

PRELATURE OF THE HOLY CROSS AND
OPUS DEI IN EAST AFRICA

**PROTOCOL FOR THE
INVESTIGATION OF COMPLAINTS
OR OTHER INFORMATION**

REGARDING ABUSE OF MINORS

**IN APOSTOLIC AND CHRISTIAN
FORMATION ACTIVITIES
CARRIED OUT BY THE PRELATURE
OF OPUS DEI**

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PROTOCOL FOR THE INVESTIGATION OF
COMPLAINTS OR OTHER INFORMATION
REGARDING ABUSE OF MINORS IN
APOSTOLIC AND CHRISTIAN FORMATION
ACTIVITIES CARRIED OUT BY THE
PRELATURE OF OPUS DEI

PREAMBLE

Article 1.

§ 1 The Catholic Church and, as a part of it, the circumscription of the Prelature of the Holy Cross and Opus Dei in East Africa (hereinafter, “the Prelature”) considers any abuse of minors to be a grave offence to God since it demeans his image in the most vulnerable persons, his favourite ones, and wounds them with consequences very difficult to heal. Thus, it pitifully tramples on central aspects of the Christian faith and life. Such crimes are particularly reprehensible when perpetrated by people committed to helping others follow Jesus Christ and his teachings, who should faithfully witness to God’s loving care for his children. For these reasons, the Church strives to prevent such behaviours and, when they nevertheless occur, to react to them vigorously, with both penal and pastoral measures, since «the effective protection of minors and a commitment to ensure their human and spiritual development, in keeping with the dignity of the human person, are integral parts of the Gospel message that the Church and all members of the faithful are called to spread throughout the world». (Chirograph for the Institution of a Pontifical Commission for the Protection of Minors, 22 March 2014)

§ 2 In March 2013 a protocol for the protection of minors was issued for this regional circumscription of the Prelature, in accord with the orientations

from the Congregation for the Doctrine of the Faith contained in the Circular Letter dated 3 May 2011. The latter laid down that Bishops and those equivalent in law to them were to establish clear and coordinated procedures to deal with allegations or other information about sexual abuse of minors attributed to clerics. Further to the m.p. *Vos estis lux mundi* (hereinafter, VELM), the Prelate of Opus Dei issued Guidelines about abuse of any kind, dated 22 February 2020, (hereinafter, Guidelines of the Prelate), applying to the Prelature the guiding principles for the protection of minors and vulnerable persons issued by Pope Francis for the Vatican City in the norms dated 26 March 2019. Complying with the mandate established in the Guidelines of the Prelate, the Regional Vicar of the Prelature in East Africa issues this Protocol. It will be modified to the extent required by future orientations of the Kenya and Uganda Conference of Catholic Bishops and by the civil laws.

TITLE I

NATURE AND SCOPE OF APPLICATION OF THESE NORMS

Article 2.

This protocol applies to the complaints or other information (cf. can. 1717 § 1 of the Code of Canon Law – hereinafter, CIC –) regarding possible abuse or harassment of minors, when their investigation is the competence of the Regional Vicar, namely, when the

alleged abuse is attributed to persons who, in the moment of the complaint or information, are under the authority of the said Vicar as far as they are faithful of the Prelature, either clerics or lay faithful.

§ 1 The scope of application of these norms to the lay faithful of the Prelature is limited to cases in which the accusation is made regarding actions carried out while they are fulfilling, under the authority of the Regional Vicar, an apostolic activity of the Prelature in which Christian formation or spiritual direction is provided.

§ 2 If it concerns possible offenses committed by clerics at a time when they were carrying out tasks legitimately entrusted to them by the diocesan authority, the Regional Vicar is to act in close coordination with that authority.

Article 3.

If the accusation refers instead to sacred ministers not incardinated in the Prelature or to members of institutes of consecrated life during the time they are carrying out an activity of apostolate or Christian formation entrusted to or promoted by the Prelature, article 33 of this protocol will be applied.

Article 4.

When reference is made in this protocol to “abuse” or “abuse or harassment”, these concepts include the behaviours addressed by the Prelate’s Guidelines, not just sexual abuse.

- § 1 In accordance with *m. p. Sacramentorum sanctitatis tutela* (hereinafter, SST), article 6, in this protocol “sexual abuse” is the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; moreover, the acquisition, possession or distribution by a cleric of pornographic images of minors under the age of eighteen, for purposes of sexual gratification, by whatever means or using whatever technology. The m.p. VELM, article 1 § 1 specifies that what is laid down for the delicts of sexual abuse applies when the complaints or information refer to behaviours consisting of: a) forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts; b) performing sexual acts with a minor or a vulnerable person; c) the production, exhibition, possession or distribution, including by electronic means, of child pornography, as well as by the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions.
- § 2 «*Minor*» is understood as any person below the age of eighteen years. A person who habitually lacks the use of reason is to be considered equivalent to a minor (cf. SST, art. 6 § 1, 1°).
- § 3 In this protocol, «*vulnerable person*» means any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence (cf. VELM, art. 1 § 2 a-b).

Article 5.

In the case of complaints or other information about abuse allegedly committed by those, either faithful of the Prelature or not, who work as employees or volunteers in institutions or projects whose spiritual orientation is entrusted to the Prelature, but in positions or roles not assigned to them by the authorities of the Prelature – in accord with the agreements between the latter and the institution or project –, the Vicar will follow article 31 of this protocol and will forward the information received to the concerned entity. This entity will then follow its own protocol for the protection of minors.

Article 6.

Both in the above case and in the case of complaints or information on abuses committed by lay faithful of the Prelature while exercising their professional or private activities, the facts will be investigated in order to take the corresponding disciplinary or other decisions with regard to the person in question, when he or she is a faithful of the Prelature.

Article 7.

When the reason for the intervention is the information about particularly serious infractions of divine or ecclesiastical law, which are not typified as a specific canonical crime, and there is an urgent need to prevent or repair the scandal, the Regional Vicar, in accordance with can. 1319 of the CIC, can issue a precept for the subject to cease his conduct, establishing a determined penalty that he will incur, including *latae sententiae*

when it is prudent, if he does not obey. If he considers that such a preventive measure would be belated and insufficient, he can promote, in accordance with this protocol, the preliminary investigation and, if appropriate, the subsequent penal process or procedure to punish such conduct in accordance with can. 1399 of the CIC.

TITLE II

COMPETENT CHURCH AUTHORITY AND AUXILIARY BODIES

Chapter 1

Competent Church Authority

Article 8.

The Church authority responsible for the investigation dealt with in these norms is the Regional Vicar (hereinafter, “the Vicar”) in his capacity as Ordinary of this circumscription of the Prelature (cf. Statutes of the Prelature of Opus Dei – hereinafter, *Statuta* –, no. 151 § 1).

Article 9.

Although, in accord with these norms, some persons may help with the investigation and give their opinion, they cannot substitute for the discernment of the Vicar.

Article 10.

In accord with article 2 § 3 of m.p. VELM, the Ordinary of the Prelature who receives notice of the alleged commission of one of these crimes by a cleric of the Prelature will inform the diocesan ordinary of the place where the events took place without delay and will agree with him on the manner of proceeding in the case.

Article 11.

The crimes of sexual abuse are reserved to the Congregation for the Doctrine of the Faith when they are committed by clerics (cf. SST, art. 6 § 1), therefore, once the preliminary investigation has been carried out, the acts must be forwarded to it, also in the event that it is decided to dismiss the complaint.

Chapter 2 Advisory Committee

Article 12.

There shall be an Advisory Committee that will function as a consultative body to the Vicar regarding the preliminary investigation of complaints or other information about abuse or harassment of minors against faithful of the Prelature. The competencies of this Committee will include:

§ 1 Reviewing and proposing updates to these norms.

