

# Canonical Sanctions and the Future of the Church in Africa

Dr. Patrick Okachi Okuta

Lecturer; Department of Canon Law, Catholic Institute of West Africa, Port Harcourt, Rivers State, Nigeria

Received: 21.02.2026 | Accepted: 18.03.2026 | Published: 23.03.2026

\*Corresponding Author: Dr. Patrick Okachi Okuta

DOI: [10.5281/zenodo.19177828](https://doi.org/10.5281/zenodo.19177828)

## Abstract

## Original Research Article

Sanctions are instituted in the church as a means to restrain or coerce erring members of the church whose contumacy has defied the use of other corrective measures. Sanctions are applied as last resort when all other means such as correction, rebuke, warning and penance have failed. The use of canonical sanctions when and where necessary must follow the procedural norms required by law. The process must take into cognizance the dignity and rights of all parties involved in the case, the right to privacy and good name, the right of defence, fair hearing and the right and opportunity for recourse either judicial or hierarchical. The accused must be presumed innocent until proven otherwise by a court of competent jurisdiction. The freedom of the accused must be equally guaranteed such that there is no use of threat whether physical, psychological, real or imaginary to forcefully obtain depositions other than what is true. However, when convicted of the alleged offence the penalty is to be applied with canonical equity. The penalty is not meant to break the offender but to break the contumacy. Penalty is to target the reform of the offender, repair of scandal and restoration of justice. Canonical sanction must fulfil the general purpose of law in the church *salus animarum* which is the supreme law. The misapplications of canonical sanctions by some ecclesiastical authorities have been the reason for questioning the necessity of law in the Church as a community of grace, preacher of mercy and advocate of forgiveness. This scenario has forced some members of the church to find other alternatives to the Catholic Church. Unless this situation or state of affairs changes the future of the church is reasonably threatened.

**Keywords:** canonical sanctions, church law, ecclesiastical justice, rights of the accused, church governance.

Copyright © 2026 The Author(s). This is an open-access article distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 International License (CC BY-NC 4.0).

## Preamble

A society without a law is a disordered one where security, rights and obligations of its members are not guaranteed. The existence of law in the church defines the rights and duties of members and limits the freedom of members in relation of one to another. It promotes respect for the rights of individuals and make provisions for the vindication of those rights when they are violated. Those who infringe on the law are held accountable, the common good of the society is promoted and the

security of life and property are guaranteed. The essence of law is to bring order, peace and harmony into the society. When justly applied, law promotes to the extent possible, egalitarian society where everyone is accorded his or her rights and privileges; discrimination, marginalisation, nepotism and injustice are totally excluded or reduced to the barest minimum.

Canonical sanctions are constitutive part of the canon law and serve the purposes of restraining erring members of the church, protection of



individual rights and fostering the common good of the church. Canonical Sanctions are employed as a last resort with the aim of reforming the offender, the restoration of justice and the repair of scandal (cann. 1311 §2; 1341), regardless of the circumstances where it binds perpetually. Canonical Sanctions and law generally is received in the church with mixed fillings; whereas those seeking justice appreciate the existence of law, those who have suffered its abuse and those in favour of charisma alone do not see any reason why the community of Gods people where grace and mercy flows should employ sanctions to coerce its members. The argument that in the church of charity there is no place for law for the reason that they are mutually exclusive was championed by Rudolf Sohm. However, Orsy observed that, “He correctly perceived the primacy of charity in the Church but failed to see the community's need for order. He had, moreover, a limited understanding of law: he saw it as a norm that by its nature demands enforcement through violent actions. For such law, he held, there is no room in the Christian community.”<sup>1</sup> The community of the people of God is not a place for criminals who cause disorder, injustice and scandal.

Some theologians argue that canon law is ordinance of faith, *ordinatio fidei*, not ordinance of reason, *ordinatio rationis*. This position was championed by Eugenio Corecco, a disciple of Morsdorf who went further than his mentor in stressing the divine elements in canon law. He saw faith as the principal agent creating it, and the law so produced as similar to dogma. He gives little attention to the human nature of the pilgrim Church.<sup>2</sup> There are many other arguments as these to exclude law, and indeed, sanctions from the church.

