Marriage in African Society and Culture: Challenges to Polygamy as A Juridical Matrimonial Model in Nigeria

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Abstract

In African society and culture, marriage as a human reality is plays an important role in integrating the family with the society. This marriage before the advent of Christianity was solely polygamous in nature, either as polygyny or polyandry, the native law and custom of the various African societies concede to men the capacity to take more than one wife concurrently. Islamic law in Northern Nigeria equally permits a man to marry up to a maximum of four wives. The reasons given for polygamy include solving the problem of childlessness in marriage and the need to give all adult females the possibility of having a husband as the number of women is said to outnumber that of men. In Nigeria today, polygamy is faced with a lot of challenges as result of the exigencies of the fundamental rights of the human person. There are challenges from international conventions that advocate for the prohibition of polygamy, as it contravenes a woman's right to equality with men. There are equally challenges from Nigerian extant laws, from canon law, from women theologians, from Church authorities and from changing economic circumstances. The paper recommends that polygamy as a matrimonial model in Nigeria should be discountenanced, and then concludes with a submission that polygamy is a negation of the unitary ideal of marriage and that it stands out as one of the oppressive structures of women in Nigeria-Africa, for it is not only devoid of complete self-donation to any of the wives, but equally goes against the well-being and dignity of women as persons.

Key words: Marriage, Society, Culture, Polygamy, African Societies, Nigeria

1. Introduction

Marriage as a natural and human reality is practiced in different cultures all over the world. It is deemed to be one of the most vital mechanisms in maintaining the consistency of all societies on earth. Every society accepts marriage as a vital force in maintaining and sustaining that society. However, its meaning and significance are understood within people's cultural affiliations and these differ from one culture to the other. Culture is usually made up of three components: what people think, what they do and what they produce. Hence, in the context of African culture and marriage, one must acknowledge polygamy as a form of marriage that has been one of it corner stones. In this paper, our emphasis is marriage with regard to how it is practiced within the African society and culture and then the challenges that confront polygamy as an aspect of African marriage in Nigeria. We shall first examine the concept of marriage in Africa, the various kinds of extant marriages in Africa, and then concentrate on polygamous marriage in Nigeria and its attendant challenges.

2. The Concept of Marriage in African Societies

Marriage, like many social terminologies, is an essentially contentious concept, such that there is no one generally accepted definition of marriage. In the African traditional system, marriage has been described as the legalising of a special relationship to which the society gives its approval between a man and a woman; one that places each of the partners under legal and social obligations to the other and to the society[1]. Most Africans understand marriage to be an institution primarily knotted within African cultural norms and traditions with disparity of roles between the couple[2].

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[1] Prudence C. Nwobi, *Marriage and Family counselling,* Enugu: 1997, p. 1.

[2] Cf. Gift Thlarinhani Baloyi, "Marriage and Culture within the Context of African Indigenous Societies: A Need for African Cultural Hermeneutics", in *Studia Historiae Ecclesiasticae* (June 2022): Dot:10.25159/2412-4265/101113, https://www.researchgate.net/publication/363365132, (accessed 24/01/2024).

From the very way African people view marriage, it is apposite to state that for the African, marriage is looked upon as a sacred duty which every normal person must perform so as not to stop the flow of life. This is why Mbiti observed that in all African societies "everything possible is done to prepare people for marriage and to make them think in terms of marriage"[3]. It is through marriage and childbearing that human life is preserved, propagated and perpetuated. In effect, the first meaning and purpose of marriage for an African is the obligation to bear children. From this perspective, marriage fulfils the obligation, the duty and the custom that every normal person should get married and bear children.

In African traditional societies, therefore, the stress was laid in marriage upon the procreation of children rather than upon the inter-personal relationship[4]. In effect, the concept of marriage for Africans is very closely tied to children and fecundity, such that the aspect of companionship and marriage for the good of the spouses appears to be clearly overshadowed by this dominant interest and concentration on children[5]. In other words, marriage for Africans is teleological, as its supreme purpose is to bear children, to build a family, to extend life and to hand down the living torch of human existence. For Africans, marriage constitutes what Mbiti rightly calls "the focus of existence", a point where all the members of a given community meet, namely, the departed, the living as well as those yet to be born[6]. It is the uniting link in the rhythm of life[7].

