

**PRELATURE OF THE HOLY CROSS AND
OPUS DEI IN KENYA**

**NORMS FOR THE INVESTIGATION
OF COMPLAINTS**

**AGAINST FAITHFUL OF THE
PRELATURE**

**IN REGARD TO SEXUAL ABUSE OF
MINORS**

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In accordance with the orientation given by the Congregation for the Doctrine of the Faith in the letter dated 3rd May, 2011, bishops and those equivalent to a bishop under Canon Law, must have clear and coordinated procedures for dealing with cases relating to allegations of abuse. Accordingly, the Norms promulgated by the Personal Prelature of the Holy Cross and Opus Dei in Kenya are hereby reproduced.

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I NATURE AND AMBIT OF APPLICATION OF THESE NORMS

1. Nature of These Norms

1.1 The Catholic Church and therefore the circumscription of the Prelature of the Holy Cross and Opus Dei in Kenya (hereinafter, “the Prelature”) considers sexual abuse of minors to be a grave violation of Christian principles and not to be tolerated. Such offenses are particularly grievous when they are committed by persons who undertake to help others follow Jesus Christ and his teachings more closely.

1.2 These norms fall under the type of norms that define more precisely the manner of applying a law (cf. Code of Canon Law – hereinafter, “CCL” –, canons 31 and 34). They intend to help with the application of CCL, cc. 1717-1719 and of the *motu proprio* “*Sacramentorum sanctitatis tutela*” (hereinafter, “SST”) of 30 April 2001 (with the amendments made to it in the *Normae de gravioribus delictis* of 21 May 2010) about the preliminary investigation of sexual abuse of minors.

1.3 These norms are based on the *Guidelines in Cases of Sexual Abuse* issued by the Congregation for the Doctrine of the Faith – hereinafter, “CDF” – (cf. Circular Letter dated 3 May 2011), and on the document *Safeguarding Children. Policy and Procedures* approved by the Kenya Conference of

Catholic Bishops at their Plenary Assembly of May 2011.

2. Ambit of Application

2.1 These norms apply to those who, in the moment an allegation is made, are faithful of the Prelature.

2.1.1 The ambit of application of these norms to the lay faithful is circumscribed to those cases in which the accusation refers to actions carried out while they were fulfilling, under the authority of the Regional Vicar, an apostolic activity of the Prelature in which Christian formation or spiritual guidance is imparted (cf. *Codex iuri sparticularis seu Statuta Praelaturae Sanctae Crucis et Operis Dei [Statuta]*, nos. 1 y 121 §2).

2.2 These norms do not apply to:

2.2.1 The lay faithful of the Prelature in their professional or personal activities.

2.2.2 The lay employees and volunteers at those institutions or programs for which the Prelature oversees only the spiritual aspects of the institutions or programs. These institutions have their own policies and procedures and are responsible for the behaviour of their employees to their own boards of directors and to the social group for which they work (parents of students, etc.).

2.3 In conformity with article 6 of *SST*, sexual abuse is understood in these norms as the offence against the sixth commandment of the Decalogue committed

by one of the faithful mentioned in article 2.1 above with a minor below the age of eighteen years.

II COMPETENT CHURCH AUTHORITY AND AUXILIARY BODIES

3. Competent Church Authority

3.1 The Church authority responsible for the preliminary investigation dealt with in these norms is the Regional Vicar of the Prelature (hereinafter, “the Vicar”) in his capacity as Ordinary of this circumscription of the Prelature (cf. *Codex iuris particularis seu Statuta Praelaturae Sanctae Crucis et Operis Dei* (hereinafter, “*Statuta*”), no. 151 §1).

3.2 Although, in accord with the universal law and with these norms, some persons may help with the investigation and give their opinion, they cannot substitute for the discernment and *potestas regiminis* of the Vicar, provided that it remains clear that the penal action, after taking into account the opinion of two legal experts (cf. CIC, c. 1718 § 3), will be presented before the Tribunal of the Prelature which has its seat in Rome.

4. Advisory Committee

4.1 There shall be an Advisory Committee that will function as a consultative body to the Vicar regarding the preliminary investigation of allegations of sexual abuse of minors against faithful of the Prelature. The functions of this Committee will include:

4.1.1 Reviewing and proposing updates to these norms.

4.1.2 Advising the Vicar, along with the Promotor of Justice of the Prelature in this circumscription, in his assessment of the allegations and in his weighing the advisability of applying in each case some of the precautionary measures foreseen in CCL, c. 1722 to safeguard the common good. According to *SST*, article 19, these measures can be imposed from the outset of the preliminary investigation.

4.1.3 Offering the Vicar advice on all matters related to cases of abuse proposing to him measures aimed at the protection of minors.

4.2 The Committee will be composed of at least five members of outstanding integrity and good judgement in full communion with the Church.

4.2.1 The majority of the Committee members will be lay persons who are not fully dedicated to tasks of the Prelature. The chairperson of the Committee will be a priest of the Prelature with several years of pastoral experience and proven good judgement. At least one member should have expertise in the treatment of sexual abuse of minors.

4.2.2 As far as possible, among the Committee members, there should be professionals of the following disciplines: canon law, criminal or civil law, psychology, moral theology or ethics.

4.2.3 The Vicar will appoint the members of the Committee for a term of five years, which can be renewed. The Vicar may ask a member of his Council to attend the meetings of the Advisory Committee.