Notwithstanding, the existence of law among the community of the people of God is traced to the very beginning of human existence, “But of the fruit of the tree in the middle of the garden God said,

‘You must not eat it, nor touch it, under pain of death’” (Gen. 3: 3). The Ten Commandments were given to the children of Israel after a breath taking theophany at Mount Sinai (Ex. 20). There were other Levitical laws regulating their liturgical life and works of charity. The question of why law in the church should not arise in any case since God is himself the law giver. Green argues that, “If the peace of the community disturbed by the delict is to be responsibly restored, church authorities, rather than private individuals, should deal with those seriously violating community faith or order. The community can ill afford to be indifferent to such violations. Otherwise its identity as a sign of the union of God and human persons would be seriously jeopardized.”<sup>3</sup> The use or abuse of canonical sanctions could make or mar the future of the church.

### Canonical Rights of Christ’s Faithful

The right of Christ’s faithful must be properly understood in order to appreciate the place of canonical sanctions in the church, since sanctions are established to protect and vindicate individual rights and common good in the church. Canons 208 to 231 establish a wide range of rights and obligations of Christ’s faithful in the 1983 code of canon law which is recognised as the first ever bill of rights in the church. This work will be too small to assume the responsibility of discussing them in their entirety, therefore only a selected few will be considered.

#### i. Fundamental Equality of Christ’s Faithful:

The second Vatican Council in its Dogmatic Constitution on the Church, *Lumen Gentium* (LG) 32, emphasised the principle of fundamental equality of all Christ’s faithful. This ecclesiology is captured in the provisions of canon law; “Following from their rebirth in Christ, there is a genuine equality of dignity and action among all Christ’s faithful. Because of this equality they all contribute, each according to his or her own condition and

<sup>1</sup> Ladislav M. Orsy. “Theology and Canon Law” *New Commentary on the Code of Canon Law*. Ed. John Beal, James Coriden and Thomas Green. Bangalore: Theological Publication, 2007. 3.

<sup>2</sup> Ibid. 5

<sup>3</sup> Thomas J Green. “Introduction: Sanctions in the Church” *New Commentary on the Code of Canon Law*. 1530.

office, to the building up of the body of Christ.”<sup>4</sup> The fundamental equality of all Christ’s faithful by virtue of the law itself derives from their rebirth in Christ – baptism. Canon 204 §1 makes this emphasis as well, while canon 96 points out the juridical effect of baptism, that is the conferral of personality on the recipient. These canons all are unanimous in providing for the obligation of Christ’s faithful to contribute to the building up of the church in accordance with their conditions and offices.

This principle of equality does not insist on uniformity bearing in mind the hierarchical structure and the communion of all the faithful arising from baptism. “What is involved are hierarchical functions which, when carrying out the mission itself of the pastoral power, constitute the specific structural line of the entire structure of the Church, just as its Divine Founder wished. And precisely in connection with these hierarchical functions, there exist among the faithful – without diminishing their fundamental equality *insofar as they are faithful*...a differentiation or diversity of functions, which is also of divine law.”<sup>5</sup>

ii. Relationship between the Faithful and their Pastors

Canon 212 provides for the obligation of the faithful to be obedient to their pastors, the right to petition and the right of opinion. “It is absolutely correct that these three duties and rights are found together in this canon since they pertain not only to those of the faithful who lack power, but also to those who form part of the hierarchy of the church. Since ‘those who preside also ought to obey those who stand above them in the hierarchical order, and, first and foremost, they always ought to bend their actions to the will of Jesus Christ whose representatives they are,’ this same line of reasoning could similarly be extended to the rights of petition and opinion.”<sup>6</sup> The fundamental obligation of Christians to maintain communion with the church

is rooted in obedience to the hierarchy; the faithful to their pastors and those who exercise power to those who stand above them in the hierarchy of the church. Disobedience at all levels is the bane of public order both in the church and civil society. If left unchecked, disobedience not only threatens the future of the church but a recipe for its total destruction.

Paragraph two of this canon focuses on the right of the faithful to petition their pastors on what is of importance to their wellbeing, especially spiritual needs. “One of the obligations of the hierarchy arising from the relationship of subjection and qualified by a dimension of service, is that of attending to the concern or concerns of the faithful’s solicitude, which they believe, above all, to be necessary or appropriate in order to satisfy the demands of Christian vocation and of their specific ecclesial function.”<sup>7</sup> The faithful have the right to make recourse to ecclesiastical authority that requires concrete response. It also confers on the faithful the right to simply present a request wishes or difficulties with regard to the life of the church which require special attention. This right could be exercised verbally or in writing.

