structures and programmes for pastoral care for marriage preparation.

- Our Department of Health shall be strengthened to give Natural Family Planning instruction to couples before and after marriage⁷³¹.

While these Acts highlight the importance of adequate pastoral care for marriage preparation, they fall short of giving detail and impetus as how this preparation should be conducted. For instance, the recommendation which states that there shall be effective pastoral ministry for couples preparing for marriage does not specify the guidelines that will accompany the prescription that such dynamics of indigenous culture can be integrated into the Christian faith in the process of celebrating marriage in the diocese. Moreover, the synod was more concerned with counselling instead of formulating directives, programmes and creating institutions to assist prospective couples.

An important fact to note is that the policies of the Synod on marriage preparation may be scanty to promote effective marriage pastoral ministry in various parishes, nonetheless these Act of the synod gives us the green light about the seriousness of pastoral care for marriage preparation in the diocese. We cannot just be critical of the synod without contributing to the welfare of marriage preparation. As such, the goal of the last chapter of the thesis will be to propose a directory and programmes on marriage preparation for the diocese of Ho.

b. Response to canon 1067

With the above reflections and presentation, it is obvious that much cannot be said about pastoral care for marriage preparation in the dioceses of Ghana. Since the Church is more concerned with the determination of freedom and validity of marriage, we will investigate what was the Ghana Bishops' conference response to the obligation of canon 1067. Similar to the German bishops' conference on marriage preparation protocol (Ehevorbereitungprotokolls), the Ghana bishops' conference also came out with some laws vis-à-vis ascertaining the freedom of prospective couples before the celebration of marriage. The document decreed is known as the "Prenuptial Enquiry form"⁷³². The major part of the content is about investigation of the bride, bridegroom and their witnesses.

We shall now briefly discuss the Form. However, we should bear in mind that most the contents are not only particular to the local church of Ghana but general requirements for the celebration of marriage in the universal Church. Yet there are also few formulations in the Enquiry form unique to Ghana.

⁷³¹ Cf. *Acts of the first Ho diocesan Synod, "Effective Evangelisation for living fully the Christian calling in the third millennium" What shall we do brothers?* The synod took place in September 2000 and the Acts were promulgated on June 2002 by Bishop Francis Kofi Anani Lodonu to become the official document in view revitalising the Diocese in the next 10 years.

⁷³² See the whole document on the prenuptial Enquiry form in the Appendix.

The form begins with the name of the parish and the particulars of the prospective spouses. The particulars include name, religion, date and place of birth. It also contains the names and religions of the spouse's parents. It also contains dates and places of Baptism and confirmation. The numbers on the entries are made in the baptismal (NLB) and confirmation (NLC) book. The particulars concluded with the proposed date of wedding and the Actual date and place of the wedding⁷³³. The form obliged the priest to question the couples about their freedom to marry. The couples and the witnesses are to be investigated separately. According to the form each of the prospective spouses are to provide two witnesses but in practical terms only a witness each is provided.

The bride and the groom are questioned independently about their domicile since they were 21 years of age. If they have stayed in a place for more than 6 months then this is to be documented. This means that the banns will be published at those places of which they had quasi-domicile for more than 6 months. The prospective couples are also to be questioned about their previous marriage status. If either or both had previously married, then the names of the previous partner(s) and the type of marriage(s) are to be documented. Types of marriage included in the document are customary marriage, Church marriage and ordinance marriage.

In case the marriage was contracted only customarily with the previous partner or partners, then the question is asked, "Were you already baptised when the essential customary rites were performed for your first (second, third, as the case may be) partner?" If the answer is in affirmative, then the pastoral minister will continue to ask, in what Church?⁷³⁴ The follow up question states, "Was your first (second, third, as the case may be) partner baptised when the marriage customs were performed? Again, if the answer is in affirmative, then the priest is obliged to know the type of Church⁷³⁵.

Having examined the status of the couple's previous marriage, the document goes on to ask if they are still living with the previous partner. The examination goes like this: "Are you still living with the first (second, third, as the case may be) partner as your wife?" If the response is negative, then the couple would have to state how the union with the first (second, third, as the case may be) partner dissolved.

The above investigation regarding customary marriage is very important because the priest must be morally certain that there is no natural bond existing that will make the marriage invalid or has ceased to exist through the death of the previous partner or through dissolution

⁷³³ Ibid.

⁷³⁴ Ibid.

⁷³⁵ Ibid.

by means of Pauline Privilege (cf. c.1143). If both partners were not baptised before the customary marriage then a natural bond persists. A natural bond gives rise to an impediment of divine law which renders persons already married incapable of entering a subsequent marriage while the prior bond still persists. Since it is a divine law no human and earthly power can dispense from it (cf. c.1085). A natural bond ceases only at the death of one of the parties. Unfortunately, through the Pauline Privilege or the privilege of the faith, the Church has the power to dissolve a natural bond (cf. c.1143).

Furthermore, the investigation is necessary to determine if the baptism received prior to the previous marriage was valid according to the teachings of the Church. In Ghana there are many sects and the so-called “mushroom” churches in which baptisms are considered invalid in the Catholic Church. For example, using the following formula: “I baptise you in the name of the Creator, and of the Redeemer, and of the Sanctifier” or “I baptise you in the name of the creator, and of the liberator, and of the Sustainer” makes the baptism invalid⁷³⁶.

One of the principal requirements of canon 1067 is to ensure that the parties are marrying out of their own free choice without any internal or external pressures. This is also to be assured that the woman is not abducted (c. 1089) or forced (c. 1103) into the marriage. The above-mentioned requirements are not particular to the Ghanaian church but to the universal church. However, while the point is not to be exaggerated, it is also true that in some cultures or customs in Ghana young girls and women are forced to marry a man against their will. For instance, in some customs a girl born from a marriage is given to a man in the woman’s clan to marry. The custom is sometimes known as *akorkornana*⁷³⁷. In some cases, it is done against the will of the girl. In some cases the marriage never lasted beyond two years.

As everywhere, the partners must also declare the intention that they are entering this marriage until death and must agree to abide by the Catholic teaching on marriage, its purpose, the rights and obligations of marriage.

We have said in the beginning that the bishops’ conference till now has not introduced and decreed any official document on pastoral care for marriage preparation but in the prenuptial enquiry is envisaged that pastoral ministers are obliged to educate young people and prospective couples about the teaching of the church on marriage and the dispositions needed in marital life.

The interpellation of the couple ended with solemn declaration that the above answers are true to the best of their knowledge. The prospective couple must sign or make his/her finger thumb

⁷³⁶ Cf. Congregation of the faith, “Answers to the doubt on Baptism”, 1. February 2008, AAS 100 (2008), p.200.

⁷³⁷ *Akorkornana* is a custom in Ghana in which a daughter is given out to a man from the extended family or clan of the mother to marry. It is sometimes conceived to be a substitute for the vacuum created by the lost of her mother from the clan. However, the custom is not a force marriage or substitute for the lost but as a mean of strengthening and keeping alive the bond between the two clans.

to confirm his or her reactions. The priest conducting the investigation must then sign to conclude the investigation. These investigations are done individually and privately⁷³⁸.

In the German marriage preparation protocol the pastoral minister has no obligation to interview witnesses (*Trauzeugen*). The witnesses are only obliged to be at the celebration of the marriage and as provided by no. 29 on the protocol to give their signatures after the liturgical celebration of the marriage. In the Ghanaian Enquiry form, a full page is given to the examination of witnesses about the free state of the couple asking for the celebration of canonical marriage.

The investigation minister asks the witness to give his/her full name and address. In most cases the witnesses are close relatives or persons from the village or the town. He or she is asked to provide the name of religion and/or parish she or he belongs to. She or he will be asked if she/he knows miss (name) or mister (name). He or she will then be asked about the duration of acquaintance. “How long do you know her or him? Is she or he related to you in any way?” How well are you acquainted with her or him? Is she or he baptised? If yes, in what religion? Is she or he entering the marriage freely without any external pressure?⁷³⁹

The examination goes further: “do you know of her or his intended marriage in the church with mister or miss (name)? She/he is then asked if she/he knows of any reason or impediment that would prevent her or him from marrying. If he or she answered in the affirmative then he or she must give the reasons or impediments. Most of the times, it is very difficult to get a negative answer because impediments are very difficult to detect by ordinary people. The witness must also demonstrate whether the man or the woman has ever contracted or attempted marriage with any other person before the depending marriage. If the witness’ answer suggests yes then she/he must give the name of the previous partner or partners, the time of the marriage and the type of marriage. She or he is also asked if the previous marriage still exists⁷⁴⁰. This section speaks of the serious obligation, which rests upon witnesses to share the truth with the investigator (cf. c.1069)⁷⁴¹.

One of the important parts of the examining witnesses relates to the question of the approval of parents and the performing of the essential customary rites. Witness must state if the parents or the families have approved of the marriage. If he/she responded with yes, then he/she must testify whether the essential customary rites have been rightly performed. If a negative answer is given, then the reasons for non-performance of the customary rites must be given.

⁷³⁸ The prenuptial Enquiry form.

⁷³⁹ The prenuptial Enquiry form.

⁷⁴⁰ Ibid.

⁷⁴¹ Ibid.

This is very necessary in Ghanaian marriages because family and clan are seen as vital and consist of part and parcel of marriage in the society. The non-performance of the requested customary rites per se does not invalidate Christian marriage in the eye of the Church. However, according to the custom of our ancestors marriage celebrated without the concern of the family, elders of the clan and lack of performing the necessary customary rites is considered void. This marriage has no legal bases even if celebrated according to the demands of ordinance and canonical marriages. In actual fact, the Church marriage is considered only as the extension of customary marriage. For this reason a person wishing to marry at public place of worship must be certain beyond any reasonable doubt that the customary rites are performed otherwise in the eyes of the family and elders, the marriage is illicit and invalid. The marriage can only be best as regards “marriage” to enable the couple to participate fully in the activities of the Church⁷⁴². Till now Ghanaian society considers ordinance marriage in which the church marriage is included as a foreign practice. Kom recorded the point in this way: “The second type of marriage in Ghana is the marriage under the Marriage Ordinance, cap 127, first introduced on 19th November 1884, to cater principally for European expatriate staff serving in the Gold Coast (*Gold Coast was the name of the Land before independence in 1957 from the British*). This was later made applicable to all residents in the country”⁷⁴³. He went on to say that “So far as Ghanaians are concerned, marriage under the Marriage ordinance is always preceded by the performance of the customary rites of marriage of the ethnic society from which the bride hails”⁷⁴⁴.

The bishops recognised this fact and acknowledged that conscious negation of customary rites before the celebration of the marriage should be avoided. In fact, we cannot imagine celebrating marriage in Ghana without the customary rites being performed. The performance of the customary rites tells the priest that the marriage is acceptable to the families. Except in a very rare circumstance, the priest is bound in conscience and by the custom of the Church in Ghana to respect this tradition. The priest can only carry on assisting at the marriage if he is morally certain the above requirements have been fulfilled. For this reason the document ended with the priest’s certificate of freedom in this way: The relatives concerned have assured me of their consent and of the performance of the essential customary marriage rites. I have also made enquiries from reliable witnesses. Banns (given dates which the banns) have been published. Freedom to marry is further established by attached documents: (a) recent extract from Baptism Register; (assurance of) dispensation from banns; from interpellations from the impediment of (type of impediment) and by (name); sworn Statements of witnesses; (d) death certificate; (e) certificate of interpellation made; (f) parental consent. The priest must therefore give his signature as a proof⁷⁴⁵.

⁷⁴² Cf. Kom. Inheritance, Marriage and Divorce, p.62.

⁷⁴³ Ibid. The words in italics are mine.

⁷⁴⁴ Ibid.

⁷⁴⁵ The prenuptial Enquiry form.

The following decrees also find their place on the form:

1. The party or witness is to be informed that the investigations being conducted are sacred and of grave consequences and that, at the end of his/her answers he/she will have to sign a solemn declaration that the answers are true.
2. The priest completing this form may ask any questions which he thinks important and relevant especially concerning the performance of the essential customary marriage rites.
3. If one of the parties lives elsewhere the Parish Priest of that place should be requested in time to obtain the statement of the party in accordance with this enquiry form, and to return this form with any relevant documents. This should be done through his own Curia; so that *Litterae Testimoniales* can be granted by his Ordinary.

If a Certificate of Freedom only is required from elsewhere this can be obtained by letter and it is not advisable to forward this form for the purpose.

4. Similarly, some documents may have to be obtained from elsewhere; some may be necessary statements on or explanations of some answers. The documents can be indicated in N. 15 of this questionnaire.
5. Whenever a dispensation is necessary, the investigating priest should ordinarily submit the application and the necessary documents to his Curia for onward transmission to the Ordinary who has to grant the dispensation.
6. A priest should not proceed with any marriage for which dispensation from an invalidating impediment is necessary until he is certain that the dispensation has been granted even though the application was submitted and every other thing in order.
7. Before any marriage takes place, the Parish Priest who is preparing the prenuptial enquiry must ensure that he is in possession of this completed form and of all relevant documents including dispensations where necessary.
8. Unless both parties have resided in the diocese for at least three months immediately preceding this enquiry, the completed form, together with the relevant documents must be forwarded to the Ordinary for a *Nihil Obstat* before the marriage is celebrated (C. 1115; C. 102 par. 2)
9. The Ordinary's permission is required for assistance at the following marriages:
 - (a) A marriage of vagrants (*vagi*);
 - (b) A marriage which cannot be recognised by the civil law or celebrated in accordance with it;
 - (c) A marriage of a person for whom a previous union has created natural obligations towards a third party or towards children;
 - (d) A marriage of a person who has notoriously rejected the Catholic faith;
 - (e) A marriage of a person who is under censure;
 - (f) A marriage of a minor whose parents are either unaware of it or are reasonably opposed to it;

(g) a marriage to be entered by proxy. (Canon 1071 par. 1; nos. 1-7.)

10. After the celebration of the marriage, the Parish *Priest shall* carefully keep *the* whole marriage dossier in his Archives.

11. Notification of the celebration of the marriage should be sent to the parishes where the parties were baptised if these happen to be different from the place where the marriage was celebrated: (C: 1122 par: 2)⁷⁴⁶.

The main objective of the document is great concern of the bishops' conference to prevent invalid and voidable marriages being celebrated.

d. Banns

The Church's publication of banns in Ghana is not different from the State's Marriages Act; 1884-1985 (CAP 127) revised 2005. The law allows that any minister of religion may be appointed as a marriage officer. This can be revoked, varied or suspended by the Minister of interior (Part III section 38, par.1 and 2). He may also license any place of public worship to be a place for the celebration of marriages and may at any time cancel such license (cf. sections 40 and 64). In other words, in Ghana, marriages may be celebrated validly in any licensed place of worship by a recognised minister of the church, denomination, or body to which such place of worship belongs, and according to the rites or usages of marriage observed in such Church, denomination or body. The marriage is allowed only if it is celebrated with open doors between eight o'clock in the morning and six o'clock in the afternoon, in the presence of at least two witnesses besides the officiating minister (Sec. 62 par. 2).

In principle all Catholic clergy in Ghana are marriage officers and allowed to celebrate marriage under the marriage officer's certificate. This permission allows for the publication of the banns in the church.

According to the laws of Ghana, if a marriage is to take place in a licensed place of worship, each of the prospective couple must give notice about his or her domicile in writing of the marriage at least four days according to Schedule 5, Form E before the time required for the first publication of the marriage banns (sec.48, par 1). The pastoral minister can only publish or cause the banns to be published of such marriage in the Church before the faithful in an audible manner both in English and the vernacular either morning or afternoon or Evening during public divine service on three Sundays (sec.50 par 1 and 2). However, section 48 par 2 states that if both parties have lived in the same place and belongs to the same church at least fifteen days preceding the publication of banns, then it is enough to publish the banns once.

⁷⁴⁶ The pre-nuptial Enquiry form.

The banns takes the following form:

“I publish the banns of marriage between (name of intended husband, parents, place of birth, and date of birth) of ... (place of domicile) and (name of the prospective wife, parents, place of birth, date of birth) of ... (place of domicile). If any anybody knows of an impediment, which may not allow these two persons to be joined together in holy matrimony or married valid in the eye of the Church, must declare and reveal it. This is for the first (second or the third, as the case may be) time of the publication” (cf. sec.50 par1).

The priest or the Headchristian or catechist shall certify through his or her signature that the banns of marriage have been duly published on three Sundays. If objection was raised against the marriage, he or she must explain the objection. According to state law if the marriage is not solemnised within three months of the last publication of the banns, such publication and all proceedings consequent thereon shall be void. The banns must be republished anew as if no banns had ever been published before the parties can marry (sec.54).

In the discussion, we have seen that the issue of banns remain significantly the matter of the state. In my opinion, the publication of banns may not be necessary especially in the situation where the community becomes, as it were, a means to certify the validity of the marriage. Banns could be necessary if the couple are strangers in the area and if the freedom of the partners to marry is doubtful. On the contrary, in the Ghanaian society where polygamy is rampant, the pastoral minister must do all things possible to be certain that they do not enter an invalid and illicit marriage.

Chapter IV

Proposed marriage preparation policy for the diocese of Ho

Accordingly, the Apostolic Exhortation (*Familiaris Consortio*) that came after the 1980 synod of bishops and the 1983 new code of canon law (particularly c. 1064) envisage the need of bishops and bishops' conferences to issue directory for marriage preparation guidelines for prospective and married couples. To be more specific FC envisaged that: “it is to be hoped that the Episcopal Conferences, just as they are concerned with appropriate initiatives to help

engaged couples to be more aware of the seriousness of their choice and also to help pastors of souls to make sure of the couples' proper dispositions, will also take steps to see that there is issued a Directory for the Pastoral Care of the Family. In this they should lay down, in the first place, the minimum content, duration and method of the 'Preparation Courses' balancing the different aspects- doctrinal, pedagogical, legal and medical- concerning marriage, and structuring them in such a way that those preparing for marriage will not only receive an intellectual training but will also feel a desire to enter actively into the ecclesial community"⁷⁴⁷. John Paul II also speaking to the Ghana bishops in their Ad Limina visit in 1994 reiterated, in spite of challenges facing marriage and family life in Ghana, the bishops and other pastoral ministers cannot spare the efforts and authority to lead couples to discover the truth and beauty of the choice⁷⁴⁸. He again emphasised to the bishops that the Post Synodal Exhortation on 1980 synod of bishops, the *Familiaris Consortio*, contains doctrines and guides on marriage and family which still need to be widely disseminated since the document provides a suitable framework for an ever more effective catechesis especially in the urgent area of marriage preparation⁷⁴⁹.

Furthermore, in his message to the pontifical council for the family in a congress to review the pastoral care for marriage preparation and family after 20 years of the FC, John Paul II observed that there has been great improvement in the concern for the family from the parishes and diocese. "After the publication of *Familiaris consortio*, the Church's interest in the family increased, and the pastoral care of families has become the priority in countless dioceses and parishes"⁷⁵⁰. This point was revitalising in the experiences and reports presented in the congress to show that pastoral care of the family is at work and had intensified in the past 20 years. Thus the council insists "these experiences that came from all the continents show us how many Christian homes are motivated by the love of the truth about the family"⁷⁵¹. These insights seem to suggest that the new approaches presented in FC and given canonical force in the 1983 code of canon have refined and updated pastoral care for marriage preparation in dioceses and parishes.

⁷⁴⁷ FC 66.

⁷⁴⁸ Cf. John Paul II, Address to the members of the Ghana Bishops conference on their Ad Limina visit, 1994, no.4.

⁷⁴⁹ Ibid.

⁷⁵⁰ John Paul II, Message to the Congress of the Pontifical Council for the Family on the 20th anniversary of *Familiaris consortio*, 23 November 2001, n. 4:

http://www.vatican.va/holy_father/john_paul_ii/speeches/2001/november/documents/hf_jp-ii_spe_20011123_card-trujillo-family_en.html. (Accessed: 11.December 2005).

⁷⁵¹ Pontifical council for the family conclusions of the theological-Pastoral congress on the theme: "Twenty years since 'Familiaris Consortio': The Anthropological and Pastoral dimension", 20 December 2001, Introduction.

http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20011220_xx-familiaris_en.html. (Accessed: 11December 2005).

However, the congress also acknowledges that “despite all that has been achieved, there is still much to be done. There are still many dioceses in which the pastoral care of families lacks adequate structures”⁷⁵². This later observation is applicable to some extent to the local church of Ghana. It is a challenge to the individual bishops and bishops’ conference of Ghana to make pastoral care for marriage a priority. This means they must resolve very urgently to produce a thorough and workable directory suiting our condition.

On account of this limitation, this last part of the work intends to propose diocesan directives and programmes on pre-marriage preparation for effective pastoral care for marriage preparation in the diocese. The first section will propose a directory on marriage preparation for the diocese, that is, the canonical and pastoral regulation that should guide pastoral care for marriage preparation. Section two will concern itself with a suggested programme or course for marriage preparation to be called “Fireside Encounter Programme” (FEP). The last section of the chapter will suggest a synchronised form of Christian marriage and customary marriage into one body to form the basis of celebrating marriage in the diocese.

It is to be noted that the proposals are not a blueprint document for the diocese to adopt by all means but a source of reference for developing a concise policy on marriage preparation.

1. Scope and Structure of the proposed policy

In Chapter three we have acknowledged that the scanty recommendations from “the Acts of the first Ho diocesan Synod” on marriage preparation cannot be considered as sufficient for preparing prospective couples for marriage. The greater part of the recommendations centred on counselling married couples rather than insisting on obligatory and vigorous pre-marriage preparation programmes⁷⁵³.

Though these acts of the Ho diocese do not offer the desired impetus for structuring a process of marriage preparation, they do serve as a green light upon which a more comprehensive directory should be developed. Unfortunately an effective mechanism has not been put in place to carry on with the pastoral sensitivity with which the Synod approaches the marriage preparation. We have also realised that the time has come for the diocese to provide diocesan policies and guiding principles that will provide for a formidable pastoral care for marriage preparation.

a. Aims

⁷⁵² Ibid. no. 9.

⁷⁵³ Refer to page 195ff for more details.

The purpose of the policy is to offer assistance to those who assist prospective couples as they present themselves for the celebration of the marriage. Marriage preparation is a means to accompany couples with important tools needed for the difficult journey of marriage life. It is also for the reason of having a common agenda on preparation and celebration of marriage in the diocese to give pastoral orientations which will stimulate and direct the pastoral activities of parish priests and all those who are involved in the preparation of the prospective couples as they take on the vocation of marriage and family life. The policy is also to serve as a framework for celebrating worthy and fruitful sacrament of marriages in the manner in which both customary and the church marriages are no longer seen as opposing to each other.

A Marriage preparation course is also a tool to assist prospective couples in assessing their own strength and insights about marriage life. It is therefore recommended to use sound pedagogical aids for marriage preparation, which will actually help the couple to know their strengths and weaknesses, and agreements and disagreements in the relationship. In special cases, the psychologist or a counsellor among the team or commission must be explored to give competent advice to the affected couple.

From the pedagogical point of view, the publication of guidelines is to foster and supply information to those assisting such that they can form and educate on the sacrament of marriage.

The guidelines are not intended to make it difficult for the couples in Ho diocese to marry in the Church but to recognise the seriousness of the situation of marriage in the world at large, and the obligation which hung on the church to prepare couples not only to ascertain their freedom to marry but to prepare them adequately for the vocation of marriage⁷⁵⁴.

b. Obligations

The guidelines shall oblige the whole of the Ho diocesan community. It obliges mostly those persons directly responsible for the pastoral care for marriage, that is, the parish priests and his assistants, full time and voluntary catechists, and team members. Naturally, the architect of the preparation policy is the bishop since according to canon 1064, it is his responsibility to decree guidelines for marriage preparation and see to it that it is carried out in the diocese. For that matter we can say the bishop has the greatest responsibility.

