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DEDICATION

TO

BENEDICT XVI, POPE EMERITUS,

THE CATHOLIC DIOCESE OF LOKOJA

AND

THE CATHOLIC ARCHDIOCESE OF VIENNA

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INTRODUCTION

I. Background of Study

Marriage as a social institution is accorded the dignity of a sacrament in the Catholic Church (may be referred to simply as the Church later in this research work). The Catholic Church teaches that the essential rights and duties of marriage are related to the *four goods viz: bonum conuigum, bonum prolis, bonus fidei, and bonum sacramenti*.¹ As one of the seven sacraments, it remains an outward sign that confers inward grace. The sacrament of marriage in accordance to marital theology has two properties: unity and indissolubility. This means that once the marital bond has been created, it is mutually exclusive to the partners in the marriage and the union cannot be broken insofar as both partners are alive. *Cana* is forever! The bond of marriage as prescribed is to last forever because the marriage bond in the Catholic Church has a unique character of permanence and perpetuity according to Can. 1134. In other words marriage is an irrevocable covenant or contract.²

The creation of the bond of marriage is predicated on the validity of the celebration of marriage. Once the marriage is validly celebrated, the lifelong bond is created. The unbreakable bond of marriage once created connotes the impossibility of divorce.³ This legal perception is largely supported by some scriptural texts, and conciliar and post-conciliar documents. Partners are expected to live together under the subsisting bond, however, a separation where the law permits could also be granted.

Nevertheless, for invalid marriages,⁴ the relevant laws have laid down necessary proceedings to be adopted to effectuate their annulment. Such a declaration of the nullity of marriage, which is not the same thing as divorce, will be granted after the relevant tribunals responsible to hear

¹ See Burke, Cormac. *The Theology of Marriage*. Catholic University of America Press, 2015, pp. 92 ff.

Bonum conuigum: the good of partnership is a later addition from the original three given by St. Augustine. Here, the partners make a sincere gift of self to each other in the union: a gift of mind, body, and spirit.

Bonum prolis: the good of offspring, which connotes fruitfulness shows that the marriage covenant is essentially ordered towards procreation and the education of the offspring (where applicable) in the faith.

Bonum fidei: the good of fidelity connotes partners' readiness to be faithful to each other all the days of their lives.

Bonum sacramenti: the bond of indissoluble unity or permanence indicates an essential key to a successful marriage whereby the partners commit to be with each other in their relationship come what may.

² Can. 1057 § 2 puts it succinctly: "Matrimonial consent is an act of the will by which a man and a woman mutually give and accept each other through an irrevocable covenant in order to establish marriage." See also Cahall, Perry. *The Mystery of Marriage: A Theology of the Body and the Sacrament*, Chicago, 2016, p. 79.

³ The implications of the indissolubility of the bond of marriage include the following: The bond is confirmed by the grace of the sacrament; this sacred bond is sealed by conjugal sexual act accomplished in a truly human way; this bond is not destroyed by lack of children nor is it destroyed by adversity or intolerable situations; and this bond limits the power of the spouses. See more in Canon Law Society of Nigeria, *Handbook on Tribunal Ministry in Nigeria*. In *Iustitia Pax*, November 2017, pp. 11–12.

⁴ Marriages which were celebrated and deemed to have been valid but subsequent evidence proved otherwise upon the realisation that certain legal conditions were not fulfilled.

the submitted petitions are satisfied that the grounds for nullity exist. The reality is not always the ideal. Circumstances lead to sour relationships and partners suddenly realise they are no longer compatible. Instances abound where couples abandon their marital state and begin a new relationship without recourse to Church teachings. Couples in such conditions are also availed of the tribunal process. They are expected to approach the marriage tribunals or church courts designated for the purpose to hear marriage petitions in order to nullify their previous marriage, which has broken down irretrievably. This could be successful if the grounds for nullity are fulfilled in the eyes of tribunals.

It is pertinent to further affirm the obvious here that a valid marriage once contracted cannot be invalidated. But an *ab initio* invalid marriage will be invalidated by the declaration of nullity of marriage when one spouse has presented a petition. Sequel to this, there are tribunals of competent jurisdictions, which are saddled with the responsibility to look at such cases and petitions. These tribunals adjudicate on cases brought before them to determine whether to grant the decree of nullity of marriage or not. There are different tribunals in the Catholic Church, which are responsible for the nullity of marriage in the church. These tribunals have different grades, kinds and competence. Book VII of the Code deals with processes in which the Code of Canon Law stipulates the various tribunals where a party petitioning can seek the declaration of nullity for a marriage, which is deemed to have been invalid in accordance with laid down laws. Therefore, it means one is not completely at liberty to go to any court or adopt any process at will in order to seek the nullity of marriage. The proceedings for the nullity of marriage was laid down before the new reform through the Papal Council for Legislative Texts in the Instruction *Dignitas Connubii*.⁵ Pope John Paul II in *Pastor Bonus*⁶ also laid down some guidelines and rules on the competent courts or tribunals to approach in such cases.

This earlier process of approaching the tribunals by petitioners was perceived as cumbersome, long and somewhat unproductive. This led Pope Francis to effectuate the reforms on the declaration of nullity of marriage when he published the *motu proprio Mitis Iudex Dominus Iesus* (which will be referred to in many parts of this research work as *Mitis Iudex* or *MIDI*).⁷ In this reform, the Pope sought to change some regulations in the laws of the church regarding

⁵ Pontifical Council for Legislative Texts. *Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage. Dignitas Connubii*. 2005. See also Rhode, Ulrich. *Kirchenrecht*. Stuttgart: 2015, p. 285.

⁶ John Paul II, *Pastor Bonus* in Canon Law Society of America, *Code of Canon Law. (Latin-English Edition) New English Translation*. Vatican 2012.

⁷ Francis. Apostolic letter *Mitis Iudex Dominus Iesus*. August 15, 2015: *Acta Apostolicae Sedis* 107 (2015), p. 58–970. See also Müller, Ludger. *Das kirchliche Ehenichtigkeitsverfahren nach der Reform 2015*. Paderborn, 2017.

the process leading to the declaration of the nullity of marriage, thereby changing or modifying the Church's legal procedures for determining when and how to issue a declaration of nullity. In some areas however, he sought to strengthen existing procedures and gave them life with the objective to take care of the pastoral needs of people who are married but separated, and who desire or need to go through the judicial process of seeking the declaration for the nullification of their previous marriages.

The legal proceedings leading towards the declaration of nullity of marriage thereby affirming the validity or invalidity of marriage has evolved over the centuries. This has been in practice with the intention of reaching the dual aim of safeguarding the sanctity of marriage, while doing justice to the partners, and to protect the rights and dignity of all parties. In a bid to ensure that the sanctity of marriage is safeguarded and that justice is done to the partners and the rights of the parties are protected, stipulated rules guiding the nullity of marriage must be followed and implemented.

The focus of this research work centres on the implementation of the reform introduced by this *motu proprio Mitis Iudex Dominus Iesus*, particularly in Nigeria. The reform as an intervention to ameliorate the irregularities in the old regulations is not enough, the practical implementation of this reform needed to be investigated to unravel probable challenges in the marriage tribunals in Nigeria.

II. Hypothesis and Research Questions

This research work postulates that the introduction of changes by the *Mitis Iudex Dominus Iesus* in the process of nullity of marriage is a welcome development but the implementation of the *motu proprio Mitis Iudex Dominus Iesus* in Nigeria could come with some attendant or peculiar challenges.

The research work will subsequently seek to give answers to the following pertinent questions: What is the background information on the social-political situation in Nigeria and what is the contextual ambience regarding the state of the Catholic Church and the marriage tribunals in Nigeria? What was the process of the nullity of marriage before the *Mitis Iudex Dominus Iesus* reform? What are the competent tribunals responsible for its proceedings? Who are the tribunal personnel? What are the different grades of the tribunals? What changes did the reform introduce? What are the principles the *Mitis Iudex Dominus Iesus* is based upon? How is the reform being implemented in Nigeria and what challenges are being encountered or what probable challenges are anticipated?

III. Methodology

This study is retrospective in nature as well as combining somewhat some prospective elements. To achieve the intended objectives of this research work, the historical, descriptive, critical and analytical methods were used. In this way, recourse was made to essential literary works to determine the position of the law on certain issues and establish the opinions of some intellectuals on such issues and concepts.

The research adopted the descriptive-qualitative research method for it intended to observe and describe the facts and events and described things as they are, investigating the challenges faced in the implementation of the document with Nigeria as a case study. The analytic method, which adopts information and facts available and utilise them for a critical evaluation of the material was also be used.

This scientific research adopted the use of questionnaire to gather non-numerical data. The information gathered was analysed in an interpretative manner. This method was chosen to provide an adequate description of the research topic. This research work is opinion based. The usage of questionnaire to quantify data targeted a group. Members of this group were not selected randomly but chosen as experts in the field sequel to their qualification, experience and knowledge.

The adoption of this technique became expedient because of the peculiar situation in Nigeria, which is a very large country with about 56 ecclesiastical circumscriptions or jurisdictions. A visit to all these jurisdictions to conduct a face-to-face interview wouldn't have been feasible because of the vastness of the country and poor infrastructure particularly associated with the terrible road network. It does not mean however that getting to assemble these questionnaires from varying experts was easy, but it is envisaged to be more practicable than conducting an interview.

This is a qualitative research, which gathered information with the aim to analyse them in an interpretative manner. Although the researcher did not interfere with the opinions of the respondents, the interpretation of the author, which could be subjective or impressionistic described the outcome of the data. Nevertheless, a complete description of the research topic was provided. By way of emphasis, this descriptive-qualitative research method adopted a case study approach to accomplish the aim of the study. Ultimately, the opinions were synthesised and a conclusion drawn. This conclusion could be the subjective opinion of the writer but remains a very honest opinion of the author.

IV. Aim and Significance of Study

This study sought to highlight the key areas where the papal document *Mitis Iudex Dominus Iesus* brought changes into the process of annulment of marriage. It also pursued an investigation into the probable challenges the implementation of these changes may pose for practitioners in the field in Nigeria. It thereby established what these challenges faced are or the challenges to be faced in Nigeria in the implementation of the reform are, while making subtle reference to other climes.

To achieve this objective, chapter one gives an overview of Nigeria, looking at its brief history, geographical composition, politics and economy. A synopsis of the Catholic Church was also presented and the state of the marriage tribunal in Nigeria was highlighted. This chapter presented an overview of the subject area and subsequently formed a good background for the research work by presenting a good understanding of the area or location of study.

The study explored the process of annulment of marriage before the introduction of the *motu proprio Mitis Iudex Dominus Iesus* in chapter two. This effort and approach gave an exposé on nullity proceedings while looking at the different competent tribunals and their jurisdictions, the tribunal personnel and the various steps taken from the submission of the petition for annulment to the judgement and appeal.

In chapter three, the thesis looked at the changes introduced by the reform as well as highlighting the principles underlying the motives for the reform. These changes affected such areas as the process of nullity and competent fora, the roles of judges, and who could serve as a judge, the petitioners and the competent jurisdictions they could submit their petitions and the varying changes in their canonical order.

Chapter four on the other hand presented the areas where the implementation of the reform has been attempted in Nigeria and established the probable and real peculiar challenges encountered in Nigeria. The analysis of the questionnaires and the findings of the research was presented. The level and areas of the implementation of the reform document in Nigeria were shown and the peculiar challenges accentuated. The conclusions reached and recommendations given followed the chapter.

It must be noted that a lot of academic works have been written in many parts of the world on the *Mitis Iudex Dominus Iesus* but little has been written particularly on the *Mitis Iudex Dominus Iesus* and its implementation, not only in Nigeria but also in many other climes. This

study therefore seeks to enrich the canonical jurisprudence in Nigeria and to enhance the proceedings involving the nullity of marriage in the marriage tribunals in Nigeria. Ultimately, it will add to the global discussion on this crucial document published by Pope Francis in his bid to reform this aspect of the life of the Church regarding marriage tribunal matters.

V. Limitations of Study

This research concerns marriage as defined by the Code of Canon Law and in accordance with the perception of the Church. It was therefore limited to the process of nullity of marriage under the purviews of Catholic legislations and not any other issues on the theology of marriage or the concept or matters of marriage outside the understanding of the Catholic Church. A concise synopsis of the process was presented and an exhaustive framework of the system was discussed, but not in a detail description of all the step by step process of nullity at the tribunals. It did not set out to tell history or review historical sequence of the tribunals. Neither was the study interested in the daily workings and regular order of the tribunals. Much more could be written about the tribunals but it could be the focus of other research works.

To achieve the aim of this research, probable face-to-face interviews were not carried out to gather necessary data from the respondents, however the task of gathering vital data was completed by the usage of questionnaires, which were duly filled and returned to the researcher by the respondents. Admittedly, interviews afford more opportunities for follow-up questions for instance, but after travelling to Nigeria from Vienna twice with no considerable success in this regard, the researcher decided to adopt this technique, which also came with its challenges.

In terms of the investigation into the implementation of the document, the study also limited itself to the implementation of the *Mitis Iudex Dominus Iesus* in Nigeria without overtly concerning itself with such implementations elsewhere, although vague references were made to some other climes where necessary. Although the study is focused on Nigeria, the research did not go into details of implementation in each diocese in Nigeria nor was it concerned about the Maronite Eparchy and the military ecclesiastical structure in Nigeria.

This research was similarly not concerned about other aspects of marital theology such as grounds for validity, laws concerning the celebration of marriage, etc but on the prevailing topic of the reform introduced by *Mitis Iudex* and its implementation. At the time of its publication, there were two *motu proprios* published viz: *Mitis Iudex Dominus Iesus* and *Mitis et Misericors Iesus*. This research was not concerned with the latter, which concerned itself with the proceedings in the Eastern Church but the former, which governs the Latin Rite.

CHAPTER ONE: AN OVERVIEW OF THE NIGERIAN STATE AND THE CHURCH IN NIGERIA

I. INTRODUCTION

The relevance of this chapter may be questioned by some. Its significance stems rather out of the exigency to offer a good background of the country vis-à-vis the issues surrounding this study to the readers who may not have any knowledge of Nigeria or who probably have little and inadequate knowledge of the location of study. It could be regarded to be unnecessary for some Nigerian readers or those who know about Nigeria but will be informative for non-Nigerian readers and those who seek to obtain a good background knowledge of the country being discussed. It is therefore essentially to write this overview for readers who may have little knowledge about Nigeria. Nigeria remains potentially a great country with boundless prospects. The description on this country will be done below under different headings.



Map of Nigeria showing the different cities and States of the Federation.¹

¹ Nigeria Map – Political Map of Nigeria. <https://www.ezilon.com/maps/africa/nigeria-maps.html> [accessed on September 20, 2018]; See also <https://geology.com/world/nigeria-satellite-image.shtml> [accessed on October 24, 2018].

II. HISTORY AND GEOGRAPHY

Nigeria, which has a population of about 200 million people with a projection of reaching 400 million by 2050² was founded in 1914 as a British colony. Nigeria is a big country in Africa. It is by far the most populous country in Africa. It shares boundary with Benin to the West, Chad and Cameroon in the East, Niger in the North and the Atlantic Ocean to the South. Indeed, the Niger Delta has one of the largest river deltas in the world. Nigeria has 923.768 square kilometre. Administratively, Nigeria has 36 States and the Federal Capital Territory, Abuja.

Before the advent of the colonial masters, there were a mix of different peoples with over 250 ethnicities³ forming and governed under different kingdoms. They had their own system of government, with kings and tribal leaders as guardians of the culture and people. Such kings and traditional leaders pontificated over kingdoms such as the Oyo Empire, Yoruba States, Benin Kingdom, Ife Kingdom, Sokoto Caliphate, Hausa States, Kanem-Borno Empire, etc.⁴ When the Europeans came to Africa to colonise the continent, they brought together people with different cultures to form sovereign States. It was the same thing with Nigeria and this formation was not an advantage for the Africans but for the invading Europeans. After the agitations by Nigerians, Nigeria became independent in 1960. Shortly after independence, Nigeria witnessed series of military coups and a civil war. After a long period of military governance, democracy was finally restored in 1999 after it was interrupted by military putsch.

There are two climatic seasons in the country: the rainy season and dry season. Many things depend on the two seasons such as: food, temperature, weather, climate, etc. These seasons are influenced by different climatic zones such as the tropical humid and hot climates in the south. The raining season generally begins in March/April to September/October. Humidity is high all year round, between 85 and 95 percent. The average temperature is approx. 30 ° C in the southern part of Nigeria. It cools only a little at night. In Northern Nigeria, one finds the desert climate with higher temperatures and less rainfall in comparison to the Southern part of the country. The dry season could last from November to March and the harmattan brings dry hot air from the Sahara at this time. The temperatures can rise up to 50 degrees in the North but the humidity is much lower here. The duration of the rainy season is usually shorter in Northern Nigeria in comparison to the southern part of the country.

² Campbell, John/Page, Matthew T., *Nigeria: What Everyone Needs to Know*. New York, 2018, p. 11.

³ Bourne, Richard, *Nigeria: A New History of a Turbulent Century*. London, 2015, p. 4.

⁴ See also Encyclopaedia Britannica. 'Nigeria: Early Nigerian Cultures'.
<https://www.britannica.com/place/Nigeria/History> [accessed March 30, 2019].

Nigeria covers five different vegetation zones in which the rich flora and fauna could be developed. This includes the large mangrove forests in the coastal areas, through the tropical rain forests of the mountain regions to the savannahs of Sudan and Sahel. This natural wealth is a product of the different climatic conditions, which created a variety of different ecosystems.

III. POLITICS AND CULTURE

As alluded to above, Nigeria is a pluralistic State with a multi-ethnic grouping with different languages and cultures. The political formation of this entity called Nigeria began in 1914 after the amalgamation of the Southern and Northern Protectorates.⁵ The amalgamation did not however extinguish the ethnic diversity or the cultural and language differences.

Federalism as a system of government was adopted to help the different federating units to govern themselves to the extent where the law permits them to do so without interference from the central government. The constitution therefore creates the exclusive list and the concurrent lists, which delineates different roles each tier of government should execute and where they can also cooperate; stating what is managed centrally and what is done at the state or local government levels.⁶ A former military president appeared to have articulated this sentiment when in a nationwide broadcast on May 3, 1989 he laid bare the rationale behind this choice. He said: “The Armed Forces Ruling Council (AFRC) took the view that by firmly encouraging Nigeria’s plural character within a federal system can our nation’s stability be guaranteed for posterity... We settled for federalism because we firmly believe that it is only through this that our diversity can be accommodated.”⁷

Democracy was embraced after years of military governance. Nigeria has a presidential system akin to the American system with the Nigerian President possessing an executive power as Head of State and Head of Government as well as the Commander-in-Chief of the Armed Forces. It has a bicameral legislature with the Senate (109 seats) and the House of Representatives (360 seats). A multi-party system which holds federal elections every four years. The present president is a retired military ruler, Gen. Muhammadu Buhari (Rtd).

Nigeria is very rich in culture with different regions showcasing their way of life. There are three so-called major languages: Hausa, Ibo and Yoruba, but English is the official language. However, there are about 300 languages and dialects, many of which accurately qualify to be

⁵ See Art 4 of the *Nigeria Protectorate Order in Council*, 1913.

⁶ See Nwabueze, B.O. *Federalism in Nigeria Under the Presidential Constitution*. London, 1983, p. 377.

⁷ Babangida, Ibrahim Badamosi. ‘Nationwide Broadcast’ *Lagos News*, May 4, 1989.

called languages because of their complete lack of similarities. Nigeria is very rich in terms of cuisines, offering numerous foods from legume, tubers (yams), fruits, nuts, etc. Many regions and states have their own cultural shows and carnivals with international recognition, for example Abuja Carnival and Calabar Carnival. Regardless of the security challenges, some tourists patronise some natural parks and game reserves in the country.

IV. ECONOMY

The Nigerian economy is largely oil dependent. Nigeria has many other natural resources, which have not been developed or harnessed because of the ineptitude of successive governments. Nigeria is very rich in mineral and natural resources. Apart from oil and gas, other natural resources such as gold, coal, uranium, iron ore, limestone, tin, phosphate, lead, forest reserve, etc could also be found in Nigeria. According to Lura Rogers Seavey, “Nigeria’s biggest industry is oil, which accounts for about 95 percent of Nigeria’s income from exports. Nigeria is the fifth-largest oil exporting country in the world. Nigeria also has vast natural gas reserves and exports agricultural products such as rubber and cocoa beans.”⁸

Despite this wealth and Nigeria’s potentials, indeed regardless of being the largest national economy in Africa, about two-thirds of Nigerians live below the poverty line in the country with many surviving on the equivalence of one dollar per day.⁹ The uneven distribution of the nation’s common wealth is evident. In many towns and villages, the lack of basic infrastructure is glaring with no electricity, no durable roads, bad health care institutions and system, lack of good internet connection, etc. Conversely, the reality is different in many big cities which boasts of comparatively better infrastructure.¹⁰ Economic problems abound with a high level of unemployment, corruption in public, and private circles and even terrorism.

There is no doubt that opportunities abound in Nigeria for local and foreign investments, the government must however provide the enabling environment to boost the trust of investors. Corruption which fuels poverty and bad governance must be confronted and the right legal framework must be put in place to encourage such investments.¹¹ When Nigeria harnesses her potentials, only then can the nation occupy its proper position in the comity of nations and the desire of many of her citizens to migrate seeking the proverbial greener pasture curbed.

⁸ Seavey, Lura Rogers. *Nigeria*. New York, 2017, p. 132

⁹ See Seavey, Lura Rogers. *Op. Cit.*, p. 71

¹⁰ See Bourne, Richard, *Op. Cit.*, London, 2015, pp. 258ff; See also Campbell, John/Page, Matthew T., *Op. Cit.*, New York, 2018, pp. 53ff

¹¹ See Campbell, John/Page, Matthew T., *Op. Cit.*, New York, 2018, pp. 2-3

V. CATHOLIC CHURCH IN NIGERIA

Before the advent of the Europeans in Africa, in this case, Nigeria, the inhabitants were adherents of traditional religions. Every ethnic group have their own traditional religions. Although these religions still exist, they are no longer popular since Christianity and Islam which were introduced by Europeans and Arabs respectively have displaced them. The traditional religions are equated with paganism, sequel to this many contemporary adherents do not publicly associate with them.¹²

Adherents of the Christian and Islamic religions are in their good numbers. Indeed, they both share about half of the population each, although each religious affiliation lay claim to majority in the country. However, one can say without gainsaying that the northern part of Nigeria is more populated by Muslims and the southern part of Nigeria is more populated by Christians. Unfortunately, Christianity and Islam, which are the predominant religions in Nigeria have also become the source of disagreement and divergence in Nigeria. Religious tensions many times spiral into serious violence claiming the lives of many people.¹³ Christianity and Islam have their different sects to which many Nigerians belong. Nigerian Muslims predominantly belong to the Sunni sect. However, there are other sects such as Ahmadiyya, Salafi, Sufi and Shia sects.¹⁴ Christianity on the other hand has a fair share of different confessions such as the evangelicals, Episcopalians, Pentecostals, indigenous churches and the Catholics.

For the intent of this work, attention is focused on the Catholics and the process of nullity of marriage in the Catholic Church. The development¹⁵ of Catholicism in Nigeria shows that the Church in Nigeria has grown over the years since the missionaries brought the Catholic faith to the country. There are approximately 28 million Catholics, 9 archdioceses, 44 dioceses, 2 Apostolic vicariates and a Maronite Eparchy. The Church in Nigeria is privileged to have 3 Cardinals, about 50 Bishops, over 4,000 priests and about 2,000 parishes. Many young men visit the seminary and young women make their training to become nuns. The Catholic Church provides various services in areas such as: schools, hospitals, old people's homes, orphanages, and much more.¹⁶

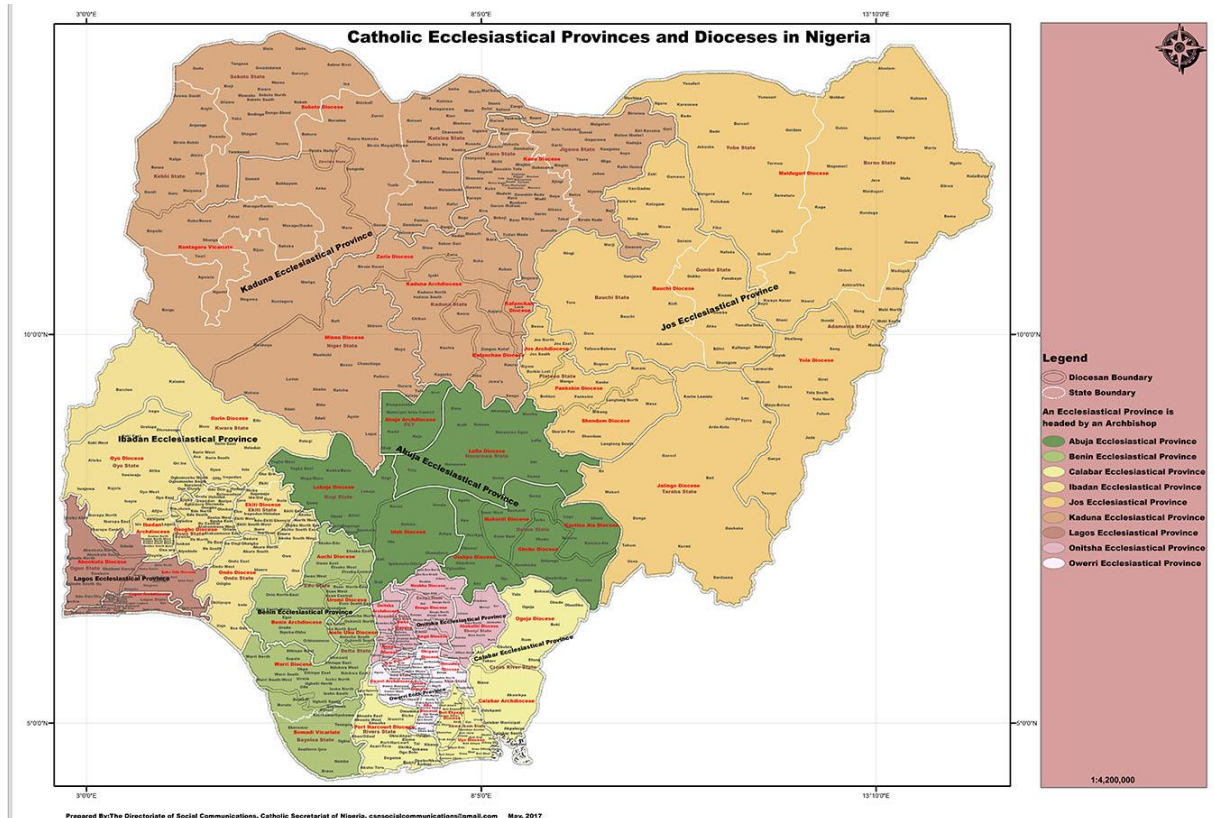
¹² See Hickey, Raymond. *The growth of the Catholic Church in Northern Nigeria 1907–2007*. Jos, 2006.

¹³ See also Campbell, John/Page, Matthew T., *Op. Cit.*, New York, 2018, pp. 74 ff.

¹⁴ Owobi Angrew, 'Tiptoeing Through A Constitutional Minefield: The Great Sharia Controversy in Nigeria'. *Journal of African Law*, Vol 48, No 2, 2002.

¹⁵ See Makozi, Alexius and Ojo, Afolabi. *The History of the Catholic Church in Nigeria*. Lagos: Macmillan Nigeria, 1982.

¹⁶ See *Annuario Pontificio per l'Anno 2018*. Città Del Vaticano, 2018, p. 1093; see also Roberts, James. 'Increase in Numbers of Catholics Worldwide, According to Vatican Stats'. *Tablet*. June 14, 2018.



Map of Nigeria showing the various ecclesiastical jurisdictions (provinces and dioceses) in Nigeria.¹⁷

VI. MARRIAGE AND THE MARRIAGE TRIBUNAL IN NIGERIA

The Constitution of the Federal Republic of Nigeria, which is the supreme law of the land guarantees the freedom of religion, while also declaring Nigeria to be a secular State. Catholics can therefore practice their faith by law in the country and be governed by the law of the church in so far as the laws are in congruent with or consistent with the laws of the State. In this regard ecclesiastical marital legislations are in consonance with the Nigerian legislation and are therefore permitted to be observed. Marriages done in accordance with the laid down rules in the Catholic church are consequently recognised by the State.

Can. 1059 of the Code of Canon Law alludes to the authority of the church over marriages of all those baptised Catholics and affirmed that they are governed by divine law. It stipulates that: “The marriage of catholics, even if only one party is baptised, is governed not only by divine law but also by canon law, without prejudice to the competence of the civil authority in

<https://www.thetablet.co.uk/news/9241/increase-in-number-of-catholics-worldwide-according-to-vatican-stats> [accessed on September 9, 2018]; See also ‘Nigeria: Statistics by Diocese, by Catholic Population’. *Catholic Hierarchy*. <http://www.catholic-hierarchy.org/country/scng1.html> [accessed on September 5, 2018].

¹⁷ Courtesy of Very Revd. Fr. Samjumi Zachariah, Secretary General, Catholic Secretariat of Nigeria (CSN), Abuja-Nigeria; See also CBCN, ‘Map of Catholic Ecclesiastical Provinces in Nigeria’. <http://www.cbcn-ng.org/mapprovince.php> [accessed March 30, 2019].

respect of the merely civil effects of marriage.” The church therefore in a subtle way rejected the civil guidance or direction on the marriages validly contracted in the Catholic Church, which is regarded a sacrament. The validity, rights, obligations and duties of a Catholic marriage should be governed consequently by divine law. Therefore, the civil effects of the dissolution of marriage in the civil courts are not applicable or recognised by the church. The divorce granted under the civil law in the courts cannot be given effect under the purview of ecclesiastical legislation. The Catholic church subsequently governs marriage with divine or positive law and the Code of Canon Law.

Cann. 1671 and 1672 assert the grip of the Church on marriages involving Catholics. Whereas Can. 1671 stipulates that “Matrimonial cases of the baptised belong by their own right to the ecclesiastical judge”. Can. 1672 says: Cases concerning the merely civil effects of marriage pertain to the civil courts, unless particular laws lay down that, if such cases are raised as incidental and accessory matters. They may be heard and decided by an ecclesiastical judge. By these church legislations, marriages contracted by baptised Catholics are handled by ecclesiastical judges in tribunals set up by the bishop in a given diocese. The legislations do not preclude entirely the civil courts from adjudication where matters pertain the civil effects of marriage. However, marriage tribunals and their judgement thereof are not subjected to civil courts procedures. Appeals from the tribunals or Rota do not lie in the Appeal Court or the Supreme Court as is the case in the Nigerian legal system, but relevant appeals will lie to the applicable relevant court of instance. This will be considered in subsequent chapters.

The state of the marriage tribunal in Nigeria could be described as unstable and wobbly. The effectiveness or otherwise of the tribunals could be dependant from diocese to diocese. Generally speaking however, the marriage tribunals operate at the diocesan and inter-diocesan and provincial levels in Nigeria. Some are functioning well with well-equipped offices and boasting of qualified personnel. Many others do not enjoy this luxury, worst still the tribunal does not function in some ecclesiastical territories because they are non-existent.

Hilary Okeke succinctly captures this when he said: “We must acknowledge the many limitations of the tribunals in Nigeria. Most tribunals do not function. Those that function are understaffed. Most of the tribunal officials work part-time in the tribunal. In effect, the tribunals in Nigeria are ill-equipped to provide efficient administration of justice especially in marriage cases. In some dioceses, marriage cases are not handled at all and those handled stay too long that the parties lose interest and some die before they could be liberated by the ministry of the

Church. There is too much frustration both on the part of tribunal personnel who cannot provide the services expected of them and worse still on the part of the people with cases. Tribunal ministry is an area of pastoral case that cries for attention in Nigeria.”¹⁸ Lending a voice to the situation, Mary Gerald Nwagwu concluded that: “complaints of unduly lengthy and delayed procedures that leave parties frustrated and compelled to enter into irregular unions or to abandon the Catholic Church have provoked the papal concern to ameliorate the situation.”¹⁹

While some individuals have no problem approaching the tribunal seeking the nullity of their marriage, there are others whose perception of marriage make them feel ashamed to do the same. Such persons may feel ashamed of themselves, seeing themselves as failures, and find it difficult to face social and cultural perception. Such persons are enjoined to note that: “The important thing to remember in initiating the process is to approach it without any sense of shame, guilt or undue trepidation. Marital failure does not mean that either party was a failure of a person.”²⁰

In a similar vein, the need to review the extant handbook after the release of *Mitis Iudex* became apparent. Such a guideline on the preparation of a marriage nullity case for a tribunal will replace the one published in 1988. This will assist practitioners and petitioner to navigate through the not so familiar terrain of the judicial procedure of the tribunal. Upon the completion of work by the committee saddled with this responsibility, the draft copy of the new handbook was approved for publication by the Bishops’ Conference of Nigeria in 2017 and the handbook to assist those approaching or working at the tribunals was “published for our common responsibility in serving the laity especially those that expects the Church’s intervention on their marital status and predicaments.”²¹

The local tribunals in Nigeria have experienced increasing numbers of petitions for nullity. Amidst this increase, some noticeable challenges became a clog in the wheel of the effective discharge of their duties. Such challenges encountered include: lack of or inadequacy of personnel; same officials serving in different roles in a tribunal; delay in procedure; neglected roles of the defender of the bond or the advocates; laxity or rigidity in tribunal procedure, etc.²²

¹⁸ Okeke, Hilary. ‘Care of Christian Marriage and Family in Nigeria’, *Studia Canonica*, 27 (1993), pp. 413–433. P. 432.

¹⁹ Nwagwu, Mary Gerald, ‘Reform of Canonical Process for Declaration of Nullity of Marriage’, Canon Law Society of Nigeria Professional Seminar Series (1), Uyo, 2016, p. 12.

²⁰ Canon Law Society of Nigeria, *Handbook on Tribunal Ministry in Nigeria*, Abuja, November 2017, p. 56.

²¹ Etokudoh, Camilius ‘Forward’ in Canon Law Society of Nigeria (CLSN), *Ibid*.

²² See more description in Chiegboka, Anthony B. ‘I want Justice from You’ (Luke 18:3: The Ecclesiastical Judge and the Administration of Justice in the Local Church Tribunals. Nimo, 2006 pp. 95–113.

Within this context in Nigeria, came the introduction of this document *Mitis Iudex* and it immediately generated interest amongst the church's hierarchy and its legal experts. The Bishops in Nigeria commended the introduction of the process in a Communique issued in September 2015 at the end of their Second Plenary meeting in Port Harcourt. They said: "We commend His Holiness Pope Francis for the *Motu Proprio, Mitis Iudex Dominus Iesus* (Jesus Christ, the meek Judge) aimed at accelerating the process for the declaration of the nullity of marriage. We pledge to use this new process for the pastoral and spiritual benefit of our people."²³ Pius Kii opined: "Pope Francis' annulment reforms is judged the most significant in the last three hundred years in areas such as the elimination of mandatory appeal, made it simpler to determine where a trial can be held (competence of tribunals) as such trials could be held anywhere other than the diocese where the wedding took place, or the diocese where the respondent is living, allows the testimony of one person to be taken as full proof under certain circumstances, if there are no other contrary proofs, if the statement was made in one's capacity (*ex officio*), etc. "²⁴

VII. CONCLUSION

This introductory chapter articulated basic but salient issues surrounding the background to this research work. It succeeded in exploring the history and geography; politics and culture; and the economy of the country for the rudimentary understanding of readers who seek to know such background of the country of study. Similarly, the research work articulated the religious background of the country, placing within the right perspective the different religions practiced in Nigeria and an overview of the Catholic Church and the state of the marriage tribunal in Nigeria, which remains the object of this research. In the next chapter, the process of nullity of marriage at the marriage tribunal, which was in existence before the introduction of the reform will be discoursed concisely.

²³ 'Nigerian Bishops Commend Pope Francis'. *Vatican Radio*. September 20, 2015. http://www.archivioradiovaticana.va/storico/2015/09/20/nigerian_bishops_commend_pope_francis_/en-1173247 [accessed on September 18, 2018]; See also 'As Synod Approaches, Nigerian Bishops Speak Up for the Family'. *National Catholic Register*. September 29, 2015. <http://www.ncregister.com/daily-news/as-synod-approaches-nigerian-bishops-speak-up-for-the-family> [accessed on September 15, 2018].

²⁴ Msgr. Pius Kii, 'Preface' in Canon Law Society of Nigeria (CLSN), *Op. Cit.*

CHAPTER TWO: NULLITY OF MARRIAGE BEFORE THE REFORM

I. INTRODUCTION

Declaring the nullity of marriage is not divorce. What then is the declaration of the nullity of marriage? The declaration of the nullity of marriage is described as a process whereby the Church examines the validity of a marriage, which was believed to have been contracted validly upon a petition submitted by a party or parties to the marriage for the annulment of the marriage based on the grounds prescribed by law. Most times, it involves parties who disagree with one another and their hitherto friendly relationship has broken down. Else, nullity is not sought but con-validation is applied where such parties intend to remain in the union. Such marriages, where nullity is granted must have also been nullified or dissolved civilly and the Church determines if the marriage was null due to any defect or any ground stipulated by ecclesiastical law. This process of examination is accomplished in a prescribed procedure established in the Code of Canon Law with the help of tribunal experts through the parties and their witnesses.

In this chapter, the process leading to the declaration of the nullity of marriage before the advent of *Mitis Iudex* will be examined. In this way, the competent forums and tribunals, which have jurisdictions to hear such petitions will be mentioned. The composition of the tribunals and the relevant tribunal personnel will be enumerated and their roles in the tribunal explained. The process of the declaration of nullity itself will be explained, taking into cognisance the varying steps to be taken leading to the declaration of nullity of marriage and a possible appeal.

In this segment, canonical quotations mentioned obviously refer to the canonical numbers in the 1983 Code in its pre-*Mitis Iudex* reform state. This clarification is important so as not to confuse the numbers in the pre- and post-*Mitis Iudex* reform.

II. THE COMPETENT FORA AND TRIBUNALS BEFORE THE REFORM

Every judicial system has its peculiar procedures and in the same vein the jurisdiction conferred on its courts. The ecclesiastical judicial system is not different in this regard, since ecclesiastical courts have stipulated procedures and jurisdictions assigned to different courts or tribunals. They are saddled with the responsibility of finding the truth in the cases before them. The process of finding the truth in ecclesiastical courts “basically consists of five elements: the material object, the formal object, the active subject, the passive subject, and the form of the adjudication process.”¹ The marital ecclesiastical trial through this process therefore, gives the

¹ Spiteri, Laurence J. *Canon Law Explained: A Handbook for Laymen*. Manchester: Sophia Institute Press, 2013, p. 132.

faithful a clarification on their marital status when they approach the tribunals, seeking to know the fate of their marital state.

Cann. 1417–1445 govern the different grades and kinds of tribunals with regards to their competence in matters of the nullity of marriage. These canons explain the essential position the tribunals occupy in the judicial hierarchy of the church, the composition of these different tribunals and the process of trial to be adopted by these tribunals at each instance. The different types of tribunal are also classified according to degrees, number of judges, territory, jurisdiction with which they judge; and the capacity to judge on different grades.²

The competent courts, which are designated to handle cases regarding the nullity of marriage in the church have different levels or grades as indicated above. There is what is called the *first instance*, which is called *Offizialat* in the German speaking world. This is the first step. The second tribunal or the second step is the *second instance*. This second tribunal is linked in law to the archbishop's or provincial court, though this could also be a court of first instance depending on the case. Then the court of *third instance* is usually the Roman Rota, the appeal court of some sort, which is a papal court.³

These three grades and levels are without prejudice to the primacy of the Pope, who, according to Can. 1417 § 1 reserves the right to entertain contentious or penal cases referred to the Holy See. Such reference could be done at any stage of the suit. However, Can. 1417 § 2 states: “Apart from the case of an appeal, a referral to the Apostolic See does not suspend the exercise of jurisdiction of a judge who has already begun to hear a case. The judge can, therefore, continue with the trial up to the definitive judgment, unless the Apostolic See has indicated to him that it has reserved the case to itself.”

a. The Court of First Instance: Diocesan Tribunal

Cann. 1419 to 1427 govern matters of the tribunal of first instance and stipulate the procedure and competence of the tribunal. According to Ulrich Rhode,⁴ the Code of Canon Law presumes

² The degrees will refer to the instances, whether first, second or third; the number of judges refers to whether the tribunal is a collegiate or a sole judge tribunal, the territory alludes to whether the tribunal is diocesan or inter-diocesan, regional, or national; the jurisdiction with which they judge concerns whether they are established by law or executing delegated authority; and the capacity to judge on different grades shows whether a tribunal can only judge in the first instance or also on appeal. See more in Caparros, Ernest – Theriault, Michel – Thorn, Jean (Eds.) *Code of Canon Law Annotated. (2nd Edition)* Montreal 2004, p. 1100–1101.

³ See Bischöfliches Offizialat Münster (Hg), *Geschieden? Wiederverheiratet? Mit der Kirche? Eine Handreichung*. Freiburg 2012, p. 35.

⁴ Rhode, Ulrich. *Kirchenrecht*. Stuttgart 2015, p. 286: „Der Codex sieht als Regel die Existenz eines Gerichts erster Instanz in jedem Bistum vor. Es ist Teil der Diözesankurie und wird im Deutschen meinst als »Offizialat«, in einigen Bistümern als »Konsistorium« bezeichnet“.

as a rule the existence of a Court of first instance in every diocese, which is to be established by the diocesan bishop. It is part of the diocesan curia and in German dioceses, it is called "Offizialat" but in some other dioceses it is known as "consistory". Ordinarily, the tribunal of first instance is the fundamental forum where the truth is articulated, and the marriage bond is defended. Once the court of first instance reaches the right decision in the case, justice is said to have been served and truth revealed.⁵

Can. 1673 § 1–4 CIC⁶ regulates the jurisdiction of a court. The marriage tribunal of the diocese where the marriage was contracted is the Competent Court. Similarly, the tribunal of the diocese where the partner who did not generate the petition can also have competence or jurisdiction. The marriage tribunal where the petitioner lives may also assume jurisdiction or competence. In addition, the marriage tribunal of the diocese where most evidence is to be collected may also assume jurisdiction.

However, as stated above, under some circumstances, a petitioner enjoys the right to request that the Roman Rota deal with the case even at the first instance. In this case, the diocesan tribunal will not serve as the court of first instance.

b. The First Instance: Inter-diocesan Tribunal

Can. 1423 permits, in place of the diocesan tribunals, with the approval of the Apostolic See⁷, the establishment of an inter-diocesan tribunal by several diocesan bishops who come together to establish one. In this regard, in some ecclesiastical jurisdictions, particularly where a diocese cannot afford to erect one, establish and manage a marriage tribunal, there exists the inter-diocesan marriage tribunal to cater for more than a diocese together. Can. 1423 § 1 therefore concludes: "In this case the group of Bishops, or a Bishop designated by them, has all the powers which the diocesan Bishop has for his tribunal."

This arrangement becomes a collective effort by the Local Ordinaries to share the same structure in order to avail the faithful in their respective dioceses the opportunity to make

⁵ See Doogan, Hugh F. *Catholic Tribunals, Marriage Annulment and Dissolution*. Marrickville, 1990, pp. 10–11.

⁶ Cann. 1407–1414 treats the issue of competence and jurisdiction of trials in general. However, when it pertains the matrimonial causes, the competence of the tribunal to entertain petitions in the first instance are limited to the tribunal of the place where the marriage took place; where the respondent has a domicile or quasi domicile; where the plaintiff has a domicile with conditions to be fulfilled and where most of the proofs are to be gathered. However, when an appellate tribunal dealing in a case of nullity of marriage admits a petition on a new ground and acts as a court of first instance, which is permitted under can. 1683, the circumstances enumerated in can. 1673 are not binding. This is regarded by John Beal, et al. as "an example of competence by means of connection" in reference to can. 1414.

⁷ *Pastor Bonus* Article 124, no. 4 empowers the Apostolic Signatura to approve regional or inter-diocesan tribunals as the case may be at the request of respective bishops or even at the discretion of the Apostolic Signatura itself.

recourse to the marriage tribunal. This cooperation takes place among these dioceses who cannot have a diocesan marriage tribunal of theirs. This inter-diocesan marriage tribunal therefore remains a tribunal of first instance. This is usually within the same ecclesiastical province. But closely related to this is the regional tribunal, which is also an inter-diocesan tribunal but not necessarily within the same province. Both however involve either bishops of a region or a province or within the same episcopal conference, who have decided to come together to establish one for other reasons which could be cultural, linguistic, or otherwise.⁸

c. The Second Instance: Metropolitan Tribunal

In accordance with Can. 1423 the ecclesiastical lawgiver obliges national episcopal conferences to set up a court of second instance after the establishment of a first-instance court by the bishops concerned, with the approval of the Apostolic See.⁹ After the judgement at the tribunal of first instance, except the appeal is made to the Roman Rota, an appeal from a diocesan tribunal could be made to the metropolitan tribunal.¹⁰ Where the petition was heard at the Metropolitan tribunal as the tribunal of first instance, and no appeal is made to the Holy See, the appeal usually lies to a tribunal which the Metropolitan Archbishop has designated for that purpose but with the approval of the Holy See.¹¹

The second instance is normally located in the respective Metropolitan Diocese. This court of second instance acts as an appellate tribunal for proceedings that have been tried by the diocesan or the inter-diocesan tribunals of first instance. This tribunal receives the automatic review that arises from a court of first instance normally from the suffragan dioceses. This tribunal may confirm the judgement and when it does not, the petition goes on further appeal to a higher court.

The tribunal of second instance is governed by Cann. 1438 to 1441 of the Code of Canon Law. The provisions of these statutes require a mandatory appeal of an affirmative judgement of a trial court to a competent higher tribunal. Where however the metropolitan tribunal serves as the first instance, the higher tribunal of second instance would be the one approved or recognised by the Apostolic See through the Apostolic Signatura in accordance with Can. 1445 § 3 n. 3.¹²

⁸ See Lüdicke, Klaus/Jenkins, Ronny. *Dignitas Connubii: Norms and Commentary*. Washington, 2006, p. 58.

⁹ See Aymans, p. 332.

¹⁰ Cf. Can. 1438.

¹¹ See Can. 1439.

¹² See Spiteri, Laurence J. *Op.Cit.*, p.145; See also Article 124 of *Pastor Bonus*.

d. The Third Instance: The Roman Rota

Can. 1443 declares that the Roman Rota is the ordinary tribunal established by the Roman Pontiff to receive appeals. The Roman Rota dates back to the Middle Ages. It served as the civil and criminal appeal court of the Papal States. The Papal States were also officially called State of the Church (*Status Ecclesiasticus*), which were a series of territories in the Italian Peninsula. From the 8th century until the year 1870, they were under the direct sovereign of the Roman Pontiff.¹³ The fall of the Papal States in 1870 therefore threatened the existence of the Roman Rota. It was reorganised in 1908 by Pius X and he re-established it as the appeal court of the Holy See.¹⁴ “The court of third instance can be the Roman Rota, however, it is not always necessary to go to the Roman Rota for a third hearing of a case. The Holy See gives permission, through an *ad hoc* basis, for a third hearing to take place in some diocese of the country.”¹⁵

Can. 1405 § 3 empowers the Roman Rota as an appeal court to hear cases involving Bishops, Abbots or Superiors of religious institutes. In matter of nullity of marriage, the Roman Rota is ordinarily a court of third instance but can also act in the first and second instance as the case may be and as prescribed by law or the Supreme Pontiff.

Anyone other than the Pope can be subjected to the jurisdiction of the Roman Rota. Can. 1441 is clear on the jurisdiction of the Roman Rota. In the discharge of its judicial powers, the Roman Curia also through the Tribunal of the Roman Rota adjudicate on cases brought before it. In the matters of the process of nullity of marriage, the Rota is the third and last instance. As stated above, it could also be the second or third instance respectively. The activities of the Roman Rota are not only governed and directed by canonical provisions. Thus, *Pastor Bonus* nos. 126–130 similarly prescribe some regulations on the activities, functions and jurisdiction thereof of the Roman Rota.

The relevant laws and statues governing the Roman Rota are clear on the jurisdictions of this Tribunal of the Holy See. The following are therefore specific matters upon which the Roman Rota specifically adjudicates:¹⁶

¹³ Mitchell, Samuel Augustus. *Mitchell's Geographical Reader: A System of Modern Geography, Comprising a Description of the World, with its Grand Divisions, America, Europe, Asia, Africa, and Oceania*. Philadelphia, 1840, p. 368.

¹⁴ See Coriden, James A. *An Introduction to Canon Law*. New York, 2004, p. 55.

¹⁵ Pazhazampallil, Thomas/Padinjarathala, Anthon. *Pastoral Guide (Vol. 3). A Handbook on the Latin and Oriental Codes of Canon Law. (IV. Revised Edition)*. New Delhi, 2013, pp. 1209–1210.

¹⁶ Can. 1444.

- (1) in second instance, cases already tried by the ordinary tribunals of first instance and brought before the Holy See by legitimate appeal;
- (2) in third and further instances, cases already treated on appeal by the Rota itself or by another ecclesiastical court of appeal;¹⁷
- (3) it adjudicates as well cases in first instance which are reserved specifically to it in c. 1405, § 3 as well as those cases which the Roman Pontiff has called to himself either *motu proprio* (i. e., on his own initiative) or at the request of the parties and which are then entrusted to the Rota by the Roman Pontiff;
- (4) it is also the Appellate Court for the Ecclesiastical Tribunal of the Vatican City State (*motu proprio Quo civium*, 21 November 1987, art. 7);
- (5) the Dean of the Rota equally has the faculty to call up a case to be adjudicated upon in the first instance, if needed.

