# The Fundamental Right to Own Private Property in Nigeria: Addressing Misconceptions About the Rights of Roman Catholic Priests to Own Property

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## Abstract

*The constitutional right of Catholic priests to acquire and own private property has been misunderstood and misinterpreted by individuals who lack an in-depth understanding of the 1999 Constitution of the Federal Republic of Nigeria and the 1983 Code of Canon Law. The above-stated right is a fundamental human right characterised by inalienability, meaning it cannot be transferred or unlawfully denied by any authority. This paper aims to clarify these misconceptions in accordance with sections 43 and 44 of the 1999 Constitution and the provisions of the 1983 Code of Canon Law. It establishes that Catholic priests have the inalienable right to acquire and own personal property like every Nigerian citizen. The researcher adopts the doctrinal research methodology using sections 43 and 44 of the 1999 Constitution and the Code of Canon Law as primary sources. It also addresses the misinterpretation of the evangelical counsel of poverty, which does not apply to diocesan/secular priests who's right to own private property is not prohibited. The paper recommends vigorous advocacy and awareness campaigns to enlighten the public on the constitutional and Canon Law provisions regarding the property rights of Catholic priests.*

**Keywords: Fundamental Rights, Property Right, Property Ownership, Catholic Priests, Canon Law, Constitution**

## 1. Introduction

The right to acquire and own immovable property in Nigeria is a constitutional right of every citizen enshrined in Chapter 4 of the 1999 Constitution.[1] This right is derived from Article 17 of the Universal Declaration of Human Rights (UDHR) and other international and regional conventions. The Catholic Church, a well-ordered and ancient institution, is bound by an internal legal framework manifested in the 1983 Code of Canon Law, as amended, which regulates the obligations and rights of its priests and lay members.[2] The Code of Canon Law does not in any of its provisions prohibit the Catholic priests, particularly the diocesan priests from acquiring and owning private property. Unfortunately, the fundamental right of Catholic priests to own private property has faced numerous uninformed criticisms by those lacking knowledge of the 1999 Constitution and the Code of Canon Law. This research aims to correct these misconceptions and provide a clear understanding of the rights of priests to acquire and own private property, as provided by the Constitution, Canon Law, international conventions, and other relevant property rights legislations.

## 2. Conceptual Clarifications

### 2.1 Right

According to Black's Law Dictionary, a right is defined as "that which is proper under the law, morality, and ethics."[3] They are also referred to as "something that is due to a person by just claim, legal guarantee, or moral principle."[4] Rights may be described as the authority to possess, claim, or use something as one's own. This authority can be either moral or legal. While rights and obligations are distinct, they often complement each other. When an individual has a right, there is a corresponding obligation on others to respect that right. Merely possessing a right is

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[1] Constitution of the Federal Republic of Nigeria 1999 (As amended) (CFRN) s. 43.

[2] Canon 273-289

[3] B A Garner (ed.), *Black's Law Dictionary* (8th edn: Thomas West 2004) 1347

[4] *Ibid.*

insufficient if it is not protected; the right must be accompanied by a legal obligation for others to respect it.

The concept of rights is a fundamental aspect of human existence, essential for achieving dignity, autonomy, equality, and freedom within society. If a priest has the right to own personal property, then the church and the state are obliged to allow him the quiet and peaceful enjoyment of this right; otherwise, the right becomes a mirage.

Rights are distinct from privileges. A privilege involves treating someone better or differently than others, giving one person or group an advantage without extending it to others. Unlike rights, privileges lack moral or legal authority and do not impose a corresponding obligation on others. Privileges, being special considerations, can be revoked if the conditions upon which they were granted are breached. Therefore, privileges are not enforceable under the law as they are not binding on others. For example, "medical privilege" is granted to someone who meets the requirements to become a medical doctor and can be revoked in cases of misconduct or negligence. In contrast, the right of priests to own property is not a privilege but a right protected by the Constitution.