§ 2 Advising the Vicar in the assessment of the complaints or other information, when doubts may arise about their credibility, and in weighing the advisability of applying in each case some of the

provisional measures foreseen in art. 35 § 4 of this protocol.

- § 3 The members of the Advisory Committee are bound to the secret of office and must proceed according to can. 1455 § 3 of the CIC. While always safeguarding reserve and the protection of privacy, the Vicar can ask their opinion on possible forms of help and pastoral and professional accompaniment of the persons concerned in specific cases, without excluding the person under investigation or accused: ways of providing them with medical and social assistance; of making them aware of their rights and how to exercise them; of facilitating recourse to the appropriate authorities; of protecting their image and privacy; etc. All this, always taking into account the opinion and needs of the persons concerned.
- § 4 It advises the Vicar or the person carrying out the investigation, when these consider it necessary, on questions of their competence that arise during the proceedings. In these cases, consultations will be made avoiding the disclosure of identities and personal data that are not essential.
- § 5 If the Advisory Committee receives information or complaints against faithful of the Prelature about alleged abuses, it should immediately bring them to the attention of the Coordinator.

Article 13.

The Advisory Committee will be composed of at least five members. They must be people of exemplary

conduct and sound judgement. The majority will be lay faithful, men and women. The chairperson of the Committee will be a priest of the Prelature with several years of pastoral experience and sound judgement. At least one member should have expertise in the treatment of abuse or harassment of minors.

§ 1 As far as possible, among the Committee members there should be professionals of the following disciplines: canon law (cf. art. 50 of this protocol and CIC, can. 1718 § 3), criminal or civil law, psychology, moral theology or ethics.

§ 2 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.

§ 3 The Committee, following the organization established by its President, shall meet as often as necessary to fulfil its functions, and whenever the Vicar calls it.

Chapter 3

Coordinator for the Protection of Minors

Article 14.

As a way of applying art. 2 § 1 VELM, according to art. 8 of the Guidelines of the Prelate, the Vicar shall appoint a Coordinator for the protection of minors (hereinafter, “Coordinator”) who will be responsible for receiving complaints or information about abuse of minors. The Coordinator may be a member of the Advisory Committee, although not necessarily. In any

case, the designated faithful must have been in the Prelature at least for 10 years and be outstanding in their qualities of upright Christian living, prudence, empathy, doctrine, and other characteristics mentioned in the Prelate's Guidelines (cf. art. 9-10). It is advisable that the coordinator have a knowledge of psychology.

Article 15.

The Coordinator should receive such complaints or information with respect, understanding and compassion; he or she should be a skilled listener, receptive to the needs of those bringing complaints or information and act with tact and sensitivity.

Article 16.

In order to make it easily accessible, a telephone number and an e-mail address where the Coordinator can be contacted quickly should be clearly visible on the Opus Dei website (www.opusdei.org.ke). This same information will be available in each centre of the Prelature. It will also be made easy for those who wish to send their report – and update it whenever necessary – through the Opus Dei web page.

Article 17.

The Vicar shall also appoint an Assistant Coordinator, endowed with the same qualities, who shall assist the Coordinator in his or her task and deputise for him or her if necessary. Specifically, according to art. 8 of the Guidelines of the Prelate, the Coordinator has the following functions and duties:

- 1° To receive any type of complaint or information – directly from the alleged victim or from third parties – related to the conducts referred to in the Prelate's Guidelines. The complainant and, if applicable, the alleged victim, will be acknowledged receipt.
- 2° To collect any data necessary for the purpose of identifying the accused and possible victims, as well as any further data related to the facts stated and the persons affected.
- 3° Provide guidance to the complainant and, where appropriate, to the alleged victim on the procedural steps to be taken, both in the canonical and in the civil sphere.
- 4° Assist the presumed victims initially with attentive personal accompaniment.
- 5° In the case of an oral complaint, to draw up a record of everything that is stated and read it to the complainant or informant so that, if he or she agrees, he or she can sign it or indicate what corrections would be necessary before doing so. If the person agrees with the written statement but does not wish to sign it, the Coordinator will so state, also recording the actions taken, for which the presence of a canonical notary will be required.
- 6° Promptly and discreetly, to send to the Regional Vicar the act of the complaint and the actions taken, leaving a documentary record of the forwarding made and the date of the same, of which the complainant will be notified.

- 7° To keep the secret of office in accordance with CIC, can. 1455 § 3.
- 8° To periodically inform the Regional Vicar of the activity carried out.

Article 18.

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.

Article 19.

When he sends the information or the complaint to the Vicar, he will accompany it with a brief report in which, in addition to his impression about the aspects of the matter that he considers appropriate to evaluate, he will propose possible measures of accompaniment or pastoral and psychological help to the informants or complainants and to the alleged victims.

Article 20.

The Coordinator will not keep documentation of the complaints and information received, once his function of collecting them and sending them to the Vicar has been fulfilled. The Vicar, without prejudice to the duty to act on them, will treat them, as far as their filing and conservation are concerned, in accordance with the provisions of the canonical norms (cf. CIC, can. 489-490).

Article 21.

The Coordinator will collaborate with the Vicar in the follow-up, coordination and verification of the norms of prevention established in the Guidelines of the Prelate. He will also promote the implementation of prevention and training activities in the Prelature for dealing with minors and vulnerable persons.

TITLE III

VALUES TO BE SAFEGUARDED

Article 22.

Upon receiving complaints and investigating them, the goods to be protected must be safeguarded by carefully applying the canonical and State regulations in force.

§ 1 As regards the alleged victims:

- a) They should be protected and helped to find support and reconciliation.
- b) They are to be offered spiritual and psychological assistance.
- c) The person making the complaint must be heard and treated with respect (see art. 15 of this protocol). In cases of sexual abuse related to a crime against the dignity of the sacrament of Penance (SST, art.4), the complainant must be informed that his name will not be communicated to the accused and his lawyer unless he has expressly given his consent (SST, art. 24).

§ 2 As regards the person accused or investigated:

- a) Anything that might subsequently impair their fundamental right to defend themselves shall be avoided (cf. art. 37 of this protocol).
- b) During the course of the procedure, the accused cleric should always be afforded a just and fit sustenance.
- c) The return of a cleric to public ministry is excluded if such ministry is a danger for minors or a possible cause of scandal for the community.

TITLE IV

MAKING AND RECEIVING COMPLAINTS OR INFORMATION

Chapter 1

Making and receiving complaints or information

Article 23.

Without prejudice to what is established in art. 3 § 1 VELM, any faithful of the Prelature who has knowledge of acts of abuse or harassment (cf. art. 4 of this protocol) committed by another faithful of the Prelature, or sees reasonable cause to suspect the existence of such conduct, must immediately inform the Coordinator or one of the Ordinaries indicated in art. 3 § 1 VELM, as accurately as possible, unless this violates the confidentiality of spiritual direction, the

seal of the sacrament of Reconciliation, or is in another of the cases provided for in can. 1548 § 2 of the CIC.

Article 24.

The Coordinator will promptly interview the person who wishes to make a complaint or report, if possible within twenty-four hours of receiving the communication from the complainant or informant, further assuring him or her that he or she will transmit the contents of the interview to the Vicar as soon as possible.

Article 25.

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

Article 26.

If the complainant is not the alleged victim, the Coordinator will interview him or her. The Coordinator should first discern the appropriateness of such an interview and obtain the consent of the minor's parents or guardians. They or the persons mandated by them will be present in the interview. These precautions are not needed when, because of the time elapsed since the alleged abuse, the victim is no longer a minor.

Article 27.