The *Sacra Romana Rota* is the oldest and most famous court of the Vatican. The judges are highly qualified jurists. The Rota has judges who are highly qualified and are screened before other Vatican authorities.¹⁸ This is a collegiate ordinary tribunal, which is constituted by the Holy See to receive appeals. It has definite numbers of judges called auditors, who are appointed by the Pope from different parts of the world. It is presided over by a judge called a dean, who is first among equals (*primus inter pares*) because he is also one of the auditors. At the moment the Dean of the Roman Rota (*Decanus Rotæ Romanæ*) is Msgr. Pio Vito Pinto.¹⁹ The Dean, who is assisted by the chancellor and the officials of the chancery is responsible for the daily affairs of the tribunal. Cases are adjudicated upon by a panel of three auditors and the official language of the Rota is Latin and therefore judgements are written in Latin. “The auditors render judgement, as a rule, functioning as a *turnus* consisting of three of its members, unless the Pope should dispose otherwise. The decision is always governed by a majority vote of the auditors hearing the particular case.”²⁰

For cases regarding the third instance in the German speaking countries, it is often determined by a court in a given country on request. The decisions of the Rota do not necessarily form a

¹⁷ Compare Rhode, Ulrich. *Op. Cit.*, p. 286.

¹⁸ See Rossi, Fabrizio. *Der Vatikan*, München 2005, *Der Vatikan*, 41 „Die Richter sind hochqualifizierte Juristen, die vor der Einstellung gleich von mehreren vatikanischen Behörden «durchleuchtet» werden“.

¹⁹ The pro-dean is Msgr. Maurice Monier. See *Annuario Pontificio per l'Anno 2018*. Città del Vaticano, 2018, p. 1201.

²⁰ Pazhayampallil, Thomas – Padinjarathala, Anthon. *Op. Cit.*, p.1206.

case law or a precedence for the lower courts. Their decisions are not *stare decisis* properly so called and are not binding on the lower courts since each case is treated *sui iuris*. The judgements of the Rota are largely published in anonymous form.²¹

The procedure of the Roman Rota has however come under scrutiny and criticism by the European Court of Human Rights. The European Court of Human Rights asserted that the procedures of the Rota “failed to reach the standards required for a fair trial under article 6(1) of the European Convention”. Sequel to this, it claimed that the judgement of the Rota “could not properly be recognized and enforced under Italian law.” “ECHR noted that, in Rota proceedings, witness statements were not provided to parties and that thus there was no opportunity for the parties to comment on them. Parties were not advised that they could appoint lawyers to appear for them, nor advised of the terms of the legal submissions made by the canon lawyer appointed by the court to argue against annulment. Finally, the parties were refused sight of a full copy of the Rota’s judgment, in which the ecclesiastical court set out its reasoning or the *ratio decidendi*. Given these circumstances, the Strasbourg court took the view that justice was not done in annulment proceedings before church courts. (*Pellegrini v. Italy* (2002) 35 EHRR 2)”²²

The above critique raises the question of whether the judgement of the Roman Rota has a civil effect. Whether the judgements of the Roman Rota should be legally binding being an organ of the Vatican State is a related question. It is obvious that while the judgement of the Roman Rota is legally binding and executed in ecclesiastical circles, the same cannot easily be said under civil jurisdiction because the judgements of the Roman Rota are not civilly legally binding in many climes. This is evidently an important issue for another academic discourse or research but not the concern of the present academic work and therefore falls outside the scope of this research.

III. The Composition of the Tribunal and Tribunal Personnel

a. The Diocesan Bishop

The diocesan bishop possesses legislative, executive and judicial powers over the territorial jurisdiction entrusted to him by virtue of his episcopal appointment. Therefore, the diocesan

²¹ Rhode, Ulrich. *Op. Cit.*, p. 286: Für die drittinstanzliche Behandlung wird „von Verfahren aus dem deutschsprachigen Raum auf Antrag häufig ein Gericht im eigenen Land festgelegt. Die Rechtsprechung der Römischen Rota übt eine Vorbildfunktion für die unteren Gerichte aus; ihre Entscheidungen werden größtenteils – in anonymisierter Form – veröffentlicht.“

²² Concordat Watch, ‘Roman Rota’. <http://www.concordatwatch.eu/kb-37614.834> [Access on August 30, 2017].

bishop is an essential judge in the judicial structure of the church essentially in his diocese. Can. 1419 § 1 stipulates that: “In each diocese and for all cases which are not expressly excepted in law, the judge of first instance is the diocesan Bishop. He can exercise his judicial power either personally or through others, in accordance with the following canons.” Thus, the diocesan bishop possesses judicial power over cases not reserved to the Apostolic See or some other authorities.

Cann. 368 and 381 §§ 1 and 2 include those leading military ordinariates, personal prelatures, and missions *sui iuris* to enjoy the powers of the local ordinaries, though they may not be bishops or possess episcopal character. The question then arises if the title or the expression diocesan bishop encompasses those who by such offices can also exercise such judicial powers within their jurisdiction or should merely utilise the judicial structures within the territories they are located. Ernst Caparros, et. al. are of the opinion that: “In those structures, therefore, the judge of first instance in the scope of his jurisdiction is the titular who presides over it; the prelate, prefect, administrator, etc. The bishop and other equivalent authorities may exercise their judicial power either by themselves, whether as single judges or as presidents of collegiate tribunals, or through others, whether the judicial vicar who judges with ordinary power, or others whom they may delegate.”²³

b. The Judicial Vicar or *Officialis* and Associated Judicial Vicars

As noted above, the diocesan bishop does not only possess judicial power to be exercised personally, but also such powers could be exercised through others. Therefore, Can. 1420 § 1 empowers the diocesan bishop to appoint a Judicial Vicar or *Officialis* who will possess an ordinary power to judge. This office is not to be held by the Vicar General of the diocese except local exigencies demands that, else, distinct persons should hold the two offices. The Judicial Vicar constitutes therefore a single tribunal with the bishop but the judicial Vicar is not empowered to judge cases which the diocesan bishop has reserved to himself.

In the exercise of his duties, assistants called associate judicial Vicars or *Vice-Officiales* could be appointed for the judicial Vicar. These (judicial vicar and the associates) must be priests in good standing and of good repute. They must possess a doctorate or at least a licentiate in canon law and such persons must not be less than thirty years old according to Can. 1420 § 4. Such appointments are timebound as they are thus for a specified period. A vacant see does not

²³ Caparros, Ernst, et. al. *Op. Cit.*, p. 1104; See also Akpoghiran, Peter, *Mitis Iudex. Text and Commentary*. Louisiana, New Orleans, 2017, p. 10.1

extinguish their appointment and they cannot be removed by a Diocesan Administrator but the new bishop needs to confirm them in the office in accordance with Can. 1420 § 5.

Those duly appointed are required to totally dedicate themselves to the task entrusted to them and to pay close attention throughout the whole proceedings by admitting petitions speedily and rejecting worthless ones. This is to ensure that justice is meted out quickly because any form of delay amounts to a form of injustice already. In exercising their functions, they preside over the collegiate tribunal according to Can. 1426 § 2.

c. Diocesan Judges and other Judges

Apart from the bishop exercising his judicial powers in person or through his judicial Vicar, the diocesan bishop is mandated to appoint diocesan judges. According to Can. 1421 § 1, those who are appointed are to be clerics (deacons and priests) and § 2 stipulates that: “The Bishop’s Conference can permit that lay persons also be appointed judges. Where necessity suggests, one of these can be chosen in forming a college of judges.” The judges so appointed must be of good repute and they must also possess a doctorate degree or at least a licentiate in the field of canon law.

The judges are to meet in a collegiate tribunal of three judges in contentious cases concerning the bond of marriage and where the trial is in accordance with the formal judicial procedure. It is permitted to have a layperson, either male or female, to be one of the three judges as seen above. However, where it is impossible to constitute a college of judges, the diocesan bishop can be permitted by the Episcopal Conference while the situation persists, in a trial at first instance,²⁴ to entrust cases to a sole judge, who is to work in consonance with an assessor and an auditor as required by Can. 1425 § 4.

The role of the judge and the importance of the task of the judge is summed up in these words: “It is the judge who is entrusted with the most noble function of judging (*ius dicere*) in a lawsuit by applying to a specific case the law issued in the abstract by the legislator. The judge whose task it is to see that justice is done, is faced with two situations in the course of the process: that of the fact which requires the objective truth, and that of law which claims fidelity to the

²⁴ Can. 1441 however states where the tribunal must be a collegiate tribunal of three judges in the second instance. It states: “The tribunal of second instance must be established in the same way as the tribunal of first instance. Nevertheless, if a single judge rendered a sentence in the first instance of the trial according to Can. 1425, § 4, the tribunal of second instance is to proceed collegially.” See also D’Auria, Eithne. ‘The Use of Experts in the Roman Catholic Canon Law of Marriage’ in Sandberg, Russell (Ed.). *Religion and Legal Pluralism*. Surrey, England, 2015, p. 91 ff.

norm. The firm adhesion to one and to the reality is what produces the beautiful fruit of justice.”²⁵ Although the role and duties of the judge are so essential in the dispensation of justice, the judge cannot however act without the petition of the parties and must discharge his duty to attain its normal and proper end.

d. Auditors

An auditor could be designated to instruct a case by the sole judge or the presiding judge as the case may be. Can. 1428 §§ 1 and 2 allows that the auditor could be chosen from the tribunal judges or qualified persons subject to the approval of the bishop and such persons could be clerics or lay persons who are “conspicuous for their good conduct, prudence and learning.” As noted above, it is very important that the sole judge at the first instance associate himself with an auditor.²⁶

The auditor has the responsibility to gather evidence and submit them to the judge.²⁷ The auditor can take steps to decipher what evidence to be collected and what manner the evidence has to be collected except the judge decides otherwise. He has the responsibility to submit such evidence to the judge. The auditor prepares the case for deliberation by the judges.²⁸ The auditor plays a vital role in the tribunal by directing the proceedings during the trial. He has the prerogative to call and hear²⁹ witnesses and draw up the record of cases. He is never to decide on the case even though, as seen above, auditors in the Roman Rota are judges.

The appointment of auditors is not compulsory and as noted above, the bishop enjoys the preserve to make and approve such appointments. The appointment “is made by the sole judge or the presiding judge of the collegiate tribunal merely to instruct the case, and not to admit or reject the petition and formulate the *dubium*, not to decide its value. The appointment is made for each particular case, that is, only for the one the judge has to instruct.”³⁰

²⁵ Caparros, Erst, et. al. *Op. Cit.*, p. 1103; See also Paul VI, Allocution to the Roman Rota, 09.02.1976, AAS 68 (1976), p. 204–208; John Paul II, Allocution to the Roman Rota, 04.02.1980, AAS (1980), pp. 176–177.

²⁶ See also Aymans – Mörsdorf – Müller, *Kanonisches Recht: Lehrbuch aufgrund des Codex Iuris Canonici*. Band IV. Paderborn, 2013, pp. 314–316.

²⁷ Art. 50 § 3 of *Dignitas Connubii* says: “It pertains to the auditor, according to the mandate of the judge, only to collect proofs and give them to the judge; however unless the mandate of the judge provides otherwise, he can also decide in the interim what proofs are to be collected and how they are to be collected, if the question should happen to arise while he is carrying out this function.”

²⁸ See Vasoli, Robert H. *What God has Joined Together: The Annulment Crisis in American Catholicism*. New York, 1998. p. 146.

²⁹ The auditor gets his name from the Latin verb to hear – *audire* although the auditors of the Roman Rota hear and judge.

³⁰ Caparros, Ersnt, et. al. *Op. Cit.*, p. 1115.

e. Assessor

Can. 1424 mandates that: “In any trial a sole judge can associate with himself two assessors as advisers; they may be clerics or lay persons of good repute.” This is also echoed by Can. 1425 § 5 that a sole judge in a trial at first instance is to associate himself with an assessor where possible.

An assessor has the function to counsel a judge he is associated with in the trial of cases he is involved in. Sitting³¹ beside the judge, the assessor is “required to examine documents, consult precedents, and in general explore the law for points bearing on the cause at issue.”³² They are not judges but advisors to the judge. They are so named advisors to the judges because of their expertise in their field. The involvement of the assessor therefore assists the judge particularly in areas where he lacks professional knowledge and the assessor is handy to advice the judge “on the proper direction of the case and the suitable evaluation of proofs.”³³ An assessor is to be above reproach and be impartial. They are witnesses in an appeal.

f. Relator

According to Can. 1429, in a collegiate tribunal, one of the judges is designated as a *ponens* or a relator by the presiding judge to present the case when the judges meet and to set out the judgment in writing. The *ponens* or relator is therefore to draw up the judgement in a collegiate tribunal by utilising the reasons articulated by individual judges in their discussion but not when such reasons have been determined by majority of judges. The relator must subsequently present the judgement to the individual judges for their approval.³⁴

The appointment of the relator must be recorded and where a substitution occurs for a just reason, the substitution must be recorded as well.

g. Advocates and Procurators

In the court of law, an advocate is a legal practitioner (a professional in the field of law), who represents a client who has engaged his service. The advocate prepares the case, gathers facts and puts together documentary evidence, selects competent witnesses to be called to canvas the case as he pleads the cause of his client. Conversely, a procurator is one who manages the legal business of another. In putting forward the case of his client, just as in the normal court

³¹ Latin: *assidere*.

³² Fanning, William. "Assessors." *The Catholic Encyclopedia*. Vol. 1. New York, 1907.

³³ Grocholewski, Zenon. 'The Judge', *Exegetical commentary on the Code of Canon Law*. Chicago, 2004, p. 74.4

³⁴ See Can. 1610.

of law, petitioners and the other parties can avail themselves the use of advocates and procurators at the marriage tribunals. This does not however preclude the parties from personally pleading and responding themselves in their own case, except where the judge deem it fit to appoint an advocate or a procurator. Where there is a paucity of legal experts to take up these responsibilities, priests who are actively involved in pastoral work in the parishes could be trained to help parties prepare their petitions.

Can. 1483 requires that: “The procurator and advocate must have attained their majority and be of good repute. The advocate is also to be a catholic unless the diocesan Bishop permits otherwise, a doctor in canon law or otherwise truly skilled, and approved by the same Bishop.” Deemed qualified to serve in such capacities, an advocate or a procurator must present an authentic mandate to the tribunal, without which a procurator cannot validly act. The procurator has the right and duty to appeal after a definitive judgement has been delivered. This right could only be declined nevertheless where the party, who mandated him renounce such a right to appeal.

Can. 1488 forbids the procurator and the advocate from influencing a suit by bribery or engaging in any form of connivance with the other party on the matter in dispute or withdrawing from a tribunal in view of obtaining a more favourable judgement in another tribunal. Such improper acts will be liable to fine by the judge and other forms of sanctions upon discovery of the same act. Can. 1489 provides that the advocates and the procurators who betray their office by benefiting from any form of consideration are to be suspended from their office and other suitable penalties imposed on them.

Can. 1490 concludes that: “In each tribunal, as far as possible, permanent legal representatives are to be appointed, who receive a salary from the tribunal and who are to exercise the office of advocate and procurator, especially in matrimonial cases, for parties who may wish to choose them.” Such persons so appointed are expected to be available to render their services in matrimonial causes to parties who need them. Appointed by the diocesan bishop or ecclesiastical authority, they are expected to safeguard the rights of a party in a canonical process by proffering arguments based on law and fact.³⁵ Such paid appointment brings element of stability and this service could best fit perfectly into the ministry of a deacon, who

³⁵ See Aymans – Mörsdorf – Müller, *Kanonisches Recht IV. Op. Cit.*, p. 389–390.

then acts as a social intermediary between the parties providing pastoral counselling and catechesis where necessary.³⁶

h. The Promoter of Justice

Can. 1430 provides for the appointment of a promoter of justice for contentious cases where public good could be at stake and he has the responsibility to safeguard the public good. In the case of marriage therefore, a promoter of justice can challenge the validity of marriage according to Can. 1674 “when the nullity of the marriage has already been made public, and the marriage cannot be validated or it is not expedient to do so.”

The promoter of justice must not be a cleric but could be a lay person who must be of good repute, have proven prudence and zeal for justice, and possess doctorate or licentiate in canon law pursuant to Can. 1435. The same individual is permitted to hold the office of the promoter of justice and the defender of the bond but such an occurrence must not be in the same case pursuant to Can. 1436. “In fact, they have different functions, because they must defend the public good from opposite view points: for example, when the promotor of justice attacks the validity of a marriage, while the defender of the bond opposes the declaration of nullity. They are incapable of being witnesses in those cases in which they have intervened (c. 1550, 2, 1^o), neither may they be involved as such, or as judges, in another instance (c. 1447).”³⁷

i. The Defender of the Bond

This office was introduced by Benedict XIV by the papal Bull *Dei Miseratione*³⁸ on November 3, 1741 to guard against abuses happening at the time. An annulment could be determined in favour of the petitioner against an apathetic respondent without due diligence and care to safeguard the marital bond. The frequency of such dissolution of marriage and the attendant freedom to enter new marital contracts caused some scandals.³⁹

Can. 1432 stipulates that: “A defender of the bond is to be appointed in the diocese for cases which deal with the nullity of sacred ordination or the nullity or dissolution of marriage. The defender of the bond is bound by office to present and expound all that can reasonably be argued against the nullity or dissolution.” The defender of the bond plays a very essential role

³⁶ See McKnight, Shawn W. *Understanding the Diaconate: Historical, Theological, and Sociological Foundations*. Washington DC, 2018, p. 237.

³⁷ Capparos, Ernst, et. al. *Op. Cit.*, p. 1121.

³⁸ Benedict XIV, ‘Apostolic Constituion Dei Miseratione’, November 3, 1741, *Magnum Bullarium Romanum*. Vol. XVI: 48–51.

³⁹ See Burtzell, Richard. “Defender of the Matrimonial Tie.” *The Catholic Encyclopedia*. Vol. 4. New York, 1908.

to ensure the protection of the indissolubility of marriage because the defender of the bond is obliged “to safeguard the validity of the marriage bond, but not at the expense of the objective truth. He seeks out, exposes and clarifies everything which can weigh in favour of the bond.”⁴⁰

In discharging these duties, the defender of the bond is not expected to concoct or fabricate false defence at all cost, which are lacking in sound reason but to seek out and elucidate on whatever he finds to be in support of the marriage bond. Based on Can. 1678 § 1, the defender of the bond enjoys the right to attend the examination of parties, their witnesses and invited experts. The defender of the bond is also permitted to inspect documents presented by the parties and to see the judicial acts irrespective of whether they are published or not. According to Can. 1433, the lack of summon of the defender of the bond renders the acts of the trial invalid but the acts of the trial will be valid where the defender of the bond was not summoned but he was present at the trial, had the opportunity to study the acts and was also able to fulfil his role before the judgement was rendered. Burke argued that: “But this is just the minimum requirement for the integrity of the process. The search for the truth is impeded when the defender of the bond is present but, through negligence and passivity, deprives, in effect, the process of an important voice in the judicial debate.”⁴¹ Therefore, summoning the defender of the bond to a trial is not enough to ensure the integrity of the process but the proper performance of his role at the trial.

The diocesan bishop enjoys the prerogative to appoint the defender of the bond, who must not be a cleric but could also be a lay person, who must possess good reputation, have a doctorate or a licentiate in canon law and have proven prudence and zeal for justice in accordance with Can. 1435. The defender of the bond could be appointed for individual cases or for all cases, such decision is at the prerogative or perquisite of the diocesan bishop, who can also remove the defender of the bond for any just reason in accordance with Can. 1436 § 2.

j. Notary

The notary is an ecclesial representative, who usually authorises certificates. Aside the appointment of a diocesan chancellor, the diocesan bishop can also appoint a notary in the diocese, who will authorise the Acts of the diocesan curia and certify relevant certificates.⁴²

⁴⁰ Pazhayampallil, Thomas, et. al. *Op. Cit.*, p. 1220.

⁴¹ Burke, Raymond Leo Cardinal. ‘The Canonical Nullity of the Marriage Process as the Search for the Truth’, in Robert Dodaro (ed.), *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church*. San Francisco, 2014, pp. 232–234.

⁴² Aymans – Mörsdorf – Müller, *Kanonisches Recht IV. Op. Cit.*, p. 324.

The role played by the notary in the marriage tribunal is equally very vital. A notary as a *magister actorum* has the legal capacity to attest or authenticate documents and without the signature of the notary, the acts are null and void. A notary, who is a technician for the judicial proceedings must be present at all the hearings according to Can. 1437 § 1. The notary prepares necessary documents and provides signature on the documents. The lack of the notary's signature will necessarily renders the acts void. Can 1437 § 2 therefore affirms that: "Acts drawn by notaries constitute public proof."

The notary could be either a priest as well as a deacon and also a layperson. There are instances where notaries must be a priest. For instance, in accordance with Can. 483 §2 where the reputation of a priest is called to question, the notary must be a priest. Nevertheless, lay persons could also be appointed by the diocesan Bishop to function as notaries. However, whomsoever is appointed thereof must not be of blemish reputation and must be above suspicion.⁴³

IV. The Process of Nullity

Under this heading, the different kinds of matrimonial processes will be discussed. These processes range from mainly judicial to administrative processes and also a hybrid of the administrative and judicial processes. Through these processes, the tribunal via its judges hand down sentences on petitions brought before them to adjudicate upon. Due diligence must be taken on the part of the judges to determine the cases based on the truth of the state of the parties.

This will guide against them handing down the declaration of the nullity of marriage where the bond still subsists or upholding the validity where in reality, the marriage is invalid. This is an arduous responsibility which the tribunal must diligently through its personnel execute. The proper application of the relevant procedural laws and the dedication of tribunal personnel to duty must show that justice has been served by the tribunals.

a. Formal Judicial Process

This process, the ordinary contentious trial, depicts as the title suggests the proper judicial process. It involves strictly speaking the judicial form of proceedings. Such a process must be adopted particularly in cases where there is a defect of matrimonial consent. This process sometimes involves some complicated acts of the intellect and will. They must therefore be carefully studied with critical objectivity in order to prevent a false annulment of a valid

⁴³ Aymans – Mörsdorf – Müller, *Kanonisches Recht IV. Op. Cit.*, p. 324.

marriage. Raymond Burke concluded that: “While it is true that the judicial process for the declaration of nullity of marriage is not itself of divine law, it is also true that it has developed in response to divine law, which demands an effective and appropriate means of arriving at a just judgement regarding a claim of nullity.”⁴⁴

There are different stages in this process which will be discussed below. The steps include: introducing the petition; the summons and the joinder of issue; gathering of proofs; the publication of the Acts and the conclusion of the case; the sentence or the pronouncement of the judge; and appeal. In this process, the rights of the parties must not only be respected but also communicated to them.

i. The Petition Introducing the Suit

The petition itself is an essential component in the procedure of the nullity of marriage as it introduces the suit. Can. 1504 stipulates what each petition must contain and what form a petition must take. A petition must state the judge who is to adjudicate the case, state what claims sought and also from whom the claims are being sought. The petition must also indicate the grounds upon which the plaintiff is basing the case, generally state the facts and proofs to be established in support of the charges made. It must be signed by the plaintiff who is making the claim or by the plaintiff’s procurator, properly dated and state the address of the plaintiff or the procurator. The petition must also specify the domicile or quasi-domicile of the respondent. Indeed, the petitioner or the plaintiff is very essential to the process in the case of the declaration of nullity, for without the initiative of the plaintiff the process cannot begin.

Who is entitled to challenge the validity of a marriage or who is entitled to petition for the declaration of the nullity of marriage? According to Can. 1674, the spouses themselves can impugn the validity of marriage. The promoter of justice can also institute a dispute “when the nullity of the marriage has already been made public, and the marriage cannot be validated or it is not expedient to do so.” The petitioner will therefore ask the tribunal to declare the marriage with the defendant or respondent invalid. It is expected that pastoral efforts are geared towards persuading the spouses to validate their marriage, however where a party wishes to sue the other party for the dissolution and the declaration of nullity of marriage, a petition must be presented before a lawfully competent judge. The petition as stated above must therefore contain the crux of the matter in dispute and set out the requested intervention of the judge.

⁴⁴ Burke, Raymond Leo Cardinal. ‘The Canonical Nullity of the Marriage Process as the Search for the Truth’, in Robert Dodaro (ed.), *Op. Cit.*, p. 213.

Both the petitioner and the respondent can employ the use of an advocate or procurator. The procurator can sign the documents on their behalf and appear before the tribunal for certain formalities on behalf of their clients. The petition must therefore be able to establish that the case is a *prima facie* case of nullity. “A *prima facie* nullity case is one in which there are facts which point to the presence of a cause of nullity and in which there are the means to establish the veracity of these facts, viz. the testimony of the parties, the testimony of witnesses, documentary evidence or circumstantial evidence.”⁴⁵

The sole judge or the presiding judge as the case may be, in their respective tribunals according to Can. 1505 § 1 must admit or reject the petition by a decree as soon as he is satisfied that he has jurisdiction over the matter and that the plaintiff enjoys the right to appear before the tribunal. Can. 1505 § 2 lists the grounds when the petition could be rejected.⁴⁶ This decree must however be predicated upon the outcome of a preliminary investigation which determines the merits of the plea in order to establish a *prima facie* case for nullity.⁴⁷

Where the petition is rejected pursuant to Can. 1505 § 4, a petitioner is entitled “within ten canonical days, to have recourse, based upon stated reasons, against the rejection of a petition. This recourse is to be made either to the tribunal of appeal or, if the petition was rejected by the presiding judge, to the collegiate tribunal. A question of rejection is to be determined with maximum expedition.”

ii. The Summons and the Joinder of the Issue

Contingent upon the issuance of the decree accepting petition, the petition must be brought to the awareness of the respondent or the other parties. The judge must summon the other party to stimulate the joinder of issues and this has to be lawfully communicated in accordance to Can. 1511. The judge must therefore specify whether they are to reply in writing or to appear before him in person in order to agree on the points at issue. He must therefore issue a new decree if he detects the need to convene the parties judging from their written replies.⁴⁸ Should a respondent refuse to accept the document of summons or thwarts the delivery thereof, it would be deemed a lawful summon in accordance with Can. 1510.

⁴⁵ Pazhayampallil, Thomas, et. al. *Op. Cit.*, p. 1225.

⁴⁶ Where the judge or tribunal lacks legal competence; plaintiff lacks right to stand before the court; where Can. 1504 nn. 1–3 have not been observed; petition lacks any foundation and no probable foundation could arise during the process.

⁴⁷ See Grochowski, Zenon/Orti, Carcel, *Dilexit Justitiam: Studia in honorem Aurelii card. Sabattani*. Vatican City: 1984, pp. 344–345.

⁴⁸ See Can. 1507.

According to Can. 1513 when the terms of the controversy are determined by a decree of the judge, as derived from the pleas and the replies of the parties, a joinder of the issue is said to have occurred. In so doing, the determination of the ground or grounds upon which the challenge of the validity of marriage is based is established.⁴⁹

Upon such a determination, the terms of the controversy can no longer be altered unless the judge issues a new decree. This can only be done when a party make such a request based on a grave reason and with the consultation of the other party.⁵⁰ Can. 1516 then concludes: “Once the joinder of the issue has occurred, the judge is to prescribe an appropriate time within the parties are to present and complete the proofs.”

iii. The Gathering of Proofs

Ordinarily, the gathering of proofs takes place after issues have been joined but Article 120 of *Dignitas Connubii* states reasons where a departure from this norm takes place. Upon the certitude that a formal declaration of nullity is required and when the tribunal has accepted the case, the commencement of the gathering of proofs is undertaken by the tribunal. This indicates that issues have been joined.⁵¹

In the trial of the issue, proofs to substantiate the grounds upon which the request for dissolution or invalidation are based will be examined. Therefore, the parties, the promoter of justice and the defender of the bond are expected to submit propositions on probable questions to the judge. Testimonies are subsequently given under oath by the parties and witnesses.⁵²

Witnesses or parties could be interrogated or interviewed by the parish priest on the order of the judge when they are not near. The priest acts as an auditor using the questions he was supplied with. A notary must be present to note everything in writing. Similar request could also be made to a diocese⁵³ where a witness is domiciled and upon gathering the evidence, the

⁴⁹ These grounds include: Intention against children (*contra bonum prolis*); total simulation, lack of due discretion, intention against fidelity (*contra bonum Fidei*); inability to assume or fulfil the essential obligations of marriage; lack of commitment; defective or inadequate consent; invalid convalidation; error of quality resulting from error of person; impotence; madness (*amentia*); deceit (*dolus*); condition; bond (*ligament*); intention against the indissolubility of marriage (*contra bonum sacramenti*) and force and fear in the petitioner. Read more in Canon Law Society of Nigeria, Handbook on Tribunal Ministry in Nigeria. In *Iustitia Pax*, November 2017, pp. 14–23.

⁵⁰ See Can. 1514.

⁵¹ See Beal, John. ‘Canon 1671-1682, 1688-1691: A Commentary’ in Martens, Kurt (Ed.) *Justice and Mercy Have Met: Pope Francis and the Reform of the Marriage Nullity Process*. Washington DC, 2017, p. 143 ff.

⁵² See Foster, Michael Smith. *Annulment, the Wedding that Was: How the Church can Declare a Marriage Null*. New York, 1999, p. 134 ff.

⁵³ See Can. 1418; This writer experienced this as the diocesan chancellor when a marriage tribunal in Liverpool, UK needed to gather proofs from a witness in Lokoja-Kogi State, Nigeria.

testimony is to be sent to the tribunal which requested it. The judge could also conduct a face-to-face interview with a witness, this comes along with all the advantages of such an interview.

In gathering proofs and evaluating them, expert opinions could also be utilised by the tribunals. Experts in relevant fields such as doctors, counsellors, psychologists, psychiatrists, legal practitioners, etc could be brought in to shed lights on relevant professional matters.⁵⁴

iv. The Publication of the Acts and Conclusion of the Case

Canonical provisions mandate the judge under the pain of nullity, after assembling the relevant evidence has been assembled, to issue a decree to permit the parties and their advocates to visit the tribunal office and inspect those acts that are unknown to them upon the request made by the advocate. The conclusion of the case is therefore reached when everything regarding the production of evidence has been completed. The conclusion is said to have taken place when both parties adjudged that they have nothing more to add or when the canonical time stipulated for the production of proofs by the judge has elapsed or when in the opinion of the judge the case has been sufficiently instructed. A decree is to be issued to this effect whenever the case has come to its conclusion.⁵⁵

It is essential to elucidate on the term *conclusion of the case (conclusio in causa)*. The concept *conclusion of the case* does not suggest that the case has come to an end and ready for the pronouncement of sentence or judgement. Indeed, according to John P. Beal et. al., the term “may be somewhat misleading to one not trained in procedural law. The trial is not completed or concluded; rather, the case remains pending, since the decision regarding the doubt (*dubium*) has not yet been rendered. The instance remains open, and vitally important stages of the trial, such as the discussion of the case and the crafting and publication of the judicial sentence, remain. What is concluded at this point, except under extraordinary circumstances described in canon 1600, is the evidence-gathering phase of the trial.”⁵⁶

In certain circumstances however, according to Can. 1600 the judge can permit that earlier witnesses be recalled or that new ones be called and even make room for the tendering of other proofs not previously requested. Such circumstances include: where the private good of the

⁵⁴ Can. 1574 says: The services of experts are to be used whenever, by a provision of the law or of the judge, their study and opinion, based upon their art or science, are required to establish some fact or to ascertain the true nature of some matter.

⁵⁵ See Cann. 1598 and 1599.

⁵⁶ Beal, John/Coriden, James/Green, Thomas. *New Commentary on the Code of Canon Law. An Entirely New and Comprehensive Commentary by Canonists from North America and Europe, with a Revised English Translation of the Code*. Bangalore 2010, p. 1712.

parties is involved; where grave reasons exist and there is no danger of fraud or subornation; and when it is probable that without the admittance of new proof there will be miscarriage of justice that will render the judgement unjust. In all these circumstances the judge must either ensure that the other parties are either consulted or obtain their consent.

The judge thereafter determines when the presentation of pleadings and the advocates' observations occurs after the case is concluded. The pleadings and observations are to be in writing unless the judge decides otherwise with the consent of the parties. Parties are therefore to make replies when the pleadings and observations have been exchanged. The judge determines the period of time needed for the parties to make a reply when the pleadings and observations have been done.⁵⁷ It is however forbidden to exclude any information given by any party or their advocates from the acts of the case.

v. The Sentence or the Pronouncement of the Judge

In his role as adjudicator, the judge is to study the evidence of the proofs, the pleadings made by the advocates and the observations done by the defender of the bond. After doing that, he is expected to write his sentence and communicate same to the parties and the defender of the bond. The judge must therefore decide in a definitive judgement in a case which has been decided in a judicial fashion.

In reaching his judgement, the judge must take cognisance of the moral certainty about the matter to be adjudicated upon in the judgement. This moral certainty must be derived from the acts and proofs available by weighing the proofs in accordance with laydown regulations. Should the judge be unable to reach moral certainty, he is expected to pronounce that the right of the petitioner is not established "and is to dismiss the respondent as absolved, unless it concerns a case which has the favour of law, in which case the judge must pronounce for that."⁵⁸

This moral certainty is based on the words and actions of people who appear before the judge. The judge cannot decipher the full depth of the human heart, which is only known to God, therefore "we have only moral certainty, not metaphysical or physical certainty. We can be morally sure that men of character will honour their promises in regard to serious matters. Moral certainty excludes reasonable and founded fear of the statement being wrong ... Moral certainty is not probability. What is probable is not certain. In what is probable all reasonable

⁵⁷ See Cann. 1601–1603.

⁵⁸ Can. 1608 § 4; See also Cann. 1607 and other paragraphs of 1608.

and founded fear of the opposite is not excluded ... Moral certainty admits of various degrees. What the judge must always make sure is that there is in reality an objective moral certainty, that is, that all reasonable doubt of the truth is excluded.”⁵⁹

In a collegiate tribunal, the judges meet on a date decided by presiding judge usually at the tribunal office. The judges come along with their written conclusions and offer their conclusions in the prescribed order. They are permitted to defer their decision to another meeting if they are unable to reach a decision in the first meeting, however not beyond a week in accordance with Can. 1609. The judges then draw up the judgement utilising the *ratio* tendered by the judges in their discussion and the judgement is submitted to the individual judges for approval. A duration of a month from the day on which the case was decided is set for the issue of the judgement. On the other hand, the sole judge draws up the judgement.

Pursuant to Can. 1611, the judgement must define the dispute brought before the tribunal; determine the obligations of the parties and how they were discharged; give the *ratio decidendi* of the judgement and apportion the expenses of the suit. This judgement must then be published in accordance to prescribed regulations.

vi. The Appeal

When the tribunal of first instance declares a marriage null, the tribunal has the obligation to transmit the judicial acts *ex officio* to the appeal tribunal within twenty days of the publication of the judgement. Upon reception of the judicial acts, the appeal tribunal issues a decree either to ratify the decision immediately or to admit the case to ordinary examination in the new instance. The appeal tribunal issues the appropriate decree after weighing the observations of the defender of the bond and that of the parties if available.⁶⁰

This suggests that once the tribunal of the first instance declares the marriage null and transmits the judicial acts to the appellate tribunal, the appellate tribunal has the option of ratifying the judgement of the tribunal of first instance by simply issuing a decree ratifying the decision of the trial court (that is the court of first instance). The second option opened to the appellate tribunal is to overturn the decision of the tribunal of first instance and declare the marriage invalid. In so doing, the appellate tribunal will follow the ordinary formal procedure, and this

⁵⁹ Pazhayampallil, Thomas, et. al. *Op. Cit.*, pp. 1236–1237.

⁶⁰ See Can. 1682 of the 1983 Code.

means that the case will be treated as if the appellate tribunal is a court of first instance. If this is not done, the outcome will be rendered invalid.⁶¹

Can. 1683 permits the introduction of a new ground of nullity of marriage at the appeal tribunal and allows the appeal tribunal to admit such a new ground advanced at the appellate level and then adjudicate on it but must give its judgement on the newly introduced ground not as an appeal tribunal but as a court of first instance.

The parties whose marriage was declared null and the nullity confirmed by the appellate tribunal by a decree or by another judgement should be notified accordingly. This frees them to contract new marriages if they so wish. However, where the tribunal of second instance adjudged that the nullity of marriage is not proven, then the parties can appeal. The case will also go on a further appeal to the third instance where the tribunal of the first instance declared that the nullity of marriage is proven but the tribunal of the second instance declares otherwise that the nullity of marriage is not proven.

According to Can. 1644 § 1 before the *Mitis Iudex* reform, where “two conforming judgements have been given in cases concerning the status of persons, recourse to a tribunal of appeal can be made at any time, to be supported by new and serious proofs or arguments which are to be submitted within a peremptory time-limit of thirty days from the time the challenge was made. Within one month of receiving the new proofs and arguments, the appeal tribunal must declare by a decree whether or not a new presentation of the case is to be admitted.” In essence, for a judgement to be executed under the previous legislation, there must be two conforming sentences and where there are two conforming sentences the case is not ordinarily admitted in a further instance unless new and serious evidence exists to the contrary.

Usually a pending appeal suspends the execution of the preceding judgment. However, where an appeal lies after two conforming sentences, it does not necessarily follow unless the law provides otherwise.⁶²

b. Summary Judicial Process

Under this process, the full judicial process is not observed but only necessary essentials of the formal judicial process procedure are followed. This process is also called the documentary process. A marriage can therefore be declared invalid using this documentary process by

⁶¹ See also Augustine, Mendonca. ‘Equivalent or Substantial Conformity of Sentences in Marriage Nullity Cases’, *Eastern Legal Thought*. Vol. I, Kochi, 2002, pp. 15–29.

⁶² See Cann. 1638 and 1644.

obtaining a document which establishes with certitude that a diriment impediment exists; that there is a defect of lawful form or there is a lack of a valid proxy mandate; and that such a document is not exposed to any forms of ambiguity, contradictions or conditions.⁶³

Therefore, where these conditions are met and where it is certain that no form of dispensation has been given and a judicial Vicar or a judge receives a petition for nullity, the normal procedures of the ordinary process could be omitted. The parties are then summoned and with the involvement of the defender of the bond, a judgement for the nullity of marriage could be declared. However, where the document tendered “does not prove with certainty the existence of a diriment impediment or a defect of a lawful form or the lack of a valid proxy and if it is not so certain that no dispensation has been given, the defender of the bond must appeal to the judge of second instance. The acts must be sent to the appeal judge and he is to be informed in writing that it is a documentary process.”⁶⁴

According to Can. 1688, the judge in the second instance, after due consultation with the parties and the intervention of the defender of the bond, is to decide in the same way as in Can. 1686 mentioned above, “whether the judgement is to be ratified, or whether the case should rather proceed according to the ordinary course of law, in which event he is to send the case back to the tribunal of first instance.” This means that if the judge of the second instance ratifies the judgement of the first instance, then the judgement can be executed, else, the case will then proceed back to the court of first instance through the ordinary formal judicial procedure.

c. Administrative Process with Judicial Formalities

Just as the title suggests, the administrative process involves administrative procedures carried out in the exercise of executive powers. The Holy Father in this process grants the dissolution of marriage where the marriage was ratified but not consummated. The diocesan Bishop of the petitioner is to assign the instruction of the process as stipulated by Cann. 1699 and 1700 and recourse could be made to the Holy See where the diocesan Bishop does not accept the petition.

The defender of the bond must always intervene in these processes. Can. 1702 prescribes that both spouses must be heard in the instruction of the case and where reconciliation is not

⁶³ Can. 1686 says: “On receiving a petition in accordance with Can. 1677, the judicial Vicar or a judge designated by him, can omit the formalities of the ordinary process and, having summoned the parties, and with the intervention of the defender of the bond, declare the nullity of the marriage by a judgement, if from a document which is not open to any contradiction or exception there is proof of the existence of a diriment or a defect of form, which it is equally certain has not been dispensed from, or of the lack of a valid proxy mandate.”

⁶⁴ Pazhayampallil, Thomas, et. al. *Op. Cit.*, pp.1238–1239; See also Can. 1687 § 1.

feasible, “the canons concerning the collection of proofs in the ordinary contentious process and in cases of nullity of marriage are to be followed.” Two forms of witnesses could testify in the process viz: witnesses who state what they heard about the case and witnesses who testify about the character of the parties. Medical personnel could be used for instance to carry out the relevant interrogation in this process.

Upon the completion of the instruction, the judge submits the acts to the diocesan bishop, who is to articulate his own opinion on the merits of the case concerning the alleged fact of non-consummation of the marriage, the opportuneness of the favour and the adequacy of the reason for dispensation. The diocesan bishop will subsequently send the acts to the Apostolic See along with his own opinion as well as the observations of the defender of the Bond. The acts to be sent to Rome should include the following: the petition addressed to the Roman Pontiff; the evidence of the appointment of members of the tribunal; the baptismal certificates; the marriage certificate; the proof of the breakage of marriage; the testimony of character of the petitioner and the witnesses; the observations of the defender of the Bond and the opinion of the bishop.⁶⁵

Upon reception of the acts sent by the diocesan bishop, the Holy See will subsequently notify the diocesan bishop should there be the need for a supplementary instruction stating the supplementary items necessary to be supplied. Where the Apostolic See forms the opinion that non-consummation is not proven by the proofs submitted, relevant experts, according to Can. 1705 § 3 “can inspect the acts of the case, though not the opinion of the Bishop, in the tribunal office, in order to decide whether anything further of importance can be adduced to justify another submission of the petition.”

d. Administrative Process

The procedure of marriage nullity involving the administrative process differs basically from the judicial process “by dint of a mere pronounced application of the criteria of simplicity, celerity and pastorality.”⁶⁶ This process does not however portend that evidence is less essential in comparison to the judicial process. Evidence is not relegated to the background but remains vital in this process; therefore, the parish priest sends a report of the investigation to the diocesan bishop, who in turn reviews the report sent. Upon certifying that enough evidence has been obtained to provide moral certainty that the marital contract was invalid based on the

⁶⁵ See Cann. 1704 and 1705.

⁶⁶ Gerosa, Libero. *Canon Law*. Münster, 2002, p. 209.

absence of canonical form, the Local Ordinary approves the report and sends it back to the parish priest. Otherwise, the Local Ordinary can then send the case for summary judicial process to be adjudicated upon.⁶⁷

This procedure takes care of such cases such as the procedure for the dispensation of a ratified and non-consummated marriage; the process of presumption of death of a partner; the procedure for the dissolution of marriages by reason of the salvation of souls (*salus animarum*); and the procedure for the dissolution of the bond of marriage in the cases of Pauline privilege (*Privilegium paulinum*); and those cases of complete lack of canonical form of marriage usually adopt this process.⁶⁸

V. Conclusion

Under this section, the process of nullity based on the provisions of the 1983 Code of Canon Law before the introduction of the *Mitis Iudex Dominus Iesus* has been articulated. This chapter therefore lays a foundation for the next chapter by providing the necessary background for a better understanding of the state of the process before the reforms were introduced. In the next chapter, focus will therefore be on the reforms *Mitis Iudex Dominus Iesus* introduced into the existing process.

⁶⁷ *Ibid.*, p. 206 ff.

⁶⁸ See *Ibid.*, p. 209; See also Cann. 1142–1148, 1697–1707.

CHAPTER THREE: THE *MITIS IUDEx DOMINUS IESUS* REFORM

I. INTRODUCTION

On August 15, 2015, Pope Francis promulgated a *motu proprio* titled *Mitis Iudex Dominus Iesus*,¹ which took effect on December 8 of the same year. What is a *motu proprio* and what was the objective of the one in question? A *motu proprio* is a papal edict or a document which the pope gives *on his own accord* or *on his own initiative* or *by his own impulse* (emphasis mine). Succinctly put a “*motu proprio* (Latin for ‘of one’s own will’) is a signed document of the pope issued on his own initiative. In this manner, they differ from most decretals, which were answers to petitions or rescripta. Thus, a *motu proprio* does not depend on the truth of the case narrated in a rescript.”² Consequent upon the initiative of a pope therefore, a pope addresses a personal concern for Catholics in a *motu proprio*.

This clearly suggests then that the contents are the Pope’s personal decision and not necessarily an outcome based on consultations with the College of Cardinals or a Synod of Bishops. The pope personally issues and signs the document.³ In this instant case, the *Mitis Iudex Dominus Iesus* addressed the pope’s personal concern for Catholics who are seeking to reconcile with the Church through the process of annulment of their marriages.

The objective of ensuring a just, legal and valid process culminating in the declaration of nullity of marriage has been perceived to be a long, rigorous and cumbersome journey. This has also been a subject of theological and canonical discussions at various fora. The third extraordinary general assembly of the synod of bishops titled “the Pastoral Challenges of the Family in the Context of Evangelization” was a case in point. The Synod gave attention to issues on the family as well as the issue of nullity of invalid marriages. A faster but principally remaining a just way was generally sought. The *motu proprio* of Pope Francis could then be seen to be an answer to the yearning for a quicker, less cumbersome but still a just process of nullity of marriage in the Catholic Church, while still searching for the truth and ensuring that justice is done to the parties. This reform affected Cann. 1671–1691 of the 1983 Code of Canon Law.

Consequently, *Mitis Iudex* was borne out of the burning zeal to make the mother church get closer to her children who are separated by cumbersome legal structures and the need to

¹ Francis, Pope. Apostolic Letter *Mitis Iudex Dominus Iesus*. August 15, 2015; *Acta Apostolicae Sedis* 107 (2015), p. 958–970.

² Coulter, Michael L./Myers, Richard/Varacalli, Joseph A. (Eds.). ‘Papal Documents’. *Encyclopedia of Catholic Social Thought, Social Science, and Social Policy*. Vol. 3 Supplement. Plymouth, 2012, p. 260.

³ MacErlean, Andrew. ‘Motu Proprio’. *The Catholic Encyclopedia*. Vol. 10. New York, 1911.

streamline the existing process, making it easily accessible to the relevant parties. In this chapter, we shall endeavour to highlight the different areas the document brought changes to, the process of nullity of marriage as well as address the fundamental principles guiding the reform. The canons referred to in this chapter, except otherwise stated, are those of the new order as delineated by the reform.

II. PRINCIPLES GUIDING THE REFORM

As alluded to above, the papal document *Mitis Iudex Dominus Iesus* was intended to deliver a faster and less cumbersome process for the declaration of nullity of marriage for petitioners without neglecting the exigency to determine the truth about their conjugal state and reinstate the vital good relationship between the petitioners and enhance their relationship with God on the one hand and the Church on the other. However, there are some guiding principles on which the promulgation of the *Mitis Iudex Dominus Iesus* was based. Peter O. Akpoghiran⁴ listed seven fundamental principles guiding the promulgation of the *Mitis Iudex Dominus Iesus*. The guiding principles, which will be discussed below include the following: Bishop as Judge; Synodality; Proximity; Celerity; Indissolubility; Financial Accessibility and *Salus Animarum*.

a. Bishop as Judge

The personal involvement of the diocesan bishop in the process of the declaration of the nullity of marriage is one of the significant principles that guided the *Mitis Iudex Dominus Iesus*. The diocesan bishop possesses judicial powers, which he could assign to judicial vicar and other judges of the marriage tribunal in his diocese upon their appointment. The principle of the bishop as judge therefore accentuate the need for the diocesan bishop to personally exercise his inherent judicial powers in the trials of marriage nullity in the briefer process. This principle underscores the role of the diocesan bishop himself as a judge in his own diocese and this is the special intention of Pope Francis, to emphasise the judicial power and highlight the judicial functions of the diocesan bishop.⁵ “The exercise of the judicial power of the diocesan bishop is an instrument of the implementation of the matrimonial nullity reform and a sign of his sacramental power.”⁶

In the exercise of his judicial powers in this briefer process (*processus brevior*), the diocesan bishop is therefore to be assisted by competent experts in the instruction of the case to ensure

⁴ Akpoghiran, Peter O. *Mitis Iudex: Text and Commentary*. New Orleans, Transfiguration Press, 2017, p. 31–39.

⁵ See Müller, Ludger. *Das kirchliche Ehenichtigkeitsverfahren nach der Reform 2015*. Aymans – Mörsdorf – Müller, Kanonisches Recht IV. Ergänzungsband 2017, p. 19; see also MIDI, 959.

⁶ Akpoghiran, Peter O. *Op. Cit.*, 31.

that he abides by relevant matrimonial laws and jurisprudence. The diocesan bishop reserves the right to however pronounce the sentence if he reaches the relevant moral certainty concerning the nullity of marriage. Otherwise, he is to remit the petition to the ordinary process for the normal proceeding of marriage nullity.⁷

b. Synodality

The principle of synodality is a key pillar on which the reform rests on. This concept of synodality concerns the collegiality of bishops exercising their pastoral ministry in sacramental community in union with other members of the episcopal college under the leadership of the Holy Father. This synodality could be forged by the episcopal college at the level of the national conference or through the ecclesiastical provinces.

Thus, the Diocesan Bishop is permitted to collaborate in the spirit of collegiality with other bishops in the province or within the jurisdiction of the Bishops' Conference to establish an inter-diocesan or regional tribunal. Accordingly, Can. 1673 § 2 stipulates: "The bishop is to establish a diocesan tribunal for his diocese to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby diocesan or inter-diocesan tribunal."

The reform subsequently places the Metropolitan See as the ordinary court of appeal for the suffragan dioceses within the province and the Metropolitan Bishop plays a vital role as he entertains the appeal from the briefer process from a suffragan bishop. This process clearly shows the distinctive sign of synodality in practice within the church as the oldest suffragan in the province hears the appeal from the sentence rendered by the metropolitan bishop in accordance with Can. 1687 § 3.