### 2.2 Fundamental Human Right

Fundamental Rights are basic rights inherent to all human beings, derived from natural or basic law. They are birthrights, inherent in every individual and not subject to grant or revocation by any authority. These rights ensure dignity, autonomy, equality, and freedom. Fundamental rights are inalienable, meaning they cannot be transferred or surrendered,[5] and are protected universally through constitutional provisions and international convention and declarations like the UDHR. These rights are "not transferable or assignable."[6] Hence, no individual can transfer nor surrender such rights.

Under the 1999 Constitution of the Federal Republic of Nigeria (CFRN), these rights are enshrined in chapter four of the Constitution. They are socio-political and are justiceable. On the other hand, there are other rights which are socio-economic in nature and are non-justiciable. They are provided in Chapter 2 of the Constitution, which is titled the *Fundamental Objectives and Directive Principles of State Policy*. The UDHR in article 26 provides for the right to education, which is adapted and provided in section 18 of the 1999 CFRN. Nigeria is a member of the United Nations and has ratified the Declaration and provided for it in chapter four of the 1999 constitution, while other rights are provided in chapter two of the 1999 constitution, though non-justiciable. The provision of human rights in the constitution is to safeguard the rights of human beings within a nation. It protects the citizens and the underprivileged in society against suffering or abuse of their rights by the government, its agencies and individuals, especially those within the corridors of power.

### 2.3 Concept of Ownership Right

Black's Law Dictionary defines ownership as "the bundle of rights allowing one to use, manage, and enjoy the property, including the right to convey it to others"[7] It is, therefore, important to note that these rights extend to the right to possess a thing, notwithstanding whether the individual is in

[5] Ibid, 774
[6] Ibid ,774
[7] Ibid, 1138

actual or constructive control of the property.[8] Possession is an intrinsic component of ownership. Hence, possession is the *de facto* exercise of a claim, while ownership is the *de jure* recognition of the claim. Ownership is the guarantee of the law, while possession is the guarantee of the facts. This implies that ownership and possession complement each other. It is therefore not enough to claim ownership of a property, without taking actual possession of the same. Hence, the saying that possession is the 'nine-tenths' of the law means that the person in actual or physical possession of a property has a stronger claim of its ownership than one that is not in possession. Hence, possession or custody presumes ownership.[9]

### 2.3.1 Classification of Property

Property is anything capable of ownership, whether tangible or intangible. It is capable of the right to be possessed and used, which might be land or chattel. It can also be described as any external thing over which the rights of possession, use and enjoyment are exercised. Property can be classified into tangible and intangible, public and private, personal versus real property, movable and immovable property, etc. Tangible property is anything that can be touched, or any movable property, which could be personal or real property, whereas intangible property is anything that cannot be touched. Of much significance to our discussion is the moveable and immovable property in line with section 43 of the 1999 CFRN. Moveable property is that property that has the character of physical mobility. Examples of moveable properties are as follows: car motorcycle, train, aeroplane, ship, etc. Immovable property is a property that is affixed in a place, for example, land, building, railway lines, etc.

## 2.4 The Roman Catholic Priests

The Catholic Church is the oldest and largest faith-based institution, with about 7,785,769,000 members in 2023.[10] It has a government headed by the Pope, who doubles as the Head of the Catholic Church and the Head of State of the Vatican City.[11] It has a governance structure whose activities are regulated by the 1983 Code of Canon Law (the code). This code inter alia outlines the rights and obligations of clerics including their right to acquire and own private property[12] especially the diocesan/ secular priests who do not take the vow of poverty.

## 2.5 The Catholic Priest

The priest of the Catholic Church is an ordained servant of God who is a spiritual leader and attends to the pastoral needs of the Catholics under his care. The ordained catholic priest takes the vow of chastity, obedience and poverty (for religious priests)[13] or promises of celibacy, obedience and daily recitation of the Holy Hours (for diocesan Priests)[14] depending on the class of the priest's ordination.