4.3 It is desirable that the Promotor of Justice participate in the meetings of the Advisory Committee.

5. Child Protection Coordinator

5.1 The Vicar shall appoint a Child Protection Coordinator (hereinafter, “Coordinator”) who will be responsible for receiving allegations of sexual abuse of minors against faithful of the Prelature (cf. art. 2.1) should any such allegations be made. The Coordinator may be a member of the Advisory Committee although not necessarily.

5.2 The Coordinator should be a skilled listener, sensitive to the needs of complainants and victims, and should act with tact and impartiality. He should receive allegations with respect, understanding and compassion.

5.3 A telephone number for contacting the Coordinator will be posted on the Opus Dei website (www.opusdei.org.ke). It should also be available in every centre of the Prelature.

5.4 Should the Coordinator be temporally impeded to discharge his functions, the Vicar should appoint a substitute Coordinator.

5.5 The Coordinator will also facilitate meetings of alleged victims with the Vicar or his delegate when such meetings may be deemed opportune to deal with the possible pastoral or medical care which the alleged victim needs.

5.6 As laid down in CCL, c. 1719, the Coordinator will keep a log of the accusations of sexual abuse of minors he receives against faithful of the Prelature (cf. art. 2), about which the Vicar decided to open an investigation.

- When ten years have elapsed since the accusation, what is laid down in CCL, c. 489 § 2 should be done. The summary will not include names of the alleged victims or accused but rather the date on which the allegations were received, the kind of the alleged offence, the opening and closing dates of the preliminary investigation, and the final decision of the Vicar (either forwarding the acts of the investigation to the CDF or considering the allegations as non-credible).
- Experiences about procedures, drawn from the different cases investigated, which could be of interest for future cases, may also be kept along with the register referred to in the previous paragraph. They should not mention any names.

- Each case's acts will be kept in the archive of the Prelature in accord with the universal norms about safekeeping of confidential documents (cf. CCL, cc. 489 and 1719).

III VALUES TO BE PROMOTED IN THE PRELIMINARY INVESTIGATION AND GUIDING PRINCIPLES

6. When receiving allegations and investigating them the following values are to be promoted and guiding principles followed:

6.1 As a guarantee that justice will be done, the applicable canonical and civil norms are to be carefully observed, and the rights of all parties involved respected.

6.2 As regards civil law and the judiciary:

6.2.1 Faithfully respecting the sacramental internal forum, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed.

6.2.2 If the Police are investigating the case or a judicial process has been instituted in a criminal or civil court against the accused, nothing shall be done that could obstruct or influence those proceedings. Taking into account the circumstances of each case, the Vicar will decide whether it is opportune to postpone the opening of the canonical preliminary investigation until the court case of the civil authorities is concluded.

6.2.3 Regardless of the result of the police investigation or the ruling of the court case, the Church retains her right to open a preliminary

investigation in accord with CCL, c. 1717 and these norms.

6.3 Care is to be taken that the preliminary investigation does not call into question anyone's good name, (cf. CCL, c.1717 § 2). In order to ensure this, all those who take part in a preliminary investigation shall respect the principle of confidentiality (natural secret).

6.4 All those who receive allegations or take part in a preliminary investigation should always act with justice, mercy and charity. Scandal is to be avoided or repaired.

6.5 As regards the alleged victims:

6.5.1 They should be protected and helped to find support and reconciliation.

6.5.2 They should be offered pastoral care and psychological counselling.

6.5.3 The person who makes allegations ought to be treated with respect. In cases where sexual abuse is connected with another offence against the dignity of the sacrament of Penance (*SST*, art. 4), the one reporting has the right to request that his or her name not be made known to the priest denounced (*SST*, art. 24).

6.6 As regards the accused:

6.6.1 Therefore, the respondent should be informed of the accusation which has been made and given the opportunity to respond to it unless the Vicar, after hearing the Advisory Committee, is of the opinion that there exist serious reasons for not doing so. The prudence of the Vicar will determine, after hearing the Advisory Committee, what information will be communicated to the accused in the course of the preliminary investigation.

6.6.2 If the Vicar thinks that there are reasons to limit the information to be given to the accused about the allegations, the respondent should be advised that, if at the conclusion of the preliminary investigation the allegations are not discarded as groundless and a judicial or administrative process is opened, he/she will have full access to all the accusations and proofs and the possibility to refute them. Furthermore, the accused is to be reminded that in the civil sphere respondents do not have access to all the information gathered by public prosecutors until and if a judicial process is instituted.

6.6.3 The accused and the accusers are to be reminded that a person is presumed innocent until proven guilty.

6.6.4 During the course of the disciplinary or penal process the accused should always be afforded a just and fit sustenance.

6.6.5 The return of a cleric to public ministry is excluded if such ministry is a danger for minors or a cause of scandal for the community.

6.6.6 At the conclusion of the preliminary investigation, whatever steps are necessary shall be taken to restore the accused's good name if the investigation showed that the accusations were groundless.

IV MAKING AND RECEIVING A COMPLAINT

7. Making and receiving a complaint

7.1 Whoever deems it necessary to make an accusation of sexual abuse of minors against a faithful of the Prelature (cf. art. 2.1) shall contact the Coordinator. Any faithful of the Prelature who becomes aware of child sexual abuse committed by another faithful of the Prelature or has a reasonable cause to suspect that such abuse is occurring should report it immediately to the Coordinator, unless to do so would violate the confidentiality of spiritual guidance or, in the case of priests, the seal of the sacrament of Reconciliation.

7.2 The Coordinator will interview without delay the person who wishes to make allegations. This should be done within twenty-four hours of receiving the call from the accuser if possible.