The Coordinator will ask people who make complaints or warnings to send him a written report. He will make the same request to the parents or guardians of the alleged victim, unless the latter is no longer a minor. He will provide them with a copy of the questionnaire

attached to these norms (Appendix IV) as an aid in writing the report. If, taking into account the age or level of instruction of the person making the accusation, the Coordinator anticipates that it would not be easy for that person to write the report, he or she may take care of writing it himself or herself. He or she will then read it to the person to see if it accurately records what he or she said, and to sign it. The Coordinator will also sign it.

Article 28.

The Coordinator shall keep a log of all conversations with alleged victims, their parents or guardians and any other persons making complaints or providing information, as well as of the written reports on those conversations.

In doing so, and in general when dealing with the data of persons involved in any kind of notice of abuse, due reserve must be kept and it should comply with the data protection legislation in force (cf. CIC, can. 471, 2°; VELM, art. 2 § 2). Once his function has been fulfilled, the Coordinator will proceed with this log in accordance with the provisions of art. 20 of this protocol.

Article 29.

If anonymous reports or information are received, the Coordinator will inform the Vicar, so that he can decide, by means of a motivated decree, whether to take them into consideration or not.

Article 30.

Upon receiving complaints, or other credible information, about abuse or harassment (cf. art. 4 of this protocol) committed by faithful of the Prelature, the Coordinator in agreement with the Vicar will promptly initiate contact with the parents or guardians of the alleged victim and will coordinate the immediate pastoral care of the alleged victim and his or her family. In agreement with the Vicar, the Coordinator will also advise them about the possibility of receiving psychological assistance.

Chapter 2

Reporting to Civil Authorities

Article 31.

§ 1 Unless the confidentiality of spiritual direction or the seal of the sacrament of Reconciliation would be violated or in another case provided for in CIC, can. 1548 § 2, in conformity with the law in force, allegations or other reports of sexual abuse of minors, that are considered credible according to art. 34 of this protocol, shall be reported to the civil authorities.

a) Consequently, upon receiving a complaint about conduct that is typified as a crime under civil law:

1° If the complainant is the alleged victim or his/her legal representatives, they should be informed of the legal context and suggested to report the facts also to the civil authorities.

- 2° When it is not a formal complaint, but other information or notice provided by a third party, it will also be suggested that he/she bring it to the attention of the civil authority. However, efforts should be made to interview the alleged victim or his or her legal representatives as soon as possible and to suggest that they act in accordance with paragraph 1° above.
- 3° If both the alleged victim and his/her representatives, as well as the informants refuse to complain to or inform the authorities, taking into account all the circumstances of the case, the advisability of informing the Office of Public Prosecutor of the facts will be considered, once the preliminary investigation has been carried out or, at least, the credibility of the information on a possible crime has been assessed.
- 4° If the facts occurred years ago and the alleged victim has attained the age of majority when the facts are known, the decision will be made by the complainant after acting in accordance with paragraph 1° above.

b) The civil authorities shall always be given the cooperation which they require and which may legitimately be offered.

§ 2 Regardless of the outcome of the police investigations or, if applicable, the sentence of the

civil judicial process, the Prelature as part of the Church retains its right to open a preliminary investigation in accordance with CIC, can. 1717 and these norms.

- a) If, on receiving notice of a possible offence (cf. art. 23 of this Protocol), the Vicar is aware that the competent civil authorities are conducting an investigation or prosecution of these facts, he may decide to postpone the opening of the preliminary investigation (cf. Title V of this Protocol) only if the civil norms so provide.
- b) Canonical proceedings must be conducted autonomously and reach their own conclusions in accordance with canon law, regardless of what is decided in civil proceedings.
- c) Care must always be taken to act with justice, compassion and charity, and also to try and prevent or remedy scandal, while avoiding to call into question anyone's good name (cf. CIC, can. 1717, §2).

TITLE V

PRELIMINARY INVESTIGATION

Chapter 1

Opening a Preliminary Investigation

Article 32.

When the Coordinator receives a report or information covered by this protocol, he or she will immediately inform the Vicar and provide him with the written report or reports of the interviews he or she has had with the complainant or informant and the alleged victim or the alleged victim's parents or guardians. The Coordinator may make such recommendations as he or she deems appropriate on the basis of the impressions obtained from these conversations (see art. 19 of this protocol).

Article 33.

If the complaint or information refers to the persons indicated in art. 3 of this protocol, the Vicar shall inform the local Ordinary where the events are said to have occurred, as well as the Ordinary or the Superior of the subject to whom the complaint or information refers (cf. art. 3 § 1 VELM).

Article 34.

If the Vicar has doubts about the credibility of the complaint or information received, he will pass the information on to the Advisory Committee and ask their opinion on whether an investigation should be

opened. Having heard the opinion of the Advisory Committee, the Vicar will make a decision.

§ 1 In doing so, he is to take into account that the investigation is to be opened whenever - through whatever channel, even if it is not strictly speaking a complaint - he receives information that is not implausible and a preliminary investigation is not superfluous; for example, because the accused confirms that the complaint or information is true and admits his responsibility (cf. CIC, can. 1717). Even in this case, it may be appropriate to conduct the investigation to clarify the scope and circumstances of the facts.

§ 2 If he decides not to investigate, because he believes there are clear reasons that make certain information not credible, the Vicar must formalize that decision in a reasoned decree (cf. CIC, can. 51) which specifies the reasons for the implausibility. This decree will be kept in the secret archives. If the information comes from specific persons, before filing the decree, the decision must be communicated to them, in the manner provided for in c. 55 of the CIC, indicating that a recourse may be lodged with the Prelate against this decree in accordance with cc. 1732-1739 of the CIC.

§ 3 When the information comes from a formal complaint, it must always be investigated, even if there are doubts as to its plausibility or even as to its veracity, so that the facts can be adequately clarified in the manner provided for by law. The decision not to investigate in such cases can only be taken if it is clear that the complaint is false. The

Vicar will also bear in mind the provisions of can. 1390 of the CIC, if it is applicable to the case.

Article 35.

If he decides to open an investigation, the Regional Vicar will issue a motivated decree making that decision in accordance with CIC, can. 1717 and determining the following points:

- § 1 With the greatest diligence the Regional Vicar shall entrust the preliminary investigation to the Promoter of Justice of his circumscription or to a delegate, in order to carry it out under his authority and to keep him permanently informed of the progress of that mission. If this is not possible, he will carry it out personally (cf. Art. 20 of the Prelate's Guidelines).
- § 2 Those who carry out the investigation and, in general, those who advise the Vicar in each case have exclusively the auxiliary and consultative functions assigned to them by law (cf. CIC, cann. 1717, §§ 1 and 3; 1428; 1718, § 3). The decisions which the law provides for to be taken in the course and at the end of the investigation are not collegial, but are the personal prerogative of the Vicar.
- § 3 In the same decree a notary is to be appointed.
- § 4 The decree shall also set forth the provisional measures that the Ordinary considers prudent to take while the investigation is being carried out, especially, but not only, if there is a risk of recurrence or scandal. Such measures are to be decisions of those already permitted by the

ordinary powers of his office, even if they require just or serious cause: for example, his removal from assignments involving dealings with minors, a temporary substitution, or other measures concerning the one under investigation which do not imply prejudice to, or endanger, his good reputation in what depends on them (cf. CIC, can. 1717, § 2).

§ 5 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.

§ 6 In cases reserved to the Congregation for the Doctrine of the Faith, the Vicar is to inform the Ordinary of the place where the events occurred of the investigation (cf. VELM, art. 3 § 1; art. 10 of this protocol).

Article 36.

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 the Promotor of Justice or 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.

Article 37.

Once the decree is issued, if the reasons of § 1 of this article are not met, the Vicar shall normally inform the accused, no later than 48 hours, of the investigation that has been opened and shall give him a copy of the decree.