The third paragraph of this canon focuses on the right of opinion. Those who manifest their opinion on matter concerning the good of the church must have the knowledge, competence and position.

The fact that the right of opinion depends on *scientia*, *competentia* and also *praestantia* of each person...does not work to the detriment of its common nature nor against the fundamental equality of the faithful, since ‘insofar as matters involving the formation of judgment in relation to the good of the church and of its expression are concerned (inherent to *knowledge* and *competence* in the subject now under discussion), the laity have the same rights and duties as clerics and religious. The same thing can be said of *praestantia*, of prestige; it consist of position of moral pre-eminence, social value and one who possesses it exerts an influence by inducing other

<sup>4</sup> Canon 208.

<sup>5</sup> Juan fornes. “Obligations and Rights of all Christ’s Faithful” *Exegetical commentary on the Code of Canon Law II/1, Eng. Ed.* Ernest Caparros. Montreal: Wilson & Lafleur, 2004. 43.

<sup>6</sup> *Ibid.* 66.

<sup>7</sup> *Ibid.* 70

members of that community to act. Thus from this vantage point, a sense of responsibility emerges, because one's action, omissions and opinions can exert a real force influencing the conduct and the decisions of the community and the authority'.<sup>8</sup>

The exercise of this right calls for prudence in choosing the channels through which the opinions are expressed. It is irresponsible to choose a means of generalised dissemination to express opinions that could mislead those faithful who are inadequately formed to understand the implications of the opinion. The exercise of this right should be regulated by public governance.

There are many other rights enjoyed by Christ's faithful such as the right to form associations (can. 215), the right to privacy and good reputation (can. 220), the right to vindicate and defend these rights (can. 221). The right to life also includes the right to be born. The legislator in protection of these rights criminalizes the threat to human life and the unborn child when in canon 1397 all offences that threaten both are severely sanctioned with expiatory penalties, excommunication not excluded. The right to acquire, retain and alienate properties either by physical or juridical persons is protected by the provisions of canon 1256. These rights are inviolable and cannot be infringed upon without canonical sanctions. There are a host of other rights enjoyed by Christ's faithful including the right to be buried at death and the method of burial (can. 1176), the choice of the place and the church to celebrate the funeral (1177). It must be constantly kept in mind that it is the legitimate right of the church to constrain with canonical sanctions, in accordance with the norms of law, any of her members whose action or inaction leads to the violation of the rights of others resulting in an offence or a crime (can. 1311 §1).

### The Use of Canonical Sanctions

Canonical sanctions are instituted in the church to curtail human excesses in the exercise of their

freedom and rights. The realization that every human person enjoys certain right which they have the freedom to exercise if not checked could become the "Will to Power" of Fredrick Nietzsche leading to the Hobbesian state of nature where public disorder not only threatens the continuous existence of the church but will destroy it. For this reason, "The one who is at the head of a Church must safeguard and promote the good of the community itself and of each of Christ's faithful, through pastoral charity, example of life, advice and exhortation and, if necessary, also through the imposition or declaration of penalties, in accordance with the provisions of the law, which are always to be applied with canonical equity and having in mind the restoration of justice, the reform of the offender, and the repair of scandal."<sup>9</sup> The expression "must safeguard and promote the good of the community itself and of each of Christ's faithful" by the legislator, brings out the imperative that the use of canonical sanctions to regulate the human aspect of the life of the church is not optional. However, the legislator did not fail to note that it must be in accordance with the norms of law. Canonical sanctions, in order that it be in accordance with the provisions of the law, due process must be followed to balance the interest of the victim and the rights of the accused.

Canonical sanctions are for the good not only of the community and the victims but also of the accused who is to be reformed by the penalty applied with canonical equity, having been deformed by his crime. The invaluable contribution of canonical sanctions to the good of the ecclesial community is to sustain its identity as a sign of the union of God and human persons.

### Abuse of Canonical Sanctions

The application of canonical sanctions without observing the due process constitute the abuse, while the refusal to employ it under any guise in the face of criminal infraction is gross irresponsibility. "The Christian faithful have the right not to be punished with canonical penalties except in accord

<sup>8</sup> Ibid. 73-74.