7.3 The Coordinator will interview the alleged victim's parents or guardians, if they are not the complainants.

7.4 If the complainant is not the alleged victim, the Coordinator, after discerning the appropriateness of such an interview and obtaining the consent of the minor's parents or guardians, will interview him/her in their presence or in the presence of persons mandated by them. These precautions are not needed

when, because of the time elapsed since the alleged abuse, the victim is no longer a minor.

7.5 The Coordinator shall make no statements to accusers, alleged victims or any other person implying that the accusation is true or not, or that there is a possible liability for damages or that a particular course of action will follow an investigation.

7.6 It should be made clear in all conversations of the Coordinator with the complainants or alleged victims that, pending investigation and resolution of the allegations, any precautionary limitation of the priestly ministry (when the accused is a priest) or of the participation in the apostolates of the Prelature (in the case of a lay faithful) which the Vicar might decide is standard procedure. It does not imply any presumption of guilt on the part of the Church authority or admission of guilt on the part of the accused.

7.7 The Coordinator will ask those who make allegations to send a written report. He will request the same of the parents or guardian of the alleged victim unless the alleged victim is no longer a minor. The Coordinator will make available to them a copy of the form attached to these norms as a guide to report allegations of abuse (Appendix II). The Coordinator may take it upon himself to write the report if, taking into account the age or level of instruction of the accuser, he foresees that it would not be easy for the accuser to do it. The Coordinator

will show the report to the accusers and the parents or guardians who will sign it after verifying that it reflects faithfully what they said. The Coordinator will also sign it.

7.8 The Coordinator will keep a log of all the conversations he has with alleged victims, their parents or guardians and any other persons who make allegations, as well as of the written reports on the allegations (cf. art. 5.6).

7.9 When an allegation involves a lay employee or volunteer at an institution for which the Prelature oversees only the spiritual aspects of that institution's activities, the Coordinator will advise the accuser to report the allegation to the directors of the institution since they are responsible for the behaviour of the employee or volunteer when he/she works at the institution (cf. art. 2.2.2).

7.10 If the mass media publish accusations, the Coordinator will contact the person mentioned in the media as accuser and ask him/her to submit a formal accusation.

7.11 If anonymous accusations are received, the Coordinator will inform the Vicar who will decide whether they should be taken into consideration or not.

8. Assistance to Alleged Victims

Upon receiving allegations of sexual abuse of minors against faithful of the Prelature (cf. art. 2.1), if the allegations seem credible, the Coordinator in agreement with the Vicar will promptly initiate contact with the parents or guardians of the alleged victim. The Coordinator will coordinate assistance for the immediate pastoral care of the alleged victim and his or her family, bearing in mind what is said in arts. 7.5 and 7.6. In agreement with the Vicar, the Coordinator will also advise them about the possibility of receiving psychological assistance.

9. Reporting Allegations to Civil Authorities

9.1 Without prejudice to the inviolability of the internal or sacramental forum (confidentiality of spiritual guidance or the seal of the sacrament of Reconciliation: cf. art. 7.1), in conformity with civil law, the allegations of sexual abuse of minors, which are deemed credible according to art. 10.2, should be reported to the civil authorities.

9.2 This right and duty is to be respected always. For no reason should anybody try to dissuade the alleged victim or his/her family from reporting the case to civil authorities. The Coordinator should rather inform the alleged victim or his/her parents or guardians if the victim is a minor, about this right and duty, and will encourage them to act accordingly.

9.3 If they refuse to do so the Coordinator, in agreement with the Vicar, will report the allegation received to the civil authorities.

9.4 If those making allegations are faithful of the Prelature, the Coordinator will urge them to report it to the civil authorities, unless the alleged victim or his/her parents or guardians have already done it.

V PRELIMINARY INVESTIGATION

10. Opening a Preliminary Investigation

10.1 When the Coordinator receives an allegation of sexual abuse, he will immediately notify the Vicar and submit to him the written report or reports of the conversations he had with the accuser or accusers and the alleged victim or his/her parents or guardians. The Coordinator can make the recommendations he deems opportune on the basis of the impressions he drew from the interviews.

10.2 The Vicar will forward the information and will request the Advisory Committee its opinion about opening an investigation. After hearing the opinion of the Advisory Committee and of the Promotor of Justice (cf. CCL, c. 1722), the Vicar will make a decision. In making this decision, the Vicar will bear in mind that the investigation should be opened whenever the allegation seems credible and does not appear to be entirely superfluous (cf. CCL, c. 1717 § 1), for instance if the accused has admitted to having committed the offence. In the latter case it might be advisable to carry out the investigation in order to establish the exact nature and circumstances of the facts.

10.3 If the Vicar decides to open an investigation, he will issue a decree to institute the investigation and appoint a suitable person to carry it out. Alternatively he may lay down that he will do it personally (cf. CCL, c. 1717 § 1). Although the Vicar is to freely

decide regarding these two possibilities, normally it will be preferable for him to appoint a delegate to carry out the investigation.

10.4 Taking into account the circumstances of the case (number and circumstances of the persons to be interviewed, nature of the alleged facts, etc.), in the decree opening the investigation the Vicar may deem it fitting to appoint two investigators, in addition to his delegate. They may be chosen among professionals with the right skills for a task of this nature; for instance a lawyer and a psychologist or social worker.

10.5 As soon as the Vicar issues a decree opening a preliminary investigation, he shall inform the accused within 48 hours about the complaint received, and will send him/her a copy of the decree opening the investigation.

10.6 The Regional Vicar will remind the accused the principle according to which a person is presumed innocent until proven guilty. He will also instruct him not to make contact with the complainant or complainants or with the alleged victim or his/her family. The accused will be advised of the risks involved in answering possible questions from the mass media; he should rather refer questions from the media to the Office of the Vicar of the Prelature.