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[8] Ibid, 1138

[9] The Lux Law Firm, [1 August 2023]<https://theluxlawfirm.com/what-does-possession-is-nine-tenths-of-the-law-mean/#:~:text=Defining%20Possession%20is%20Nine%2DTenths,to%20them%20than%20anyone%20else.> accessed 16 July 2024

[10] Agenzia Fides, 'Vatican - Catholic Church Statistics 2023' [Friday, 20 October 2023] <https://www.fides.org/ en/news/74319-VATICAN_CATHOLIC_CHURCH_STATISTICS_2023> accessed 16 July 2024

[11] J A. Mirus, 'A Brief Description of the Government of the Catholic Church' <https://www.catholicculture.org/culture/library/view.cfm?id=7456> accessed 15 July 2024

[12] Cc 208-233

[13] Canons 599(vow of chastity),600 (vow of Poverty), and 601 (obedience)

[14] Canons 277 §1(celibacy); 273 &, 274 § 2(obedience); 276 §2, 3°(Recitation liturgy of the Hours)

### 2.5.1 Classification of Catholic Priests

Generally, Catholic priests are classified into two, thus: Diocesan Priests and Religious Priests.

(a) Diocesan Priests

The Diocesan priests are priests ordained for a particular diocese or archdiocese, that is, they are ordained essentially to work in particular diocese of ordination.[15] This class of priests, has the right to own personal property and does not take the vow of poverty. The Priests in this class make the following three promises to their bishops: obedience to their Bishops/local ordinary (during their priestly ordination), daily recitation of Holy Hours, and celibacy (usually made during the diaconate ordination).[16]

(b) Religious Priests

A religious priest takes three evangelical vows (counsels) of obedience[17] to their Superiors, chastity[18] and poverty[19], thereby denouncing ownership of private property in favour of communal living. Examples of religious priests are Franciscans, Dominicans, Benedictines, Sons of Mary Mother of Mercy, Spiritans, et cetera.

## 3. International Conventions on the Right to Own Property

The right to acquire and own personal property is a long-standing fundamental right. Historical declarations such as the Virginia Declaration of Rights in 1776 declared property an inherent right of all men. This declaration led to the promulgation of other rights, such as the United States Bill of Rights.[20]

Furthermore, the French Declaration on the Rights of Man and the Citizens of 1791 provides for the right to property in the following ways: "Property being a sacred and inviolable right, no one can be deprived of it, unless a legally established public necessity demands it, under the condition of a just and prior indemnity."[21] The Declaration reiterates one of the core elements of human rights thus: "Men are born free and remain free and equal in rights. Social distinctions can be based only on public utility."[22] From the foregoing, both declarations held the right to property as an inviolable right.

The Universal Declaration of Human Rights (UDHR) in article 17 provides that: "(1) everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his or her property."[23] The UDHR recognised the "inherent dignity of all members of the human family as the foundation of freedom, justice and peace in the world". The nature of the right declared by this instrument is universal and protects all human beings notwithstanding where they reside on the face of the earth. UDHR considered civil and political rights, as well as also

[15] Catholic TV, 'Catholic Classroom: 3 Key Differences Between Diocesan & Religious Priests' [24 July 2017] <https://medium.com/@CatholicTV/catholic-classroom-3-key-differences-between-diocesan-religious-priests-68f6518eeb38> 16 July 2024

[16] Catholic Answers, 'What Is the Difference between Secular Priests and Religious' Priests<https:// www. catholic. com/ qa/what-is-the-difference-between-secular-priests-and-religious-priests> accessed 16 July 2024.

[17] Canon 601 (obedience).