We will suggest that a parish that fails to give thorough preparation to prospective couples should be summoned and reprimanded by the bishop. Also, seminarians on pastoral shall be obliged to participate in marriage preparations.

The seminarians on holidays could help the priest to organise such discussion on marriage preparation. We also know that the major seminary has introduced one full pastoral year

⁷⁵⁴ Cf. PCF, Twenty years since 'Familiaris Consortio, no.1.

before the diaconate. This pastoral year could be a test case for them to organise marriage preparation courses or discussion during their meeting with the faithful. We suggest that the bishop could make it an obligation to them to see themselves as instructors in marriage preparation courses.

This obligation must also bind catholic parents, teachers and members of various societies to contribute to the success of marriage preparation in the parishes. It is also binding on parish priest or parish team to involve the family, leaders and elders of the society in any form of pastoral care for marriage and married life since in our Ghanaian context, marriage cannot be thought of without the consent of these traditional leaders of families. The contribution of such people should be seen in a positive direction rather than ignoring them.

There should be diocesan developed marriage preparation courses and programmes in Ho diocese which no prospective couple shall fail to attend or visit. An important fact to note is that in FC the unwillingness of the couples to avail themselves for participation in marriage preparation programmes should not be a serious reason to refuse them celebration of marriage or church marriage. However, except in very unusual circumstances, for example old age and sickness, couples will not be excused from participation⁷⁵⁵ in this structured pre-marriage preparation programme to be called “fireside Encounter Programme”. In such cases clearance should be made with the parish or deanery team director of the programme in order to determine that there is no other viable alternative. If however, the couple willingly refuse and resist participating in the programme the matter should be referred to the bishop for his judgement because “resistance to any form of programme is a strong negative indicator of readiness for marriage”⁷⁵⁶. We need to insist even more clearly the fact that the participation in the programme is necessary because “in the traditional training for the priesthood in the Church, great stress has been laid on the need for an adequate preparation because of the

⁷⁵⁵ Before one enters a religious or secular vocation, it is normal that one accepts the principles lay down for the accomplishment of such an institution. This is no exception for participation in marriage preparation seminars. As result Milton insists, “Although Dr. Fournier implies that a mandatory policy does not and cannot create a conducive atmosphere for the idealistic couple I disagree. Mandatory doesn’t have to mean dictatorial or authoritarian. Then I would object also. It is not meant to be used as a billy club. Yes, it is a command, a way of life for those who wish to marry in the church. But so did Christ give commands: ‘the command I give you is this, that you love one another (John 15:17). Even Jesus was commanded by his Father: ‘For I have not spoken on my own; no, the Father who sent me has commanded me what to say and how to speak (John 12:49)’. The Father also gave us the Ten Commandments. Certainly we human beings would not have liked easier alternatives nor do we want to work very hard at them. But that doesn’t mean that our way is right or the best in the long run. What I think Dr. Fournier, and the Church as well, really want is this kind of mandatory policy: ‘I command you to freely choose to do this of your own free will’. It is a paradox. Any policy that is strictly recommended ultimately becomes voluntary. And when it is voluntary it becomes useless because no one pays any attention to it anymore. The voluntary and recommended policy of driving 55 miles per hour didn't happen until it became mandatory. Would children go to school on a recommended basis? We may be adults, but we still need directives, guidelines to keep us going the right direction” (Milton, Preparation for marriage, p.17).

⁷⁵⁶ Diocese of Beaumont, Marriage guidelines for the Sacrament of matrimony, rev. ed. September 1996, <http://www.dioceseofbmt.org/resources/resources/sacrament-celebration/marriage.html> (Accessed: 12. August, 2005.)

seriousness of the step involved. We submit that since marriage is also both a vocation and a sacrament it should be preceded by a careful, graded and obligatory preparation”⁷⁵⁷. Though prospective couples are morally obliged to avail themselves for the seminars, such “orientations and norms proposed should be applied with a spirit of charity and understanding and with a deep ecclesial sense which is as far removed from any rigorism or utopian idealism as from any form of indifferent or indiscriminate action”⁷⁵⁸

We are convinced that the timeframe of six months should not be too much for the prospective couples to attend, if only the parish priest and those charged with marriage preparation educate them about the need for such a programme. Moreover, customary marriage in Ghana especially among the Ewes takes some time to be completed since it is a continuous and progressive process. This dynamic process of customary marriage must lay the groundwork for effective implementation of the programme.

c. Formation of a commission

The first step towards any meaningful and workable agenda for effective marriage preparation is the creation of a diocesan commission to be responsible for pastoral care for marriage preparation. The creation shall then be the fulfilment of the urgent need of such a commission as recommended by FC and reiterated by the pontifical council for family⁷⁵⁹.

This commission shall replace the existing chaplaincy for marriage counselling coordinated by a priest; and be responsible for all marriage related-issues in the diocese. The commission shall work hand in hand with the existing diocesan department for faith and culture. It should have the help of a coordinator, normally a priest, representing the bishop.

The coordinator must from time to time report the progress of the commission to the bishop. If the coordination is entrusted to a lay person or a couple, a priest’s assistance would be advisable. Since, family planning is one of the vital issues confronting the Church in Ghana,

⁷⁵⁷ Naidoo, “The need for an obligatory, Graded preparation for marriage”, in AFER, p.51.

⁷⁵⁸ Cf. Taken from Gavin, Pastoral Care in Marriage Preparation, p.138.

⁷⁵⁹ PCF, Preparation for the Sacrament of marriage, no.20 “The whole diocese should be involved in this task and offer the proper support. The ideal would be to create a diocesan Commission for marriage preparation, including a group for the pastoral care of the family, composed of married couples with parish experience, movements and experts. The task of this diocesan Commission would be formation, follow-up and coordination, in collaboration with centres on various levels involved in this service. The Commission should in turn be formed by networks of teams of chosen laypersons who work together in marriage preparation in a broad sense and not only in the courses. It should have the help of a coordinator, normally a priest, representing the bishop. If the coordination is entrusted to a lay person or a couple, a priest’s assistance would be advisable. All of this should enter into the organizational context of the diocese with its corresponding structures, such as possible areas headed by an Episcopal Vicar and vicars forane”. See also PCF, “Twenty years since ‘*Familiaris Consortio*’, n.9.

the diocesan coordinator of Natural family planning shall be an ex-officio member of the commission

In addition to the coordinator and the ex-officio members, the commission shall consist of married couples, priests, catechists, and those professionally trained in the area of psychology, counselling, economics, law and traditional leaders. They should be persons who are interested and capable of coming to the level of the couples since most communities of the diocese are made of simple people. The team should have adequate training in the sacraments, theology of marriage, the cultural understanding of marriage, information and materials⁷⁶⁰. Accordingly, the commission must supply booklets, leaflets and manuals for the courses.

The grave task of the diocesan Commission shall be the formation of parish and deanery marriage teams; follow-up and coordination of all activities pertain to marriage preparation in the diocese. In other words, the important duty of the commission shall be to train deanery and parish marriage preparation teams. It must also be responsible in the formulation and the publication of diocesan guidelines on pastoral care for marriage preparation in the diocese. The commission's activities shall not only concentrate on immediate preparation for celebration of marriage but shall also develop and offer best ways in which remote and proximate preparation for marriage become integral parts of the programme.

The diocesan commission shall from time to time patrol the parishes to see progress of marriage preparation and give necessary help to parishes in difficulties.

d. Training and education

If marriage preparation is to succeed, then there should be well-trained animators. Much importance is to be given to the proper preparation of all those who will be more specifically engaged in the family apostolate. Marriage preparation should no longer be perceived in the diocese as mostly a work of one person, the priest⁷⁶¹. It must work as a team. On the parochial

⁷⁶⁰ Cf. Diocese of Richmond, *Called to Marriage*, 1997

<http://intranet.richmonddiocese.org/docs/marriage.pdf> (Accessed: 12.August, 2005).

⁷⁶¹ Cf. Milton, Preparation for marriage, p.8: The pastors do not only need professional expertise in order to give good marriage instructions but they must also be receptive and willing to work with other trained specialists as psychologists, counsellors and professors. They should not be threatened by them nor fear that they are out to change their beliefs. On the contrary they can teach and give them skills, methods and approaches that will prove not only to be invaluable but also make their own work much easier. It is also important for pastors to utilize their parishioners in all aspects of family life, especially in marriage preparation. The Laity of his parish are a valuable resource for the pastor so that the newly married have both to rely and fall back on. The couple won't go to the priest with their day-to-day family problems; often because the priest cannot fully relate to the question no matter how serious it is to the couple. Whereas the experienced couple could be the very sanctuary the young couple would identify with and to whom they could relate. Even in marriage preparation, the prospective couple would readily discuss and ask questions of another married couple which they would never think of asking a priest. However, couples picked by the pastor to work in marriage preparation should be carefully chosen. Persons picked must have solid marriages, must be willing to be trained, and willing to spend time in the field.

level, the team should include the clergy, religious men and women, the full time catechists as proposed in the Acts of the diocesan synod, and the Laity using the talents of all.

Though the coordination process of marriage preparation can be given to the full-time catechists, the presence of priests is essential because couples consistently judge the presence of clergy valuable and their absence detrimental. The team shall also include experienced married couples. If applicable, the team shall co-opt leaders of various societies and groups in the parish such as Legion of Mary, St. Anthony's Guild, Perpetual Help, Catholic Women Association, Diocesan Association of Widows and widowers, Catholic men Fellowship (Camfel), Knights of St. John, Knights of Marshall, Catholic Youth Organisation (CYO), Young Christian Student (YCS), Catholic Youth Action (CYA). It is also necessary that some elders of the community are included. Hence each parish in the diocese with the help of the diocesan commission shall recruit and train validly married couples, catechists, health workers councillors, and clan elders etc., to be members of the parish marriage preparation team.

Priests, men and women religious, from the time of their formation should be oriented and trained progressively and thoroughly for the various tasks, not excluding pastoral care, for marriage preparation. It would mean that special courses on pre-marriage preparation programmes must be introduced and taught in the pre-philosophy classes, major seminaries and formation houses where priests and religious are trained and formed. Moreover, continuous formation in the form of seminars, workshops and sabbaticals shall be intensified in the diocese for older priests on marriage preparation to increase public awareness and create support for the programme. Seminarians on pastoral are to take marriage preparation seriously. Before they proceed on to their various places of assignment, the diocesan commission shall give them input on marriage preparation. Annual priestly Easter conferences in the diocese shall be an occasion to intensify the magisterial document on marriage preparation and family life.

On the local level, the Ho diocesan Education committee in partnership with the commission on faith and culture and the commission on marriage preparation shall initiate the establishment of an institution for the study of marriage and family life.

Marriage preparation programmes shall depend mainly on the 1983 new code of canon law, FC, Human vitae, and the Pontifical council on marriage preparation, GS nos. 48-52, and other relevant values in our culture, which are relevant to the appreciation of the institution of marriage.

We do hope that the recommendation given in the Acts of the first Ho diocesan synod "that the diocesan commission on faith and culture be reconstituted and strengthened to intensify its research into all areas of our culture in order to unearth all possible areas where our

indigenous cultural beliefs and practices can be integrated into our Christian Catholic faith and practice”⁷⁶² is taken seriously. Such a commission can help train - especially on marriage related issues in our culture - those to form the parish marriage preparation team.

In making these pertinent suggestions it is necessary to point out that the Diocese must provide financial and moral support for the training of the marriage commission, marriage team and the publication of materials.

e. Freedom to marry

Marriage preparation, even though must heavily lean toward pastoral preparation, the celebration of marriage cannot ignore the obligation of freedom to marry. For this reason, we suggest that pastoral ministers should be informed as soon as the couple has the intention to marry. Beginning the marriage preparation earlier will give enough time to couples to assess their individual readiness to marry and enough time to respond to particular circumstances that may require attention especially the determination of the party’s freedom to marry canonically and the issue of previous marriages⁷⁶³. The 1983 Code of Canon Law states, “all persons not prohibited by law can contract marriage” (c. 1058) and “before marriage is celebrated it must be evident that nothing stands in the way of its valid and licit celebration”

(c.1066). Against this situation, the priest is to see to it that those divine, natural, positive and ecclesiastical laws governing marriage in the Church are upholding. Since the purpose of prenuptial investigation is to protect both parties to the marriage and the welfare of the community, the priest must be critical of polygamous tendencies. If he is certain that the man will return to polygamy he must refer the matter to the bishop for his judgement. However, the determination of freedom to marry shall be established in our case, not only the presentation of documents, but also through family members and witnesses (if applicable).

Situations, which may call for delay or refusal of the priest to witness the marriage may include: Lack of maturity, age, alcoholism, drug abuse, mental disability, wife beating, forced marriage or Akorkor marriage, and pregnancy. Polygamy is commonplace in the diocese, and therefore the children of the previous marriage must not be in any way relegated to the background. Therefore the primary concern of pre-marriage preparation is to prepare the parent to acknowledge and fulfil his or her responsibility faithfully to support the children from a previous relationship both financially and emotionally. On the other side, stepchildren have also been causes of worry for marriages or new marriages. Therefore special preparation

⁷⁶² Acts of the first Ho Diocesan synod, p.10.

⁷⁶³Cf. The bishops of the Dioceses of New Jersey, “Pastoral Policies and Guidelines for Marriage Preparation for the Catholic Church in New Jersey”, <http://www.rcan.org/famlife/A-Overview&Intro.pdf> (Accessed: 12. August 2005).

should be given to such couples to appreciate the situation. A parent who rejects this obligation should have his or her marriage delayed or referred to the bishop for necessary action.

Dispensation or permission and all records of the marriage must be diligently kept at the parish archive. This means that the commission for faith and culture has responsibility to see to it that all parishes in the diocese have proper archives.

f. Age

The common knowledge in Ghana is that customarily most people marry earlier especially girls in their teens. Marriages of minors or teenagers must be discouraged in the diocese. According to Ghana law if a party to the marriage is not yet 21 years old, then the parents must be consulted. Even though canon law insists on 14 years for girls and 16 for boys, the diocese must encourage young people to marry according to age stipulated in the Ghana Law. In other way round if even though the girl is under age but the parents are insisting on the marriage, the matter must be referred to the bishop for advice for which the marriage must be delayed. The diocese should not allow parents to give their daughters into marriage sometimes because of monetary gains.

g. Older couples.

In the diocese many couples ask for Church marriage at the very old age especially because of polygamy and other related marriage issues. These persons' situations are different from young adults (*Dekakpui kple Detugbiwo*). It is therefore not necessary for such couples to attend marriage preparation courses except that the couples are new converts especially from traditional religion. Private discussion with older couples approaching marriage may be the best way out.

h. The place of the celebration of the marriage

The team and sponsors should assist the couples to plan a celebration that is simple and dignifying. The planning should be done in such a way that the celebration expresses and deepens the conviction of Christian marriage and as culminating of foregone preparation courses. On other hand, if the wedding should be celebrated outside mass especially in the case of synchronising the customary rites and Christian marriage as we shall propose later in this part of the work, still the pastoral minister and the team will have to be involved to the last end of the celebration. The planning should be done in cooperation with the couples and the elders of the family. The parts to be played by each individual should be clearly spelled

out such that there is no confusion of interest. If the marriage is celebrated outside, the pastoral minister should officially introduce the new couple to the parish or the Church community in the following Sunday mass.

i. Post-marital support

As we have already said in this work, parish priest apart from celebrating using Valentine day, Mothers' day, fathers' day Silver or Golden marriage jubilees to reassure marriage couples, a Sunday should be set aside in the parish calendar as day of honour to all those who have married a year and beyond. The new couples apart from their Godparents who will accompany them at least for the first two years of new journey, it is recommended that the parties especially young couples, join catholic women association, men association and other societies in the community such that they can overcome isolation from the parish or church life which is vital for the early years of marriage.

The traditional community i.e. the nucleus and extended families shall be encouraged to help the couples giving them support but must be cautious of the fact that they cannot interfere in the marital life of the couple. Family members shall not put too much pressure on the couples in term of assistance such as providing for the day-to-day survival of the extended family.

Our society is blessed with traditional values of settling disputes. In most cases, the settlement is spearheaded by the family, clan heads or chief and his elders. This type of judicial system always keep our society going because sometimes disputes between couples are just considered "home matter" which can be solved by just summoning the parties early in the morning for arbitration. The Church shall encourage family and community heads to revive this old traditional value and mechanism of settling disputes among couples.

2. Marriage preparation Programme

It would have been noticed that our main focus in this work as envisaged in canons 1063 and 1064 is to produce appropriate marriage programmes for effective handling of pastoral care for marriage preparation. Apart from the concern which the diocese has for pre-nuptial enquiry, that is the determination of freedom to marry, it is also the duty of the Church that couples are provided with the proper impetus and values necessary for understanding and living a true marriage and family life.

Therefore, prospective couples wishing to marry in the diocese are required to take part in marriage preparation programmes or courses such as the "Fireside Encounter Programme" (FEP) for a number of times to be determined by the circumstances. The "fireplace encounter

programme” should be able to offer at least 6 sittings for the couples. This means the programme should be spread through six months.

The programme should offer reasonable options because of the occupational demands and residential geographical locations of the couples in the diocese. In some circumstances, it may not always be conducive for the couples to come to the parish or deanery centre for the courses. Couples may reside in separate villages or remote outstations where the means of transport is difficult. In this case, it is possible that the couples cannot attend all the 6 sessions of the programme.

For instance, aged prospective couples residing at *Wlitodzi*, an outstation (*Filiale*) village situated at the top of a mountain in the Fodome parish cannot always climb and descend the mountains to come to the parish centre for the programme. They may lose interest in it. Therefore in such a situation long distance preparation is sometimes necessary in which case a catechist and other married couples can form a small team in the village to provide help to these people. However, the parish team needs to coordinate the process. The parish team must set some time aside to visit them despite the difficulty of climbing the mountain. Furthermore, the couple should definitely meet with the priest or deacon who will preside at their wedding even if most of the preparation will be done at a distance. The distance is a challenge but not a reason to omit marriage preparation course.

In the organisation of the programme particular attention shall be paid to the “Diaspora parish of Kpetoe”⁷⁶⁴, because of the great influence of Presbyterianism and African traditional religion.

For the effective implementation of the programme, a parish team shall be in charge of the parish programmes. It is an urgent need that the recommendation given in the Ho diocesan synod that every parish in the diocese gradually strive to have one full-time catechist be implemented⁷⁶⁵. Although the parish priest has the greatest responsibility to see to it that the programme is effectively organised, we suggest that day-to-day organisation and directing of the programme should be the responsibility of the full-time catechist.

If a parish does not have the personnel or resources to provide its own preparation programmes, then the deanery marriage preparation team must provide assistance. Otherwise, two or more neighbouring parishes can join their resources together to organise the

⁷⁶⁴ There are few Catholic Christians in the Kpetoe parish since the area is dominated mainly by Evangelical Presbyterian Christians.

⁷⁶⁵ Cf. Acts of the first Ho diocesan synod, p.7: “Every parish must gradually strive to have one full-time catechist who should be an essential part of the parish pastoral team. He/she should share the responsibilities of the parish with the Priests and the religious as a full time personal as soon as practicable. His/her remuneration, which must be adequate, must be the responsibility of the parish, with the diocese assisting wherever the need arises”.

programme or form a team. What is most important is couples are morally obliged to attend marriage preparation courses.

This formation team must provide a series of sessions, spread over a period of time. It should be participatory in nature involving input on various topics and issues while engaging the couples in reflection and discussion. The courses must be carefully prepared and presented in a simple language for the people to understand. The medium of communication should be the local language “Ewe” except unless the couples do not understand the language. In other words, academic language should be avoided. Rather, practical language or a simple medium of communication found in our culture and society which those formally uneducated can understand should be adopted. The programme should be able to offer prospective couples the opportunity to determine whether they have the personal, psychological, spiritual, social and relational capacities to carry out the responsibilities of marriage and family life.

The team should also ensure that the instructions are not only geared towards marriage and family life but are also an opportunity to deepen their faith or to awake faith in them⁷⁶⁶. The team should take care that the programme does not become a forum of testing the knowledge of the couple in the bible, doctrines and theology of the church, but a means of helping prospective couples to deepen their faith and the ability to adjust to marriage life. The sessions should also be an occasion for the couple to explore the ministerial dimensions of marriage and family life, in that they clearly understand, appreciate and accept their social and religious responsibilities as spouses and parents in the community.

The priest and his team will follow the content and format of the diocesan marriage preparation directives and programme to be drawn by the commission. The parish can make adjustment to the programme to suit time and place but the core contents of the diocesan regulations cannot be ignored.

If for one reason the couples are to join another parish for the courses, nevertheless their own parish must supplement it with special programmes possible in the parish. One of such special programmes could be termed a “couple sponsor programme”.

The sponsors are to be pacesetters or Godparents to prospective couples. They must be active married couples ready to guide the prospective couples and to share with them their experiences in whatever way. The sponsors may also act as social and spiritual friends and parents and mentors to them, providing them with support and insights as they approach marriage and family life. They must provide encouragement to them helping them in practical ways to recognise the challenges of marriage and family life. They should be available to the couples through the process of immediate preparation for marriage. They must also assist

⁷⁶⁶ Diocese of Richmond, *Called to Marriage*, loc. cit.

them in planning the customary rites or the marriage ceremony. They must also continue to be available to the couples during the early years of marriage life⁷⁶⁷.

2.1. Period of preparation

A great deal has already been said about various stages of marriage preparation. We will now comment on how the methods in various stages are manageable within the bounds of the Diocese. As already hinted in this study, marriage preparation must begin with the general education on the meaning of marriage, its importance in the life of the Christian community, and the nature of its obligations and responsibilities. It is especially important that the sacramental or faith dimension of marriage be stressed in such a way that it is be understandable and attractive to people. The conditions of the society and even the particular community must be taken into consideration, particularly the effect of secular value systems on the formation of marital and family values⁷⁶⁸. Moreover, preparation for marriage must also take into account the requirement of the long-range dimensions of marriage and should not focus solely on the limited event of the actual celebration of marriage. Otherwise, the pastoral minister may fall prey to the same error of seeing the wedding as the only aspect of marriage⁷⁶⁹.

As we have also seen FC and PCF have traditionally identified three stages of marriage preparation: Remote, proximate and immediate preparation. Nevertheless, this traditional classification of stages of marriage preparation is not absolute because “the various periods of marriage preparation cannot be rigidly defined. However, it is useful as a working model to divide marriage preparation into remote, proximate, and immediate stages. This, of course is followed by the celebration of marriage itself”⁷⁷⁰. We have also resolved to follow this method and consider how best it will be workable to promote effective pastoral care for marriage preparation in the diocese of Ho.

2.1.1 Fireplace school (Remote preparation)

Remote preparation as discussed earlier on fit into an old cultural practice in Ghana in which children gathered around the fireplace in the evenings to listen to the wisdom of the “elders”. At this tender age, the older generation, for instance, parents, grandparents, aunties and uncles

⁷⁶⁷ Ibid.

⁷⁶⁸ Doyle, Marriage, p.747.

⁷⁶⁹ A pastoral Directive and instruction on marriage preparation in the diocese of Dallas, Office of Marriage Ministries, 2003 p.2.

⁷⁷⁰ “What God has Joined ...” Particular Norms for Christian Marriage in the Archdiocese of Denver. http://www.archden.org/marriage/norms_marriage.htm (Accessed: 23.10.2008).

through the evening informal education, impart wisdom and moral values to children and young people such that from this tender age, they begin to grasp morally accepted values in the society as resonant and the yardstick guiding them into the future. In our case, we shall then call the remote preparation “the fireplace school”.