10.7 The purpose of the preliminary investigation is to establish the facts and circumstances, as well as

the imputability of the offence (cf. CCL, c. 1717 §1 and Appendix I of these norms).

10.8 It remains the duty of the Vicar to determine what precautionary measures, among those foreseen in CCL, c. 1722 and the Code of Canons of the Eastern Churches (CCEO), c. 1473, should be imposed to provide for the common good. In accord with *SST*, art. 19, this can be done once the preliminary investigation has been initiated. The Vicar may ask the Advisory Committee for its opinion about the advisability of adopting these measures to limit as a precaution the exercise of the ministry by the priest who is investigated. On its own initiative the Committee may also make this kind of recommendation to the Regional Vicar.

11. Carrying Out a Preliminary Investigation

11.1 The investigators appointed by the Vicar (cf. art. 10.4) or his delegate, if the Vicar does not appoint investigators, have the same powers and obligations as an auditor in a process (cf. CCL, c. 1717 § 3 and arts. 11-12 of these norms).

11.2 Those who will be interviewed by the investigators are to be informed about their right to be accompanied by another person of their choice. This person could be a canon or civil lawyer.

11.3 The investigators will provide the persons whom the accused and the victim have chosen as

their advisers, the appropriate information about the progress of the investigation (cf. arts. 6.6.1 - 6.6.2). If the accused or the victim preferred not to count on the assistance of any person, the information on the progress of the investigation will be provided directly to them.

11.4 The investigators will meet the complainant or complainants, the victim (if the allegations have been made by other persons), the accused and any other person who may help to clarify the facts referred to in the accusations.

11.5 If the victim is a minor, the investigators will discern the appropriateness of interviewing him/her. In case of meeting him/her, they should first obtain the express consent of the minor's parents or guardians, and the interview will take place in their presence.

11.6 Before interviewing the accused he/she should be informed about the allegations made against him/her (cf. arts. 6.6.1 - 6.6.2), and granted the possibility of answering to them. If he/she so desires, this answer may be given in writing, either by him/herself or his/her canon or civil lawyer. The accused may also answer the accusations verbally when interviewed by the investigators, if he/she prefers to do so.

11.7 When interviewing the accused person, it should be borne in mind that he/she is not bound to

admit to an offence, nor may the oath be administered to the accused (cf. CCL, c. 1728 § 2).

11.8 The investigators and those interviewed by them are to sign a written report of each interview after ascertaining that it reflects adequately what was dealt with in the interview. With this purpose the interviews can be recorded. Whoever makes the transcription of the recordings should undertake a commitment to keep the secret of office.

12. Conclusions and Recommendations of the Preliminary Investigation

12.1 After the investigation, the investigators shall consider:

12.1.1 Whether they can come to the conclusion that the allegations made against the accused person are credible or not.

12.1.2 Whether the facts and circumstances before them correspond to the offence of sexual abuse (cf. Appendix I).

12.1.3 Whether the alleged offence is imputable to the accused.

12.1.4 Whether the behaviour, while not constituting sexual abuse, is nevertheless because of its imprudence, etc. inappropriate for a priest or a lay person who wishes to live his/her Christian vocation in an exemplary manner.

12.2 The investigators shall submit a report with their conclusions about the matters referred to in art. 12.1 to the Advisory Committee. They may add the suggestions and recommendations that they deem opportune. This report is to be accompanied by the reports or transcriptions of the interviews (cf. art. 11.8), as well as by any other document of interest (letters, etc.) which may have been handed to them during the investigation.

12.3 The Advisory Committee should meet expeditiously to consider the investigators' report and determine whether the investigation was complete and without irregularities. If necessary, the Committee may ask the investigators to complete the information they have sent. Subsequently the Committee will submit all the documents of the investigation to the Vicar. In a covering letter they will express whether they agree with the conclusions of the investigators and may make any additional recommendations they feel should be included.

12.4 Mindful that the preliminary investigation is a difficult and trying time for the victim and the accused, the Vicar and the members of the Advisory Committee shall seek to ensure that it is brought to an end in as short a time as possible, being vigilant so that the investigators may not delay the interviews or the drafting and submission of their conclusions.

13. Closure of the Preliminary Investigation by the Vicar

13.1 The Vicar shall assess conscientiously the reports and conclusions of the Coordinator (cf. art. 10.1), the investigators (cf. art. 12.2) and the Advisory Committee (cf. art. 12.3). If he deems it necessary, he may refer the case back to the Committee and the investigators for clarification or further investigation. If he is satisfied with the completeness and appropriateness of the investigation, he shall close the preliminary investigation.

13.2 If the Vicar's conclusion is that the allegations are not credible, he will issue a decree closing the investigation and rejecting the allegations as groundless. He will send a copy of this decree to the accused, the alleged victim and the Advisory Committee.

13.3 If the accused is a cleric and the Vicar's conclusion is that the allegations are credible and that therefore there are reasons to think that an offence has been committed:

13.3.1 He will ascertain that the allegations have been reported to the civil authorities (cf. arts. 6.2.1 and 9).

13.3.2 He will forward the acts of the preliminary investigation to the Prelate for their referral to the

Congregation for the Doctrine of the Faith (cf. *SST*, art. 16).

13.3.3 He will send a letter to the accused, the victim and the Advisory Committee informing them of having done what is said in art. 13.3.1.

13.3.4 In this letter, the Vicar shall advise that the accused is not allowed to participate in any activity of the Prelature in which minors take part or to carry out any other pastoral work, and that he will be able to carry out his ministry only within the centre of the Prelature where he resides.