The national episcopal conference in a country, in the spirit of synodality can assist individual bishops to implement the new matrimonial procedures in addition to setting machineries in motion to draw formularies regarding how investigations are to be conducted as well as those to guide the process of marriage nullity.

c. Proximity

This is an essential influencing factor for the publication of the document. The principle of proximity as it affects the closeness of the tribunals to the faithful has been articulated in the

⁷ See Müller, Ludger. *Op. Cit.*, p. 36 ff.

past. For instance, Benedict XVI once said: “It is nonetheless a grave obligation to bring the Church’s institutional action in her tribunals ever closer to the faithful.”⁸ Thus, Pope Francis echoed this sentiment in the preface of the document when he affirmed that: “Thus charity and mercy demand that the Church, like a good mother, be near her children who feel themselves estranged from her ... the proximity between the judge and the faithful will each its desired result and so that individual bishops may carry out the reform of the matrimonial process.”⁹

To ensure that this proximity is achieved, the reform permits bishops, who do not have marriage tribunals in their own dioceses, could withdraw matrimonial causes emanating from their dioceses from inter-diocesan tribunals and entrust such petitions to a nearby diocese or closer inter-diocesan tribunal.¹⁰ This could also be said to have influenced the grant of further competent fora or jurisdictions to the tribunals to include the place where the marriage was celebrated, where either or both of the parties have domicile or quasi-domicile, and where most evidence would be gathered in accordance with Can. 1672.¹¹

d. Celerity

Most petitioners have had a terrible experience with different marriage tribunals regarding longevity of waiting time while the process subsists. Delay mainly characterised the hitherto process of nullity of marriage. Many petitioners subsequently waited in vain, while some were not so lucky, death comes knocking before justice arrives and they died before the sentence was delivered. This embarrassing and inclement situation had to be dealt with. Celerity consequently appears to be the kern of the reform. The long, cumbersome and somewhat frustrating process of marriage nullity was obviously begging for a change. This drew the attention of previous popes in their allocutions to the Roman Rota.¹²

⁸ Benedictus PP. XVI. Allocutio “Ad sodales Tribunalis Romanae Rotae,” 29 Ianuarii 2010, *Acta Apostolicae Sedis* 102 (2010), pp. 110–114. English translation: Pope Benedict XVI, “Address of His Holiness Pope Benedict XVI on the Occasion of the Inauguration of the Judicial Year of the Tribunal of the Roman Rota,” 29 January 2010, *L’Osservatore Romano* Weekly Edition in English, 3 February 2010.

⁹ Francis. Apostolic letter *Mitis Iudex Dominus Iesus*. August 15, 2015: *Acta Apostolicae Sedis* 107 (2015), p. 958–970, Preface, n. VI.

¹⁰ Can. 1673 § 2; See also Art 8 §§ 1–2 in the attached Procedural Rules of the *Mitis Iudex Dominus Iesus*

¹¹ The new reform states: In cases regarding the nullity of marriage not reserved to the Apostolic See, the competencies are 1° the tribunal of the place in which the marriage was celebrated, 2° the tribunal of the place in which either or both parties have a domicile or a quasi-domicile, 3° the tribunal of the place in which in fact most of the proofs must be collected.

¹² Pope Paul VI had noted that negligent delay amounted to injustice in Paul VI., *Motu Proprio* ‘Causas matrimoniales’ March 28, 1971, in *AAS* 63 (1971) 441–446. English Translation in *CLD*, vol. 7, 969–974; Pope John Paul II enjoined that the process should not cause so much delay in John Paul II, ‘Address to the Tribunal of the Roman Rota’, January 30, 2003: *AAS* 95 (2003), p. 397. English translation from *Papal Allocutions to the Roman Rota. 1939–2011*; Pope Benedict XVI had stressed that the truth sought must not be alienated from the good of the petitioners and the declaration of this truth be reached in reasonable time in Benedict XVI. ‘Address

Similarly, it drew the attention of the Synod Fathers at the 2014 extraordinary synod, who recommended in no. 48 of the *Relatio Synodi* a more streamlined and readily accessible judicial process. Therefore, Pope Francis alluded to this in the Preface of the document: “All of this also reflects the wishes of the majority of our brother bishops gathered at the recent extraordinary synod who were asking for a mere streamlined and readily accessible judicial process.” He then concluded in the Preface that the document was published not to favour the nullity of marriage “but the speed of processes as well as the simplicity due them, lest the clouds of doubt overshadow the hearts of the faithful awaiting a decision regarding their state because of a delayed sentence.”¹³

To achieve this brevity and fasten the process, the reform eliminated the necessary consultation the judicial vicar of the tribunal of the respondent or that where most of the proofs for competence precondition to the acceptance of the petition of the petitioner in according to Can. 1672. Similarly, the reform abrogated the double conformity of sentences requirement, instead it stipulates that the moral certainty of the first judge is sufficient, once it is in accordance with the stipulated canonical provisions but by so doing making the pronouncement of a single judgement by the judge which favours nullity of the marriage effective in accordance with Can. 1679.

e. Indissolubility

Indissolubility is one of the essential properties of marriage alongside unity. The principle of indissolubility can therefore be perceived as a vital standard of the reform. Through the centuries, guided by the words of Christ, the Church has professed, taught and enforced the doctrine of indissolubility of the sacred bond of marriage, which the judicial process of declaration of nullity of marriage takes cognisance of. Taking cognisance of the principle of indissolubility, the Pope similarly sets out in his reform, while taking great note of the necessity to protect the sacred marital bond and its indissolubility.

Peter Akpoghiran is of the view that: “The protection of the indissolubility of the sacred bond of marriage in the reform is evident in the new legislation in that the judicial matrimonial process for challenging the presumed validity of marriage by means of the ordinary process is retained and the abbreviated process before the diocesan or eparchial bishop is introduced.”¹⁴

to the Tribunal of the Roman Rota’, January 22, 2011: AAS 103 (2011) 113. English translation from *Origins* 40/36 (February 17, 2011), 599.

¹³ *Mitis Iudex*, Preface, Paragraph VI

¹⁴ Akpoghiran, Peter. *Op. Cit.*, p. 37.

On his part William L. Daniel believes that the retention of the function of the defender of the bond in matrimonial causes indicated the pope's readiness and intention to protect the indissolubility of marriage.¹⁵ The role of the defender of the bond remains very essential to the protection of the indissolubility of marriage because the defender of the bond has the obligation "to safeguard the validity of the marriage bond, but not at the expense of the objective truth. He seeks out, exposes and clarifies everything which can weigh in favour of the bond."¹⁶

The protection of the principle of indissolubility of marriage will be better served within a judicial matrimonial process and the pope himself concluded in the preface of the document that: "following in the footsteps of our predecessors who wished cases of nullity to be handled in a judicial rather than an administrative way, not because the nature of the matter demands it, but rather due to the unparalleled need to safeguard the truth of the sacred bond: something ensured by the judicial order."¹⁷

f. Financial Accessibility

Legal fees have become a menace and an impediment to achieving justice, not only in normal civil proceedings but likewise in ecclesiastical tribunals for matrimonial causes. This has become an impediment to instituting matrimonial causes in the process of marriage nullity within the tribunal system established by the Church. Sequel to the exorbitant financial burden, many genuine petitioners cannot approach the tribunals to seek the truth about their state of their marriages and get probable nullity for their invalid marriages.

One could wonder why this menace is applicable to the processes of marriage nullity in the marriage tribunal. However, it must be noted that the personnel of the tribunal must be remunerated, their offices must be maintained and equipped, office accommodation must be provided to enable them function effectively, etc.

Pope Francis, recognising this challenge wished that the declaration of marriage nullity process should be rendered gratis for the parties involved in the process. In an address to the prelate auditors of the Roman Rota before the publication of the *Mitis Iudex Dominus Iesus*, he subsumed: "I would like to underline that the Sacraments are freely given; the Sacraments give

¹⁵ Daniel, William L. 'An Analysis of Pope Francis' 2015 Reform of the General Legislation Governing Causes of Nullity of Marriage', *The Jurist* 75 (2015), p. 185.

¹⁶ Pazhazampallil, Thomas/Padinjarathala, Anthon. *Pastoral Guide (Vol. 3). A Handbook on the Latin and Oriental Codes of Canon Law. (IV. Revised Edition)*. New Delhi, 2013, p. 1220.

¹⁷ *Mitis Iudex*, Preface, par. 7.

us grace; a matrimonial process touches upon the Sacrament of marriage. How I would like all processes to be free!”¹⁸ This shows a deep yearning of the Holy Father in this regard.

The principle of financial accessibility in relation to the reform intends to offer free of charge access to parties in the matrimonial processes. The preface therefore asserts: “Episcopal conferences, in close collaboration with judges, should ensure, to the best of their ability and with due regard for the just compensation of tribunal employees, that processes remain free of charge, and that the Church, showing herself a generous mother to the faithful, manifest, in a matter so intimately tied to the salvation of souls, the gratuitous love of Christ by which we have all been saved.”¹⁹

Although the document intended that the processes might be free of charge for all the parties involved in the nullity process, the question arises what happened where the tribunal has to fund itself without diocesan or external support, yet expected to function properly by hearing proceedings and paying the remuneration of its staff; how can such a tribunal render free of charge services? The document however envisages that where circumstances call for it and the process cannot be rendered free of charge, then whatever cost charged must be at a minimum cost to both the parties and the witnesses. In this vein “through the cooperation between tribunals mentioned in can. 1418, care is to be taken that everyone, parties or witnesses, can participate in the process at a minimum of cost.”²⁰

g. *Salus Animarum*

Can. 1752 affirms that keeping in mind the salvation of souls must always be the supreme law in the Church, therefore *salus animarum* is the *terminus ad quem* of all ecclesiastical laws. The reform as a legislative intervention also rests on this principle and ensures that the laws of the Church are also spiritual instruments through which God’s salvific plan for humanity is realised and the Gospel of Christ becomes real.

The *Mitis Iudex Dominus Iesus* in its preface attests to this and articulated this point clearly when it says: “Therefore, the zeal for the salvation of souls that, today like yesterday, always remains the supreme end of the Church’s institutions, rules and law, compels the Bishop of Rome to promulgate this reform to all bishops who share in his ecclesial duty of safeguarding the unity of the faith and teaching regarding marriage, the source and center of the Christian

¹⁸ Pope Francis, January 23, 2015, *Allocution to the Roman Rota*, AAS 106 (2015) p. 185.

¹⁹ *Mitis Iudex*, Preface, n. IV.

²⁰ *Ratio procedendi*, art. 7 § 2.

family. The desire for this reform is fed by the great number of Christian faithful who, as they seek to assuage their consciences, are often kept back from the juridical structures of the Church because of physical or moral distance. Thus charity and mercy demand that the Church, like a good mother, be near her children who feel themselves estranged from her.”²¹

III. ESSENTIAL CHANGES INTRODUCED BY THE REFORM

a. The Competent Fora and Courts after the Reform

Mitis Iudex introduced a radical simplification of issues surrounding competence or the jurisdiction to accept a case. It is pertinent to stress that the competent courts remain largely the same as articulated in the previous chapter. This is because the process remains entirely judicial and not necessarily administrative. However, the process of approaching the courts while submitting petitions have been amended and the role of the bishop as a single judge has been strengthened.

For instance, the diocesan tribunal, which is ordinarily the tribunal of first instance remains in place and the Diocesan Bishop is mandated to establish one in his diocese. Thus, Can. 1673 § 2 as amended in the *Mitis Iudex Dominus Iesus* says: “The bishop is to establish a diocesan tribunal for his diocese to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby diocesan or interdiocesan tribunal.” This ensures that the diocesan bishop establishes a diocesan tribunal with competence to deal with matrimonial cases if such does not exist before in his diocese.²² Here the diocesan bishop himself is to exercise his judicial power personally in collaboration with the *officialis* and other judges of the tribunal.

Although the diocesan bishop in this case has the right to establish a diocesan marriage tribunal, Can. 1423 § 1. gives room for the establishment of a regional or inter-diocesan tribunal of first instance for all the affected dioceses (*unicum tribunal primae instantiae pro pluribus dioecesibus*). The provision of this canon stipulates that “several diocesan bishops can agree to establish a single tribunal of first instance for their dioceses in place of the diocesan tribunals mentioned in cann. 1419–1421.” Such establishment will be done with the approval of the Apostolic See. The group of bishops or a bishop designated by the group of bishops possesses all the powers a diocesan bishop would ordinarily exercise in his own diocesan tribunal.²³ Such

²¹ *Mitis Iudex Dominus Iesus*, Preface, par. 5.

²² See Apostolic Tribunal of The Roman Rota. *Subsidium for the application of the Motu proprio Mitis Iudex Dominus Iesus*, Vatican City, 2016, p. 17.

²³ See also Aymans – Mörsdorf – Müller, *Kanonisches Recht IV*, p. 329–331.

an arrangement takes care of dioceses with paucity of funds to set up their own tribunals or dioceses with inadequacy of personnel, infrastructure or other logistical challenges.

The establishment of the diocesan tribunal requires that the diocesan bishop appoints a retinue of tribunal staff. The diocesan tribunal should constitute the judicial vicar and not less than two other judges to form the collegiate tribunal in cases of the ordinary process. As usual, other functionaries like the defender of the bond, a promotor of justice, an advocate, and a notary remain expedient appointments to be made.

After the sentence at the first instance, as it is the case here, the execution of judgement can be given effect to without the initial compulsory appeal, in accordance with the rules. This will be discussed further below.

The Diocesan Bishop is also permitted to cooperate in the spirit of collegiality with other bishops in the province or within the jurisdiction of the Bishops' Conference to establish an inter-diocesan tribunal to serve as a tribunal of first instance. This legal allowance envisages the situation where a local bishop is incapacitated either by pecuniary challenge or paucity of trained personnel, and unable to establish his own diocesan tribunal. This inter-diocesan tribunal serves also as a court of first instance. However, Art 8 §§ 1–2 in the attached Procedural Rules of the *Motu proprio Mitis Iudex Dominus Iesus* then empowers the diocesan bishop to withdraw from an existing inter-diocesan tribunal if he intends to form a tribunal in his own diocese.

Similarly, the tribunal of the second instance is not abrogated by the reform but strengthened when Can. 1673 § 5 states that: “The tribunal of second instance must always be collegiate for validity, according to the prescript of the preceding § 3.” In addition to this, § 6 maintains the metropolitan tribunal as the tribunal of second instance and emphasised its role to accept appeals from the trial courts of first instance. It stipulates that: “The tribunal of first instance appeals to the metropolitan tribunal of second instance without prejudice to the prescripts of cann. 1438–1439 and 1444.”

These canons therefore imply and stipulate that appeals normally lie from the tribunal of first instance to the tribunal of second instance. The tribunal of second instance could therefore be a second instance diocesan tribunal or a second instance inter-diocesan tribunal. However, neither the diocesan or inter-diocesan tribunals hears appeals in cases which it has delivered a

judgement in the first instance.²⁴ They are expected to receive appeals from sentences of other diocesan or inter-diocesan tribunals respectively.

Although most of the competent courts remain unchanged, *Mitis Iudex* calls for existing judicial structures to quickly adapt to the reformed process. This appeal was particularly made in paragraph VII in relation to the Roman Rota and appeals to the Holy See. “It says: Appeal to the Apostolic See. – In accord with a revered and ancient right, it is still necessary to retain the appeal to the ordinary tribunal of the Holy See, namely the Roman Rota, so as to strengthen the bond between the See of Peter and the particular churches, with due care, however, to keep in check any abuse of the practice of this appeal, lest the salvation of souls should be jeopardized. Nevertheless, insofar as necessary, the respective law of the Roman Rota will be adapted as soon as possible to the rules of the reformed process.”

A very vital innovation presented by the *motu proprio* is the novelty it introduced in the jurisdiction and competence of the court by delineating where the petitioners could go and lay their petitions and stipulates three different ones: domicile of either party, place where evidence is gathered and place of marriage. It makes it simpler to determine where a trial can take place. Hitherto, a special permission was necessary when the trial was to take place anywhere other than the diocese where the wedding was celebrated or the tribunal situated where the respondent was living. This has now changed. Trials can now take place in the diocese where either of the parties is domiciled or in the diocese where they celebrated their wedding or where it would be easier to collect evidence. This is clearly articulated in Can. 1672: “In cases regarding the nullity of marriage not reserved to the Apostolic See, the competencies are: 1° the tribunal of the place in which the marriage was celebrated; 2° the tribunal of the place in which either or both parties have a domicile or a quasi-domicile; 3° the tribunal of the place in which in fact most of the proofs must be collected.”

In addition, 1673 § 4 empowers diocesan bishop or the bishop moderator to entrust cases to sole clerical judges where a collegial tribunal cannot be constituted in his diocese or in a nearby diocesan or inter-diocesan tribunal. In this instance, the sole judge is to employ where possible “two assessors of upright life, experts in juridical or human sciences, approved by the bishop for this task; unless it is otherwise evident, the same single judge has competence for those

²⁴ See Raymond L. Burke. ‘The Distinction of Personnel in Hierarchically-Related Tribunal’ in *Studia Canonica* 28 (1994), p. 95.

things attributed to the college, the *praeses*, or the *ponens*. In a bid to make the procedure less cumbersome and offer the diocesan bishop more freedom to act within his jurisdiction, the new regulation sought to eliminate the previous requirement of the diocesan bishop to seek permission of the episcopal conference before entrusting cases to the sole clerical judge. As seen above, this option is only open where the constitution of the diocesan tribunal or the recourse to a nearby tribunal is practically impossible.

The judge however has an essential role to ensure that the marriage has irretrievably failed and that conjugal life cannot be restored before accepting the case according to Can. 1675. It then means that the judge is not to be concerned about the possibility of bringing the parties back together, rather the *Ratio procedendi* gives the local bishop the responsibility to seek out and to care for all those who are living in situations of matrimonial irregularities.

b. The Briefer Process and the Diocesan Bishop as the Judge of the First Instance

One of the notable highlights of the reform is the briefer process (*processus brevior*) in paragraph IV of the document. This is particularly related to the powers of the diocesan bishop to adjudicate on marriage cases.²⁵ Indeed the new reform in Can 1673 § 1 states that: “In each diocese, the judge in first instance for cases of nullity of marriage for which the law does not expressly make an exception is the diocesan bishop, who can exercise judicial power personally or through others, according to the norm of law.” However, it must be noted that Can. 1419 § 1 appears to have given the diocesan bishops the same power when it stipulates: “In each diocese and for all cases which are not expressly excepted in law, the judge of the first instance is the diocesan Bishop. He can exercise his judicial power either personally or through others, in accordance with the following canons.”

Irrespective of the above assertion, it is to be noted that the new reform strengthens the position and role of the diocesan bishop in the process of nullity, and empowers the diocesan Bishop to adjudicate on marriage cases and petitions brought before him as the new provision clearly states *for cases of nullity or marriage for which the law does not expressly make an exception* because the old norm did not clearly stipulate specific competence or jurisdiction on

²⁵ “Briefer process. – For indeed, in simplifying the ordinary process for handling marriage cases, a sort of briefer process was devised – besides the current documentary procedure – to be applied in those cases where the alleged nullity of marriage is supported by particularly clear arguments. Nevertheless, we are not unaware of the extent to which the principle of the indissolubility of marriage might be endangered by the briefer process; for this very reason we desire that the bishop himself be established as the judge in this process, who, due to his duty as pastor, has the greatest care for catholic unity with Peter in faith and discipline.”

matrimonial cases. It must however be emphasised that the document in paragraph III makes the role of the bishop as judge clearer in cases of *clear nullity*.²⁶

The *Mitis Iudex* therefore clarifies previous position on the law and role of the diocesan bishop. It affirms the role of the diocesan bishop as a judge and highlights the necessity for a more active engagement of the diocesan bishop in the procedure leading to the declaration of the nullity of marriage and emphasises the central role the diocesan bishop should play in the process of the declaration of nullity.

The essential role of the bishop in the briefer process is articulated in Can. 1687 § 1. It says: “After he has received the acts, the diocesan bishop, having consulted with the instructor and the assessor, and having considered the observations of the defender of the bond and, if there are any, the defense briefs of the parties, is to issue the sentence if moral certitude about the nullity of marriage is reached. Otherwise, he refers the case to the ordinary method.” It is not the bishop who instructs the case, he does not interrogate the parties and witnesses but intervenes in the case where nullity is evident in his role as a judge based on moral certainty.

The bishop is consequently called upon to be more involved in the important ministry in the life of the Church and it gives the diocesan the bishop opportunity to exercise his office of ruling which he received by virtue of his episcopal consecration together with the sanctifying office and teaching office. According to Bernard Hebda, “the diocesan bishop is not simply called upon to serve also as a pastor who, in union with the Successor of Peter, bring the light of Christ into the lives of those seeking the nullity at what could potentially be a very difficult time for them.”²⁷

In the *Subsidium for the application of the Motu proprio Mitis Iudex Dominus Iesus* issued by the Apostolic Tribunal of the Roman Rota, the rationale for elevating the role of the bishop the judge was elucidated upon. It says: “The Bishop in his Church, as father and judge, is the icon of Christ-Sacrament. Therefore, he ought to be personally the judge, by giving a sign of his

²⁶ *Mitis Iudex Dominus Iesus* stipulates that: “The bishop himself as judge. – In order that a teaching of the Second Vatican Council regarding a certain area of great importance finally be put into practice, it has been decided to declare openly that the bishop himself, in the church over which he has been appointed shepherd and head, is by that very fact the judge of those faithful entrusted to his care. It is thus hoped that the bishop himself, be it of a large or small diocese, stand as a sign of the conversion of ecclesiastical structures, and that he does not delegate completely the duty of deciding marriage cases to the offices of his curia. This is especially true in the streamlined process for handling cases of clear nullity being established in the present document.”

²⁷ Hebda, Bernard A. ‘Reflections on the Role of the Diocesan Bishop Envisioned by *Mitis Iudex Dominus Iesus*’. *The Jurist* 76 (2016), p. 614.

sacramental power. This is true especially in the briefer process: “it is not the Bishop who instructs the case, interrogating the parties and witnesses, but he intervenes as a judge in those cases in which the nullity is evident. The veracity of the judgement is safeguarded because qualified personnel assist the Bishop, who, in the end, takes on the responsibility of the moral certitude of the sentence he is to pronounce.”²⁸

Closely related to the diocesan bishop having power to adjudicate on marriage cases where nullity is evident is also the right of appeal to the metropolitan bishop, which manifests a tangible sign of collegiality. Paragraph V of the *Mitis Iudex Dominus Iesus* then accentuates the point on the appeal to the metropolitan see saying that: “It is necessary that the appeal process be restored to the metropolitan see, especially since that duty, insofar as the metropolitan see is the head of the ecclesiastical province, stands out through time as a stable and distinctive sign of synodality in the Church.”²⁹

Gearing to accomplish a better involvement of bishops in the process of nullity of marriage in their respective dioceses, this *processus brevior* provides an opportunity for the diocesan bishop to exercise his power as a servant and a judge. He is therefore empowered to issue a decree of nullity after examining the facts of the case presented to him and based on moral certainty adjudged the facts to manifest nullity. However, Article 5 of *Mitis Iudex Dominus Iesus* prescribed two conditions precedents³⁰ before the bishop could exercise such powers: Firstly that “the petition is proposed by both spouses or by one of them, with the consent of the other”; and secondly that the “circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest.”³¹

The consent of both parties is an essential condition precedent. Consent suggests an active and explicit adherence which involves an agreement and collaboration *pro rei veritate*. Where a party clearly opposes or merely keeps silence, the condition *sine qua non* has not been fulfilled and the briefer process cannot be used. A written consent is contemplated by the requirement of the signature of each party. The lack of fulfilment of this condition will lead to the case reverting to the ordinary contentious trial.

²⁸ *Subsidium for the application of the Motu proprio Mitis Iudex Dominus Iesus*. Op. Cit., pp. 9–10.

²⁹ *Mitis Iudex Dominus Iesus*, Paragraph V.

³⁰ See also Müller, Ludger. Op. Cit., p. 36–37.

³¹ See also Can. 1683.

Similarly, in Article 14 § 1 of *Ratio prodendi* the circumstance of things and person that can occasion nullity of marriage under the briefer process are underlined. These conditions, where they occur must be manifest. There must be clear evidence to prove the existence of these conditions for the briefer process to be used. The *Ratio prodendi* listed the circumstances to include but not limited to “the defect of faith which can generate simulation of consent or error that determines the will; a brief conjugal cohabitation; an abortion procured to avoid procreation; an obstinate persistence in an extraconjugal relationship at the time of the wedding or immediately following it; the deceitful concealment of sterility, or grave contagious illness, or children from a previous relationship, or incarcerations; a cause of marriage completely extraneous to married life, or consisting of the unexpected pregnancy of the woman, physical violence inflicted to extort consent, the defect of the use of reason which is proved by medical documents, etc.”

Essentially however, “the process is moderated by the judicial vicar and the instructor, who may be the judicial vicar or another, and is instructed by the instructor, the one who issues the decision is the bishop.”³² This does not negate the position that diocesan bishop exercises his judicial powers in this process or imply that the vital role the diocesan bishop ought to play in the process is downplayed.

In summary, the procedure of the briefer process introduced by *Mitis Iudex* involves the party submitting a petition for the Declaration of Nullity in accordance with the new statute. The petition proposed by both spouses (co-petitioners) or one of the spouses (petitioner) but with the consent of the other party. This thereby makes the consent of the other spouse a necessity in accordance to Can. 1683 1^o.³³ The petition is to be supported by relevant documents and proofs manifesting *prima facie* case of marriage nullity. The request is made to the bishop and the process is instructed by the Judicial Vicar or an appointed Instructor.

In discharging his assigned role, the Judicial Vicar then determines if the petition meets the requirement of the briefer process, shares it with the respondent obtaining the relevant consent and then issuing a decree establishing the grounds in the case. He nominates an instructor, who gathers the evidence and an assessor who advises the bishop. The relevant information

³² William L. Daniel, ‘The Abbreviated Matrimonial Process before the Bishop in Cases of ‘Manifest Nullity’ of Marriage’, *The Jurist* 75 (2015) 550.

³³ This is condition precedent to qualify the petition for the briefer process before the bishop rather than as a ground for nullity as understood by some. The consent of the spouses does not affect the validity or invalidity of marriage since the validity of marriage is not dependent on their consent but on the consent legitimately manifested between two parties in accordance with the law established by God and taught by the Church.

pertaining to the petition are obtained and the defender of the bond and the parties have 15 days to bring forward additional information if any.³⁴

Then the case is presented to the local bishop, who can issue a judgement declaring the nullity of marriage after reaching moral certitude that the marriage is null based on the evidence presented.³⁵ Otherwise, the case is referred to the ordinary process. Within fifteen days, an appeal could be brought against the bishop's decision by either party or the defender of the bond after they are notified. The whole process should ordinarily take approximately 120 days from the beginning till the end of the procedure.³⁶ This is a clear departure from the previously delay associated with the procedure in the process of marriage nullity before the *Mitis Iudex* reform was published.

The question arises if this process is a documentary process or if it could still be regarded as a judicial process? The involvement of the bishop who enjoys and exercises executive powers gives the impression that the process is merely an administrative process or the exercise of the bishop's executive authority. But the Judicial vicar or the Instructor of the case does not just collate documents and send them to the bishop for his signature but the involvement of the judicial vicar, the instructor, the defender of the bond, the assessor and the bishop himself, and the scrutiny of the judicial process it goes through suggests otherwise. This indicates therefore that a form of contentious trial still takes place. The decision therefore is not just left at the will of the bishop but demands the rigours of an objective process of reaching the truth and arriving at a moral certitude before the bishop can declare the marriage invalid, otherwise the trial will revert to the ordinary process. Indeed, the bishop himself is the judge appointed by law in this judicial process.

Although the entire matrimonial process could be trifurcated into the documentary, ordinary and briefer processes. The briefer process, which has a semblance of the administrative process before the bishop remains fundamentally a judicial process. This assertion draws credence from the preface of *Mitis Iudex* when Pope Francis asserted that: "We have done this following in the footsteps of our predecessors who wished cases of nullity to be handled in a judicial rather than an administrative way, not because the nature of the matter demands it, but rather due to the unparalleled need to safeguard the truth of the sacred bond: something ensured by the

³⁴ See Müller, Ludger. *Op. Cit.*, p. 44–45.

³⁵ See Müller, Ludger. *Op. Cit.*, p. 46–47.

³⁶ Bryan, Solomon. 'Mitis Iudex Dominus Iesus: The Reform of the Marriage Annulment Process 8 September 2015'. No 28. <https://slideplayer.com/slide/8853116/> [accessed on March 29, 2019].

judicial order.”³⁷ Peter Akpoghiran on his part, sharing his view on the subject matter opined that “in the judicial process of the Church, the method of evaluating proofs, of arriving at the truth of the controverted matter, and of administering justice in the case is objective. The judicial process is based on objectivity, and not on subjectivity. The judge is required to arrive at a definitive decision in the case based on the acts and the proofs gathered *in casu* and on his or her conscience. On the other hand, in the administrative process, although the authority is required to seek information from those whose rights might be injured in the matter (c. 51), nonetheless, both the process of arriving at a decision and the decision of the authority itself are subjective and are dependent on a subjective will of the authority.”³⁸

c. Elimination of the Automatic Appeal

The *Motu proprio* eliminated the initial compulsory appeal to the second instance after the sentence at the marriage tribunal of first instance. This new legislation therefore eliminates the obligatory *ex officio* transmission of the judicial acts to another tribunal. John Beal affirms that: “If the peremptory period of fifteen useful days from the notice of the publication of the sentence has elapsed (c. 1630 § 1) without an appeal being lodged against an affirmative decision either by the disgruntled respondent or by the defender of the bond, the parties are free to enter a new marriage in the Church.”³⁹

The *Mitis Iudex Dominus Iesus* eliminates the need for an automatic appeal. Sequel to the *Motu proprio*, the previous requirement necessitating a mandatory appeal to a regional tribunal, (which is the second instance or the metropolitan tribunal) to examine the original decision, when the trial court or the court of first instance grants a declaration of nullity has been repealed. The automatic appeal existed to ensure that the sanctity of the bond marriage is preserved and protected, and not just tampered with at will. Similarly, it was in place to ensure that potential abuse of laxity was avoided.

However, by so doing, it prolonged the final decision on the petition. The *Motu proprio* has therefore taken away this delay. The removal is to ensure that the process is shortened and in the same vein to “simplify and make the processes less complex.”⁴⁰ Nevertheless, a party or both parties may still appeal to the metropolitan of their region when they are dissatisfied with

³⁷ *Mitis Iudex Dominus Iesus*, paragraph 7; see also Akpoghiran, Peter, *Op. Cit.*, pp. 593 ff.

³⁸ Akpoghiran, Peter. *Op. Cit.*, p. 594–595.

³⁹ Beal, John P. ‘Mitis Iudex Canons 1671-1682, 1688-1691: A commentary’. *The Jurist* 75 (2015) p. 505.

⁴⁰ *Ibid.*, p. 11.

the judgement of the trial court and its original decision. But such an appeal is no longer mandatory but merely an optional step.⁴¹ It thereby suggests that the appeal is still in place, but it is no longer automatic or mandatory.

Although *Mitis Iudex* says that one affirmative decision suffices, the adequacy of a single affirmative decision does not mean that *Mitis Iudex* has abolished the possibility of an appeal. Rather, the parties, the defender of the bond and the promoter of justice are permitted under Can. 1682 § 1 to lodge an appeal when they deem it necessary to do so. Where such an appeal is lodged, Can. 1680 discourages needless and constraining appeals which merely seek to place obstacles to the remarriage of the other party.

d. Appointment of Eligible Laypersons as Judges

Closely related to matters relating to the competent courts, a somewhat innovation has been introduced in Can. 1673 § 3 which permits a certain number of laypersons to become judges and form part of the college of judges. It says: “Cases of nullity of marriage are reserved to a college of three judges. A judge who is a cleric must preside over the college, but the other judges may be laypersons.” Against the background of Can. 1421 § 2, the *Mitis Iudex Dominus Iesus* touched on the composition of the marriage tribunal. Can. 1673 § 2 clearly states that only the presiding judge of the tribunal must be a cleric. This then means that two lay persons could be appointed as tribunal judges at the same time.⁴²

Nevertheless, the involvement of laypersons in the judicial ministry did not begin with Pope Francis and his *Mitis Iudex Dominus Iesus* reform. Indeed, Paul VI appears to have introduced a major turning point in this regard by the reform he brought in with two *Motu proprios Causas Matrimoniales* of March 27, 1971⁴³ and *Cum matrimonialium* of September 8, 1973.⁴⁴ The former introduced changes affecting the Latin Rite, while the latter affected the Eastern Church. These papal documents improved generally the regulations of processes for establishing the

⁴¹ In its own words, the document says: “A single executive sentence in favor of nullity is effective. – First of all, it seemed that a double conforming decision in favor of the nullity of a marriage was no longer necessary to enable the parties to enter into a new canonical marriage. Rather, moral certainty on the part of the first judge in accord with the norm of law is sufficient.”

⁴² See also Meckel-Pfannkuche, Sabrina. *Die Rechtsstellung der Kleriker in der Rechtsordnung der lateinischen Kirche*. Graulich, Markus/Hallermann, Heribert/Pulte, Matthias, (Eds.) *Rechtsgeschichtliche Entwicklung, theologische Begründung und rechtliche Kontur*. Kirchen- Und Staatskirchenrecht (KStKR 24), Paderborn, 2018, p. 392.

⁴³ Paul VI, *motu proprio Causas Matrimoniales*. March 27, 1971: AAS 63 (1971), p. 441–446.

⁴⁴ Paul VI, *motu proprio Cum matrimonialium*. September 8, 1973: AAS 65 (1973), p. 577–581.

nonconsummation of marriage,⁴⁵ setting conditions for diocesan bishops to appoint lay persons as judges⁴⁶ and sought “to simplify the often cumbersome contentious process imposed by the 1917 code, and the instruction *provida Mater* and to expedite thereby the resolution of marriage cases.”⁴⁷ It could be argued therefore that based on these innovations introduced by the papal documents and its subsequent incorporation into the church’s body of laws, Can. 1421 § 2 permitted the conference of bishops to appoint laypersons as judges with one of them chosen to form a college of judges where necessary.

Pope Francis however took this reform and development further in *Mitis Iudex Dominus Iesus* by broadening the scope and permitting the appointment of not just one layperson but up to two laypersons who could as well constitute a collegiate tribunal. However, such an appointment is predicated on the fact that a clerical judge shall preside in such a collegiate tribunal. The diocesan bishop could exercise this right in conjunction with the existing requirement laid down in Can. 1421 § 3 which requires him to seek the permission of the episcopal conference before the appointment of such laypersons.

e. Tribunal Expenses

Sequel to the hinderance the high cost of tribunal services cause, *Mitis Iudex* reform seeks to make the process at the tribunal affordable. Although the document does not eliminate all tribunal fees completely, it enjoins that the process be free of charge where it is feasible or practicable. However, the document also takes cognisance of the exigencies of the tribunals, particularly bearing in mind the right of the personnel of the tribunal to a just wage. The affordability of the process, in the intent of the reform, will ensure that no one is discouraged from approaching the tribunal for want of pecuniary affordability. The Pope through the document seeks to remove the financial obstacle preventing access to justice for the people who need it most. More so, the declaration of nullity should not be under an illusion that it is for the highest bidder where it is bought and sold.

While considering the exigencies of the tribunals, efforts could therefore be put in place to establish an appeal fund to cover administrative fees so as to help to enable either a partial

⁴⁵ Georg, May. ‘The Code of Canon Law and the Development of Canon Law to 1974’ in Adrianyi, Gabriel, et al (Ed). *The Church in the Modern Age*. Vol. 10. New York, 1979, p. 151–176, p. 172.

⁴⁶ Beal, John P. ‘The Ordinary Process According to *Mitis Iudex*: Challenges to our “Comfort Zone”’ in Martens, Kurt (Ed.) *Justice and Mercy Have Met: Pope Francis and the Reform of the Marriage Nullity Process*. Washington DC, 2017, 233-270, p. 243.

⁴⁷ *Ibid.* p. 234.

reduction of the fee for indigent petitioners or its total waiver to enable them to approach the tribunals and enjoy the pastoral care of the mother church through the services of the tribunal. Therefore, the poor should enjoy the pride of place and be put at the centre of the reform by the generous mother, for the benevolent mother thinks of the plight of her children.

f. Other Reforms

i. Declaration of Parties

Can. 1678 gives a judicial weight to the declaration of the parties. This is part of the major changes introduced by *Mitis Iudex Dominus Iesus*. To have the deposition of multiple witnesses becomes unnecessary except where it's essential. The deposition of one witness can now constitute full proof provided the witness is a qualified witness in accordance with Can. 1678 § 2 which says: "In the same cases, the testimony of one witness can produce full proof if it concerns a qualified witness making a deposition concerning matters done *ex officio*, or unless the circumstances of things and persons suggest it." The judge has the freedom to freely evaluate the weight to be assigned to a particular testimony.

ii. Role of Assessors

Can. 1673 § 4 introduces something new in the role of assessors in the process of marriage nullity. When the bishop entrusts a case to a sole clerical judge where a proper tribunal cannot be constituted, he is to associate himself, where possible with two assessors who are experts in juridical or human sciences. This could be interpreted to include those who have good knowledge about the parties and the situation. It does not necessarily connote the involvement of technical experts in certain fields. Thus, even village elders who have good knowledge of the family situation and who remain custodians of the prevailing cultures within their respective precincts could be invited and used as experts.

iii. Developing a Procedural Handbook

Art. 3 of the *Ratio* calls for the publication of a handbook to explicate the new reforms entrenched in *Mitis Iudex*. This in turn could be a great help to auditors, those in charge of investigations and those who are assigned some responsibilities without having a formal knowledge of the law.

IV. CRITIQUE OF THE DOCUMENT

a. Mode of Promulgation

Questions could be raised about the promulgation of *Mitis Iudex* whether it was promulgated in accordance with canonical rules. The apostolic letters by Pope Francis, *Mitis Iudex Dominus*

Iesus and *Mitis et misericors Iesus* were enacted on August 15, 2015 but to take effect on December 8, 2015, the effective date coinciding with the beginning of the Year of Mercy. It was officially published however in the summer of 2016 in the *Acta Apostolicae Sedis*, about a year after they were released but bearing the date September 4, 2015 and number 9. The question on some legal minds is whether this conformed with canonical regulations on the normal process to be taken in the promulgation of ecclesiastical legislations,⁴⁸ and when such laws take effect.

The first indications to any form of debate comes from Can. 7, which clearly states that a “law comes into being when it is promulgated.” What is the definition of promulgation and what constitutes promulgation? Can. 8 § 1 succinctly prescribes that: “Universal ecclesiastic laws are promulgated by publication in the ‘Acta Apostolicae Sedis’, unless in particular cases another manner of promulgation has been prescribed. They come into force only on the expiry of three months from the date appearing on the particular issue of the ‘Acta’, unless because of the nature of the case they bind at once, or unless a shorter or a longer interval has been specifically and expressly prescribed in the law itself.” It is highly debatable if the promulgation of the *Mitis Iudex* meets this canonical regulation. If ecclesiastical laws are promulgated by their publication in the *Acta Apostolicae Sedis* (AAS) and are to be given effect three months after such promulgation, *Mitis Iudex* took effect before it was promulgated. If the canon law gives dispensation from this form of publication and makes room for a situation where *another manner of promulgation has been prescribed*, did *Mitis Iudex* specifically state this knowing that it was merely published on the Vatican website?

However, Can. 8 § 2 suggests that particular laws are promulgated in the manner determined by the legislator. If this is the case, could it be reasoned that this canon brings a relief to the apparent ‘*illegality*’ of the promulgation of *Mitis Iudex*? Does this canon consequently empower the pope as a lawgiver to promulgate the *Mitis Iudex* in the manner he did and puts an end to the debate? Should the pope as the supreme lawgiver dispense himself from the norm? Does it appear that the pope is merely fulfilling all righteousness by stating the date the *Mitis Iudex* comes to effect in the document? Does that suffice for the fulfilment of normative procedure laid down by the legislation? The preceding paragraph of this canon (Can. 8 § 2) appears to give the room where the duration is elongated or shorten by stating further option regarding only the date a legislation takes effect: *or unless a shorter or a longer interval has*

⁴⁸ See more in Müller, Ludger. *Das kirchliche Ehenichtigkeitsverfahren nach der Reform 2015*. Aymans – Mörsdorf – Müller, Kanonisches Recht, Ergänzungsband, Paderborn, 2017, pp. 9 ff.

been specifically and expressly prescribed in the law itself. Could the pope be averse to legal regulations? All these questions and possible debates could form another theme for a different research.

b. Grounds for Nullity and the Briefer Process

Article 14 of the document lists probable grounds for nullity. This list raises the question of over simplification of the grounds for nullity of marriage. Over simplifying things and attempting to dilute the teachings of the church on indissolubility and sneaking in divorce through the backdoor has been a subject of discussion, particularly when viewed vis-à-vis the debate on *Amoris laetitia*⁴⁹ and the aftermath of the *dubia*⁵⁰ (containing five questions) sent to the pope by the four cardinals requesting the pope for a clarification on a footnote in the Apostolic Exhortation.

The probable grounds listed in Art. 14 appear to be easy grounds for nullity and since they are not exhaustive, more frivolous grounds could spring up and be added to include this list feared to make nullity too easy to attain. While the pope intends to use his reform as a contribution to help Catholics in difficult relationships and situations to live and relate in peace with the church, however it could be noted that majority of the marriages are not invalid but a few.⁵¹

This then raises the question whether speeding the process of nullity alone is an appropriate solution rather than a better marriage preparation and proper marital pastoral care. It could however be argued that a step has been taken to help those in dire need, no matter how little or insignificant their number may appear to be. By so doing, this reinforces the benevolent character of the church, making the church act truly like a mother and the pope on his own part, acting like a good shepherd going after the lost sheep irrespective of the number of those lost.

The briefer process posits some inherent dangers. For instance, a danger that could be highlighted in the briefer process is seen in Article 14 § 1 of the Procedural Rules, which lists the circumstances or conditions for the use of the briefer process. The list remains open-ended and not certain. Some authors such as William Daniel postulate that such an open-ended list could be misconstrued as a list of presumptions of marriage nullity. He opined that “the very list of examples proposed by the legislator in Art 14 § 1 of the *Ratio Procedendi*, while not

⁴⁹ Francis, Pope. *Amoris Laetitia* (1 April 2016) AAS. 108 (2016), 311-446.

⁵⁰ See more on the *dubia* in Pentin, Edward. ‘Four Cardinals Formally Ask Pope for Clarity on ‘Amoris Laetitia’’. *National Catholic Register*. November 14, 2016. <http://www.ncregister.com/daily-news/four-cardinals-formally-ask-pope-for-clarity-on-amoris-laetitia> [accessed on January 9, 2018].

⁵¹ *Ibid.*

establishing new *capita nullitatis*, gives the impression that nullity can occur in a way heretofore unanticipated.”⁵² However such a list does not necessarily indicate a list of presumptions of marriage nullity but circumstances that will qualify a case for the briefer process as Can. 1683 begins with the sentence: *The diocesan bishop himself is competent to judge cases of the nullity of marriage with the briefer process whenever ...* and no 2 alludes to circumstances which are then enumerated in the procedural rules. This must therefore be given a conjunctive interpretation recognising that the clause in no 2 has a prefix in the opening statement. In addition, these lists are not new grounds of nullity but situations that canonical jurisprudence has long articulated as symptomatic elements which vitiates consent, affects the validity of marriage and could be proven by testimonies or existing documents.

It must be noted that the procedure of nullity is legal in nature however, the appointed assessor need not be a canon lawyer. Without the appointment of someone who is knowledgeable in legal jurisprudence and an individual who possesses a good understanding of the nuances of the law, could that affect the effectiveness of the acts of the assessor?

c. Elimination of Automatic Appeal

The elimination of the automatic appeal introduced by the reform at the end of the judgement at the first instance has come under some academic discussions and scrutiny. Could the elimination of this step result in the miscarriage of justice? Is there the possibility of dishonesty and indolence on the part of some judges which could result in wrong judgements, and are never upturned at a non-existent appeal? Judges could be more firm and forthright when they know that their judgement could be upturned on a probable appeal. Could this reform aimed at offering a quicker process be solving a problem as well as creating another?

Where a tribunal of first instance is not well equipped and lacking in the relevant and competent personnel, nullity sentences coming out of such tribunals could be defective and not canonically sound. On the other hand, the integrity of the process for the declaration of nullity basically rests largely on the diocesan or the inter-diocesan tribunals or the tribunals of first instance. Therefore, if the process in the first instance is properly done, an obligatory review in the second instance will be unnecessary. But the question remains, how can its propriety be reviewed and accessed to ensure due compliance with canonical rules, and to investigate if its properly done when the obligatory appeal is not there?

⁵² Daniel, William L. ‘An Analysis of Pope Francis; 2015 Reform of the General Legislation Governing Causes of Nullity of Marriage’, *The Jurist*, 2015, p. 450.

An obligatory review would rather confirm if the proper process has been complied with or not. A probable quick administrative review of the judgment of the first instance instead of an optional appeal could be a better option in the view of the writer. Admittedly, a mandatory review is not a necessity for justice under natural law, however, it could ensure that justice is not only done but seen to be done. A good, hardworking and honest judge should have nothing to fear about his judgement going on appeal. The removal of the automatic appeal could therefore obtain a fast process but at the same time portend a risk where cases are carelessly handled. Such fears were expressed by the Synod Fathers at the October 2014 Synod in the *Instrumentum laboris* and the Synod Fathers concluded that the removal of the mandatory appeal “would not guarantee a reliable judgement.”⁵³

d. The Active Involvement of the Bishop

The reform seeks to effectuate more involvement of the diocesan bishop in the process of marriage nullity. While this is a noble and lofty ideal, an appropriate step which will help the diocesan bishop to discharge his ruling office, one still wonders if many bishops are equipped and prepared adequately for the role of a diocesan bishop as a judge. In the next chapter, we shall be looking at the propensity of the busy schedule of the diocesan bishops in Nigeria constituting an impediment to the discharge of this duty.

If a diocesan bishop is able to generate more interest in this regard by educating⁵⁴ himself on the procedural steps to be taken in the process of marriage nullity and creating the time needed to discharge his duties in this regard, part of the goals of the reform will be achieved. A competent diocesan bishop as far as marriage nullity is concerned will therefore work closely with his judicial vicar and tribunal staff in order to deliver the good. The diocesan bishop's essential involvement brings him in closer contact with the tribunal and its staff, thereby prompting purposeful and dutiful discharge of duty on the part of tribunal personnel. They will meet more face-to-face and he will be able to understand their challenges and visions and such a collaboration should bring about affecting the lives of the people positively and helping the bishop not only to exercise his judicial office but also carry out his role as a pastor.

⁵³ Synod of Bishops, XIV Ordinary Assembly, ‘The Vocation and Mission of the Family in the Church and the Modern World, *Instrumentum laboris*, 114.

⁵⁴ It may appear rude on the face of to ask that bishops should educate themselves. This call becomes expedient when such matters involve technicalities and requires some expertise. Bishops are conferred with the Doctor of Divinity upon their episcopal appointment and ordination because of their function as teachers of the faith. This does not however amount to having requisite canonical knowledge to discharge his duty as a judge. Since it is not an academic but an honorary title, the bishop must endeavour to seek further knowledge in this regard to equip himself properly and avail himself the use of canonical experts around him.

e. Cooperation and Consent of Both Spouses as a Pre-Condition

The document *Mitis Iudex* mandates that in the briefer process, both parties are to propose the petition; or the petition is jointly signed by both parties; or that the petition is signed by one with the consent of the other party. This may be intended to enable the parties work together and avoid the situation of the parties antagonising themselves unnecessarily and given the opportunity to defend their marital bond. However, the question arises, what happens where the parties do not cooperate to achieve this? It is easier to say that the petition then reverts to the ordinary process but an uncooperating partner would have robbed or denied the other partner of enjoying the advantages of the briefer and quicker process.

This condition could lead to an erroneous conclusion that where the parties agree that the marriage is null and give their requisite consent to submit their petition, this automatically leads to a declaration of nullity. However, this required consent instead helps to protect the right of both parties to defend the validity of their marital bond. The existence and proof of the ground of nullity usually determine the declaration of nullity and not the agreement or otherwise of the parties. Walter Kasper as quoted by Raymond Burke puts it aptly when he said: “Because marriage as a sacrament has a public character, the decision about the validity of a marriage cannot simply be left to the subjective judgment of the parties concerned.”⁵⁵

Making the consent of one party the subject of jurisdiction or granting the status of a *locus standi* before the briefer process appears contentious. Edward Peters however defended this when he concluded that the parties’ “consent to a nullity petition is never necessary for the Church to exercise jurisdiction over a case and, more to the point, it is *not* indicative of the merits of the petition. Making mutual agreement to a petition an element of hearing that petition quickly risks confusing two things that the Church has long sought to distinguish, namely, the *parties’ laudable cooperation with the tribunal’s search for truth* and *their collusion with each other toward a specific outcome*. Treating nullity petitions in which the parties agree radically differently from those wherein they disagree, sends a dubious message.”⁵⁶

⁵⁵ Burke, Raymond Leo Cardinal. ‘The Canonical Nullity of the Marriage Process as the Search for the Truth’, in Robert Dodaro (ed.), *Remaining in the Truth of Christ: Marriage and Communion in the Catholic Church*. San Francisco, 2014, p. 211. The German translation can be found in Walter Cardinal Kasper. *Das Evangelium von der Familie: Die Rede vor dem Konsistorium*. Freiburg im Breisgau, 2014, p. 59. The German translation is repeated here: „Da die Ehe als Sakrament einen öffentlichen Charakter hat, kann die Entscheidung über die Gültigkeit einer Ehe nicht allein dem subjektiven Ermessen der Betroffenen überlassen sein.

⁵⁶ Peters, Edward N. ‘Dr. Edward Peters: A First and Second Look at “Mitis Iudex”’ *Catholic World Reporter*. September 9, 2015. <http://www.catholicworldreport.com/2015/09/09/dr-edward-peters-a-first-and-second-look-at-mitis-iudex/> [accessed on February 26, 2018].

However, practical experience shows already that meeting this condition precedent to qualify for the briefer process is not as easy as it appears to be. For instance, Msgr. Tony Bawyn, the Judicial Vicar of Seattle Archdiocese noted that many petitioners seem to have delayed the submission of their petitions while awaiting the effective date of *Mitis Iudex* with the hope that they will qualify for the new *processus brevior*. In his words however "they were disappointed. In most cases, the other party is not willing to copetition or to join the petition after being cited. Even in cases where they are willing to do so, the facts in most cases are not sufficiently manifest to qualify for that process."⁵⁷ This may therefore allay the initial fears that the consent of the parties amounts to giving them the jurisdiction to decide on the nullity of marriage.