From all indications it is very clear, that the remote or the fireplace school type of preparation for marriage actually does not explicitly gear towards the celebration of marriage; rather it is only an “informal or passive”⁷⁷¹ technique of marriage preparation because the listeners or audience are not directly the applicants of eminent married and family life. However, since the “early bird catches the fly”, we cannot ignore this stage of marriage preparation as very crucial to the development of children. In other words, the early years of the child are most crucial in laying the moral foundation on which subsequent learning will be built. It is in the light of all this that pastoral care in families and lineages’ activities should give careful attention to children and young people.

For remote preparation to flourish in the diocese parents and clan members must resuscitate these fireplace schools using the commonest medium of expression like proverbs, the African personal names, folktales, riddles, songs, music rhymes and biblical stories to instil in children and young people the inclination towards accepting the ethics of marriage life and moral values. For at the end of the day, parents, family and the clan are the immediate educators of the younger generation. They have an inalienable duty to teach children and form them in the positive cultural and Christian values of marriage. The family as the basic cell of the Church, through family pastoral programmes must give guidance and help so that these children and young people may grow up to understand the culture of marriage, that is, the beliefs and prohibitions about marriage.

It is also important that sex education is never overlooked. Parents and the family must feel free to give a responsible formation on sex. . It is no secret that sex is a taboo theme in our culture. This needs to be demythologised such that parents and elders can give correct ethics of sex. The era by which parents punished children for mentioning for example, penis or vagina should be a thing of the past. Parents and teachers must responsibly lead the young people to have a true vision of sex. However, we must also be sensitive to the matter such that we avoid the danger of stimulating children to put sex education in to practice by engaging in sexual activities.

Besides, the Church cannot stay aloof in the course of remote preparation. The church is obliged to form parents and elders in those matters pertaining to sex education and serious issues for the upbringing of children. On the other hand, parents and elders must be ready to

⁷⁷¹ Diocese of Dallas, Pastoral directives and instruction on marriage preparation, p.10.

learn and accept the methods and teaching to be offered by the Church. Finally, we suggest that a Handbook for “Fireplace School” should be compiled with the appropriate folklore, songs, proverbs, wise sayings, etc. on marriage and family life.

2.1.2 Proximate preparation

Proximate marriage preparation is very crucial for pastoral care of marriage in the diocese. This stage comprises the most difficult time of human development, the adolescent age. The common knowledge associated with this age is the prestige of “self-reliance”. It is also associated with the decline of parental and family influence especially because of new socialisation processes allowing young people to be influenced by their peers and urbanisation. This freer association, rapidly the relaxed and atmosphere changing society in Africa make it difficult for some of the rigid traditional rules and taboos on marital values to be enforced with the same firmness as before⁷⁷². According to Nukunya, the changed conditions also mean that puberty rites, which formed an essential consideration in pre-marital training especially for girls, have to be neglected or modified⁷⁷³.

FC insisted that renewed catechesis and classroom instruction of young people and others preparing for Christian marriage is absolutely necessary in order that the sacrament may be celebrated and lived with the right moral and spiritual dispositions. For this reason, the foundation of this stage must involve, through appropriate catechesis, a more specific preparation towards future mores and rediscovery of the sacraments. Although parents and the family must continue to be instrumental in the formation of healthy relational skills and attitudes of their children, it is also an indispensable responsibility of pastoral ministers in the diocese, along with the classroom teachings in our schools to provide integral religious and cultural formation of young people as a way forward in the preparation for life as a couple (canon 1063). Serious religious and value-systems should be integrated into the activities of the schools and other youth programmes. This means that teenage programmes should be drawn up so that while still at school, especially in the final years of schooling, young people may be presented with the biological, medical, legal, traditional, cultural and evangelical aspects of marriage such that even in the midst of a highly secularised and fast changing African society, these young adults will have some basis for this very important institution of marriage that many of them will eventually find themselves⁷⁷⁴.

We believe one of the contributions might be to consider mandatory courses on marriage related issues for all teachers in Catholics schools in the diocese. The seminar should be

⁷⁷² Nukunya, *Tradition and Change in Ghana*, p.155.

⁷⁷³ *Ibid.*

⁷⁷⁴ Naidoo, *The need for an obligatory, Graded preparation for marriage*, AFER, p.53.

organised by experts from the diocesan marriage commission. Moreover, the Parish priest and priest in the parish should not neglect the schools, rather they should involve themselves actively as local managers in the life of our schools.

Again, in the context of proximate preparation, those responsible must grant the young generation an authentic and comprehensible meaning of sexuality and the essential medical and biological knowledge connected with it. We are all aware of AIDS and STDs pandemic in our continent of Africa. This awareness makes it paramount that the diocese, parishes and lineage members re-affirm the traditional means of sexual practices and help to diffuse immoral lifestyles gradually creeping into our culture. Alfonso lamented the situation as follows: “It is true that where there has been no education towards a serious responsibility in love; where the dignity especially of women is not given sufficient importance; where a faithful monogamous relationship is ridiculed; where condoms are distributed to the youth in parties and to children in schools; where immoral lifestyles are diffused and all forms of sexual experience are regarded as positive; and where parents are not allowed to give adequate formation to their children: such ‘impossibility’ turns into a serious, limiting condition. The end result is not only alarming in terms of the spread of HIV/AIDS, but in that man and woman can no longer have full confidence in each other. What will become of these children’s future, without the proper information and the necessary parental guidance?”⁷⁷⁵ The gloomy picture painted above shows that the diocese must attach great importance and value to marriage preparation.

Thus proximate preparation must heed the strong words of the Ghanaian Bishops’ Conference that “But we cannot accept the use of such devices as condoms as an effective and morally justified means of AIDS prevention. We, therefore, call for an end to the advertisement of condoms on the news media as the answer to the spread of AIDS. Apart from the fact that the use of condoms and artificial contraceptives is evil and, in fact, has proved not to be a total guarantee to the prevention of AIDS, the easy availability of condoms and the belief that contraceptives are safe against pregnancy have begun to generate sexual permissiveness. The moral depravity of our children is uncultural; ... We still insist that the most effective way of preventing the spread of AIDS is good moral conduct”⁷⁷⁶. What the bishops said has been the original position of the Church that the use of condom is unethical as far as moral values are concerned.

⁷⁷⁵ Alfonso López Trujillo, “Family values versus safe sex”, 1.December 2003
http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20031201_family-values-safe-sex-trujillo_en.html (Accessed: 30.06. 2007).

⁷⁷⁶ Ghana Bishops Speak, : A collection of Communiqué, Memoranda and Pastoral Letters of the Ghana Catholic Bishops’ conference, first edition, National Catholic Secretariat, Accra 1999, p.244.

However, it is also interesting to note that currently in the Vatican there is discussion and profound study taking place about the use of condoms in marriage to prevent the transmission of AIDS from one partner to the other. However, cardinal Barragán in his explanation to clarify the condom-AIDS study in Vatican insists, “We are in the first stage. This study is promoting a dialogue only at the level of the Holy See and it is not finished yet. Once it’s finished, will there be a document? There might or might not be”⁷⁷⁷. In whatever way the discussion regarding the use of condoms in the marital home goes, we cannot afford to lose sight of the principles of maintaining moral standards in the youth.

It is no gainsaying that proximate preparation of marriage must also acquaint the younger generation in the diocese with correct methods of education and spacing of children, and will also assist them in gaining the basic requisites for well-ordered family life, such as stable work, sufficient financial resources, sensible administration, responsible parenthood and notions of housekeeping⁷⁷⁸.

Following what has been said above, the indelible obstacle of emancipation of women and violence against women cannot be hidden from the youth. It is a menace in our society for men to suppress women in marriage homes. Therefore, they must be aware that a true marriage subsists between equals who are ready to share their lives together. In other words, the traditional rules about pre-marital sex, relations between the sexes before marriage, the ceremonies, bride-wealth and other elements in the institution have all seen changes either in relations to, or as a result of, social changes. For this reason, the younger generation must be tended to realise the changing of husband-wife relation from a position of male dominance to one of equality⁷⁷⁹.

2.1.3 Immediate preparation

The principal objective of pastoral care for marriage preparation subsists in the immediate preparation. The immediate preparation involves more than preparation for the day of wedding when couples exchange consent. From the look of things it is a preparation for an entire marriage life whereby the couple lives their marriage in the sacrament and to the benefit of the society. For that matter immediate preparation in the diocese cannot be limited to few days or weeks before witnessing or publicly celebrating the commitment couples make to each other. As such immediate preparation for marriage in the diocese must take at least 6 months before the wedding.

⁷⁷⁷ Lozano Barragán, “Vatican clarifies its condom-Aids study”, Vatican City, 25 April, 2006 (www.zenith.org/article-15838?|=english (Accessed: 18.11.2008)).

⁷⁷⁸ Cf. FC 66.

⁷⁷⁹ Cf. Nukunya, *Tradition and Change in Ghana*, p.160f.

Prospective couples intending to marry within the diocese should contact the parish priest or the catechist approximately 6 months before the proposed wedding. This will mean that as soon as the knocking rite is performed the couple has to inform the Church of their intention to participate in marriage course or preparation programmes since this is a suitable time to begin preparing for marriage and attending marriage preparation courses. The time between the knocking rites and the celebration of the marriage has a minimum of six months in the customary marriage.

The immediate preparation of marriage should not be left to the parish priest or the marriage preparation team alone. The family, community and the clan must in one way or the other be encouraged to be part of the process since after the marriage the couple returns to the family and the society. This is very important because the cohesive nature of family system in Ghana proposes that marriage cannot be left to the initiative of pastoral agents alone. At least the parents cannot be left out in the preparing of the couple. They are the immediate people to assist the pastor or marriage team in preparing their own sons and daughters for marriage. They are the first teachers of their children and care more about their children than anyone else.

It will be very strange in Ghanaian society for parents to become speechless as soon as a son or daughter announces that he or she wishes or plans to marry. The care for children must not suddenly stop at this point. The pastor and the team obliged for the immediate preparation of marriage couples must make the parents very important in the preparation. The parents should not be the last people to be consulted in the preparing of the couples. He must seek their advice or listen to the couples' parents about the marriage.

With this brief introduction, we shall now concentrate on the actual suggested marriage preparation programme for Ho diocese.

2.2. “**Fireside Encounter Programme**” (FEP)

Since the publication of the apostolic exhortation FC and the promulgation of the 1983 code of canon law, many dioceses and parishes have come out with particular programmes to help prospective couples and the newly married. Ho diocese lacks a cohesive programme for preparing couples for marriage life; we deem it necessary to propose such a programme which will be tuned and acceptable to our people. The primary focus of marriage preparation programmes in the Ho diocese must be both cultural and sacramental. The marriage programme is not an end in itself such that going through it will definitely prevent marriage

breakages and divorces but there is presumption that it is an important step to assist couples to be aware of the intricacies of marriage and family life.

As already mentioned the programme shall be called the “Fireside Encounter Programme”. We settled on this name because of the idea of Fireplace school we talked about and the contribution to be made by respected couples in the evening “couple sponsor programme”. The Fireside Encounter Programme (FEP)⁷⁸⁰ is designed for prospective couples planning to bring their marriage to the church.

The FEP will offer prospective couples and those recently married the opportunity to spend some time in conversation, discussion, debate, and reactions and reflect on the vocation of marriage. It will also guarantee them to learn more about facets and principles of married life. Above all the programme is designed to enable prospective couples to have an opportunity to be instructed and to discuss frankly with each other the prospects of marriage life together, their strengths and weaknesses, desires, ambitions, goals, family living, responsibilities and duties, equality, cultural relationship in our African concept, attitudes about money, stepchildren, sex, children, family and their roles in the church and the clan and society in general.

In other words as Chiona observes: “Adequate moral, spiritual and physical preparation is needed if young people are to succeed in their marriages. Parents, and the whole community, have the responsibility of helping and instructing young people to prepare them for marriage: such training should include very practical things such as house-building, farming and other skills, and especially respect for others and good manners”⁷⁸¹. In the age of ecumenism the marriage Team must have the courage to seek the expertise of non- Catholic Christians and if possible consider other religions. The expertise of African traditional religion is no exception. In our Ghanaian community the wisdom of the elders in marriage preparation cannot be overlooked. Some of these elders are experienced marriage couples and have the customs of the community at their fingertip, therefore their involvement is not a matter of choice. However, care must be taken that the expertise from these non- Catholic Christians and other religions does not deviate from the essential elements of Catholic teaching on marriage.

The Catholic identity of marriage must be maintained in the programme. In the view of this, it is very important that the faith dimension of marriage is given more weight such that the couples become aware of their Christian duties in the marital life. However, the Christian message about marriage cannot stay in isolation. It must be blended with the “conditions of

⁷⁸⁰ We settled on the name “Fireside Encounter” because experience have shown that before the coming of TV and Radio in to Ghanaian society, which are still scare in most villages; important information and cultural values are disseminated to young people sitting around the elderly people at the fireplace in the evenings. In other words, name “Fireplace” will rekindles the longingness for the forgotten primitive school in our culture in which the community especially the young generation learns more about the truth and values of life.

⁷⁸¹ James Chiona, “Pre-marriage and marriage catechesis”, in AFER, p.49.

the society and even the particular community must be taken into consideration, particularly the effect of secular value systems on the formation of marital and family values”⁷⁸².

2.2.1 Initial Contact

Couples desiring to marry in the Ho diocese should contact the parish priest or catechist or the Headchristian (*Hamemega*) or Christian mother (*Hamedada*) at least 12 months before the actual time of the wedding. The catechist and the Headchristian have important roles to play because they are more or less in-charge of the outstations and are the immediate link between the local church and the parish centre or the priest. These persons may arrange a meeting between the couple and the priest. The first reaction at this initial contact with the couple should be a moment of welcome and congratulation for the step taken and the choice to celebrate the marriage in the faith of the Church.

As we have already said marriage in the African context is a gradual process. A customary rite precedes Church and civil marriages and it takes sometime to be completed. The suggested timeframe will allow enough time for the couples and the priest to prepare for the marriage. It is therefore to be recommended that prospective couples should start marriage preparation courses before setting a wedding date. Even though couples cannot be refused marriage in the Church, the wedding date could only be set if the priest has made an assessment of the couple. This means the date for the wedding must be contingent upon the couple’s willingness to participate in a marriage preparation seminar. The date should only be confirmed after the couples had participated in a marriage preparation seminar. Of course, the couple should inform the parish priest 12 months before the marriage date but the diocesan marriage preparation course FEP should take six months to be completed.

FEP must be supplemented in each parish or outstation by a particular programme for the couple. One of such programmes suggested is “couple sponsor programme” which we have already mentioned. The “couple sponsor programme” could be done in the last two months before the marriage. Of course, this could cater for the recommendation of SECAM: “The Church as family of God shall be keen to promote in an efficient manner, a family ministry responsible for the family pastoral care in general and in particular, exemplary and experienced couples to monitor other couples in their encouragement and fulfilment”⁷⁸³.

There should be no fixed timeframe for the programme but 4-6 meetings about two hours in the evenings could be useful. The meeting can take place in the godparent’s or sponsor’s house. Meetings consist of dialogue with individual couples about practical day-to-day life.

⁷⁸² Doyle, Marriage, p.747.

⁷⁸³ SECAM, pastoral letter 4.1.4

The initial one-hour could be an interaction between the females and males separately but simultaneously.

The woman will discuss domestic issues such as taking care of the house in terms of cooking, and other household duties, relation with in-laws, neatness, and behaviour towards visitors. The discussion in the males circle could centre on relation with maids, help and sharing household duties, providing for the house and children, behaviour towards the woman, and seeing the woman as his equal and adviser. The couples would then come together to continue the discussion in a group. Practical issues can be discussed and if possible the prospective couple can bring some of the things they learnt about marriage preparation courses for discussion. The main goal for this extra programme is to deal with practical things in our culture related to marriage and family life.

2.2.2 Suggested Course

FEP is a one day-seminar in each month prior to marriage. The FEP should take six months to be completed, that is every first Saturday in a month from 10am to 4pm, but the time can be adjusted to the transportation problem of the parish. This means the programme or course shall be organised in six sittings.

Generally, FEP should include catechesis and education about the general view on marriage, the sacramental nature and vocation of marriage; elements and properties of marriage; Polygamy and baptism, communication and conflict in marriage; natural family planning; sexuality, HIV/AIDS and STDs, adultery and chastity; fertility issues and parenting; barrenness, widowhood rites; work and leisure; time and finances; faith and interfaith issues⁷⁸⁴. Besides, the course should discuss how the couple can strengthen love for each other, their feeling and affection. The objective of the FEP is not to suggest a calculated and blueprint programme for the diocese. Instead, it aims at working towards a strategic plan of action of a solid marriage preparation programme for the diocese.

I. First Sitting: Self Awareness

The first sitting should consist of an Introduction and general orientations and getting to know the partners and the assessment of the individual couples. The introduction stage provides the opportunity for the pastoral ministers and the team to develop a better relationship with the prospective couples. It is the stage of establishing a rapport with the couple by communicating

⁷⁸⁴ Cf. Dioceses of Minnesota, "Common marriage preparation Procedure for the Catholic Arc/dioceses in Minnesota", approved 7 March 2006, n.4:
<http://www.archspm.org/family/pdfs/19%20points%20MP%20Procedures.PDF> (Accessed: 3 July 2008)

an attitude of openness, support and hospitality. It is also to review and explain the pastoral care of marriage preparation policy of the diocese to them. Copies of the booklet can be made available to them. It is also the time to provide and explain the “Fireside Encounter programme” to the couple. The sitting is also the time for exploring the motives and mood for the marriage.

Here again, the aim of the first section should merely be a self-diagnostic instrument “premarital inventory” as being done in FOCCUS⁷⁸⁵ and other marriage programmes in which there is a package of questions to help couples better understand and learn more about themselves and their unique relationship. Moreover, this oral inventory is set to help identify issues including life style expectations, personality match, religion and values, problem solving, sexuality, finance, etc. These initial reactions are to be taken care of and be reviewed throughout the sittings with the couples and help them to find resources that will help them to meet those challenges⁷⁸⁶. It is pertinent to add, however, that this voluntary self-diagnostic inventory is not a test nor is it meant to be a predictor of marital success or failure. Rather it is a tool to help couples identify and work through issues before marriage. It is also not a counselling instrument but a discussion instrument whose purpose should be to maximise the total marriage preparation by tailoring it to the individual couple and by providing a comprehensive content and process that best serves the prospective couple preparing for marriage⁷⁸⁷.

It is to be reemphasised that the important role of the marriage team or animators is to empower the couple to discuss issues of marriage and family life, and move toward awareness

⁷⁸⁵ FOCCUS is a self-diagnostic inventory designed to help couples learn more about themselves and their unique relationship. It is not a test nor is it meant to be a predictor of marital success or failure. It is a tool to help couples identify and work through issues before marriage. Although used by many educators and counsellors, primarily FOCCUS is not a counselling or teaching tool. It is an instrument of discussion. The 1st level initiates awareness and discussion of issues. It begins when each partner responds independently to the inventory items (45 to 60 minutes). The couple is then encouraged to explore thoughts and responses with the other even before reviewing their FOCCUS REPORT with a facilitator. The 2nd level involves facilitation of the couple’s discussion and problem solving around patterns identified within categories in their FOCCUS report. FOCCUS facilitators make use of a Facilitator Manual that includes explanation of all patterns and hundreds of additional resource questions. At the completion of the discussion of the FOCCUS REPORT, both partners complete a form called FOCCUS for the Future, which helps them consolidate what they have learned about their relationship and plan how to use this in their future. The 3rd level involves two kinds of referrals. The first kind is not needed by every couple and is for specialized assistance (e.g., domestic violence, alcoholism, sexual dysfunction). The second referral is to educational or skill training programmes. This is recommended for most couples. FOCCUS is very adaptable and can be used in a wide-variety of models: self-standing, group or individual processes, in conjunction with mentor or educational programmes. A facilitator’s role is to empower the couple to discuss the issues and move toward awareness and problem solving. The facilitator also helps couples identify and affirm their strengths. Referrals to educational programmes and counselling are recommended; some models of FOCCUS integrate these elements. (See: http://www.foccusinc.com/sections/foccus_content.asp?PKID=6).

⁷⁸⁶ Cf. FOCCUS (Facilitating Open Couple Communication, Understanding and Study), Facilitator Notebook, Introduction, 1-9.

⁷⁸⁷ Cf. FOCCUS, loc. cit.

and problem solving. The couple must freely share verbally what their experiences and expectations with the animators are. In a relax atmosphere the team must also help couples to identify and affirm their strengths. Some of the response to be given may be personal; as such the animators should be cautious with his or her interventions. This means that animators should desist from psychologising or drawing unfounded conclusions⁷⁸⁸.

With these points in mind we shall now turn to some of the premarital questions which animators may find useful in this regard.

First of all, we will begin with the Socratic principle: "Know yourself". The best way to have appreciation and dignity of marital life is by knowing oneself. Thus the following method can be adapted. Who are you? How you came to be what you are. Where do you stand now? "What are you asking out of life? You then must identify yourself, and not just about surface things like age, education, etc. but what you are like deep down inside? ... What are your feelings? What about your background, because you are a product of your past - the good and the bad? ... Your social adjustment: emotions, moods, keeping secrets, sense of humour. Your vocation-what kind of work do you like? Your spare time ... Your spiritual development ... What does religion mean to you? What are your sexual experiences? ... Apart from this, what are your love experiences and relationships? Experience in dating, going steady, and so on? Are you both compatible? How much acceptance and tolerance do you have for each other?⁷⁸⁹

Our second set of interventions concern marriage and family life. Why does the Church law forbid dissolution of marriage even if husband and wife can no longer live in peace? What is the difference between customary marriage and Christian marriage? Is it wrong to be in polygamy? What are their hopes and fears, their plans and expectations? What do they do in their leisure time? Who will be the dominant or submissive one? Who will have to take the major responsibilities? How will quarrels, fraud and duress be handled? What direction the decision-making process in the home takes or simply who is responsible for final decisions? How should domestic tasks and resources be allocated? And what chores are there? How is the home financed and who handles the money? How do you handle family, in-laws and relatives? How are sex needs catered for?

Some of the questions or rhetoric may seem trivial but they can tremendously help the couple to know who they are and to understand the implications of marital life. It is the task of pastoral ministers and animators to ensure that every means is taken to guide the couple in their search.

⁷⁸⁸ Cf. Ibid.

⁷⁸⁹ Cf. Milton, Preparation for Marriage, p.12.

II. Second Sitting: Catholic teachings on marriage

The second sitting should be devoted to the catholic teachings on marriage and marriage catechesis. Here the splendour of the marriage vocation, the meaning of marriage as covenant and as a sacrament, including love, consent, and the essential elements and properties of marriage, i.e. permanent, exclusive, unconditional love, life giving commitment that unites as a participation in the creative power of God and a human reality should be carefully elucidated to the couples. The most serious feature to be stressed is that despite the cultural values of family, clan and community involvement of marriage are of great importance. Accordingly, marriage is an interpersonal relationship of a man and a woman. The legal framework is also crucial for marriage; as such we have no other choice than to discuss canonical norms and customary laws of marriage.

It should be obvious that before this sitting is well treated, it is essential that the animators or the marriage team are at least familiar with the following teachings of the church: The attention teachings of the Second Vatican Council especially GS 47- 52; the guidelines of the Apostolic Exhortation *Familiaris Consortio*; the ecclesial norms (CIC, can. 1063-1072, 1983 CIC; CCEO, can. 783 1990 CCEO); the Catechism of the Catholic Church; The pontifical council's documents on marriage preparation and documents of the Charter of the Rights of the Family.