§ 1 Since he is not yet formally accused of a crime, if there are proportionally serious reasons, a motivated decision not to inform the person under investigation can be legitimately made. This decision must be recorded in the decree. In addition, the Vicar shall decide prudently to what extent the person under investigation is to be informed of the investigation opened, its details and its progress.

§ 2 Upon being informed, the investigated person shall be advised that, if he so wishes, a lawyer or adviser of his confidence may be present at the proceedings in which he is involved.

Article 38.

The Regional Vicar will remind the investigated person the principle according to which a person is presumed innocent until proven guilty. He will also explain to him/her the nature of the investigation prior to the possible penal process or procedure, and instruct him/her not to communicate at all with the complainant or complainants or with the alleged victim or his/her family.

Article 39.

The purpose of the investigation is to establish the facts and their circumstances, i.e., what has been the conduct and the most precise personal, temporal, place-related, etc., data that can be obtained, as well as the imputability (see CIC, c. 1717 and Appendix I to these norms).

Chapter 2

Carrying Out a Preliminary Investigation

Article 40.

While respecting both canonical and civil law, the one conducting the investigation can use whatever means he considers useful to gather relevant information about what he is investigating (cf. CIC, can. 1717 § 3). In the case of interviews, he will instruct the persons interviewed to keep secret the existence of the investigation and what they may know because of their participation in it. No obligation of secrecy can be imposed on them with regard to any personal knowledge they may have had prior to the interview (cf. VELM, art. 4 § 3). The handling of such information is governed only by the general criteria of Christian morality.

Article 41.

Those who are to be interviewed by the investigator will be informed of their right to be accompanied by another person of their choice. This person may be a canonist or a lawyer. If a minor or vulnerable person is to be interviewed, provision shall be made for the

presence of at least one of the persons – family members or professionals – who normally take care of him/her; and other measures shall be taken to facilitate the proper course of the conversation.

Article 42.

The one conducting the investigation shall provide the canonist, lawyer, or other person chosen by the accused and the victim as adviser, with the information that is appropriate in each case regarding the progress of the investigation (cf. art. 22 § 2-a and 37 § 1 of this protocol). In any case, if the accused or the victim prefers not to count on the assistance of another person, the information on the progress of the investigation will be given to them directly.

Article 43.

The person conducting the investigation shall meet with the person or persons who submitted the information or complaint, the victim (if he or she has not reported personally), the person under investigation and any other person who can help clarify the facts to which the information or complaint relates.

Article 44.

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.

Article 45.

11.6 Before interviewing the accused he/she should be informed about the information or complaint against him (cf. art. 22, § 2-a and 37, § 1 of this protocol), 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.

Article 46.

When interviewing the accused person, it should be borne in mind that he/she is not bound either in that interview or in the penal process or procedure that may be opened after the ongoing investigation, to admit to an offence, nor may the oath be administered to the accused (cf. CIC, can. 1728 § 2).

Article 47.

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. The written report is to be signed also by the notary.

Article 48.

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 to ensure that there are no delays in interviews and other investigative steps and in the drafting and presentation of the conclusions. Normally the investigation is not to be extended beyond ninety days (cf. CIC, can. 201, § 1 and VELM, art. 14, § 1), but the Vicar can extend it for a short and definite time, if he prudently considers that some ongoing procedure can be concluded during that extension and provide relevant elements.

Chapter 3

Conclusion of the Preliminary Investigation

Article 49.

The one who carries out the investigation shall present a report to the Vicar with his conclusions regarding the object of the investigation (cf. CIC, can. 1717, § 1 and art. 39 of this protocol). In the report, he can add the suggestions and recommendations he deems appropriate. This report is to be accompanied by the reports of the interviews conducted (cf. art. 47 of this protocol) as well as any other documents (letters, etc.) of interest that may have been submitted to them during the investigation.

Article 50.

The Vicar shall transmit the report to the Advisory Committee, which shall meet without delay to consider it and assess whether the investigation was complete and without irregularities. If the Committee considers it necessary, it may request the Vicar that the information sent be completed. It will then submit to

the Vicar all the documents of the investigation and add a written statement indicating whether it agrees with the conclusions of the investigation and the recommendations it wishes to make to the Vicar. This opinion will comply with the recommendations of can. 1718 § 3 of the CIC.

Article 51.

The Vicar will carefully examine the reports and conclusions sent to him.

§ 1 If it seems necessary to him, he can refer the case back to the Advisory Committee and to the one who carried out the investigation for clarification or further inquiry.

§ 2 Before closing the investigation, he must consider whether it is appropriate for him or the investigator to settle the question of harm in accordance with can. 1718 § 4 of the CIC, always with the consent of the parties (cf. Title V, Chapter 4 of this protocol).

§ 3 If he is satisfied with the results presented to him, he will close the preliminary investigation by a decree of conclusion of the investigation (cf. CIC, can. 48 ff.; 1718 § 1).

Article 52.

In the decree of conclusion of the investigation (cf. art. 51, § 3 of this protocol), the Regional Vicar shall take into account the following points:

§ 1 If the investigation of a possible crime reserved to the Congregation for the Doctrine of the Faith does

not bring to light any element which would corroborate the possibility that it has been committed, he is to send the file to the Prelate so that, besides informing the Congregation for the Doctrine of the Faith of the investigation and its result, he can order the file to be kept in the secret archives (cf. CIC, cann. 1719, 489-490), unless the Congregation has decided otherwise. Likewise, the Vicar will send a copy of the decree to the person under investigation, to the person who appeared as a victim in the complaint or information, or to his or her representatives, and to the Advisory Committee.

- § 2 If he considers it possible that one of the crimes reserved to the Congregation for the Doctrine of the Faith has been committed:
- a) the imputed cleric will be prohibited from staying in a centre of the Prelature where activities with minors take place, participating in any activity of the Prelature in which minors take part, as well as from carrying out any other pastoral activity, and he may exercise his ministry only within the centre of the Prelature in which he resides;
 - b) the file of the investigation will be sent without delay to the Prelate with the personal vote of the Regional Vicar, so that he can present it to the Congregation (cf. SST, arts. 16 and 21);
 - c) the Vicar shall ensure that action is taken in accordance with art. 31 of this protocol with respect to civil authority and that the decision

made is notified in writing to the cleric being investigated (indicating the prohibitions referred to in paragraph a above), the alleged victim or his/her representatives, the Advisory Committee, the Bishop of the Diocese in which the alleged sexual abuse occurred, and the Bishop of the Diocese in which the person being investigated resides.

§ 3 If it is not a crime reserved to the Congregation for the Doctrine of the Faith, the Vicar shall proceed by making the decisions entrusted to him by the legislator (cf. CIC, can. 1718, § 1, Appendices II and III, nn. 1-3 of this protocol):

- a) The person being investigated will be prohibited from participating in any activity of the Prelature in which minors take part, as well as from carrying out any other pastoral activity, and may only exercise his ministry within the centre of the Prelature in which he resides.
- b) If he chooses to follow the judicial course, he will order that the file on the investigation be sent to the Promoter of Justice of the Tribunal of the Prelature, for the purposes of CIC, can. 1721, and he will notify the decree to the person under investigation in accordance with CIC, can. 55.
- c) Likewise, the Vicar will see to it that the conduct under investigation which may have the characteristics of a crime under State law is communicated to the appropriate authorities in accordance with art. 31 of this protocol and that

the same decree is communicated: to the victim, to the Advisory Committee, to the Bishop of the Diocese in which the reported conduct took place and to the Bishop of the Diocese in which the accused resides, indicating that the person under investigation is prohibited from participating in any activity of the Prelature in which minors take part.