In a broader and traditional context, African marriage is not simply an affair between two people, a man and a woman who decided to be husband and wife, but rather a marriage between two families or even between two clans, which even continues after the death of the husband. Hence, the concept of "marriage" in the African context suggests a relationship between two kinship groups, and so lays much emphasis on the community rather than on the personalist dimension of marriage[8].

It is good to observe that within the African societies, marriage practices differ from one culture to another, but there are certain things which they share in common. African societies believe more in communal existence than in the autonomy of the individual, and they equally believe that the propagation of life is essentially communal rather than an individual concern. This implies that new social relations are created, not only between the husband and the wife, and between the husband and the relatives of the wife on the one side and between the wife and the husband's relatives on the other, but also between the relatives of the husband and those of the wife, who on both sides, are interested in the marriage and in the children that are expected to result from it[9].

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[3] John S. Mbiti, *Introduction to African Religion,* Heineman Educational Books, Ibadan: 1975, p. 98.

[4] Adrian Hastings, *Christian Marriage in Africa*, London: 1973, p.28.

[5] Titus Nnabugwu, "Childless Marriages in Africa and Indissolubility" in Hilary C. Achunike (Ed.), *Evangelization in the Third Millennium: A Contemporary Analysis*, Rex Charles & Patrick Ltd, Nimo: 2022, p. 197. The Bishops of Africa and Madagascar at their SECAM meeting of 1981 at Yaounde, Cameroun stated quite categorically that Marriage in Africa aims at Fecundity (cf. Francisco Urrutia, "The Challenges on Canonical Marriage Arising from Africa" in *Studia Canonica*,23(1989), p. 14.

[6] John S. Mbiti, *African Religions and Philosophy*, Heinemann, London, Ibadan – Nairobi-Lusaka, First pub. 1969, Reprinted 1975, p. 133.

[7] John S. Mbiti, *Introduction to African Religion*, p.104.

[8] Pius EO Okpaloka, *Legal Protection of Marriage and the Family Institutions: A Comparative Study of Major Normative Systems with Special Focus on Nigeria-Africa*, Trinitas Publications, Onitsha: 2002, p. 168.

[9] AR Radcliffe-Brown and Daryll Forde (eds.), *African Systems of Kinship and Marriage*, Oxford University Press, London, 11th Edition, 1975, p.43.

3. Typologies of Marriages Practiced in African Society and Culture

There are several kinds of marriages that are practiced and recognised in African societies. These marriages fall into two major groups, namely marriages under Customary Law or Native Law and Custom, and marriages under the Marriage Act. The marriages performed under native laws and customs, which vary in different tribes and areas of Nigeria, and Africa in general, are called traditional or customary law marriages[10]. These kinds of marriages flourished even under the British colonial rule in Nigeria and other former British colonies in Africa, where the British Government adopted a policy of non-interference with the traditional patterns of domestic relations, save where it was felt necessary to do so in compliance with the repugnancy clauses in the colonial legislation[11].

For instance, in Nigeria, customary marriage is firmly rooted in Nigerian customs, which originated from time immemorial, and which have equally acquired the force of law in the various communities. Customary law marriage, though varying from place to place, from community to community, has at the same time certain fundamental principles and notions that are common to nearly all the customary law systems in the various communities. Customary marriage is said to be potentially polygamous in its characteristic incidents, which means that this type of marriage does not limit the number of wives a man may marry. Obi on the nature of customary marriage in some parts of Igboland said: "Marriage is potentially polygamous for men. That means that a man is free to have as many wives at a time as he pleases. There are no circumstances under which a man is forbidden by customary law to have more than one wife at a time"[12].

Polygamy may comprise either of two types of marriage: polygyny and polyandry. Polygyny, which is a fairly common type of marriage in African societies, obtains where two or more women are married to one husband in accordance with their native law and custom. In effect, a woman who marries under this native law and custom must take cognisance of the fact that her husband may have other wives, or may take other wives, and that she has no right to stop him[13]. In other words, the main feature of polygamous union is the capacity of the man to take more than one wife concurrently, and it is immaterial whether the man in question exercised this capacity[14].