A curious question is whether the document contemplated the absence of the other partner, who must consent before the petition qualifies for the briefer process? What happens where a partner is not found, and the other partner prefers the petition under the brief process after fulfilling other conditions? Will a literal interpretation be given and the petition reverted to the ordinary process? Will the reversion to the ordinary process serve the purpose of brevity? If the briefer process goes ahead and sentence given, and possibly an appeal goes as far as Rome, what could be the outcome? These questions could serve some other academic excursions.

f. Laypersons as Judges

Mitis Iudex permits that a certain number of laypersons are appointed as judges. Closely related to the appointment of the laity is also the fact that the laypersons cannot be appointed as presiding judges irrespective of their qualification. It could be argued that a cleric, who is a qualified expert in canon law could bring to bear his pastoral care and understanding into the process. However, lay judges could also solve some problems, where they are available, in dioceses or regions where there are few or no qualified clerics exist.

The question however remains why a cleric must still preside over the college even if there are qualified laypersons. Could the appointment of laypersons help to solve the problem encountered with the paucity of trained and qualified tribunal personnel in some climes? This may simply be an academic discourse since laypersons are mostly not trained as canonical experts in many parts of the world. How many laypersons are trained in Nigeria as canonist for instance when even priests and religious are lacking? The writer opines however that where it

⁵⁷ See Morris-Young, Dan, 'Annulment Reform Seems to Cultivate Change of Culture' *National Catholic Reporter*. Jun. 5, 2017. <https://www.ncronline.org/news/people/annulment-reform-seems-cultivate-change-culture> [accessed on July 20, 2017].

is practicable and laypersons who are qualified exist, legislations could be amended to accommodate them. The possibility of a collegiate tribunal consisting of all laypersons (once qualified) should not be regarded as a radical opinion.

Within this context, the question could be posed if female religious are classified as laypersons since they are not clerics? If they are not clerics and are regarded as laypersons, such strata of *laypersons* could be elevated to the status of judges. There are a handful of female religious who are canonical experts for instance in Nigeria and their appointment as presiding judges to head tribunals will go a long way to solve the problem of the dearth of canonical experts to be appointed as judges. Laypersons who have been trained should be seen to possess the requisite capabilities and expertise. Restrictions against laypersons to serve as sole judges could be removed in future legislations since *Mitis Iudex* did not consider taking such a step. Could there be a question of trust and confidence why laypersons are not appointed judges to head a tribunal? This could be a subject of further research as a properly so-called scientific work could be done on this on a broader scope.

Mitis Iudex Dominus Iesus affirmed the power of the diocesan bishop to appoint judges when it stipulates: “A sole judge under the responsibility of the bishop. – In the first instance, the responsibility of appointing a sole judge, who must be a cleric, is entrusted to the bishop, who in the pastoral exercise of his judicial power must guard against all laxism.”⁵⁸ *Mitis Iudex Dominus Iesus* makes room for the appointment of a sole clerical judge. Conversely to a collegiate tribunal where three judges are appointed,⁵⁹ a single judge is appointed to adjudicate on cases in the tribunal. It is expected that the procedure under a sole judge should be fast and speedily executed. It is however expected that justice is served under a sole judge since one may not always be better than three.

g. Dignitas Connubii

The Instruction *Dignitas Connubii*⁶⁰ on the norms to be observed at ecclesiastical tribunals in matrimonial proceedings was presented on February 8, 2005 long before the promulgation of *Mitis Iudex*. This Instruction *Dignitas Connubii* is sequel to the Holy Father’s express request

⁵⁸ *Mitis Iudex Dominus Iesus*, no. II.

⁵⁹ Can. 1425 § 1 lists contentious cases or cases concerning the bond of marriage as part of the cases, which are reserved to a collegiate tribunal of three judges.

⁶⁰ Pontifical Council for Legislative Texts. *Instruction to be Observed by Diocesan and Interdiocesan Tribunals in Handling Causes of the Nullity of Marriage. Dignitas Connubii*. 2005.

in 1996 and the product of an extensive inter-dicastery cooperation and efforts. Apart from the Pontifical Council for Legislative Texts, the Congregation for Divine Worship and the Discipline of the Sacraments, the Congregation for the Doctrine of the Faith, the Supreme Tribunal of the Apostolic Signatura and the Apostolic Tribunal of the Roman Rota worked together to produce this document. This was intended to provide ecclesiastical tribunal personnel a practical and easy guide (a kind of a *vademecum*) to assist them to function properly in canonical processes of the nullity of marriage.⁶¹ The question arises if there is the need to review it or even if the Instruction is still valid in its entirety with the changes introduced in the process of marriage nullity by *Mitis Iudex*.

Mitis Iudex changed some previous process but not the doctrine. The changes are indicated by the new canonical numbers in the Code of Canon Law. This change has to be extended to such documents like the *Dignitas Connubii* and a reviewed instruction based on *Mitis Iudex* be written. It could be argued that the Instruction may not have lost its validity but it needs to be revised. Instructions are normally given for the benefit of the execution of the law and they are binding in that respect. Instructions are not superior to laws and shall have no force where they derogate from the law. Indeed Can. 34 § 3 concludes: “Instructions cease to have force not only by explicit or implicit revocation by the competent authority who published them or by that authority’s superior, but also by the cessation of the law which they were designed to set out and execute.”

Can. 21 seems to shed light into the way forward: “In doubt, the revocation of a previous law is not presumed; rather, later laws are to be related to earlier ones and, as far as possible, harmonised with them.” The preface of *Mitis Iudex* clearly sets out to make changes to certain canons in the Code of Canon Law and not the entire Code or the entire legislations governing the regulations concerning the nullity of marriage. It becomes clear therefore that those articles that are not abrogated continue to maintain their normative values and remain in force and the ones affected remain revoked.⁶² William Daniel affirmed that the articles of *Dignitas Connubii* which “retain their force and must be observed outside of the legitimate use of the abbreviated process before the diocesan bishop.”⁶³ Can. 1691 § 3 as amended also suggests the application

⁶¹ See Herranz, Cardinal Julián. ‘A simple purpose: helping tribunals handle their work better’. <https://www.ewtn.com/library/CURIA/CILTPRDC.HTM> [accessed April 10, 2019].

⁶² The following articles have been revoked by *Mitis Iudex*: Articles 10 § 1, 13, 22 § 2, 24 § 1, 30 § 3, 43 § 2, 46 § 2, 7^o–10^o, 47 § 2, 65, 69 § 2, 118, 119, 126 § 1, 127, 135 § 1, 140, 1^o–2^o, 180, 202, 264–265 and a part of articles 290 and 301 § 1.

⁶³ Daniel, William L. “An Analysis of Pope Francis’ 2015 Reform of the General Legislation Governing Causes of Nullity of Marriage.” *The Jurist: Studies in Church Law and Ministry*, vol. 75 no. 2, 2015, p. 429–466, p. 463

of special process for the declaration of nullity of marriage. It says: “In other procedural matters, the canons on trials in general and on the ordinary contentious trial must be applied unless the nature of the matter precludes it; the special norms for cases concerning the status of persons and cases pertaining to the public good are to be observed.” Therefore, Frans Daneels surmised that the *Dignitatis connubii* “continues to be in force, except for the articles of the aforementioned Instruction that explained canons of the former legislation, now modified and no longer present in the new canons, and also those articles that do not conform with the procedural rules attached to the *motu proprio*. In the interpretation of *Dignitas connubii*, one should moreover take into account the fundamental criteria of the reform.”⁶⁴

In his views, Ludger Müller inferred that a new version of the instruction on the process of nullity is necessary. He concluded that: “*Die Instruktion „Dignitas connubii“ ist in der vorliegenden Fassung jedenfalls nicht mehr brauchbar.*”⁶⁵ Since the Instruction is no longer usable in its present form with some sections abrogated and some retaining their normative values, this writer believes a proper review of the Instruction is a causal effect of the promulgation of the *Mitis Iudex* on the Instruction *Dignitas Connubii*.

h. Preparation of the Document

On August 14th, 2015, the eve of the promulgation of the two *motu proprios*, the Vatican announced that the *motu proprios* will be promulgated the following day. This came after a special commission for the reform of the canonical process had presented its report in May 2015 to Pope Francis, who consulted four experts on the matter.⁶⁶ Sequel to the promulgation of the *motu proprios*, which elicited many reactions, the promulgation was received with surprise by numerous canonists and bishops around the globe. This was partly because the extensive consultation and experts’ involvement which was witnessed in the promulgation of the 1983 Code of Canon Law, the Instruction *Dignitas Connubii* and the revision of Book VI of the 1983 Code of Canon Law on Penal law, did not take place in the case of these *motu proprios*. Roch Pagé undeniably acknowledged that “there was no draft offered for discussion by Conference of Bishops or by specialists in canon law from around the world. The Special Commission established by Pope Francis on August 27, 2014 to study the question, worked with no transparency over the few months it took to prepare the substance of the *motu*

⁶⁴ Daneels, Frans. ‘A First Approach to the Reform of the Process for the Declaration of Nullity of Marriage, *The Jurist* 76 (2016), p. 120.

⁶⁵ The Instruction “*Dignitas Connubii*” is no longer usable in its present form. See Müller, Ludger, *Op. Cit.*, p. 81.

⁶⁶ See Akpoghiran, Peter. *Op. Cit.*, p. 26.

proprio.”⁶⁷ Edward Condon opined that: “No one on the working group which proposed the changes has heard a first instance case in decades, neither were there any members from Africa, where there are the greatest shortages of Tribunal staff, or North America, where more than half of the marriage cases in the world are heard.”⁶⁸

This lack of wide consultations bred a wide range of misconceptions and misinterpretation of the document. It was indeed a herculean task at the beginning for experts to come to terms with the initial difficulties and to seek to offer clarifications on the new regulations. The document was simply initially misunderstood and misconstrued. The lack of official translations also gave rise to unofficial translations with their attendant errors or misinterpretations. The proper involvement of more experts would have done more to avoid the avoidable embarrassing situation. The unanswered question is why the need to hurriedly promulgate the legislations without going through the usual consultative process?

V. CONCLUSION

The marriage annulment process in the Catholic Church varied dramatically from what is considered a civil divorce. It examines whether or not the parties entered marriage correctly by giving full and unobstructed consent to each other. This process as envisioned in the 1983 Code of Canon Law, has been greatly streamlined by the papal *motu proprio Mitis Iudex Dominus Iesus* issued in 2015. The various areas of changes introduced by the reform have been analysed and evaluated. This forms a foundational structure for the contextualisation of the reform in the Nigerian space, which will be explored in the next chapter. The pope has given the church *a puppy*, it is now left to professionals to make this little dog develop and possibly bark.

⁶⁷ Pagé, Roch. ‘Questions Regarding the Motu Proprio *Mitis Iudex Dominus Iesus*’, *The Jurist* 75 (2015) pp. 607–608.

⁶⁸ Condon, Edward. ‘The Good, The Bad & The Ugly’ <https://canonlawyered.wordpress.com/2015/09/09/mitis-iudex-the-good-the-bad-the-ugly/> [accessed on February 26, 2018].

CHAPTER FOUR: PECULIAR CHALLENGES IN NIGERIA

I. INTRODUCTION

The aim and objective of the questionnaire is to help answer the research questions, fulfil the purpose of research and provide data for relevant analysis, which will aid research findings. Thus, the questionnaire will help to identify the state of marriage tribunals in Nigeria, explore the level of implementation of the *Mitis Iudex* in Nigeria and discover probable challenges facing the tribunals in Nigeria, essentially in the implementation of the *Mitis Iudex*. The questionnaire was also intended to do what face-to-face interview could have achieved in a massive country like Nigeria with enormous travelling cost. Longer time and stressful trips would have made the face-to-face interview technique burdensome. Admittedly, interview as a technique for gathering data would have afforded the opportunity for follow-up questions and would have been preferable but the situation on ground in Nigeria did not make that feasible. Even the possibility of phone interviews or internet calls would have come with its own challenges such as huge cost of international or local calls, and perennial bad internet connection. The usage of questionnaire tool was therefore the best option available in this situation to achieve the aim and objectives set.

This study, which seeks to unravel the challenges the implementation of the *Mitis Iudex* could face in Nigeria will make its findings in this chapter. To accomplish this, generated questionnaires, which were sent out to respondents and the answered questionnaires returned will be examined. Under this heading therefore, an analysis of the data generated from the questionnaires sent will be carried out. A narrative presentation of the results, after a careful thematization of the frequencies and questions will be done. This will in addition be aided using designed tables and charts based on the data generated from the respondents. In doing so, focus will be placed on the exploration of thoughts, beliefs, values, meanings, experiences and feelings relating to the research.

II. QUESTIONNAIRE AND ATTEMPTED IMPLEMENTATION OF THE REFORM

Nigeria is a big country with 56 ecclesiastical circumscriptions. To get a good representation of the whole country, the targeted respondents were randomly selected amongst the nine ecclesiastical provinces, which were targeted to represent the population of the research. Covering all the dioceses will pose some logistical, financial and time challenges. Despite the random selection approach adopted, there is no probability of repeating the samples. The targeted respondents consist of various experts in canon law, who do not only have good

knowledge of canonical proceedings on the nullity of marriage but also working experience at the various marriage tribunals in different provinces. Although not all are currently leading the tribunals in their respective jurisdictions, they all have a connection with varying tribunals in the country. Figure 1 below shows the different positions the different respondents are holding in their respective dioceses.

Position or Designation					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Professor of Canon Law	1	4.2	4.2	4.2
	Judicial Vicar	10	41.7	41.7	45.8
	Not Stated	2	8.3	8.3	54.2
	Judge	2	8.3	8.3	62.5
	Pastor	1	4.2	4.2	66.7
	Director, Pastoral Affairs Dept	1	4.2	4.2	70.8
	PA to Archbishop	1	4.2	4.2	75.0
	Defender of Bond	2	8.3	8.3	83.3
	Parish Priest	3	12.5	12.5	95.8
	Notary	1	4.2	4.2	100.0
	Total	24	100.0	100.0	

Figure 1: Shows the different designations of the respondents and the numbers accordingly

The population description is consequently stratified to capture a national outlook. The samples are evenly spread to each province in the country capturing canonical experts knowledgeable about the state of the marriage tribunal in Nigeria. The distribution of the samples, which adopted a simple random sampling from a stratified sampling technique has no probability of repeating the samples by capturing different dioceses within all the provinces in Nigeria. The frequencies were given the following unique identities in their alphabetical order: ab (Abuja Province); bc (Benin Province); ca (Calabar Province); ib (Ibadan Province); jo (Jos Province); ka (Kaduna Province); la (Lagos Province); on (Onitsha Province) and ow (Owerri Province). Questionnaires were delivered to the respondents either by hand or electronically (by E-Mail and WhatsApp document sharing mode). The writer does not intend to name individuals or dioceses (except where technicalities does not permit) so that respondents could answer freely and the publication of the findings will not lead to any unintended perception or prejudice.

Each province is represented in the distribution of the survey instrument. At least two samples were selected, and the questionnaires sent to practitioners in the field, who are working in the diocesan or inter-diocesan in dioceses or provinces as applicable. As noted above, there are 56

ecclesiastical jurisdictions in Nigeria, which are spread across nine provinces. Each province has an average of five dioceses with Lagos having three dioceses, representing the least and Abuja having eight dioceses, representing the highest. More copies of the questionnaires were sent to some provinces with higher number of dioceses to elicit good same rate response.

The return rate of the questionnaire was very encouraging irrespective of the unreturned ones. At least two questionnaires were returned from each province excluding Lagos Province with one because it has only three dioceses and the province has an inter-diocesan tribunal run by the three dioceses. Calabar with five dioceses also returned one. This therefore indicates that the samples were evenly distributed and enjoyed a good representation of the population.

	ab	Bc	ca	ib	Jo	ka	la	on	ow	Total
Dioceses	8	6	5	6	7	7	3	7	6	56
Sent	6	2	2	4	3	4	2	4	6	33
Returned	4	2	1	4	2	2	1	3	5	24
Unreturned	2	0	1	0	1	2	1	1	1	9

Figure 2: Showing the number of dioceses in each province, number of questionnaires sent and received.

The questionnaire employed different questions to elicit various responses to achieve its multiple objectives. It was divided into three segments with many questions pertaining the peculiar segment. The compartmentalisation of these questions was done to take care of similar threads and themes, and to help the respondents focus properly on answering the questions without confusing the themes.

The first segment, comprising of three questions centred on the general focus. Under this heading, it was intended to get a general background of each respondent. These respondents span from different positions from judicial vicar, lecturer of Canon Law at a Catholic Institute to practitioners at the various tribunals in their respective dioceses. Many voluntarily gave their names, dioceses and the positions they occupy. The statistics available in the Figure 3 below shows that most of the respondents work in various marriage tribunals in the country with 10 of the 24 respondents serving as Judicial Vicars, 2 as judges, 2 as defender of the bond and 1 as notary. Some also serve in other canonical related capacities, while holding other assignments in the parishes and other ecclesiastical institutions. It is pertinent to note that the nomenclatures pastor and parish priest are used interchangeably connoting the same meaning. They are however separated here because that is how the respondents described themselves.

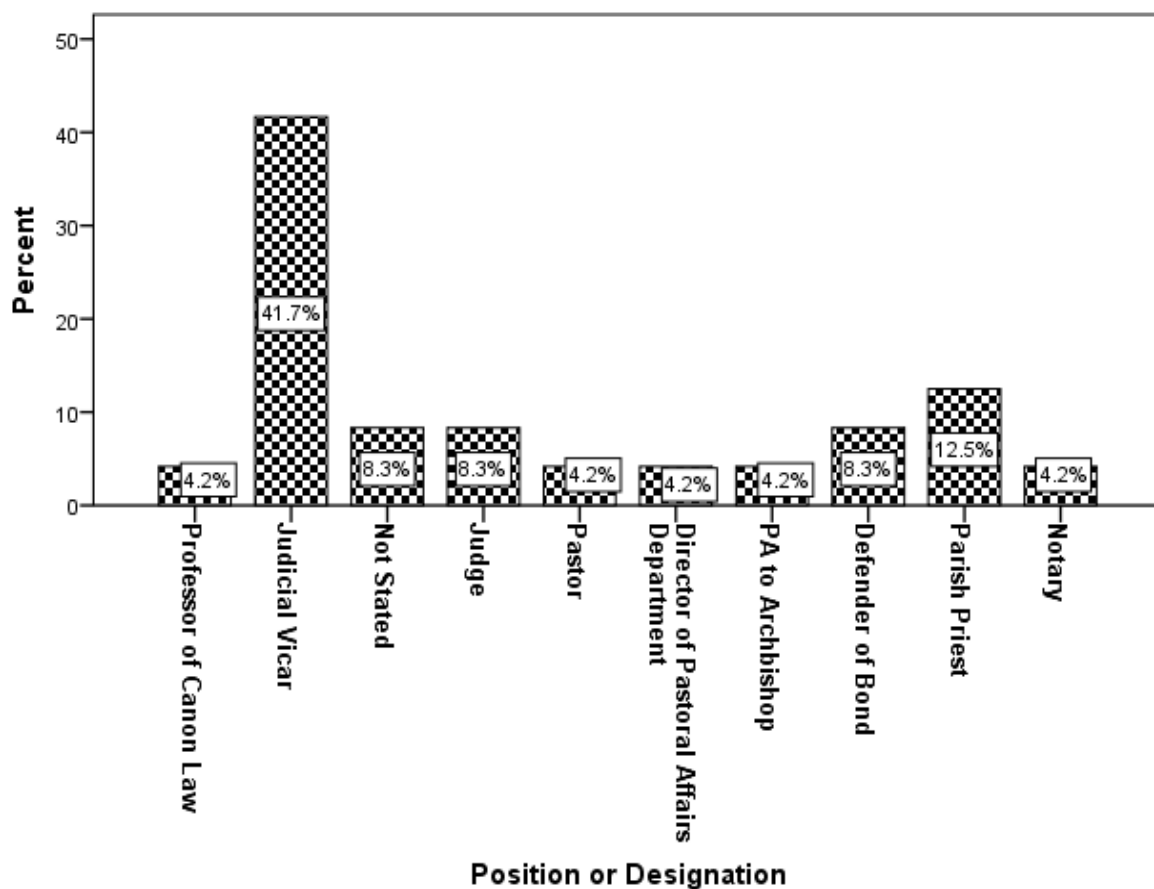


Figure 3: Shows the positions held by the respondents and their corresponding percentage.

The second segment pertains to relational or comparative interests. Here, questions were formulated and intended to gather relative information on a wide range of issues on the workings of the tribunals in Nigeria, the working environment, disposition of Nigerians towards the tribunals, knowledge on the tribunals by Nigerians, and perception about *Mitis Iudex*. There are three questions under this heading. Consequently, question four addresses the state of marriage tribunal in Nigeria viz: if the tribunal in a given diocese is functional, whether funds are provided and if the tribunal is well-staffed and equipped; what the charges are and what the basic perception of the laity is. Question five addresses the assessment of the *Mitis Iudex*, while question six investigates areas of *Mitis Iudex Dominus Iesus* already implemented.

The third and the last segment deals with peculiar considerations. This is intended to gather information on the implementation of *Mitis Iudex*, the challenges faced in its implementation or even anticipated challenges envisaged, and what the Catholic Law Society of Nigeria (CLSN) is doing to ensure proper implementation of the document. Questions seven and eight surround the challenges to the implementation of the *Mitis Iudex* in Nigeria. These anticipated

challenges could spread through the following areas: gratis service and effectiveness; funding, removal of automatic appeal; laxity in granting nullity or lack of willingness to grant it; favouritism or arbitrariness in the discharge of duty; feasibility of achieving the consent of spouses; briefer process and the diocesan bishop; paucity of experts and inter-diocesan cooperation. The last question deals with the role and possible contributions of the Canon Law Society of Nigeria (CLSN) in ensuring the success of the implementation of the *Mitis Iudex*.

Based on the questionnaire, the implementation of the *Mitis Iudex* has taken off in Nigeria. The implementation is however still at its nascent stage. While some dioceses have not started the implementation of the document, some others have taken advantage of the *Mitis Iudex*, swung into action and implemented many aspects of the reform. For instance, some respondents affirmed that all aspects of *Mitis Iudex* are being implemented already in their dioceses. Some dioceses however have adopted the following aspects of the reform: single judge process with the advantage of the sole judge sentences; gratis service or reduced administrative charges; the briefer process; the removal of the automatic appeal; and the forum competence.

III. CHALLENGES TO THE IMPLEMENTATION OF *MITIS IUDEX* IN NIGERIA

As articulated already, the survey employed different questions to elicit varying responses to achieve its multiple objectives. The findings encompassed in a substantial data generated will be rendered in a purely descriptive narrative format, and then supported, where necessary, by tables and charts representing the results.¹ The data will be coded into nominal-level categories, which are as follows: the state of marriage tribunals in Nigeria; the perception of the reform brought in by *Mitis Iudex*; the implementation and challenges to its implementation in Nigeria; and the Way-forward.

a. The State of Marriage Tribunals in Nigeria

The state of marriage tribunals in Nigeria will be better accessed by investigating the functionality of the tribunals in Nigeria, viewed from the lens of funding, staffing and equipping of the tribunals; the perception of Catholics in Nigeria about the process of nullity; and in addition the administrative cost paid by petitioners at the marriage tribunals in Nigeria.

i. The Functionality of the Tribunals

The functionality of the tribunals in Nigeria is vital to the process of marriage nullity in Nigeria and invariably, the implementation of the *Mitis Iudex*. Under this subsection, the research

¹ These tables and charts however represent only responses to close-ended questions alone.

sought to know if the marriage tribunals in Nigeria generally possess the enabling or conducive environment to thrive and function effectively, and whether there exists marriage tribunal in the dioceses of the respondents and if they exist, whether they are also functioning. Of the 24 respondents, most of them (representing 83.3 %) answered in the affirmative that marriage tribunals existed and are functioning, while few respondents (representing 16.7 %) had no marriage tribunals to cater for the pastoral needs of Catholics who seek nullity of marriage.

Is there a functioning Marriage Tribunal in your diocese					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	20	83.3	83.3	83.3
	No	4	16.7	16.7	100.0
	Total	24	100.0	100.0	

Figure 4: Shows table representing the percentage of functioning marriage tribunals in some dioceses in Nigeria as indicated by the respondents.

Some respondents believe that the state of the marriage tribunal in Nigeria could be described as evolving. Some said that the tribunals are not dispensing cases as they get them; not functioning to full capacity due to shortage of trained and experienced personnel; inadequate funding, staffing and equipment; and some tribunals are also not implementing the new reform.



Figure 5: Shows bar of functioning marriage tribunals in respondents' dioceses

Despite this negative perception articulated by some, many believe that there are changes in the horizon with the marriage tribunal been brought closer to the people; periodic meetings of experts to compare notes take place; and more inter-diocesan cooperation are commonplace. Respondent 21 surmises this when he said: “The general opinion is that marriage tribunals in the country do not function very well. Basically, it depends on the seriousness of a particular diocese or dioceses forming an inter-diocesan tribunal. That is not taking away the fact that there are some very functional marriage tribunals in the country. Marriage tribunals are still alive.” It is supposedly based on this believe that many respondents asserted as seen below that there are functioning marriage tribunals in their dioceses.

ii. Funding, Staffing and Equipping the Tribunals

Essential indicators for a functioning marriage tribunal will consist of whether the tribunals are well-funded, well-staffed or well-equipped. These are vital signs to gauge the functionality of the tribunals because without the financial muscle to pay staff or manage their affairs; provide office equipment or complex; and even employ qualified and dedicated staff, discharging the onerous duties of the marriage tribunals will be more difficult. When the right working environment is not realised, it could hamper staff retention and impede job satisfaction, which ultimately prevents the attainment of set objectives.

Is the tribunal well equipped?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	12	50.0	50.0	50.0
	No	12	50.0	50.0	100.0
	Total	24	100.0	100.0	

Figure 6: Table showing how well-equipped diocesan tribunals are

Therefore, the research findings as seen in the tables and charts, show that in terms of whether the tribunals are well-equipped, 12 respondents on either side said their tribunals are either well-equipped or not well-equipped. This may lead to the perception of the glass is half empty or half full scenario depending on how one views it. However, a whoopy 50 % of ill-equipped marriage tribunal does not portray a good picture.

It is pertinent to also state that even among those who asserted that the tribunals are well equipped, some noted that they are equipped to some extent or fairly equipped and some quipping that we can do better. This situation will no doubt impede a good working environment to achieve targeted aims and goals. Invariably, the lack of well-equipped tribunals will hamper the proper implementation of the *Mitis Iudex*.

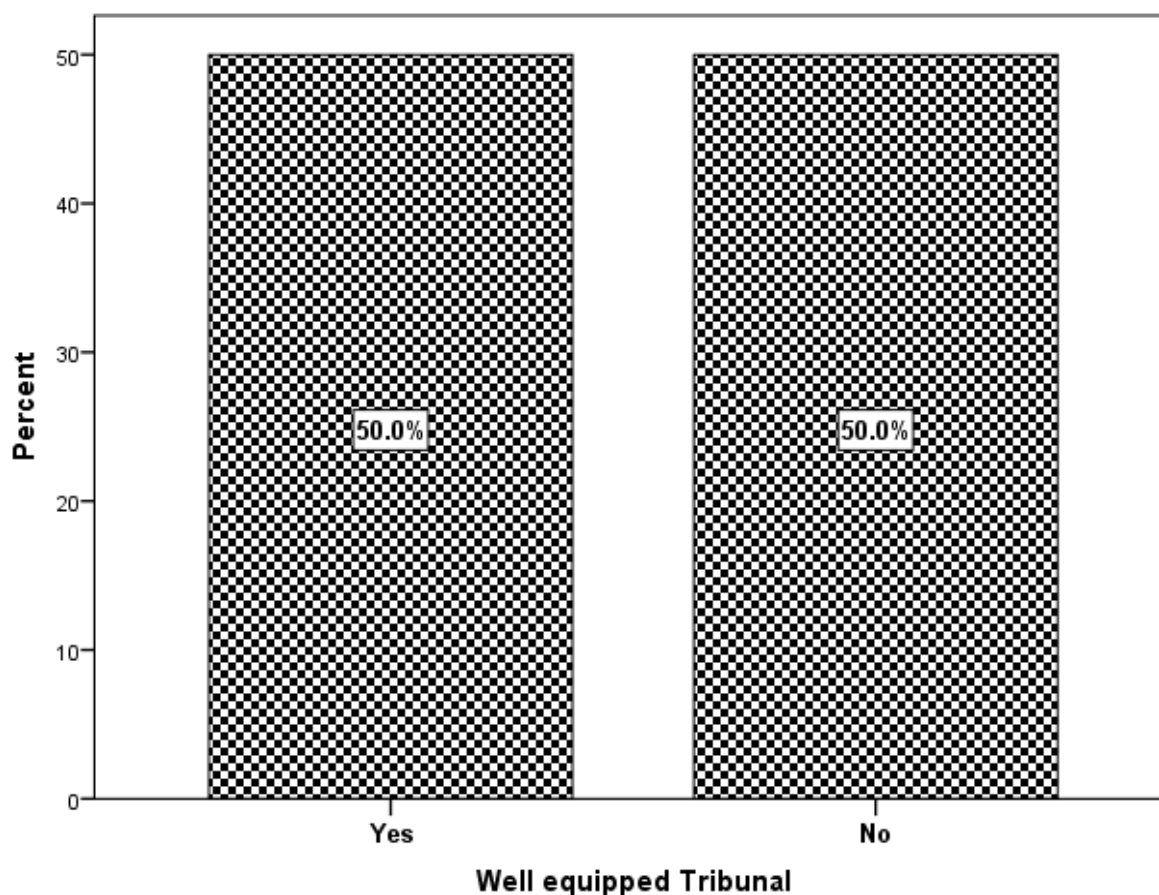


Figure 7: Shows chart depicting how equipped the tribunals are

As noted above, funding is essential to make the tribunals discharge their functions effectively. 15 out of 24 respondents representing 62.5 % said that their marriage tribunals are not well-funded. This does not portray a good picture in an attempt to achieve the proper implementation of the *Mitis Iudex*. Without proper funding, the tribunals cannot function effectively. Staff motivation will be low and staff retention will also be affected. This will lead to loss of trained and experienced staff, thereby affecting the attainment of the goals of the marriage tribunals.

Is the tribunal well-funded?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	9	37.5	37.5	37.5
	No	15	62.5	62.5	100.0
	Total	24	100.0	100.0	

Figure 8: Table shows funding regarding question relating to diocese of domicile

Indeed, without proper funding, the tribunals cannot function well, and this will cause them to seek other means of raising funds at the detriment of the primary duties at the tribunals. Many times, it leads to a hike in the service charge, this affects one of the goals or guiding principles

of *Mitis Iudex* intended by the pope as this threatens financial accessibility or gratis service intended by Pope Francis. Priests working at different tribunals will be saddled with other responsibilities like parish work to cater for their remuneration, thereby leading to a divided interest or attention and subsequently causing low productivity. If the percentage of low-funded tribunals is as high as 62.5 %, it therefore remains a huge challenge.

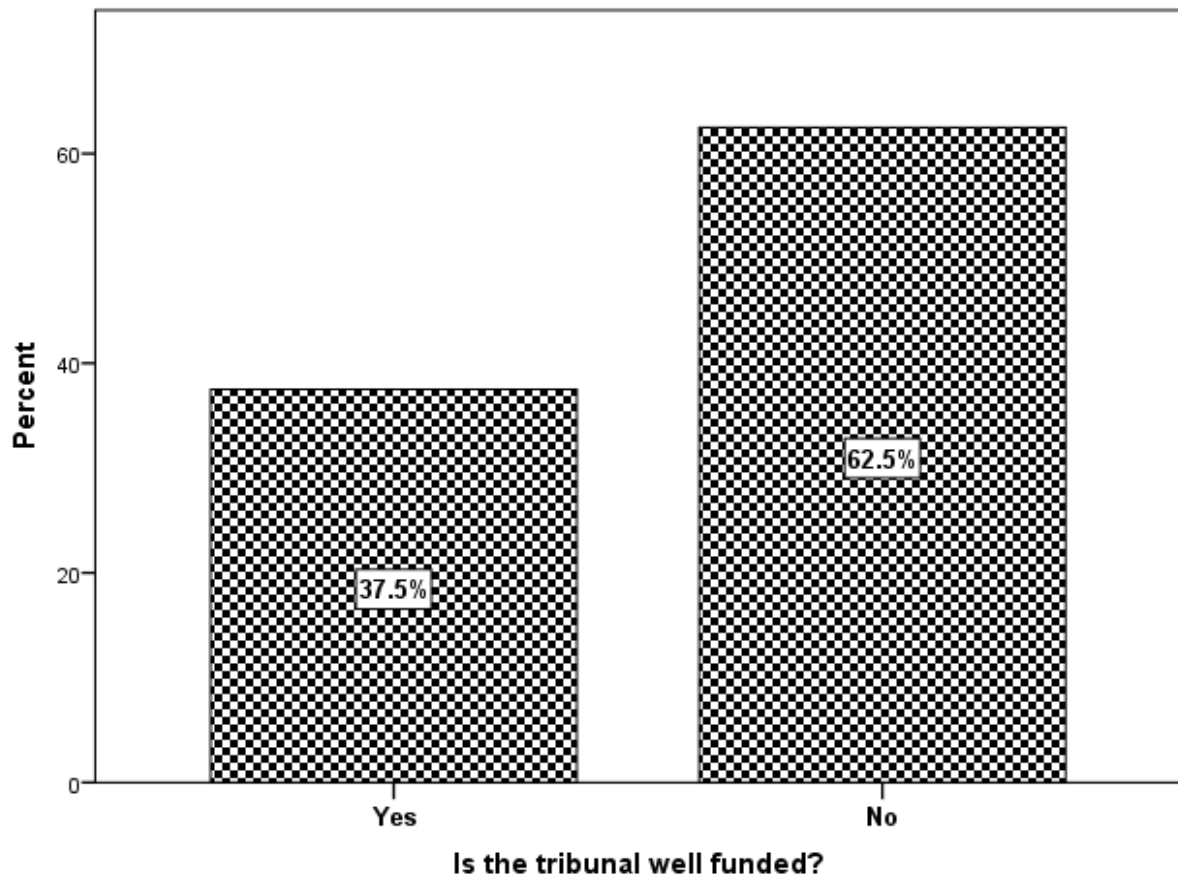


Figure 9: Chart depicting the extent of funds respondents' tribunals get

Closely related to proper funding is proper staffing as they complement each other. To meet the goals of an organisation, the availability of the appropriate personnel is essential to achieve this goal. However, getting the marriage tribunals in Nigeria well-staffed can also be a challenge to the implementation of the *Mitis Iudex*. Indeed, the findings show that it is a challenge to the implementation of the reform. Tribunal personnel are vital to the tribunals' discharge of their duties assiduously and diligently in order to give the document life and help it to achieve its aims and objectives. Where the tribunals are not well-staffed, realising these goals is therefore in jeopardy. Proper staffing is therefore fundamentally significant in effectuating the proper implementation of the document.

Is the tribunal well-staffed?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	13	54.2	54.2	54.2
	No	11	45.8	45.8	100.0
	Total	24	100.0	100.0	

Figure 10: Table showing the data on how well-staffed the tribunals in Nigeria are.

Staffing is another vital factor. Although 13 of the 24 respondents said the marriage tribunals in their domain are well-staffed, a significant number of 11 representing 45.8 % of the respondents affirm that their own tribunals are not adequately staffed. Many respondents also said the prevalence of inadequate and ill-trained personnel remains a challenge to the implementation of the *Mitis Iudex*. For instance, respondent 21 surmises that: “Also in diocese without full time tribunal staff like in our case”, it remains a “problem finishing cases so quickly while combining tribunal work and parish work.” For lack of qualified staff, according to respondent 22, some bishops preside over contentious marriage cases on theological ground rather than canonical norms, this leads to poor investigations and summary sentences. A process without canonical experts cannot implement the reforms introduced by *Mitis Iudex*.

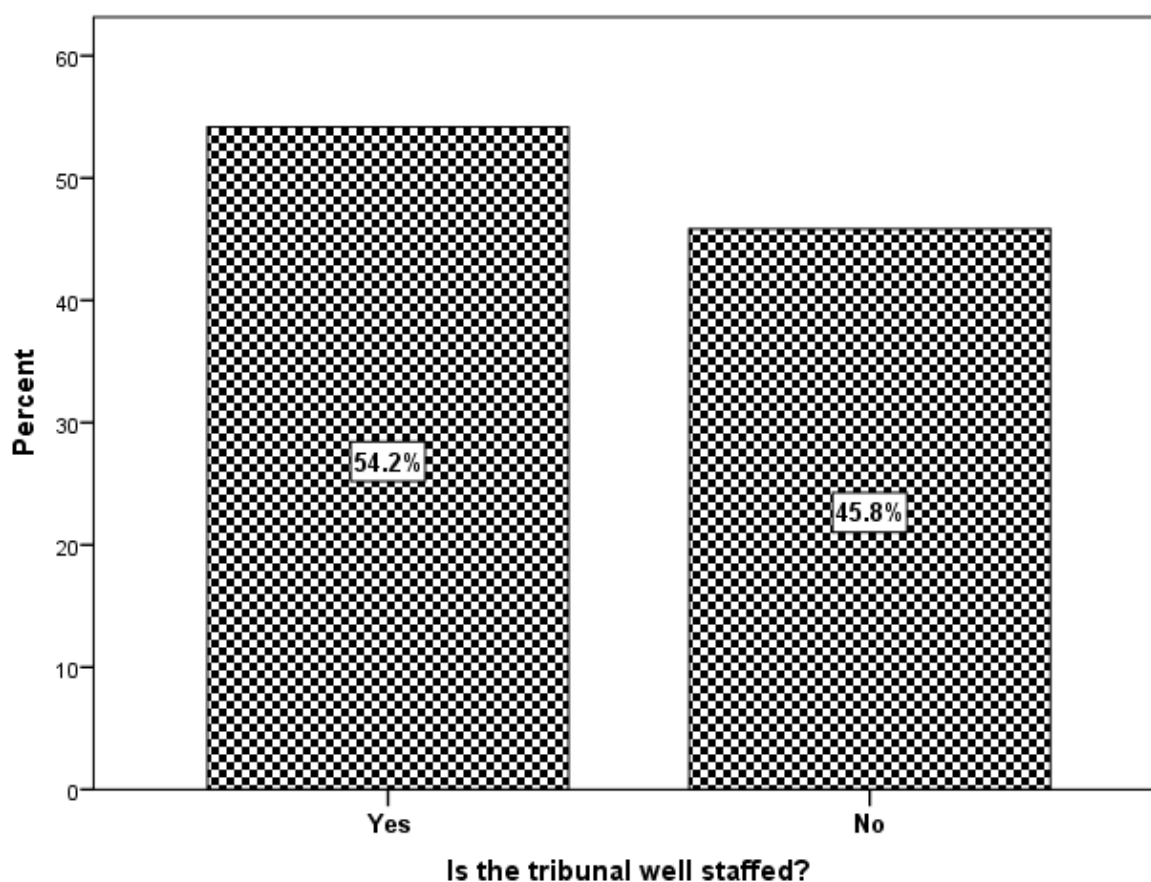


Figure 11: Chart shows the percentage regarding staffing at varying tribunals in Nigeria.

Aside the general issue of staffing at the tribunals, the question of having proper judges and/or judicial vicars is also of grave importance. As pointed above, such canonical experts are vital to securing and ensuring that the proper canonical processes are adhered to. Positively, most of the respondents attest that their tribunals have either judges or judicial vicars. Many of the respondents even said they have both and not just either of the tribunal officials. Despite this high positive outlook in this regard, few of the respondents however confirm the lack of the essential tribunal personal in their own tribunal. The chart and table below highlight this data clearly. These and other tribunals in their situation can therefore be said not to be in the right position to implement the document. Without a judge or judicial vicar, the process of nullity cannot be carried out either in its briefer process or otherwise.

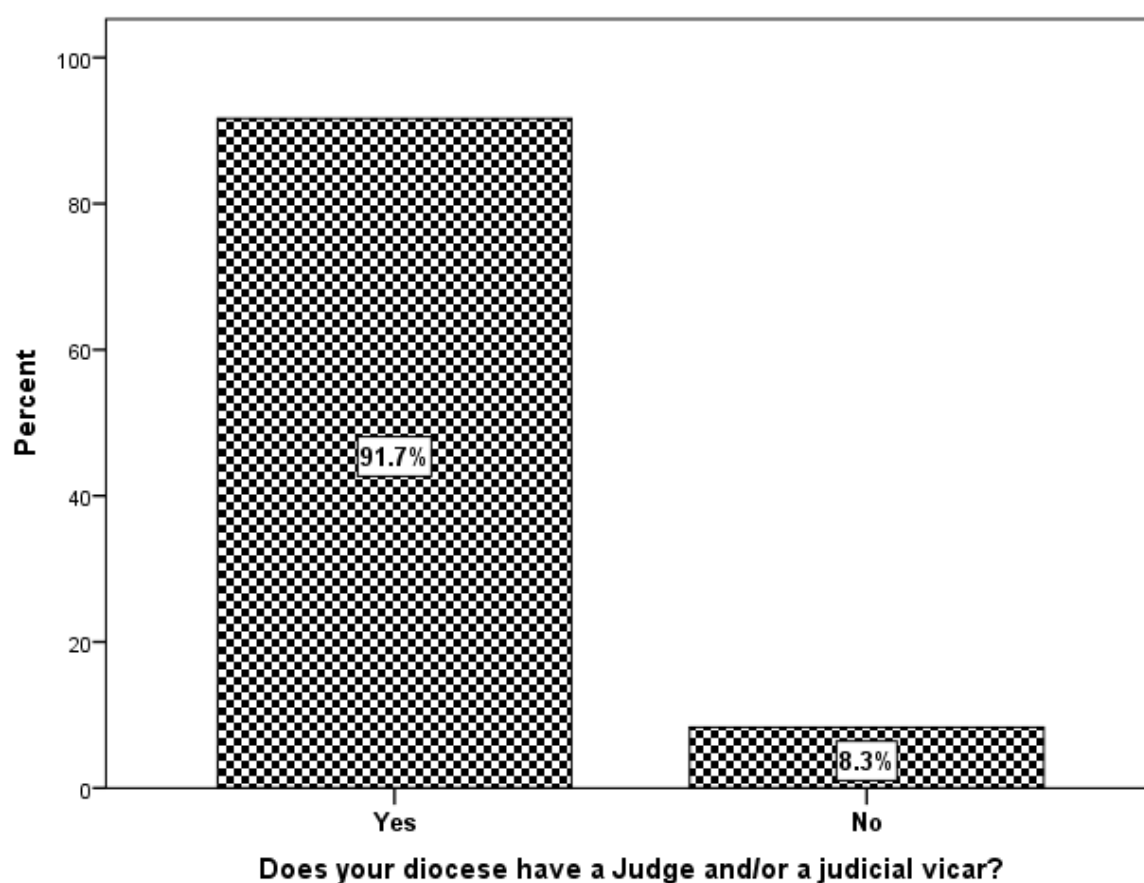


Figure 12: Bar showing the percentage of dioceses with judges and/or judicial vicars.

The role of the judicial vicar cannot be over-emphasised particularly when seen in relation to the responsibilities the judicial vicar is saddled with in the briefer process. This makes the appointment of at least a judicial vicar in each diocese necessary. Therefore, the low percentage of the dioceses without a judicial vicar as seen below is never to be glossed over.

Does your diocese have a Judge and/or a judicial vicar?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	22	91.7	91.7	91.7
	No	2	8.3	8.3	100.0
	Total	24	100.0	100.0	

Figure 13: Table shows data on dioceses with or without a judge or judicial vicar.

iii. Perception of Catholics on Tribunal Matters and Proceedings

Perception of Catholics towards the process of nullity or the marriage tribunal in Nigeria is an important key to the implementation of the *Mitis Iudex*. This is because irrespective of what good the document portends, without the proper understanding of those whom this good is intended, it becomes futile to this extent. This then raises the question whether many Catholics in Nigeria (who have challenges with their marriages) are keen or disposed to approaching the marriage tribunals and to avail themselves of the opportunity presented to them at the tribunals in process of the nullity of marriage.

Admittedly, 18 of the 24 respondents think that many Catholics are disposed to approaching the marriage tribunals in Nigeria. Such positive outlook is seen for instance from respondent 7 who posited that more Catholics are becoming more disposed to approaching the tribunals in their area of domain and attested that a total number of 134 cases were introduced in 2016 and 110 were registered in 2017 at the diocesan tribunal. Similarly, some neighbouring dioceses are also witnessing such large numbers of petitions. Although no past comparable figure was made available, the current figures given simply show a supposedly high turnout in a single diocese, which may not represent the province or illustrate a national outlook.

Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	75.0	75.0	75.0
	No	6	25.0	25.0	100.0
	Total	24	100.0	100.0	

Figure 14: Table shows the data on the disposition of Catholics to approaching the tribunals.

However, some of those who admitted this preparedness of Catholics to approach the tribunals also added that more could become more aware and approach the tribunal with proper education and enlightenment. Respondent 14 for example says that although many approach the tribunal, there are nevertheless many others “who do not know that there is anything called tribunal, especially rural dwellers.”

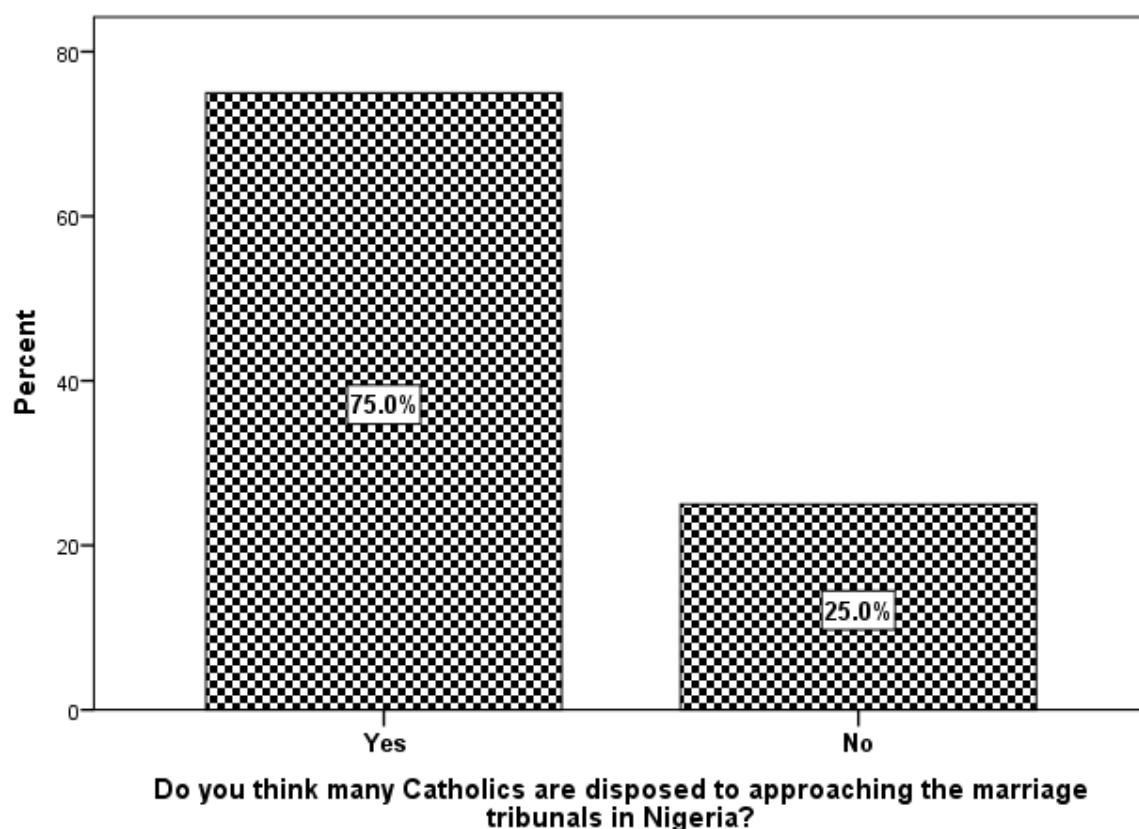


Figure 15: Chart showing how disposed Catholics are to approaching the tribunals in Nigeria.

Similarly, a quarter of the respondents believe that many Catholics are not disposed at all to approach the marriage tribunals in the country. This figure is never to be ignored. When so large a number exist, who are not disposed to approaching the tribunal or the nullity process, then it poses a challenge to the implementation of *Mitis Iudex*.

A closely related issue to whether Catholics are disposed to approaching the process of nullity in Nigeria is the proper or lack of proper understanding of declaration of nullity of marriage. Here, perception is key. What do many people think nullity of marriage means? Does socio-cultural acuity play any role in their understanding? 18 respondents of the 24 respondents, representing three-quarter of the respondents believe that many Catholics equate nullity with divorce and are consequently slow to petition for nullity.

Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	18	75.0	75.0	75.0
	No	6	25.0	25.0	100.0
	Total	24	100.0	100.0	

Figure 16: Shows the data representing the perception of Catholics on nullity and divorce

This understanding may be borne from the socio-cultural-religious perception that marriages once contracted are meant to last forever. Those who therefore find themselves going their separate ways are perceived as weak or even failures in the society. To avoid such indignity, they prefer to suffer in silence. This lack of understanding between the legal nuances regarding nullity and divorce will subsequently impede the proper implementation of the *Mitis Iudex*.

