

**PRELATURE OF THE HOLY CROSS AND OPUS DEI
IN EAST ASIA**

**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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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 Asia (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 April 2015 a protocol for the protection of minors was issued for this regional circumscription of the Prelature and amended in May 2019, 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 Asia issues this Protocol. It will be modified to the extent required by future orientations of the Bishops and by the civil laws of Hong Kong, Macau, Taiwan and Korea.

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 Chairperson, 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 (for Hong Kong & Macau: www.opusdei.org.hk; for Taiwan: www.opusdei.org.tw; for Korea: www.opusdei.or.kr). 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 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 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 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 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 Advisory Committee may also make this kind of recommendation to the 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 Promoter 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 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.

Before interviewing the accused he/she should be informed about the information or complaint against him/her (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 Advisory 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 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 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. Hong Kong Law

1. CRIMES ORDINANCE

- a) Rape – Section 118 which includes the offences of attempted rape, aiding and abetting, counselling or procuring rape or attempted rape and incitement to rape.
- b) Non-consensual buggery/Assault with intent to commit buggery/homosexual buggery with or by man under 16/Buggery with girl under 21/Buggery with mentally incapacitated person/Procuring others to

commit homosexual buggery/gross indecency with or by man under 16 – Sections 118A to 118H.

- c) Gross indecency by man with male mentally incapacitated/Gross indecency by man with man otherwise than in private/procuring gross indecency by man with man – Sections 118I to 118K.
- d) Procurement of sexual intercourse by threats/ Procurement of sexual intercourse by false pretences - Sections 119 and 120.
- e) Administering drugs to obtain or facilitate unlawful sexual intercourse – Section 121.
- f) Indecent assault – Section 122.
- g) Intercourse with a girl under 13/Intercourse with a girl under 16/Intercourse with mentally incapacitated person – Sections 123 to 125.
- h) Abduction of unmarried girl under 16 – Section 126.
- i) Abduction of unmarried girl under 18 for sexual intercourse – Section 127.
- j) Abduction of mentally incapacitated person from parent or guardian for sexual act – Section 128.
- k) Trafficking in persons to or from Hong Kong for sexual purposes – Section 129.
- l) Control over persons for purpose of unlawful sexual intercourse or prostitution – Section 130.
- m) Causing prostitution – Section 131.
- n) Procurement of girl under 21 to have unlawful sexual intercourse/Procurement of mentally incapacitated person to have unlawful sexual intercourse – Sections 132 and 133.
- o) Causing or encouraging prostitution of, intercourse with or indecent assault of girl or boy under 16 – Section 135.
- p) Causing or encouraging prostitution of mentally incapacitated person – Section 136.
- q) Use, procurement or offer of persons under 18 for making pornography or for live pornographic performances – Section 138A.
- r) Permitting girl or boy under 13 to resort to or be on premises or vessel for intercourse – Section 140.
- s) Permitting young person to resort to or be on premises or vessel for intercourse, prostitution, buggery or homosexual act – Section 141.
- t) Permitting mentally incapacitated person to resort to or be on premises or vessel for intercourse, prostitution or homosexual act – Section 142.
- u) Indecent conduct towards child under 16 – Section 146.
- v) Indecency in public (covers acts of indecent exposure) – Section 148.

2. PREVENTION OF CHILD PORNOGRAPHY ORDINANCE

This Ordinance covers printing, making producing, reproducing, copying, importing or exporting any child pornography which is defined as a photograph, film image or other visual depiction that is pornographic depiction of a child (under 16 years old) and whether made or generated by electronic or other means and whether it depicts a real person and whether or not it has been modified. Terms such as film, photograph, pornographic depiction, and other terms are defined in the Ordinance.

3. OFFENCES AGAINST THE PERSON ORDINANCE

This ordinance sets out offences against the person and includes using chloroform etc. in order to commit indictable offences (such as rape), common assault, assault occasioning actual bodily harm.

4. SEX DISCRIMINATION ORDINANCE

This Ordinance, among other things, makes it an offence to sexually harass a female of any age in a workplace. The one who harasses can be an employee or a volunteer and the one who is harassed can also be an employee or volunteer.

A.4. Macau Law

SECTION II OF CHAPTER V OF TITLE I OF THE MACAU CRIMINAL CODE

- a) Article 166 (Child Sexual Abuse)
- b) Article 167 (Sexual Abuse of pupils and dependents)
- c) Article 168 (Rape)
- d) Article 169 (Sexual Acts with minors)
- e) Article 169-A (Recourse to Prostitution of minors)
- f) Article 170 (Prostitution of minors)
- g) Article 170-A (Pornography of minors)

A.5. Taiwan Law

CHILD AND YOUTH SEXUAL TRANSACTION PREVENTION ACT

- a) Article 22 (Engaging a child or teenager under the age of 16 in sexual transaction).
- b) Article 23 (Seducing, permitting, matching, helping or by other means having a person under the age of 18 engage in sexual transaction which is defined as sexual intercourse or obscene act for a consideration).
- c) Article 24 (Engaging a person under the age of 18 in sexual transaction by violence, menace, medicament, control, hypogenesis or other means against his/her will).
- d) Article 25 (Engaging a person under the age of 18 in sexual transaction and delivering or accepting him/her to or from other person by means of dealing, impawning or other ways).
- e) Article 27 (Shooting or producing pictures, videos tapes, films, CDs, electronic transmission or other products of sexual intercourse or obscenity of a person under the age of 18).
- f) Article 28 (Distributing, broadcasting or selling, filming, producing photographs, movies, videos, DVDs, digital files, and other materials, displaying these materials in public or using other means to present them to others).