Polygamy as part of Muslim law permits a man to marry up to four wives. It is generally accepted by Islamic scholars that a Muslim man does not require permission from anyone to enable him contract a second or subsequent marriage up to a maximum of four. Hence Polygamy as a Muslim practice is a matter of conscience, convenience and male discretion, with no corresponding right given to Muslim women[15].

There is another form of polygamy commonly known as polyandry, which strictly interpreted means the marriage of one woman to a plurality of husbands. Its most usual form is adelphic

[10] In Nigeria, the term "Customary law" generally includes Islamic law and although there are Moslems all over Nigeria, Islamic law applies only in the Northern States.
[11] Cf. TO Elias, *Law in a Developing Society*, Ethiope Publishing Corporation, Benin City: 1973, p.80. The Native laws and Customs were to be so applied if they are neither repugnant to the principles of natural justice, equity and good conscience, nor inconsistent with any valid local enactment (cf. Section 20 of the Nigerian Supreme Court Ordinance, 1943).
[12] SNC Obi, *The Customary Law Manual: A Manual of Customary Laws obtaining in the Anambra and Imo States of Nigeria*, Enugu: 1977, no. 269, p. 209.
[13] JO Ogebe, *Marriage in Nigeria*, Challenge Publications, Jos: 1988, p.7.
[14] CO Okonkwo (Ed.), *Introduction to Nigerian Law*, Sweet & Maxwell, London: 1980, p. 287.
[15] D Pearl and W Menski, *Muslim Family Law*, 3rd Ed., Sweet & Maxwell, London:1988, p.238.

polyandry, in which the woman marries two or more brothers. However, Polyandry, as the taking of more than one husband concurrently by a woman, is not part of Nigerian law and it does not find a wide acceptance in many African societies[16].

Customary law marriage views marriage as coextensive with the life of the wife, such that the death of the husband does not necessarily terminate the marriage. This is because a woman may retain the status of a married woman for a number of purposes in spite of her husband's death. A dissolution of the marriage in customary marriage is only possible by divorce, which entails returning fully the bridewealth or dowry to the family of the husband.

It is pertinent to note that a former Justice of the Nigerian High Court in Benue State categorized as "Traditional Type of Church Marriage" a situation where "The Church recognises or blesses a marriage in which the couple have completed a contract of marriage according to Native Law and Custom and then desire to receive Christian recognition of their marriage[17]" without more. This means that once the Church marriage is not conducted in accordance with the Marriage Act but celebrated merely as "The Church recognition or Church Blessing", then the said "Traditional Type of Church Marriage" is still viewed as a customary law marriage in Nigeria, even though the canonical form of marriage was observed[18]. Hence, such marriage may have legal validity under the customary marriage law but not under the Act. An illustration of this is the pronouncement of the Court in *Obiekwe v Obiekwe* which stated as follows:

> Legally a marriage in a church (of any denomination) is either a marriage under the Ordinance or it is nothing…if the parties have not been validly married under the Ordinance then either they are married under native law and custom or they are not married at all. In either case the ceremony in a church would have made not a scrap of difference to their legal status[19].

Apart from Customary Law Marriage or Marriage according to Native Law and Custom, many African societies, as former colonies under the British legal system and common law, equally contract a Statutory Marriage referred to as Marriage under the Marriage Act. This type of marriage, which is open to all persons who fulfil all legal or statutory requirements, irrespective of religion or philosophical conviction is also often called a Court Marriage or a Civil Marriage. Its essential requirements relate to the age of the parties, their status, consent, their mental state and the prohibited degrees of affinity and consanguinity[20]. In contrast to Polygamy, the Marriage Act provides for a monogamous marriage which is recognized by law as "a voluntary union for life of one man and one woman to the exclusion of all others"[21].