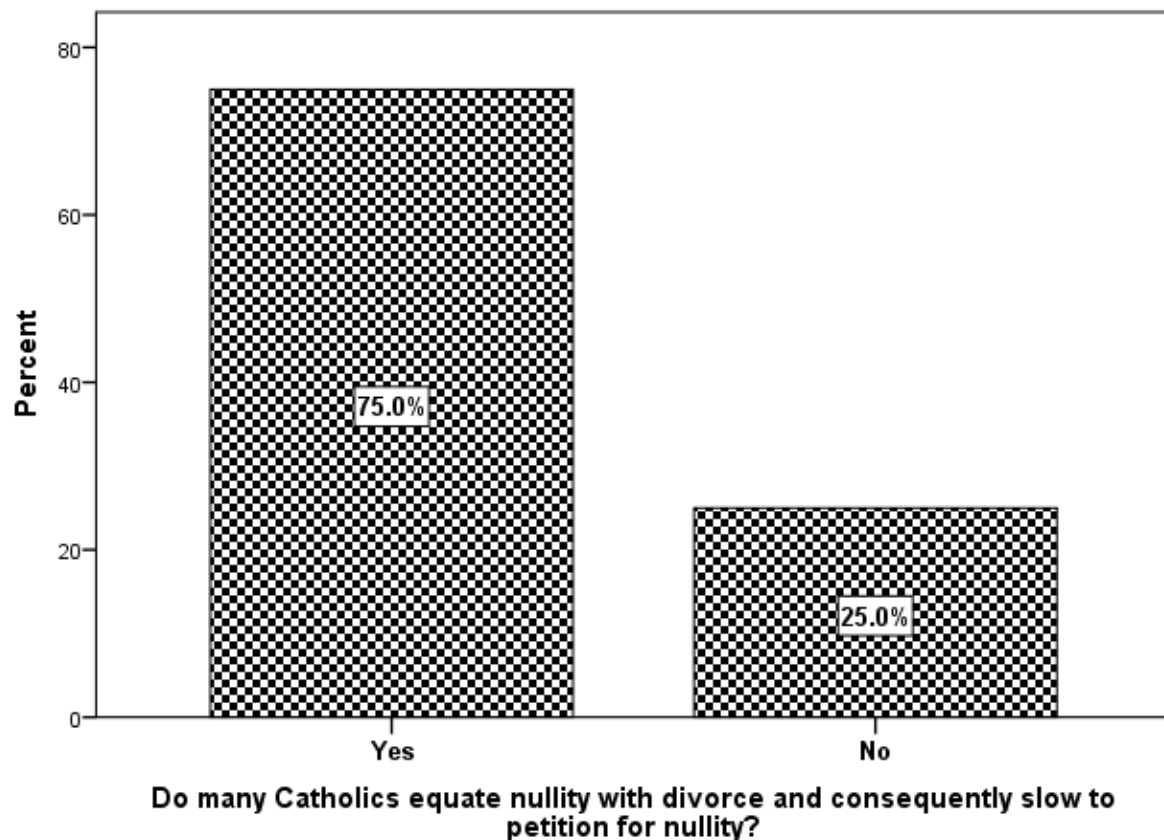


Figure 17: Shows the percentage of the understanding of divorce and nullity

This limitation of inadequate knowledge of the potential petitioners about the process shows also that many Catholics in Nigeria are not conversant with the procedure of marriage nullity at the tribunals. Most respondents think that many Catholics are not conversant with the process of nullity at the marriage tribunals. Only 7 respondents believe that they are becoming more conversant as respondent 10 says that with enlightenment, many are now more conversant. Respondent 21 added: “There are many who are disposed to approaching the tribunal. However, there are so many others who have not the slightest idea what the tribunal does or is about. These are in the majority.” The last opinion indeed sums up the level of understanding of Catholics about divorce and nullity, however, respondent 20 added the geographical twist to the puzzle when he said that those in the rural areas are not as informed as those who live in

the urban locations in Nigeria. There could be some weight to this assertion since varying infrastructures are usually better in the urban areas in comparison to the rural areas.

How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Conversant	7	29.2	29.2	29.2
	Not Conversant	17	70.8	70.8	100.0
	Total	24	100.0	100.0	

Figure 18: Table depicting the data on how conversant Catholics are with the process of nullity

The process of nullity of marriage requires its own peculiar procedures. These technicalities could come with their own form of complications. It is not enough to think of the role of the parish priest or the assistance that could be rendered at the tribunal office. Many Catholics in Nigeria have no idea of what the tribunals are, talk more of being conversant with the process of nullity at the marriage tribunals. Indeed, many do not even know the first step to take. The research findings therefore reveal that many Catholics in Nigeria are not conversant with the process of nullity. 17 respondents representing 70.8 % attest to this situation. This condition poses a challenge to the implementation of the *Mitis Iudex*.

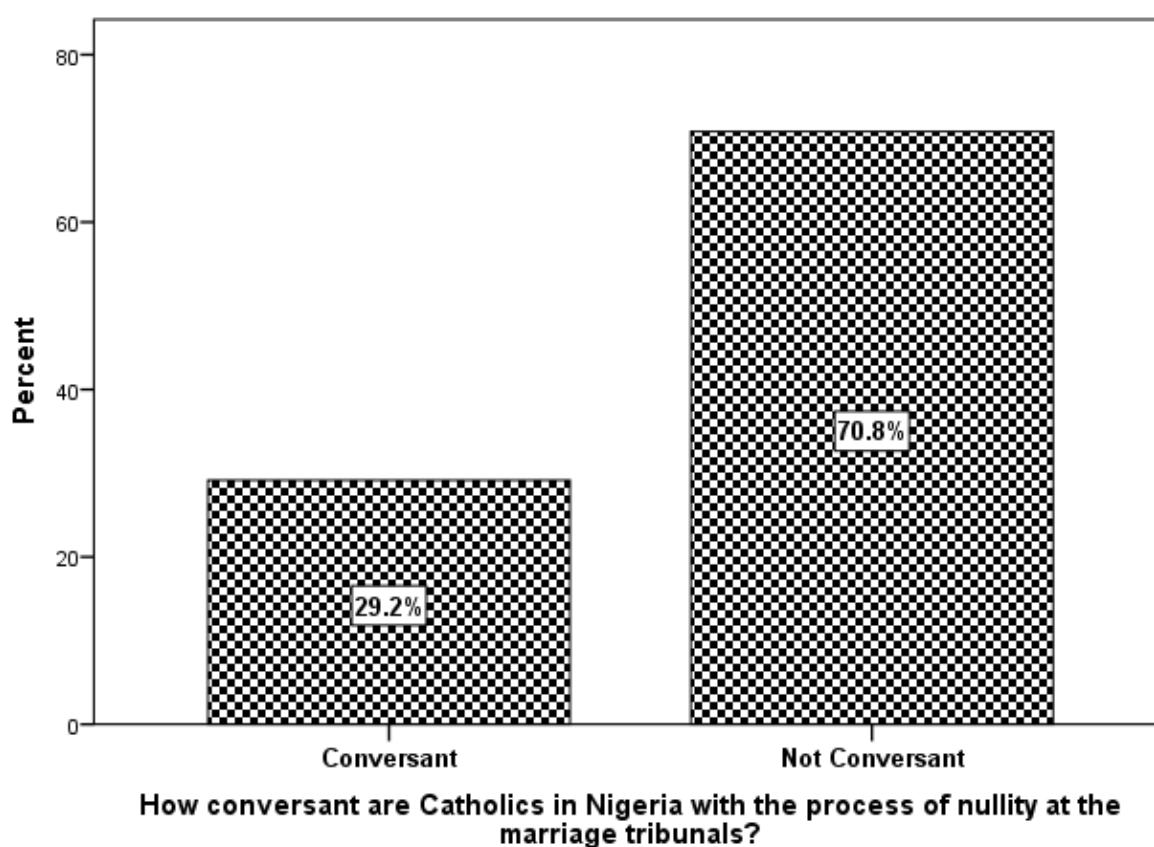


Figure 19: Shows the percentage of how conversant Catholics are about the nullity process

iv. Administrative Cost

There are no uniform administrative charges in Nigeria relating to the services rendered at the varying marriage tribunals. The high cost of administrative charges at the marriage tribunals, which tend to prevent access to the pastoral care of the Church at the tribunals remains a target of *Mitis Iudex*. As enunciated elsewhere, the document seeks to remove any financial hinderance militating against the ability of the petitioners to approach the tribunals seeking justice in matters regarding the validity of their marriages. In a country where the minimum wage of a government worker² is ₦ 18,000 (this is about € 43 as at September 25, 2018) and a country where poverty is rife, an additional high cost of administrative charges will be a challenge to the implementation of this document. The table below presents the varying charges in different dioceses. This shows that with a minimum wage as stated above, workers will have to work for months in some dioceses without other expenses, before they are able to afford the administrative cost or charge.

What is the average administrative charge for cases brought before the marriage tribunal?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0	10	41.7	41.7	41.7
	10000	4	16.7	16.7	58.3
	20000	1	4.2	4.2	62.5
	25000	1	4.2	4.2	66.7
	30000	2	8.3	8.3	75.0
	35000	1	4.2	4.2	79.2
	40000	3	12.5	12.5	91.7
	50000	1	4.2	4.2	95.8
	72000	1	4.2	4.2	100.0
	Total	24	100.0	100.0	

Figure 20: Table showing varying administrative charges at the marriage tribunals

The chart shows an average of ₦ 35,000 (this is about € 83 as at September 25, 2018) charged as administrative fee. This is well over the reach of the average working Catholic in Nigeria. According to the research findings however, since the release of the *Mitis Iudex*, 7 respondents confirmed that administrative charges have been abolished based on the recommendation of *Mitis Iudex*, while 3 others did not state any amount charged. In some instances, where charges

² Private employers are not bound by this government rate. Many self-employed individuals may not even make this amount per month, neither would many pensioners be able to afford it, not to talk of so many unemployed people who have no steady income and barely struggle to make ends meet.

are not completely discarded, the charges are reduced. For instance, respondent 16 talked about a reduction from ₦ 50,000 to ₦ 30,000. This is indeed encouraging. However, there is the necessity for the diocesan bishops and their tribunal personnel to find ways of removing this clog to the full implementation of the document, since the rate of non-affordability of the cost is getting high. Majority as indicated by the findings are still charging and some charging exorbitant fees. Just as asserted by respondent 6, other tribunals could explore the possibility of getting voluntary donations, while offering affordable services to Catholics who approach the tribunals. In similar vein, respondent 7 stated that there is room for clients “to pay in three instalments, without prejudice to people who receive services pro bono, when proven that they are too poor really to make this little contribution for offsetting some procedural expenses.”³

To achieve the full implementation of the *Mitis Iudex* in Nigeria, the administrative charges as indicated above placed side by side with the average earnings of Nigerians cannot be acceptable. The findings as shown in the chart below clearly highlight this challenge to the principle of financial accessibility, a fundamental basis upon which the *Mitis Iudex* is based.

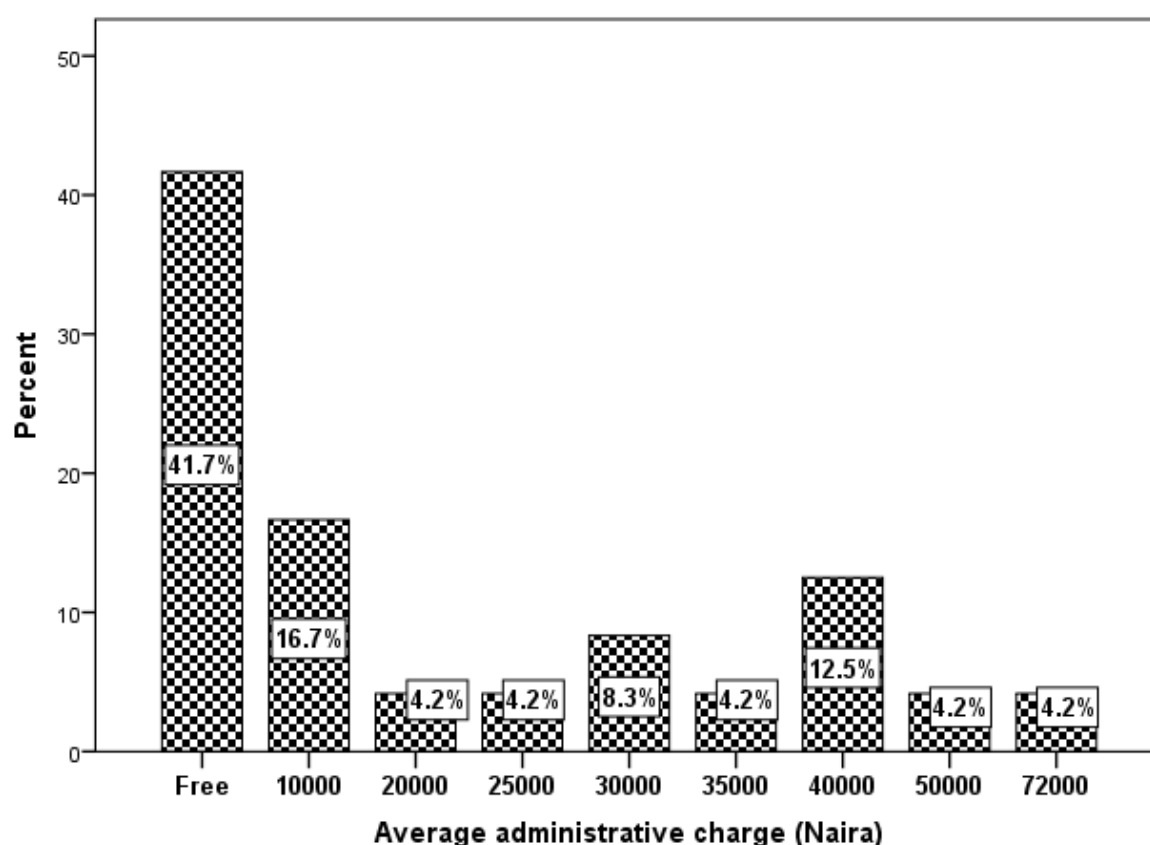


Figure 21: Chart shows the average administrative charges in Nigerian currency

³ The ‘little contribution’ here is ₦ 40,000, which is more than two months’ salaries based on the minimum wage.

b. Perception on the Reform Introduced by *Mitis Iudex*

The *Mitis Iudex* and the reform it introduced have been generally well received in Nigeria. The assessment of the reform based on the findings shows that most respondents are positively disposed towards the reforms introduced by the *Mitis Iudex* and welcomed it. Thus, 21 respondents representing 87.5 % acknowledged that the reforms introduced by the document as a positive development. Many of the respondents hailed the reform, describing the document in different positive expressions such as: good; a welcome development; motivating for tribunal personnel; and helpful. Some others described it as a dream document that will facilitate the functionality of many tribunals; ensure speedy justice; simplify the tribunal process; and solve problems. In addition, some respondents said the *Mitis Iudex* will enhance accessible procedure; encourage innovations; intensify efforts to save souls; increases awareness for functional tribunals; and present a good guide for tribunal personnel. Some find it so welcoming that they describe it as a document long overdue. The Catholic Bishops of Nigeria also added their voices to this positive acceptance of this document in the country.

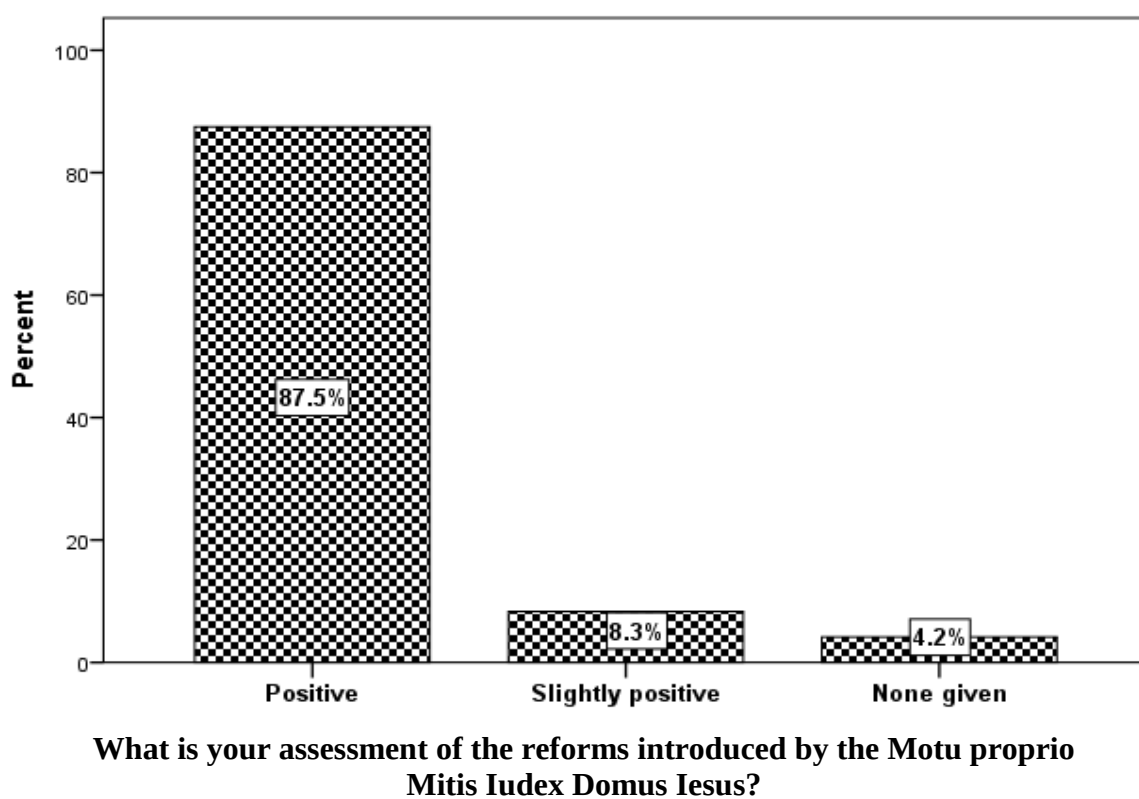


Figure 22: Chart showing how *Mitis Iudex* was rated

As noted in chapter one of this work, the Catholic Bishops Conference of Nigeria (CBCN) commended Pope Francis for the publication of this document and praised the reforms introduced by the *Mitis Iudex*. The words of commendation were expressed in a Communique

issued in September 2015 at the end of their Second Plenary meeting in Port Harcourt, Rivers State. They said: “We commend His Holiness Pope Francis for the *Motu Proprio*, *Mitis Iudex Dominus Iesus* (Jesus Christ, the meek Judge) aimed at accelerating the process for the declaration of the nullity of marriage. We pledge to use this new process for the pastoral and spiritual benefit of our people.”⁴ These words of commendation and pledge are very essential coming from the highest ecclesiastical authority in Nigeria. The warm acceptance of the document by many could be regarded as a positive sign towards the implementation of the document and a change of attitude where some have been lukewarm towards matters of the tribunal in their dioceses.

Indeed, some respondents believe that the document has already added bite to the dispensation of justice through the marriage tribunals. For instance, respondent 4 stated that: “My assessment is that the reforms are positive in the same way that they are motivating to the tribunal staff. The reforms have made many tribunals sit up and awake to the necessity and urgency of the tribunal process of declaration of marriage nullity.” In the same vein, counting the gains already, respondent 7 pointed out: “...I have positive assessment of it because I feel it was done to meet the yearnings of the people and not make them wait for long before justice is served them whether for or against nullity in their respective marriage situations. It aims also at minimizing frustrations by people who are already in the tribunal and encouraging people who are yet to approach the tribunal to do so; knowing as they do that celerity has been introduced in the system.”

What is your assessment of the reforms introduced by the MP <i>Mitis Iudex Dominus Iesus</i> ?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Positive	21	87.5	87.5	87.5
	Slightly positive	2	8.3	8.3	95.8
	None given	1	4.2	4.2	100.0
	Total	24	100.0	100.0	

Figure 23: Table showing the rating of the assessment of the reforms

In spite of the generally positive outlook towards the document, two respondents classified as having a slightly positive assessment in the table shown above believe that the reform is good,

⁴ ‘Nigerian Bishops Commend Pope Francis’. *Vatican Radio*. September 20, 2015 http://www.archivioradiovaticana.va/storico/2015/09/20/nigerian_bishops_commend_pope_francois_/en-1173247 [accessed on September 18, 2018]; see also ‘As Synod Approaches, Nigerian Bishops Speak Up for the Family’. *National Catholic Register*. September 29, 2015. <http://www.ncregister.com/daily-news/as-synod-approaches-nigerian-bishops-speak-up-for-the-family> [accessed on September 15, 2018].

but it needs time for proper comprehension and predicate the long-term benefits of the document on how well it is understood in the future because it is very difficult to implement in mission territories according to respondent 19. Strangely, respondent 13 says there is nothing new. Respondents 1 and 10, raised the issue of understanding, stating that the document requires proper understanding, and if the document is properly understood, it would do the Church a lot of good. Understanding the significance of implementation, respondent 23 pointed out that the tribunals need time to enable them to digest the document for better applicability because implementation in this case is key to its success.

c. Probable Peculiar Challenges to its Implementation

i. Gratis Administrative Service

The question of rendering minimal cost or even free administrative service is at the heart of the reform the *Mitis Iudex* is set to achieve. Its goal of rendering the process very accessible to married persons and removing financial constraint which may impede them from easily approaching the process. Although, the document recognises situations where administrative charges could be necessitated, it is obvious that the intent is to offer *pro bono* service in most cases based on its principle of financial accessibility. In the Nigerian milieu however, the pertinent question will be whether the tribunals could function effectively by rendering gratis services or whether they could survive by rendering minimal cost services to the parties. 13 of 24 respondents representing 54.2 % as seen in the table below, clearly said the tribunals cannot survive with free service, while 11 others said they could. Of these 11 respondents, many predicated their assumption on the proper funding of the tribunals from other sources. If as seen above that the tribunals are not well-funded, then the conclusion could be drawn that the removal of financial constraint as intended by the document may not be feasible in Nigeria.

Can the tribunal function effectively by rendering free or minimal cost services to parties?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	11	45.8	45.8	45.8
	No	13	54.2	54.2	100.0
	Total	24	100.0	100.0	

Figure 24: Table showing how gratis service could affect the effectiveness of the tribunals

Many respondents therefore posited that on the condition that there is subsidy or support from the diocese to cater for the effective running of the tribunal and the remuneration of the personnel, it will not affect the effectiveness. Conversely, respondent 7 however suggested

that: “There is need for the tribunal to have a dependable source of money to contain running costs and hence entirely rendering free service would impact productivity.” Respondent 9 raised the issue of the value attached to free things, cautioning that: “It will negatively affect the functionality of the tribunals because many people will not value it since it is free of charge.” Of the 45 % represented in the chart below who believe that the tribunals could function effectively by rendering free or minimal cost services to petitioners, many indeed predicated their convictions only on the term that support funds are given to the tribunals by the bishops or the dioceses. Else, they think that they will function with great difficulties without regular source of income. This is clear that the tribunals cannot be managed without funds and they derive their running costs from such administrative charges since many dioceses or bishops cannot afford to support the tribunals. In this regard, as a matter of emphasis, funding remains a vital challenge to the implementation of the document since they are poorly funded.

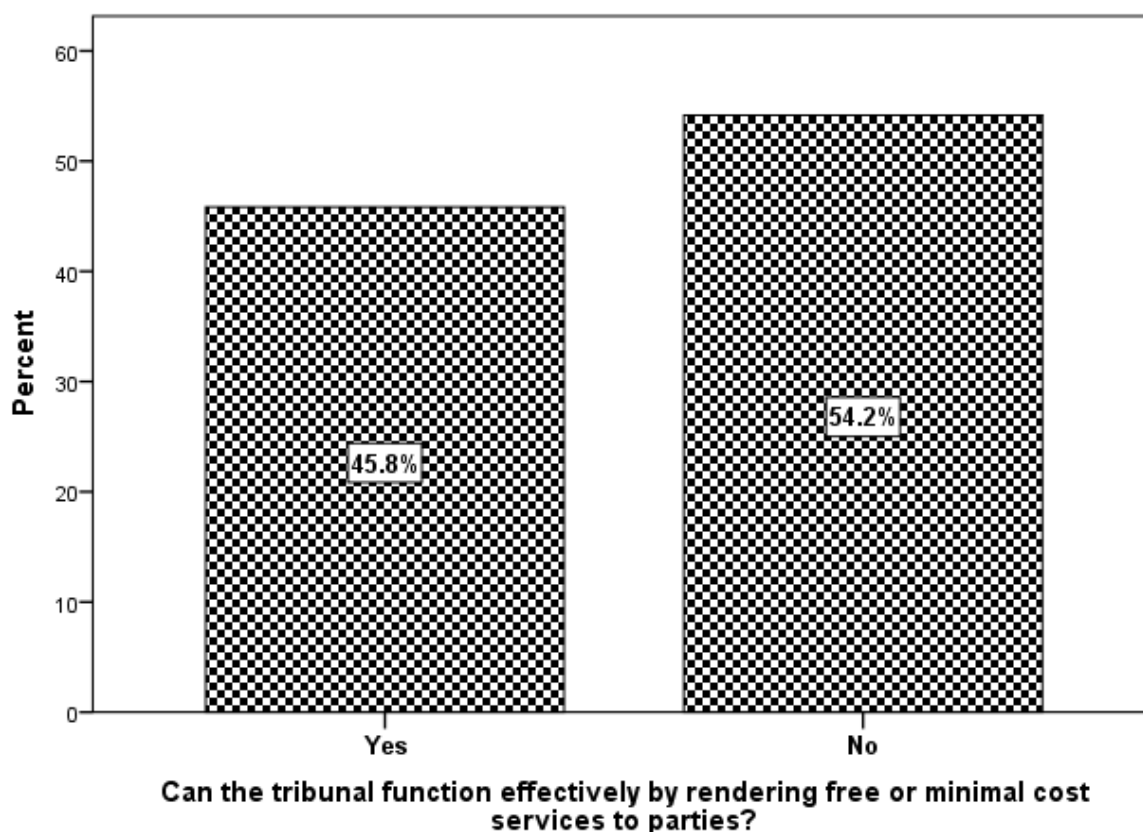


Figure 25: Chart showing if the tribunals could function effectively with gratis service

ii. Proper Funding

The issue of funding the marriage tribunals has been treated above. However, this was limited to the dioceses of the respondents. The findings below consequently relate to the national

perception on funding. Here, the findings on funding become more obvious that the tribunals are majorly not well-funded. 19 of the 24 respondents representing a whopping 79.2 % assert that the tribunals are not well-funded in Nigeria. This, as noted above remains a challenge to the implementation of the *Mitis Iudex*.

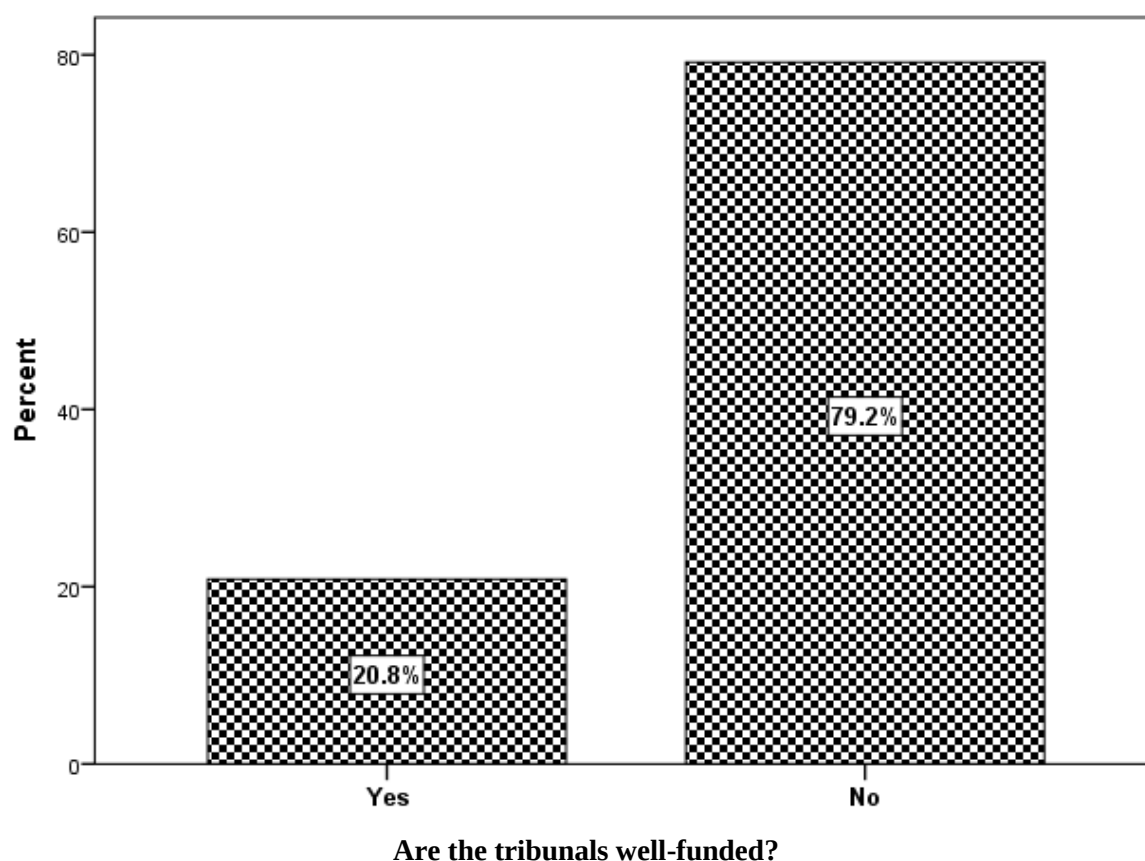


Figure 26: Showing Chart on how well the tribunals in Nigeria are well-funded

Respondent 9 surmises the issue of funding of the tribunals: “Not all the tribunals are well funded. Some are not even funded at all. They run on income they generate through charges.” The importance of funding in an organisation in order to keep its day-to-day organisational and procedural activities running must be emphasised. The tribunals can’t be different. Without proper, constant and stable funding, fulfilling their mandates will not be achievable.

Are the tribunals well-funded?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	5	20.8	20.8	20.8
	No	19	79.2	79.2	100.0
	Total	24	100.0	100.0	

Figure 27: Table showing the how well the tribunals in Nigeria are funded.

iii. Removal of Automatic Appeal

The removal of the automatic appeal by *Mitis Iudex* is meant to improve the speed of the process. This removal may be well intended but this has the potential of miscarriage of justice because wherever abuse of legal processes takes place, it is tantamount to a miscarriage of justice. The tendency of carefree attitude from some practitioners cannot be ruled out. The first instance may not feel obliged to thoroughly adjudicate the case in accordance with the law since the weight or the anticipation of an appeal could upturn its judgement. Respondent 6 puts it succinctly: “From a not too positive perspective, the elimination of the ex-officio appeal may lead to not being thorough on the part of the first instance officials and promotion of a ‘Catholic Divorce’ under the canopy of a declaration of nullity.” Therefore, it is not enough just to dispense cases brought before the tribunals, but how well are these cases judged. The Chart below shows an overwhelming belief based on the respondents’ understanding of the mentality and attitude surrounding them that the removal of the automatic appeal may constitute an impediment to the dispensation of justice. Respondent 4 concluded that the removal could lead to abuse because some judges may not render thorough judgements knowing that sentences may not go any further for re-examination.

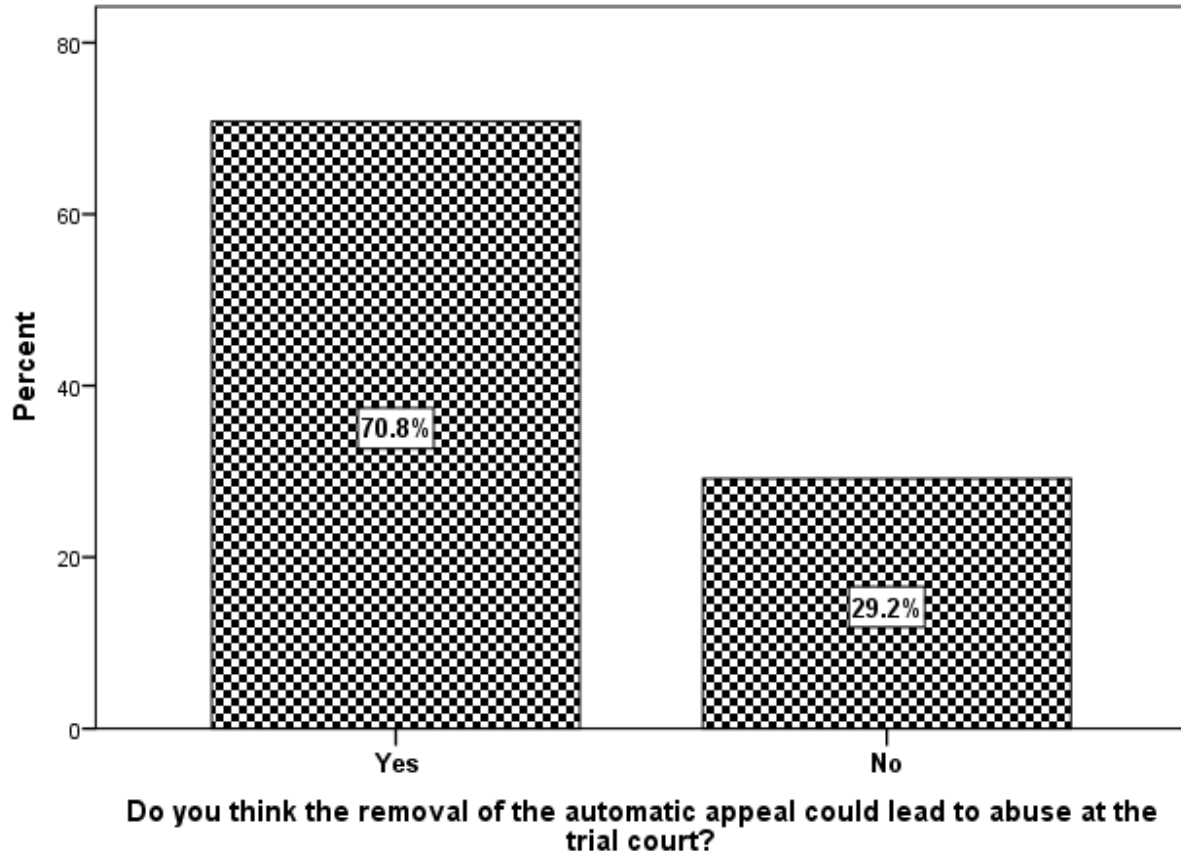


Figure 28: Chart showing the perception on the removal of the automatic appeal

Indeed, as high as 17 respondents, representing 70.8 % believe the removal of the automatic appeal could lead to abuse at the court of first instance. Appeals are put in place to test judgements of the lower court, when such judgements comply with legal procedures and rules, they are upheld. Else, such judgements are overturned. The removal may have been introduced with the best of intentions but the removal of such checks and balances could be a clog in the wheel of the process of justice. Alluding to this, respondent 2 said: “Appeals serve as checks and balances and if removed, abuses could set in. We can only hope that the tribunal personnel will perform their duties in accordance with its ethics.” 7 of the 24 respondents who think otherwise appear too little to allay the fears on this probable judicial rascality, which may discredit the process.

Do you think the removal of the automatic appeal could lead to abuse at the trial court?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	17	70.8	70.8	70.8
	No	7	29.2	29.2	100.0
	Total	24	100.0	100.0	

Figure 29: Table shows the views of respondents on the removal of automatic appeal

iv. Possibility of Laxity in Granting Nullity or Lack of Willingness to grant Nullity

Closely related to the dangers associated with the removal of automatic appeal is the laxity in granting nullity. On the other hand, there could be also the extreme case of the lack of willingness to grant nullity. The former deals more with the situation whereby nullity could be granted indiscriminately without thoroughness of process either in the name of speedy process or accessibility of the process. The latter however, deals with a situation where the process of marriage nullity is treated within the purview of pastoral care but a stringent move to avoid getting divorce through the back door or granting separation at all cost. To this end, the findings found out that 13 of the 24 respondents agree that the possibility of laxity in granting nullity on the one hand and the lack of willingness to grant nullity for fear of not granting divorce on the other hand exist.

Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	13	54.2	54.2	54.2
	No	11	45.8	45.8	100.0
	Total	24	100.0	100.0	

Figure 30: Table showing the possibility of laxity in granting or lack of willingness to grant nullity

The affirmation of the majority shows that the fear is real and could put a clog in the wheel of the implementation of the document. Should nullity be granted at will, it negates the objectives of the *Mitis Iudex* and should nullity not be granted for fear of granting divorce through the back door, it does not serve the purpose of the document. The thinking of the 54.2 % respondents as shown in the chart below, representing most of the respondents demonstrates that this could constitute a challenge to the implementation of the document, since the *Mitis Iudex* seeks that the process be dispensed in fairness.

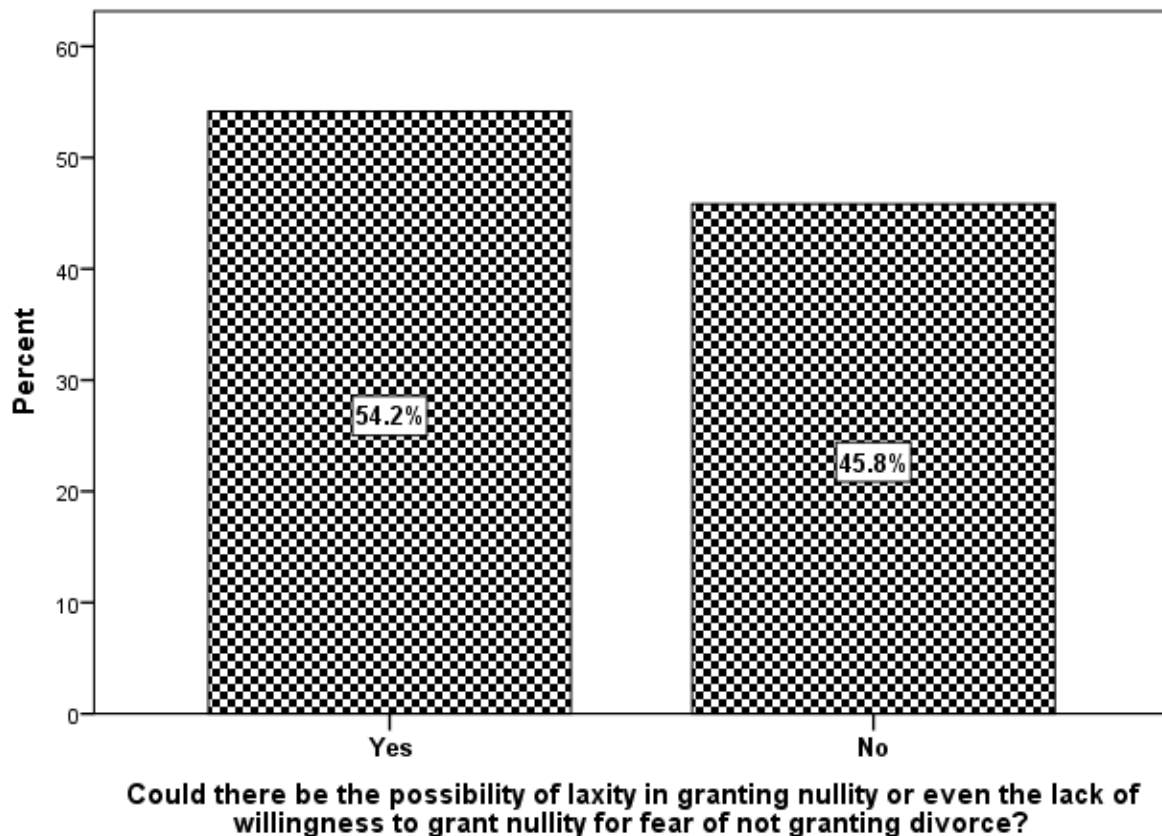


Figure 31: Chart showing the roles laxity and unwillingness to grant nullity could play in the process

v. Arbitrariness or Favouritism

No human institution is perfect. Imperfections such as favouritism on the one hand and arbitrariness on the other hand could be found wherever human beings exist and relate. The tendency to grant merited or unmerited favours in some instances abound. There could be the situation too, where someone will seek for favour or another lobbying other people, when joint action is needed, in order to actualise such intentions. Contrarywise, there could be some emotional tendency to dislike another and such sentiments may becloud one's sense of judgement. Invariable, where either of the two takes place, it will eventually affect the quality

of judgment and that taints the moral certainty in reaching the judgement. Such sentimental basis for judgement affects voluntariness and objectivity. In this regard, the findings in the chart below show that 13 respondents representing 54.2 % did not believe there is the possibility or the existence of such cases. But 11 respondents representing 45.8 % believe that such cases exist, and this percentage is significant enough to elicit concern about this challenge to the implementation of the document in Nigeria.



Figure 32: Chart showing the possibility of favouritism or arbitrariness from tribunal staff

Although a good percentage, indeed the majority of the respondents representing 54.2 % seem to believe that there are no cases of such or that such cases are not likely to happen, the testimony of 45.8 %, representing 11 respondents is high enough to raise eyebrows. When they do occur, such practices would be antithetical to the cause of justice dispensation.

Are there possible cases of favouritism or arbitrariness from the tribunal staff?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	11	45.8	45.8	45.8
	No	13	54.2	54.2	100.0
	Total	24	100.0	100.0	

Figure 33: Table showing figures on possible cases of arbitrariness or favouritism

Could this be found only with the tribunal staff? The question arises too whether the diocesan bishops are insulated from such arbitrariness or favouritism when exercising their judicial powers. Could the diocesan bishop be impartial in a serious or bitterly contentious matter and his neutrality or his office as shepherd of all the faithful in his diocese not be jeopardised? Recourse to Article 38 § 2 of *Dignitas connubii* would seem helpful to resolve this challenge by providing that unless special causes demand it, the diocesan bishop should not exercise his judicial powers personally but through a judicial vicar. This could be the case where a conflict of interest occurs between the diocesan bishop's interest and the dictates of legislative texts.

vi. Feasibility of Estranged Couples Cooperating in the Briefer Process

To qualify for the briefer process, the *sine qua non* for couples is to cooperate in the process of instituting the petition. Sometimes bitter separation could occasion a grave animosity or bad blood between couples, which will make cooperation between estranged couples unfeasible. Where it becomes unrealistic to have the partners cooperate in this regard, utilising the briefer process that ensures speedy despatch of the petition will be impracticable, thereby reverting the petition for nullity of marriage to the normal process. The goal of a speedy resolution through the briefer process will therefore be jeopardised. Although 8 respondents said it is feasible to have estranged couples to cooperate and participate in the briefer process, 16 others either said it was not feasible or slightly feasible but predicated on some conditions.

How feasible is it for estranged couples to cooperate and participate in the briefer process?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Feasible	8	33.3	33.3	33.3
	Not Feasible	6	25.0	25.0	58.3
	Slightly Feasible	10	41.7	41.7	100.0
	Total	24	100.0	100.0	

Figure 34: Table showing how feasible it is for estranged couples to cooperate in the process

This is undoubtedly a serious challenge where the condition precedent to qualify for the briefer process will not be met by some. This is so because many of the marriage petitions that find their ways to the tribunals in the country affect marriages, where the partners separated in bitter and acrimonious ways, and for this reason probably remain uncommunicative and still harbour ill feelings towards each other. Where couples still live together and merely present a petition to ascertain the state of the marriages, such a challenge will not be encountered. Respondent 3 concluded that the peculiar challenges are in respect of the use of the briefer process as some respondents are usually not willing to cooperate, particularly when it involves a mixed

marriage. Majority of the petitions before the tribunals would therefore not be admissible for the use of the briefer process. Despite this notable challenge, we must not lose sight of Article 11 § 2 of the Procedural Rules of *Mitis Iudex*,⁵ which also envisaged such the situation and proffered a remedy, stating that where there is no manifest objection to the petition, silence in this case could be deemed favourable or a positive response to set the process in motion. One then wonders if majority of the cases would be treated with such presumptions. A worst scenario is where the other party outrightly rejects and refuses to cooperate leading the petition to revert to the normal process, thereby negating the principle of brevity of the *Mitis Iudex*.

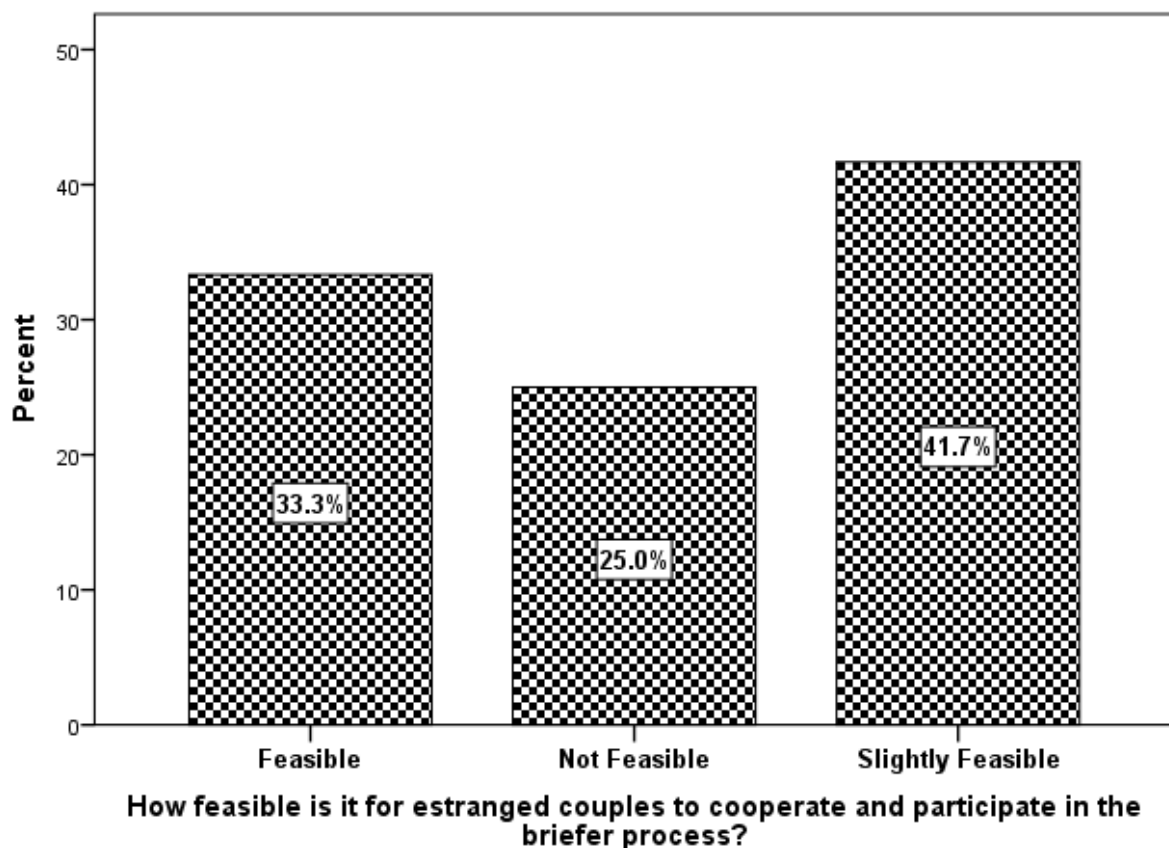


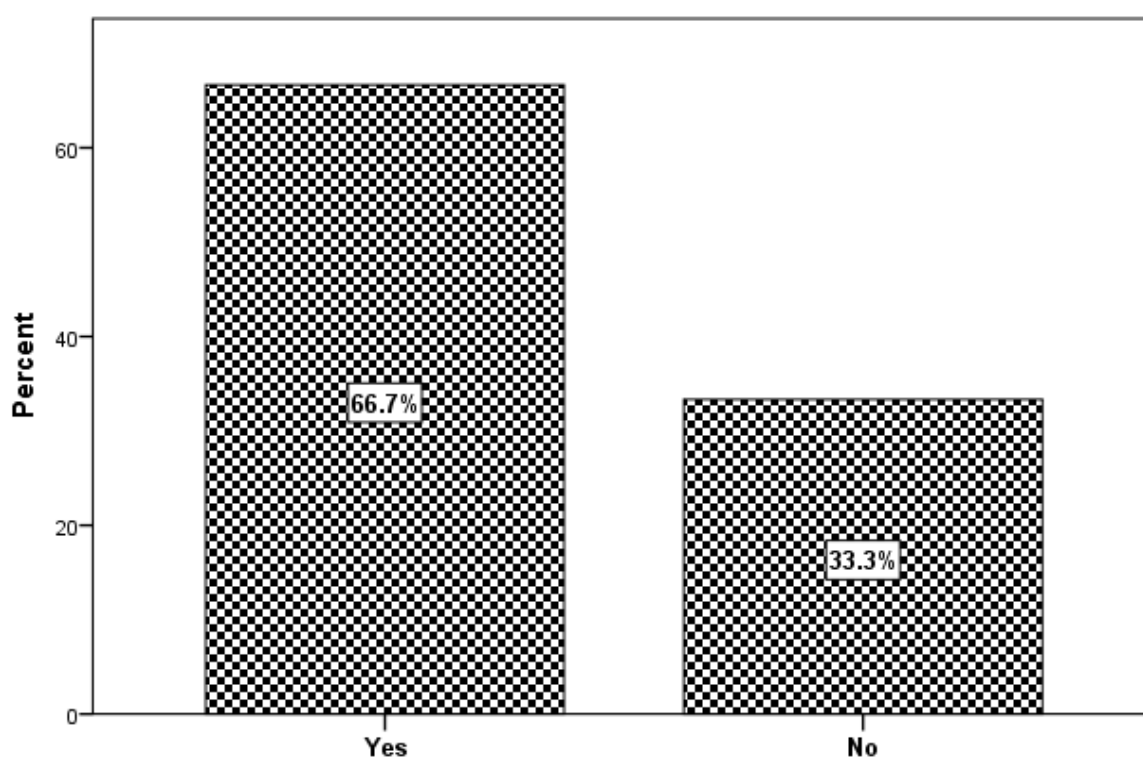
Figure 35: Chart showing the feasibility of estranged couples cooperating together in the briefer process

vii. Busy Schedule of the Diocesan Bishop

Mitis Iudex saddles the diocesan bishop with the responsibility of being a judge at the briefer process. The office of the bishop however has its attendant busy schedules that offers the diocesan bishop limited time to take care of many pastoral and administrative needs. Although bishops take the title of Doctor of Divinity at their consecration, this does not mean that many

⁵ “A respondent who remits himself or herself to the justice of the tribunal, or, when properly cited, once more, makes no response, is deemed not to object to the petition.”

of them understand the nuances of the canonical requirements. Therefore, even when the judicial vicars must have done the ground work and expect the bishop to make his judgement based on moral certainty, cognitive inadequacies could still pose a challenge in unison with the challenge of busy schedule. John Beal realises this when he highlighted this challenge by opining that “diocesan bishops often lack the time and expertise to deal with the messiness of marriage cases effectively and expeditiously.”⁶ Therefore, apart from the challenge of having much to do, there is also the challenge of knowing what to do. In the findings peculiar to Nigeria, 16 respondents out of 24, affirm that the heavy schedule of the diocesan bishop will affect his role in the briefer process, while the remaining 8 respondents believe it will not. Where it is established that the role of the diocesan bishop is compromised in relation to the briefer process, full implementation of the document is rendered improbable.