<sup>9</sup> Canon 1311 §2



with the norm of law.”<sup>10</sup> This provision of the law clearly makes invalid any application of canonical sanction that excludes the due process. The external violation of a law does not immediately amount to a punishable offence. “Any person is considered innocent until the contrary is proved. No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability.”<sup>11</sup> The imputability of the external violation must necessarily prove that the action causing the infraction is a product of *dolus* (malice). “The component parts of malice are advertence which is the understanding that to so act is to violate a legal obligation; and freedom of the will which is to choose to so act even with the knowledge that a legal obligation is violated.”<sup>12</sup> The evidence that the accused has a deliberate intention to violate a law – commit a crime, makes the external violation of the said law imputable to him or her. It may appear contradictory that the same law also provides that, “Where there has been an external violation, imputability is presumed, unless it appears otherwise.”<sup>13</sup> The presumption of imputability from the external violation of a law suggests that the external violation alone is a source to raise the presumption; that is, imputability is taken for granted. “This appears to be a return to the *ex informata conscientia* (from informed conscience) of the 1917 Code and overturns the presumption of innocence until proven guilty.”<sup>14</sup>

The presumption of innocence is a presumption of law while the presumption of imputability is that of fact. The interplay between the presumption of innocence until guilt is proven and the presumption of imputability, the law places a certain burden on the alleged offender to demonstrate that imputability, or at least grave imputability, is not verified in the case in question.<sup>15</sup> This apparent

contradiction in the law resulting from opposing presumptions is resolved by the proof of *dolus*. On the other hand, the presumption of imputability is overturned by virtue of the canon itself if the external violation of a law ‘appear otherwise’ (*nisi aliud appareat*). The interpretation of the *nisi aliud appareat* may be subjected to individual opinions but the reality of its application cannot be reduced to mere rhetoric, but must be substantiated with convincing evidence to show that the presumption of imputability appear otherwise. It require some weight of evidence to overturn the presumption of imputability no matter how small but must have value in law. While the evidence required to overturn the presumption in a penal case is not expected to be as weighty as in the proof of the contrary required in the marriage nullity case, it is instructive to note that mere possibility does not suffice to rebut the presumption, there must be evidence having value in law.<sup>16</sup>

Imputability could be substantially diminished by some circumstances and conditions recognized in law, which makes the presumption appear otherwise. These circumstances and conditions equally excuse the imposition of canonical sanctions if authenticated by subjecting them to juridical analysis to ensure that they are not imaginary but real, as well as not deliberately intended in order to evade sanctions. Habitual lack of the use of reason, lack of age (below sixteen years), non-culpable ignorance of the law, physical force, grave fear, legitimate self-defence, lack of reason due to influence of substance are the circumstances and conditions recognized in canons 1322 and 1323. However, these are not easily proven unless under strict juridical interrogation. The intentional or culpable neglect of this interrogation prior to the imposition of canonical sanction is abuse of the right of the accused and the penal process.<sup>17</sup>

<sup>10</sup> Canon 221 §3

<sup>11</sup> Canon 1321 §1

<sup>12</sup> Patrick O. Okuta. *Imputability in Ecclesiastical Penalty*. Port Harcourt: CIWA Publications, 2023, 106.

<sup>13</sup> Canon 1321 §3

<sup>14</sup> Okuta. 109

<sup>15</sup> Tomas Green. “Offenses and Penalties in General.” *The Code of Canon Law: A Text and Commentary*. Ed.

James Coriden, Thomas Green and Donald Heintschel. Bangalore: Theological Publication, 1999. 891-941. 901. Print.

<sup>16</sup> Okuta. 112-113

<sup>17</sup> Patricia M. Dugan, “The Need to Know vs. Confidentiality: Do Pontifical Secret and the Clamoring of the Media Deny Canonical Rights” *Towards Future Developments in Penal*