[18] Canon 599 (chastity)

[19] Canon 600 (poverty)

[20] The Virginia Declaration of Rights, 1776 art 1

[21] Declaration of the Rights of Man and the Citizen, 1791 art 17 <https://www.justice.gc.ca/eng/rp-pr/csj-sjc/ilp-pji/rev5/index.html> accessed 14 July 2024

[22] Ibid, art 1

[23] Universal Declaration of Human Right, United Nations General Assembly 1948 art 17

socio-cultural rights. Generally, article 17 of the UDHR guarantees the right to own property and protects against arbitrary deprivation of property. Though UDHR is not a treaty and does not create a legally binding obligation on countries, it has tremendously influenced the development of International Human Rights Law and domestic laws[24].

The International Covenant on Civil and Political Rights (ICCPR) in its article 17 implicitly is in support of property rights by stating that an individual should be protected by providing the right to be free from arbitrary interference and right to privacy, which impliedly includes, property.[25] The Protocol to the European Convention on Human Rights (ECHR) provides that "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law"[26] American Convention on Human Rights (ACHR) supports the right to ownership of property in article 21 by affirming that everyone has the right to use and enjoy his property, except for the interest of society.[27] However, for the subordination of the individual's right, he/she must be compensated according to the law.[28] African Charter on Human and People's Rights (ACHPR) in article 14[29] also, provides that "The property right shall be guaranteed. It may only be encroached upon in the interest of public need or the general interest of the community and in accordance with the provisions of appropriate laws".

Generally, it is a given that all the international laws both the declarations and conventions support property right for individuals and provides that the right can be subordinated on the grounds of public interest or good. Furthermore, for this property right to be taken from an individual, he/she must be compensated, and appropriate laws must be duly adhered to.

## 4. Nigerian Legislation on the Right to Own Property

### 4.1 Constitution of the Federal Republic of Nigeria(CFRN) 1999 (as amended)

Chapter 4 of the 1999 Constitution of the Federal Republic of Nigeria, provides for the fundamental human rights of Nigerian citizens including the right to acquire and own immovable property in any part of Nigeria.[30] It provides that "subject to the provisions of this constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria."[31] Section 44 protects the rights of the individual from compulsory acquisition of his/her property by the government or any individual, except for an overriding public interest.

### 4.2 Land Use Act

Land Use Act(LUA) is one of the pivotal legislations on property rights which regulates the acquisition, ownership and land administration in Nigeria. Section 44 of the Constitution sets the foundation for section 29 LUA to protect the right of an individual owner of a property from

[24] Fact Sheet 5, 'The International Bill of Rights' <https://humanrights.gov.au/our-work/education/human-rights-explained-fact-sheet-5-international-bill-rights#:~:text=Universal%20Declaration%20of%20Human%20Rights%20(UDHR),create%20legal%20obligations%20for%20States.> accessed 24 July 2024

[25] International Covenant on Civil and Political Rights, United Nations, 1966 art 17

[26] European Convention on Human Rights (ECHR),1950, Protocol 1, art 1

[27] American Convention on Human Rights (ACHR) 1969 art 21 (1)

[28] African Charter on Human and People's Rights (ACHPR) 1981, art 21 (2)

[29] *Ibid*. art 14

[30] CFRN s43

[31] CFRN s43

compulsory acquisition of his/her property without adequate compensation.[32] Furthermore, the Act gives the property owner the right of redress in court if not adequately compensated and that it is only on the grounds of overriding public interest should the government compulsorily acquire a property from the owner.

## 5. Canon Law on the Right of Priests to Acquire and Own Private Property

The Catholic priesthood is grossly misrepresented, misunderstood and misjudged by some uninformed members of the public on the issue of acquisition and ownership of personal property. Hence, one of the most common misconceptions about the Catholic priesthood is that all priests take the vow of poverty, and hence are prohibited from acquisition and ownership of personal property. The vow of poverty is one of the evangelical counsels expressed in "living without possessing anything of one's own, life in common, and having nothing of one's own.[33] This vow implies that a priest-member of a religious order before his first profession should cede the administration of his goods to any person of his choice either by making a will or selling the goods.[34] On the other hand, being that a diocesan priest does not belong to a religious order, he does not profess vow of poverty, and so is not bound by it. A diocesan priest only makes the "promises" of obedience to his bishop, celibacy, and praying the Liturgy of the Hours.[35] Since the diocesan priest does not take the vow of poverty, it implies that nothing under the 1983 Code of Canon Law prevents him from acquiring and owning private property. The following provisions of the code of canon law support this conclusion.