13.3.5 The Vicar shall also notify the Bishop of the diocese in which the alleged sexual abuse occurred and the Bishop of the place where the accused resides of what is said above (arts. 13.3.1 - 13.3.4).

13.4 If the accused is a lay faithful and the Vicar's conclusions is that the accusations are credible and that therefore there are reasons to think that an offence has been committed:

13.4.1 He will ascertain that the allegations have been reported to the civil authorities (cf. arts. 6.2.1 and 9) and will wait for the conclusion of the judicial process in which these allegations will be tried, if it had not concluded before the opening of the preliminary investigation.

13.4.2 He will lay down that the accused is not allowed to participate in any activity of the Prelature in which minors take part.

13.4.3 He will send a letter to the accused, the victim and the Advisory Committee informing them of having done what is said in art. 13.4.2.

13.4.4 The Vicar shall also notify the Bishop of the diocese in which the alleged sexual abuse occurred and the Bishop of the place where the accused resides of what is said above (arts. 13.4.1 - 13.4.3).

VI PASTORAL RESPONSE AFTER AN INVESTIGATION IS CLOSED

14. Pastoral Response as regards the Victim

14.1 The Vicar, or someone appointed by him, will meet the victim (or parents or guardians if the victim is still a minor) to inform him/her of the outcome of the investigation. Both the Vicar or his representative and the victim will have one other person present with them.

14.2 If the accusation does not seem to be credible, the alleged victim will be informed of this. He/she will be treated with compassion and given whatever help and support are considered necessary and reasonable.

14.3 If the allegations have been found to be credible, the victim and the complainants, if there are others apart from the victim, will be informed. Pastoral support shall be offered to the victim and, if deemed necessary, to his/her family in the manner best suited to the circumstances. When making this offer it will be advisable to explain that this is not to be interpreted as an admission of guilt by the accused or assumption of guilt by the Church authority. Only after the judicial or administrative process which will follow the preliminary investigation or after other canonical response, if there is no process (cf. arts. 17 - 22), will the accused then be declared guilty or innocent (cf. Appendix I, B).

15. Pastoral Response as regards the Accused

15.1 As regards the accused, if the preliminary investigation showed that the allegations were not credible or if, as a result of a police investigation no prosecution was instituted or the accused was acquitted by a court of law, the Vicar shall take whatever steps are necessary to restore the good name of the person unjustly accused. These steps may include:

15.1.1 a public statement that the accused has been found innocent and, if he is a cleric, is returning to full ministry;

15.1.2 a visit by the Vicar to the apostolic undertakings where the accused works to give the same information to the people who work in those places or take part in their activities;

15.1.3 an offer of spiritual and psychological help to the person wrongly accused to enable him/her deal with the inevitable trauma.

15.2 If at the end of the preliminary investigation the allegations seem credible, in addition to doing what is said in arts. 13.3.3 or 13.4.3, the Vicar may urge the accused to voluntarily undergo a medical and psychological evaluation with professionals deemed suitable by both the Vicar and accused. The Vicar will also take care that pastoral support is offered to the accused in keeping with his/her circumstances.

16. Pastoral Response in respect of Others Affected

16.1 Abuse profoundly affects the victim's family. The victim may be rejected in his/her social surroundings and the parents may blame themselves for not having taken better care of their children. The Vicar will seek ways and means of assisting them in recovering from the possible psychological and spiritual trauma.

16.2 It may happen that the offender is a very popular person in the place where the abuse has taken place. The reaction of those who know him/her may include anger, disappointment, disgust, betrayal, disbelief, grief and compassion for the victim, etc. The Church authority will give serious consideration to ways of dealing with these conflicting emotions by means of suitable pastoral and psychological remedies.

VII CANONICAL RESPONSE TO CONFIRMED OFFENCES OF SEXUAL ABUSE OF MINORS

17. **When even a single act of sexual abuse of a minor** by a faithful of the Prelature is admitted by its author or is established after an appropriate judicial or extra-judicial process in accord with Canon Law, the Vicar will determine the person's suitability for continuing in the Prelature.

18. Taking into account the relevant norms of the Statutes of the Prelature (cf. *Statuta*, nos. 28-35), the Vicar may suggest to the offending person that he/she request the Prelate to be dispensed from his/her incorporation into the Prelature (cf. *ibid.*, no. 31) or suggest to the Prelate that the person be dismissed from the Prelature. In all cases the rights of the person under the Statutes of Opus Dei and Canon Law will be respected.

19. As regards the canonical penalties applicable to priests or deacons who commit this offence, what is laid down in *SST*, arts. 6 § 2; 21 § 2 (cf. Congregation for the Doctrine of the Faith, Circular Letter dated 3May 2011, II) is to be followed.

19.1 A priest or deacon who commits an offence of sexual abuse against a minor may at any time request a dispensation from the obligations of the clerical state.

19.2 In most grave cases the Prelate of Opus Dei, through the Congregation for the Doctrine of the Faith, may present directly to the decision of the Roman Pontiff the dismissal of the guilty party from the clerical state or his deposition, together with dispensation from the law of celibacy, when it is manifestly evident that the offence was committed and after having given the guilty party the possibility of defending himself (cf. *SST*, arts. 21 § 2, 2°).

20. The Ordinary of the diocese in which the abuse occurred will be informed of the resolution of the case.

21. The return of a cleric to public ministry is excluded if such ministry is a danger for minors or a cause of scandal to the community (cf. Congregation for the Doctrine of the Faith, Circular Letter dated 3 May 2011, III, i).