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[16] Onyeka C. Nwanunobi, *African Social Institutions*, University of Nigeria Press, Nsukka: 1992, p.31.
[17] JO Ogebe, *Marriage in Nigeria*, pp. 7-8.
[18] This is why the Code of Canon Law expressly stated that: "Except in a case of necessity, a person is not to assist without the permission of the local ordinary at: 2º a marriage which cannot be recognised or celebrated according to the norm of civil law" (Can. 1071). Section 22 of the *Marriage Act* forbids a minister of religion to celebrate any marriage until the parties have delivered to him the Registrar's certificate or the special license from the governor under s.13. Equally, section 43 imposes a maximum penalty of five years imprisonment for performing a marriage in defiance of the Act.
[19] *Obiekwe v Obiekwe*, E.N.L.R (1963)196 at p.199.
[20] CO Okonkwo (ed.), *Introduction to Nigerian Law*, p.288.
[21] *Hyde v Hyde and Woodmansee* (1866) LR 1 P&D 130, p. 133.

4. The Reasons for Polygamy in African Traditional Culture

We have seen that polygamy is practiced in many African societies for it is supported by their native law and customs. But the question still remains as to why some people in traditional African societies prefer polygamy as opposed to monogamy. The first primary reason has been identified as the desire to have many children and to solve the problem of childlessness. In effect, polygamy traditionally helped to satisfy the need and desire of having a large family and also catered for the childless union and offered a kinder solution than that of divorce when a wife is barren. Again, for the fact that the main purpose of marriage in Africa has been variously described as procreation, and coupled with the understanding and the societal pressure that one must have his or her descendants on earth, polygamy is seen as a means of solving a major societal problem of childlessness and of minimizing the chances of promiscuity and prostitution[22]. According to Kisembo et al., "It can be readily understood that childlessness placed a heavy if not intolerable strain upon a marriage. Without the alternative of polygamy divorce would be practically inevitable and it was divorce that the practice of the sororate was designed to forestall"[23].

A second reason was identified by Clignet as the complexity of female roles in the society, as the obligations of a woman to her husband and his family do not cancel her duties to the members of her own family[24]. This is with regard to the fact that in many African cultures, a married woman is required to visit her kin group at regular intervals and on special occasions, such as funerals; and these prescribed absences often lead to the complaint of African husbands that to have one wife is to have none, as this situation might impose on husbands the performance of domestic chores, such as cooking and fetching water and wood, which is considered female tasks and therefore incompatible with male dignity[25].

Some people equally consider sex ratio as a contributory factor to polygamy, since the number of women is said to outnumber that of men. It was stated that the outcome of the 2002 Tanzania population census of Mara region revealed that the male population was 663,449 and female population was 715,153 leaving a surplus of more than 61, 704 females. In the said Mara societies it was considered unacceptable for adults to be unmarried; and moreover, in such a situation, a woman would prefer to be one of the multiple wives rather than remain without a husband and further risk being considered a social outcast[26].

Other reasons adduced for the preference of polygamy include prestige, as a man was considered as a person of great influence or a leader if he had several wives and many children. And there is the issue of levirate marriages, which entails the taking of the widow of a dead brother as a wife in order to provide the widow with security, care for the children, the means to have children if she had none and to provide an inheritance in the family. This new relationship normally becomes effective without the need for any fresh bride-price or formal marriage.[27] This brings us to the

[22] B. Kisembo, Magesa and A. Shorter, *African Christian Marriage*, Second Edition, revised and reproduced with permission, Paulines Publications Africa, Nairobi: 1998, p.86.
[23] B. Kisembo, L. Magesa and A. Shorter, *African Christian Marriage*, p.96.
[24] Remi Clignet, *Many Wives, Many Powers: Authority and Power on Polygynous Families*, Northwestern University Press, Evanston: 1970, p. 30.
[25] Remi Clignet, *Many Women, Many Powers*, p.30. There is a proverb among the Serere, a district in Eastern Uganda quoted by Vincent Monteil that says: "With one wife, a man has only one eye", (cf. Vincent Monteil, L'Islam noir, Le Suel, Paris: 1964).
[26] I. Gaskiyane, *Polygamy: A Cultural and Biblical Perspective*, London: 2000, p. 7.
[27] EI Nwogugu, *Family Law in Nigeria* (Revised Edition), Claverianum Press, Ibadan: 1996, p.65.

second part of this paper which is the challenges facing Polygamy as a specie of marriage in Nigeria.