A.6. Korea Law

1. CRIMINAL ACT

- a) Article 287 (Kidnapping or Abduction of Minors).
- b) Article 288 (Kidnapping, Abduction, etc. for Purpose of Indecent Acts, etc.).
- c) Article 289 (Trafficking in Persons).
- d) Article 290 (Inflicting or Causing Another's Bodily Injury while in Kidnapping, Abduction, Trafficking in Persons, Transportation, etc.).
- e) Article 291 (Killing Another or Causing Death of Another while in Kidnapping, Abduction, Trafficking in Persons, Transportation, etc.).
- f) Article 292 (Receiving, Harboring, etc. of Person Kidnapped, Abducted, Trafficked, or Transported).
- g) Article 294 (Attempts) - Attempts to commit any of the crimes of Articles 287 through 289 and Articles 290 (1), 291 (1) and 292 (1) shall be punished.
- h) Article 296 (Preparations or Conspiracies) - A person who makes preparations or conspires with the intent to commit any of the crimes of Articles 287 through 289 and Articles 290 (1), 291 (1) and 292 (1), shall be punished.
- i) Article 296-2 (Universality) - Articles 287 through 292 and Article 294 shall apply to aliens who commit any of the crimes in these Articles outside the territory of the Republic of Korea.

- j) Article 297 (Rape)
- k) Article 297-2 (Imitative Rape)
- l) Article 298 (Indecent Act by Compulsion)
- m) Article 299 (Quasi-Rape, Quasi-Indecent Act by Compulsion)
- n) Article 300 (Attempts) - Attempts to commit any of the crimes of Articles 297, 297-2, 298 and 299 shall be punished.
- o) Article 301 (Inflicting or Causing Another's Bodily Injury by Rape, etc.) - A person who commits any of the crimes of Articles 297, 297-2, and 298 through 300, thereby inflicting or causing the injury of a victim of such crime, shall be punished.
- p) Article 301-2 (Killing Another or Causing Death of Another by Rape, etc.)
- q) Article 302 (Sexual Intercourse with Minor, etc.)
- r) Article 303 (Sexual Intercourse by Abuse of Occupational Authority, etc.)
- s) Article 305 (Sexual Intercourse or Indecent Acts with Minor)
- t) Article 305-2 (Habitual Offenders) - A person who habitually commits any of the crimes of Articles 297, 297-2, 298 through 300, 302, 303, and 305 shall be punished by aggravating the penalty by up to one half of the penalty specified for the crime committed.
- u) Article 305-3 (Preparations or Conspiracies) - Anyone who prepares or conspires with intent to commit the crimes of Article 297, 297-2, 299 (limited to the crime of Quasi-Rape), 301 (limited to the crime of Inflicting Another's Bodily Injury by Rape, etc.) and 305, shall be punished by imprisonment for not more than three years.

2. ACT ON SPECIAL CASES CONCERNING THE PUNISHMENT, ETC. OF SEXUAL CRIMES

The purpose of the Act is to prescribe the punishment of sexual crimes and the procedures therefor.

3. ACT ON THE PROTECTION OF CHILDREN AND YOUTH AGAINST SEX OFFENSES

The purpose of this Act is to prescribe special cases concerning punishment for committing sex offenses against children or youth and the procedures therefor, prepare procedures for relieving and assisting victimized children and youth, and systematically manage sex offenders against children or youth, thereby protecting them against sexual abuse and assisting them to become sound members of society.

4. CHILD WELFARE ACT

- a) Article 17 (Prohibited Acts)

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 Promoter 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 Promoter 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 HONG KONG, MACAU, TAIWAN & KOREA 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 ASIA

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: _____ Country: _____

Postal Code: _____ Tel.: _____ E-mail address: _____

2) Suspected author of the alleged facts:

Name and surname: _____

Street Address: _____

City/Town: _____ Country: _____

Postal Code: _____ Tel.: _____ E-mail address: _____

Age: _____ Male Female

3) Alleged victim:

Name and surname: _____

Street Address: _____

City/Town: _____ Country: _____

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: _____ Country: _____

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: _____ Country: _____

Postal Code: _____ Tel.: _____ E-mail address: _____

Name and surname: _____

Street Address: _____

City/Town: _____ Country: _____

Postal Code: _____ Tel.: _____ E-mail address: _____

Name and surname: _____

Street Address: _____

City/Town: _____ Country: _____

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

8) Signature and date:

Signature of the person who wrote this report:

Date:

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