22. No priest or deacon of the Prelature who has committed an act of sexual abuse against a minor may be assigned to ministry within another ecclesiastical circumscription or transferred for ministerial assignment to another ecclesiastical circumscription, unless the Vicar previously fully informs the Ordinary of that jurisdiction about the offence of sexual abuse the priest or deacon has committed and any other information indicating that he has been or may be a danger to children or young people.

APPENDIX I

Several legislative texts of special importance for the preliminary investigation of allegations of sexual abuse are included in this Appendix along with some brief commentaries.

A. THE OFFENCE OF SEXUAL ABUSE OF MINORS: ITS NOTION IN THE LAW OF THE CHURCH AND OF THE STATE

A.1. *Motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, with the amendments made to it in the *Normae de gravioribus delictis* of 21 May 2010

Article 6

«§ 1. *The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:*

«1° *the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor;*

«2° *the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.»*

A.2. The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding “Graviora Delicta,” Section A, “Delicta contra mores”

This *Procedure and Praxis of the CDF* quotes the *Motu proprio “Sacramentorum sanctitatis tutela”* of 30 April 2001, without the amendments made to it in the *Normae de gravioribus delictis* of 21 May 2010. However what it says about the offence of sexual abuse of minors is still relevant in order to understand its notion.

«a) The *motu proprio* speaks of a “*delictum cum minore*”. This does not mean only physical contact or direct abuse, but includes indirect abuse also (for example: showing pornography to minors; lewd indecent exposure in front of minors).

«b) Canon 1395 § 2 of the Code of Canon Law speaks of a delict with a minor under 16: “*cum minore infra aetatem sedecim annorum*”. The *motu proprio*, on the other hand, speaks of a delict with a minor under 18: “*delictum ... cum minore infra aetatem duodeviginti annorum*”. Therefore the classification of the delict becomes more complex. Some experts, in fact, speak not only of pedophilia (the sexual attraction to prepubescent children) but also of ephebophilia (the sexual attraction to adolescents), of homosexuality (the sexual attraction

to adults of the same sex) and of heterosexuality (the sexual attraction to adults of the other sex). Between sixteen and eighteen years of age, some “minors” may indeed be perceived as objects of homosexual or heterosexual attraction. Some civil jurisdictions consider a person of sixteen years as capable of giving consent for sexual activity (whether hetero- or homosexual). The *motu proprio*, however, stigmatises as a delict every violation of the Sixth Commandment with a minor under eighteen years of age whether based on pedophilia, ephebophilia, homosexuality or heterosexuality. This differentiation has, nevertheless, an importance from the psychological, pastoral and juridical points of view. It helps, no doubt, both the Ordinary and the judge in grasping the gravity of the delict and choosing the path necessary for the reform of the guilty cleric, the reparation of scandal and the restitution of justice (cf. canon 1341).»

A.3. KENYAN LAW

CHILDREN'S ACT, 2001

Part I Preliminary

2. Interpretation

In this Act, unless the context otherwise requires—

“**child**” means any human being under the age of eighteen years;

“**child abuse**” includes physical, sexual, psychological and mental injury;

“**child of tender years**” means a child under the age of ten years;

Part II. Safeguards for the Rights and Welfare of the Child

13. Protection from abuse, etc.

(1) A child shall be entitled to protection from physical and psychological abuse, neglect and any other form of exploitation including sale, trafficking or abduction by any person.

(2) Any child who becomes the victim of abuse, in the terms of subsection (1), shall be accorded appropriate treatment and rehabilitation in accordance with such regulations as the Minister may make.

SEXUAL OFFENCES ACT, 2006

2. Interpretation

In this Act, unless the context otherwise requires—

“**child**” has the meaning assigned thereto in the Children Act ([Cap. 141](#));

“**complainant**” means the Republic or the alleged victim of a sexual offence and in the case of a child or a person with mental

disabilities, includes a person who lodges a complaint on behalf of the alleged victim where the victim is unable or inhibited from lodging and following up a complaint of sexual abuse;

“vulnerable person” means a child, a person with mental disabilities or an elderly person and **“vulnerable witness”** shall be construed accordingly.

7. Acts which cause penetration or indecent acts committed within the view of a family member, child or person with mental disabilities

A person who intentionally commits rape or an indecent act with another within the view of a family member, a child or a person with mental disabilities is guilty of an offence and is liable upon conviction to imprisonment for a term which shall not be less than ten years.

8. Defilement
 - (1) A person who commits an act which causes penetration with a child is guilty of an offence termed defilement.

- (2) A person who commits an offence of defilement with a child aged eleven years or less shall upon conviction be sentenced to imprisonment for life.
- (3) A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.
- (4) A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years.
- (5) It is a defence to a charge under this section if—
 - (a) it is proved that such child, deceived the accused person into believing that he or she was over the age of eighteen years at the time of the alleged commission of the offence; and
 - (b) the accused reasonably believed that the child was over the age of eighteen years.
- (6) The belief referred to in subsection (5)(b) is to be determined having regard to all the circumstances, including any steps the accused person took to ascertain the age of the complainant.
- (7) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction,

sentence the accused person in accordance with the provisions of the Borstal Institutions Act (Cap. 92) and the Children's Act (Cap. 141).

- (8) The provisions of subsection (5) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

9. Attempted defilement

- (1) A person who attempts to commit an act which would cause penetration with a child is guilty of an offence termed attempted defilement.
- (2) A person who commits an offence of attempted defilement with a child is liable upon conviction to imprisonment for a term of not less than ten years.
- (3) The provisions of section 8(5), (6), (7) and (8) shall apply mutatis mutandis to this section.