5. The Challenges to Polygamy in Nigeria

Even though polygamy has a number of well-defined social functions and advantages, and is said to have helped to stabilize the institution of marriage and to integrate the family with society, there is no doubt that as practiced in Nigeria today, polygamy is faced with a lot of challenges taking into consideration the exigencies of the fundamental rights of the human person. It is evident that the principle of human rights is derived from the concept of the human person and his or her relationship with the society which cannot be separated from the universal human nature, such that the existence of human rights does not depend on the will of a State, but existed independently of, and before, the state. This is why fundamental rights are usually guaranteed by the fundamental law of the land, with a view that no organ of the state, be it executive, legislative or judicial, can act in contravention of such rights, as that would be invalid and nugatory[28]. The challenges to polygamy in Nigeria include the following.

5.1 The Challenge of International Conventions

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) defined discrimination as: "Any distinction or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field"[29]. The Federal Government of Nigeria ratified CEDAW in 1985 without reservation, signed the Optional Protocol to the convention in 2000 and ratified it in 2004, and so, is obliged as a state party to implement the Convention by using all appropriate means to eliminate all forms of discrimination against women[30]. This in principle includes polygamy.

Reproductive health and rights issue has also been accepted as a global problem such that there are a few international instruments directly and indirectly protecting the reproductive rights of women. Hence, there is international concern for the reproductive rights of women in polygamous marriages. The United Nations Committee on the Elimination of Discrimination against Women in 2004 expressed their intolerance for practices founded on sex-based prejudices or stereotypes through the Convention on the Elimination of All Forms of Discrimination against Women, and they advocated for the prohibition of polygamy as it "contravenes a woman's right to equality with men" and can have severe emotional and financial consequences. They maintained that Nigeria should take proactive and innovative measures to ensure that any conflict of law with regard to women's rights to equality and non-discrimination are resolved in full compliance with the

[28] Simeon O. Eboh, *Human Rights and Democratisation in Africa*, SNNAP Press, Enugu: 2002, p.110. It is noteworthy that a constitutional affirmation of fundamental rights hardly means much unless the judiciary whose duty it is to enforce the rights is independent, for this explains the African dilemma, where for instance the rights of citizens to freedom of expression are trampled with impunity.

[29] Convention on the Elimination of All Forms of Discrimination against Women, art. 1., http//www.un.org/women watch/daw/cedaw/text/convention.htm (accessed 4/2/ 2024).

[30] Unfortunately, CEDAW does not enjoy automatic enforcement in Nigeria due to constitutional constrains. Section 12 of the Constitution of the Federal Republic of Nigeria 1999 (As Amended) specifically requires legislative domestication through the National Assembly of international conventions before they can be legally enforced, and Nigeria has not done it till date. As for the reason for not doing it, your guess is as good as mine. Evidently, the coexistence of three systems: Islamic, civil and traditional, made it difficult to adopt laws which genuinely protected women's rights.

provisions of the Convention and General Recommendation on equality in marriage and family relations.[31]

5.2 The challenge of fair treatment of the wives in a polygamous marriage

There is at present an on-going world-wide women emancipation movement that is concertedly, systematically, and progressively addressing many aspects of the fundamental inequality between the sexes, such that with time, excepting Muslim marital order, polygamy can no longer be predicted as typical of the customary system of marriage in Nigeria[32]. In a polygamous marriage in Nigeria, where there are two or move wives, there is always the challenge of the existence of interpersonal conflicts, disagreements, unhealthy rivalries and competition among the wives. A situation of one wife being the favourite of the polygamist husband at the expense of the others is always a challenge to this type of marriage. Such unfair treatment and favouritism usually cause some bitter animosities, hatred and endless quarrels between the less-favoured wives and the beloved one, and this is more pronounced if the husband equally showed a preference for the children of such a favourite wife[33].

This is why Dwane argues that "men may not easily appreciate what it costs a woman to share her husband and the father of her children with several wives" because when wives in a polygamous marriage compete with one another and quarrel frequently, this is not a manifestation of petty jealousies but a loud reminder that there is something that needed to be attended to[34]. Added to this is the challenge that polygamous marriages increase the risk of sexually transmitted diseases such as HIV/AIDS infection. Closely related to this is the challenge of adultery in polygamous marriages. Trobisch argues that those who address polygamy as antidote against adultery see only one part of the problem because once an inclusive sex-partnership is accepted, the step toward adultery is easy to take. Moreover, women married to polygamous men often live individually in adultery because their husbands usually stay with one wife for a week at a time or with the favourite wife only for a long time, and as a result he is not able to satisfy them[35].