Do you think the heavy schedule of the diocesan bishop will affect his role in the briefer process?

Figure 36: Chart shows whether the schedule of the diocesan bishop will affect his role as judge in the briefer process

The administrative and sometimes the pastoral responsibilities of the diocesan bishop could constitute a challenge in this regard to his judicial duty as a judge. Although the local bishop can rely on the expertise of the tribunal personnel and then ratify their decision, getting some

⁶ Beal, John. 'Mitis Iudex Canons 1671-1682, 1688-1691: A Commentary'. *The Jurist* 75, (2015) 467-538, p. 477.

to ratify could still constitute a herculean task. That accounts for why an overwhelming majority of the respondents as seen below represented by 16 of the 24 respondents believed that the heavy schedule of the diocesan bishop will affect his role in the briefer process. Ordinarily, such a duty should be discharged and seen as one of the pastoral priorities to the married people who seek clear definition for the state of their marriages. It will be counter-productive to have a process put in place to dispense marriage cases quickly and the diocesan bishop find little time to attend to it. The principle of *planned neglect*,⁷ which was often articulated by the late Archbishop G. G. Ganaka should be applicable here.

Do you think the heavy schedule of the diocesan bishop will affect his role in the briefer process?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	16	66.7	66.7	66.7
	No	8	33.3	33.3	100.0
	Total	24	100.0	100.0	

Figure 37: Table showing whether the busy schedules of diocesan bishops could affect their roles as judges in the briefer process.

viii. Paucity and dearth of Canon Lawyers or Experts

The process of the nullity of marriage in Nigeria cannot function effectively without adequate canonical experts. As seen in previous chapters, some positions at the marriage tribunals require canonical expertise till licentiate or doctoral level of study in canon law. Some dioceses cannot boast of any marriage tribunal or a functional marriage tribunal because of the paucity of canonical experts. Without this expertise, this essential pastoral care of the church cannot be dispensed to married persons. Although 17 respondents attest to having adequate canonical experts to assist the bishop in his role as a sole judge with 7 respondents stating otherwise. Some of the dioceses in Nigeria do not have adequate canonical experts to set up their own marriage tribunals or make the ones established to function effectively.

Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Yes	17	70.8	70.8	70.8
	No	7	29.2	29.2	100.0
	Total	24	100.0	100.0	

Figure 38: Table showing dioceses with adequate canonical experts to assist the diocesan bishop in his role as a sole judge.

⁷ The late Archbishop Gabriel Gonsuam Ganaka repeatedly articulated this view never to postpone issues that need to be done. Neglecting some things for others more important at a given time will ultimately achieve success.

This appears to negate the notion that many dioceses lack adequate canonical experts. However, this question treats a local concern on the availability of experts to support the diocesan bishop in the discharge of his duty. Although a high number have expressed their adequacy in this regard, 29.2 % as seen below cannot be overlooked. In such dioceses as these, a local bishop will have serious challenges where he lacks personal knowledge of canonical procedures as well as lacking canonical experts to help him to exercise his duties as a judge.

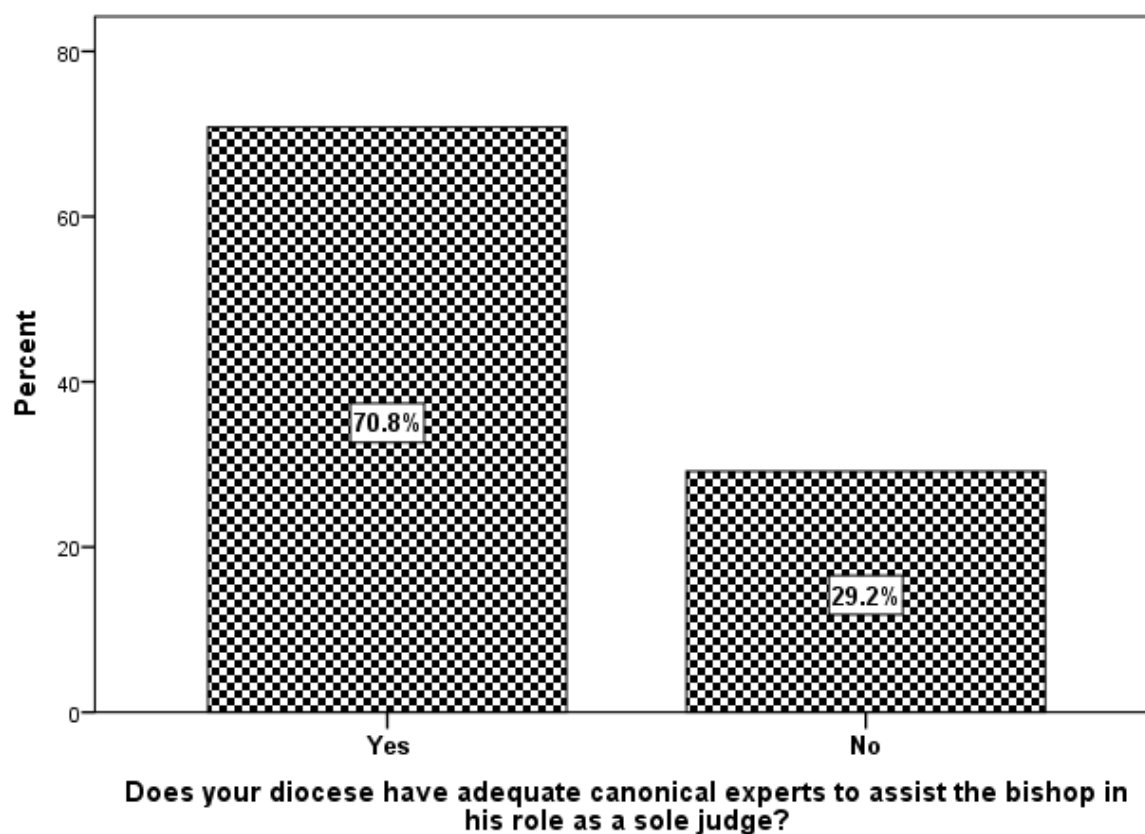


Figure 39: Chart showing dioceses with or without adequate canonical experts to assist the bishop in his role as a sole judge.

ix. Inter-Diocesan Cooperation

The *Mitis Iudex* permits inter-diocesan cooperation (which was already in practice) particularly where a diocese lacks the wherewithal to establish and manage a marriage tribunal. This is very essential to the implementation of the document because such a cooperation will bring the ministry of the tribunal and its services closer to the people they are intended for. This area of cooperation appears to enjoy a high rate of success in Nigeria. The findings as noted in the table below shows that 20 of 24 respondents asserted that inter-diocesan cooperation on tribunal matters is feasible. Two further respondents also confirm that such a cooperation is slightly feasible. This is a positive outlook and remains a good prospect for the successful

implementation of the *Mitis Iudex* in Nigeria, where the dioceses within the different provinces are willing to cooperate in order to effectively discharge their roles in the tribunal ministry. The slight concern affecting the few as reflected in the chart below, who are unable to find the useful cooperation within their own province should not be glossed over as they remain vital components of the whole. As part of the whole, what affects them should be of concern to all, because it will ultimately affect many married persons in their respective dioceses and to the extent as it affects these dioceses, the challenge in this regard to the implementation of the *Mitis Iudex* in their own dioceses exists and should remain an issue for genuine concern.

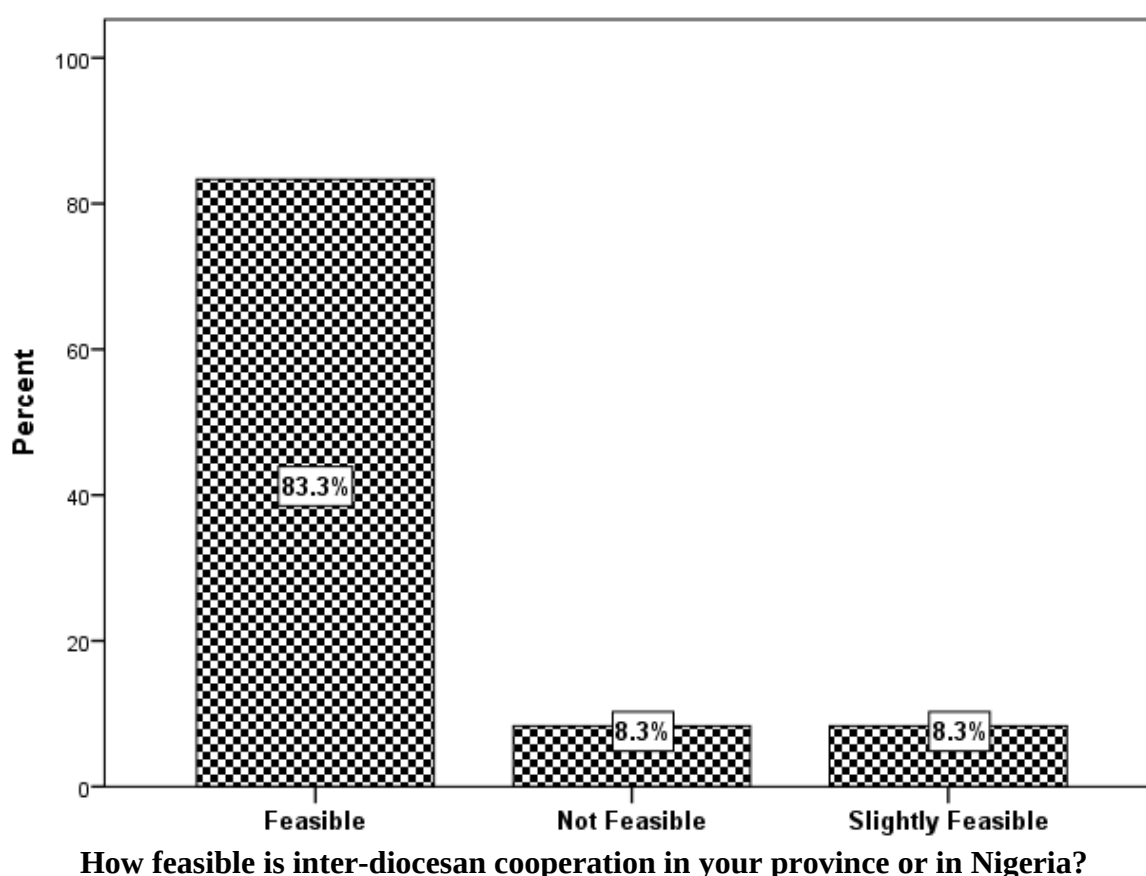


Figure 40: Chart showing the feasibility of inter-diocesan cooperation in the provinces

Inter-diocesan cooperation has been witnessed at different levels with few dioceses coming together to collaborate on issues of marriage tribunals; dioceses working together at the provincial or at the national levels. This cooperation helps to support weaker structures and even assist each other in cases requiring rogation according to respondent 7. This liaison between dioceses makes pooling human and material resources together feasible. By so doing, it is advantageous for staff, who are able to compare notes and gain more skills in the process. The forum helps to disseminate information and in area of instruction of cases. This experience is no doubt encouraging and rewarding and the table below shows that many dioceses are

patronising it. The already established inter-diocesan and provincial tribunals, which signify this cooperation may not have all been working smoothly but they remain helpful to those who patronise it.

How feasible is Inter Diocesan cooperation in your province or in Nigeria?					
		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Feasible	20	83.3	83.3	83.3
	Not Feasible	2	8.3	8.3	91.7
	Slightly Feasible	2	8.3	8.3	100.0
	Total	24	100.0	100.0	

Figure 41: Table showing the feasibility of inter-diocesan cooperation

d. Way Forward and the Role of the Canon Law Society of Nigeria (CLSN)

The successful implementation of the *Mitis Iudex* in Nigeria is predicated on overcoming the challenges highlighted above, essentially in the ecclesiastical circumscriptions where such challenges abound. The diocesan bishops have major roles to play in conjunction with those appointed to head the tribunals in varying dioceses to ensure the functionality of the tribunals in their domain.

To this end, marriage tribunals should be properly funded. When they are properly funded, tribunal personnel will devote time to tribunal matters and be more dedicated to executing their duties assiduously. Similarly, the administrative charges would be reduced if not eliminated particularly for indigent Catholics. Qualified personnel should be engaged for effective functionality and the training and re-training of these tribunal staff must be taken seriously. In unison with proper funding, the remuneration of the tribunal personnel should improve to cater for their needs and ensure job satisfaction and encourage staff retention and prevent staff exodus. More experts should be trained particularly in dioceses where they are lacking so as to establish their own tribunals in conjunction with other dioceses and dispense this essential pastoral care to married persons.

In similar vein, proper education of the lay faithful using different productive means and procedures available is essential, and this will ultimately enable them to understand what the marriage tribunals stand for and what nullity and the declaration of nullity of marriage mean. Since the removal of the automatic appeal has come to stay for now, those adjudicating on matters of nullity at the tribunals must do so in fear of God and in good conscience. Estranged couples should be encouraged for their own benefit to cooperate in order to be qualified to

approach the briefer process. Understandably, the diocesan bishops have busy schedules, matters of the tribunal should be seen as one of the priorities before them, thereby utilising the principle of planned neglect to give proper attention as judges in their respective dioceses to tribunal issues in their domain.

At the national level, the Department of Pastoral Affairs of the Catholic Secretariat of Nigeria (CSN), through its Catholic Bishops' Conference of Nigeria (CBCN) Committee on Canon Law, which represents the Nigerian bishops on canonical matters should continue to work in conjunction with the Canon Law Society of Nigeria (CLSN) to seek ways to make the implementation of this important document a success in the country. The Department of Pastoral Affairs as the intermediary between the Local Ordinaries and the tribunal personnel must provide technical assistance to the Local Ordinaries in Nigeria both as a conference and individual bishops in their respective dioceses to see to the implementation of the document, so as to discharge their duties as sole judges properly and understand "the canonical implication and merits of their sentences."⁸ In this capacity also, the department must continue to play a great role in educating and informing the tribunal personnel, priests, religious and the laity in Nigeria.⁹

Cooperating with necessary stakeholders, the Canon Law Society of Nigeria should intensify its effort to periodically organise professional seminars, workshops, paper presentations and symposia for her members and in this regard, more enlightenment or awareness on issues pertaining to the reforms in *Mitis Iudex*. Such educative exercises will help tribunal personnel in particular to keep themselves abreast with new developments and equip themselves with requisite knowledge to assist them to discharge their duties competently, diligently and devotedly. In addition, such conferences will help the society to come up with antidotes against peculiar challenges that may hamper the successful implementation of the document in Nigeria.

The production of the handbook on tribunal ministry in Nigeria must be given good publicity and wide circulation so as to help those in need of the proper education by availing them the needed clarifications and guidelines contained therein. A review of the publication could also be considered in view of coming out with a better-looking typesetting, better print quality and consequently publish an appropriate qualitative production worthy of its designation.

⁸ This technical support could include "periodic seminars for tribunal officials and sometimes, for the bishops" since it will be very helpful according to respondent 6. See also Respondent 22.

⁹ Respondent 17 emphasised the importance of beginning the awareness programme with the Local Ordinaries and then extend same to the laity.

The Canon Law Society of Nigeria must also go beyond organising workshops, enlightenment and awareness seminars but go further to make follow up on the level of implementations by various tribunals in the country “by investigating and getting reports concerning the implementation and then encouraging and motivating the tribunals to properly implement the reform.”¹⁰ Members should be encouraged to compare notes and exchange judgement to help other tribunals handling similar cases. This could ultimately ensure uniformity of practice in instances of core issues since every case is expected to be treated on its own right.

IV. CONCLUSION

The findings of the research revealed the dearth of tribunals in Nigeria, and where they exist they are sometimes ill-equipped, lack adequate personnel or lack qualified personnel. They are encumbered with paucity of fund and ill-informed laity. Even the probable lack of proper understanding of the document itself has been identified. These and many other challenges addressed above constitute the challenges faced by the marriage tribunals in their responsibility to implement the document *Mitis Iudex*. As noted above, all hands must be on deck to remove the clog in the wheel of the implementation of this document meant to help married persons ascertain the state of their marriages, find justice and get speedy access to judgement in the process of marriage nullity at the tribunals in Nigeria.

¹⁰ Respondent 4.

CONCLUSION AND RECOMMENDATIONS

A modest attempt to evaluate the *Mitis Iudex Dominus Iesus* vis-à-vis its implementation in Nigeria, and an enquiry into probable challenges the implementation of the papal document could encounter in Nigeria have been carried out in this research. Efforts were also made to look at the state of marriage tribunal in Nigeria and some areas of its operations. To achieve the aim of this research, we painstakingly gathered data through questionnaires and made some findings which were articulated in the previous chapter, upon which relevant conclusions are being made. Nigeria has peculiar challenges which have been highlighted.

Sequel to the publication of *Mitis Iudex* and after it came into effect, the *motu proprio* could be said to have brought a new life in certain areas as some evidence show that the initial apathy towards the marriage tribunal is making a converse turn bringing more petitioners to the tribunals. For instance, in a research done in the United States of America by the *National Catholic Reporter*¹ comparing the numbers of petitioners in 2015 and 2016, the figures show some remarkable improvement. This came with even a report of about 70 % increment in some places. Some reasons cited in this report include but not limited to the Pope's appeal for the elimination of administrative fees and the indication that the streamline process offered by *Mitis Iudex* will take shorter time.

This change of culture introduced by the document will take time for essential personages who are saddled with its implementation to adapt to the new realities and do things rightly in accordance with the new norms. Admittedly, the document has come under certain criticisms, however, the document has been generally accepted and welcomed irrespective of such criticisms expressed in some quarters.

It must be noted that in the end, the changes brought in by *Mitis Iudex* are procedural changes and not radical changes in the teachings of the church on jurisprudence for marriage cases or substantive canonical legislation. *Mitis Iudex* did not really introduce for instance new grounds for declaring a marriage null as the grounds for such determination remain basically the same and every case must be determined in the light of established canonical grounds. It is evident that the changes introduced by the reform did not intend to make obtaining a declaration of nullity easier as indicated by some criticisms. This laxity is certainly not the purpose of the document as enunciated by the Holy Father himself in the Preface of the *motu proprio*. That

¹ See Morris-Young, Dan, 'Annulment Reform Seems to Cultivate Change of Culture' Jun. 5, 2017. <https://www.ncronline.org/news/people/annulment-reform-seems-cultivate-change-culture> [accessed on July 20, 2017].

the judge or the diocesan bishop as a judge must reach moral certainty in arriving at an affirmative decision shows that the standard remains high in accordance with Can. 1608. Ultimately, the process of seeking nullity of marriage could bring about a state of wholeness to the parties and accentuate their healing process after an emotionally challenging period.

As seen in the preceding chapter, the research found out that the *motu proprio Mitis Iudex Dominus Iesus* will generally be of great benefit to the church in Nigeria. It is germane to reiterate the specific areas in this conclusion. The briefer process (*processus brevior*) and the role of the diocesan bishop as a judge will both be a positive development in Nigeria, when the process is fully and properly implemented. The role of the bishop as the principal judge in his diocese, assisted by those he chooses to, portrays him as a shepherd of the faithful. He must discharge this massive responsibility as a pastor to the faithful.

Another area of positive development in the implementation of the *Mitis Iudex* in Nigeria is the sufficiency of the single affirmative judgement at the first instance. This single executive sentence in favour of nullity will help to achieve the objective of the reform in Nigeria, since many petitioners who have requested to know the state of their marriages will not necessarily wait for more time to know their fate. The faster speed or the expedited process remains a desired progress. Closely related to this is the reaffirmation of the right to appeal. Should a party be unsatisfied, an appeal could be presented to the appropriate jurisdiction. This will ensure that justice is dispensed to Catholics who approach the marriage tribunals in Nigeria.

An essential area of reform that will benefit the tribunal system in Nigeria is the reform of the competent forum to facilitate the addition of the jurisdiction and competence of court. By removing the special permission needed when the trial is to take place in a place other than the diocese where the wedding was celebrated or tribunal where the respondent is domiciled. With the new reform, the petition can be received in the place of domicile of either the petitioner or the respondent; a place where evidence would be gathered easily; and the place of marriage. This simplifies accessibility to the tribunal for many Catholics in Nigeria who seek to approach the marriage tribunals without the hitherto complications.

A significant part of the reform that will greatly benefit the petitioners at the marriage tribunals in Nigeria is the urge to offer gratis service. With the level of poverty, many Catholics definitely groan under additional challenges of high charges at the tribunals. The free service already in place in many of the tribunals serves those who approach the marriage tribunals positively. To completely realise this however, the funding of the tribunals must be taken seriously.

The encouragement to set up regional or inter-diocesan tribunals and the right of appeal to the Metropolitan See is a welcome development in Nigeria. The Metropolitan is the head of the ecclesiastical province and such a recourse to him as an appeal organ will not only enhance inter-diocesan cooperation within a given province but will continue to show the sign of synodality of the Catholic Church in Nigeria.

The reform also brought about the utilisation of individuals who possess good knowledge as assessors. The previous requirement of experts placed an onerous task to get some specialists where it is expedient because of the paucity of technical experts in some needed areas. What is now required is for such persons is to possess good knowledge on the matters in question. The possession of good knowledge will not be in want in Nigeria to discharge this responsibility, particularly when it concerns some cultural evidence.

Other relevant areas of constructive improvements which the reform introduced include additional place for lay judges. This is an encouragement for the teaming lay faithful in the country who could aspire to study and become needed canonical experts in Nigeria. The issue of developing a procedural handbook is a vital tool that will enhance the education of all, who seek to be conversant with the tribunal procedures. Generally, if these reforms are well implemented in Nigeria, it would elicit the anticipated pastoral concern, which should be applicable to the marriage tribunal process in Nigeria.

Conversely however, the introduction of the consent of both parties in the marriage as a condition precedent to be qualified for the brief process could constitute an impediment to achieving the objectives of the reform in Nigeria. The joint petition from both parties so to say may not be feasible or practicable in some instances. This will thereby jeopardise the chance of many enjoying the benefit of this process.

Similarly, a reform that may not be of great benefit in Nigeria is the admissibility of the evidence of one witness. This could pave the way for a miscarriage of justice particularly where a party could collude with a witness to depose to false evidence and such an evidence is accepted as true. This will thereby amount to miscarriage of justice in such a matter.

Sequel to these conclusions and the findings of the research stated earlier, the following recommendations are given below. It is evident from the findings that some Catholics do not approach the tribunals for nullity because many of them are not aware that the tribunals exist or of the workings of the tribunal or do not possess the requisite knowledge needed to take the right steps to approach the tribunals. Some on the other hand do not approach the tribunals

because of wrong perceptions. Pastors of souls should make more efforts to encourage the Faithful in such situations to seek redress through existing canonical processes at their disposal. It is important that Catholics be encouraged to obtain nullity for their invalid marriage before civilly remarrying.

A way of making progress without necessarily seeking the grant of nullity is to evaluate marriage preparation. An adequately prepared Christian marriage stands a better chance to minimise the rate of divorce in Catholic marriages. Pastors and parties could be enjoined to take more seriously the different stages of marriage preparations: the remote stage of marriage preparation; the proximate stage of marriage preparation and the immediate stage of marriage preparation. Therefore, the adage in Nigeria that prevention is better than cure becomes relevant. With adequate preparation, all parties would have had requisite knowledge on grounds for nullity, steps to be taken to prevent a failed marriage and necessary steps to be taken should challenges come the way of the partners. These levels of marriage preparation may not succeed in preventing every failure in marriage or situations warranting nullity, but the marriage preparation done could go a long way to reduce drastically such occurrences if given the serious attention it deserves.

In Nigeria, there are many marriages cases crying for attention. Some have made their ways to the tribunals, while others for various reasons have not. Diocesan bishops can use the opportunity offered by *Mitis Iudex* to lessen the burden of their flock and free most of them from untold shackles which weigh them down. Therefore, efforts must go beyond just making a statement acknowledging the usefulness and importance of the document, but the shepherd must now go forward to utilise the positive innovations it has offered to pastorally care for the flock. In the year 2000, the Jubilee Year, the late Bishop Joseph Sunday Ajomo of Lokoja Diocese set this example, in his capacity as a sole judge and using his moral certainty and granted a decree of annulment in few cases. This outcome enabled such parties to ascertain the true state of their marriages and were able to forge ahead in their spiritual lives. Such purposeful and compassionate approach to duty is needed in the implementation of the *Mitis Iudex* in Nigeria.

Consequent upon the findings from the research data, it is obvious that many dioceses in Nigeria do not have adequate experts to take care of existing tribunals and this affects the establishment of new ones. The training of more personnel other than clerics particularly where the legislation does not mandate the appointment of clerics could be a way out since the training

of priests alone will not be enough to fill the vacuum. *Propaganda Fide* could therefore grant special attention to training in Canon law in its scholarship approvals, either in institutes abroad or within the country. Unfortunately, many of the priests trained as canonical experts are drafted to take care of other responsibilities other than marriage tribunal responsibilities. Admittedly, a priest can be a lecturer and a parish priest and still be able to work in a tribunal but in reality, will a priest not be too busy with such other pastoral and academic responsibilities as primary assignments while the tribunal work suffers? Indeed, it will be highly recommended that priests who are canonical experts and are appointed to the tribunal be exempted from other assignments to enable them focus on discharging the burdensome duties at the tribunal.

The preamble of the Instruction *Dignitas Connubii* says: “For this reason it falls to the Bishops, and this should weigh heavily on their consciences, to see to it that suitable ministers of justice for their tribunals are trained in canon law appropriately and in a timely manner, and are prepared by suitable practice to instruct causes of marriage properly and decide them correctly.” Training in this regard should also include upgrading the skills of existing tribunal personnel, organising more refresher courses by the relevant arm of the Catholic Secretariat of Nigeria in conjunction with the Canon Law Society of Nigeria, which is already doing much in organising annual meetings, workshops and seminars, etc. More enlightenment campaigns on catholic platforms and fora; newspapers, newsletters, social media, talks, seminars, symposia should be carried out. The Canon Law Society of Nigeria should make the right noise to the appropriate authority; embark upon enlightening initiatives to educate all concerned; design a special training for bishops; and put more pressure on the Catholic Secretariat of Nigeria (CSN) and the Catholic Bishop’s Conference of Nigeria (CBCN) to attract them more to the tribunal ministry.

The propensity of sending priests who lack the necessary zeal for the tribunal ministry is high. Some priests are sometimes arbitrarily selected to study canon law without their input in such an essential decision. Bishops should however seek out those who are interested in the tribunal ministry. Sincere and proper consultation with the presbyterium and individual priests will help to determine this. The tribunal ministry should be seen as a vocation within a vocation and those who enter into it should be carefully selected. This is not to be regarded as a vote of no confidence on existing personnel, but such an approach could accentuate better performance when those who have the zeal are appointed. Similarly, a proper orientation could be given to those selected to go for such studies either abroad or within the shores of Nigeria. Such an orientation should border on the future expectations, probable future tasks and the goals to be achieved.

Such must be made clear from the beginning with the intention to help the individual studying to focus on some specifics and to map out plans for the future in the course of the study. Such an approach will yield more fruits in the tribunal ministry.

An evident finding from the data collected is inadequate funding. The tribunals need to be well funded to be able to discharge their duties effectively. Funding remains a big issue in the tribunal ministry, particularly in Nigeria. The Catholic Church in Nigeria must do more than rely on church collections to be able to achieve the status of a self-sustaining church and richer dioceses must be ready to assist non-viable dioceses in the spirit of solidarity. It is never enough, each having its own exigencies, but sharing is also evangelisation in the collaborative efforts to bring relieve to the people and lead them to salvation. In a similar vein, it is expedient to remunerate the staff or personnel of the tribunal properly. Such a proper remuneration will not only enhance productivity but will also help staff retention, since they will have job satisfaction and wouldn't have the need to seek greener pastures elsewhere.

Theologians and canonists in Nigeria are to be more assertive and innovative in thoughts and perceptions. As stated above there are two properties of marriage and they are unity and indissolubility. The question of admitting civilly remarried Catholics hinges on the issue of indissolubility and arguments have been propounded to support the fact that a marriage validly contracted remains valid and cannot be dissolved. In Nigeria and Africa generally, the challenge of polygamy could be likened to the challenge of civilly remarried people because those who are in a polygamous marriage, who are traditionally married are also not admitted to Holy Communion. While civil law recognises the marriage of the civilly remarried Catholics, traditional or customary law as it is called also recognises polygamous marriages.

Just as those who are civilly married, those who are in polygamous unions are similarly prevented from the reception of the Holy Eucharist. Both are antithetical to the two properties of marriage: Unity and Indissolubility. While persons in various polygamous unions negate unity, other individuals in civil marriages after their first marriage in the Church and have not obtained the decree of nullity negate indissolubility. However, more attention has been given to the latter because it is seen more as a problem in the western world and the former merely seen as an African problem and probably unworthy of attention. More could be done to also attend to such a serious pastoral problem in such a region. The writer believes that African theologians need to do more to bring this issue to the front burner to see how requisite pastoral attention could be given to such persons who are also denied admittance to Holy Communion.

The Catholic Institute of West Africa (CIWA) has a Department of Canon Law, which is well-staffed by competent canonical experts. A Canonical Institute in Nigeria at the Veritas University Abuja (VUNA) will serve a worthy purpose to support what CIWA is already doing in training canonical experts. A dedicated programme on Marriage Tribunal in CIWA and VUNA will go a long way to provide the marriage tribunals in Nigeria the much-needed personnel. The design of such programmes offers part-time and full-time opportunities for interested candidates. The envisaged training should envisage not just priests but also religious, educated catechists and all laypersons or personnel working in the tribunal. Programmes aimed at ensuring effective services at the tribunal should be designed periodically based on different modules that will enhance greater efficiency in executing their assignments at the tribunal. Weekend courses could be considered to cater for civil servants. Such a programme must not be long like that of a degree programme, thus a six-month or one-year programme could also help.

A defeatist approach would be to begin to think of and identify reasons why it will not work such as funds, time, resources, logistics, etc and ultimately get discouraged. A positive attitude will be to recognise the feasibility and efficacy of such an idea and work towards overcoming probable challenges and make it see the light of the day. Where there is a will there is a way. Canon Law Society of Nigeria organising seminars and ongoing training workshops is a good step in the right direction, but it may not be enough in this regard to equip the clergy, religious and laypersons with the basic skills needed to work and act at the tribunal level.

The intensification of pastoral care for married people should be taken seriously. Couples should be encouraged to live in peace with one another. The value of reconciliation and forgiveness should be embraced. In a relationship, there are two persons who are imperfect, and these imperfections could result into a shaky relationship. It is common in the contemporary society for people to tend towards divorce and separation and to jettison Christian attitudes such as reconciliation and forgiveness. However, partners should be encouraged to embrace understanding, love, and patience in their relationship. Pastoral agents should therefore be more dedicated and take this pastoral care more seriously and free people from their burden. Inculturation could be taken to another level by seeking a cultural intervention, whereby values from the culture are employed to help marriage partners to live happily, and the elders or those who are more conversant with the culture be more involved.

Finally, the document has been criticised for a number of reasons including but not limited to the following. Its abrogation of the mandatory appeal; jettisoning the use of experts as assessors as it was in can. 1421 § 3; recommendation of gratis service, which ordinarily should be a positive development but could be an impediment for some tribunals towards delivering effective services; lack of wide consultations during the preparatory stage of the document; the admissibility of the testimony of one person without corroboration, while a judge could permit it if he deems it to be credible opening the tendency for a miscarriage of justice; and joint petition may not be feasible as the cooperation of the partners may be lacking.

However, the document can be praised for introducing and affirming steps to make the process of marriage nullity more efficient not necessarily making it easy to grant every annulment or sneaking in a *Catholic divorce* through the back door. The briefer process gave conditions precedent for its application. The document reformed the three judges panel. It offered the possibility for a free process, not without giving attention to the wages or remuneration of the staff of the tribunals. It reiterated the Metropolitan See as a court of appeal or second instance, while reforming the procedure of the second instance. The role of the bishop in the nullity proceeding was strengthened by the document, he has to personally sign the decree after he has reached moral certainty. The competent forum was not left out. Ultimately, with proper implementation of the *Mitis Iudex* in Nigeria, the reform will achieve a desired success.

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APPENDIX 1: TABLE OF COMPARISON¹

CANN. 1671 – 1691: 1983 CODE OF CANON LAW AND 2015 MITIS IUDEX REFORM

1983 Code of Canon Law	2015 Mitis Iudex Reform
Art. 1. The Competent Forum	Art. 1 – The Competent Forum and Tribunals
Can. 1671 Marriage cases of the baptized belong to the ecclesiastical judge by proper right.	Can. 1671 § 1. Marriage cases of the baptized belong to the ecclesiastical judge by proper right.
Can. 1672 Cases concerning the merely civil effects of marriage belong to the civil magistrate unless particular law establishes that an ecclesiastical judge can investigate and decide these cases if they are done in an incidental or accessory manner.	§ 2. Cases regarding merely the civil effects of marriage belong to a civil magistrate, unless the particular law establishes that such cases, if carried out in an incidental or accessory manner, can be recognized by and determined by an ecclesiastical judge.
Can. 1673 In cases concerning the nullity of marriage which are not reserved to the Apostolic See, the following are competent: 1° the tribunal of the place in which the marriage was celebrated; 2° the tribunal of the place in which the respondent has a domicile or quasi-domicile; 3° the tribunal of the place in which the petitioner has a domicile, provided that both parties live in the territory of the same conference of bishops and the judicial vicar of the domicile of the respondent gives consent after he has heard the respondent; 4° the tribunal of the place in which in fact most of the proofs must be collected, provided that consent is given by the judicial vicar of the domicile of the respondent, who is first to ask if the respondent has any exception to make.	Can. 1672. In cases regarding the nullity of marriage not reserved to the Apostolic See, the competencies are: 1° the tribunal of the place in which the marriage was celebrated; 2° the tribunal of the place in which either or both parties have a domicile or a quasi-domicile; 3° the tribunal of the place in which in fact most of the proofs must be collected.
Compare Can. 1419 § 1	Can. 1673 § 1. In each diocese, the judge in first instance for cases of nullity or marriage for which the law does not expressly make an exception is the diocesan bishop, who can exercise judicial power personally or through others, according to the norm of law.
Compare Can. 1420, 1421, 1423	§ 2. The bishop is to establish a diocesan tribunal for his diocese to handle cases of nullity of marriage without prejudice to the faculty of the same bishop to approach another nearby diocesan or interdiocesan tribunal.
Compare Can. 1421 §§ 1-2, 1425 § 1 1°, 1426	§ 3. Cases of nullity of marriage are reserved to a college of three judges. A judge who is a cleric must preside over the college, but the other judges may be laypersons.
Compare Can. 1425 § 4, 1424	§ 4. The bishop moderator, if a collegial tribunal cannot be constituted in the diocese or in a nearby tribunal chosen according to the norm of § 2, is to entrust cases to a sole clerical judge who, where possible, is to employ two assessors of upright life,

¹ See a similar *Table of Comparison* in German language in Müller, Ludger. Das kirchliche Ehenichtigkeitsverfahren nach der Reform 2015. Aymans – Mörsdorf – Müller, Kanonisches Recht: Lehrbuch aufgrund des Codex Iuris Canonici. Paderborn, 2017, pp 86-105.

	experts in juridical or human sciences, approved by the bishop for this task; unless it is otherwise evident, the same single judge has competency for those things attributed to the college, the <i>praeses</i> , or the <i>ponens</i> .
Compare Can. 1441	§ 5. The tribunal of second instance must always be collegiate for validity, according to the prescript of the preceding § 3.
Compare Can. 1438 1°	§ 6. The tribunal of first instance appeals to the metropolitan tribunal of second instance without prejudice to the prescripts of cann. 1438-1439 and 1444.
Art. 2. The Right to Challenge a Marriage	Art. 2 – The Right to Challenge a Marriage
Can. 1674 The following are qualified to challenge a marriage: 1° the spouses; 2° the promoter of justice when nullity has already become public, if the convalidation of the marriage is not possible or expedient.	Can. 1674 § 1. The following are qualified to challenge a marriage: 1° the spouses; 2° the promoter of justice when nullity has already become public, if the convalidation of the marriage is not possible or expedient.
Can. 1675 § 1. A marriage which was not accused while both spouses were living cannot be accused after the death of either one or both of the spouses unless the question of validity is prejudicial to the resolution of another controversy either in the canonical forum or in the civil forum.	§ 2. A marriage which was not accused while both spouses were living cannot be accused after the death of either one or both of the spouses unless the question of validity is prejudicial to the resolution of another controversy either in the canonical forum or in the civil forum.
§ 2. If a spouse dies while the case is pending, however, can. 1518 is to be observed.	§ 3. If a spouse dies while the case is pending, however, can. 1518 is to be observed.
Art. 3. The Duty of the Judges	Art. 3 – The Introduction and Instruction of the Case
Can. 1676 Before accepting a case and whenever there is hope of a favorable outcome, a judge is to use pastoral means to induce the spouses if possible to convalidate the marriage and restore conjugal living.	Can. 1675. The judge, before he accepts a case, must be informed that the marriage has irreparably failed, such that conjugal living cannot be restored.
Can. 1677 § 1. When the libellus has been accepted, the presiding judge or the ponens is to proceed to the communication of the decree of citation according to the norm of can. 1508.	Can. 1676 § 1. After receiving the <i>libellus</i> , the judicial vicar, if he considers that it has some basis, admits it and, by a decree appended to the bottom of the <i>libellus</i> itself, is to order that a copy be communicated to the defender of the bond and, unless the <i>libellus</i> was signed by both parties, to the respondent, giving them a period of fifteen days to express their views on the petition.
Can. 1677 § 2. When fifteen days have passed from the communication and unless either party has requested a session for the joinder of the issue, the presiding judge or the ponens is to establish the formula of the doubt or doubts within ten days by ex officio decree and is to notify the parties.	§ 2. After the above-mentioned deadline has passed, and after the other party has been admonished to express his or her views if and insofar as necessary, and after the defender of the bond has been heard, the judicial vicar is to determine by his decree the formula of the doubt and is to decide whether the case is to be treated with the ordinary process or with the briefer process according to cann. 1683-1687. This decree is to be communicated immediately to the parties and the defender of the bond.
	§ 3. If the case is to be handled through the ordinary process, the judicial vicar, by the same decree, is to arrange the constitution of a college of judges or of a single judge with two assessors according to can. 1673, § 4.
	§ 4. However, if the briefer process is decided upon, the judicial vicar proceeds according to the norm of can. 1685.

Can. 1677 § 3. The formula of the doubt not only is to ask whether the nullity of the marriage is established in the case but also must determine on what ground or grounds the validity of the marriage is to be challenged.	§ 5. The formula of doubt must determine by which ground or grounds the validity of the marriage is challenged.
Can. 1677 § 4. Ten days after the communication of the decree, the presiding judge or the ponens is to arrange for the instruction of the case by a new decree if the parties have lodged no objection.	
Art. 4. Proofs	
Can. 1678 § 1. The defender of the bond, the legal representatives of the parties, and also the promoter of justice, if involved in the trial, have the following rights: 1° to be present at the examination of the parties, the witnesses, and the experts, without prejudice to the prescript of can. 1559; 2° to inspect the judicial acts, even those not yet published, and to review the documents presented by the parties.	Can. 1677 § 1. The defender of the bond, the legal representatives of the parties, as well as the promoter of justice, if involved in the trial, have the following rights: 1° to be present at the examination of the parties, the witnesses, and the experts, without prejudice to the prescript of can. 1559; 2° to inspect the judicial acts, even those not yet published, and to review the documents presented by the parties.
Can. 1678 § 2. The parties cannot be present at the examination mentioned in § 1, n. 1.	§ 2. The parties cannot be present at the examination mentioned in § 1, n. 1.
Can. 1679 Unless there are full proofs from elsewhere, in order to evaluate the depositions of the parties according to the norm of can. 1536, the judge, if possible, is to use witnesses to the credibility of those parties in addition to other indications and supporting factors. Compare also Can. 1536 § 2	Can. 1678 § 1. In cases of the nullity of marriage, a judicial confession and the declarations of the parties, possibly supported by witnesses to the credibility of the parties, can have the force of full proof, to be evaluated by the judge after he has considered all the indications and supporting factors, unless other elements are present which weaken them.
Compare also Can. 1573	§ 2. In the same cases, the testimony of one witness can produce full proof if it concerns a qualified witness making a deposition concerning matters done <i>ex officio</i> , or unless the circumstances of things and persons suggest it.
Can. 1680 In cases of impotence or defect of consent because of mental illness, the judge is to use the services of one or more experts unless it is clear from the circumstances that it would be useless to do so; in other cases the prescript of can. 1574 is to be observed.	§ 3. In cases of impotence or defect of consent because of mental illness or an anomaly of a psychic nature, the judge is to use the services of one or more experts unless it is clear from the circumstances that it would be useless to do so; in other cases the prescript of can. 1574 is to be observed.
Art. 5. The Sentence and the Appeal	
Can. 1681 Whenever, during the instruction of a case, a very probable doubt emerges that consummation of the marriage did not occur, after suspending the case of nullity with the consent of the parties, the tribunal can complete the instruction for a dispensation <i>super rato</i> and then transmit the acts to the Apostolic See together with a petition for a dispensation from either one or both of the spouses and the <i>votum</i> of the tribunal and the bishop.	§ 4. Whenever, during the instruction of a case, a very probable doubt arises as to whether the marriage was ever consummated, the tribunal, having heard both parties, can suspend the case of nullity, complete the instruction for a dispensation <i>super rato</i> , and then transmit the acts to the Apostolic See together with a petition for a dispensation from either one or both of the spouses and the <i>votum</i> of the tribunal and the bishop.
	Art. 4 - The Judgment, its Appeals and its Effects
Can. 1682 § 1. The sentence which first declared the nullity of the marriage is to be transmitted <i>ex officio</i> to the appellate tribunal within twenty days from the publication of the sentence, together with the appeals, if there are any, and the other acts of the trial. Compare Cann. 1626 § 1, 1628	Can. 1679. The sentence that first declared the nullity of the marriage, once the terms as determined by cann. 1630-1633 have passed, becomes executive.
	Can. 1680 § 1. The party who considers himself or herself aggrieved, as well as the promoter of justice and the defender of the bond, have the right to

	introduce a complaint of nullity of the judgment or appeal against the sentence, according to cann. 1619-1640.
Can. 1682 § 2. If a sentence in favor of the nullity of a marriage was given in the first grade of a trial, the appellate tribunal is either to confirm the decision at once by decree or to admit the case to an ordinary examination in a new grade, after having weighed carefully the observations of the defender of the bond and those of the parties if there are any.	
	§ 2. After the time limits established by law for the appeal and its prosecution have passed, and after the judicial acts have been received by the tribunal of higher instance, a college of judges is established, the defender of the bond is designated, and the parties are admonished to put forth their observations within the prescribed time limit; after this time period has passed, if the appeal clearly appears merely dilatory, the collegiate tribunal confirms the sentence of the prior instance by decree.
Compare Can. 1640	§ 3. If an appeal is admitted, the tribunal must proceed in the same manner as the first instance with the appropriate adjustments.
Can. 1683 If a new ground of nullity of the marriage is alleged at the appellate grade, the tribunal can admit it and judge it as if in first instance.	§ 4. If a new ground of nullity of the marriage is alleged at the appellate level, the tribunal can admit it and judge it as if in first instance.
Compare Can. 1644 § 1	Can. 1681. If a sentence has become effective, one can go at any time to a tribunal of the third level for a new proposition of the case according to the norm of can. 1644, provided new and grave proofs or arguments are brought forward within the peremptory time limit of thirty days from the proposed challenge.
Can. 1684 § 1. After the sentence which first declared the nullity of the marriage has been confirmed at the appellate grade either by a decree or by a second sentence, the persons whose marriage has been declared null can contract a new marriage as soon as the decree or second sentence has been communicated to them unless a prohibition attached to the sentence or decree or established by the local ordinary has forbidden this.	Can. 1682 § 1. After the sentence declaring the nullity of the marriage has become effective, the parties whose marriage has been declared null can contract a new marriage unless a prohibition attached to the sentence itself or established by the local ordinary forbids this.
Can. 1684 § 2. The prescripts of can. 1644 must be observed even if the sentence which declared the nullity of the marriage was confirmed not by a second sentence but by a decree.	
Can. 1685 As soon as the sentence is executed, the judicial vicar must notify the local ordinary of the place in which the marriage was celebrated. The local ordinary must take care that the declaration of the nullity of the marriage and any possible prohibitions are noted as soon as possible in the marriage and baptismal registers.	§ 2. As soon as the sentence becomes effective, the judicial vicar must notify the local ordinary of the place in which the marriage took place. The local ordinary must take care that the declaration of the nullity of the marriage and any possible prohibitions are noted as soon as possible in the marriage and baptismal registers.
	Art. 5 - The Briefer Matrimonial Process before the Bishop
	Can. 1683. The diocesan bishop himself is competent to judge cases of the nullity of marriage with the briefer process whenever: 1° the petition is proposed by both spouses or by one of them, with the consent of the other;

	2° circumstance of things and persons recur, with substantiating testimonies and records, which do not demand a more accurate inquiry or investigation, and which render the nullity manifest.
	Can. 1684. The <i>libellus</i> introducing the briefer process, in addition to those things enumerated in can. 1504, must: 1° set forth briefly, fully, and clearly the facts on which the petition is based; 2° indicate the proofs, which can be immediately collected by the judge; 3° exhibit the documents, in an attachment, upon which the petition is based.
	Can. 1685. The judicial vicar, by the same decree which determines the formula of the doubt, having named an instructor and an assessor, cites all who must take part to a session, which in turn must be held within thirty days according to can. 1686.
	Can. 1686. The instructor, insofar as possible, collects the proofs in a single session and establishes a time limit of fifteen days to present the observations in favor of the bond and the defense briefs of the parties, if there are any.
	Can. 1687 § 1. After he has received the acts, the diocesan bishop, having consulted with the instructor and the assessor, and having considered the observations of the defender of the bond and, if there are any, the defense briefs of the parties, is to issue the sentence if moral certitude about the nullity of marriage is reached. Otherwise, he refers the case to the ordinary method.
	§ 2. The full text of the sentence, with the reasons expressed, is to be communicated to the parties as swiftly as possible.
	§ 3. An appeal against the sentence of the bishop is made to the metropolitan or to the Roman Rota; if, however, the sentence was rendered by the metropolitan, the appeal is made to the senior suffragan; if against the sentence of another bishop who does not have a superior authority below the Roman Pontiff, appeal is made to the bishop selected by him in a stable manner.
	§ 4. If the appeal clearly appears merely dilatory, the metropolitan or the bishop mentioned in § 3, or the dean of the Roman Rota, is to reject it by his decree at the outset; if the appeal is admitted, however, the case is remitted to the ordinary method at the second level.
Art. 6. The Documentary Process	Art. 6 - The Documentary Process
Can. 1686 After receiving a petition proposed according to the norm of can. 1677, the judicial vicar or a judge designated by him can declare the nullity of a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary process are omitted except	Can. 1688. After receiving a petition proposed according to the norm of can. 1677, the diocesan bishop or the judicial vicar or a judge designated by him can declare the nullity of a marriage by sentence if a document subject to no contradiction or exception clearly establishes the existence of a diriment impediment or a defect of legitimate form, provided that it is equally certain that no dispensation was given, or establishes the lack of a valid mandate of a proxy. In these cases, the formalities of the ordinary

for the citation of the parties and the intervention of the defender of the bond.	process are omitted except for the citation of the parties and the intervention of the defender of the bond.
Can. 1687 § 1. If the defender of the bond prudently thinks that either the flaws mentioned in can. 1686 or the lack of a dispensation are not certain, the defender of the bond must appeal against the declaration of nullity to the judge of second instance; the acts must be sent to the appellate judge who must be advised in writing that a documentary process is involved.	Can. 1689 § 1. If the defender of the bond prudently thinks that either the flaws mentioned in can. 1688 or the lack of a dispensation are not certain, the defender of the bond must appeal against the declaration of nullity to the judge of second instance; the acts must be sent to the appellate judge who must be advised in writing that a documentary process is involved.
Can. 1687 § 2. The party who considers himself or herself aggrieved retains the right of appeal.	§ 2. The party who considers himself or herself aggrieved retains the right of appeal.
Can. 1688 The judge of second instance, with the intervention of the defender of the bond and after having heard the parties, will decide in the same manner as that mentioned in can. 1686 whether the sentence must be confirmed or whether the case must rather proceed according to the ordinary method of law; in the latter event the judge remands the case to the tribunal of first instance.	Can. 1690. The judge of second instance, with the intervention of the defender of the bond and after having heard the parties, will decide in the same manner as that mentioned in can. 1688 whether the sentence must be confirmed or whether the case must rather proceed according to the ordinary method of law; in the latter event the judge remands the case to the tribunal of first instance.
Art. 7 – General Norms	Art. 7 – General Norms
Can. 1689 In the sentence the parties are to be reminded of the moral and even civil obligations which may bind them both toward one another and toward their children to furnish support and education.	Can. 1691 § 1. In the sentence the parties are to be reminded of the moral and even civil obligations binding them toward one another and toward their children to furnish support and education.
Can. 1690 Cases for the declaration of the nullity of a marriage cannot be treated in an oral contentious process.	§ 2. Cases for the declaration of the nullity of a marriage cannot be treated in the oral contentious process mentioned in cann. 1656-1670.
Can. 1691 In other procedural matters, the canons on trials in general and on the ordinary contentious trial must be applied unless the nature of the matter precludes it; the special norms for cases concerning the status of persons and cases pertaining to the public good are to be observed.	§ 3. In other procedural matters, the canons on trials in general and on the ordinary contentious trial must be applied unless the nature of the matter precludes it; the special norms for cases concerning the status of persons and cases pertaining to the public good are to be observed.

APPENDIX 2: QUESTIONNAIRE SAMPLE



QUESTIONNAIRE

Mitis Iudex Dominus Iesus: Challenges for Its Implementation in Nigeria

I am a priest of the Catholic Diocese of Lokoja, Nigeria but presently a Master Degree student at the Faculty of Catholic Theology of the University of Vienna, Vienna, Austria. I am writing a dissertation on the topic: “***Mitis Iudex Dominus Iesus: Challenges for Its Implementation in Nigeria***”. The findings of this research will hopefully enrich canonical jurisprudence in Nigeria and enhance the proceedings involving the nullity of marriage in the marriage tribunals in Nigeria.