In canon 281 the code provides that a priest should earn remuneration or payment, it specifically points out that the remunerations should consider the nature of the cleric's function and the condition of the place where they work. It emphasises that the clerics should be remunerated so that their take-home should care for their health needs and old age. It points out further that those in civil profession should use their remuneration to provide for the necessities of their own life as well as for the equitable payment of those whose services they need.[36] The above provision is unambiguous wherein he stated that remuneration is the right of the priest. Canon 282, however, require clerics to follow a simple way of life. The canon does not prohibit the clerics from utilising their remuneration as private property. Still, it suggests to the clerics that after they have provided for their needs should channel the remaining goods for the good of the church and the work of charity.[37] The suggestion of a simple lifestyle by the canon law implies a confirmation of the priests' right to his property. The reason for the suggestion to apply the goods to the good of the church is because the priest can only give to others what belongs to him, hence *Nemo dat quod non habet.*[38] Canon 285 §4 in clear terms states that clerics" …are prohibited from giving surety even with their goods without consultation with their proper ordinary." The emphasis here is on 'even with their own goods'. By implication, the priest can own private property under the law. In Canon 286, priests are forbidden to conduct businesses either personally or through an agent for their benefit or that of others without the permission of the legitimate ecclesiastical authority. One

[32] Land Use Act 1978 s29

[33] J A Coriden and others (eds), *The Code of Canon Law: A text and Commentary*, (Bangalore: Theological Publications in India 1999)464

[34] Canons 668 § 1, 635 § 2; 640 (collective witness of charity, the needs of the church and the poor)

[35] EWTN, Franciscan, St. Francis of Assisi, <https://franciscanmissionaries.com/priests-take-vow-poverty/> accessed 11 June 2024

[36] Can 281 § 3

[37] Can. 282 §2.

[38] You cannot give out what does not belong to you.

significant part of the above provision is that a priest can do business but with the consent of the legitimate ecclesiastical authority. The canon here is simple, the permission of the bishop is a *conditio sine qua non* for a priest to conduct any business. The canon stated the prerequisite but was silent on the usage of the proceeds of the business. By implication, it means that once permission is sought and had the priest has the right to own the proceeds of the businesses. Canon 945§1 provides that it is lawful for "a priest who celebrates or concelebrates mass to receive an offering …" This offering received by the priest is his property. Furthermore, canon 951§1 provides that a priest who celebrates more than one mass on a day except on Christmas may retain the offering for only one mass. Here the offering is considered a material good in support of the particular priest and should belong to the priest personally. The offering here is not the liturgical offertory but the mass stipend.

Generally, from the provisions of the canon law, as cited above, it is not in doubt that a diocesan priest is not prohibited from acquiring and owning private property. It is therefore good to state that the misconceptions of the uninformed persons about the catholic priesthood and their rights to acquire and own properties are clarified as the legal framework regulating the activities of Catholic priests in general has set the records straight, just that ignorance and lack of in-depth knowledge of the canon law have been the challenge of the protagonists that a diocesan priest has no right to acquire and own property.