5.3 The challenge of the extant Nigerian Laws on Polygamy

The legal provisions on Marriage in Nigeria do not accord a statutory recognition to a polygamous marriage. Hence, polygamy in all its forms, though accommodated by customary law that disciplines the rights and obligations of polygamous spouses, does not enjoy any recognition in the Nigerian Marriage Act or the Statute, which provides that neither of the parties to an existing marriage has the juridical freedom to marry a third party, and that if such a marriage is contracted, it constitutes the offence of bigamy[36]. The Marriage Act criminalized the act of a man who contracted marriage under the act, going further to contract another marriage with another third party, stating that such a person shall be liable to imprisonment for five years. The Act states that: "Whoever contracts a marriage under the provisions of this Act, or any modification or re-enactment thereof, being at the time married in accordance with customary law to any person other

[31] Ijeoma Nkolika Aniekwu, "The Convention on the Elimination of All Forms of Discrimination Against Women and the Status of Implementation on the Right to Health Care in Nigeria", *Human Rights Brief* 13, no. 3 (2006): 34-39.
[32] Pius EO Okpaloka, *Legal Protection of Marriage and Family Institutions,* p. 147.
[33] Ibid. 146.
[34] S. Dwane, "Polygamy" in T.D. Verryn, *Church and Marriage in Modern Africa*, Grooenkloof: The Ecumenical Research Unit, 1975, pp. 235-236.
[35] W. Trobisch, *My Wife made me a polygamist*, Downers Groves, Illinois: Interversity Press, 1971, p.31-32.
[36] CO Okonkwo, "Bigamy in a Polygamous Society (Nigeria)" (1976) 1, in *The Nigerian Juridical Review* 76.

than the person with whom such marriage is contracted, shall be liable to imprisonment for five years"[37].

The Nigerian criminal code equally criminalized bigamy and made it publishable with seven years' imprisonment. Section 370 of the Criminal code states that "Any person who, having husband or wife living, marries in any case in which such marriage is void by any reason of its taking place during the life of such husband or wife, is guilty of a felony, and is liable to imprisonment for seven years.". Section 384 of the Penal code equally criminalized and punished bigamy with seven years' imprisonment. The only exception to this offence of bigamy in both criminal and penal code is with regard to a person whose marriage with such husband or wife has been dissolved or declared void by a court of competent jurisdiction, and with regard to a person whose former wife or husband has been absent from such a person for a space of seven years, and shall not have been heard of by such person as being alive within that time. In other words, this is with regard to a person who is legally presumed dead.

5.4 The Challenge of Canon law and Church Authorities

The 1983 Code of Canon Law while repeating the provisions of three apostolic constitutions[38] with some modifications addressed the problem of polygamy and polyandry. These Constitutions represent a major attempt to solve matrimonial problems presented by polygamous societies. They reveal the efforts made by three Supreme Pontiffs in adapting the good news of the Gospel to the situations, traditions, and requirements of the local cultures. Canon 1148 focusing on the phenomenon of an unbaptized person who *simultaneously* has more than one unbaptized spouses states: "When an unbaptized man who simultaneously has a number of unbaptized wives, has received baptism in the Catholic Church, if it would be a hardship for him to remain with the first of the wives, he may retain one of them, having dismissed others. The same applies to an unbaptized woman who simultaneously has a number of unbaptized husbands"[39]. This implies that even though the Church is aware that from such marriages there arise serious obligations of natural justice, she does not recognise the validity of polygamous unions[40].

Hence, some Catholic Church authorities in Nigeria, like Archbishop Stephen N. Ezeanya, regarded Christian men who relapsed into polygamy by marrying more than one wife, or baptized women who became second or subsequent wives of a polygamist, as people in irregular marriages and were not allowed to participate in the sacramental life of the Church[41]. Hilary

[37] Sec. 46 of the Marriage Act. Cap M6 (2004).