The *Motu proprio*, *Mitis Iudex Dominus Iesus* issued by Pope Francis on August 15, 2015 could be seen as an answer to the yearning for a quicker, less cumbersome but still a just process of nullity of marriage in the Catholic Church, while still searching for the truth and ensuring that justice is done to the parties.

I am carrying out a research to evaluate the possible peculiar challenges the Catholic Church in Nigeria could encounter in the implementation of this reform in her efforts to meet the pastoral needs of the Faithful who seek marriage nullity at the marriage tribunals in Nigeria.

I therefore sincerely and earnestly seek your assistance in answering the following questions and offer your inputs and ideas, which will eventually help me in the course of this academic exercise. Efforts have been made to ask few questions and the exercise will take approximately fifteen minutes.

I will appreciate some detailed answers where applicable and please an additional sheet of paper could be used where you deemed it necessary to do so. May God reward and bless you. Amen.

Signed:

Signed:

Ambrose Abejide Olowo (Revd. Fr.)

A. GENERAL FOCUS

1. Name (optional).....
2. Diocese of domicile (optional).....
3. Position or Designation.....

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

.....

.....

- a. Is there a functioning marriage tribunal in your home diocese?

.....

- b. Is the tribunal well equipped, funded and staffed?

.....

- c. Does your diocese have a Judge and/or a judicial vicar?

.....

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

.....

.....

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

.....

.....

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

.....

- g. What is the average administrative charge for cases brought before the marriage tribunal?

.....

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

.....

.....

.....

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

.....

.....

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

.....

.....

.....

.....

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

.....

b. Are the tribunal well-funded?

.....

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

.....

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

.....

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

.....

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

.....

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

.....

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

.....

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

.....

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

.....

.....

Thank you for taking your time to respond to these questions.

APPENDIX 3: RETURNED QUESTIONNAIRES



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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional): **Respondent 1**
2. Diocese of domicile (optional):
3. Position or Designation: **Lecturer**

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

It can be described as evolving. Some things are being done. But they are few and far in between compared to the number of cases that abound

- a. Is there a functioning marriage tribunal in your home diocese?

Not really

- b. Is the tribunal well equipped, funded and staffed?

Not applicable

- c. Does your diocese have a Judge and/or a judicial vicar?

No

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

I don't think so

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Not very conversant

- g. What is the average administrative charge for cases brought before the marriage tribunal?

I am not very sure of this. I will say N10,000.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

If properly understood, it would do the Church a lot of good

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

The single judge, briefer process, the role of the diocesan bishop, removal of automatic appeal

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

- I) adequate knowledge of the workings of a tribunal
- II) lack of requisite knowledge on the part of the diocesan Bishop
- III) inadequate funding, inadequate personnel in some dioceses
- iv) too many assignments given to priests working at the tribunal.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Yes, if well funded

b. Are the tribunal well-funded?

Not at all

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes, if not properly understood and if the bishops do not make efforts to educate themselves on the laws guiding tribunal practice.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

Possibility, yes. But this has not been my experience.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

I have heard of such cases but not proven.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Not very feasible. By the time they approach the tribunal, things are usually out of hand.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Not at all.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

It is feasible. We had some form of cooperation when I was the Officialis, Ekiti Inter Diocesan Tribunal, Ado Ekiti.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Great role, education, information and providing technical assistance to the local ordinaries in Nigeria, either as Conference or individually.

Thank you for taking your time to respond to these questions.



A. GENERAL FOCUS

1. Name (optional) **Respondent 2**
2. Diocese of domicile (optional)
3. Position or Designation... **Judicial Vicar**

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

..... **Marriage tribunals in Nigeria have taken a new turn for the better since after the Ad Limina visit of 2009 of the Nigerian Bishops. I must say that there are many tribunals (Diocesan and Provincial) all over the dioceses and provinces and thriving at that. There is yearly workshop anchored by the Catholic Secretariat to help the would be personnel at the tribunals.**

- a. Is there a functioning marriage tribunal in your home diocese?

..... **Yes**

- b. Is the tribunal well equipped, funded and staffed?

..... **Equipped & Funded? to a certain extent, yes but grossly under staffed**

- c. Does your diocese have a Judge and/or a judicial vicar?

..... **Yes we have the two manned by the same person**

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

..... **Yes but sometimes for wrong reasons because of their misunderstanding of what the tribunal stands for**

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

..... **What they know and generally want is divorce and not nullity. They do not approach the tribunal until very later in their lives while they might have separated for a long time and already living with another spouse with children in that relationship. They only later approach the tribunal if they suddenly fall sick and (or) they are already old and there is the possibility of death that they approach the tribunal so that they could resume receiving communion.**

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

..... **not very conversant**

- g. What is the average administrative charge for cases brought before the marriage tribunal?

..... **ours in Lokoja diocese is N35 , 000.00**

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

..... **A good one I will say** ...

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

..... **The reform would have been a big relief for tribunal proceedings if our peculiarities are taken into consideration.**

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

..... The joint request or the request of one of the spouses with the consent of the other is one big challenge. There are times when the deposition of the petitioner and the answers of the respondent to the questionnaire are totally opposed and you are left wondering if you are dealing with the same marriage. The witnesses sometimes take sides in favour of the one that nominated them. Their witnessing sometimes is of no help because of their little knowledge of facts regarding the marriage at hand.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

..... Free or minimal cost services directly affects the parties involved in tribunal proceedings. For this to happen, subsidy of some sort ought to be put in place for effective running and remuneration of the tribunal staff. So if this is done, I do not know how it can affect the tribunal functioning.

b. Are the tribunal well-funded?

..... which organ these days is well funded? So tribunal, like the other organ is funded but not WELL... ..

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

..... Appeals serve as checks and balances and if removed, abuses could set in. We can only hope that the tribunal personnel will perform their duties in accordance with its ethics.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

..... I do not think it should lead to laxity in granting nullity at all if properly understood. It actually gives more grounds for nullity than before.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

..... Anything is possible when right focus is lost to self.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

..... This is where the problem lays the more. The couple separate in bitterness and may never be in talking terms for the rest of their lives. They do not communicate and do not wish one another well. I have had cases where a partner does not have the contact of the other. There have been cases where the respondents (male and female) have said they were not interested in the tribunal proceedings.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

..... The heavy schedule of the Local Ordinary could affect his role in the briefer process and more also his knowledge on what is required to be done.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

..... There is hope on the horizon with new Canon lawyers coming up.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

..... It is feasible especially with the innovation of the CBCN through the CSN to organize annually an Institute of Matrimonial Jurisprudence where participants are taken through the nitty-gritty of canonical processes.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

..... Through the above mentioned Institute with meetings and workshops by the Society which is on

Thank you for taking your time to respond to these questions.

My pleasure.



A. GENERAL FOCUS

1. Name (optional) **Respondent 3**
2. Diocese of domicile (optional)
3. Position or Designation **Lecturer**

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

Marriage tribunals in Nigeria are either diocesan or inter-diocesan tribunals. Due to the shortage of trained and experienced personnel, some of the tribunals are not operating to full capacity.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes

- b. Is the tribunal well equipped, funded and staffed?

Yes, the tribunal engages the services of the staff of Canon Law Dept. CIWA

- c. Does your diocese have a Judge and/or a judicial vicar?

Yes

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

There is generally a clear understanding between nullity and divorce among Catholics in Nigeria

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Until very recently, the tribunal process was not very clear to many Catholic, but now, they are becoming very aware of it.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

It ranges between N30, 000,00 – N50,000,00 in Port Harcourt.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

The Motu Proprio *Mitis Iudex Dominus Iesus* has simplified and fast-tracked the nullity process in tribunal. It introduced the briefer process in certain cases. It is good for speeding up nullity process by removing automated appeals and putting the forum of competence where the parties are domiciled.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

All aspects of *Mitis* is being implemented in Port Harcourt tribunal. The peculiar challenges are in respect of the use of the briefer process as some respondents are usually not willing to cooperate. Major of cases do not admit the use of the briefer process. The parties themselves are not conversant with the briefer process.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

The peculiar challenges to the implementation of Mitis are:

1. Lack of clear understanding of the document on the part of some tribunal
2. Lack of adequate qualified personnel in some tribunals
3. Some tribunal/personnel are working part-time and so they are not fully committed and dedicated to the tribunal work
4. Very poor remuneration of tribunal workers in some tribunals
5. Lack of commitment and seriousness on the part of some parties; and general poverty to meet administrative charges.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Not very effectively in terms of morale booster in form of allowance

b. Are the tribunal well-funded?

No

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes, if tribunals are not staffed by qualified personnel

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

Trained tribunal personnel should know the difference between nullity and divorce. Nullity is a declaration of non-existent marriage

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Tribunal personnel are human beings who are not insulated from human weakness, so everything is possible

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

If the briefer process is to the benefit of both parties who are Catholics, it is feasible but difficult in cases of mixed marriage.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

The Local Ordinary can rely on the judgement of the tribunal personnel and ratify, just ratify their decision

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

The Port Harcourt Diocesan tribunal has enough canonists as judges to assist the Bishop in his role as sole judge.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Tribunals in Nigeria have good cooperation in the instruction of cases and dissemination of information

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Canon Law Society of Nigeria organised a seminar to enlighten her members on Mitis – Who are the personnel in the tribunals

Thank you for taking your time to respond to these questions.



A. GENERAL FOCUS

1. Name (optional)...Respondent 4
2. Diocese of domicile (optional)
3. Position or Designation.....Judge.....

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The marriage tribunals in Nigeria are functional though with a lot of shortfalls. Such shortfalls include want of qualified personnel in many tribunals, want of adequate organization of the tribunals and lack of suitable equipment and materials and environments. These difficulties cause a lot of set-backs in the operation of tribunals.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes my home diocese has a functioning tribunal

- b. Is the tribunal well equipped, funded and staffed?

The tribunal is not well equipped, not well funded and not well staffed

- c. Does your diocese have a Judge and/or a judicial vicar?

Yes my diocese has both a Judicial vicar and a judge

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes many Catholics these days are disposed to approaching the tribunal and they do really come.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Yes, many Catholics do equate nullity with divorce so that when they get nullity they do not think of petitioning for divorce except if they are advised to do so. However through continuous enlightenment, many are getting to know the difference-that while the former is ecclesiastical, the later is civil.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Many are not yet very conversant with the process of nullity at the marriage tribunals. Many are still very new to the knowledge of the process. However a good number is already getting used to it.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

In my diocese the charge is 45,000. In some other dioceses the charge is higher. In some it is up to 70,000. So I can say that the average charge may be taken to be 50,000.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

My assessment is that the reforms are positive in the same that they are motivating to the tribunal staff. The reforms have made many tribunals sit up and awake to the necessity and urgency of the tribunal process of declaration of marriage nullity.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

The aspects being implemented include: expediting the cases-being faster in issuing sentences; many tribunals declaring independence from the inter-diocesan practices and being on their own as diocesan tribunals, and enjoying the advantage of sole judge sentences and first instance conclusive sentences.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

The challenges include the fact that it is difficult to administer the tribunals free of payment by the clients because of the level poverty of the tribunals which do not have sources of income for their operations; also the difficulty of doing the speedy process of 45 days interval or briefer process as recommended by the *Motu Proprio* etc.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties

Yes it is indeed inclusive

b. Are the tribunal well-funded?

Yes it is indeed inclusive

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

To some extent, it can lead to abuse, whereby some judges may not be committed to rendering thorough judgments knowing that their first instance sentences may not go any further for re-examinations.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

There may be lack of willingness in granting nullity some cases not just for the fear of not granting divorce but for the fear nullifying marriages that can be reconciled and for the purpose of moral certitude that is required for adequate judgements.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Even though not very common, there are such possible cases of favouritism or arbitrariness due to existence of prejudice and other selfish interests and influences

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

It is feasible but not much and rarely do we succeed in organizing the couples for such briefer processes

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes of course.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes my diocese have those to assist the bishop if the bishop is willing to use them.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

It is quite feasible. The inter-diocesan tribunals have been operating successfully in some provinces, though not very smoothly.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The CLSN can follow up various tribunals by investigating and getting reports concerning the implementation and then encouraging and motivating the tribunals to properly implement the reform.

Thank you for taking your time to respond to these questions.



A. GENERAL FOCUS

1. Name (optional) **Respondent 5**
2. Diocese of domicile (optional)
3. Position or Designation... **Pastor**

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

They can function better with if given more serious consideration by the local churches.

- a. Is there a functioning marriage tribunal in your home diocese?

not really

- b. Is the tribunal well equipped, funded and staffed?

No

- c. Does your diocese have a Judge and/or a judicial vicar?

No

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria? **Yes**

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity? **Yes, but it rather makes them quick to approach the tribunals**

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Not very conversant

- g. What is the average administrative charge for cases brought before the marriage tribunal?

No charge is fixed

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

Make tribunals like ours able to function better

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

The briefer process and single instance sentence

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

List of relevant cases and the danger of abuse

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties? **No**

b. Are the tribunal well-funded?

No

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

Yes

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

No

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Usually, parties are not equally interested in the cases

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes, I do

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

No

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

it is feasible

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Come up with more practicable ways to address the Nigerians peculiar cases/situations

Thank you for taking your time to respond to these questions.

A. GENERAL FOCUS

1. Name (optional) – Respondent 6
2. Diocese of domicile (optional)
3. Position or Designation – Judicial Vicar

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

I would say that very few tribunals, a great minority, across the country function properly. In some Dioceses, it is non-functional. We still have a long way to go in terms of staffing, procedures and delivery of services.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes, there is. Note that we operate the Inter-Diocesan System with the instructional sections in each of the Dioceses making up the Inter-Diocesan Tribunal.

- b. Is the tribunal well equipped, funded and staffed?

It is fairly equipped. It is very well funded by the Metropolitan. It is well staffed in terms of canonists. About 9 in all.

- c. Does your diocese have a Judge and/or a judicial vicar?

Yes, my diocese has a Judge and has a Judicial Vicar.

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

The members of the faithful in Nigeria are becoming more and more aware of the fact that they can approach the tribunals. In our Inter-Diocesan Tribunal, the request for the services of the tribunal keeps increasing.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Perhaps, a few. My experience tells me, rather, that while they know they should get civil divorce and declaration of nullity from the Church, many do not know the real difference between the two. They think what they are getting from the ecclesiastical tribunal is the Church's divorce.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

I would say many Catholics are not conversant with the demands of the process. They file an application and all they want is the result.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

The Lagos Inter-Diocesan Marriage Tribunal, to which I belong, no longer charges since the coming into effect of *Mitis Iudex*. It does not, however, turn down voluntary donations.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

From a positive point of view, it has eliminated the delay caused by the ex-officio appeals, except where there is an appeal by the party. And the elimination of the fees has brought some relief to the parties. The introduction of the pre-judicial pastoral service would strengthen marriages and assist troubled unions.

From a not too positive perspective, the elimination of the ex-officio appeal may lead to non being thorough on the part of the first instance officials and promotion of a "Catholic Divorce" under the canopy of a declaration of nullity.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

In our Inter-Diocesan Tribunal, some of the aspects we have implemented include the following:

- Free services
- No more ex-officio appeals for positive sentences
- Bringing the services of the tribunal closer to the people by having a tribunal official in each of the deaneries (Principle of proximity)
- the putting in place of the pre-judicial and pastoral service

The challenging area is in relation to the briefer process. Putting into consideration our local circumstances (lack of staff and equipment and good understanding of the process itself), it is difficult to observe the procedure. The ordinary process is preferred.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

- Where the diocese is not financially buoyant, it will be difficult to operate without charging the fees (though, this is only an exhortation from the Pope).
- The use of the briefer process – see explanation under B6.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

It will be difficult except where the Diocese is able to support as is the case with the Lagos Inter-Diocesan Marriage Tribunal.

b. Are the tribunal well-funded?

While ours is, I believe many are not.

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes. See explanation under B6.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

This is very possible, especially with the elimination of the ex-officio appeal

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Yes, especially with the elimination of the ex-officio appeal.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

We have not used this process in our Tribunal. I believe it will be very challenging to make use of the process.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

I think so. But it is expected that the Judicial Vicar will assist him in carrying this out.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes, we have qualified canonists in all the dioceses that make up the Interdiocesan Tribunal.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

The cooperation has been excellent and smooth and it affords us the opportunity of pooling our human and material resources.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The organization of periodic seminars for tribunal officials and, sometimes, for the bishops will help.



A. GENERAL FOCUS

1. Name (optional)... **Respondent 7**
2. Diocese of domicile (optional)
3. Position or Designation... **Judicial Vicar**

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

...I would say that some dioceses within Nigeria are doing their best with regards to dealing with cases that are introduced within their domain. However, from our interactions at the level of the Canon Law society of Nigeria, it could be noticed that there is still the major problem of insufficient personnel. Some dioceses can only boast of a few canonists and some without any professional as such. In those places, tribunal ministry is moribund.

- a. Is there a functioning marriage tribunal in your home diocese?

.....Yes, Awka is reputed to have one of the best functional tribunal in Nigeria

- b. Is the tribunal well equipped, funded and staffed?

.....Yes, it is well equipped with comfortable office complex and staffed relatively enough

- c. Does your diocese have a Judge and/or a judicial vicar?

Yes, the diocese has a judicial vicar, associate judicial vicar and other three judges even

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes, they are more than disposed at least in our local setting to approach the tribunal. In fact, in the diocese where I preside, there were a total number of 134 cases introduced in 2016 and 110 registered in 2017. The neighbouring dioceses of Onitsha and Nnewi are equally dealing with large numbers of clients. I have the privilege of sharing statistical data with them on the state of the tribunals at the end of every judicial year because until the *Mitis Iudex* came into force, we used to be Inter-diocesan tribunal comprising the three mentioned dioceses. Now each tribunal is autonomous.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

I would not say that people are slow to petition for nullity because they equate that with divorce. Time existed in the past when people did not know that their marriages can be actionable. But with greater awareness now created, the story is different now, with more and more people heading to the tribunal with their marital cases.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

I can say that more and more people are becoming conversant by the days. The Canon Law society of Nigeria recently published a “Handbook on Tribunal Ministry in Nigeria”

with the blessing by and ‘nulla osta’ of the CBCN. With this handbook now in circulation across the nation, I guess more and more people hitherto unaware of the work that church marriage tribunals do, will become more and more exposed to the ecclesiastical ministry of justice and truth, which the tribunals stand for.

g. What is the average administrative charge for cases brought before the marriage tribunal?

#40,000 (forty thousand naira) which is about \$110 (with the current exchange rate) and it can be paid in three instalments, without prejudice to people who receive services pro bono, when proved that they are too poor really to make this little contribution for offsetting some procedural expenses.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

...I have positive assessment of it because I feel it was done to meet the yearnings of the people and not make them wait for long before justice is served them whether for or against nullity in their respective marriage situations. It aims also at minimizing frustrations by people who are already in the tribunal and encouraging people who are yet to approach the tribunals to do so; knowing as they do that celerity has been introduced in the system.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

The briefer process has been well implemented in my diocese and so is the removal of the *conformitas sententiarum* – double conformity of sentences. Perhaps the only challenge is in trying to avoid judicial rascality which can creep in especially with the possibility of sole judges still in place for tribunals with paucity of personnel.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

I think the peculiar challenges are inadequate judicial personnels to meet up with the speed required by the reform in most of the tribunals. Therefore the lingering of cases in most cases beyond a year can still be an issue to contend with. Secondly the bishops who are detailed to process the briefer process cases are too engaged to be able to do all the reform is asking of them. It is therefore doubtful that the *processus brevior* would find conclusive steps within a month specified (cf. can. 1685-1686 of the reformed canons), particularly with the slow pace things work in our setting, which included difficulty in citing the parties or even locating their whereabouts.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

There is need for the tribunal to have a dependable source of money to contain running costs and hence entirely rendering free service would impact productivity.

b. Are the tribunal well-funded?

Our tribunal is okay

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

See my answer on number 6 above. It is a possibility.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

Both are extremes which ought to be avoided because what is on trial each time is the bond and truth and justice should have the day and should neither be suppressed nor betrayed.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

We strive to put that under check in our tribunal, especially as it concerns our lay staff.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

This is always a problem but there is a way we wriggle out of it, invoking the sense of article 11, § 2 (cf. *Motu proprio, Mitis Iudex Dominus Iesus*, Procedural rules); with both parties [petitioner and respondent] either favourable to the process or at not against it, when respondent having received summon, didn't make any manifest objection to it. The silence is deemed favourability, enough to drive the process on.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes, it does affect his role as *iudex natus* no doubt in practice. In the end it is still the judicial vicar who does everything and supplies for him, presenting the judgment redacted however, along with the acta for his study and endorsement.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

...Yes, she has. See my exposition above.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

It is working well in our province and it can work in Nigeria. In fact, there are some places where what is in place is inter-diocesan tribunals. And the tribunals are willing to assist each other in cases requiring rogation.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The new papal reform anticipated the production of handbook (*vademecum*) by the Conference of Bishops and this task has been fulfilled effectively through the CLSN in the production of the earlier mentioned handbook on tribunal ministry in Nigeria. The CLSN set up a committee (where incidentally I served as the Secretary) that updated the already existing one and accommodated other essential needs of the operation of marriage tribunal in the local Church in Nigeria. The draft copy of the handbook was approved for publication by the CBCN at the Second Plenary in Jalingo 2017 through the Commission on Canon Law. We know the ministry of the tribunal to be quite a difficult one and hence it requires very clear and precise guidelines on how to proceed.

Thank you for taking your time to respond to these questions.



A. GENERAL FOCUS

1. Name (optional) **Respondent 8**
2. Diocese of domicile (optional)
3. Position or Designation **Judicial Vicar/Chancellor**

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

Very important for the Church in Nigeria

- a. Is there a functioning marriage tribunal in your home diocese?

Yes, an interdiocesan

- b. Is the tribunal well equipped, funded and staffed?

Very well funded by few staff

- c. Does your diocese have a Judge and/or a judicial vicar?

Yes. Both a judge and a judicial vicar

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Yes

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Some are not conversant with the process

- g. What is the average administrative charge for cases brought before the marriage tribunal?

N5,000.00

5. What is your assessment of the reforms introduced by the *Motu proprio Mitis Iudex Dominus Iesus*?

Very good especially with the briefer process

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

The briefer process and the financial aspect

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

Some of the Local Ordinaries are not aware of the briefer process except explained to them by the Tribunal (Judicial Vicar) or members of the tribunal.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

No

b. Are the tribunal well-funded?

Yes

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

No

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

No

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

No

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Very feasible

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

No

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Very feasible in the province

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Through workshops and professional seminars.

Thank you for taking your time to respond to these questions.



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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional) **Respondent 9**
2. Diocese of domicile(optional)
3. Position or Designation **Director at CSN**

B. RELATIONALOR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The marriage tribunal in Nigeria had been far from the ordinary Christian for a long time but since 2010, the tribunal has been brought closer to most people in Nigeria through the activities of my committee. We have had series of trainings and workshops for tribunal personnel and recruited many people to participate it. At the moment, almost all the dioceses in Nigeria has a working tribunal.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes, we have a functional tribunal in my home diocese

- b. Is the tribunal well equipped, funded and staffed?

The tribunal is funded, but not well funded. Though they do not have enough trained staff as one would desire.

- c. Does your diocese have a Judge and/or a judicial vicar?

My diocese has a judicial vicar who is also a judge in the tribunal. It is a Single Judge Tribunal.

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Not until recently and many people are now approaching the tribunals in Nigeria.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

It was before but anymore. Many are now filing for declaration of nullity.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Gradually Catholics in Nigeria are becoming conversant with the process of nullity at the marriage tribunals. This is because of education and enlightenment being carried out through out training and the annual inauguration of the judicial/tribunal year in dioceses. Many dioceses use this inauguration ceremony to educate the people of the work and process of the marriage tribunal.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

The average charge is about N30,000 (about \$70 US Dollars).

5. What is your assessment of the reforms introduced by the *Motu proprio MitiIudex Dominus Iesus*?

The *Motu proprio*, "*Mitis Iudes Dominus Iesus*" is most timely and needed in the Church, especially in Nigeria because it eases the tribunal process in a way that makes it easier for the dispensation of the many cases.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

We are implementing all the changes introduced by the *Motu proprio*. And we do not really have peculiar challenges to such implementation. In fact the changes have been of immense assistance to the functionality of our tribunal since we are now able to more quickly dispense of our cases.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

None specifically

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

It will negatively affect the functionality of the tribunals because many people will not value it since it is free of charge. It is from experience. It be less attractive for the tribunal personnel since most of the tribunals run on funds generated through the charges for services.

b. Are the tribunal well-funded?

Not all the tribunals are well funded. Some are not even funded at all. They run on income they generate through charges.

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

The removal of automatic appeal can be abused but it has its own values. The values outweigh the abuses.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

I do not understand this question enough for an answer. Do you mean that the judges will be slow in granting nullity for fear of it being interpreted as granting divorce? If that is the question I will answer yes that some people do not understand the rationale. However, do not forget that in the tribunal we only look into cases where the couples have already obtained civil or customary divorce, thereby rendering the possibility of unity impossible. And most of the time, the cases begin after all the avenues for reconciliation have been exhausted.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

None that we have noticed yet but it is not impossible for the staff are human beings.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Most of the time, the petitioner would prefer the briefer process for quick dispensation of justice while the respondent would oppose it.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

That is the big challenge we face in Nigeria. The Local Ordinary is most of the time very busy and are not able to participate in the tribunal process effectively.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

It is very feasible as many dioceses run inter diocesan tribunals while others run provincial tribunals. However, many others have diocesan single judge tribunals.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The Canon Law Society of Nigeria is playing the role of education and enlightenment. They provide the personnel that the CBCN Committee on Canon Law uses for the training of Tribunal personnel annually and regularly in dioceses.

Thank you for taking your time to respond to these questions.



- 1 Name (optional)..... Respondent 10
 2. Diocese of domicile (optional)
 3. Position or Designation: Personal Assistant to Archbishop Emeritus

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The marriage tribunal in Nigeria exist mostly at the diocesan level and they operate as organ of the bishop for ensuring principally the stability of marriages

- a. Is there a functioning marriage tribunal in your home diocese?

Yes

- b. Is the tribunal well equipped, funded and staffed?

.....Yes....

- c. Does your diocese have a Judge and/or a judicial vicar?

.....JUDICIAL VICAR....

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

.....VERY WELL.....

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

.....NO.....

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Far from the assumption of many that most Catholics do not know much in this direction, part of the growth in faith is the heightened enlightenment. So, they know much.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

.....I DON'T KNOW..

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

They are good, but much time is required for their proper understanding

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

Item four is most lively, that the briefer process, however, it calls for more thoroughness in investigation.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

The love level of the faithful about this new provision

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties? **yes**

Are the tribunal well-funded?

YES

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

.....**YES**.....

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

...**TO SOME EXTENT**.....

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

.....**NONE, TO MY KNOWLEDGE**.....

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

..**QUITE DIFFICULT**.....

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

.....**MOST PROBABLY, YES**.....

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

.....**YES**.....

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

.....**VERYPOSSIBLE**.....

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

There should be exchange of case matters within them, to provide members with good references.

Thank you for taking your time to respond to these questions.

Respondent 11

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QUESTIONNAIRE

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A. GENERAL FOCUS

1. Name (optional).....

2. Diocese of domicile (optional) Archdiocese Abuja, State Nigeria or

3. Designation Notary Position

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

Many dioceses in Nigeria are doing well in terms of their tribunals.

a. Is there a functioning marriage tribunal in your home diocese?

Yes, highly functioning

b. Is the tribunal well equipped, funded and staffed?

Not well equipped but moderately funded.

c. Does your diocese have a Judge and/or a judicial vicar?

3 Judges and a judicial vicar

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

At yes and no, because they approach the tribunal on extreme cases

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Yes.

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Not too conversant because they lack the knowledge of how it works.

g. What is the average administrative charge for cases brought before the marriage tribunal?

Before the new law it was ₦10,000 but now the charge.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

It has solved some problems.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

They are doing well organising

These aspect of competence. Before now one can only apply or petition to the tribunal in the diocese where he wedded or diocese of origin but now one can apply any tribunal of his choice

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

1. Ignorance

2. People may think it is very easy to obtain nullity and begin to toy with marital life

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Yes, it is a problem

b. Are the tribunal well-funded?

Not as it should be

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

Yes

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Yes not still

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

It depends on the interest of parties

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes -

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Great

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

They are doing well, organising workshops and seminars

God be with you

They are doing well, organising workshops
and seminar.

Thank you for taking your time to respond to these questions. God be with you.

Respondent 12

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QUESTIONNAIRE

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A. GENERAL FOCUS

1. Name (optional)..... Fr Chukwudi Uwanunochi

2. Diocese of domicile (optional)..... Umuahia

3. Position or

Designation..... Parish Priest

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

..... It is functional but not very actively

a. Is there a functioning marriage tribunal in your home diocese?

..... Yes

b. Is the tribunal well equipped, funded and staffed?

..... It is staffed & equipped but Rome says it should be freely funded

c. Does your diocese have a Judge and/or a judicial vicar?

..... 2 Collegiate Judges & 1 Judicial Vicar

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

..... Yes

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

..... Yes

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

..... They are conversant and accessible

g. What is the average administrative charge for cases brought before the marriage tribunal?

..... None

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

..... It is a dream

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

It is difficult but not impossible

b. Are the tribunal well-funded?

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

No

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

No

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

No way

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

It is very feasible because they want the truth which must prevail.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

No

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Active

What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Regular meetings & WhatsApp Online Paper sharing on etc

God bless you.

Respondent 13

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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional)

2. Diocese of domicile (optional) LIMUATHA DIOCESE

3. Designation CHAST Position of

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria
some tribunals are solely Catholic.

a. Is there a functioning marriage tribunal in your home diocese?
yes

b. Is the tribunal well equipped, funded and staffed?
yes

c. Does your diocese have a Judge and/or a judicial vicar?
yes

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?
yes

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?
NO

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?
VERY CONSERVATIVE

g. What is the average administrative charge for cases brought before the marriage tribunal?
10

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?
for me, there is nothing new.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

Lack of monetary involvement

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

NO

b. Are the tribunal well-funded?

NO

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

NO

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

NO

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

The feasibility is situational

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

NO

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

YES

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

THE FEASIBILITY IS ENCOURAGING

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

They have to organise seminars/workshops and be able to ascertain, if there are shortcomings.

They have to organize seminars / workshops
and be able to ascertain if it is a
short course.

Thank you for taking your time to respond to these questions.

Respondent 14

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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional) *Opapa Paschal Obioma*
 2. Diocese of domicile (optional) *Umuahia*
 3. Designation *Defender of Bond* Position *Diocesan Tribunal* or

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The much I know is that a good number of dioceses have functional tribunals. Most tribunals are not well funded. Unfortunately cases are delayed in many of these tribunals.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes

- b. Is the tribunal well equipped, funded and staffed? *It is well staffed, but not well funded and equipped.*

- c. Does your diocese have a Judge and/or a judicial vicar?

We have a competent judicial vicar and 2 competent judges.

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes but many do not know that there is anything called tribunal, especially rural dwellers.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Most couples or persons who approach our tribunals seek solution for divorce.

- f. Do *not* think they know the difference

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals? *I think that most Catholics who have had nothing to do with the Tribunal do not know anything about the process.*

- g. What is the average administrative charge for cases brought before the marriage tribunal?

In our own tribunal, we currently do not charge anyone.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

I commend Pope Francis for the motu proprio. It is immensely enhancing the promptness in the resolution of cases that have been in many of our tribunals for a long time now.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

- The briefer process has been mostly implemented.
 One challenge is that sometimes the petitioners do not appear.
 Another challenge is that, in my diocese particularly, some persons living very far away are so poor that they find it difficult transporting themselves to the Tribunal.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

1. When aggrieved couples live in different cities, one party may find it difficult coming to the chosen Tribunal of the petitioner.
2. The scarcity or unavailability of witness often pose a problem.
3. On some occasions, parties and their witness either do not co-operate or they withhold useful information.

8. Do you think such probable challenges could include the following concerns?

a. Can the Tribunal function effectively by rendering free or minimal cost services to parties?

Yes, but the diocese must fund the Tribunal.

b. Are the Tribunal well-funded?

No.

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

No. I do not think that well trained Canonists can do that.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

It is possible, especially when the judge is a conservative believer in the indissolubility of marriage.

e. Are there possible cases of favouritism or arbitrariness from the Tribunal staff?

I do not imagine that trained Canonists can do that.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

When a party does not want to leave, he/she may not cooperate.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes, but he can include cases from the Tribunal to his schedule.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

No. We need more, but funds to train priests is a serious hindrance.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

This co-operation is not very easy a task but if Tribunal personnel in the provinces must endeavour to keep it going.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

By organising Seminars and discussions on the understanding, importance and implementation of the

By organizing seminars and discussions on the
understanding, importance and implementation
of the motto program.

Thank you for taking your time to respond to these questions.

Respondent 15

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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional)..... fr Benjamin Ade ADEBIYI
 2. Diocese of domicile (optional)..... OSOGBE, Nigeria.
 3. Position or Designation..... Judicial Vicar.

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

Because of the Supreme law in the Church - "Salvation of souls", many dioceses are now coming up with a functioning and functional Tribunal as part of the Church's efforts to provide healing and hope to victims of those in invalid marriages. This is done through the adequate investigation by the tribunal to safeguard the Marimonial bond by observing canonical principles.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes, there is a functioning and functional tribunal in Oso.

- b. Is the tribunal well equipped, funded and staffed?

Majority are not well equipped, funded and staffed.

- c. Does your diocese have a Judge and/or a judicial vicar?

Yes

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

No so many. Their awareness is not there in many dioceses, but they are coming up.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Some yes, while some others know the difference.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Catholics are becoming very conversant with this.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

In my Diocese, it is absolutely free.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

It is an opportunity of making annulment procedures for marriage more (1) accessible, (2) less time-consuming and (3) possibly free of administrative charges. But I am of the opinion that it will not guarantee a reliable judgment. The process of arriving at the determining the validity of a marriage becomes more difficult through single judgment.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

The *Motu proprio* addresses the issue of Tribunal fees: that the procedure be conducted without fees. This seems to be the aspect most implemented but with great challenges. In as much as the Church would show herself to the faithful as a generous Mother, it's been very difficult to achieve this, particularly for a Church like Nigeria where poverty is biting hard coupled with the poor economic situation.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

- (1) Lack of trained Canon law experts to assist in this area.
- (2) Lack of adequate personnel owing to
- (3) improper or poor funding.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

They could, once the Bishops are ready for the funding.

b. Are the tribunal well-funded?

Not at all.

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes. Because the question of second instance for confirming sentences has been eliminated and should not.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

Yes, particularly with the introduction of one single confirming sentence and the problem of under staffing.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Not to my knowledge.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

It is still very strange for a number of reasons (1) cultural wife (2) lack of proper awareness/education (3) intervention from family

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Obviously it will coupled with few personnel who are well trained in Canon law.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Not really. Just one person as at now.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Some are functioning well. but other (majority) are not owing to problems of staffing and funding.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The society could help in the sensitization or spreading this awareness through organizing seminars and workshops to tribunal staff, priests, and religious and laity.

Thank you for taking your time to respond to these questions.



A. GENERAL FOCUS

1. Name (optional) Respondent 16
2. Diocese of domicile (optional)
3. Position or Designation Judicial Vicar

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The state of Marriage Tribunals in Nigerian is for the most part evolving. Long before the coming of the Mitis Iudex Interdiocesan or Provincial Tribunal was the vogue. One Interdiocesan Tribunal serves as a First Instant Tribunal while the other serves as appellate Tribunal. Disposal of cases were never expeditious as a decision in the first instant tribunal is automatically appealed in the next. Meanwhile before this first decision is reached, many years may have lapsed. The coming of Mitis Iudex proposes the elimination of the automatic appeal. However, Tribunals around the country are still tied to the apron string of the old system. Many dioceses lack trained Canonists to form Diocesan Tribunal.

- a. Is there a functioning marriage tribunal in your home diocese?
.....Yes
- b. Is the tribunal well equipped, funded and staffed?
.....Yes
- c. Does your diocese have a Judge and/or a judicial vicar?
.....Yes, 3 judges, of m which One doubles as Judicial Vicar
- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?
.....Yes, many Catholic are so disposed.
- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?
.....Yes, many Catholics are ignorant of the difference between divorce and nullity, however it may not result in their being slow to petition for nullity
- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?
.....Not many. The process has to be explained to virtually every litigant and respondent.
- g. What is the average administrative charge for cases brought before the marriage tribunal?
...It used to be N50,000 but after the arrival of Mitis Iudex it has been reduced to N 30,000

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

The Motu Proprio is a welcome development in the life of the church. The reform of the process for the declaration of nullity is long over due. Innovations that encourages the formation of autonomous diocesan Tribunals, the appeal from the dioceses within a province to the

Metropolitan Tribunal and from the Metropolitan to the most senior suffragans Tribunals where necessary, and in place of the automatic appeal, the briefer process before the bishop etc all make the document take on a compassionate face.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

At the National level of the Canon Law Conference a lot has been said and done to create awareness among professional about the process and on the need for implementation

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

Lack of sufficient man power and adequately trained personnel is peculiar challenge followed by the near lack of funding of the Tribunal in many dioceses

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Yes if the diocese takes up the responsibility of adequately providing for the remuneration of the staff in the Tribunal

b. Are the tribunal well-funded?

No, not all.

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

No. There was a time it was never there.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

No. Most Tribunal accept proof of a court decision or even an affidavit of separation before accepting a petition for divorce

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

I don't know

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Such mutual cooperation is a requirement for the briefer process. It's feasibility mostly depends on their understanding of the issues

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

No because the bulk of the paper work may be done at the Tribunal.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Cooperation at this level has already been established

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Organising professional seminars, workshops, and conferences to foster uniformity of practice can be some of the many roles it can play

Respondent 17

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A. GENERAL FOCUS

1. Name (optional)..... *Sr. Damiana Uchimi Adeyigbo*

2. Diocese of domicile (optional).....

3. Position or Designation.....

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The marriage tribunal has not been taken seriously especially in the west. Many laity are still very ignorant of it and cannot even save their marriages because not have justices.

a. Is there a functioning marriage tribunal in your home diocese?

Am not sure

b. Is the tribunal well equipped, funded and staffed?

Not really

c. Does your diocese have a Judge and/or a judicial vicar?

Am not sure if the judicial vicar

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes those who are knowledgeable about marriage tribunal.

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

They don't really understand the difference, all they want is justice

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

/

g. What is the average administrative charge for cases brought before the marriage tribunal?

I don't know

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

.....

.....

.....

.....

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

I can't really say because I have not worked at tribunal for the past 2 1/2 years now.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

No it can't

b. Are the tribunal well-funded?

No

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

Yes

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

No for the time I was conversant at The Ibadan Archdiocese Tribunal

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes

1. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

It doesn't function

2. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

They should begin with the local Ordinaries. Then lay faithful. Consecrated life. On the importance of marriage tribunal. That it is another area of pastoral life of the Church that comes for them.

Thank you for taking your time to respond to these questions. Especially to make sure that they have a happy and fulfilled married life. And the Bishops should not compromise the or take the marriage Tribunal with levity.

Respondent 18

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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional)..... *NICHOLAS O- AKINDIZI*
 2. Diocese of domicile (optional)..... *LOKOJA*
 3. Position or Designation..... *Defender of the bond*

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

To a large extent marriage tribunals have not gained consciousness in the minds of many Catholics both lay and clergy alike. In many dioceses, tribunals have even not been established.

- a. Is there a functioning marriage tribunal in your home diocese?

YES

- b. Is the tribunal well equipped, funded and staffed?

We can do better.

- c. Does your diocese have a Judge and/or a judicial vicar?

YES

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

If properly educated, they would.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Now divorce and nullity seem like same thing to some extent. Only proper education will explain the difference.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

I would say very few know about nullity process.

- g. What is the average administrative charge for cases brought before the marriage tribunal?

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

The reforms seem targeted at regions where nullity cases are already part of Catholic life. In Nigeria where many are yet to understand nullity proceedings we have more work with educating our people.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

1. Our people should already embrace the nullity process first.
2. It is still challenging for in a situation to have one witness to sustain a charge / proof.
3. The need to ensure that nullity is not seen as divorce through the back door since both parties are expected to agree to the process and freely in the grounds.
4. The need to clarify what brief or prohibition really means in our context.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Yes

b. Are the tribunal well-funded?

Not much can be done

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes, but it does place more responsibility on the diocesan of the trial.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

The fear is more on the latter.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

There are possibilities, especially when some may think it is just a game. But in reality, for many not obvious.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

If the animosity and anger persists, it may be difficult to cooperate. Then the tribunal will go the ordinary process - formal.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Practically yes. Though it is preferred that he needs at least to go through the Acts of the case and have moral attitude.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

We have 2 canonical experts for now. We can have more surely.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Not much is happening now. But there is a lot of advantages therein.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Thank you for taking your time to respond to these questions.

g. with regards to the sentence written by the Judge. I do not see the insistence on the bishop writing the sentence himself especially if he is not a Canon Lawyer. He needs to sign on the sentence prepared by his judicial vicar.

Respondent 19


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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional): REV FR MICHAEL CHING

2. Diocese of ENUGU domicile ENUGU

3. Position DESIGNATE VICAR, ENUGU DIOCESE

Designation: REV FR

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

I can talk about our own Tribunal Enugu Inter-Diocese Tribunal comprising of Enugu Agba and Nsukka dioceses. It's performing very well. We have a Justice Tribunal.

a. Is there a functioning marriage tribunal in your home diocese?

YES

b. Is the tribunal well equipped, funded and staffed?

YES

c. Does your diocese have a Judge and/or a judicial vicar?

We have Judicial Vicar and judges

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

YES

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

YES

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Not much

g. What is the average administrative charge for cases brought before the marriage tribunal?

About ₦72,000

5. What is your assessment of the reforms introduced by the *Motu proprio Mitillex Dominus* *lexus*?

Very ad rem but difficult to apply in mission territories.

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and

— The application of Briefer Process
— and the execution of Judgment after the first Instance.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

- Sponsorship of the Tribunals
- Without funding, we cannot grant free access to Tribunal processes
- We have to pay for administrative costs

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

NO

b. Are the tribunal well-funded?

NO

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

NO

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

NO

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

None

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Very feasible. In fact we have treated about two cases by briefer method

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

NO

Because the Judge Instructor will prepare all for him. Of course he has to read and sign

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Very feasible. We are Inter-Diocesan Tribunal

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Teaching and education of the faithful



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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional): Respondent 20
2. Diocese of domicile (optional):
3. Position or Designation: Judicial Vicar

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

a. Is there a functioning marriage tribunal in your home diocese?

What we have is an Inter-diocesan Tribunal for Jos province for now

b. Is the tribunal well equipped, funded and staffed?

Yes, the Tribunal is equipped but not well funded. We have tribunal officials and few supporting staff.

c. Does your diocese have a Judge and/or a judicial vicar?

Yes, Pankshin Diocese has a judge/ Judicial Vicar

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Not many are well disposed because of lack of understanding because Pankshin is a rural diocese

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

The general understanding/ Impression is that Church Marriage cannot be dissolved, and Nullity is equated with divorce, and so Catholics are slow to approach Marriage Tribunal.

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

Few. Let me put it 40 %, and especially in the southern part the country.

g. What is the average administrative charge for cases brought before the marriage tribunal?

N10, 000.00 only Jos Province for now.

5. What is your assessment of the reforms introduced by the *Motu proprio Miti Iudex Dominus Iesus*?

It is a welcome idea because the existence of the Church is for the salvation of Souls and if there is anything that could be done to save souls; the Church can go for it. These reforms introduced by the motu proprio – ‘miti. Iudex Dominus Jesu’ gives serious support to the position of the Church

6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

A single executor sentence in favour of nullity and A single judge acts under the responsibility of the Bishop in some dioceses (Not Pankshin Diocese)

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio*? *Answer: the Bishop may not have enough time to sit with the Judicial Vicar/judge*

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

The Tribunal cannot function well without enough money.

b. Are the tribunal well-funded?

Yes, but not well funded

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting *divorce*?

No

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Yes

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

It could only be possible if they are within the same environment

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Only one Canonist

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

We have an Inter-diocesan Tribunal and so it is feasible

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The Canon Law Society of Nigeria should continue to organize workshops/Seminars for her members and Tribunal staff.

Thank you for taking your time to respond to these questions.



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QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional) Respondent 21
2. Diocese of domicile (optional)
3. Position or Designation Parish Priest

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

The general opinion is that marriage tribunals in the country do not function very well. Basically it depends on the seriousness of a particular diocese or dioceses forming an interdiocesan tribunal. That is not taking away the fact that there are some very functional marriage tribunals in the country. Marriage tribunals still alive.

- a. Is there a functioning marriage tribunal in your home diocese?

Yes. We have been functioning as an interdiocesan tribunal of Warri together with the dioceses of Isele Uku and Bomadi..However recent changes in Canon Law has made it easier for us to handle certain cases without reference to the interdiocesan tribunal.

- b. Is the tribunal well equipped, funded and staffed?

Our Tribunal is not well equipped or funded.We have basic staffing.....We basically fund the tribunal from parish income as well as fees paid by those who approach the tribunal.

- c. Does your diocese have a Judge and/or a judicial vicar?

We do have a judicial vicar in the diocese.

- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes. There are many who are disposed to approaching the tribunal. However there are so many others who have not the slightest idea what the tribunal does or is about. These are in the majority.

- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

When issues of nullity arise, the question is always asked if the church now allows divorce. It is only after a proper explanation that they come to the understanding of the difference..the fact remains however that majority of the cases handled by our tribunals are of couples who no longer live together.

- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

My experience is that many Catholics who approach the tribunals only get to know much of the process when they approach. Most ordinary Catholics are ignorant of the workings of a marriage tribunal.

g. What is the average administrative charge for cases brought before the marriage tribunal?

From start to finish in our tribunal is N25000. This is not a uniform charge in Nigeria. Though many still complain they are not able to pay.

5. What is your assessment of the reforms introduced by the Motu proprio Miti Iudex Dominus Iesus?

The usual complaints about tribunals in the country would be the length of time it took to finish cases. So in that regard it is a very welcome development. Now cases take less time to finish, and definitely less burdensome. Also bishops can judge certain cases without the parties going through the ordinary tribunal process.

However it is all not about fast tracking cases. Thorough investigations still have to be made and that could be missed in the rush to finish a case. Overall it has helped tribunals and dioceses to settle issues that were long pending in many tribunals.

6. What aspects of the reform of the Motu proprio to your knowledge have been implemented and are there peculiar challenges regarding such implementation?

My experience here is that we have dealt with many briefer cases and that appears very nice. The tribunals are very underfunded here and using the same standards as in Europe or other developed areas is a bit of a problem. The cases need to move fast, but the tribunals are underfunded. Also in dioceses without full time tribunal staff like in our case it still is a problem finishing cases so quickly while combining tribunal work and parish work.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the Motu proprio in Nigeria?

The key thing on the lips of all is that the motu proprio of the pope has fast tracked the whole process. What has to be considered is the fact that we are in a different part of the world. You do not want to give the impression that marriages could be entered into and out as soon as inconveniences arise.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

No. More especially when the tribunals are very poorly funded.

b. Are the tribunal well-funded?

The tribunals are not well funded. At I speak from my experience. Probably others are better funded.

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

The automatic appeal was a good check on any form of recklessness. But it has shortened the waiting time. But it was very useful to the process. It brought credibility to the whole process.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

I do not think so. With better catechesis the faithful should be brought to an understanding of what the whole process is about. The fear of it appearing like a divorce could come up especially with the briefer cases.

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Ours has been a disciplined tribunal. Cases are treated on first come first served basis. It is not impossible that such negative trends could creep in but that has not been our experience with our staff.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

At this stage some of the issues leading to separation are still fresh and it could be a problem getting them to cooperate. However knowing that such cooperation sets them free to move on with their lives has been of help in persuading to cooperate.

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

No. Most times the bulk of the work is done by tribunal official who the bishop might ask to look into the matter. Remember some bishops do not know much about marriage tribunal details. Handling them alone with his numerous other engagements and activities would be too much.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

Yes we do

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Like I mentioned earlier that has been our practice in this area for so many years. We successfully ran the Interdiocesan tribunal of Warri.

Cooperation on the level of interdiocesan tribunals have a way of helping tribunal staff gain experience and learn from each other. I see them going down rather than coming up

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

I think they can do so by publications that focus on tribunal practice and periodic workshops that focus on these areas instead of the routine paper presentations at conferences that seem to solve nothing.

Thank you for taking your time to respond to these questions.

Respondent 22

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ibQUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional)..... Rev. Dr. Titus Imojume
2. Catholic Diocese of MAKURDI domicile (optional).....
3. Position tribunal judge at Makurdi Interdiocesan Marriage Tribunal.
- Designation.....

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria
functional Marriage tribunals exist only in few dioceses in Nigeria while in the great majority of the dioceses they exist only in name, not functional and only a few priests are trained in Canonical studies. So lack of trained personnel is a major factor for the non availability of functional tribunals in Nigeria.
- a. Is there a functioning marriage tribunal in your home diocese?
Yes, Makurdi inter-diocesan Marriage Tribunal for Makurdi/Aboko/Katsina-Ala dioceses.
- b. Is the tribunal well equipped, funded and staffed?
Not equipped, not funded and poorly staffed.
- c. Does your diocese have a Judge and/or a judicial vicar?
Yes. Both are available.
- d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?
No. Many are not aware that Marriage tribunals exist. Those who are aware are often discouraged for due to the non-functional state of the tribunals.
- e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?
Yes, poor catechesis is the cause for this ignorance.
- f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?
Poor awareness. Not conversant.
- g. What is the average administrative charge for cases brought before the marriage tribunal?
₦10,000 in Makurdi interdiocesan tribunal.
5. What is your assessment of the reforms introduced by the *Motu proprio* *Mitis* *Indux Dominus* *Iesus*?
 - Increase awareness of the need for functional Marriage tribunals
 - Speedy administration of justice in contentious marriages
 - The setting aside of the second instance tribunal verdict could lead to abuses and arbitrariness at the first instance tribunals. The absence of experts also is a problem.
 - Among the polygamous cultures in Nigeria, the reforms could lead to increase in nullity cases.
6. What aspects of the reform of the *Motu proprio* to your knowledge have been implemented and are there peculiar challenges regarding such implementation?
 - Speedy dispensation of justice on contentious Marriage cases.
 - The constitution of the bishop as a judge in his diocese.