The sitting shall also see to it that different positions taken by various religions and confessions on marriage are thoroughly explained. At the same time marriage preparation courses should offer encouragement to couples entering into mixed-marriage and disparity of cult to respect the faith of the other partner. The marriage preparation team must ensure that each enjoy total freedom with regard to their beliefs and practices. The traditionalist should be made to understand the faith position of the catholic party⁷⁹⁰.

III. Third Sitting: Communication and Dialogue

SECAM observes, "The African loves dialogue and debate as a quest for arriving at lasting and constructive consensus. This is in view of safeguarding and restoring, if the case arises, the harmony, solidarity and communion, understanding and trusts in the family. Dialogue and debate are so much imperative in life lived together in society, in the same place, where people eat, drink, dance, educate, learn and initiate into the ancestral wisdom (proverbs,

⁷⁹⁰Cf. Diocese of San Diego, "Guidelines for marriage preparation", 5 Jan. 2000 Diocese of, *Guidelines for marriage preparation in the diocese of San Diego*, http://www.diocese-sdiego.org/Handbook/Handbook_PDFs/Marriage1.pdf (Accessed: 5 Jan. 2006).

sayings, maxims, tradition, genealogies, art and craft. The spirit of dialogue and discussion must prevail in the family. Lack of positive dialogue and communication in African society and families is only a contradiction of the best African tradition⁷⁹¹.

Communication is very important for the success of marriage. The lack of communication between couples can seriously affect the stability of marriage and family life. Experience shows that the secret of most successful marriages and families is the ability of good communication. For this reason couples must learn the skills in communication. Some of the powerful skills are clarity and unambiguous expressions and the ability to listen and pay attention to the other party. Through good, thorough utterances and listening, couples could understand each other, such that joys, desires, successes, frustrations, displeasures, irritations, fears, hope and love could be communicated and be understood. Through good communication, problems and diversities of opinion could constructively be solved. Moreover, couples must be taught the kind of languages to be used as they talk to each other.

There are various ways of communicating and settling dispute among the people. This programme must be able to feed them with conflict resolution and problem solving methods necessary to stand the breaking of the marriage. In fact, the main goal of this section should introduce the basic communication skills needed to form and maintain a good Christian marriage and family life. However, we must be aware that the skills are not answers to the problem that the couples will have in the future but they have something at hand to be of help to them in the future⁷⁹².

IV. Fourth Sitting: Natural family planning.

The diocesan policy must require that pre-marriage preparation include courses on NFP and prospective couples are obliged to avail themselves to it. Some dioceses and parishes which have started this sort of programmes require NFP before the celebration of marriage. For example, Norwich states: "Couples preparing for marriage should be introduced to Natural Family Planning (NFP). Workshops are held on a regular basis and ordinarily couples should

⁷⁹¹ Cf. SECAM, PL, 4.8.

⁷⁹² Cf. vgl. Hans Günter Gruber, „Grundlagen und Impulse einer verantwortlichen kirchlichen Ehevorbereitung“, in: *AKF Bericht* Nr. 36, Bonn 1999.: Ehevorbereitungskurse, in denen Paare ein angemessenes Gesprächs- und Konfliktlösungsverhalten erlernen und einüben, in denen sie über ihre Erwartungen und Partnerschaftsvorstellungen reflektieren oder sich über wichtige christliche Grundhaltungen gelingenden Ehelebens miteinander austauschen, können zwar keine Probleme lösen, die in der Ehe dieser Paare zukünftig auftreten werden. Aber sie können den Paaren Ehefertigkeiten, Beziehungswissen und Grundhaltungen mit auf den Weg geben, mit deren Hilfe sie ihre zukünftigen Probleme selbst besser werden meistern können.

be obliged to attend one series”⁷⁹³. The Denver Archdiocese requires “adequate instruction in NFP as part of all marriage preparation programs. Thus, as far as practical realities permit, a course on NFP should be a regular part of proximate marriage preparation”⁷⁹⁴. No diocese should not be an exception in this case.

We cannot say that there is population explosion in the diocese but the alarming rate at which young boys and girls are involved in unplanned pregnancies leaves much to be desired. One of the best ways to check unwanted pregnancies and *kpedevidzidzi* is not to result to condoms and other artificial methods of birth control since they are alien to our custom, but to regenerate the old custom of our traditional spacing method through extended lactation, i.e. a man must not touch his wife during the weaning period. Meanwhile the weaning period must not be an excuse for men to go in for other women.

To be exact, couples must be provided with the knowledge of using the natural rhythms of the body to promote the shared responsibility for spacing out childbearing. This is very important because most of our homes are crowded or over populated. The couples must learn to identify and appreciate the signs of fertility in their own bodies. The information should enable them to monitor the signs of the woman’s body during her menstrual periods to determine times of fertility and infertility. This will help them to achieve or postpone pregnancy without considering abortion, which is dangerous to the life or health of the woman, especially the crude way by which abortion⁷⁹⁵ is carried out in most of our communities and homes, which leave much to be desired.

However, in the courses, the animators must avoid repeating the mistakes of the 1970s and 1980s in which African family planning programmes used posters depicting ideal happy families as one with a smiling well-dressed couple and two happy children, boy and girl. In contrast was the picture of a couple with eight children, all of them in tattered clothes and looking miserable. These untruthful posters will only have a negative effect on their education because if one witnesses a couple losing two children to measles or malnutrition or fever, within four months, it is difficult in that village, if not impossible to persuade any young couple in that village not to have more children⁷⁹⁶. This should be obvious that such negative posters and slogans cannot deter population control in our society. Rather, the course should be able to help understand more traditional means in our culture for limiting family size.

⁷⁹³ Diocese of Norwich, Marriage preparation, 2006-2008, <http://www.ccfnsn.org/pdf/files/2006MP.pdf> (Accessed: 26. November 2008).

⁷⁹⁴ Denver Archdiocese, Particular Norms for Christian Marriage, loc. cit.

⁷⁹⁵ Ghana Bishops Speak, p.243: The Ghanaian bishops’ conference at the end of their annual meeting in Accra: July 7-14, 1994 issued a communiqué to bemoan the situation and prevailed on all people of good will to hard to save the situation. This is what they had to say: “Teenage pregnancy, as well as, abortion, is on the increase and many young women continue to die as a result. Many have their health permanently impaired; their chances of having happy marriages and producing children are considerably reduced, if not permanently destroyed”.

⁷⁹⁶ Cf. Dolphyne, The Emancipation of Women, pp.31-33.

Family-planning can be useful to our communities if there is a shift of emphasis from family size to the spacing of births in the first place to protect the health of the mother and of the child⁷⁹⁷.

We have already said that Africans abhor abortion at its highest apogee. The reason is that the traditional society is portrayed by love, protection and growth of life at all levels. Thus there are all sorts of taboos in our cultures and customs that aim at protecting and reinforcing life. In fact, every member of the family in Africa is expected to ensure the continuity and the flux of life that was received from the ancestors. This is an inalienable and sacred duty of every person. It entails modesty, dignity and restraint in the expression of sexuality, as well as self-control and tenderness in birth control. In effect, the traditional African society holds in horror, dismay, disgust, in aversion and contempt homosexual tendencies, as well as pornography, paedophilia and incest. Anything that hampers procreation is strongly rejected. Barrenness and sterility are considered in our society as hazard if not considered as a curse⁷⁹⁸. Infertility per se is not an impediment to marriage in the teaching of the Church, but must be discussed with openness and sincerity in marriage preparation courses since in the diocese or in our culture infertility and the desire to bear children can cause a great concern for the couple such as going to the unacceptable extreme of polygamy and divorce. The course should explain various reasons of barrenness and if possible the couple must be recommended to see a medical doctor if the need should arise.

In the same way African customs emphasised a keen sense of responsibility towards procreation but one must show respect and regard for any person who has not biologically given birth remembering that spiritual fruitfulness is equally important⁷⁹⁹. Marriage is not only geared towards procreation but also toward “the good of the spouses” (c.1055 § 1).

V. Fifth sitting: Practical and Domestic issues

The fifth sitting should concentrate on Practical and Domestic issues such as Parenthood, monogamy and polygamy, family of origin and extended family issues, finances, lifestyle, stepchildren, domestic violence and especially wife beating, equality, career, cooperation in house, early marriage adjustments, the problem of in-laws in marriage and any other relevant general views on marriage. It is no secret that the practical management of a household if ignored can warrant or leads to unnecessary family crises, and if unchecked can cause a total breakdown of marriages. For that matter, the help of a team of people competent in various

⁷⁹⁷ Dolphyne, *The Emancipation of Women*, p.32.

⁷⁹⁸ SECAM, PL, 4.4.1.

⁷⁹⁹ SECAM, PL 4.4.4.

practical, social and economical disciplines like budgeting, housekeeping, health and childcare could be more than useful⁸⁰⁰. If a marriage preparation team lacks those experts then provision should be made for their assistance in the sitting.

VI. Sixth Sitting: Review and Retreat

If it is possible the course should end with a weekend retreat for the couples beginning on Friday evening and conclude on Sunday after mass. But most importantly, the last section of the course should also be the time for reviewing the course, and finding out missing links in the whole process. The team must find out from the participants their feelings and reactions to the programme. Moreover, at the end of the course couples must assess their readiness to marry. They must also find out if the course is only one of the diocese's formalities or requirements for the celebration of marriage or if they have actually benefited from the programme.

It is to be recommended that FEP should be completed at least 8 weeks prior to the wedding day. This will give time to the couples to make final and last minute consultations or preparations. The celebration of the marriage should not only be thoroughly understood but must also actively be planned with the priest, the team and the traditional community especially if the marriage would be a synchronised form of Christian and customary rites.

2.4. A shortlist of pedagogical materials for animators or marriage Team

In the previous chapter a suggested marriage preparation programme for the Ho diocese was discussed. The main concern of this section is to discuss some instructional materials for the sittings. We do not pretend to say that it is exhaustive material for the programme; instead it is to serve as groundwork for the commission. Besides, the elements to be discussed under this section are a supplement to the discussion we already had on the institution of marriage in the earlier chapters.

2.4.1 Scripture and pre-marriage preparation course

In the FEP, we suggested that couples' biblical and theological understanding on marriage should be deepened. However, the question still remains, can we have a systematic teaching on marriage in the bible to help animators or the diocesan marriage commission to develop and teach theology of marriage? Molinski and other scholars have observed that it is not easy to derive a systematic theology on marriage from the scriptures. Even the most likely themes

⁸⁰⁰ Cf. Naidoo, The need for an obligatory, Graded preparation for marriage, in AFER, p.53.

appear in fragmentary forms with no distinct order. The problem is compounded with the fact that those seemingly themes came partly from varying times and different authors.⁸⁰¹ Given that what those scholars said are true to the fact, should we abandon the project of finding out some answers to the situation of marriage and family life particularly from scripture?

We may agree that the fragmentary may not be sufficient to give us the full and detailed exposition on the theology of marriage, but they can help us deduce and expound theology on marriage. These fragmentaries give us the guarantee that marriage is not only a natural reality but also in fact a business to the creator because Christian marriage is a mystery of salvation⁸⁰². In other words the scanty notes in the bible give us in no small way the clues that lead to the understanding and identifying marriage as natural reality that emanate from God⁸⁰³.

Therefore in FEP courses the animators have the responsibility and the task of grasping and expressing this reality of salvation and divine realities of marriage such that the divine nature of marriage is not relegated to the periphery but made the centre of the whole teaching on the nature of marriage. This means that the animators must be well vested in fragmentary teachings on marriage in the bible. We will now get few examples from the bible to support the discussion.

The Genesis account of the creation of man is one of the commonest and popular verses to help animators in the marriage preparation courses. The account insisted that marriage comes from the loving hand of God, who fashioned both male and female. Thus a man “leaves his father and mother and clings to his wife, and the two of them become one body”. The man recognises the woman as “bone of my bones and flesh of my flesh”. God blesses the man and woman and commands them to “be fertile and multiply” (Gen 1:28). This bible verses suggest that the Edenic institution of marriage means two would become one flesh joined and be fruitful in love⁸⁰⁴. They are bound to each other in a special covenant of love such that “this mystery between man and woman is so deep that the covenant between man and woman is, in the bible, the image and likeness of God’s covenant with man and the reproduction of his love, faithfulness and creative power. In this way, an almost inestimable value is given to marriage, and hostility between the sexes is excluded from the relationship”⁸⁰⁵. Man and woman in this realisation are called and joined into a union of steadfastness to each other and to the terms of the covenant: permanence within the bond of covenant, indissolubility of the

⁸⁰¹ Cf. Molinski, *Theologie der Ehe in der Gegenwart*, pp. 11-12. See also Örsy, *Marriage in canon law*, p.15.

⁸⁰² Örsy, *Christian marriage*, p. 314.

⁸⁰³ Cf. J. Neuner and J. Dupuis (eds.), *The Christian Faith in the Doctrinal Documents of the Catholic Church*, revised edition, Alba House, New York, 1981, p.523.

⁸⁰⁴ Cf. Teresa Tavormina, *Kindly Similitude: Marriage and Family in Piers Plowman*, D.S. Brewer, Cambridge, 1995, p. 154ff.

⁸⁰⁵ Walter Kasper, *Theology of Christian marriage*, p.26.

union, openness to tolerate and readiness to forgive one another⁸⁰⁶. Jesus reiterates these teachings from Genesis, saying, “But from the beginning of creation, ‘God made them male and female. For this reason a man shall leave his father and mother [and be joined to his wife], and the two shall become one flesh”. The precious gem in the verses imposed the proposition that man and woman are fully equal and with duties and rights. It also confirms the fact that the oppression of woman by man in marriage negates and undermines the true sense of marriage.

Another major teaching to be identified is the marriage controversy with the Pharisees about whether it is lawful for a man to divorce his wife in Mark 10:2-9. Jesus’ conclusion to the controversy is very paramount to us: “what God has joined together, let no man put asunder“. Here, Jesus reiterates the fact that marriage is indissoluble, permanent, exclusive and against unfair treatment of women in the scheme of marriage.

Animators can also refer to the marriage episode in Cana to bring out the theological and sacramental nature of marriage in the courses. They must insist that the wedding feast at Cana is actually the official announcement of the inception of the messianic Kingdom here on earth but the fact that this sign has taken place justifies the knowledge that Christ has indeed elevated the institution of marriage to a certain important level in the secular order. Therefore, we can say the presentation of the Canaan wedding is the first serious notice for us to understand marriage in theological terms⁸⁰⁷. We may therefore say that in the programme, it is important to remember that the priest and the team have the responsibility to bring out the divine and sacred character of the marriage union.

2.4.2 Understanding of marriage as covenant in *Ewe* Language

We have already discussed contract and covenant according to canon 1055. Our main concern here is how best to explain these terms in the Ewe concept so that the ordinary people and those who have no formal education can understand marriage as covenant.

To refresh our minds, the new code no longer considers marriage solely as a contract but as covenant. The legal term ‘contract’ invokes a binding relation that presumably deals with exchange of properties, goods and services that are of worldly character and perishable. The contract in this sense is initiated by people and determined by the people. The parties’ responsibilities are spelled out and the contract is valid and good for a certain period of time.

⁸⁰⁶ Cf. Patrick Chukwudezue Chibuko, *Igbo Christian Rite of Marriage*, Vol.119, Peter Lang, Frankfurt am Main, 1999, p.22.

⁸⁰⁷ Cf. Stephan E. Müller, „Eheliche Liebe im Wirkfeld der Gnade. Elemente einer Theologie der Ehe“, in: *Ist die Liebe noch zu retten? Brennpunkt Partnerschaft, Sexualität und Ehe*, Stephan E. Müller und Erwin Möde (Hrsg.), LIT Verlag, Münster 2004, p.168.

Valid marriage cannot be levelled on this type of secular contract which can be broken or abrogated any time any day on the wishful demand of either or both parties. Marriage is a covenant. It cannot be terminated on the level with a secular contract just like the example we gave above. No party is allowed to withdraw from a validly contracted marriage. Therefore, a marriage validly contracted “cannot be dissolved by any human power” (C.1141) except by the death of a spouse (cf. C.1707).

In our African context, specifically among the Ewe of Ghana, a covenant is the same as “*Dzonyinyi*” and “*Dzodudu*”. *Dzodudu* is a deathly agreement or pact between two individuals; and *Dzonyinyi* is between two villages⁸⁰⁸. There are some special rituals or sacred rites⁸⁰⁹ connected with them. According to the belief of the traditional folks the consequence of failing to fulfil one’s part of the pact would result in the death of the deviant. The parties to the pact cannot in anyway whatsoever revoke or call for its dissolution. The implication for inability to abrogate the pact is conceived on the analogy that as the body and soul cannot in any way be separated from each other save death, so do our forefathers perceive this sort of agreement.

It is binding until death of one party or both. The African bishops describe it in the following way: This sense of solidarity and community life is not always based on biological or blood relationships in Africa. We have cases in many societies where people, totally unrelated and, therefore, otherwise aliens to one another, become so closely knit together that the relationship between them is stronger than what exists between natural parents and their children. The reference here is to the institution of blood pacts. Two people exchange blood in some form. They may drink each other’s blood or mix it with their own. From that time on, they become blood-brothers or -sisters or -relatives. They will do anything for each other, including dying. They will never let down their blood-relative. Blood pacts may be between individuals but sometimes it is also between groups. The fidelity exhibited by the blood brothers is simply amazing. The blood pacts are the basis of another form of the family in Africa. Only this time the ties in that family are more binding than any other ties⁸¹⁰. We think that this type of analogy could bring the understanding of marriage as something that must last till death.

⁸⁰⁸ Cf. Obianim, Ewe Kɔnuwo, pp.79-81

⁸⁰⁹ The rituals are different from place to place but the commonest one is the exchange of blood. Each of the parties to the pact in *Dzonyinyi* brings a small amount of his/her blood for concoction to be prepared. Each party drinks a bit from the concoction (usually the mixture of the blood and spirited drink) to put the pact into action. Sometimes, the ritual is simply each party presenting a small from a cut from his/her body to other to lick.

⁸¹⁰ Cf. SECAM, The Church as family of God, nos.65-66, p.25.

2.4.3 Meaning of Love in *Eve* language

We have already with much difficulty attempted to say that love is focal and a pivotal point in the properties of marriage. Our attention will now be turned to the explanation of love in our Ghanaian context. Love may have different meanings in different cultures. For instance, the word for love in *Eve* is *lɔɔ*. This word has different meanings in Ewe. In the first context, according to Professor Dzobo, *lɔɔ* may mean love and in another situation, a ‘promise’, ‘agreement’ or mutual understanding, harmony or strong desire to lean on the other. According to this concept of love if both of you agree on the same issue then there will be no cause for dispute, fraud, duress and cheating and thus you will be said ‘to love one another.’ The verb form of *lɔɔ* is *lɔ* which means to ‘agree and faithfully observe the demands of the second party’⁸¹¹. The essence of love therefore is an agreement and mutual desire to seek the good and well being of the object of love.

Another meaning of *lɔɔ* that conveys the ontological truth of marriage understands the root verb *lo* meaning “to weave”, for example, a basket or “*Kente* cloth”. *Lɔɔ* in this context has the strong meaning of “weaving together” or “joining together” into one whole and the emphasis is on oneness in this concept of love. The “oneness” in canon law will mean “the unity” one of the essential properties of marriage. The understanding of *lɔɔ* conveys always the biblical notion of becoming one flesh. In this case, man and woman are no longer two but one in flesh. Each becomes the better half of the other. Love is then what binds husband and wife together into one flesh. One may argue that there are other relational values, for instance devotion, commitment, respect and honour that equally bind people together. However, we must add that without love these values have no utility for the human race. The above values are just the tentacles for the objects of love. Therefore, the husband who thinks ‘his wife is worth anything’ may simply not have understood the essence of love in marriage or may have only married on dubious grounds. A true love in marriage also means that the partners would have to seek the welfare of the other and each becomes the object of appreciation for the other. It must be said that the essence of the Ewe concept of love expresses in strong terms the welfare of the spouse, respect for one another worth as a human being, not as an object just to be used for one’s own satisfaction, but acceptance of him or her and the promotion and maintenance of a harmonious relationship with each other⁸¹².

We are aware that the inclusion of love in the definition of marriage may be judicially and scientifically absurd because it cannot be classified among the essential properties of marriage because what constitutes a valid marriage in canonical codification is not so much the finality of love but such items as consent, unity, ratification and consummation. The meaning most

⁸¹¹ Cf. N.K. Dzobo, *African Proverbs: The moral value of Ewe proverbs, Guide to conduct* Vol. II, Bureau of Ghana Languages, Accra, 1997, pp.72-73.

⁸¹² Dzobo, *African Proverbs* p.73; Randall Collins, *Sociology of Marriage and the Family. Gender, Love and Property*, Nelson-Hall, Chicago, 1987, p.99ff.

often associated with love is affective inclination⁸¹³. However, it is agreeable fact that a marriage bond is a moral entity formed by a mutual and irrevocably permanent commitment to seek the common good proper to marriage. This commitment must set the will to seek the good of another person, which must create the habit of love. In a sense, the capacity to love is a capacity of sharing with another person the goods of one's entire life and a readiness to share one's life in defence of the other. The viability of a valid marriage could only be grounded in love. A true marriage should always be thought of and be grounded on the mystery and bond of love. Above all, the value of marriage as a school of love and devotion must be reflected in the treatment of love as purpose of marriage just as important as procreation⁸¹⁴.

John Paul II's teaching on the Supremacy of love⁸¹⁵ reaffirmed that the primary concession to marriage journey is nothing else than the possibility of love as the consequence of a valid marriage. "Hence any definition of marriage, whether it is in terms of contract or covenant, must include the right to love, the promise to love, the pledge of one's undivided affection"⁸¹⁶. As a result, "love must always occupy a central role in Christian marriage"⁸¹⁷ because "right from the creation the texts of Genesis marriage has been looked upon as a unique love relationship between man and woman, more intimate than that between parent

⁸¹³ Cf. Ignatius Garmunt, *The Essence of Marriage*, p.375f. "L. Wrenn, „Refining the essence of Marriage,“ in CLSA Proceedings, 48 (1986), pp.21-24; Eder op. cit. p.43, insisted that love cannot be expressed juridical therefore cannot be included in the essential elements. "Gerade Liebe kann mit rechtlichen Kriterien nicht erfasst werden" (Der Begriff "foedus matrimoniale" in Ehe recht, p.43). Likewise Schöch states that „Dennoch bildet die Liebe kein wesentliches, zum gültigen Eingehen der Ehe notwendiges Element, obwohl das Konzil der ehelichen Liebe höchste Bedeutung für das Wohl der Eheleute, der Nachkommen, der Familie und der Gesellschaft zuschrieb. Weder im endgültigen Text noch in irgendeinem der Entwürfe oder Vorschläge der Väter findet sich die eheliche Liebe als für die Gültigkeit der Ehe erforderliches Wesenselement. Würde man annehmen, die Liebe wäre eine Wesenseigenschaft, welche die gleiche oder eine ähnliche juristische Bedeutung hat wie die Einheit und die Unauflöslichkeit, müsste man den minimalen Grad der Liebe definieren, den man wenigsten implizit beabsichtigen muss, um einen gültigen Ehekonsens abzugeben. Eine rechtliche Bestimmung des Grades der Liebe ist jedoch unmöglich. Deshalb widerspricht dieser Vorschlag dem wissenschaftlichen Ernst (Nikolaus Schöch, *Die kirchenrechtliche Interpretation der Grundprinzipien der christlichen Anthropologie als Voraussetzung für die eheprozessrechtliche Beurteilung der psychischen Ehekonsensunfähigkeit. Eine kanonistische Studie unter besonderer Berücksichtigung der päpstlichen Allokutionen und der Judikatur der Römischen Rota*, Peter Lang, Frankfurt am Maim 1999, p. 82).