[38] The apostolic constitutions were: *Altitudo* promulgated by Pope Paul III on January 6, 1537; *Romani Pontificis* promulgated by Pope Pius V on August 2, 1571; *Populis* promulgated by Pope Gregory XIII on January 25, 1585. The objectives of these three Constitutions can be summarized as follows: a).The Constitution *Altitudo* allowed the polygamists converted to Christianity and baptised, to choose one of his wives if he could not remember who his first wife was. b).The Constitution *Romani Pontificis* permitted the baptised polygamist convert to keep the wife baptised with him, even if she was not the first wife. c).The Constitution *Populis ac Nationibus* gave missionaries the faculty to dispense baptised slaves or captives from the obligation of conducting the interpellation of their former spouse before entering a second marriage with another Christian and said that this second sacramental marriage, once consummated, remained binding even if later it was discovered that the original valid marriage had been made sacramental by the baptism of both spouses.

[39] Can. 1148 §1, CIC/1983.

[40] Canon Law Society of Great Britain and Ireland, *The Canon Law: Letter and Spirit*, Geoffrey Chapman, London: 1995, p.647.

[41] Stephen Ezeanya, *Instruction on the Questions of Irregular Marriages and Related Problems in the Archdiocese of Onitsha*, Onitsha: 1987, p. 9.

Okeke while affirming this position even went further and declared those in irregular marriages as public sinners who might not be given an ecclesiastical funeral: "A person in irregular marriage is regarded as a public sinner. The most obvious effect of irregularity of marriage is an exclusion from the sacraments of reconciliation and the Holy Eucharist. A person in irregular union may not receive ecclesiastical funeral as the person is regarded as a public sinner (see Canon 1184 §1, no.3)"[42].

This clearly shows that the Church frowns at and rejects polygamy and constitutes a very big challenge to the practice of polygamy in Nigeria, even when her members relapse into it as a key solution to their perceived problem of a childless marriage, a problem that constitutes what Nwabude called "the greatest problem in Igbo cultural marriage"[43]. This is so because, according to Anozie, "When a person has no offspring, he or she is not considered to be complete, perfect and truly a man or a woman, for in the people's conception, only the fact that somebody has children makes that person truly a person[44]".

The Fathers of the Vatican II Council even implicitly equated polygamy with "the plague of divorce, so-called free love", describing them as overshadowing the dignity of marriage and the family,[45] a comparison that constitutes a real challenge to polygamy as a genuine form of marriage in Nigeria.

5.5 The Challenge of Polygamy as a negation of the unitary ideal of marriage according to God's plan

The critics of polygamy maintain that marital love by its nature is meant to be total, abiding, undivided, self –giving and sacrificing, and that without total self-gift required of marital union, then there is no genuine conjugal love as the interpersonal marital relationship would not be based on love but on use of persons.[46] Polygamy perpetuates the degradation of women and the husbands' treatment of their wives as objects of enjoyment, for rather than making a complete self-donation to any of his spouses, the husband usually seeks personal gratification. This is why Pope John Paul II affirmed that the conjugal communion, which sinks its roots in the natural complementarities that exist between man and woman and is nurtured through the personal willingness of the spouses to share their entire life project, is radically contradicted by polygamy.[47] This is so because polygamy "directly negates the plan of God which was revealed from the beginning, because it is contrary to the equal personal dignity of men and women who in matrimony give themselves with a love that is total and therefore unique and exclusive"[48]. Hence, it is a big challenge that polygamy as practiced is devoid of complete self-donation to

[42] Hilary Paul O. Okeke, *Marriage and Family in the Light of Faith*, Cathcom, Nnewi: 2014, p.96. This view appears to be the general understanding of the Church in Igboland today, which is being challenged by some scholars like Mmaju Eke (cf. Mmaju Eke, *Denial of Catholic Funeral Rites and Irregular Marriages in Igboland*, 2014, p.122). see also Titus Ik. Nnabugwu, "Irregular Marriages and Denial of Catholic Funerals in Igboland – Any Justification?" in *Lumen Fidei*, (Maiden Edition, December 2014 – December 2015), 15-20.

[43] Emmanuel O. Nwabude, *Preparation for Marriage and Family life Among the Igbo People of Nigeria*, Onitsha: 2001, p. 259.