Abuse of canonical sanctions is a product of certain societal factors such as media notoriety and trial in the public opinion court. “Once the media began announcing any claim of abuse for which it could get even a slight amount of information, some bishops reacted by giving that priest 24 hours to leave the rectory where he lived, without any substitute place to live and without any financial support, not even his monthly salary.”<sup>18</sup> The order to vacate the rectory is a canonical sanction recognized by canon 1333 §3 2°, it follows that the affected priest has been sanctioned from mere allegation of committing an offence without at least a preliminary investigation in accordance with the norms of canon 1717. Some penal authorities take too far, the recommendation of Woestman that, “If the fact of the offense and its imputability are notorious, the ordinary can omit the preliminary investigation as useless and superfluous.”<sup>19</sup> This state of affair has subjected some members of Christian faithful, clerics in particular, to undeserved and sometimes damaging or irreparable sanctions. The right of the affected priest to his good name has been severely tarnished even if later he is not found guilty of the alleged offence. “If there is an error and the person accused is not guilty of the act, the media seems to believe that printing a retraction somewhere in a back page will be enough to restore a once good name. This is in total conflict with canon 280 (sic), (c. 220). This canon cannot, under any circumstance, be sacrificed in the name of transparency, or any other concept of cooperation, for the protection of children.”<sup>20</sup> Abuse of canonical sanction of this magnitude cast the image of the church in bad light as an institution lacking in due diligence. There are other occasions where the accused deserved to be sanctioned but the sanction grossly outweigh the offence committed, a clear case of killing an ant with a sledge hammer. It is indicative of authoritarianism or a demonstration

of personal hatred for the accused which damages the exercise of real authority.

The refusal to impose sanctions on some members of Christian faithful who have been found culpable of some offence is another aspect of abuse. This selective treatment of some members of Christian faithful creates class conflict and reduces the church to unjust society where injustice and dehumanization breed. These “sacred cows” are never going to be reformed but will continue to grow in wrong doing and become perpetual criminals if the state of affairs remained unchanged. The initial contumacy becomes audacious and reckless being aware that the authority will do nothing about it. The consequential scandal and in some cases financial liability of their offence reverts to the church for failing to whip them into line or hold them in check. Both the image and future of the church are faced with moral and judicial impropriety casting on them a big shadow of uncertainty.

### Right of Defence and Fair Hearing

The right of defence in a penal process is an imperative for the validity of the penalty to be imposed. The law states that “If the ordinary thinks that the matter must proceed by way of extrajudicial decree: he is to inform the accused of the accusation and the proofs, giving an opportunity for self-defense, unless the accused neglected to appear after being properly summoned.”<sup>21</sup> The accused is at liberty to exercise the right of self-defence or may choose not to exercise it. His choice does not affect the decision of the authority to proceed with the case. “The involvement of the accused here is required by the basic right to be informed of proposed actions which might prejudicially affect one's rights and the right of self-defense (1°). If the accused chooses not to exercise that right, however, the ordinary or his delegate may decide the case.”<sup>22</sup> However, the refusal to inform the accused of the proposed action against him or her and summon to

Law: *US Theory and Practice* ed. Patricia M. Dugan, Montreal: Wilson & Lafleur, 2010, 21.

<sup>18</sup> Dugan. 21.

<sup>19</sup> William H. Woestman, *Ecclesiastical Sanctions and the penal Process*, Bangalore: 2009. 161.

<sup>20</sup> Dugan. 23.

<sup>21</sup> Canon 1720 1°

<sup>22</sup> Thomas J. Green, “Penal Process” *New Commentary on the Code of Canon Law*. 1811.



self-defence is another form of abuse of the penal process if a penalty is indeed imposed.

Fair hearing, the right of defence and the right of recourse or appeal in case of one who is found guilty must be guaranteed so that no one is unjustly treated or favoured. “This obligation to listen to a respondent and to consider his defense is particularly important in the penal process, in which the good of the accused has a special importance. In fact, the freedom, the good reputation and the free exercise of spiritual goods inherent to the condition of a Christian (lay or cleric), more than the economic assets, constitute the essential legal patrimony of the human person and of the faithful.”<sup>23</sup> The violation of the rights of the accused in a penal trial robs them not only of their legal patrimony but also of their human dignity and spiritual goods. The process must be transparent, maintaining the constant and perpetual will to give to each his right, such that “*Abbas non privabit eum defensione, quae [...] etiam diabolo, si in iudicio adesset, non negaretur* (Abbot will not deprive him of a defence, which even if the devil, if he were present at the trial, would not be denied).”<sup>24</sup>

The right of defence cannot be denied for any reason regardless of the urgency of the need to repair scandal. A penalty imposed in this fashion is sure to produce a negative reaction from the alleged offender who has been denied this right. The pains of this ill treatment could break the communion of the accused and his or her sympathisers with the church. The church in Africa in majority of cases is still growing in many respects including the requisite personnel and knowledge of penal process, giving some authorities the reason to seemingly be high handed in some decisions they make. As the church in Africa continues to grow some of these practices are becoming repugnant to the faithful. If there is no change in this manner of treatment of Christ’s faithful, the future of the church may not be very promising.