⁸¹⁴ Lisa Sowle Cahill, "Commentary on *Familiaris Consortio* (Apostolic Exhortation on the Family)", in Kenneth R. Himes, et al. (ed.), *Modern Catholic Social Teaching: Commentary and Interpretations*, Georgetown University Press, Washington D.C 2005, p.378.

⁸¹⁵ John Paul II, Letter to Families, <<Address to the fourth world meeting of families in Manila, Philippines, 25 January, 2003. http://www.vatican.va/holy_father/john_paul_ii/speeches/2003/january/documents/hf_jp-ii_spe_20030125_family-manila_en.html>> (Accessed: 26.11.2007).

From this perspective, love becomes the foundation of marriage in the process of the irrevocable covenant between man and woman. This love is faithful and exclusive to both partners. Besides, this love must be a mutually respectful action, a genuine expression of love. Unlike what is so often portrayed by the various media today, marital love is not some erotic action, rooted in selfishness, fleeting pleasure or dominance. No, marital love is a sacred action which unites a couple with each other and God (HV. 9). See also Manfred Gerwing, „Nur die Liebe rettet, zum Brief des Papstes an die Familien. Dogmatische Reflexionen“, in: *Ist die Liebe noch zu retten? Brennpunkt Partnerschaft, Sexualität und Ehe*, p.117f.

⁸¹⁶ Palmer, *Christian Marriage: Contract or covenant?* p.646.

⁸¹⁷ John R. Connery, "the role of love in Christian marriage", in: *Marriage studies, reflections in canon law and theology vol. III*, ed. by Thomas Doyle, Canon Law society of America, Washington DC, 1985, p.203.

and child”⁸¹⁸. Marshall observes, “when we look at marriage in relation to Christianity, we realise that love must be the foundation of every Christian marriage. When our lord was asked which the greatest commandment is, he replied, ‘you shall love the lord the Lord your God with all your heart, and with all your soul, and with your entire mind... And a second is like it; you shall love your neighbour as yourself. (Mt.22: 37-39). No-one is more entitled to be called our neighbour than the man or woman with whom we plan to share our entire life; no-one is, therefore, more entitled to our love”⁸¹⁹. In the words of Leclerc, “to love is to give oneself; it is to find one’s happiness in bringing happiness to someone else; true love is to forget oneself”⁸²⁰. Similarly, in the words of Jean Guitton, while contemplating his suffering in a concentration camp, came to the conclusion that, “neither fervour nor ardour is love, that joy, serene and effective, which devotes itself to service, that interflows between persons”⁸²¹. Love is then the axis of marriage. In this love there is total giving of the partners. Here and then, we can say that marriage is nothing more than the community of love. In addition to the above, the love which the couple has for each other obliges them to give a consent, that is a free act of the will by which the couples commit themselves to each other by means of a covenant (cf.c.1057 §2).

2.4.4 Polygamy is opposed to unity in marriage

As already observed, one of the thorny pastoral problems for the Church in Ghana, for that matter Africa, is the active prevalence of polygamy. Practical experience shows that it is rather tough for many men to do away with the practice. Ankrah related beautifully an experience of a missionary in Ghana whose efforts to see to it that the faithful married properly in the Church backfired.

According to the story “an early missionary in Ghana was so determined to see his flock properly married in accordance with the laws of the Catholic Church that after taking them through a few lessons concerning the sacramentality of Catholic marriage, he tried to persuade them to do away with their second or third wives. Then he quickly presided over the Church weddings of the polygamous men, who gave him assurances that they were willing to send all but the first wives away. Having satisfied himself that the members of his flock had done what every practicing catholic was supposed to do, he moved on to other areas to continue his primary evangelisation. When he returned to the former places where he had initiated this evangelisation, he noticed that the previous wives who had been cast aside had

⁸¹⁸ *ibid.*

⁸¹⁹ John Marshall, *Preparing for Marriage*, Longman & Todd, London, 1972, p.15.

⁸²⁰ J. Leclerc, *Marriage a Great Sacrament*, Clonmore and Reynolds, Dublin 1953, p.58. See also Marshall, *Preparing for Marriage*, 1972, p.17.

⁸²¹ Jean Guitton, *Essay on Human Love*, Rockcliff Publishing Corporation, London 1951, p.28.

returned. Their former husbands had changed their minds and decided that there was no reason to dismiss their former wives since they had done no wrong. The first wives who had gone through the Church wedding were even happier to have their rivals back because they felt lonely in their absence and now the household chores and other responsibilities could be reassigned equitably”⁸²². In spite of the great amount of critique the story might have generated for pastoral care and catholic teaching on marriage, many people in Africa still regard polygamy as a useful cultural heritage and as a landmark of the culture. The behaviour of the flock described in the story also suggests the old mentality of the culture that after all polygamy is not against the core teaching of the gospel, rather it is only considered opposite to European traditional cultural value.

Still putting it in another way, the research into human social nature reveals that there is perpetual witness of history of polygamy and other forms of arrangements between one man and several women tolerable in many communities and customs. Some people believe that the consequence of society to forbid such unions result in fornicatory and adulterous relationships. This attitude is not only limited to African societies but observable in almost every society including also the present Western civilisation⁸²³. This seems to vindicate the idea that the “male of the human species is biologically by nature polygamous in opposition to monogamy. In addition to this claim it is suggested that morality ought to reflect this fact of the human male’s biological nature or at least not to condemn his sexual interest in other women apart from his marriage partner⁸²⁴. It is believed that a man only estranges himself if he desires to be monogamous.

Though this pattern of behaviour cannot be denied in men we can as well adequately explain it by having recourse to environmental forces, as differentiated from psychological needs, impinging on the person. We can also affirm that the desire of man to court other women does not necessarily imply that it is to marry them; thus is not a tendency to polygamy, since in reality man does not wish to marry more than one woman. Man might perhaps simply be interested in transitory conquests as the case may be to enhance his self-esteem, which he developed from the concept of masculinity as a social ideal. Again, he might use the situation as ammunition against the feelings of inferiority experienced by the individual in general which man can easily master successfully in the area of sex⁸²⁵.

In this context one may ask, is polygamy really and actually opposed to the purpose of marriage? According to Pospishil, “polygyny (*polygamy*) would not be against the important purpose of marriage, called sometimes primary, the procreation and raising of children, and

⁸²² Ankrah, How Africans marry in the Church, p.21.

⁸²³ Cf. Pospishil, Eastern Catholic Marriage Law, 189.

⁸²⁴ Cf. Pospishil, Eastern Catholic Marriage Law, 189-190.

⁸²⁵ Cf. Pospishil, Eastern Catholic Marriage Law, 190.

could be therefore allowed by God in the Old Testament. It is, however, opposed to the ideal marriage described in Genesis, and to the nature of man/woman as perceived by psychological insight”⁸²⁶. *Unity as* essential property of marriage means that marriage could only be between one man and one woman is opposed to bigamy, polygamy and all other forms of marriage contrary to monogamy. This implies that a perfect psychological unity in marriage can only be achieved if one man is joined to one woman in marriage at the same time. Similarly, our discussion on African monogamy clearly tells us that true marriage has always involved two persons and not one man with a plurality of partners as in polygamy⁸²⁷. Polygamy in its form necessarily negates the total self-giving, which is essential to marriage⁸²⁸ and has never fulfilled the deepest yearnings of humankind since the dawn of history⁸²⁹.

Although FEP needs to promote the interests, traditions and customs of the people in the diocese, it is equally important to ensure that prospective couples understand the basic truth that “the unity in marriage is opposed by polygamy”⁸³⁰. We have enumerated in chapter two above that polygamy fulfils certain functions within a home in Africa. On account of this polygamy might sometimes be justified as an emergency measure; however it is always deficient in that it does not satisfy the true human needs of man and woman because a truly human relationship between man and woman is possible in monogamy⁸³¹. We think that this theme is very important because there are some Christians in Ghana who want to enjoy the benefits of polygamy and their religious privileges simultaneously, may marry one woman properly according to laws of the church then later marry other women in the customary way⁸³². This attitude seems to confirm the classical rhetoric of Oppong that in Africa “all unions are potentially polygamous”⁸³³. However, as far as the Catholic Church is concerned, this claim is not acceptable. Those who enter catholic marriage must not consider the marriage to be potentially polygamous. A crisis in the domestic unit may seem to negate the binding force of monogamy; however, couples must understand that the Church still prohibits divorce and polygamy.

2.4.5. The Vocation of marriage: The forgotten gem in marital law

⁸²⁶ Pospishil, *Eastern Catholic Marriage Law*, 189. The word in italic is mine.

⁸²⁷ Cf. Doyle, *marriage*, p.742.

⁸²⁸ *Ibid.*

⁸²⁹ Cf. Pospishil, *Eastern Catholic Marriage Law*, p.189.

⁸³⁰ *Ibid.*

⁸³¹ Cf. Pospishil, *Eastern Catholic Marriage Law*, p.192. See also René König, “Zur Geschichte der Monogamie”, in: R. Kurzrock (hrsg.), *Die Institution der Ehe*, Colloquium Verlag, Berlin 1979, 9ff.

⁸³² Cf. John Kuadu & Yao Chachah, *Ghana: understanding the people and their culture*, p.65.

⁸³³ Christine Oppong, *Middle Class African marriage*, p.31.

One of the topics, which we also deem to be relevant to the courses of FEP, is the vocationality of marriage. Often in the mass during the general intercessions, we hear prayers for an increase in priestly and religious vocations. A particular Sunday⁸³⁴ in the Church's liturgical calendar is also devoted to prayer for vocations. It is a "must" for the bishop of a diocese "in a very special way to foster vocations to the various ministries and to the consecrated life, having a special care for priestly and missionary vocations" (c.385). Again, in canon 233 §1, "it is the duty of the whole Christian community to foster vocations so that the needs of the sacred ministry are sufficiently met in the entire Church. In particular, this duty binds Christian families, educators and, in a special way, priests, especially parish priests. Diocesan Bishops, are obliged to show the greatest concern to promote vocations, are to instruct the people entrusted to them on the importance of the sacred ministry and the need for ministers in the Church. They are to encourage and support initiatives to promote vocations, especially movements established for this purpose".

Unfortunately, the canons on marriage laws did not say anything specific about marriage as a vocation. This is not strange because the Church has frequently tended to reserve the honour of vocation to priests and religious, failing to actively integrate professional life, marriage and family, and politics into the fundamental "calling", to co-operate with God's activity in the world, and with his loving intention to perfect all men and women in his image and likeness⁸³⁵. What becomes of the church if the vocation to marriage were considered a trivial issue? Then the future of the Church is in danger because it is through marriages that other vocations can be possible.

Cardinal Law explains the position in this way: "It concerns the fact that Christian marriages ground the well-being of the whole Church. Marriage of course establishes a community of persons: the family. When sound instruction on Christian marriage and proper esteem for conjugal love no longer inform a society, then the other vocations in the Church suffer a decline in their spiritual vigour and, consequently, also in their numbers. In other words, in order that the Church might daily manifest herself through many different human expressions of God's own love, the whole ecclesial community depends on Christian marriage"⁸³⁶. He further observes that: "The Church cannot exist without ordained priests, without men and women who follow Christ in institutes of consecrated life, or without married persons"⁸³⁷.

⁸³⁴ The third Sunday after Easter is normally considered the vocation Sunday.

⁸³⁵ Cf. Bernard Häring, *Free and Faithful in Christ, Moral Theology for Priests and laity*, Vol.3, St. Paul publications, Middlegreen, 1981, p.153. *Humanae Vitae* no. 27 also believed that there are other vocations apart from priestly and religious vocations. The exhortation observes: "Likewise we hold in the highest esteem those doctors and members of the nursing profession who, in the exercise of their calling, endeavour to fulfil the demands of their Christian vocation before any merely human interest".

⁸³⁶ Law, *Christian Marriage*, loc. cit.

⁸³⁷ *Ibid.*

However, did the canons on marriage show any importance to it as true vocation in the Church?

The section on marriage in the new code did not explicitly treat the vocation of marriage; anyhow, we could still see the traces of it in the opening canons on marriage and from other sources in the code. There is no direct evidence somehow, but canon 226 §1 sees marriage as a particular vocation to be exercised by the couples⁸³⁸. Married couples are bound in a way by a special obligation in accordance with their own vocation to strive for the building up of the people of God through their marriage and family. This point to Paul VI's exhortation: "In humble obedience then to her voice, let Christian husbands and wives be mindful of their vocation to the Christian life, a vocation which, deriving from their baptism, has been confirmed anew and made more explicit by the sacrament of matrimony. For by this sacrament they are *strengthened* and, one might almost say, *consecrated* to the faithful fulfilment of their duties, to realising to the full their vocation, and to bearing witness, as becomes them, to Christ before the world"⁸³⁹. The Holy Father explained further that: "Among the fruits that ripen if the law of God be resolutely obeyed the most precious is certainly this that married couples themselves will often desire to share with others their own experience. Thus it comes about that in the fullness of the lay vocation will be included a novel and outstanding form of the apostolate by which, like ministering to like, married couples themselves by the leadership they offer will become apostles to other married couples. And surely among all the forms of the Christian apostolate it is hard to think of one more opportune for the present time"⁸⁴⁰.

Still we could ask, what relevance has a vocation for marriage and for that matter preparation for marriage? Vocation in a theological sense will mean a call or an invitation given by God to the Christian life or to some particular service or state of life. All Christian vocations including marriage are rooted in the basic vocation received in baptism. Marriage couples are therefore called to share and live out in a unique way the various elements of the baptismal call: sharing in the prophetic, priestly and kingly mission of Christ, the lifesaver and the backbone of the marital union⁸⁴¹.

As such, "marriage should be considered truly a vocation based on the fundamental calling of each Christian to holiness, a vocation for the building up of the mystical body and for the

⁸³⁸ For instance, canon 226 mentioned "those who are married are bound by the special obligation, in accordance with their own vocation, to strive for the building up of the people of God through their marriage and family. Again, according to canon 387, "the diocesan bishop is to seek in every way to promote the holiness of Christ's faithful according to the proper vocation of each.

⁸³⁹ *Humanae Vitae*, no.25.

⁸⁴⁰ *Humanae Vitae*, no.27; Decree on the Apostolate of the Laity *Apostolicam Actuositatem*, n. 11, AAS 58 (1966), pp.874-849.

⁸⁴¹ Cf. William P. Roberts, *Encounter with Christ – Introduction to the sacraments*, Paulist Press, New York, Mahwah, 1985, p.226.

good of society”⁸⁴². This call to holiness of life validates the growing dominion of a self-sacrificing love which enables the spouses through faith to share in the Trinitarian life by sacramental incorporation in Christ within the Church, unites and assimilates them to him in repudiating things unbecoming of their state, and enabling the couples both to worship the Father and serve others in the power of the Spirit in concrete fidelity to their marital vocation on earth⁸⁴³. The couples through their vocation are invited to have a real share in the activities of salvation and in the Church. This is affected, first and foremost, through the sacramental incorporation by “baptism” (cf. C.1055 §2) and confirmation (cf. C.1065 §2) into Christ himself, the one mediator. This incorporation must touch the very being of the couples so that they become ambassadors to other new couples, preparing and instructing them to understand the wonderful effects of marriage.

Couples are to be good leaders and ambassadors not only in the Church but also in the secular environment, because this is a responsibility flowing from their celebration of the sacrament of matrimony, from being a domestic church, and from the marital mission, which is theirs as the primary cells of society⁸⁴⁴.

The marriage call also obliges the couples to exercise the primary role in the all round formation of their children. They must not consider the formation in the first place as a natural obligation and duty binding upon them but see it as fulfilling their marriage call in which they create in the home an atmosphere of faith, trust and love. Consequently, the trust and loving faith created within the home will then provide the inner security needed to reach out, out to build wholesome, faith filled relationships beyond the threshold of the household to the complete society⁸⁴⁵. As a result, “the spouses are called to be, for each other and their children, a true image of God’s love, fidelity, reconciling compassion and patience. Marriage is not just for procreation but for that kind of responsible and loving parenthood that points to the parenthood of God”⁸⁴⁶. This becomes a God given right that must be defended always. On this account, marriage “becomes a juridical competence on account of the sacramental reality contained in it, by which it becomes a special vocation within the Church: the specific path of sanctification of the majority of the faithful”⁸⁴⁷. So, the success of marriage life depends on how serious marriage is taken to be a vocation. Couples preparing for marriage have to be aware that marital relation is a special vocation that encourages right and duties proper to a marriage state.

⁸⁴² Häring, op. Cit., p.154.

⁸⁴³ Cf. Alfred Hughes, “The spiritual Accompaniment of Seminarians: Vocational Discernment and Growth in the life of the Theological virtues”, *Seminarium*, Nova Series: Anno XXXIX-N. 4, Oct-Dec 1999, p.515.

⁸⁴⁴ Cf. Second Vatican Council, decr. *Apostolicam Actuositatem*, 18 November 1965, n.1.1

http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651118_apostolicam-actuositatem_en.html (Accessed: 18 Novemeber 2005.)

⁸⁴⁵ Roberts, *Encounter with Christ*, p.227.

⁸⁴⁶ Häring, op. cit. p.153.

⁸⁴⁷ Joseph T. Martin De Agar, *Handbook on canon Law*, Midwest Theological Forum, Chicago, Illinois, 1996, p.155.

2.4.6. Women and Widowhood rites

We have already noted that despite the air of change blowing in our society concerning the position of women, there is more to be done to liberate them from oppressive mechanisms laid down by the culture. This mistreatment of women sometimes blocks women from self-development and excludes them from participation in true marital life and in society because they do not have certain rights that the men take for granted⁸⁴⁸. There are forms of oppression, for example wife-beating, etc which must at all cost, be treated in the FEP. However, at present, we will only briefly touch on widowhood rites.

As we have already seen in this study there is a kind of imbalance in the performance of widowhood rites in the Ghanaian society. The men enjoy more freedom in the performing of the rite than women. If a man refuses to perform the rite there is no public outcry, but if a woman refuses she is blended with all sorts of taunting and considered as having a hand in the death of her husband. Marriage is based on equality, therefore, we will suggest an equal duration for the rite. Also, subjecting women to those sufferings mentioned in this work should be modified such that the rite looks more of a symbol than the means of dehumanising women in the process. “In this connection, as SECAM insists, we must mention the distortion that has crept into some otherwise meaningful widowhood rites that women are forced to perform in some African societies. It is true that in most cases the women themselves feel compelled to undergo the rites in order to get rid of the spirit of their deceased husbands”⁸⁴⁹. Therefore in the sittings serious attention should be paid to it.

Besides, the reality of humiliation suffered by many widows and women in our homes should urge the commission on marriage preparation to make decisions that will help a woman’s standard of living and for her to come to terms with herself as a being having equal opportunities in education, employment and salary, and have a share and access to the property she jointly acquired with her husband before becoming a widow, or divorcee. Therefore the topics to be treated should work perseveringly towards the fight to abrogate laws that discriminate against women, laws and customs that enslave women, and rituals of widowhood that contradict the human dignity of the woman⁸⁵⁰.

⁸⁴⁸ Cf. Seán Ruth, *Leadership and Liberation: A Psychological Approach*, Routledge, London and New York, 2006, pp.116-117. See also Mullaly B. *Challenging Oppression: A Critical Social Work Approach*, Oxford University Press, Ontario, 2002, p.28.

⁸⁴⁹ SECAM, *The Church as family of God*, Inst. Lab., no.89.

⁸⁵⁰ Umorem, *Enculturation and Inculturation*, loc. cit.

The reasons behind the rite should be clearly explained to the participants making references to the scriptures about the obligation to take care of widows. Moreover, the mourning period should be used as the period of praying for the departed wife or husband. As the custom demands, this is also a time for doing good works rather than merry-making. The traditional belief is that if shortly after the death one begins to enjoy life, the foregone conclusion is that the woman did not love her husband or feel the absence of her husband. Moreover, some communities will draw the conclusion that the wife has a hand in the death of her husband.

Performing of the rite should not also compel the victim to sit in the house always or break with her normal economic activities. She may carry on with her activities such as farming, and selling, among others. The only difference is that this should be done in such a way that the society would be convinced one is in a mourning period. As said earlier, the official mourning period should not be discriminatory against women. The duration should be short and equal to all. In our tradition, matters concerning death remain mystical, which even enlightened Christians and the educated are uncertain about⁸⁵¹, and in response the courses must also try to explain the meaning of death to the couples.

3. The celebration of the marriage: Customary marriage and Canonical marriages

In the previous chapter, we have made efforts to look at ways in which marriage preparation courses could be effectively organised in the Ho diocese. In this chapter we shall try to make the case for the recognition of African traditional marriage and examine how best to synchronise customary and Christian marriages such that the celebration of marriage in the diocese does not seem to be two separate unrelated celebrations. The percentage of Catholics who avail themselves for the canonical form of marriage is very low and it is a matter of great concern for the diocese. As a matter of fact, a critical look at the African life reveals that Africans are living in two worlds as far as Christianity is concerned. The problem is that the Christian ideal of the family has seemingly failed to become the lived experience of most married couples, who see no vital link between the traditional African family pattern and the Christian ideal proposed to them⁸⁵². However, some dioceses in Africa resolve to do just that but the point remains that in Africa the Church has not in any critical way been able to raise the traditional African marriage into Church marriage. What actually takes place in Africa can be described as a reality of customary marriage to which a subsequent church marriage or blessing, as it is actually called, is added as a trimming, for the purpose of solemnity. The situation remains so because most Catholic faithful in Africa, on the other hand, feel no need of, and are often in no hurry for a church marriage since customary marriage in their mind is a

⁸⁵¹ Cf. Abotchie, *Social Control in Traditional Southern Eweland of Ghana*, p. 104.

⁸⁵² Cf. Peter Poreku Dery, *Christian and Customary Marriage in Ghana*, in AFER, p.38.

real marriage which appeals to their values. The ceremony in the Church is seen not as a celebration of marriage, but rather as a condition for the reception of the sacraments, a demand imposed by those who themselves do not marry⁸⁵³.

The dream of the Church in Ghana supposedly is to resolve this dilemma to Christianise the African family and to Africanise the Christian ideal of the family. Unfortunately this seems to be meeting no success even after more than 100 years of the evangelisation.

3.1 The glamour of customary marriage

It is a pity that customary marriage and its celebration are reduced to a western type of engagement in Ghana. To set the records straight the celebration of a customary marriage, which has been reduced or termed engagement in African societies in terms of categorisation, is real and complete a marriage between two consenting adults of the opposite sex which is just as valid as any other marriage in different cultures and countries. An engagement is a promise or intention to marriage according to canon 1062 CIC. This promise to marry does not give rise to an action to seek the celebration of marriage or an action for the reparation of damages (c.1062 §2). Customary on the other hand is not an intention to marry but true marriage in itself. As already seen in the marriage rites of the Fodome traditional area, engagement could only be deemed in terms of *Ufofo* (knocking), i.e. if a delegation of the prospective groom family goes officially to the girl's parents at dawn with drinks suggesting to them that their son is interested in their daughter to marry her as his wife. This is engagement in the sense of the word. However, as soon as marriage rites are performed according to the laid down norms of the culture, true marriage exists. The consideration of a "second" marriage in the Church is actually redundant in the eyes of the African. To avoid misconception of customary marriage and the consequent redundancy of the marriage being celebrated twice, a possible synchronism must be accepted. This means that customary marriage and canonical marriage must be fused together.