11. Indecent act with child or adult

- (1) Any person who commits an indecent act with a child is guilty of the offence of committing an indecent act with a child and is liable upon conviction to imprisonment for a term of not less than ten years.
- (2) It is a defence to a charge under subsection (1) if it is proved that such child deceived the accused person into believing that such child was over the age of eighteen years at

the time of the alleged commission of the offence, and the accused person reasonably believed that the child was over the age of eighteen years.

- (3) The belief referred to in subsection (2) is to be determined having regard to all the circumstances, including the steps the accused person took to ascertain the age of the complainant.
- (4) Where the person charged with an offence under this Act is below the age of eighteen years, the court may upon conviction, sentence the accused person in accordance with the provisions of the Borstal Institutions Act (Cap. 92) and the Children's Act (Cap. 141).
- (5) The provisions of subsection (2) shall not apply if the accused person is related to such child within the prohibited degrees of blood or affinity.

12. Promotion of sexual offences with a child

A person including a juristic person who—

- (a) manufactures or distributes any article that promotes or is intended to promote a sexual offence with a child; or
- (b) who supplies or displays to a child any article which is intended to be used in the performance of a sexual act with the intention of encouraging or enabling that child to perform such sexual act,

is guilty of an offence and is liable upon conviction to imprisonment for a term of not less than five years and where the accused person is a juristic person to a fine of not less than five hundred thousand shillings.

13. Child trafficking

A person including a juristic person who, in relation to a child—

- (a) knowingly or intentionally makes or organizes any travel arrangements for or on behalf of a child within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against that child, irrespective of whether the offence is committed;
- (b) supplies, recruits, transports, transfers, harbours or receives a child, within or across the borders of Kenya, for purposes of the commission of any sexual offence under this Act with such child or any other person,

is, in addition to any other offence for which he or she may be convicted, guilty of the offence of child trafficking and is liable upon conviction to imprisonment for a term of not less than ten years and where the accused person is a juristic person to a fine of not less than two million shillings.

14. Child sex tourism

A person including a juristic person who—

- (a) makes or organizes any travel arrangements for or on behalf of any other person, whether that other person is resident within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed; or
- (b) prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child;
- (c) introduces, organizes or facilitates contact with another person under the auspices of promoting tourism, in any manner, in order to promote conduct that would constitute a sexual offence against a child,

is guilty of an offence of promoting child sex tourism and is liable upon conviction to imprisonment for a term of not less than ten years and where the accused person is a juristic person to a fine of not less than two million shillings.

15. Child prostitution

Any person who—

- (a) knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form of sexual activity or

- in any obscene or indecent exhibition or show;
- (b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse or indecent exhibition or show;
 - (c) induces a person to be a client of a child for sexual intercourse or for any form of sexual abuse or indecent exhibition or show, by means of print or other media, oral advertisements or other similar means;
 - (d) takes advantage of his influence over, or his relationship to a child, to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
 - (e) threatens or uses violence towards a child to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show;
 - (f) intentionally or knowingly owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of any offence under this Act with a child by any person;
 - (g) gives monetary consideration, goods, other benefits or any other form of inducement to a child or his parents with intent to procure the child for sexual intercourse or any form of sexual abuse or indecent exhibition or show,

commits the offence of benefiting from child prostitution and is liable upon conviction to imprisonment for a term of not less than ten years.

16. Child pornography

(1) Any person including a juristic person who—

(a) knowingly displays, shows, exposes or exhibits obscene images, words or sounds by means of print, audio-visual or any other media to a child with intention of encouraging or enabling a child to engage in sexual acts;

(aa) sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his or her possession any obscene book, pamphlet, paper, drawing, painting, art, representation or figure or any other obscene object whatsoever which depict the image of any child;

(b) imports, exports or conveys any obscene object for any of the purposes specified in subsection (1), or knowingly or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation;

- (c) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that any such obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation;
- (d) advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or
- (e) offers or attempts to do any act which is an offence under this section,

is guilty of an offence of child pornography and upon conviction is liable to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to a term of not less than seven years without the option of a fine.

- (2) This section shall not apply to—
 - (a) a publication which is proved to be justified as being for the public good on the ground that such book, pamphlet,

paper, writing, drawing, painting, art, representation or figure is in the interest of science, literature, learning or other objects of general concern;

(b) any book, pamphlet, paper, writing, drawing, painting, representation or figure which is kept or used *bona fide* for religious purposes;

(c) any representation sculptured, engraved, painted or otherwise represented on or in any ancient monument recognised as such in law; and

(d) activities between two persons of over eighteen years by mutual consent.

(3) For the purposes of subsection (1), a book, pamphlet, paper, drawing, painting, art, representation or figure or any other object shall be deemed to be obscene if it is lascivious or appeals to the prurient interest or if its effect, or where it comprises two or more distinct items the effect of any one of its items, if taken as a whole, tends to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

24. Sexual offences relating to position of authority and persons in position of trust

(1) Whoever being the superintendent or manager of a jail, remand home or

children's or any institution or any other place of custody established by or under any law takes advantage of his or her official position and induces or seduces any inmate or inhabitant of such jail or institution, remand home, place or institution to have sexual intercourse with him or her, such sexual intercourse not amounting to the offence of rape or defilement shall be guilty of a sexual offence relating to a position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.

(...)