[44] Michael Anozie, *Childless Marriage in Igbo Christianity: Description of, and reflections concerning solution in a pastoral problem*, Bonn: 1988. p. 57.

[45] Vatican II Council, *Gaudium et spes*, no.47.

[46] Pius EO Okpaloka, *Legal Protection of Marriage and the Family Institutions*, p.145.

[47] John Paul II, *Familiaris consortio*, no.19.

[48] *Familiaris consortio*, no. 19; cf. *Gaudium et spes*, 47 §2.

any one of the wives, at least in terms of time and intensity. It clashes with the full ideal of Christian marriage and is not in accord with the moral law[49].

5.6 The Challenge of Polygamy by changing circumstances

Apart from the challenge of polygamy as a negation of the ideal form of marriage from the Christian teaching on monogamy, the changing circumstances of capitalistic world, the change from traditional economy to modern economy, globalization, the modern forms of education and the current moves by feminists and female theologians towards the deconstruction of patriarchy, equally pose a challenge to polygamy. In effect, the main economic factor, which traditionally encouraged a man to take a few wives, appears to have been almost overtaken in the wake of modern economic changes that have engulfed the developing Nigerian and African societies, evident in the progressive decline in the traditional system of land holding and the steady growth of urbanization and industrialization[50].

5.7 The Challenge of African Women Theologians

In response to African cultural oppressive structures, African women theologians established an institution that researches on women's experiences in Africa, which includes polygamy, with a view to liberating women from these structures. According to these women, the condition and status of African women have been something men do not want to discuss, but for them, it ought to be discussed as the urgency of the moment. On the condition of African women, Kanyoro observes that: "African women are custodian of cultural practices, for generations, African women have guarded cultural prescriptions that are strictly governed by fear of breaking taboos. Many aspects that diminish women continue to be practiced to various degrees, often making women objects of cultural preservation…In the guise of culture, harmful practices and traditions are perpetuated. Practices such as female genital mutilation, early betrothals and marriages, and stigmatization of single women and widows, polygamy, domestic violence, hinder the liberation of women"[51]. In order words, the African women theologians maintain that culture has been the main cause of the oppressive structures in African Societies, especially in regard to the oppression of women, who are often defined in terms of their relationship with men and from male centered worldview. Polygamy for them, therefore, stands out as one of those oppressive structures of women in Africa including Nigeria that must be challenged as it goes against their well-being and dignity as persons created in the image of God like their male counterparts.

6. Conclusion and Recommendations

In this paper, we have seen that marriage for an African is closely linked to procreation and that polygamy is deeply rooted in African culture; and that in African societies, polygamy has persisted despite the existence of Christianity for many centuries. In Nigeria, polygamy equally continues to exist and to be sustained by the customary laws or the native laws and customs of the different ethnic nationalities in spite of the many challenges facing it. Again, Islam as a religion in Nigeria allows the men to marry up to four wives, in the belief that four is generally considered the optimal number of co-wives for a man to have[52]. However, according to African women theologians, the practice of polygamy is inhuman, and needs to be discouraged by both

[49] *Catechism of the Catholic Church* (CCC), no.2387.
[50] Pius EO Okpaloka, *Legal Protection of Marriage and the Family Institutions*, p.146.
[51] M. Kanyoro, "Engendered Communal Theology: African Women's contribution to Theology in the 21st Century" in N. Njoroge and W.D, Musa (eds.) *Talitha cum! Theology of African Women*, Cluster Publications, Pietermarizburg: 2001, p.159.
[52] Cf. Remi Clignet, *Many Wives, Many Powers*, p.31.

the church and the society. The Church in her opposition to polygamy maintains that polygamy does not accord with the moral law, and radically contradicts marital communion, as it is contrary to the equal personal dignity of men and women, who are meant to give themselves to each other in marriage with a love that is total and exclusive. Moreover, the reasons adduced by many traditional African societies including Nigeria in practicing polygamy, such as the need to have many children and many wives to work in the farms, are no longer sustainable as a result of the changing circumstances, especially, the transition from the traditional society to the modern one. Consequently, it is recommended that polygamy as a juridical matrimonial model in Nigeria should be discouraged for it goes against the fundamental right of women especially, their right to equal personal dignity.