The common practice now in Ghana regarding marriage is that during the customary marriage rites the parish priest or a priest is invited to participate and give his blessing to the so called engagement ring and bible, which are in the first place alien to traditional marriage. If the priest can bless a ring and bless the spouse at the function, then do we have any more problem allowing the priest officially, with prior canonical preparation, to accept the marriage as a valid marriage in the eye of the Church and therefore allowing the spouse to participate in the sacramental life of the Church? We are not against the Church's praxis of canonically celebrating of marriage in the Church; for that matter it should be wiped out from the

⁸⁵³ Cf. Ibid.

liturgical books in Ghana. However, according to our cultural situation and the beauty of the customary marriage, the celebration of marriage in Ghana should be a single act.

In the 1980 synod of bishops, the Ghanaian bishops presented certain pastoral solutions to the perennial dichotomy between customary and Christian marriages. They have suggested that the Church should “recognise and Christianise” the celebration of “*monogamous* traditional and customary marriage”. What they meant is that customary and Christian marriage should be synchronised. According to them the consent in traditional marriage should be given before a priest or some Catholic elders. The blessing could later be given at the mass. They also suggest that a programme of catechesis be prepared for the formation of married people. Again, marriage counselling and Christian Family Spirituality programmes must be introduced everywhere. African theologians must undertake more seriously an in-depth research into the true nature of traditional or customary marriage with the aim of coming up with some theologically sound solutions, especially for the questions of the African concept of children as essential to the marriage, and the practice of matrilineal inheritance, in certain African societies⁸⁵⁴.

The most forceful suggestion according to our opinion is the amnesty that should be given at certain times. They proposed that those who live in “*monogamous*” customary or traditional marriage situations be permitted to receive the sacraments at the celebration of major feasts of the Church (Christmas, Easter, Pentecost, etc)⁸⁵⁵. In spite of this welcoming and acceptable environment on customary marriage presented at the synod, the bishops sitting in Yaoundé assembly instead of making the case further for promoting the right and legality of monogamous customary marriage couples to the sacraments reverted to the same old ideological biased policy on traditional marriage in Africa. This contradiction between calling for permission to receive the sacraments and insisting later that “couples who have been married only according to customary law are not to be admitted to the sacraments until they have regularised their situation”⁸⁵⁶, in our opinion, lose touch with the real world of culture and customary marriage in Africa. Critics may ask the question, if monogamous customary marriage should have no problem, then what prevents the couple from sacramentalising the marriage in the Church? We can answer those critics in this way: what prevents the church also to accept monogamous traditional customary marriage as a true marriage therefore allowing the couple to participate in the sacramental life of the Church?

In the final analyses, according to our opinion couples who have married according to traditional customs have no reason to be refused the sacraments, if they understand marriage in the light of the Christian principles and would live according to it demands. Moreover,

⁸⁵⁴ Dery, Christian and Customary Marriage in Ghana, p.38f.

⁸⁵⁵ Dery, Christian and Customary Marriage in Ghana, p.39.

⁸⁵⁶ SECAM, Recommendations and conclusions, p.375.

according to the traditions of the tribes in Ghana no church marriage is valid unless it is valid according to the norms laid down by the society. This inevitably leads to a dichotomy in marriage celebrations and reduces the Church celebration to a mere and often formalistic blessing. To have a successful marriage we have to take Church marriage out of its isolation and put it in touch with the people's lives, i.e. culture. Our preparation for marriage should not be limited to preparation for its celebration in the church but to be blended with the tradition and culture of the said people⁸⁵⁷. As a pastoral solution to dichotomy between customary and Christian marriages, this last chapter will come out with a suggested synchronised celebration of marriage for Ho diocese.

3.2 Benedict XVI and African Traditional marriage

With reference to traditional marriage in African societies Benedict XVI has presented a front, which is of great concern to us. It is regrettable what Benedict XVI has said, "For the Christian, traditional forms of marriage can never be a substitute for sacramental marriage"⁸⁵⁸. The logical conclusion to be drawn from this response to the Ghanaian bishops on marriage is either the statement is not properly formulated, the Pope might be thinking of polygamy or he did not actually grasp the situation of customary marriage which may offer him grounds to disagree with the Christianisation of the African marriage and the Africanisation of the Christian ideal of the family. If the Pope was talking about the problem of polygamy, then we have to make it clear that neither the bishops nor the African theologians nor canonists ever opted that polygamy should be raised to sacramental marriage.

The main agitation of Africans or what we are clamouring for is the fact that in the era of enculturation the "Church should recognise and Christianise the monogamous traditional marriage, i.e., the two (customary and Christian marriages) should be synchronised"⁸⁵⁹. Pope John Paul II speaking on marriage to the African families in Kinshasa, 3 May 1980 said, 'African traditions, judiciously utilised, can have their place in the building up of Christian homes in Africa'. The logic is very clear. It is a duty and right for the local churches in Africa to ensure that marriage and family life within the African region are 'authentically Christian and authentically African'⁸⁶⁰. The Pope reiterated the importance of people's culture in his visit to Ghana: "I therefore say to Ghana and all Africa: Preserve your culture. Let it become enriched through exchange with other cultures, but do not let your culture die. Keep it alive,

⁸⁵⁷ Cf. Gabriel Zubeir Wako, "The Marriage rite in Africa", in AFER, pp.57-58.

⁸⁵⁸ Benedict XVI address to bishops of Ghana at conclusion of their quinquennial visit to Rome, 24 April 2006. http://www.vatican.va/holy_father/Benedict_xvi/speeches/2006/april/documents/hf_ben-xvi_spe_20060424_ghana_en.html. Accessed: 27.05.2006.

⁸⁵⁹ Dery, Christian and Customary Marriage in Ghana, p.39.

⁸⁶⁰ Cf. John Paul II, Apostolic Visit to Kinshasa, Zaire, AAS LXXII (1980), p.430ff.

and offer it as your contribution to the world community”⁸⁶¹ This is exactly what Africa is striving to do. Therefore, it is by no means substituting sacramental marriage by traditional African marriage, as Benedict XVI seemed to postulate in his responsorial speech.

What we are striving for in Africa is that traditional marriage be given the free hand to integrate sacramentality into its domain. Just as the intervention of one of the African synod fathers in 1980 bishops synod states “it is a beneficial revolution to see traditional marriage recognised as a sacrament”⁸⁶². The synchronisation is very much important if we are to have a meaningful understanding of sacramental marriage in the context of African culture. Christian marriage, as it were, must have ultimate and universal validity⁸⁶³. This means that it is unprecedented to understand Christian marriage as the womb of western culture and its spiritual attitudes⁸⁶⁴. As Kasper insists the universal validity of Christian marriage “means however that it is not possible to make any one particular historical or cultural reality of marriage absolute. Christianity has rather to remain open to all cultures and to all historical change”⁸⁶⁵. In the same way Cahill advocates that “local family customs must not be negated, but can be remodelled in the light of the gospel by the Christian subjects themselves who live within them”⁸⁶⁶. It is also a situational fact that we cannot divorce the traditional form of marriage from the human person whether Christian or not. The Christian marriage can seek to purify those practices which are contrary to it but cannot totally separate all aspects of the traditional marriage from the sacramental. That will be suicidal to African customary marriage. This is important because as Cardinal Rugambwa said, “cultural traditions concerning marriage and family life constitute one of the most important aspects of any culture, especially in Africa. Customs and traditions concerning the choice of life-partners, manner of contracting marriage, conditions of married life, patterns of family life, are deeply embedded in the traditions of the tribes. These customs and traditions continue to be observed, even in the new African nations. It can be observed in almost all independent African countries that civil marriage legislation (*and church marriages*) remains a ‘dead letter’, except for a small ‘emancipated’ minority. The large majority still live within the traditions of customary marriage and family life”⁸⁶⁷.

Moreover, bishop Bouchard observes that many things concerning marriage and family are not the same in Africa as in Europe or America. There is no doubt that “we have the same evangelical ideal to propose, but the cultural context in which this ideal has to take root and

⁸⁶¹ John Paul II, Apostolic Visit to Accra, Ghana, AAS LXXII (1980), p.504.

⁸⁶² Sarah, Polygamy, p.99

⁸⁶³ Cf. Kasper, *theology of marriage*, p.7

⁸⁶⁴ Helmut Schelsky, *Soziologie der Sexualität. Über die Beziehungen zwischen Geschlecht, Moral und Gesellschaft*, Rowohlt Verl., Hamburg, 1955, p.34.

⁸⁶⁵ Kasper, *Theology of marriage*, p.7

⁸⁶⁶ Cahill, *Commentary on Familiaris Consortio*, p.380.

⁸⁶⁷ Laurean Rugambwa, *The responsibility of the local churches*, AFER, p.28. The phrase in italics is mine.

blossom is radically different... In any case, it would be a pity if evangelisation, which should be liberation, should contribute to the destruction of authentic human values, which are good, even if they need to be enlightened by the gospel. It is a pity – and we have to admit this – that we have got to the stage of having two or even three marriages side by side in Africa; on the one side, the human reality, which is the true marriage; on the other, a civil or religious.... We are sure that the sacrament of marriage is no other reality than human marriage prepared and lived in a constant conversion to Christ, following a certain progression and certain aspects that can be defined by the Episcopal conferences”⁸⁶⁸. These statements have pointed out that the concept of African customary marriage is part of this universal validity.

Having put the statement of Benedict XVI in its rightful perspective we can now realise that Christianising, or more specifically, synchronising traditional marriage is very relevant. The situation on the ground is that people of Ghana contract marriage according to their traditional or customary law, normally in every case prior to any civil or Christian rite of marriage. Besides, from the time of their traditional marriage, even the die hard Catholics consider themselves to be properly married. However, as we have remarked above, in the eye of the Church they are not married and cannot receive the Eucharist and other sacraments. If it takes place at all, the Church marriage is often celebrated years after the traditional marriage and this rite loses its meaning for the couple, and many Catholics consider that a Church marriage contributes little, if anything, in itself to the married state. At best it regularises a couple’s position before the priest and thus provides access to the Eucharist. As a matter of urgency, it is essential to combine the Christian rite and traditional marriage in order to dissolve the dichotomy, which continues to exist between traditional marriage of Christians and the Church marriages. It is obvious that the genuine values of African culture have to be integrated in the marriage ceremony, if we wish to make Christian marriage incarnate in African culture⁸⁶⁹.

3.3 Canonical Form and Traditional marriage

According to canon 1108 valid marriage must observe the canonical form. This means for marriage to be valid it must take place in the presence of one Church’s official witness and two other witnesses. According, to can. 1112 lay people can also act as official witnesses but with permission and a condition. The condition is given as being lack of priest and deacons.

We may ask, is canonical form a witnessing to marriage, a problem in Africa traditional marriage? In relation to the question, it appears to us that some scholars fail to grasp the marriage procedure in Africa. Urrutia suggests that canonical form has been frequently

⁸⁶⁸ Cf. Jean-Claude Bouchard, « Culture and Collegiality », in AFER, p.31f

⁸⁶⁹ Cf. Henry Karlen, “Canonical form and traditional marriage”, in AFER, p. 59.

blamed for the painful and altogether unacceptable situation whereby the majority of Catholic couples in Africa are deprived of the sacraments because they satisfy themselves with the customary traditional celebrations without the canonical form. If canonical form cannot be blamed for the situation and in addition, if the suppression of the canonical form would not by itself solve the pastoral problems involved, then where lays the problem?⁸⁷⁰

Urrutia listed few things that need to be reacted to. According to Urrutia Canonical form cannot be said to be the actual reason for the abnormal situation⁸⁷¹. We are not too sure what he meant by abnormal situation, whether traditional marriage in Africa is an abnormal situation or the type of situation he is talking about.

However, he mentioned the fact that the religious ceremony, which is usually accompanied by heavy expenses in clothes, cars, and guests, and celebrations, may well be above the actual possibilities of many families. Furthermore, the exaggerated demands for the bride-wealth might also lead to financial trouble, particularly when, contrary to tradition, the parents let the young boy himself take care of it. He believes such actions may give no alternative to the boy who has just begun payment, than to start cohabitation without any further ceremony, much less the religious ceremony. He also touches on the probability that the heavy significance of the religious ceremony might scare people to elevate their marriage sacramentally. Moreover, if they are carried away by the widespread way of thinking and the frequent practice that they should ascertain their own fertility in the first place, or that they have to give proof of their compatibility and good character before they really settle down for a lifetime marriage, the religious ceremony, with its heavy meaning, is very likely to be postponed indefinitely. He also mentioned disappointedly that in view of the fact that many young couples may not have received an adequate religious formation, the idea that Christian marriage is indissoluble may have also scared them away from the canonical form⁸⁷².

Coupled with the above, he seems to say that the matter becomes more complicated with the fact that family heads and elders themselves wish more or less openly to allow for the possibility of a separation and a different marriage if things do not turn out as well as they may have desired⁸⁷³.

Unfortunately, some of the points raised by Urrutia to battle home why Africans seem to have a problem with the canonical form do not speak or correspond to the African mind and ideas about the canonical form or African inability to welcome the canonical form or raise their marriage sacramentally. We are aware that he draws such puzzling conclusions from

⁸⁷⁰ Urrutia, *The challenges of canonical Doctrine on marriage Arising from Africa*, pp. 18-19.

⁸⁷¹ Urrutia, *The challenges of canonical Doctrine on marriage Arising from Africa*, p. 19.

⁸⁷² Urrutia, *The challenges of canonical Doctrine on marriage Arising from Africa*, 19

⁸⁷³ *Ibid.*

deliberations of SECAM on the topic in Yaoundé meeting⁸⁷⁴. The problem per se does not lie with the Africans whether they consider the canonical form as indispensable of marriage or if the Church considers the steps or the value of the steps taken before marriage is celebrated in the African cultures. What is canonical form all about? Although canonical form is important and profoundly expresses the theological soundness of marriage, it was also introduced to check and prevent clandestine marriages as happened in the past⁸⁷⁵. For the African clandestine marriages are hard to think of because accepted traditional marriage passes through the traditional laid down norms according to each society.

It is also suggested that since divorce is an easy custom in traditional custom the Africans are afraid to undergo the canonical form since it forbids divorce. Even though there are no rigid laws binding by death as the indissolubility of marriage in African traditional marriage, nevertheless, there are mechanisms put in place to prevent divorce. Of course, African custom permits separation of couples and remarriage but we must also admit that no African enters marriage with the intention of divorcing the other. Separation and remarriage are only the last resort if the marriage is beyond reparation. It is also a last resort if one party becomes a danger to the other such that this can create perpetual enmity between the two families. Moreover, the potentiality of African marriage being polygamous is not suitable conclusions to render traditional marriage as no marriage.

SECAM has always maintained that couples married according to the traditional rite only must not be admitted to the sacraments. If the Church maintains that those in polygamous marriages should not be allowed to celebrate Christian marriage then it is understandable; but to prevent couples married monogamously in the traditional marriage to approach the sacraments leaves much to be desired. Although a marriage may be potentially polygamous or potentially dissoluble as it is always thought of African marriage, nevertheless, this should be considered a good marriage capable of becoming exclusive and a lifelong commitment.

In a nutshell, just as the law has given lacuna to Bishops' Conferences to compose and approve of a particular ritual for the celebration of marriage (cf. c.1120), the best thing for the African Church is synchronisation of traditional and Church marriages so that it does not look as if African Christians are living in two worlds.

The Church must accept that the customary marriage of African Christians marrying is and was indeed a marriage according to the extraordinary canonical form. Then, the union of these

⁸⁷⁴ Cf. SECAM, Recommendations and conclusions, p.370ff. See also the discussions on Marriage and Canonical form, in AFER, pp. 57-61.

⁸⁷⁵ To read more about the introduction of canonical form at council of Trent see Sabine Demel, *Kirchliche Trauung – unerläßliche Pflicht für die Ehe des katholischen Christen?*, pp.48ff. See also J. Carberry, *The juridical Form of Marriage*, Catholic University of America, Washington D.C, 1934, pp.7-20; Hurbert Jedin, *Geschichte des Konzils von Trient, Band IV*, Herder, Freiburg, Basel, Wien, 1975, p.96ff.

people was and is a perfectly valid and sacramental marriage, and there is no reason why they should have been or should be kept away from the sacraments⁸⁷⁶.

Finally, the simplest and most natural way of involving the African in the true Christian dispensation is “to restore customary marriage to its proper place, through raising it to the level of a sacrament; this means obviously, finding an adequate canonical form, while preserving the essential elements of unity and indissolubility. In this way the law of the incarnation would be respected, according to which everything is to be renewed in Christ. Some kind of solution would also be given to pastors who are embarrassed by the accumulation of three marriages, for in some places the future partners have to pass through customary and civil marriage, before arriving at Christian marriage, with the huge difficulties brought by these parallel ceremonies”⁸⁷⁷. For this reason it is not enough to say that those married customarily must be encouraged to participate in the life of the community and to use the spiritual means at their disposal, which are not in contrast with their situation. Rather we should find means and ways of synchronising the two marriages such that the marriage situation in Africa could dispose of the contradiction and diabolism associated with it. Our contribution to the problem will be to suggest the best way of “culturalising” the Christian marriage acceptable to both parties, that is Christian and customary marriages. For this reason we shall now propose a synchronised form of marriage for Ho diocese.

3.4 Proposed synchronisation of marriage celebrations in Ho Diocese

In the foregoing discussion of the impact of Christianity on the traditional institution of marriage, it was established that the traditional modes of marriage are still widely practiced and patronised in Ghanaian modern society. This patronage goes on in spite of the existence of the Christian marriage and in spite of formal prohibition from the leadership of the Church in Ghana that those marrying customarily are prevented from going to communion and other sacraments. We may argue that if for more than 100 years the presence of the so-called liberating forces such as education and Christianity, the traditional mode of marriage precedes Christian and civil marriages, that is, still receives active patronage, then the reasons upon which the traditional marriage is held in traditional society of Africa are still valid and abiding⁸⁷⁸. With respect to the above propositions, it is the duty of the diocese to research into possible means of overcoming the dichotomy existing between traditional marriage of Africa and the Christian marriage. Thus, it is a matter of grave concern for the diocese of Ho to ensure that a compromise is reached by which the faithful will no longer be living in “two

⁸⁷⁶ Urrutia, *The challenges of canonical Doctrine on marriage Arising from Africa*, 24

⁸⁷⁷ Yago, *Marriage and Family in the Modern world*, p.18.

⁸⁷⁸ Cf. Abotchie *Social Control in Traditional Southern Eweland of Ghana*, p.92ff

worlds” or one who has been uprooted from his culture. This is why the humble plea of Ghanaian bishops in the 1980 synod of bishops is still relevant and imperative: “It is our humble submission that the Church should recognise and Christianise the monogamous traditional marriage, i.e., the two (customary and Christian marriages) should be synchronised”⁸⁷⁹. In order not to remain theoretical, we must now look at how the dichotomy could be solved by proposing a synchronised form of Christian marriage and customary marriage to be in conformity with the Church.

a. Suggested Rite of Synchronisation

Prior to the celebration of the marriage the prospective spouse must follow the laid down pre-marriage preparation directives and regulation of the diocese. They must attend marriage preparation seminars and courses available in the parish or deanery.

Since marriage is a sacrament, “to raise customary marriage to the sacramental fullness of the new and original teaching of Christ”, the Church has to lead the couple, during the various stages of their marriage, to hear the radical call of the Lord: a call, on the one hand, to fidelity and sharing, and, on the other hand, to understanding and forgiveness. These are essential values of marriage that cannot be overlooked. These values already exist in our tradition, it is therefore the duty of the Church as a first step in the process of contracting marriage to confirm and strengthen with the Gospel message. We recognised also that customary marriage depends on the clan authorities. If it is to become a sacrament, both the family and the Church authorities must collaborate and help each other to foster happy marriages of couples under their jurisdiction⁸⁸⁰.

To forestall invalidity, the priest in charge of the preparation of the couple should ensure that no impediment is overlooked, especially, to cross check with the family for any possible polygamous behaviour. The publication of banns in this case may or may not be necessary depending on the situation. If both are from the same parish or area, then it may not be necessary.

The celebration must begin in the normal customary way as described and explained earlier, especially in the celebration of customary marriage among the people of Fodome traditional area. In the Latin Church it is known that the couples are the ministers of the sacrament of marriage and the position of the priest is only an official witness and representative of the authority of the Church to legislate exclusively on marriage. For that matter, the priest and other church members especially, the catechist(s), *Hamedada* and *Hamemega* must be present

⁸⁷⁹ Dery, Christian and Customary Marriage in Ghana, p.39.

⁸⁸⁰ Cf. Cyriaque Obamba, “Marriage in Stages lived ‘in the Lord’ in AFER, p.49.

to represent the Church. The priest becomes active after the lady is brought from the room to the gathering and interrogated by the elders or the family head. He must have patience and allow the elders in charge of the ceremony continue interrogating the prospective spouses in line with the traditional custom. If this is over, then the priest must now take the front stage.

The priest begins with a short introduction and a reading related to marriage from the gospel. This is followed by a short homily stressing once again the unity, equality, indissolubility and the nobility of marriage as already done in the marriage preparation courses. He should also emphasise to the man that he cannot practice polygamy or take another wife because it is against the teaching of the Church. Moreover, the marriage should not be seen as potentially polygamous. The homily should be short because parents and selected elders will have to give advice to the couple at the end of publicly exchanging of consent.

b. Exchange of consent

One of the big questions people are eager to ask in the celebration of customary marriage is the determination of exchange of consent. Can consent freely be exchanged in customary marriage especially if we consider the parental or family intervention of the marriage? Of course, yes. We have already ascertained in this work that sometimes the initiative in the selection of a partner may come from the parents or lineage members but the consent exchanged is a personal choice between the couple.

Since exchange of consent is the central element in the Rite of Marriage; we will suggest that after the elders have questioned the partners about their readiness to accept each other as husband and wife as normally done in customary marriage, the couple should move to a prominent place before the assembly and face each other to exchange their vows in an audible voice. Although the current laws on marriage in the 1983 code of canon law - especially in respect to canon 1108, §2 which explicitly required that the Church's official or qualified witness (usually the local ordinary, the pastor, or a priest or deacon delegated by either of them along with two other witnesses) who assist at the celebration of marriage must ask for and receive the consent of the parties in the name of the Church - do not provide for this curious situation in which the elders of the families will take over the questioning process, but we do believe, it is fitting, then that the elders of families themselves should be the means of dispensing these questions to its members because their role is paramount in preserving the stability of the marriage.

They should now join their hands and exchange consent in an audible and an expressive form before the official witness i.e. before the parish priest, his representative, deacon or some Catholic elders as the situation may call for⁸⁸¹. It is worthy to note that in the synchronised

⁸⁸¹Cf. Dery, Christian and Customary Marriage in Ghana, p.39.

form of marriage, the rite must be clothed with external religious and sacred significance, but for the prospective couple to marry validly it is sufficient to unequivocally, externally express their intention to marry here and now, i.e., to express their consent, before witnesses. We may suggest that consent can be formulated in other words but expressing the same seriousness of marriage. However in order to avoid any doubt concerning the expression of marriage consent, it would be wise for the prospective couple to use a formula found in the liturgical rites accompanying the exchange of consent. They could either be read out or recited or repeated after someone as in the ritual for the ordinary form⁸⁸². If rings are at hand the priest can bless them and finally impart God's blessing on them. Dery suggests that after the exchange of consent in the family home, the blessing could be postponed and be given later in the Church⁸⁸³. We strongly suggest that the blessing should be part and parcel of the celebration because the blessing and the celebration of marriage must definitely link but not separated. We will also recommend that the blessing of the parents and the elders can be done in the evening as is done in many customary marriages.

The couple must attend mass on Sunday to give thanks to God. If both are Catholics then they must also receive the Eucharist in the mass, otherwise only the Catholic partner should receive the Eucharist. The priest or the catechist must officially introduce the couple as newly wedded to the Church community during the time of announcements or before the beginning of the mass.