- (4) Any person who being the head-teacher, teacher or employee in a primary or secondary school or special institution of learning whether formal or informal, takes advantage of his or her official position and induces or seduces a pupil or student to have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of authority and shall be liable upon conviction to imprisonment for a term of not less than ten years.
- (5) Any person who being in a position of trust takes advantage of his or her position and induces or seduces a person in their care to

have sexual intercourse with him or her or commits any other offence under this Act, such sexual intercourse not amounting to the offence of rape or defilement, shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction to imprisonment for a term of not less than ten years.

B. Credible Allegations

Code of Canon Law, c. 1717: *§1 Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.*

The allegations to be investigated are those that seem credible, that have semblance of truth. «A positive condition to open an investigation is that the information obtained provides indications leading to consider as probable the commission of an offence.»(Josemaria Sanchis, Commentary on Canon 1717 in *Exegetical Commentary on the Code of Canon Law*, Gratianus Series, Montreal/Chicago, Wilson & Lafleur/MWTF, 2004)

The purpose of the preliminary investigation is to see whether the semblance of truth (credibility) of the allegations is confirmed. However, it will only be in

the judicial or administrative process which may follow the preliminary investigation where the moral certainty needed to impose a penalty is to be attained (cf. canon 1608). That is why at the end of the preliminary investigation the accused is not considered guilty, except when he/she has admitted to the commission of the offence.

C. IMPUTABILITY

Code of Canon Law, c. 1717: *§1 Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.*

What is imputability? When are the facts alleged imputable to the accused person?

Imputability is the quality of an action or omission which makes it attributable to its author in so far he/she has intentionally or negligently violated the law. In Penal Canon Law there are two forms of imputability: intentional violation of the law and violation of the law out of negligence. The Code of Canon Law deals with these two forms of imputability in canon 1321:

§1 No one can be punished for the commission of an external violation of a law or precept unless it is

gravely imputable by reason of malice or of culpability.

§2 A person who deliberately violated a law or precept is bound by the penalty prescribed in that law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.

§3 Where there has been an external violation, imputability is presumed, unless it appears otherwise.

D. PRESCRIPTION OF THE OFFENCE OF SEXUAL ABUSE

D.1.PRESCRIPTION IN CANON LAW

«Any person is entitled to denounce an offence. “Denunciation” is understood in a broad sense as the action by means of which an offence is reported to the authority. Denouncing offences should be considered not only as a right but also as a duty, either a moral or juridical duty depending on each case. (...) However, making a denunciation does not entail presenting a criminal action or the obligation to proof the culpability of the accused. Bringing a criminal action corresponds exclusively to the promotor of justice at the request of the Ordinary (cf. cc. 1430 and 1721 § 1); it is never the prerogative of the injured party». (Josemaria Sanchis, Commentary on Canon 1717 in *Exegetical Commentary on the*

Code of Canon Law, Gratianus Series, Montreal/Chicago, Wilson & Lafleur/MWTF, 2004)

The purpose of bringing a criminal action against an alleged offender is to request the opening of a judicial process to declare or impose a penalty. The possibility of presenting an action is extinguished by the passage of time. This is called prescription (in some countries statute of limitations) and is regulated by the law. In the same penal process which is opened as a consequence of the criminal action brought by the promotor of justice, the injured party may bring a contentious or penal action to obtain compensation for the damages he/she has suffered as a consequence of the offence (cf. CCL, cc. 1596 and 1729 § 1).

Motu proprio “Sacramentorum sanctitatis tutela” of 30 April 2001, with the amendments made to it in the Normae de gravioribus delictis of 21 May 2010

Art. 7 § 1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

§ 2. Prescription runs according to the norm of can. 1362 § 2 of the Code of Canon Law and can. 1152 § 3 of the Code of Canons of the Eastern

Churches. However, in the delict mentioned in art. 6 §1 n. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age.

D.2.PRESCRIPTION IN KENYAN LAW

In Kenyan law the right to institute a prosecution for criminal offences does not lapse.

APPENDIX II

Sample Forms:

REPORT OF ALLEGED SEXUAL ABUSE OF A MINOR ATTRIBUTED TO A FAITHFUL OF THE PRELATURE OF OPUS DEI IN KENYA

It is not necessary to have all the information requested before
submitting this report

- 1) This report is submitted by:

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

- 2) Suspected author of the alleged facts:

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

Age _____ Male __ Female __

- 3) Alleged victim:

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

Age _____ Male __ Female __ Age when he/she
was allegedly abused _____

- 4) Parents or guardian of the alleged victim (when
he/she is still a minor):

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

- 5) Eyewitnesses to the alleged facts if any (use another
sheet if needed):

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

Name and surname:

Street Address:

City/Town

County _____

Postal Code _____

Tel. _____

- 6) Any individuals who heard about the facts alleged from another person (use another sheet if needed):

Name, surname and title:

Tel. _____

Name, surname and title:

Tel. _____

Name, surname and title:

Tel. _____

7) **FACTS OF THE CASE**

On a separate sheet of paper, please type or handwrite neatly, in a legible manner, a description of the alleged sexual abuse, including the following information if known by those who report the incident:

Nature of the alleged act(s) (type of violation of the 6th commandment)

Date(s) and time(s) of the alleged act(s)

Location(s)/address(es) where the alleged act(s) took place

- a) Any other information you deem important (for instance, using threats or force, gifts, scandal, involving abuse of position, etc.)

Signature of the person who wrote this report:

—

Date _____

Please sign also the sheet where you write the description (no. 7 above) and staple it to this sheet.

See art. 7.7 of the *Norms for the Investigation of Complaints against Faithful of the Prelature in regard to Sexual Abuse of Minors* on the possibility that this report be written by the Child Protection Coordinator if the complainant so prefers.