### Canonical Equity: The Balance between Justice and Compassion

Canonical sanctions are used as a last resort when all pastoral approaches have been exhausted without achieving the desired result – break in contumacy. Generally the supreme law is the salvation of soul<sup>25</sup>, therefore, the imposition of canonical sanctions is not to inflict pains but to reform the offender, restore justice and repair scandal.<sup>26</sup> “The Church’s penal activity will reflect its redemptive, healing character if it primarily affirms ecclesial unity through faith and charity rather than condemning individuals expressing heterodox positions or behaving in an ecclesially detrimental fashion.”<sup>27</sup> The law itself provides for the offender to be treated with dignity so that he is not dehumanised by the penalty but shown some level of compassion. The canon law provides that, “*Si post delictum commissum lex mutetur, applianda est lex reo favorabilior*” (If a law is changed after an offence has been committed, the law more favourable to the offender is to be applied).<sup>28</sup> The legislator in this provision clearly demonstrate that it is the reformation not the hardship of the offender that is sought in the imposition of canonical sanctions, otherwise the law would have recommended a stiffer sanction for the offender when the law is changed. Again, “*Quod si lex posterior tollat legem vel saltem poenam, haec statim cessat*” (If a later law removes a law, or at least a penalty, the penalty immediately lapses).<sup>29</sup> In the same way the legislator did not insist on the sanction when a later law removes the previous law under which the offence was committed.

Penalties are either medicinal (censure) or expiatory (vindictive), the former is relaxed when the contumacy has ceased and the offender has shown remorse and have repented of his offence while the latter may bind perpetually or cease when the duration of the penalty has elapsed. *Latae sententiae* binds automatically by the commission of the

<sup>23</sup> Joaquin Llobell. “The Balance of the interest of Victims and the Rights of the Accused: The Right to Equal Process” *The Penal Process and the Protection of Rights in Canon Law*, ed. Patricia M. Dugan, Montreal: Wilson & Lafleur, 2005. 69.

<sup>24</sup> Ibid.

<sup>25</sup> Canon 1752

<sup>26</sup> Canon 1341

<sup>27</sup> Green. “Introduction: Sanctions in the Church” *New Commentary on the Code of Canon Law*. 1530

<sup>28</sup> Canon 1313 §1

<sup>29</sup> Canon 1313 §2



offences which carry with them such prescriptions while *Ferendae sententiae* is imposed after a due process has been observed in accordance with the norms of law. The law equally makes provision to avoid double punishment for a single offence when the accused have been found guilty. “Even though the law may use obligatory words, the judge may, according to his own conscience and prudence: abstain from imposing the penalty or substitute a milder penalty or a penance, if the offender has repented, as well as having repaired any scandal and harm caused, or if the offender has been or foreseeably will be sufficiently punished by the civil authority.”<sup>30</sup> If the person is first time offender the law also made provision for compassion.<sup>31</sup> Canons 1345 §2 and 1346 both made provisions for the reduction of penalties for the offender under various circumstances, to be observed by the judge who found them guilty of some alleged offences. This show of compassion by the legislator in the imposition of canonical sanctions, demonstrates that it is the reform of the offender not his or her suffering that is desired and that the salvation of souls is the supreme law.

This show of compassion is not to be elevated over and above reason, justice and truth otherwise it becomes profoundly immoral, unhealthy and a threat to the public order and the existence of the church itself. The Catholic Church is built not only by the word, sacraments and creed but also by the law such that the disregard for the canonical procedural law tarnishes the purity of the mission of the church. The frustration of the legitimate interest of the victim and the public scandal of the offender’s crime, if not punished by the law of the church, are recipes for the destruction of the church. “Actually, official penal action is not taken primarily at the initiative of church authorities. Rather, such action responds to the action of an individual breaking entirely with the Church or seriously disturbing his or her communion with it.”<sup>32</sup>

## Right of Recourse

In exercising the right to restrain with canonical sanctions, those members of the church who have infringed on the law, ecclesiastical authorities being human may fail to observe the due process either by omission or commission. This lack of due diligence calls to question the penalty imposed by means of such a process. The alleged convicted offender may exercise his or her right to administrative recourse, in order that the flaw in the process leading to the imposition of the penalty is reconsidered.