There is no doubt that Archbishop Batantu's suggestion in the 1980 synod of Bishops laid a good background for our purpose. In order to respond to the dichotomy between customary marriage and the marriage of Catholics, he suggested that "there would be no celebration in the Church building; but in the home of the families of the partners"⁸⁸⁴. We agreed with Batantu's suggestion and in fact, this is exactly what we are driving at. There is need for the Church in Africa to bridge the dichotomy between customary marriage and the marriage of Catholics.

However, we disagree with his comment that "Since this marriage always remains the 'progressive', from the Christian viewpoint, there still remains the possibility of celebrating it and of concluding it according to the canonical form: this celebration would emphasise the Christian meaning of the marriage sacrament"⁸⁸⁵. We disagree in the sense that once marriage is celebrated in the home in the presence of a priest as official witness to the marriage, then there is no reason to renew the consent in the Church, because it is forbidden to have another religious celebration of the same marriage to express or renew matrimonial consent (cf. c.1127 §3). The couples are truly married according to the regulation of the Church and to

⁸⁸² Cf. William H. Woestmann, "Extraordinary Canonical Form of Marriage when a Qualified witness cannot be present without a Grave Inconvenience", *Studia canonica* 42 (2008), p. 378f.

⁸⁸³ Ibid.

⁸⁸⁴ Cf. Barthelemy Batantu, "Progressive marriage and admission to sacraments", in AFER, p.42.

⁸⁸⁵ Barthelemy Batantu, "Progressive marriage and admission to sacraments", p.42.

permit such a duplication of the exchange of consent would create the impression that the marriage already celebrated is invalid.

With absolute certainty, the project of synchronising marriage in the diocese does not in any way suggest that the celebration of marriage should be completely moved out of the Church to family homes. This will be against the spirit of canon law and catholic identity. However, the Church law also recognises that with the permission of the local ordinary a marriage can be celebrated in some suitable place other than in a Catholic Church or Chapel (cf. c. 1118 §2). According to Doyle, “the determination of what is suitable is left to the local ordinary. One might envision here churches of other denominations, halls, or even private homes”⁸⁸⁶. In the case of Ghana most traditional celebrations take place in traditional homes or under special trees and, as such, to bring the cultural significance to the marriage we still consider it fitting that the process takes place at homes.

Following what has been said above; the synchronised form of marriage should take place in the family homes of the prospective couple. Notwithstanding the proposal, those who still prefer the Latin rite are free to it. On this note, we will attempt to propose integrated traditional and Christian marriages. We will also propose that the imported new custom of the man presenting a bible to the bride in customary marriage is modified and enhanced if not eliminated. It appears as if the woman alone needs to pray for the family. Rather, the priest or the catechist presents a bible and rosary to the couple. This signifies that they must pray together as a family.

We suggest that the elders must also be allowed a special intercessory prayer in a traditional way (with libation) asking for good health, prosperity, long life and fecundity if they wish to do so. The priest can allow two witnesses to sign the marriage certificate. In the preparation we must insist on free and personal choice of the marriage because if the exchange of consent, which is indispensable of marriage, is lacking then the immediate consequence is that the marriage is unacceptable and invalid.

In a nutshell, the simplest and most natural way of involving the African in the true Christian dispensation is “to restore customary marriage to its proper place, through raising it to the level of a sacrament; this means obviously, finding an adequate canonical form, while preserving the essential elements of unity and indissolubility. In this way the law of the incarnation would be respected, according to which everything is to be renewed in Christ”⁸⁸⁷. In the light of this, it would surely be possible to see from the suggested rite that clamouring of the African to recognise customary marriage is not in any way pretence to replace

⁸⁸⁶ Doyle, Marriage, p.798.

⁸⁸⁷ Yago, Marriage and Family in the Modern world, p.18

sacramental marriage with traditional marriage. Rather, our main concern has been and still remains that both should be synchronised as being postulated.

CONCLUSION

The main thrust of this work has been to explore the norms of the 1983 new Code of Canon Law on new approaches to pastoral care for marriage preparation and certain mechanisms of marriage in the traditional African society as motivation for assistance in the formulation of appropriate guidelines and programmes for marriage preparation in the Ho diocese. The study realised that the old Code (1917) became outmoded because in the face of numerous problems confronting the marriage institution there is in fact more than just establishing freedom to marry. The immediacy of freedom to marry thus carried less potential safeguards to marriage and family life in the right approach to the pastoral care for marriage preparation. It insisted that the alarming rate of separation and divorces on the globe cannot totally be attributed to the heavy stress put on the freedom to marry; nevertheless, the study has shown how traditional methods which act as a check and balance on marriage are gradually being eroded; the directives of the 1983 new code which stresses the obligation of pastoral ministers to prepare Christ's faithful for a better marriage and family life is acknowledged as more beneficial.

The initial theoretical concepts and surveys discussed in the beginning of the study have been to help determine the interactive effects of the genesis of marriage and pastoral care for marriage preparation in celebration of marriage. They pointed out how important it is for the legal conformity of marriage preparation in the Church embedded on the validity and liceity of marriage celebration must take into account a wider range of contributions including the anthropological, social, cultural and religious dimensions. The quest led to various anthropological theories about the mode of taking a wife among the pre-historic humankind. Some scholars believe that sexual behaviour among those pre-historic people was nothing more than promiscuity.

This theory proposed that the human race might have originally lived in a state of promiscuity where individual marriage did not exist. This suggests that all the men in a horde or tribe had indiscriminate access to all the women, since there were no social sanctions on sexual relations and for establishing a relatively permanent man to woman partnership. It therefore concluded that early cavemen might not be awake to the concept of biological paternity⁸⁸⁸. Another theory identified “machoism” as a means of marrying or having a mate in those early days. This theory suggested that having a mate was only possible through force or capture of the females. Still another theory proposed that taking a wife was done through “wife purchase”. This practice, misunderstood as “wife purchase”, is still considered to be prevalent in Ghana because of the bride-wealth paid before religious or ordinance marriage in Ghana.

However, the theory which was most likely to be accepted as having a positive indication to moral order in the present generation, suggested the automated pairing of one man and one woman for a period more or less transitory. It presupposed that the origin of marriage might have originated in “pair marriages”, that is the pairing of one man and one woman in time. This might seem to be plausible since the numerous societies practiced premarital chastity, until recently very strictly adhered to in many societies in Ghana and the instinctual behaviour of some apes for a lifelong mate clearly demonstrated that man has always liked sexual exclusiveness and the social security of a woman in the cave. In other words, the original form of sexual union among the early races was the pair marriage – the union of one man and one woman for a period of time. We may call this type of marriage “transitional monogamy”⁸⁸⁹ or quasi-monogamous relationship. However, we remark that the great amount of variety in terms of number of wives in primitive societies suggests that the original form of marriage may not have necessarily been monogamous⁸⁹⁰. Finally, we said that none of the theories can validly be proven to convince us about the actual mode of marriage among our

⁸⁸⁸ Cf. Richard Clayton, *The family, Marriage and social Change*, D.C. Heath and Company, Lexington, Massachusetts, Toronto, London, 1975, p.40

⁸⁸⁹ The transitional monogamy may refer to the temporary union by which a man and woman live together until their newborn child is weaned and then the union is broken for each of them to seek a new partner.

⁸⁹⁰ Clayton, *The family*, p.43

progenitors because the institutions of the primitive man are not very clear to us, and we will never know; and most of the materials gathered from the surviving primitive tribes are tainted with exaggerations and modernity.

We also explored briefly how biblical usages and canonical codification contribute to the understanding of the marriage institution. The investigation found out that the institution of marriage was not categorically and sufficiently discussed in scripture, but there were many phrases, pronouncements, practices, symbolisms and utterances alluding to the teaching on marriage. However, we observed that the principal and most significant teaching concerning marriage, and for that matter, a hint on steps to be taken into account when preparing couples to appreciate the beauty of marriage and family life is set out in Pauline literature, especially in the so called “household codes (*Haustafeln*) tabulated in Col. 13:18-4:1 and Ephesians 5:21-33. These regulatory codes may be seen as a way of coping with the delay of the *Parousia* but we can assume that they prescribed a certain amount of knowledge concerning Christian and social behaviours in marriage and family. However, in the organisation of the regulatory rules there was a degree of inequality. This means that the household codes are saturated not only with the good and equitable relation, which ought to exist between husband and wife but also the unbalanced relation between man and woman.

The first impression one can gather from these relations is portrayed by a master-slave relationship. The woman is not allowed to be seen in public taking any leadership role. The role of leadership and responsibility is accorded the man or the husband, as the head of the wife while the latter must submit in obedience paralleling on Christ as the head of the Church. The man represents the family in public. The woman, on the hand, is responsible for bringing up and educating the children.

In spite of the conflict inherent in the household codes, reading the texts contextually reveals that it did not totally support male domination for that matter. From the very onset of the texts especially Colossians and Ephesians, Paul excellently dug out the details arising from the challenging teaching of concrete life. Hence, the texts in their contextual manner are not instructions to lay claim to the ambivalent nature of man and woman relationship, but that the “the entire system of social relationships is even held in check; submission in each of the relationships is to be adhered to in accordance with what is ‘fitting in the Lord’ (Col.3: 18- wives to husbands), ‘pleasing in the Lord’ (Col.3:20- children to parents), and showing respect and rendering service to ‘the lord’ (Col.3:22,23,24- servants to masters). Slave-owners are reminded that they are no different from slaves before God, who is impartial (Col.3:25) and to whom they must answer as their ‘master in heaven’ (Col. 4:1). He refers to various aspects of the husband- wife relationship such as mutual respect and fidelity, and the marital permanence among others. If the ideals presented in these texts are put into its practical terms, there will be no possibility of fighting over whom the head and leader of the household is i.e. craving for about authority rights.

We have also pointed out in the search for the origin of marriage in the history of canonical codification that the Church's determination is ultimately to outline the basic principles underlying the standard judgement of the marriage institution. The fundamental issue for the Church is to share the meaning of marriage allowing for the capacity of those preparing for the sacrament to understand more or less what she means. We have seen that the definition of marriage went through changes in the course of legal history in the Church. The 1917 code of canon law described marriage as a sacrament, that is, as a contract between two baptised persons (cf. 1012) and the purpose of marriage is principally geared towards procreation and education, giving the second place to mutual love and conjugal life as the process of solving the problem of concupiscence in man. Moreover, the code put heavy stress on the freedom to marry. However, stress on the freedom to marry in the understanding of marriage gave way to the shift of emphasis in the drafting of the 1983 code on marriage.

Based on the GS document, the 1983 code defined marriage in the context of the biblical notion of covenant. The covenant terminology attempts to redefine and shift understanding of marriage from the outmoded perception of canonical law which saw marriage in the context of a contract. The content of the contract was primarily a right to acts fitting for procreation, while the vital aspect of marriage, "mutual love" was denigrated to the secondary end. Canons 1055 §1 of the 1983 Code of Canon Law and 776 §§1, 2 of the 1990 code of canons of the Eastern Churches attested to the shift we talked about.

From the above results of the research as appropriately addressing pastoral care for marriage preparation, the study has established that there were only three direct short pointers to marriage preparation in the documents of Vatican II; however, as Gavin reiterated, the image of marriage and family for which the Church intends couples to prepare is clearly outlined in a number of paragraphs of the pastoral constitution GS. The outline was given more clarification in the FC of 1981 on the role of the family in our turbulent world which was expanded in the determination and efforts of the PCF to give comprehensive details about pastoral care for marriage preparation. Following the thought of FC, pastoral care for marriage preparation was insisted upon as a life-time journey accompanied by remote, proximate, immediate, and post-marriage preparation stages⁸⁹¹. Each of the stages indicated an interrelationship highlighting collective and participatory responsibility. This means that the functioning of the stages is not only the responsibility of clergy but includes the whole community: parents, relatives, clans, the expertise of theologians and those skills in other fields of sciences, notably the law, medical, biological, anthropological, social and psychological, pooling their efforts and strength together with clear conscience to educate the youth, the most vulnerable, and the public in general about the sacredness and sanctity of

⁸⁹¹ Gavin, *Pastoral Care in Marriage*, p.192f

marriage. In addition, it is the obligation of parents and the lineage to nurture children and young people in the traditional values and codes relevant to the acceptable behaviour in marriage and family life.

The theoretical and canonical survey of addressing the genesis of marriage as a guide for the approach to pastoral care for marriage preparation has been complemented by the details of socio-cultural notions of African customary marriage and family life in collaboration with the perspective of SECAM. The study justified that in Ghanaian societies marriage is found to be an important institution between opposite sexes and as a result must be accorded the highest respect and be protected. As such we acknowledged that the process of acquiring a wife in the traditional Africa society is by no means an issue of triviality because the survival of the family and the society depended on it. Hence the entire community, including living and dead, are involved in the marriage process. Thus it is sometimes difficult to make clear cut distinctions between the group and personal decisions in marriage.

We commented that this significant participation in the activities of the prospective couple is very fundamental to the social structure of the Ghanaian traditional family system because it gives the sense of dependability and availability of solutions to problems within the extended family relationships, as the couples know within their means they have to contribute to the large family, and the large family knows - without interfering in the private affairs- contribute to the well being of the couples especially in times of crisis⁸⁹². A typical example mentioned was the traditional way of settling disputes among couples or family members. We said that divorce is not anathema, in spite of the fact that the custom hates it since it is seen as a factor that can disintegrate and disorganise marital and family life, and sow seeds of contempt among families. Divorce is the prerogative of couples; however, it is preceded by family arbitration involving the heads of the two lineages or clans (*Ametsitsiawo*), the acknowledged representatives of the ancestors, who may persuade the couple for reconciliation.

In the discussed rites of customary marriage in Fodome traditional area, the study attempted to legalise the perceived idea that the marriage bond in African customary marriage comes about as a result of a dynamic process. Practically, there certain rituals persisted through various stages necessary in the preliminary negotiations which finally culminate in the ceremony of a bride's ultimate journey of marriage in the abode of the bridegroom. We have also seen that the payment of bride wealth is very much essential to the process. Of course, in the Ghanaian traditional view Christian or ordinance marriage celebrated without performing the traditional rites is unacceptable, illegal and void. Even though the non-performance of customary rites has no effect on the canonical validity of marriage, the Ghanaian Church

⁸⁹² Cf. Hevi, *Cultural Values and the Family* beyond year 2000, p.290.

strongly insisted that the full customary rite be performed prior to the celebration of sacramental marriage in the church⁸⁹³.

The study has also shown the perspective of SECAM on traditional marriage and sacramental marriage. SECAM strongly believed that certain cultural and social structures of marriage and family life in Africa provide a springboard for integration. This affirmation called for a formal integration of traditional values of marriage and family life in Africa into its pastoral and liturgical activities to bridge the gap between traditional and church celebrations of marriage. In the same way SECAM recommended the formulation of sound policies and comprehensive programmes for marriage preparation. SECAM suggested that pastoral care for marriage should begin in childhood, intensify during puberty or adolescence, and must reach its culmination in the immediate preparation and celebration of marriage. In addition, there should be continuous formation for those recently married such as on matters bordering on how humankind's relationship and married couples can grow, change, improve or deteriorate, therefore developing indicators which will accommodate living their daily life as couples and family in a generous and realistic manner. Accordingly, one would have thought that the documents and the solid proposals by SECAM would mean more to various dioceses and bishops' conferences to promote and attach seriousness to it, but unfortunately, over the years the proposal remains archived in many dioceses. In other words, these handsome recommendations and proposals that raised interest have never materialised in most parishes in Ghana because there are no elaborate directives and programmes on marriage preparation. Moreover lack of success may be partly due to conflicts of interest which lay more emphasis on marriage counselling rather than on a qualitative approach to pastoral care for pre-marriage preparation.

The study also revealed that out of the 15 canons associated with marriage preparation in the 1917 Code only one canon (c.1033) truly speaks of marriage instruction. The particular instruction in canon 1033 must be directed towards the prospective spouse in a face-to-face manner with the parish priest who is to instruct them in such a way that they will receive the sacrament of matrimony in a pious and worthy manner. Moreover, the instruction is to ensure that the spouses may live out their future marriage life in a Christian fashion as opposed to the pagan marriages.

The remaining canons in the category were loaded with the investigation into the freedom to marry while the pre-marital instruction was added to it in a manner inconspicuous to attract any serious attention. This means that pre-marriage instruction could only be undertaken if the pastor is morally certain that the couple are free to marry. The implication of this structure actually presupposed that pre-marriage instruction even though indispensable of pastoral care

⁸⁹³ Cf. Dery, *Christian and Customary Marriage in Ghana*, p.38.

for marriage preparation is considered as a secondary requirement. We maintained that the Church's great concern on the freedom to marry remain the same today, since there is a relationship between legal and pastoral oriented preparation for marriage; nevertheless, there was a crisis in the order of pastoral priorities. The heavy stress on the legal formalities rather gave rise to less focus and perhaps dysfunction of the pastoral oriented preparation for marriage because it appeared to be of no great importance from a legal point of view.

However, we pointed out that the tone of the revised norms on marriage preparation in the 1983 new code of canon law has a slightly redefined emphasis. The 1983 code lays substantially more emphasis, in terms of contents and in the legal provisions on the pastoral care for marriage preparation, than the 1917 code which was more concerned with the determination of freedom to marry and the things that had to be done before a marriage could validly be celebrated. The objective of broadening the emphasis in the 1983 CIC with specific reference to pastoral care is to ascertain more strongly the proper pastoral care which must be given to prospective spouses preparing to marry. However, we insisted that the pastoral perspective on marriage preparation acclaimed in the 1983 code did not in the slightest manner envisage rethinking the legal propositions of marriage preparation.

Thus the new approach to pastoral care for marriage preparation in the 1983 code of canon law drawing heavily from canon 1063 in particular, stresses the responsibility of the entire ecclesial community not merely for the immediate preparation of the prospective couples but also remote catechesis about marriage in general and for the assistance and support for married couples in their vocation. This pastoral approach to rediscover the truth, goodness and the beauty of the marriage institution, which differs significantly from the 1917 code, is based on a renewed description of the nature of marriage as a 'matrimonial covenant' involving a partnership of the whole of life⁸⁹⁴. The parish priests and entire ecclesial community through general catechesis must educate young people and prospective couples through various forms, provide for more personal preparation in advance for the celebration of the marriage, the effective liturgical celebration of the marriage ritual to bring out the true meaning of Christian marriage and also provide certain supportive pastoral follow-up programmes for newly wedded couples. In the execution of the above the canon also insisted that pastors do not only have an obligation but a most "serious obligation" to insure that various forms of assistance are provided for prospective spouses and for those already married.

In keeping with the extensive concern for new approaches in pastoral care for marriage preparation the 1983 code obliged the local ordinary with the responsibility of ensuring that the pastoral care for prospective and married couples stipulated in the canon 1063 is fully

⁸⁹⁴ Cf. John A. Alesandro, "General Introduction", in: J.A. Coriden, T.J. Green and D.E. Heintschel (eds.), *The code of canon law. A text and commentary*, study edition, CSLA, New York, 1985 p.18.

appreciated and provided for in his territory or diocese. Therefore the legislative instrument in canon 1064 requires that individual bishops and the local bishops' conferences are obliged to establish their own directories and formulate programmes on pre-marriage preparation for their area of jurisdiction.

In spite of the fact that the new approach insisted on instruction and education as the main persuasive process in the pastoral care for marriage preparation, the legislative activity of the Church also establishes that certain precautions and steps must be taken before marriage is celebrated. It means the pastoral minister can only assist at the marriage if he is morally certain that it will be valid and licit. Therefore it is also very necessary to formulate particular laws and legislative frameworks to regulate marriage in the diocese and the Church. Thus, the study has also shown how German bishops' and Ghanaian bishops' conferences have provided for the obligations of canons 1064 and 1067 by establishing their own directories and particular laws to facilitate the implementation of norms on pastoral care and the requirements for the celebration of marriage.

The German Bishops' conference published a handbook on pre-marriage preparation and the celebration of marriage which was to serve the purpose of reference for pastoral ministers assisting at pre-marriage preparation and the celebration of marriage. They also came with a marriage preparation protocol (Ehevorbereitungprotokolls) with annotations to provide for canon 1067. The annotation unlike the handbook presented certain legal precautions and the church's teaching on the celebration of marriage and the particular rules guiding publication of banns. It also envisaged the responsibilities binding pastoral ministers to prepare prospective couples approaching the Church for the celebration of marriage adequately. The investigation of the study on the other hand insisted that the Ghana bishops' conference has only succeeded in carrying out the obligation of can 1067 CIC in the pre-nuptial investigation form while consciously or unconsciously ignoring their own recommendation in SECAM's plenary meetings insisting that all Episcopal conferences must urgently formulate policies and urgently work out comprehensive programmes for an obligatory and graded preparation for marriage as required in canons 1063 and 1064.

Although the Ghana bishops' conference has no official collective response to canonical obligation in canons 1063 and 1064 to assist the pastoral ministers in preparing prospective partners for the celebration of marriage, yet they did not ignore the obligation completely. The study observed that even some individual dioceses in their recent local synods did not ignore the canonical obligation of canons 1063 and 1064; however, much cannot be said about serious pastoral care for marriage preparation in the dioceses of Ghana because the local Church is more preoccupied with the canonical obstacles that might render a marriage invalid

rather than assisting prospective couples to understand the values and rigors of marriage family life.

Pre-nuptial investigation should not be down played since it is expected that the application of these norms will make a significant contribution to the stability of marriages by preventing the danger of prospective couples entering invalid marriages; however, the study has maintained that the run on the priests and the tribunals all over the globe by Catholics demanding and receiving annulments of their marriages in unheard of numbers, is an indication and proof that no bureaucratic measure can divert prospective spouses from marrying foolishly, even if it were possible for the assisting priest to discover infallibly factors predicting failure and confront the parties with them. Therefore we have every reason to say that the pre-nuptial investigation cannot achieve more than gathering personal data and documentation⁸⁹⁵.

Though we did not project that exhaustive pre-marriage instruction and education will totally eradicate divorce and marriage dilemmas because of the complex nature of the factors responsible for it, common knowledge suggests that “marriages break down because of factors inherent in the personality structure of the partners”⁸⁹⁶ not so much because of invalidating factors. In other words, while the determination of freedom to marry and the publication of banns are contingent on fulfilling certain legal prerequisites⁸⁹⁷ for the valid celebration of marriage, they must be simultaneous with diligent pastoral care for marriage preparation as stipulated in canon 1063.

Thus John Paul II once posed the question: what can one say to the argument which holds that the failure of conjugal life implies the invalidity of the marriage? As a response he insisted that “admission of true nullities should rather lead to ascertaining with greater seriousness at the time of the marriage the necessary prerequisites for matrimony, especially those concerning the consent and the true disposition of the engaged couple. Parish priests and those who work with them in this area have the grave duty not to surrender to a purely bureaucratic view of the pre-matrimonial examination of the parties, specified in can. 1067. The pastoral intervention must be dictated by awareness that at precisely that moment, people are able to discover the natural and supernatural good of marriage and consequently commit themselves to pursuing it”⁸⁹⁸.

However, the study disbanded the notion that the absence of a decreed and written policies programmes for pastoral care for marriage preparation in Ghana was to suggest that there has

⁸⁹⁵Cf. Pospishil, *Eastern Catholic Marriage Law*, p. 251.

⁸⁹⁶ Pospishil, *Eastern Catholic Marriage Law*, p.243.