§ 4 If there is no offence, but the results of the investigation lead one to consider likely that abuse has taken place or other behaviour which detracts from the exemplary character proper to a priest or a lay person who wishes to live his/her Christian vocation to the full, the Vicar shall issue the closing decree in accordance with can. 1718, § 1, 1° of the CIC. To this decision he will add that of applying the penal remedies or penances which he considers appropriate (cf. Title VII of this protocol).

Article 53.

If it is not a question of reserved crimes and the complaint or information proves to be groundless, the Vicar must issue the decree of conclusion of the investigation (cf. CIC, can. 1718, § 1, 1), in which he will order the file to be kept in the secret archive (cf. CIC, cann. 1719, 489-490). He will also send a copy of the decree to the person under investigation, to the person who appeared as a victim in the complaint or information, or to his/her representatives, and to the Advisory Committee.

Chapter 4

The question of harm

Article 54.

Abuse or harassment, without prejudice to its penal consequences, may also give rise to an obligation to make reparation or to compensate for the harm caused by the conduct of the offender (cf. CIC, c. 128). Contentious action to claim compensation for such damages within the penal process must follow the provisions of CIC, cann. 1729-1731.

Article 55

As a possible out-of-court alternative to such an action, under CIC can. 1718, prior to the decree closing the investigation (cf. art. 52 of this protocol), consideration should be given to whether it is expedient to seek the consent of the parties, which should be given in writing, to resolve the question of harm equitably, thus avoiding unnecessary trials.

Article 56.

The proposal for an equitable solution must be set down in a document, to be signed by the Vicar or his delegate and the parties or their legal representatives. In this document, in addition to accepting the proposed solution, the parties must undertake (cf. CIC, cann. 1713-1716) not to exercise subsequently the action mentioned in art. 54 of this protocol. Care must be taken to ensure that this document is formalised in a manner recognised by civil law and without confidentiality clauses.

Article 57.

The Vicar must ensure that the parties correctly understand that neither his request for consent to act, nor his equitable solution to the question of harm proposes or implies in any way an out-of-court settlement to avoid the penal process or procedure, which takes its course in accordance with the law in any case.

TITLE VI

**PASTORAL RESPONSE AFTER AN
INVESTIGATION IS CLOSED**

Chapter 1

Pastoral Response as regards the Victim

Article 58.

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.

Article 59.

If the accusation does not seem to be credible, and the Congregation for the Doctrine of the Faith, where applicable, has confirmed it, 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.

Article 60.

When informing about the decree of art. 52 of this protocol, pastoral support shall be offered to the victim and, if deemed necessary, to his/her family in the manner best suited to the circumstances.

Chapter 2
Pastoral Response as regards the Accused

Article 61.

As regards the accused, if the preliminary investigation showed that the allegations or information were not credible and, therefore, no canonical prosecution was instituted and, furthermore, was not prosecuted by the civil justice or was prosecuted and acquitted, the Vicar shall take whatever steps are necessary to restore the good name of the person. These steps may include:

- § 1 a public statement that the accused has been found innocent and, if he is a cleric, is returning to full ministry;
- § 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;
- § 3 an offer of spiritual and psychological help to the person wrongly accused to enable him/her deal with the inevitable trauma.

Article 62.

In the cases of §§ 2-4 of art. 52 of this protocol, in addition to making the appropriate notifications, 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.

Chapter 3

Pastoral Response in respect of Others Affected

Article 63.

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.

Article 64.

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 Vicar, with the help of the Advisory Council if he deems it appropriate, will give serious consideration to ways of dealing with these conflicting emotions by means of suitable pastoral and psychological remedies.

TITLE VII
PENAL REMEDIES AND PENANCES
AT THE CLOSURE OF THE
PRELIMINARY INVESTIGATION

Article 65.

If, at the closure of the preliminary investigation, it is found that there has been imprudent, inappropriate or otherwise reprehensible conduct, which detracts from the exemplary character proper to a priest or a lay person who wishes to live his/her Christian vocation to the full, but which is not to be prosecuted (cf. CIC, can. 1718, § 1) because, for example, the facts do not constitute a canonical offense, the Vicar, together with the Advisory Committee, will evaluate the opportunity to proceed according to can. 1339 of the CIC or according to can. 1319 and no. 30 of *Statuta*.

Article 66.

§ 1 In the cases mentioned in art. 65 of this protocol, if the Vicar thinks that he must formally warn or reprimand the faithful concerned in accordance with can. 1339 of the CIC, or even formally warn him/her that he or she will be dismissed from the Prelature if he/she does not change his/her attitude, in accordance with n. 32 of *Statuta*, he will establish this in the closing decree of the preliminary investigation and will leave a record of the warning or reprimand, substantially reflecting its content in an act to be signed by the Vicar, or whoever acts on his behalf, a notary, and the person concerned, after reading it in his presence.

§ 2 If the person concerned refuses to sign, the notary shall record his refusal in the same act. The document will be kept in the secret archive (cf. CIC, cann. 1339 § 3, 489).

Article 67.

§ 1 If the warnings or reprimands have been ineffective, or can reasonably be expected to be so, the Vicar can give a penal precept (cf. CIC, can. 1319, § 1, 49), in which he commands exactly what the person concerned must do or avoid, while establishing a specific penalty (cf. CIC, can. 1315, § 2), which he will incur if he disobeys.

§ 2 The penalty established in the penal precept should be a censure or a non-perpetual expiatory penalty (cf. CIC, can. 1312), without excluding even the dismissal from the Prelature (cf. Statuta. n. 30).

§ 3 In the event that the person disobeys this precept, the administrative procedure of CIC, can. 1720 is to be followed to impose the prescribed penalty (see Appendix II).

APPENDIX I

Several legislative texts of special importance for the preliminary investigation of allegations or information on 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 eighteen, 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*”

Regarding the offence of sexual abuse of minors, some considerations of the *Procedure and Praxis of the CDF* are relevant:

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 paedophilia (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 paedophilia, 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. KENYA CONFERENCE OF CATHOLIC BISHOPS, Safeguarding Children. Policy and Procedures, 2014 (2016 edition), Sections 2 and 3.

2.

DEFINITIONS

- 2.1. A minor is defined as any person who has not completed eighteen years of age. (Code of Canon Law Can. 97 51 and the Children's Act 2001, Section 2)
- 2.2. Child abuse refers to a form of maltreatment of a child. Someone may abuse or neglect a child by inflicting harm or by failing to act to prevent harm.
- 2.3. Physical abuse may involve hitting, shaking, kicking, suffocating, misuse of medication, applying inappropriate sanctions or otherwise causing physical harm to a child. It can also apply to one's failure to act to protect the child.

- 2.4. Emotional abuse is the-persistent emotional ill-treatment or rejection of a child by conveying that he/she is unloved, inadequate or even worthless; or by overprotection and limiting exploration, learning, and normal social interaction.
- 2.5. Sexual abuse involves forcing or enticing a child to take part in sexual activities -- whether the child is aware of what is happening or not. The activities may involve physical contact, including penetrative sex (rape or buggery) or non-penetrative sex (oral sex).

Other forms may include non-contact activities, such as involving children looking at or participating in the production of pornographic material, watching sexual acts or behaving in sexually inappropriate ways.

Boys and girls can. be sexually abused by males or females, by adults, by young people, family members or people from all different walks of life.

- 2.6. Neglect can be defined as an omission or the failure to protect a child. This is often evidenced in the child by being deprived of food, clothing, warmth, hygiene, intellectual stimulation, safety, affection from adults, and failure to access appropriate medical care.

3.