~ The briefer process

- The setting aside of the appeal tribunal verdict (not necessary)
- The implementation of the verdict of the first instance tribunal immediately
- The fear of Mercy as a context for settling Most Marriage cases

challenges

- Most Bishops presided over contentious Marriage Cases on Theological grounds and not Canonical norms. ② Poor investigations and Summary Sentences given.
- Processes without Canon Lawyers could not implement the reform in the Year of Mercy.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

- Lack of trained Canon Lawyers (staffing)
- Non functional tribunals of Marriage in dioceses.
- Lack of awareness of the existence of Marriage tribunals
- The equation of nullity with Divorce among Nigerians.
- The tribunal charged in some functional dioceses
- The non-funding of Marriage tribunals by the dioceses.
- The busy nature of the work of Bishops in Nigeria render them unavailable.
- The poor understanding of the norms of the reform in many dioceses.
- The hasty manner with which Marriage are contracted in Nigeria.
- Arbitrariness among the tribunal staff; the blame game among parties

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Yes

b. Are the tribunal well-funded?

NO

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

Yes.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

Yes. The provisions in the reforms are open-ended that the civil courts may reject the granting of Divorce

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

Yes. Lack of training makes this possible and the Nigerian attitude of buying Justice and listening more to a preferred group.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

Not feasible. Most cases end up with the judge hearing the case on non-appearance without reason and judging the Court to proceed

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

Yes.

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

NO.

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

It is working in my province. Makurdi, Aboko, Katsina Ala have one interdiocesan Marriage tribunal.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

Seminars and workshops in dioceses to deepen the understanding of the reform norms.

Workshops for bishops who are by the name of the reform ^{are} to serve
as sole judges, educating them on the canonical implications and
merits of their sentences.

Thank you for taking your time to respond to these questions.

Respondent 23

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018 QUESTIONNAIRE

A. GENERAL FOCUS

1. Name (optional): Rev Fr. Michael Agbaye

2. Diocese of domicile (optional): Okeigbo

3. Designation: Judicial Vicar

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

I notice that there is no one condition of tribunals in Nigeria. A good number of tribunals are doing well, some are at low level while some are non functional.

a. Is there a functioning marriage tribunal in your home diocese?

Yes

b. Is the tribunal well equipped, funded and staffed?

No

c. Does your diocese have a Judge and/or a judicial vicar?

Yes

d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria?

Yes

e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity?

Not really

f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals?

There is much ignorance in this area

g. What is the average administrative charge for cases brought before the marriage tribunal?

N/A

5. What is your assessment of the reforms introduced by the *Missa propter Miss Indes Domini* Iesus?

I personally believe that the reform is good but for a time, to enable tribunal to prosper.

6. What aspects of the reform of the *Missa propter* to your knowledge have been implemented and are there possible challenges regarding such implementation?

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the *Motu proprio* in Nigeria?

The only difficulties I see are lack of the will to study the document and the will to implement the reforms.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties?

Yes

b. Are the tribunal well-funded?

They are ~~not~~ currently well-funded

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court?

It might

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce?

There is the possibility

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff?

None in my tribunal

f. How feasible is it for estranged couples to cooperate and participate in the briefer process?

often difficult but happens too

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process?

It need not if the tribunal members assist him

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge?

No

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria?

Very feasible with great prospects

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform?

The Society is already doing much
in this direction through her seminars and
business meetings.

Thank you for taking your time to respond to these questions.

Welcome and all the best in your
research!

A. GENERAL FOCUS

1. Name (optional)...Respondent 24
2. Diocese of domicile (optional)...
3. Position or Designation...Vicar General, Judicial Vicar Kaduna Provincial marriage Tribunal

B. RELATIONAL OR COMPARATIVE INTEREST

4. Briefly describe your view on the state of marriage tribunals in Nigeria

We have a number of marriage tribunals in Nigeria, some of them are diocesan and others provincial. There are some that are fully equipped and functional, while others are partially equipped.

- a. Is there a functioning marriage tribunal in your home diocese? NO
 - b. Is the tribunal well equipped, funded and staffed? No
 - c. Does your diocese have a Judge and/or a judicial vicar? Yes
 - d. Do you think many Catholics are disposed to approaching the marriage tribunals in Nigeria? Yes, there is growing awareness of the importance of the tribunal in our diocese and Catholics are much more than before, disposed to approaching the tribunal.
 - e. Do many Catholics equate nullity with divorce and consequently slow to petition for nullity? Yes, many of the Catholics in Nigeria have a feeling that nullity is the same as divorce and as such, they look at the process with disdain.
 - f. How conversant are Catholics in Nigeria with the process of nullity at the marriage tribunals? Many Catholics are not conversant with the process of nullity except those who are privileged to be part of the tribunal
 - g. What is the average administrative charge for cases brought before the marriage tribunal? Twenty thousand naira.
5. What is your assessment of the reforms introduced by the Motu proprio Miti iudex Dominus Iesus? It is such a wonderful document that guides those working in the tribunal. It makes it easier for those who want to access justice in the Church, to do so. It also makes the process of marriage adjudication faster, especially by making the second instance tribunal optional or as requested by either the petitioner or the respondent.
 6. What aspects of the reform of the Motu proprio to your knowledge have been implemented and are there peculiar challenges regarding such implementation? Two aspects, tribunal fee which is less than before, from fifty thousand to thirty thousand naira. It is also the decision of the tribunal that those who cannot even afford the twenty thousand

naira can approach their Parish Priests for consideration. There is also the issue less use of the second instance tribunal.

C. PECULIAR CONSIDERATIONS

7. What do you think are the probable peculiar challenges to the implementation of the Motu proprio in Nigeria?

Lack of constant awareness by some of the tribunals on the importance of the document. Secondly, there is lack of funds to run the tribunals.

8. Do you think such probable challenges could include the following concerns?

a. Can the tribunal function effectively by rendering free or minimal cost services to parties? Yes it can function though with some difficulties

b. Are the tribunal well-funded? No, not at all

c. Do you think the removal of the automatic appeal could lead to abuse at the trial court? Yes, in some cases.

d. Could there be the possibility of laxity in granting nullity or even the lack of willingness to grant nullity for fear of not granting divorce? No

e. Are there possible cases of favouritism or arbitrariness from the tribunal staff? Yes there have been such instances.

f. How feasible is it for estranged couples to cooperate and participate in the briefer process? It is possible but rarely

g. Do you think the heavy schedule of the Local Ordinary will affect his role in the briefer process? Yes

h. Does your diocese have adequate canonical experts to assist the bishop in his role as a sole judge? Yes, we have three judges

i. How feasible is Inter Diocesan cooperation in your province or in Nigeria? It is quite feasible, in fact, as at now we are operating the Inter-Provincial Tribunal which serves the whole province.

9. What role can the Canon Law Society of Nigeria play for a proper implementation of the reform? The Officials of the Canon Society of Nigeria have been involved in organizing seminars and other programmes in this regard. However, they need to do more.

Thank you for taking your time to respond to these questions.

APPENDIX 4: SUMMARY OF QUESTIONNAIRE RESPONSES (SECTION B AND SECTION C)

SECTION B

QUESTIONS	Question 4: The state of marriage tribunal in Nigeria: - Functioning tribunal - well-staffed tribunal - perception of the laity - funding and charges	Question 5: Assessment of the Mitis Iudex	Question 6: Areas already implemented Challenges already faced
RESPONDENT 1	- Tribunal in Nigeria is evolving, inadequate - No function tribunal in the diocese - Faithful are disposed to approaching the tribunal - Lay faithful not very conversant with the process - Charges about ₦10,000	- Good for the church if properly understood	Briefer Process Single Judge Role of diocesan bishop Removal of automatic appeal
RESPONDENT 2	- Better times for the tribunals in Nigeria since the 2009 Ad Limina visit. Many are thriving. CSN organises workshops for probable tribunal personnel - functional tribunal - not fully equipped or funded - grossly understaffed - Judge and Judicial vicar in one person - Lay faithful disposed to approach the tribunal but lacks proper understanding of the role of the tribunal - Many come seeking divorce and not nullity - Lay persons not conversant with the process of nullity - Charge is ₦ 35,000	- A good reform	- If peculiarities are taken care of, the reform would be a big relief for tribunal proceedings
RESPONDENT 3	- Tribunals are either diocesan or inter-diocesan - Some not working to full capacity - Shortage of trained and experienced personnel - Tribunal engages experts in the Catholic Institute - There is a Judge - Lay persons are disposed to approach the tribunal - There is generally a clear understanding between nullity and divorce - Lay persons have not been familiar with tribunal process but they are gradually becoming aware of it - Charges ranges between ₦ 30,000 to ₦ 50,000	- Simplified and fast-tracked the process of nullity - Introduced the briefer process - Good for speeding the process - Helpful reform with the removal of automatic appeal and introducing the forum of competence where the parties are domiciled	- All aspects of the reforms already implemented in PH - Some respondents in the briefer process are not willing to cooperate - Most cases do not qualify for the briefer process - Parties are not conversant with the briefer process

RESPONDENT 4	- Tribunals functioning with many shortfalls such as inadequate qualified personnel, poor organisational structure, and want of suitable equipment, materials and environment - Diocese with a functioning tribunal - Tribunal not adequately equipped, funded and staffed - Both Judicial vicar and a judge exist - Lay persons are disposed to approaching the tribunal - Many people equate nullity with divorce - Many Catholics are not conversant with the process of nullity - Charge is ₦ 45,000 in the diocese. Average of ₦ 50,000. Could be as high as ₦ 70,000 in some	- Reforms are positive - Motivating for tribunal personnel - Positive effect on service delivery from the tribunals	- Expediting cases - creation of more diocesan tribunals and leaving inter-diocesan tribunals - Sole judge sentences - Five instance conclusive sentences
RESPONDENT 5	- Tribunals possess the capacity to function better if given more consideration by the local churches - No functioning tribunal in the diocese - No Judge, no judicial vicar - Many Catholics equate nullity with divorce - Many are not conversant with the process of nullity - No fixed charge	- Mitis will enable more tribunals to function better	- The briefer process - Single instance sentence
RESPONDENT 6	- A minority of the tribunals function properly - Long way to go concerning staffing, procedures and delivery of services - Functioning inter-diocesan tribunal in the province with instructional sections in each diocese - Fairly equipped; well-funded and well-staffed - Both judge and judicial vicar exist - Increasing interests in the tribunal amongst Catholics - Many do not know the real difference between nullity and divorce - Many Catholics are not conversant with the process - No more charges after Mitis but voluntary donations are accepted	- Eliminated the delay caused by ex-officio appeals could lead to defective results in the first instance and then lead to the promotion of a 'Catholic Divorce' under the canopy of nullity - Elimination of fees brought relief to parties - Introduction of pre-judicial pastoral service would strengthen marriages and assist troubled unions	- Gratis services - Lack of ex-officio appeals for positive sentences - Principle of proximity implemented by having a tribunal official in each deanery - Setting up pre-judicial and pastoral service - Briefer process a challenge: difficult to observe the procedure because of local circumstances of lack of personnel and equipment on the one hand and lack of proper understanding of the process itself

RESPONDENT 7	- Insufficient personnel makes the tribunal ministry moribund in some domain - Diocese with arguably the best functioning marriage tribunal in Nigeria - Well staffed and well equipped with comfortable office complex - Diocese has a judicial vicar, associate judicial vicar and three other judges - Many Catholics in this domain are disposed to approach the tribunal. 134 cases in 2016 and 110 in 2017. Neighbouring dioceses recording good patronage - Operated an inter-diocesan tribunal until the introduction of Mitis Iudex with each diocese erecting autonomous tribunals - Lack of approach to the tribunal not as a result of equating nullity with marriage but initially due to lack of knowledge, person did not know that marriage is actionable. Conversely, awareness has changed the perception - More are becoming more conversant with the process of nullity. The recently published handbook will also further this consciousness - ₦ 40,000 payable in three instalments. Indigents offered pro bono services	- Positive assessment - Speedy justice - Minimising the frustration of those who have pending cases at the tribunal - Encouraging those willing to approach the tribunal because of the briefer process	- Implemented the Briefer process and the removal of the <i>conformitas sententiarum</i> - Challenges is to avoid judicial rascality with the sole judge in place
RESPONDENT 8	- Tribunals play important roles in the Church in Nigeria - An inter-diocesan tribunal is functioning - Well funded but inadequate staff - Both judge and judicial vicar exist - Catholics are disposed to approach the tribunals - Many Catholics equate nullity with divorce - Some are not conversant with the process - ₦ 5, 0000	- Reform is good - Briefer process a highlight	- Briefer process - Gratis service
RESPONDENT 9	- Tribunals far from the people previously but the story has changed; CSN committee worked to change this since 2010; Series of trainings and workshops for tribunal personnel conducted; Almost all the dioceses in Nigeria with working tribunal - Functional tribunal in home diocese - Not well-funded and inadequate staff - One person as judge and judicial vicar - Many Catholics are currently disposed to approaching the tribunal against past experience - Many used to equate nullity with divorce but perception is now different - Many are gradually becoming conversant with the process as a result of better enlightenment and the inauguration of the annual judicial/tribunal year in respective dioceses - Charge is an average of ₦ 30,000	- Timely and needed document - Easies the tribunal process	- Implementing all the changes introduced - No peculiar challenges to the implementation - Changes rather have been of immense assistance to the functionality of tribunals

RESPONDENT 10	- Mostly diocesan tribunals operating as episcopal organs to ensure the stability of marriage - Functioning tribunal in the diocese - Well equipped, funded and staffed - Diocese with a judicial vicar - Many Catholics are disposed to approaching the tribunals - Many Catholics do not equate nullity with divorce - With enlightenment, many are now conversant - Charges not known	- The reform is good but needs time for proper comprehension	- The briefer process
RESPONDENT 11	- Many tribunals are doing well - Diocese has a highly functioning tribunal - Not well equipped but moderately funded - Three judges and a judicial vicar - Some are disposed; others are not, approaching in extreme cases - Many Catholics equate nullity with divorce - Many are not conversant - Charges was ₦ 10,000 before the reform; no more charges now	- Reform has solved some problems	- Competence
RESPONDENT 12	- Functional but not very active - Functioning tribunal in the diocese - Well staffed and equipped - Two collegiate judges and a judicial vicar - Catholics are disposed to approaching the tribunals - Catholics are conversant - No charges	- Reform is a dream	No answer
RESPONDENT 13	- There are issues of delay of cases - Functioning diocesan tribunal - Well equipped, funded and staffed - Diocese with judge and judicial vicar - Many Catholics are disposed to approach the tribunals - Many Catholics do not equate nullity with divorce - Many Catholics are very conversant - Charge is ₦ 10, 000	- There is nothing new	No answer

RESPONDENT 14	- A good number of dioceses have functional tribunal; Most tribunals are not well funded and many cases are unnecessarily delayed - Diocese has a functioning tribunal - Tribunal well staffed but not well funded or equipped - Two judges and a judicial vicar - Many are disposed but many more have no knowledge of the existence of the tribunals - Many equate nullity and divorce - Many are not conversant with the process until they approach the tribunal - No more charges after <i>Mitis Iudex</i>	- Motu proprio commendable - Prompt resolution of pending cases	- The briefer process - Petitioners sometimes do not appear - Some petitioners can't even afford transport cost to attend the process
RESPONDENT 15	- More and more dioceses are inaugurating their tribunals to save souls, and provide healing and hope to the faithful - Functioning tribunal in the diocese - Most tribunals are not well equipped, funded and staffed - Diocese with judge and judicial vicar - Many are not disposed to approaching the tribunal in some dioceses for lack of requisite awareness but getting better - Some know the difference; some do not - Many Catholics are becoming more conversant - Charge is free in the diocese	- Reform makes annulment procedure accessible - It is less time consuming - Possibility of free administrative charges, which may not guarantee a reliable judgement - Single judgement has its own difficulties	- Gratis service - Challenging to grant gratis service because of prevailing economic difficulties and the level of poverty
RESPONDENT 16	- Evolving in most parts of Nigeria - Provincial tribunals was in vogue before <i>Mitis Iudex</i> came into effect with one inter-diocesan tribunal serving as a court of first instance and another as the appellate tribunal - Disposal of cases were not expeditious - In spite of <i>Mitis</i>, many tribunals are still tied to the apron string of the old system - Many dioceses lack trained canonists to form a diocesan tribunal within their jurisdiction - Functioning marriage tribunal in the diocese - Tribunal well equipped, funded and staffed - Tribunal has three judges with one serving as a judicial vicar - Many Catholics are disposed to approaching the tribunals - Many Catholics equate nullity with divorce but it may not affect readiness to petition - Many Catholics are not conversant with the tribunal process – Process explained to parties - ₦ 50,000 before <i>Mitis Iudex</i> and ₦ 30,000 after <i>Mitis Iudex</i>	- Welcome development - Long overdue - Innovations encouraging the formation of autonomous tribunals and appeal to the Metropolitan from the diocesan bishops and to the most senior suffragan from the Metropolitan - Briefer process and others make the <i>Mitis</i> take on a compassionate face	- Awareness created at the national level among professionals about the process and the need to implement the document

RESPONDENT 17	- Tribunals have not been given proper attention particularly in the Western part - Many lay persons are not still ignorant of the tribunal and denied justice - Not sure of a functioning tribunal in the home diocese - Tribunal not really equipped, funded and staffed - Not sure if there is a judge or a judicial vicar - Catholics who are knowledgeable about it are disposed to approach the tribunals - Many Catholics don't understand the difference between divorce and nullity	No answer	Has been absent from the tribunal for about two and half years
RESPONDENT 18	- Tribunals have not gained consciousness in the minds of many priests and laity - Many dioceses have not established tribunals - Functioning marriage tribunal in the home diocese - Diocese has a judicial vicar - Many Catholics still need proper education to be disposed to approaching the tribunal - Divorce and nullity seem to be same for many but could change with proper education - A few Catholics know about the nullity process	- Reform seem to be targeted at areas where nullity cases are already part of the Catholic life. - Educating the people in Nigeria is needed where many are not used to nullity proceedings	No answer
RESPONDENT 19	- A functioning inter-diocesan tribunal in the province - Tribunal is well equipped, funded and staffed - Diocese has judicial vicar and judges - Many Catholics are disposed to approach the tribunal - Many Catholics equate nullity with divorce - Many Catholics are not well conversant with the nullity process - ₦ 72,000	- Very <i>ad rem</i> - Difficult to apply in mission territories	- Application of briefer process - Execution of judgement after first instance
RESPONDENT 20	- No answer on the state of marriage tribunals in Nigeria - An inter-diocesan tribunal in the province serves the diocese - The tribunal is well equipped but not well funded. - There are tribunal officials but few supporting staff. - Diocese has a judge/judicial vicar - Many are not well disposed to approaching the tribunal in a rural diocese - The general impression is about the indissolubility of marriage, which makes many to equate nullity with divorce. Therefore, many Catholics are slow to approach the marriage tribunal - Few are conversant with the nullity process. A conservative figure of 40 % of which most of them are found in the southern part of the country. - ₦ 10, 000	- A welcome idea - An effort to save saves - Supports the position of the church	- Single executor sentence in favour of nullity - Single judge acts under the responsibility of the Bishop

RESPONDENT 21	- It's a general opinion that marriage tribunals in Nigeria do not function well - Functionality depends on the seriousness of a particular diocese or dioceses when they form inter-diocesan tribunal. - Some are however functioning well, therefore, marriage tribunal is alive in Nigeria - An inter-diocesan tribunal (Bomadi, Isele-Ukwu and Warri) exists but the reform makes it easier for certain cases to be handled without recourse to the inter-diocesan tribunal. - Tribunal is not well equipped or funded. Funds from parish income and administrative charges Basic personnel. - Diocese has a Judicial Vicar - Many are disposed to approaching the tribunal, although many have no idea of the tribunal and they are in the majority. Many ask whether Catholics now allow divorce when issues of nullity arise - Many are ignorant of the workings of the tribunal but get to understand after they approach the tribunal - ₦25,000 in the diocese and many complain of their inability to pay	- Welcome development to address the prevailing issue of the length of time a case takes to be dispensed - Cases to be speedily dispensed - Bishops' ability to judge certain cases without recourse to the ordinary process - However, without thorough investigations, cases could be poorly handled - Reform has helped tribunals and dioceses to settle pending issues before many tribunals.	- Briefer process - Still not as fast as envisaged due to poor funding - Lack of full-time tribunal staff makes the tribunal less functional
RESPONDENT 22	- Functional marriage tribunals exist in few dioceses - Few priests trained in canonical studies major cause of non-functionality - Functional tribunal in Makurdi/Gboko/Katsina-Ala - Tribunal not equipped, not funded and poorly staffed - Diocese as a judge and judicial vicar - Many are not disposed to approach the tribunal; some who do are discouraged because of the dysfunctional nature of the tribunal - Poor catechesis makes Catholics equate nullity with divorce - Many are not conversant with tribunal process - ₦ 10,000	- Increase awareness of the need for functional marriage tribunals - speedy administration of justice in contentious marriages - Removal of automatic appeal could lead to abuses and arbitrariness - Reform could lead to increase in nullity cases in a polygamous clime	- Speedy dispensation of justice on contentious cases - Constitution of the bishop as a judge in his diocese - The briefer process - Removal of automatic appeal - Implementation of the first instance judgement immediately - Year of Mercy as a context for settling many cases - Challenges experienced: Many bishops presided over cases on theological grounds and not on canonical grounds; Poor investigation and summary sentences given; Dioceses without canon lawyers could not implement the reforms in the Year of Mercy

RESPONDENT 23	- Some tribunals are doing well; others are not - Functional marriage tribunal exists in the diocese - Tribunal not equipped, funded and staffed - Diocese has a judge and judicial vicar - Catholics are disposed to approaching the tribunals - Catholics do not really equate nullity with divorce - Many are not conversant - Nil	- Reform is good - Time needed for tribunals to implement	No answer
RESPONDENT 24	- Diocesan and provincial tribunals exist - Some are fully equipped and functional; Others are not - No functional marriage tribunal in the diocese - Nothing to equipped, funded or staffed - Diocese has a judge and judicial vicar - Growing awareness among Catholics makes them disposed to the tribunal - Many Catholics equate nullity and divorce - Many Catholics are not conversant with tribunal process - ₦ 20,000	- wonderful document that guides the working of the tribunal - Makes access to justice in the Church easier - Makes process of marriage adjudication faster by removing automatic appeal	- Reduction of tribunal charges from 50,000 to 30,000; indigent persons could also approach their parish priests for consideration - Less use of the second instance tribunal.

SECTION C

QUESTIONS	Questions 7 Challenges to the implementation of Mitis in Nigeria	Questions 8 Suggested Challenges - Pro Bono and effectiveness - Funding - Removal of automatic appeal - Laxity in granting nullity or lack of willingness to grant - Favouritism - Feasibility of achieving the consent of spouses - Briefer Process and the Local Ordinary - Paucity of experts - Inter-diocesan cooperation	Question 9: Role of Canon Law Society of Nigeria (CLSN) in ensuring success
RESPONDENT 1	- Lack of adequate knowledge of the workings of the tribunal - Lack of requisite knowledge on the part of the diocesan bishop - inadequate funding - inadequate personnel - added assignments and busy schedules of priests working in the tribunal	- Gratis service possible if well-funded - Tribunals not generally well funded - abuse possible at the trial instance without good understanding of canonical regulations - Laxity possible in granting nullity - Heard of cases of favouritism though unconfirmed - feasibility of spouses cooperating is low - Busy schedule of local bishops could hamper the success of the briefer process - Inadequate expects to assist the bishop in his role as judge - Inter-diocesan tribunal cooperation efficient	- Education - Information - provision of technical assistance to the local ordinaries in their individual or in Bishops' Conference capacities
RESPONDENT 2	- Co-petitioner petition and consent needed by the other party - Partiality of parties and witnesses	- Gratis process advantageous to the parties; will not affect the effectiveness of the tribunal if the tribunal is well funded and staff remuneration taken care of - tribunal funded but not well funded - Removal of automatic appeal could occasion abuse without checks and balances - No laxity if properly understood; more grounds for nullity - Favouritism possible where selfishness prevails - cooperation of the spouses is problematic; acrimonious separation, no further communication, lack of interest in tribunal proceedings - Busy schedule of the bishop could affect the briefer process and inadequate knowledge too - inadequate canonists to assist the bishop but some already in training - Inter-diocesan cooperation enhanced by the CBCN and CSN organised annual event on matrimonial jurisprudence	- Periodic meetings and workshops through the Institute of Matrimonial Jurisprudence

RESPONDENT 3	- Lack of clear understanding of the document by some tribunals - Lack of adequate qualified personnel in some tribunals - Part-time personnel - Lack of full commitment and dedication to tribunal responsibilities - Poor remuneration of personnel in some tribunals - Lack of commitment and seriousness from parties - Inability of parties to meet administrative charges	- Can't be effective if gratis process affects the remuneration of personnel; wanes moral boost - Tribunals are not well funded - Removal of automatic appeal could lead to abuse where tribunals are staffed by unqualified personnel - Well trained personnel will be able to demarcate between nullity and divorce - Favouritism occurs; humans are susceptible to human weakness - Consent more feasible where parties are Catholics but more difficult with mixed marriage - Busy schedule of the Local Ordinary may not affect his role if he relies on the judgement of the tribunal personnel - Adequate experts to assist the bishop with the presence of the Catholic Institute in Port Harcourt - Inter-diocesan cooperation exists in areas of instruction of cases and dissemination of information	- Canon Law Society of Nigeria (CLSN) organised a seminar already to enlighten members and tribunal personnel on Mitis Iudex
RESPONDENT 4	- Difficult to administer the tribunals with gratis service when they lack funding to operate - Difficulty to accomplish a speedy process of 45 days in the briefer process	- Tribunals cannot function well with gratis service without adequate funding - Lack of funding is a challenge - Lack of automatic appeal could lead to abuse when the judge knows his judgement will not be re-examined - Lack of willingness could also be occasioned by the believe that reconciliation is still possible or for reasons of moral certitude - Prejudice, external influences and selfish interest could bring about favouritism or arbitrariness - Busy schedule of the Local Ordinary could affect his role as a judge - Diocese has adequate experts to help the bishop - Inter-diocesan cooperation exists	- Canon Law Society of Nigeria (CLSN) could make follow-up activities such as: investigating and obtaining reports regarding implementation of the document; encouraging and motivating the tribunals to properly implement the document
RESPONDENT 5	- List of relevant cases - Danger of abuse	- Gratis service will hamper functional effectiveness - Lack of funding for the tribunals is a challenge - Notion of divorce could affect the grant of nullity - No known cases of favouritism or arbitrariness - Lack of equal interest in the nullity process will affect consent of the other party - Busy schedule of the bishop will affect his role as judge - Lack of adequate canonical experts in the diocese - Inter-diocesan cooperation is feasible	- Proffer practical guide to address peculiarities in Nigeria

RESPONDENT 6	- Lack of proper funding of the tribunal will not facilitate gratis service - Briefer process as explained above	- Without adequate support, tribunals cannot function well by granting free services - Many tribunals are not well-funded, but this is - Removal of automatic appeal could lead to abuse - Laxity could occur against the backdrop of the removal of automatic appeal - Favouritism could occur and will be undetected with the lack of automatic appeal - Cooperation of spouses in the briefer process will not be easy to achieve - Busy schedule of the Local Ordinary could affect his role though the judicial vicar is expected to assist him - Enough canonical experts in the province - Excellent and smooth cooperation in the province, affording the opportunity to pool human and material resources together	- Periodic seminars for tribunal officers - Same for bishops will also help
RESPONDENT 7	- Inadequate personnel to ensure the speedy process required of the reform - Bishops are too engaged to ensure the success of the briefer process within the stipulated duration	- Tribunals need to have dependable source of fund to ensure that the gratis service does not affect its productivity - Diocesan tribunal well-funded - Removal of the automatic appeal could lead to abuse - Both laxity and lack of willingness should be avoided - Checks are put in place to avoid favouritism and arbitrariness - Cooperation of spouses a big challenge but Art. 11, 2 of the Procedural Rule of Mitis helps to bring them together - Busy schedule of bishops affects the role of bishop in practice but the judicial vicar comes to the rescue - Diocese has adequate canonical experts - Inter-diocesan cooperation is working well in the province and can work in Nigeria as many dioceses already team with others to establish a tribunal and assist each other	- Publication of the Handbook already facilitated by the Canon Law Society of Nigeria (CLSN) and a member of the Committee that made it possible
RESPONDENT 8	- Lack of awareness of the briefer process on the part of the Local Ordinaries	- Tribunal cannot function effectively with free service - Well funded - Removal of automatic appeal will not lead to abuse - No possibility of laxity or lack of willingness - No favouritism or arbitrariness - Feasible for estranged couples to cooperate and participate in the briefer process - Busy schedule of the Local Ordinary will affect his role - Inadequate canonical experts - Inter-diocesan cooperation very feasible in the province	- Workshops and professional seminars

RESPONDENT 9	- No specific challenge identified	- Gratis service will impact negatively on the tribunal; less value will be placed on it because it's free and it will become less attractive for tribunal personnel because most tribunals survive on charges from petitioners - Many tribunals are not well-funded; some are not funded at all and only survive on charges - Removal of automatic appeal is open to abuse but has its own values - Since cases which have either been dissolved in civil courts or by customary proceedings are entertained with no room for reconciliation, laxity to grant nullity or the fear of divorce leading to unwillingness to grant nullity does not arise - No favouritism recorded but it is a possibility - Most times, estranged couples don't cooperate - Big challenge in Nigeria; the Local Ordinary's busy schedule renders many bishops incapable of participating in tribunal proceedings - Home diocese has enough canonical experts - Inter-diocesan or provincial tribunals are already success stories	- Canon Law Society of Nigeria (CLSN) playing the role to educate and enlighten by providing experts for the Catholic Bishops' Conference of Nigeria (CBCN) Committee on Canon Law training programmes of tribunal personnel
RESPONDENT 10	- Acceptance of the reform by the faithful	- Tribunals can function effectively with gratis service - Tribunals are well funded - Removal of automatic appeal could lead to abuse - Laxity and lack of willingness could play a role in the grant of nullity - No favouritism or arbitrariness - Difficult for estranged couples to cooperate - Busy schedule of bishops could probably affect their role as judge - Diocese has adequate canonical experts - Inter-diocesan cooperation is very possible	- Exchange of case matters to help others with good references
RESPONDENT 11	- Ignorance - Carelessness; the thought of an easier process could lead to abuse	- Gratis service will affect effectiveness - Tribunals not funded as they ought to be - Laxity and unwillingness play no role - No favouritism or arbitrariness - The interest of the parties will dictate the level of cooperation - Busy schedule will play no role - Diocese has adequate canonical experts - Inter-diocesan cooperation is great	- Already doing well in terms of organising workshops and seminars

RESPONDENT 12	No answer	- Difficult to effectively function with gratis service but possible - Automatic appeal will not lead to abuse - Laxity and unwillingness plays no role - No favouritism and arbitrariness - Cooperation feasible between estranged couples - Busy schedule of Local Ordinary will not affect their role - Diocese has adequate canonical experts - Inter-diocesan cooperation good	- Regular meetings - Use of social media like WhatsApp to share relevant papers
RESPONDENT 13	- Lack of monetary involvement	- Tribunals can't function well with gratis service - Laxity or lack of willingness play no role - No favouritism or arbitrariness - Situation could play a role in estranged couples cooperating - Busy schedule of Local Ordinary does not affect role - Diocese with adequate canonical experts - Inter-Diocesan cooperation is encouraging	- Organise seminars/workshop - Ascertain shortcomings when they exist
RESPONDENT 14	- Inability of a party to attend the process where he/she lives in a different domicile with the petitioner - Demise or absence of witnesses - Lack of cooperation of parties or their witnesses	- Gratis service could affect effectiveness but diocese must fund the tribunal - Tribunals are not funded - A trained canonist should not engage in any form of abuse - Laxity or unwillingness could play a role where the judge is conservative - A trained canonist should not favour any party or be arbitrary - A party who still believes in the union may not cooperate - Busy schedule could affect but tribunal matters should be a priority too - Inadequate canonical experts but lack of funds to train more experts - Inter-diocesan cooperation is not easy but it must be enhanced	- Organise seminars and discussions on the understanding, importance and implementation of the <i>Motu proprio</i>
RESPONDENT 15	- Inadequate canon law experts - Inadequate personnel - Inadequate or poor funding	- Gratis service could affect effectiveness but could be avoided if bishops fund the tribunals - Automatic appeal could lead to abuse - Laxity or unwillingness could play a role particularly with a single confirming sentence and problem of inadequate staff - Cooperation between estranged couples could be difficult because of culture, lack of proper awareness and intervention from the extended family - Busy schedule of the Local Ordinary will affect role as judge couple with inadequate canonical experts - Paucity of canonical experts in the diocese; one for now - Inter-diocesan cooperation is evident in some provinces; not the same story everywhere because of problems of funding and staffing	- Sensitisation and disseminating the message through seminars and workshops for tribunal staff comprising of priests, religious and laity

RESPONDENT 16	- Lack of sufficient manpower - Inadequate trained personnel - Lack of proper funding of the tribunal in many dioceses	- Gratis service will not affect the functions of the tribunals if the diocese takes care of the remuneration of the tribunal staff - Tribunals are not well funded - Removal of automatic appeal will not lead to abuse - Laxity or unwillingness will play no role - Not aware of any case of favouritism or arbitrariness - Estranged parties could cooperate if there is understanding of the issues involved in the process - Busy schedule will not affect the role of the bishop because the administrative work may be done at the tribunal - Inter-diocesan cooperation already established	- Organisation of professional seminars, workshops and conferences to foster uniformity of practice
RESPONDENT 17	- No answer	- Tribunal cannot effectively function with gratis service - Tribunals are not well funded - Removal of automatic appeal could lead to abuse - Laxity and unwillingness could play a role - Not aware of any case of favouritism or arbitrariness - Busy schedules of Local Ordinaries could affect their roles in the briefer process - Diocese has adequate canonical experts to assist the bishop in his role as judge - Inter-diocesan tribunal does not function	- Canon Law Society of Nigeria (CLSN) should begin with the Local Ordinaries so that they don't take the marriage tribunals with levity - Conscientise the lay faithful on the importance of the marriage tribunal as an aspect of pastoral care for the laity
RESPONDENT 18	- Ability of the people to embrace firstly the process of nullity - Having a witness to sustain a charge/proof - Ensuring that divorce is not sneaked in through the back door with the consent of both parties needed in the briefer process - Need to clarify what brief co-habitation means in the Nigerian context	- Tribunals can effectively function with gratis service - More could be done in terms of funding - Removal of automatic appeal could lead to abuse but more responsibilities placed on the defender of the bond - Lack of willingness is more probable - Though not obvious but the possibility of favouritism and arbitrariness exist - Cooperation of the estranged couple will be more difficult where animosity and anger persist - Busy schedule of the bishop will practically affect his role as judge though the judicial vicar is expected to do most of what needs to be done and the bishop is to sign if he has moral certitude - Diocese has two canonical experts for now, there is room for more - Not much of the cooperation is taking place. Lots of benefits derived from such cooperation	No answer

RESPONDENT 19	- Sponsorship of the tribunals - No gratis service without proper funding - Difficulties in paying administrative costs	- Tribunal cannot function properly with gratis service - Tribunals are not well-funded - Removal of automatic appeal cannot lead to abuse - Laxity in granting nullity or unwillingness to grant nullity is not probable - No cases of favouritism or arbitrariness - Cooperation between estranged couples is very feasible: two cases done already - Busy schedule of bishops will not affect his role, administrative work by another - Diocese has adequate canonical experts - Inter-diocesan cooperation is very feasible	- Educate the faithful
RESPONDENT 20	- The Local Ordinary may lack adequate time to collaborate with the Judicial Vicar or Judge	- The tribunal cannot function properly without adequate fund - Tribunal not well funded - Removal of automatic appeal could lead to abuse - No possibility of laxity or lack of willingness to grant nullity - Possible cases of favouritism or arbitrariness from tribunal staff exist - Cooperation between estranged couples could be enhanced when they are within same locality - Busy schedule of the Local Ordinary could affect his role - There is just a canonist in the diocese - Inter-diocesan cooperation is feasible and already in progress	- Continue to organise workshops and seminars for members and the tribunal staff
RESPONDENT 21	- To guard against the impression that marriage could be contracted and abandoned where inconveniences arise.	- Tribunals cannot function well with gratis service where they are not well funded. - Not well funded from personal experience - Automatic brought credibility to the process; removal has shortened the waiting time - No possibility of laxity or lack of willingness to grant nullity but briefer process could make nullity look like divorce. - No case of favouritism or arbitrariness in our tribunal but the possibility exists - Busy schedule of the Local Ordinary will not affect his role; bulk of the work done by tribunal officials since many bishops also lack requisite knowledge about the details of marriage tribunals. - Diocese has adequate canonical experts - Inter-diocesan cooperation is feasible	- Publications focusing on tribunal practices - Periodic workshops focusing on tribunal practices and not just paper presentations at conferences, which may not proffer solutions to existence challenges

RESPONDENT 22	- Lack of trained canon lawyers - Non-functional marriage tribunal - Equation of nullity with divorce - Tribunal charges in some dioceses - Non-funding of tribunals in some dioceses - Busy nature of the bishops renders them unavailable - Poor understanding of norms of reform in many dioceses - Hasty manner with which marriages are contracted in Nigeria - Arbitrariness among the tribunal staff - The blame game among parties	- Tribunals can function effectively by granting free or minimal cost - Tribunals are not well funded - Removal of the automatic appeal could lead to abuse - There's the possibility of laxity in granting nullity or unwillingness to grant nullity; Provisions in the reform are open-ended - The possibility of favouritism or arbitrariness exists because some personnel lack proper training and the belief in buying justice - Cooperation between estranged couples not feasible - The heavy schedule of the diocesan bishop could affect the briefer process - No adequate canonical expert in the diocese - Functioning inter-diocesan marriage tribunal in Makurdi/Gboko/Katsina-Ala	- Seminar and workshops in dioceses to deepen the understanding of the reform norms - Workshops for bishops who are by the norms of the reform are to serve as sole judges, educating them on the canonical implications and merits of their sentences
RESPONDENT 23	- Lack of the will to study the document - Lack of will to implement the reform	- Tribunals can function effectively by granting free or minimal cost - Tribunals are not well funded - Removal of automatic appeal might lead to abuse - There the possibility of laxity in granting nullity or unwillingness to grant nullity - There is no possibility of favouritism and arbitrariness in my tribunal - Difficult for estranged couples to cooperate - Busy schedule may not if they are properly assisted - Diocese has inadequate canonical expert - Inter-diocesan cooperation is feasible with great prospects	- Canon Law Society of Nigeria (CLSN) is already doing much in this direction through seminars and business meetings
RESPONDENT 24	- Lack of constant awareness by some of the tribunals on the importance of the document - Lack of funds to run the tribunals	- Tribunals can function effectively by granting free or minimal cost but with some difficulties - Tribunals are not well-funded - Removal of automatic appeal could lead to abuse in some cases - There's no possibility of laxity in granting nullity or unwillingness to grant nullity - There has been instances of favouritism or arbitrariness - Cooperation between estranged couples is possible but difficult - Busy schedule of the diocesan bishop could affect his role in the briefer process - Diocese has adequate canonical experts - Inter-diocesan cooperation is feasible; Inter-provincial tribunal serves the whole province already	- Canon Law Society of Nigeria (CLSN) officials have been involved in organising seminars and other programmes in this regard - The Canon Law Society of Nigeria (CLSN) need to do more

ABSTRACT

Marriage as a social institution is accorded the dignity of a sacrament in the Catholic Church. The sacrament of marriage in accordance with the theology of marriage has two properties: unity and indissolubility. The Catholic Church teaches that the essential rights and duties of marriage are related to the four goods viz: *bonum coniugum*, *bonum prolis*, *bonum fidei*, and *bonum sacramenti*. The creation of the bond of marriage is predicated on the validity of the marriage celebration. The unbreakable bond of marriage once created suggests the impossibility of divorce. This legal perception is largely supported by some scriptural texts, and conciliar- and post-conciliar documents. Partners are expected to live together under the subsisting bond but a separation permitted by law could also be granted. However, for invalid marriages, the relevant laws have laid down necessary proceedings to be adopted to effectuate their annulment. Such a nullity of marriage, which is not the same as divorce, will be granted after the relevant tribunals responsible to hear the submitted petitions are satisfied that the grounds for nullity exists.

The process of approaching the tribunals by petitioners was apparently cumbersome, long and somewhat unproductive. This led Pope Francis to effectuate the reforms on the nullity of marriage when he published the *motu proprio Mitis Iudex Dominus Iesus*. In this reform, the Pope sought to change some regulations in the laws of the Church regarding the process leading to the declaration of the nullity of marriage, thereby changing or modifying the Church's legal procedures for determining when and how to issue a declaration of nullity. In some areas however, he sought to strengthen existing procedures and gave them life with the objective to take care of the pastoral needs of people who are married but separated, and who desire or need to go through the judicial process of nullifying previous marriages.

The research work focused its attention on the implementation of the reform introduced by the *motu proprio Mitis Iudex Dominus Iesus*, with specific reference to Nigeria. The publication of the reform document as an intervention to ameliorate the irregularities in the old regulations is not enough, the practical implementation of this reform is needed to be investigated to unravel probable challenges in the marriage tribunals in Nigeria, in order to achieve its goals. This research work therefore postulated that the introduction of changes in the process of nullity of marriage is a welcome development but the implementation of the *motu proprio Mitis Iudex Dominus Iesus* in Nigeria could come with some attendant or peculiar challenges.

This is a qualitative research, which gathered information with the aim to analyse them in an interpretative manner. Although the researcher did not interfere with the opinions of the respondents, the interpretation of the author, which could be subjective described the outcome of the data. Nevertheless, a complete description of the research topic was provided. To achieve this set objective, an overview of the country (Nigeria) was given, looking at its brief history, geographical composition, politics and economy. A synopsis of the state of the tribunal and the Church in Nigeria was also examined. The research went further to explore the process of annulment of marriage before the introduction of the reform and similarly looked at the changes introduced by the reform as well as highlighting the principles underlying the motives for the reform. Subsequently the areas where the implementation of the reform has been implemented in Nigeria were investigated, and the real challenges encountered established. The probable challenges peculiar to its implementation in Nigeria were consequently articulated, while the writer offered gave an exposé on the way forward to ameliorating or resolving the challenges.

ABSTRAKT

Die Ehe ist eine soziale Einrichtung basierend auf der Würde eines Sakraments der Katholischen Kirche. Das Sakrament der Ehe – im Einklang mit der Theologie über die Ehe – ist gekennzeichnet durch zwei Eigenschaften: die Einheit und die Unauflöslichkeit. Die Katholische Kirche lehrt, dass die wesentlichen Rechte und Pflichten der Ehe zusammenhängen mit den vier Begriffen, nämlich: BONUM CONIUGII, BONUM PROLES, BONUM FIDEI und BONUM SACRAMENTI. Die Errichtung des Bundes der Ehe basiert auf der Gültigkeit der Eheschließung. Das unauflösliche Band der Ehe, das einmal entstanden ist, weist auf die Unmöglichkeit der Scheidung hin. Diese Rechtsauffassung wird sowohl durch einige biblische Texte, als auch durch konziliare und postkonziliare Dokumente bekräftigt. Von den Ehepartnern wird erwartet, dass sie unter dem bestehenden Bund der Ehe zusammenleben, aber es könnte auch einer gesetzlich erlaubten Trennung zugestimmt werden. Für ungültige Ehen haben die einschlägigen Gesetze jedoch die notwendigen Verfahren festgelegt, die eingeleitet werden müssen, um ihre Ungültigkeit festzustellen. Eine derartige Nichtigkeit einer Ehe, die nicht mit der Scheidung gleichzusetzen ist, liegt vor, wenn die Gerichte, die für die Anhörung der eingereichten Anträge zuständig sind, die vorliegenden Nichtigkeitsgründe durch Urteil festgestellt haben.

Der Vorgang der Anrufung der Gerichte durch die Antragsteller erschien wohl zu umständlich, langwierig und ein wenig unproduktiv. Dies veranlasste Papst Franziskus, die Reformen zur Nichtigkeit der Ehe durchzuführen, als er das "MOTU PROPRIO MITIS IUDEX DOMINUS IESUS" veröffentlichte. In dieser Reform versuchte der Papst, einige Vorschriften in den Gesetzen der Kirche über das Verfahren, das zur Nichtigkeitserklärung einer Ehe führt, zu ändern und damit auch die rechtlichen Verfahren der Kirche zur Festlegung, wann und wie eine Nichtigkeitserklärung abzugeben ist, zu ändern oder zu modifizieren. In einigen Bereichen versuchte er auch, die bestehenden Verfahren zu stärken und sie zu beleben, mit dem Ziel, sich um die pastoralen Bedürfnisse von Menschen zu kümmern, die verheiratet sind, aber getrennt leben und die den Wunsch oder die Notwendigkeit verspüren, das Gerichtsverfahren zur Nichtigkeitserklärung früherer Ehen zu durchlaufen.

Die Forschungsarbeit konzentrierte sich auf die Umsetzung der vom MOTU PROPRIO MITIS IUDEX DOMINUS IESUS eingeleiteten Reform unter besonderer Berücksichtigung Nigerias. Die Veröffentlichung des Reformdokuments als Maßnahme zur Verbesserung der Unregelmäßigkeiten in den alten Verordnungen allein reicht nicht aus. Die praktische Umsetzung dieser Reform muss überprüft werden, um zu erwartende Herausforderungen bei den Ehegerichten in Nigeria zu lösen und damit ihre Ziele zu erreichen. Diese Forschungsarbeit verlangte daher, dass die Einführung von Änderungen im Ehenichtigkeitsprozess eine vollkommene Entwicklung darstellt, aber die Umsetzung des MOTU PROPRIO MITIS IUDEX DOMINUS IESUS in Nigeria könnte mit einigen besonderen Herausforderungen verbunden sein.

Dies ist eine qualitative Forschung, die Informationen sammelte, um sie interpretativ zu analysieren. Obwohl der Forscher nicht in die Meinungen der Befragten eingriff, könnte die Interpretation des Autors eine subjektive Beschreibung des Ergebnisses der Daten darstellen. Es wurde eine vollständige Beschreibung des Themas erstellt. Um das gesetzte Ziel zu erreichen, wurde eine Übersicht über das Land Nigeria mit Blick auf seine kurze Geschichte, seine geographische Zusammensetzung, seine Politik und seine Wirtschaft dargestellt. Eine Übersicht über den Zustand der Gerichte und der Kirche in Nigeria wurde ebenfalls vorgelegt. Die Forschung ging weiter, um den Vorgang der Annullierung der Ehe vor der Einführung der Reform zu untersuchen und betrachtete ebenfalls die durch die Reform eingeführten Änderungen, sowie die den Motiven für die Reform zugrundeliegenden Prinzipien. Anschließend werden die Bereiche, in denen die Umsetzung der Reform in Nigeria durchgeführt wurde, untersucht und die tatsächlichen Herausforderungen festgestellt. Die wahrscheinlichen Herausforderungen, die für die Umsetzung in Nigeria charakteristisch sind, wurden angeführt; gleichzeitig zeigt der Autor Wege zur Verbesserung oder Lösung dieser Herausforderungen.

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OBJECTIVE

Personal education towards a societal edification

PERSONAL DATA

Sex	Male
Date of Birth	26.02.1971
Marital Status	Single
Place of Birth	Kabba
State of Origin	Kogi State
Nationality	Nigerian
Occupation	Clergy, Legal Practitioner
Year of Priestly Ordination	1996
Year of Call to the Nigerian Bar	2004

Languages Spoken: Owe, Yoruba, English and German

FORMATION AND EDUCATION

a. Demonstration School, Kabba	1982	First School Leaving Certificate
b. St. Clement's Seminary, Lokoja	1987	SSCE
c. St. Thomas Aquinas Major Sem., Makurdi	1990	Philosophy Studies
d. St. Augustine's Major Seminary, Jos	1995	Bachelor of Sacred Theology
e. University of Jos	2000	Post Graduate Dipl. (Education)
f. University of Jos	2003	LLB
g. Nigerian Law School, Abuja	2004	BL
h. Österreichische Sprache Diplom	2013	B2 Diplom
i. Iki Deutschkurs (Deutschkenntnisse)	2013	C1.1
j. Universität Wien	2017	LL.M.

PASTORAL WORK EXPERIENCE

a. Sacred Heart Catholic Church, Kabba	1996-1997	Assistant Parish Priest
b. Christ the King Catholic Church, Okene	1997-1998	Assistant Parish Priest
c. St. Theresa's Catholic Church, Jos	1998-2002	Priest in Residence
d. Catholic Bishop's House, Maryville, Lokoja	2002-2003	Episcopal Assistant
e. Our Lady Queen of Nigeria, Abuja	2003-2004	Priest in Residence
f. St. Matthew's Catholic Church, Felele	2004-2006	Priest in Charge
g. Church of Archangels, Gadumo	2006-2008	Priest in Charge
h. Diocesan Chancery, Lokoja	2006-2009	Diocesan Chancellor
i. Church of Archangels, Gadumo	2008-2011	Parish Priest
j. Justice, Development and Peace Commission	2006-2011	Diocesan Coordinator
k. Nigerian Prison Service	2004-2011	Diocesan Chaplain
l. Pfarre Oberbaumgarten	2012-2017	Aushilfskaplan
j. Pfarre Bisamberg	2017-2019	Kaplan

QUALITIES

A hardworking, resourceful, enterprising and an intelligent man, who is ready and interested to carry out scholarly work. He can adapt and contextualise learning to positively influence others around him in order to bring about a better and a just society. A team player, who is always ready to contribute towards achieving clearly stated team goals.

REFEREE

Bishop Martin Dada Olorunmolu, Maryville, Box 172, Lokoja-Kogi State, NIGERIA