## 6. Applicability of Property Ownership Right under the Canon and Statutory Laws

Canonically, diocesan priests do not take the vow of poverty, and by that fact are allowed to acquire and own immovable property.[39] The Nigerian Constitution guarantees every citizen, including priests, the right to acquire and own immovable property.[40] It is good to note that no authority, be it ecclesiastical or governmental, can infringe on this inalienable right. Nevertheless, the government may compulsorily acquire a citizen's property only on the grounds provided by the Constitution or other related legislation.[41] Land Use Act is another federal legislation that supports this right by guaranteeing protection and adequate compensation for the compulsory acquisition of property provided it is for the overridden public interest.[42]

The character of inalienability intrinsic to the fundamental human rights, including the right to acquire and own immovable property *ipso facto* implies that the individual holder of this right may not in any circumstances transfer this right to another person, except in line with the law. On the other hand, no government or ecclesiastical authority has the right to deny the holder of this right that is considered as birthright.[43]

Citizenship is the foundation for the right to acquire and own immovable property. Which can be acquired in Nigeria either by birth,[44] registration,[45] or naturalization.[46] Priests having acquired their citizenship through any of these channels, especially by birth, are by that fact firstly the citizens of Nigeria before their initiation into Christianity.[47] In this context, a priest is *ipso facto*

[39] canons 281§1-3 and 282 §1-2
[40] CFRN 1999 s43
[41] *Ibid*. s44 (1)-(3)
[42] *Ibid*. s43
[43] *Ibid*. s44 (2) (a)-(m)
[44] CFRN s25
[45] *Ibid* s26
[46] *Ibid*. s27
[47] 'Baptism', *The Catechism of the Catholic Church*, nos. 1212 -1284

and *de jure* a Nigerian before being initiated into Christianity. In other words, Nigerian citizenship predates the religious affiliation.

Property rights of a priest under the Constitution include the right to make wills, receive remunerations and make use of same; right to retirement benefits, use of gifts received from friends and the people of God. Since it is established that this right is inalienable, it means that no superior of the priest has the right to take over his property, whether during his lifetime or when he dies intestate. The superior who dispossesses the priest of his property, whether tangible or intangible acts *ultra vires* and may warrant a legal action against the superior in breach. It is therefore imperative that at the death of a priest, both the family members and the ecclesiastical body the deceased belongs to should first inquire whether the deceased left a will or made some gifts *inter vivos*. It will be a violation of the right of the deceased priest for anyone to take over the fund in the bank account of the deceased priest or take his moveable or immoveable property when one is not the next–of–kin of the deceased nor has in his favour the order "TO PAY ON DEATH".

Both the canon law and the 1999 Constitution uphold that a catholic priest has the right to acquire and own private property.[48] On this, it is good to note that canon law compliments civil law. A priest generally is entitled to enjoy an exclusive right of any property that accrue to him whether movable or immovable due to his work as a priest. Consequently, he has the right to acquire relevant things he needs with the proceeds of his work.

## 7. Conclusion and Recommendations

### 7.1 Conclusion

It is pertinent to reiterate that a Roman Catholic priest, before becoming a Christian, is already a bona fide citizen of Nigeria. As such, he is protected by the Constitution particularly sections 43 and 44 to acquire and own property. Canon law also affirms that there are no provisions prohibiting priests from acquiring and owning personal property, whether movable or immovable. The code of canon law permits priests to earn remuneration and use it to meet their personal needs, aligning with sections 43 and 44 of the 1999 Constitution, which guarantees a priest's fundamental right to own property. Although priests have the unfettered right to acquire and own personal property, canon law encourages them to live a simple life and to use their surplus resources for the benefit of the church and to do charitable works.

### 7.2 Recommendations

This paper makes the following recommendations.

a. There is the need for vigorous advocacy and awareness campaigns to enlighten the public, relatives/family members or friends of priests; legal practitioners and ecclesiastical authorities about priests' constitutional and canonical rights to acquire and own private property. Civil Society Organisations (CSOs), and Non-governmental organisations (NGOs) will surely be of much help in this regard.

c. Priests should be assured of their constitutional and canonical rights to property, and their rights to family inheritance should not be unlawfully interfered with.

[48] Canon 22