HOW TO RECOGNISE CHILD ABUSE

- 3.1. Recognising child abuse is not easy. Neither is it the responsibility of an individual to decide whether or not child abuse has taken place. However, one does have the responsibility to alert the appropriate agencies, so that they can take the necessary actions to protect a child.
- 3.2. The following information should be helpful, so that one may become more alert to the signs of possible abuse:

<i>Physical Abuse</i>	<i>Emotional Abuse</i>
<ul style="list-style-type: none">- Unexplained bruising, or marks of injuries on any part of the body including hand or finger marks- Cigarette burns- Bite marks- Broken bones- Scalds	<ul style="list-style-type: none">- Failure to thrive, particularly if the child puts on weight in other circumstances, e.g. when away from home- Sudden speech disorders- Developmental delay: physically or emotionally- Withdrawal
<i>Sexual Abuse</i>	<i>Neglect</i>
<ul style="list-style-type: none">- Pain, itching, bruising or bleeding in the genital area- Sexually transmitted diseases- Vaginal discharge or infection- Discomfort when walking or sitting down- Abdominal pains- Pregnancy	<ul style="list-style-type: none">- Constant hunger: sometimes stealing food from other children- Constantly 'dirty' or smelly- Constantly underweight or loss of weight- Being left alone or unsupervised- Inappropriate dress for conditions

<i>Changes in Behaviour</i>	<i>Changes in Behaviour</i>
<ul style="list-style-type: none"> - Fear of parents being approached - Temper outbursts - Flinching when approached or touched - Aggression - Reluctance to get changed into sports gear. etc. - Depression - Withdrawn - Running away 	<ul style="list-style-type: none"> - Sulking, hair twisting, rocking, unable to play - Fear of making mistakes - Self-harm - Fear of parents being approached regarding their behaviour
<i>Changes in Behaviour</i>	<i>Changes in Behaviour</i>
<p>Unexplained aggression, with-drawn; fear of being left with a specific person/people; night-mares; running away; sexual knowledge, drawings or language beyond age; bed wetting; eating problems; self-harm sometimes leading to suicide attempts; secrets they cannot share; substance or drug abuse; unexplained sources of money; avoids making friends; sexually explicit actions towards adults</p>	<ul style="list-style-type: none"> - Tiredness - Not seeking medical assistance - Failing to keep appointments - Having few friends - Withdrawn - Constant sadness

Note: These definitions and indicators are not meant to be definitive. They serve only as a guide to assist in recognising possible child abuse.

**A.4 UGANDA EPISCOPAL CONFERENCE,
Guidelines for The Exercise of The Church's
Ministry in Case of Sexual Abuse of Minors
and Child Protection Policy Structure,
November 2014, numbers 44-47.**

**II. SPECIFIC GUIDELINES AND NORMS
FOR SEXUAL ABUSE**

DEFINITION OF SEXUAL ABUSE IN GENERAL

Various definitions

44- There exist numerous definitions of sexual abuse and the areas they cover vary according to the penal codes and local cultures. In general, though, under this somewhat wide term are included actions and attitudes, expressed in verbal and/or physical form, which may go from sexual harassment and exploitation to the physical violation of another person. The term is applied both to the heterosexual and homosexual areas.

A pastoral relationship

45- Our condition as clerics, religious, catechists and lay ministers, places us in a special situation, and makes the way we relate to the people entrusted to our care or whom we meet in the exercise of our ministerial service (the faithful, men and women religious, students, catechumens, employees of the mission...) a "pastoral" relationship. In such a context, where we enjoy people's special trust and exercise a particular authority, any attempt to render this same relationship sexual beyond the limits and integrity proper to a pastoral and work relationship, constitutes an abuse of that trust and authority, and is professionally improper behaviour.

The following should be clear to everyone, and once and for all: it is never permissible for us to mix our professional and pastoral relationship with an inappropriate sexual relationship.

SEXUAL ABUSE OF MINORS

Definitions and clarifications

46-§ 1. By "sexual abuse of minors" is meant any sexual activity whatsoever that involves an adult and a minor, in the sense that the latter is defined by the Code of Canon Law and the relevant civil legislation.

- i. The term "paedophilia" is used to describe any sexual activity involving an adult and a child who has not yet reached puberty.
- ii. The term "ephebophilia" is used to describe the condition of an adult who feels sexually attracted towards adolescents in puberty who are still minors.
- iii. The term "minor" applies also to adults who habitually lack the use of reason (Motu Proprio SST art. 6).

§ 2. Various types of behaviour may be associated with the sexual abuse of minors (from incest, exhibitionism, violence, and sadism to pornography, child prostitution and others), and these may be expressed in various forms of physical intimacy (from improper hugging and masturbation to full sexual activity).

§ 3. It is not, however, necessary that a person should actually touch a minor for sexual abuse to take place. It would also be sexual abuse, for example, if an adult were to engage a minor in a conversation of a sexual

nature, thus harassing the minor and violating the proper boundaries of a respectful relationship. Different cultural backgrounds are to be kept into account, provided they do not contradict the general law.

§ 4. It needs to be remembered that often, after sexual abuse has taken place, the adult attempts to have the victim keep the matter secret, so that the act may remain concealed and he /she is not accused and, in practice, continues to follow his sexual urges. Sometimes, once the abuse is discovered, the person responsible tends to deny it or to minimize it. It should be borne in mind that, when the accusation concerns a single case or a single minor, there is a considerable probability that abuse has in fact been committed on more than one occasion and with more than one person.

§ 5. Experts agree in declaring that the wounds inflicted on the victims of sexual abuse are deep and serious, to the point that they are sometimes unable to find healing even with the help of prolonged psychotherapy. Hence, the importance of never in any way to minimize the significance of episodes of sexual abuse, granted, naturally, that they have been proved in fact to have taken place.

Abuses committed by clerics or religious

47-§ 1. Generally, the faithful in the Church look at clerics and religious with respect, considering them as having greater moral dignity and authority than other persons. Because of this, they find it inconceivable that a consecrated person, considered worthy of their trust could sexually abuse a minor. Consequently, they often

do not believe the testimony of the minor who has been the victim of sexual abuse perpetrated by clerics or religious.

§ 2. The lack of an explicit refusal of sexual advances on the part of the minor may not be taken to signify implicit consent to the sexual proposal made by an adult. In this case too, in fact, the cleric or religious is in a position of power; because of his/her age as well as his/her role, he exercises an improper moral pressure on the minor, who does not enjoy the same degree of freedom in responding to the proposal.

A.5. KENYAN LAW

A.5.1 CHILDREN'S ACT, (No. 8 of 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.

A.5.2 SEXUAL OFFENCES ACT, 2006 (KENYA)

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**act which causes penetration**” means an act contemplated under this Act;

“**child**” has the meaning assigned thereto in the Children Act (No. 8 of 2001);

“**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;

“**indecent act**” means an unlawful intentional act which causes—

- (a) any contact between any part of the body of a person with the genital organs, breasts or buttocks of another, but does not include an act that causes penetration;

- (b) exposure or display of any pornographic material to any person against his or her will;

“person with mental disabilities” means a person affected by any mental disability irrespective of its cause, whether temporary or permanent, and for purposes of this Act includes a person affected by such mental disability to the extent that he or she, at the time of the alleged commission of the offence in question, was—

- (a) unable to appreciate the nature and reasonably foreseeable consequences of any act described under this Act;
- (b) able to appreciate the nature and reasonably foreseeable consequences of such an act but unable to act in accordance with that appreciation;
- (c) unable to resist the commission of any such act; or
- (d) unable to communicate his or her unwillingness to participate in any such act;

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

6. Compelled or induced indecent acts

A person who intentionally and unlawfully compels, induces or causes another person to engage in an indecent act with—

- (a) the person compelling, inducing or causing the other person to engage in the act;

- (b) a third person;
- (c) that other person himself or herself; or
- (d) an object, including any part of the body of an animal, in circumstances where that other person—
 - (i) would otherwise not have committed or allowed the indecent act; or
 - (ii) is incapable in law of appreciating the nature of an indecent act, including the circumstances referred to in section 43,

is guilty of an offence and is liable upon conviction to imprisonment for a term which shall not be less than five years.