## Fiducia Supplicans and Canonical Sanctions

The compassion granted to the gay couples by the Roman Pontiff, permitting that they could be blessed seems to undermine the aim of canonical sanctions in the church. However, “the Congregation for the Doctrine of the Faith’s *Explanatory Note* to its 2021 *Responsum* recalls that when a blessing is invoked on certain human relationships by a special liturgical rite, it is necessary that what is blessed corresponds with God’s designs written in creation and fully revealed by Christ the Lord. For this reason, since the Church has always considered only those sexual relations that are lived out within marriage to be morally licit, the Church does not have the power to confer its liturgical blessing when that would somehow offer a form of moral legitimacy to a union that presumes to be a marriage or to an extra-marital sexual practice.”<sup>33</sup> This statement firmly states the position of the church regarding the other forms of union which presumes to be marriage but against the original understanding of marital union.

The law made provisions to sanction offences of this nature when it provides that, “Besides the cases prescribed in this or in other laws, the external violation of divine or canon law can be punished, and with a just penalty, only when the special gravity of the violation requires it and necessity demands that scandals be prevented or repaired.”<sup>34</sup>

<sup>30</sup> Canon 1344 2°

<sup>31</sup> Canon 1344 3°

<sup>32</sup> Green. “Introduction: Sanctions in the Church” *New Commentary on the Code of Canon Law*. 1530

<sup>33</sup> Dicastery for the Doctrine of the Faith, *On the Meaning of Blessing* n. 11

<sup>34</sup> Canon 1399



Same sex union and its allied orientations the LGBTQ attacks human nature, radically vitiates the theology of the body and Christian anthropology. It is a practice by those who have no intention to repent from this form of orientation but have persistently clamour for recognition and legitimacy. The blessing of such couples on the ground of compassion is a good intention that could surreptitiously become audacious and metamorphose into a rite for the solemnization of such union in a distant future with this compassionate granting of blessing being the foundation. The continuous clamour of these gay persons for legitimacy without seeing the wrongness of their orientation has by itself invalidated the compassionate blessing. The acceptance of wrong doing is the beginning of conversion but these persons do not see themselves as doing anything wrong, therefore any privilege granted on compassion is going to lend support to legitimize their union if not now, in the future.

It is well known that while some nations of the world give legitimacy to this union others, Nigeria inclusive, have criminalized the union. If the church that has been in the fore front of this campaign grants this privilege it appears the Christian faithful and governments of those nations could not be any less disappointed. The way to go is to resort to canonical sanctions until their contumacy is broken. It is abundantly clear from the foregoing that canonical sanctions are not to inflict pains but to reform the offender, therefore, canonical equity in this case should not be the granting of a privilege that gives the impression of legitimacy but an encouragement to repentance from a crime that threatens their communion with the church.

### Recommendations

Canonical sanctions remain a means of constraining the members of Christian faithful who have gone

astray to restore them to communion with the church. Therefore, canonical sanctions are to be imposed:

1. Observing the due process in accordance with the norms of law, such that the purity of the mission of the church remains untarnished.
2. Protection of the rights of the accused, to good name and reputation, privacy, defence and fair hearing and not to be sacrificed for the interest of the victim, cooperation or transparency.
3. Ensuring that there is no selective justice where some are treated as sacred cows while others are severely punished even more than is required for the offence committed.
4. To ensure that the application of canonical equity in the imposition of canonical sanction is not stretched beyond limit so that compassion is elevated over and above justice.
5. To ensure that no privileges are given to offender which will misrepresent the teaching of the church or have the connotation of giving legitimacy to an offence which ought to have been punished.

### Conclusion

The future of the church and its salvific mission is tied not only to the word, sacraments and the creed but also to the law regardless of the reactions of some members to it as restricting charisms, pastoral initiatives and charity. The law puts order into the human aspects of the church which are very much unstable and could derail the smooth running and communion. If the offending members are not controlled the future of the church and its communion are profoundly threatened especially in the growing church of Africa and the global south.