⁸⁹⁷ Doyle, *Marriage*, CLSA 751

⁸⁹⁸ John Paul II address to the members of the tribunal of the Roma Rota, loc. cit.

never been a thorough pastoral intervention for preparing prospective couples for the celebration of marriage. What the debate seems to claim was the inability of either the Bishops' Conference or the individual dioceses to produce systematic programmes on pre-marriage preparation. Each of the individual priests offers what he deems of relevance to the preparation of marriage. For that matter, we could say that the lack of any written directives and policies on marriage preparation from the Ghana bishops' Conference is an indication that too much attention is given to the freedom to marry just as it was demanded in the 1917 code to the detriment of pastoral investments necessary to help prospective couples approaching the Church for the celebration of marriage. So if after 28 years of those wonderful recommendations in the Yaoundé assembly of SECAM, 27 years of the Apostolic Exhortation FC and 26 years of the promulgation of the current code of canon the Ghana Bishops' Conference could come out with systematic directives and programmes on marriage preparation, then it is a great omission for good pastoral care. Moreover, we have realised that after 9 years of the Ho synod there seems to be no follow up on the promulgated acts of the synod.

This unfortunate omission has justified and catapulted the study to its final phase with the resolve in the context of new approaches in the 1983 code on pastoral care for marriage preparation and certain important socio-cultural values of African identity, to intervene with a proposed plan of action as ground preparing work to help the Ho diocese come out with directives and programmes for marriage preparation in the diocese.

On account of this, the chapter proposed a directory on marriage preparation for the diocese, that is, the canonical and pastoral regulation that should guide pastoral care for marriage preparation. The study suggested that the diocese should create a diocesan Commission for pastoral care for marriage preparation and family life under a coordinator who must from time to time report the progress of the commission to the bishop. The commission in collaboration with the bishop, the chief architect and arbiter of pastoral care in the diocese, has the responsibility to draw guidelines and the form which the whole process will take. It should be participatory in nature involving input on various topics and issues while engaging the couples in reflection and discussion. The courses must be carefully prepared and presented in a simple language for the people to understand. There should be marriage preparation teams in every parish.

The team should also ensure that the instructions are not only geared towards marriage and family life but also an opportunity to deepen the faith or to awake faith in those approaching the sacrament of matrimony. The team should take care that the programme does not become a forum of testing the knowledge of the couple in the bible, doctrines and theology of the Church, but as a means of helping prospective couples to understand the renewed description

of the nature of marriage as covenant and the ability to adjust to marriage life. The sections should also be an occasion for the couple to explore the ministerial dimensions of marriage and family life, in that they clearly understand, appreciate and accept their social and religious responsibilities as spouses and parents in the community.

However, we maintained that the efficiency or failure of the directives and programmes of pastoral care for marriage preparation depends mostly on the effectiveness of the parish priest and marriage team. As a result the priests are indispensable and for that matter the study suggests that no priest, religious man or woman and permanent catechist in the diocese should have a choice whether to participate in the programmes or not. The only choice he or she may contemplate is how best he can offer and how best to enhance the diocesan guidelines and programmes of action on pre-marriage preparations to the greater glory of those prospective couples.

By acting through the commission the study also suggested the bishop should see to it that the norms and programmes decreed are carried out with no excuses. This may even call for reprimand for failure to conform. A serious cause for delaying a marriage should include refusal of both prospective couples to take part in the marriage preparation programmes deemed necessary for the proper preparation for the reception of the Sacrament.

Thus as a practical utility of this proposed plan of action we suggested a course to be called the “Fireside Encounter Programme” (FEP). FEP is a one day-seminar in each month sustained over the first six months prior to marriage. The FEP will offer prospective couples and those recently married the opportunity to spend some time in conversation, discussion, debate, and reactions and reflect on the vocation of marriage. It will also guarantee them to learn more about facets and principles of married life. Above all, the programme is designed to enable prospective couples to have the opportunity to be instructed and frankly to discuss with each other the prospects of marriage life together; and their strength and weaknesses, desires, ambitions, goals, family living: responsibilities and duties, equality, cultural relationship in our African concept, attitudes about money step-children, sex, children, family their roles in the Church and the clan and society in general.

Generally, FEP should include catechesis and education about the general view on marriage, the sacramental nature and vocation of marriage, elements and properties of marriage, polygamy and baptism, communication and conflict in marriage, natural family planning, sexuality, HIV/AIDS and STDs, adultery and chastity, fertility issues and parenting, barrenness, widowhood rites, work and leisure, time and finances, and faith and interfaith

issues⁸⁹⁹. Besides, the course should discuss how the couple can strengthen love for each other, their feeling and affection.

We also insisted that the synchronisation of Christian and customary marriages in the celebration of marriage in the diocese is very crucial so that our people may not be seen to be living in two worlds of marriage. This is urgent because in spite of the proliferation of Christian ideas of marriage, one could certainly still realise that certain values of customary marriage are optimal and worthwhile for the survival of the dynamic nature of the African marriage perspective and family life to be fully integrated into the celebration of sacramental marriage.

Finally, we must insist that the proposals in the study are not meant to be taken as a blueprint document which the diocese must follow strictly in the maintenance of effective pastoral on marriage preparations, but as a guide for any further discussion on the theme. In other words, the suggested directives and the FEP are in no way intended to say everything about effective marriage preparation for Ho diocese. The study is a contribution to new approaches in pastoral care for marriage preparation as demanded by the 1983 code on pastoral care for marriage preparation aimed at working towards a strategic plan of action of a solid marriage preparation programme and to stimulate further investigation and redouble our efforts in the Ho diocese to fulfil the “serious obligation” to provide help for young people and prospective couples. We therefore, urge the diocese to show and display seriousness about the process.

ABBREVIATIONS

AA	Apostolicam actuositatem, Decree on the Apostolate of the Laity, 18 November 1965
AAS	Acta Apostolicae Sedis
ACHPR	Protocol to the African Charter of human and People’s Rights on the Rights of women in Africa
AFER	African Ecclesial Review
AIDS	Acquired immune deficiency syndrome
AfkKR	Archiv für Katholisches Kirchenrecht
AKF	Arbeitsgemeinschaft für katholische Familienbildung
Anm.	Anmerkungstafeln
art.	Article
Aufl.	Auflage
Bd.	Band

⁸⁹⁹ Cf. Dioceses of Minnesota, “Common marriage preparation Procedure for the Catholic Arc/dioceses in Minnesota”, approved on 7 March 2006, n.4: <http://www.archspm.org/family/pdfs/19%20points%20MP%20Procedures.PDF> (Accessed: 3 July 2008).

BzMK	Beihefte zur Münsterischen Kommentar
c.,can.	canon
cc.	canons
Cap.	Chapter of the 1951 Volumes of the Laws of the Gold Coast
CBQ	Catholic Biblical Quarterly
CBQM	Catholic Biblical Quarterly Monograph
CCC	Catechism of Catholic Church
CCEO	Codex Canonum Ecclesiarum Orientalium
Cf.	Compare
CIC	Codex Iurius Canonici
CLSA	Canon Law Society of America
CLSAP	Canon Law Society of America Proceedings
Const.	constitution
Doc.	Doctorial
ed(s).	editor(s)
EIC	Ephemerides Iurius Canonici
et al.	and others
Enc.	Encyclical
EPL	Ehevorbereitung – ein Partnerschaftliches Lernprogramm
Exh.	Exhortation
f.(ff.)	the following page(s)
FC	Familiaris Consortio
FeDDAF	Femme, Droit et Development en Afrique
FEP	Fireside Encounter Programme
FOCCUS	Facilitating Open Couple Communication, Understanding and Study
FS	Festschrift
GS	Gaudium et Spes, Pastoral Constitution on the Church in the Modern World, 7 December 1965
HIV	Human Immunodeficiency Virus
Hrsg	Herausgeber
HUCA	Hebrew Union College Annual
HV	Humanae Vitae
Ibid.	Ibidem
i.e.	id est (that is)
IGP	Inspector General of Police
Inst.	instruction
Inst.lab.	Instrumentum Laboris
IusCan	Ius Canonicum
J.	Jahwist narrative
loc. cit.	loco citato (in the place cited: <i>Internet sources</i>)
MonEccl	Monitor Ecclesiasticus
n.,no.	number
NCCB-USCC	National Conference of Catholic Bishops-United States Catholic Conference
NDC	National Democratic Congress
NT	New Testament
ÖAKR	Österreichischer Archiv für Kirchenrecht
Op.cit.	Opere Citato
OT	Old Testament
Par.	paragraph
PCF	Pontifical Council for the Family
PL	Pastoral Letter

PNDCL	Provisional National Defence Council Law
RB	Revue Biblique
RCIA	Rite of Christian Initiation of Adults
rev.ed.	revised edition
Rev. Sch.	Revised schema
SC	Sacrosanctum Concilium
SECAM	Symposium of Episcopal Conferences of Africa and Madagascar
SJOT	Scandinavian Journal of the Old Testament
STD	Sexually Transmitted Disease
StdZ	Stimmen der Zeit
StudCan	Studia Canonica
ThQ	Theological Quarterly
TJ	Trinity Journal
Transl.	translated
TRE	Theologische Realenzyklopädie
u.a	und andere
UNESCO	United Nations Educational, Scientific and Cultural Organization
Verl.	Verlag
vol.	volume
WILDAF	Women in Law and Development in Africa

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Appendix

Ghanaian Bishops conference Prenuptial Enquiry Form

DIOCESE OF HO

PRENUPTIAL ENQUIRY FORM

PARISH.....
GROOM.....
Religion.....
Date and Place of Birth.....
Father's Name.....
Religion.....

Mother's Name.....

Religion

Date and Place of (i) Baptism NLB

(ii) Confirmation NLC

BRIDE

Religion

Date and Place of Birth

Father's Name

Religion.....

Mother's Name

Religion

Date and Place of (i) Baptism. NLB.....

(ii) ConfirmationNLC

Proposed date of wedding

Actual Date and place of Wedding

INSTRUCTIONS

1. The party or witness is to be informed that the investigations being conducted are sacred and of grave consequences and that, at the end of his/her answers he/she will have to

sign a solemn declaration that the answers are true.

2. The priest completing this form may ask any questions which he thinks important and relevant especially concerning the performance of the essential customary marriage rites.

3. If one of the parties lives elsewhere the Parish Priest of that place should be requested in time to obtain the statement of the party in accordance with this enquiry form, and to return this form with any relevant documents. This should be done through his own Curia; so that Litterae Testimoniales can be granted by his Ordinary.

If a Certificate of Freedom only is required from elsewhere this can be obtained by letter and it is not advisable to forward this form for the purpose.

4. Similarly, some documents may have to be obtained from elsewhere some may be necessary statements on or explanations of some answers. The documents can be indicated in N. 15 of this questionnaire.

5. Whenever a dispensation is necessary, the investigating priest should ordinarily submit the application and the necessary documents to his Curia for onward transmission to the Ordinary who has to grant the dispensation.

6. A priest should not proceed with any marriage for which dispensation from an invalidating impediment is necessary until he is certain that the dispensation has been granted even though the application was submitted and every other thing in order.

7. Before any marriage takes place, the Parish Priest who is preparing the prenuptial enquiry must ensure that he is in possession of this completed form and of all relevant documents including dispensations where necessary.

8. Unless both parties have resided in the diocese for at least three months immediately preceding this enquiry, the completed form, together with the relevant documents must

be forwarded to the Ordinary for a Nihil Obstat before the marriage is celebrated (C. 1115; C. 102 par. 2)

9. The Ordinary's permission is required for assistance at the following marriages:
- (c) A marriage of vagrants (vagi);
 - (d) A marriage which cannot be recognised by the civil law or celebrated in accordance with it;
 - (c) A marriage of a person for whom a previous union has created natural obligations towards a third party or towards children;
 - (d) A marriage of a person who has notoriously rejected the Catholic faith;
 - (e) A marriage of a person who is under censure;
 - (f) A marriage of a minor whose parents are either unaware of it or are reasonably opposed to it;
 - (g) a marriage to be entered by proxy.
(Canon 1071 par. 1; nos. 1-7.)

10. After the celebration of the marriage, the Parish *Priest shall* carefully keep *the* whole marriage dossier in his Archives.

11. Notification of the celebration of the marriage should be sent to the parishes where the parties were baptised if these happen to be different from the place where the marriage was celebrated: (C: 1122 par: 2)

STATEMENT BY THE GROOM

- 1.Full Name.....
- 2.Present Address.....
(Indicate House No. wherever possible)
- 3 Where have you lived for 6 Months, or more since you were -21 years old?
 - How long?.....
 - How long?.....
 -How long?.....

.....How long?.....
(If there are more places indicate below)

4. Have you been previously married?How many times?.....

(a) Name of first previous partner.....

What type of marriage?

Church Marriage?Customary marriage?Statutory Marriage?
and

(b) Name of second previous partner

What type of marriage?

Church Marriage? Customary Marriage? Statutory Marriage?.....
and

(c) Name of third previous partner

What type of marriage?

Church Marriage? Customary Marriage Statutory Marriage?.....

5. (a) Were you already baptised when the essential customary marriage rites were performed by your first partner ?

If so, in what Church?.....

(b)Were you already baptised when the essential customary marriage rites were performed by your second partner?

(c) Name of third previous partner.....

What type of marriage?

Church Marriage? Customary Marriage? Statutory Marriage?.....

6. (a) Was your first Partner baptised when the marriage customs were performed?

If so, in what Church?

(b)Was your second Partner baptised when the marriage customs were performed?.....

If so, in what Church

(c) Was your third Partner baptised when the marriage customs were performed?.....

If so, in what Church

7. Are you still living with the first Partner as your husband?.....With the second Partner as your husband? With the third Partner as your husband?

If No, How was the union with the first Partner dissolved?.....

With the second dissolved?

With the third dissolved?

8. Are you related to your prospective partner by consanguinity

..... affinityadoption?

(If Yes; find out and state what degree)

9 Are you marrying freely?

10. Do you intend to enter this marriage until death?

11. Do you understand and agree to abide by the Catholic teaching on marriage, its purpose, the rights and obligations of married persons?

I solemnly declare that the above answers are true.

Signed Her Mark

Signature of Parish Priest/Assistant Priest

ADDITIONAL INFORMATION

PRIEST'S CERTIFICATE OF FREEDOM (GROOM)

- 12. The relatives concerned have assured me of their consent and of the performance of the essential Customary marriage rites.
- 13. I have also made enquiries from reliable witnesses
- 14.banns have been published at (1)
(2)(3)
- 15. Freedom to marry is further established by attached documents: (a) recent extract from Baptism Register.
(b) (assurance of) dispensation frombanns; from interpellations from the impediment of.....by(c) sworn Statements of witnesses. (d) death certificate. (e) certificate of interpellation made. (f) parental consent. (g).....

Signed Parish Priest of
.....Date.....

EXAMINATION OF A WITNESS BEFORE THE MARRJAGE CONCERNING THE FREE STATE OF

GROOM
B.RIDE

- 1.. What Is you full name?.....
- 2. What is your address?.....
Parish.....
- 3. To religion do you belong?
- 4.Do you know Mr (Miss) (Mrs).....
- 5. How long have you known him (her)
- 6.Are you related to him (her) in anyway?.....

7. How well are you acquainted with him (her).....
8. Is he (she) baptised? In what religion?.....
- 9 Do you know of his (her) intended marriage with Mr (Miss) (Mrs).....
10. Is he (she) entering this marriage freely?.....
11. Do you know of any reason or impediment that would prevent him (her) from marrying?..... If yes, what are these.....
12. Has he (she) ever contracted or attempted marriage with any otherbefore.....
If yes, give the name of each person; when the marriage took place and the type of marriage

- | | | |
|--------------|---------|--------------------|
| (a) | | |
| (With whom?) | (When?) | (Type of Marriage) |
| (b) | | |
| (With whom?) | (When?) | (Type of Marriage) |
| (c) | | |
| (With whom?) | (When?) | (Type of Marriage) |

13. Is the marriage with (a) still existing?.....
Is the marriage with (b) still existing?
Is the marriage with (c) still existing?.....
14. Has his (her) family approved of the marriage?.....
If Yes, have the essential customary rites been rightly performed?.....
If No, what, ate the reasons.....

I solemnly declare that the above answers are true

Signature of the Witness

Signature of Parish Priest/Assistant Parish Priest.

ADDITIONAL INFORMATION

EXAMINATION OF A WITNESS BEFORE THE MARRJAGE CONCERNING THE FREE STATE OF

GROOM

B.RIDE

1. What Is you full name?.....
2. What is your address?.....
Parish.....
3. To religion do you belong?
- 4.Do you know Mr (Miss)(Mrs).....
5. How long have you known him (her)
- 6.Are you related to him (her) in anyway?.....
7. How well are you acquainted with him (her)?

8. Is he (she) baptised? In what religion?.....
 9. Do you know of his (her) intended marriage with Mr (Miss) (Mrs).....
 10. Is he (she) entering this marriage freely?.....
 11. Do you know of any reason or impediment that would prevent him (her) from marrying? If yes, what are these.....
 12. Has he (she) ever contracted or attempted marriage with any otherbefore.....
 If Yes, give the name of each person; when the marriage took place and the type of marriage

- (a)
 (With whom?) (When?) (Type of Marriage)
- (b)
 (With whom?) (When?) (Type of Marriage)
- (c)
 (With whom?) (When?) (Type of Marriage)

13. Is the marriage with (a) still existing?.....
 Is the marriage with (b) still existing?
 Is the marriage with (c) still existing?.....
 14. Has his (her) family approved of the marriage?.....
 If Yes, have the essential customary rites been rightly performed?.....
 If No, what, ate the reasons.....

I solemnly declare that the above answers are true
 Signature of the Witness
 Signature of Parish Priest/Assistant Parish Priest.

ADDITIONAL INFORMATION

STATEMENT BY THE BRIDE

1.Full Name.....
 2.Present Address.....
 (Indicate House No. wherever possible)
 3 Where have you lived for 6 Months, or more since you were -21 years old?
 How long?.....
 How long?.....
 How long?.....
 How long?.....
 (If there are more places indicate below)
 4. Have you been previously married?How many times?.....
 (a) Name of first previous partner.....

What type of marriage?
 Church Marriage? Customary marriage? Statutory Marriage?
 And (b) Name of second previous partner

What type of marriage?
 Church Marriage? Customary Marriage? Statutory Marriage?.....
 And (c) Name of third previous partner.....

What type of marriage?
 Church Marriage? Customary Marriage Statutory Marriage?.....

5. (a) Were you already baptised when the essential customary marriage rites were performed by your first partner?
 If so, in what Church?.....
 (b) Were you already baptised when the essential customary marriage rites were performed by your second partner?
 (c) Name of third previous partner.....
 What type of marriage?
 Church Marriage? Customary Marriage? Statutory Marriage?.....

6. (a) Was your first Partner baptised when the marriage customs were performed?
 If so, in what Church?
 (b) Was your second Partner baptised when the marriage customs were performed?.....
 If so, in what Church
 (c) Was your third Partner baptised when the marriage customs were performed?.....
 If so, in what Church

7. Are you still living with the first Partner as your husband?..... With the second Partner as your husband? With the third Partner as your husband?
 If No, How was the union with the first Partner dissolved?.....
 With the second dissolved?
 With the third dissolved?

8. Are you related to your prospective partner by consanguinity
 affinity adoption?
 (If Yes; find out and state what degree)

9 Are you marrying freely?

10. Do you intend to enter this marriage until death?

13. Do you understand and agree to abide by the Catholic teaching on marriage, its purpose, the rights and obligations of married persons?

I solemnly declare that the above answers are true.

Signed Her Mark

Signature of Parish Priest/Assistant Priest

ADDITIONAL INFORMATION

PRIEST'S CERTIFICATE OF FREEDOM (BRIDE)

- 14. The relatives concerned have assured me of their consent and of the performance of the essential Customary marriage rites.
 - 13. I have also made enquiries from reliable witnesses
 - 14.banns have been published at (1)
(2)(3)
 - 16. Freedom to marry is further established by attached documents: (a) recent extract from Baptism Register.
(b) (assurance of) dispensation frombanns; from interpellations from the impediment of.....by(c) sworn Statements of witnesses. (d) death certificate. (e) certificate of interpellation made. (f) parental consent. (g).....
.....
- Signed Parish Priest of
.....Date.....

EXAMINATION OF A WITNESS BEFORE THE MARRIAGE CONCERNING THE
FREE
STATE OF

- GROOM
B.RIDE
- 1. What is your full name?.....
 - 2. What is your address?.....
Parish.....
 - 3. To religion do you belong?
 - 4. Do you know Mr (Miss)(Mrs).....
 - 5. How long have you known him (her)
 - 6. Are you related to him (her) in anyway?.....
 - 7. How well are you acquainted with him (her)?
 - 8. Is he (she) baptised? In what religion?.....

9. Do you know of his (her) intended marriage with Mr (Miss) (Mrs).....
10. Is he (she) entering this marriage freely?.....
11. Do you know of any reason or impediment that would prevent him (her) from marrying? If yes, what are these.....
12. Has he (she) ever contracted or attempted marriage with any otherbefore.....
If Yes, give the name of each person; when the marriage took place and the type of marriage

- (a)
(With whom?) (When?) (Type of Marriage)
- (b)
(With whom?) (When?) (Type of Marriage)
- (c)
(With whom?) (When?) (Type of Marriage)

13. Is the marriage with (a) still existing?.....
Is the marriage with (b) still existing?
Is the marriage with (c) still existing?.....
14. Has his (her) family approved of the marriage?.....
If Yes, have the essential customary rites been rightly performed?.....
If No, what, ate the reasons.....

I solemnly declare that the above answers are true

Signature of the Witness

Signature of Parish Priest/Assistant Parish Priest.

ADDITIONAL INFORMATION

EXAMINATION OF A WITNESS BEFORE THE MARRJAGE CONCERNING THE FREE STATE OF

GROOM

B.RIDE

- 1.. What Is you full name?.....
2. What is your address?.....
Parish.....
3. To religion do you belong?
- 4.Do you know Mr (Miss)(Mrs).....
5. How long have you known him (her)
- 6.Are you related to him (her) in anyway?.....
7. How well are you acquainted with him (her)?
8. Is he (she) baptised? In what religion?.....

9. Do you know of his (her) intended marriage with Mr (Miss) (Mrs).....
10. Is he (she) entering this marriage freely?.....
11. Do you know of any reason or impediment that would prevent him (her) from marrying? If yes, what are these.....
12. Has he (she) ever contracted or attempted marriage with any otherbefore.....
If Yes, give the name of each person; when the marriage took place and the type of marriage
- | | | | |
|-----|-----------------------|------------------|-----------------------------|
| (a) |
(With whom?) |
(When?) |
(Type of Marriage) |
| (b) |
(With whom?) |
(When?) |
(Type of Marriage) |
| (c) |
(With whom?) |
(When?) |
(Type of Marriage) |
13. Is the marriage with (a) still existing?.....
Is the marriage with (b) still existing?
Is the marriage with (c) still existing?.....
14. Has his (her) family approved of the marriage?.....
If Yes, have the essential customary rites been rightly performed?.....
If No, what, ate the reasons.....

I solemnly declare that the above answers are true

Signature of the Witness

Signature of Parish Priest/Assistant Parish Priest.

ADDITIONAL INFORMATION

LITTERAE TESTIMONIALES OF THE ORDINARY OF ANOTHER DIOCESE

Having gone through the documents given above I certify that
Is free to marry provided that the necessary Nihil Obstat is obtained.

Seal Signed

Diocese of

Date

NIHIL OBSTAT OF THE ORDINARY OF THE DIOCESE OF HO

Having gone through the documents given above I certify that nothing hinders the marriage in question from being celebrated in our diocese, provided the demands of the law are kept.

Seal Signed

Date

STATEMENT OF THE PARISH PRIEST OF THE PLACE OF MARRIAGE

1. I Parish Priest of

Delegate Rev.of
For valid assistance at the above marriage in this Parish (with power to sub-delegate)

Seal Signed

Date

2. The above marriage was celebrated in this parish on
before Rev. The appropriate entries have been
made in the Baptism and Marriage Registers.

Seal Signed

Date