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.

(6) Deleted by Act No. 7 of 2007, Sch.

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. Repealed by Act No. 8 of 2010, Second Sch.

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) A person, including a juristic person, who knowingly—

- (a) possesses, an indecent photograph of a child;
- (b) 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 a sexual act;
- (c) 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 an indecent photograph of a child;
- (d) 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;

(e) takes part in or receives profits from any business in the course of which he or she knows or has reason to believe that 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;

(f) 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

(g) offers or attempts to do any act which is an offence under this section,

commits an offence and is liable upon conviction 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, to imprisonment to a term of not less than seven years without the option of a fine.

(2) This section shall not apply to—

- (a) publication or possession of an indecent photograph where it is proved that such publication or possession was intended for bona fide scientific research, medical, religious or law enforcement purpose; the indecent representation of a child in a sculpture, engraving, painting or other medium on or in any ancient monument recognised by law; and
 - (b) activities between two persons above eighteen years of age by mutual consent.
- (3) For the purposes of subsection (1),—
- (a) an image is obscene if—
 - (i) it is lascivious or appeals to prurient interest; or
 - (ii) 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.
 - (b) an indecent photograph includes a visual, audio or audio visual representation depicting —
 - (i) a child engaged in sexually explicit conduct;
 - (ii) a person who appears to be a child engaged in sexually explicit conduct; or realistic images representing a

child engaged in sexual activity. [Act No. 7 of 2007, Sch., Act No. 6 of 2009, Sch., Act No. 5 of 2018, Sch.]

16A. Sexual communication with a child

(1) A person of eighteen years and above who knowingly communicates with a child in—

- (i) a sexual manner; or
- (ii) a manner intended to encourage the child to communicate in a sexual manner, commits an offence and is liable, on conviction, to a fine of not less than five hundred thousand shillings or imprisonment for a term of not less than five years, or to both.

(2) For the purposes of this section, a communication is sexual if—

- (a) any part of it relates to sexual activity, or
- (b) a reasonable person would consider any part of the communication to be sexual.

[Act No. 5 of 2018, Sch.]

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.

A.6. UGANDAN LAW

A.6.1 THE CHILDREN ACT, AMENDED BY THE CHILDREN (AMENDMENT) ACT 2016.

1. Interpretation.

- (i) “**child exploitation**” means the employment of a child in activities from which other people derive a benefit, whether financial, sexual or political and includes activities such as child trafficking, child prostitution, child pornography and involvement of children in armed conflict;
- (m) “**child pornography**” means any representation through publication exhibition, cinematography, indecent show, through information technology by or whatever means, of a child engaged in real or simulated explicit sexual activity, or any representation of sexual parts of a child for primarily sexual purposes;
- (o) “**child trafficking**” means recruitment, transportation, transfer, harbouring or receipt of a child by means of threat or use of force or other forms of coercion, abduction or fraud, deception, abuse of power, or of a position of vulnerability, or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation;
- (mm) “**violence**” means any form of physical, emotional or mental injury or abuse, neglect, maltreatment and exploitation, including sexual

abuse, intentional use of physical force or power, threatened or actual, against an individual which may result in or had a high likelihood of resulting in injury, death, psychological harm, mal-development or deprivation;

2. Definition of child.

A child is a person below the age of eighteen years.

8A. Prohibition of sexual exploitation

(1) A person shall not engage a child in any work or trade that exposes the child to activities of sexual nature whether paid for or not.

(2) For avoidance of doubt, it shall be unlawful for any person to use-

- a) Inducement or coercion in the encouragement of a child to engage in any sexual activity;
- b) Children in prostitution or other unlawful sexual practices; and
- c) Children in pornographic performances or materials.

A person who contravenes this section commits an offence and is liable, on conviction, to a fine not exceeding one hundred currency points or to a term of imprisonment not exceeding five years.

9B. Functions of the National Children Authority

(1) The functions of the Authority are to-

- (i) receive complaints from the public relating to child abuse and where necessary, to refer such complaints to the appropriate authorities;

- (p) Organise and facilitate workshops, seminars and discussions, relating to child abuse;
- (q) Liaise and exchange information with foreign Governments and international organizations, with respect to detection and prevention of all forms of child abuse.

11. Duty to report infringement of child's rights.

(1) Any member of the community who has evidence that a child's rights are being infringed or that a parent, a guardian or any person having custody of a child is able to but refuses or neglects to provide the child with adequate food, shelter, clothing, medical care or education shall report the matter to the local government council of the area.

(2) The secretary for children's affairs may, upon receiving the report, summon the person against whom the report was made under subsection (1) to discuss the matter; and a decision shall be made by the secretary for children's affairs in the best interests of the child.

42A. Protection of children from all forms of violence

(1) Every child has a right to be protected against all forms of violence including sexual abuse and exploitation, child sacrifice, child labour, child marriage, child trafficking, institutional abuse, female genital mutilation, and any other form of physical or emotional abuse.

(2) A person who on reasonable grounds believes that a child has been abused or is in imminent danger which may result in physical injury, sexual abuse, deliberate

neglect, or is in need of care and protection may report to a designated child protection organisation or authority.

(3) Notwithstanding subsection (2), it shall be mandatory for the following persons to report on any matter which affects the wellbeing of a child under their charge-

- (a) A medical practitioner;
- (b) A social worker;
- (c) A teacher; or
- (d) Local Councillor at LC I level

(4) The designated child protection organisation, probation and social welfare officer, or police officer or any other responsible person to whom a report has been made must-

- (a) Ensure the safety and well-being of the child concerned, if the child's safety or well-being is at risk;
- (b) Make an initial assessment of the report;
- (c) Unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated; and
- (d) If the report is substantiated by such investigation, initiate proceedings in terms under this Act for the protection of the child.

**A.6.2 PENAL CODE ACT 1950, CHAPTER 120,
CONSOLIDATED ACT 2000 (UGANDA)**

128. Indecent assaults, etc.

- (1) Any person who unlawfully and indecently assaults any woman or girl commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.
- (2) It shall be no defence to a charge for an indecent assault on a girl under the age of eighteen years to prove that she consented to the act of indecency.
- (3) Any person who, intending to insult the modesty of any woman or girl, utters any word, makes any sound or gesture or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman or girl, or intrudes upon the privacy of such woman or girl, commits a misdemeanour and is liable to imprisonment for one year.

129. Defilement of girl under the age of eighteen.

- (1) Any person who unlawfully has sexual intercourse with a girl under the age of eighteen years commits an offence and is liable to suffer death.
- (2) Any person who attempts to have unlawful sexual intercourse with a girl under the age of eighteen years commits an offence and is liable to imprisonment for eighteen years, with or without corporal punishment.

147. Indecent assaults on boys under eighteen.

Any person who unlawfully and indecently assaults a boy under the age of eighteen years commits a felony

and is liable to imprisonment for fourteen years, with or without corporal punishment.

148. Indecent practices.

Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.

B. CREDIBLE ALLEGATIONS

Code of Canon Law, can. 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. »

A commentator of this canon said that «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)

However, it should be noted that crimes against the sixth commandment of the Decalogue are very rarely committed in front of witnesses. Consequently, the current orientation is that the judgement of lack of credibility (which could lead to the omission of the preliminary investigation) will be made only in the case of manifest impossibility of the offence (cf. *Linee guida per la protezione dei minori e delle persone vulnerabili*, Vicariato della Città del Vaticano, 26 March 2019, F-6).

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 yet considered guilty. Even if he/she has admitted to the commission of the offence, this does not replace the established procedure.

C. IMPUTABILITY

Code of Canon Law, can. 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 the terminology of Criminal Law – also of Penal Canon Law – there are two forms of imputability: a) malice – the intentional violation of the law – and b) culpability – 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 prove the culpability of the accused. Bringing a criminal action corresponds exclusively to the promotor of justice at the request of the Ordinary (cf. CIC, cann. 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 harm he/she has suffered as a consequence of the offence (cf. CIC, can. 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 ((delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years)), prescription begins to run from the day on which a minor completes his eighteenth year of age.

D.2. PRESCRIPTION IN KENYAN AND UGANDAN LAW

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

APPENDIX II

GUIDELINE FOR THE PENAL EXTRA-JUDICIAL PROCEDURE OF CIC, Can. 1718 §1 3°

- 1 After receiving the Prelate's approval for the use of the administrative procedure, without delay the Vicar will summon the accused with his advocate (cf. CIC, can. 1509), advising him that he should appear with his advocate (cf. can. 1483), in order to notify him, in accordance with can. 55, of the decree closing the preliminary investigation (cf. art. 52 of this protocol), the consent of the Prelate to proceed, the formal accusation and the evidence, in accordance with can. 1720, 1.
- 2.1 The Vicar or his delegate, the accused and the notary must be present at the appearance for the indictment. The notary is responsible for drawing up a record which is to be signed by all those present at the end of the appearance.
- 2.2 The Vicar or the Notary shall read to the accused the accusation and the list of proofs on which it is based. Whether orally or in writing, the communication shall be completed in all respects necessary to ensure that the accused is given the opportunity to defend himself adequately from all aspects of the accusation.

- 2.3 If the accused, duly summoned, does not appear, the procedure shall be carried out in accordance with the provisions of cann. 1592-1593.
- 2.4 At the same appearance, the Vicar (cf. can. 1342 § 3) can notify the accused of any precautionary measures he may have decreed, if he considers them necessary for any of the purposes provided for in can. 1722.
- 2.5 At the end of the appearance, before the signing of the record, the Vicar is to set a day and hour for the next hearing, giving the accused sufficient time to prepare his defense and to present the evidence he deems opportune, always keeping in mind can. 1728, § 2.
- 2.6 If, among the proposed proofs, there are witness or expert declarations, the Vicar shall by decree summon each proposed witness and expert and notify them of the summons in accordance with c. 1509.
- 3.1 At the hearing for the presentation of the defence's arguments and proofs, the Vicar, the accused with his advocate and at least one notary or two witnesses must be present. The Vicar shall order the session in the manner he prudently deems best, following in what may be helpful the guidance in cann. 1526-1586.

- 3.2 If necessary, while avoiding unnecessary delays, but without restricting the right of defence, the Vicar shall set short time limits for the successive appearances that are necessary to complete the presentation of the evidence.
- 3.3 When the production of evidence has been completed, the conclusions will be briefly presented in light of c. 1725.
- 3.4 In all appearances the notary or, in his absence, one of the witnesses is responsible for drawing up a record to be signed by all those present at the end of the session.
- 4.1 Once the production of evidence has been completed, the Vicar shall meet as soon as possible with the Advisory Committee to carefully weigh all the proofs and allegations made in the appearances and procedures that have been carried out (cf. c. 1720, 2°). Canons 1526-1586 can serve as guidance for the evaluation of evidence.
- 4.2 If, after this evaluation, which must not be unnecessarily protracted, he reaches certainty (cf. can. 1608, by virtue of can. 1342, § 3) about the abuse and its imputability (cf. can. 1720, 3°), after having ascertained that the criminal action has not been extinguished (cf. can. 1362), the Vicar must issue the decree of condemnation.

- 4.3 If, however, it is not possible for him to achieve this moral certainty, or if the innocence of the accused is proven (cf. can. 1726), he must issue a reasoned decree of acquittal, taking into account, where appropriate, the possibility of using the penal remedies and penances provided for by law (cf. can. 1339-1340).
- 4.4 The latter must be done in any case when, in the case referred to in no. 4.2, the criminal action has been extinguished (cf. can. 1362).
- 5.1 In the penal decree of conviction, the Vicar must state the reasons for the certainty achieved, i.e. what facts of the accusation he considers to be proven in the proceedings and what legal qualification they deserve; what relevant circumstances he considers to be equally proven; why he does not consider the convicted person's defences to be tenable in respect of those facts and circumstances; and what legal prescriptions are applicable to the case in accordance with the qualification expressed. The norms on sentencing can serve as guidance on the logical structure of this decree, especially those contained in canons 1608 and 1611-1612.
- 5.2 It must also express the penalty imposed on the convicted person in a precise and specific manner.

In deciding on this aspect, the Vicar must follow the norms of cann. 1342-1350.

- 5.3 The penal decree must be dated, signed and countersigned in the usual manner (see can. 474). The condemned person is notified within no more than fifteen days in accordance with cann. 55-56.
- 5.4 The decree must indicate that there can be a hierarchical recourse to the Prelate in accordance with cann. 1732-1739, with suspensive effect while it is being resolved (can. 1353).

APPENDIX III

CANONICAL RESPONSE TO CONFIRMED OFFENCES OF SEXUAL ABUSE OF MINORS

1. 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 canonical judicial or extra-judicial process, carried out in accord with the norms of law, the Vicar will determine the person's suitability for continuing in the Prelature.
2. Regardless of the above, any person found guilty of committing a crime of abuse against a minor or vulnerable person shall be demoted from his or her pastoral or apostolic offices or assignments. However, he/she shall be offered appropriate support for psychological and spiritual rehabilitation as well as social reintegration.
3. 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 that the Statutes of Opus Dei and Canon Law in general recognize for the faithful who have been

convicted in accordance with the law will be respected.

4. As regards the canonical penalties applicable to priests or deacons who commit these offences, what is laid down in *SST*, arts. 6 § 2; 21 § 2 (cf. Congregation for the Doctrine of the Faith, Circular Letter dated 3 May 2011, II) is to be followed.
 - 4.1 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.
 - 4.2 In most grave cases, the Prelate of Opus Dei may request the Congregation for the Doctrine of the Faith to present directly to the decision of the Roman Pontiff the dismissal of the guilty party from the clerical state 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°).
5. The Ordinary of the diocese in which the abuse occurred will be informed of the resolution of the case.
6. 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).

7. No priest or deacon of the Prelature who has committed an act of sexual abuse against a minor may be assigned to priestly or diaconal 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 IV

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

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. _____ E-mail address _____

2) Suspected author of the alleged facts:

Name and surname: _____

Street address: _____

City/Town _____

County _____

Postal Code _____

Tel. _____ E-mail address _____

Age _____ Male ___ Female ___

3) Alleged victim:

Name and surname: _____

Street address: _____

City/Town _____
County _____

Postal Code _____

Tel. _____ E-mail address _____

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. _____ E-mail address _____

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

Name and surname: _____

Street address: _____

City/Town _____
County _____
Postal Code _____
Tel. _____ E-mail address _____

Name and surname: _____

Street address: _____

City/Town _____
County _____
Postal Code _____
Tel. _____ E-mail address _____

Name and surname: _____

Street address: _____

City/Town _____
County _____
Postal Code _____
Tel. _____ E-mail address _____

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

Name and surname: _____

Tel. _____ E-mail address _____

Name and surname: _____

Tel. _____ E-mail address _____

Name and surname: _____

Tel. _____ E-mail address _____

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:

- Nature of the alleged act(s) (type of sin against the 6th commandment)
- Date(s) and time(s) of the alleged act(s)
- Location(s)/address(es) where the alleged act(s) took place
- Any other information you deem important (for instance, using threats or force, gifts, scandal, involving abuse of authority, 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.