

Commissio Constitutionum

Proposed Revision of Chapter VIII

CHAPTER VIII

THE GOVERNANCE OF OUR ORDER

Rome — General Curia — 2010



General Curia of the Capuchin Friars Minor

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To all brothers in the Order

Dear Brothers

May the Lord give you peace.

Even from a quick reading of the Proposals for the revision of Chapter Eight of our Constitutions as set out by the Commission, certain "new points" emerge which substantially change some of our norms. Some may ask: "Aren't we perhaps going beyond the mandate of the General Chapter of 2006, which spoke of transferring and enriching while remaining fundamentally faithful to the present text?"

This question could not be more legitimate. However, I invite you to look at the changes which have been proposed in the light of the new situation that exists in the Order at this precise moment in history, and I am sure you will realise the plausibility of the proposals. I recall incidentally that during the preparations for the General Chapter of 2000 a closer study of Chapter Eight was called for, although eventually the Chapter itself did not take any significant decisions.

The General Definitory took the responsibility of suggesting that the Commission undertake a thorough review of certain points and propose new alternatives. At first glance all this material might appear to be dry and uninteresting. However, it is also true that without a well thought-out structure which reflects reality, negative repercussions will be felt sooner or later. In what follows I restrict myself to listing just a few of the more important proposals for the revision of the text of the Constitutions.

Certainly the most substantial proposal is that which provides for the simplification of the structure of the Order, abolishing Vice-provinces, both General and Provincial, and raising Custodies to the status of the present Vice-provinces. These Custodies might be either General or Provincial. This simplification is required because the description of both entities as given in the present Constitutions can no longer be justified. In practice the same duties have been assigned to both entities. One difference, where it exists, is with respect to numbers, but even in this case the criterion is not always objectively valid. As a matter of fact, there are Custodies in the Order today that have greater numbers than some Provinces.

It is well known that the Order is growing strongly today in the southern hemisphere and generally decreasing in the northern hemisphere. New Provinces are being born, others amalgamated, still others are asking to open houses in the territory of other provinces for special reasons, such as the fact that they belong to a Church in its own right (*sui iuris*). These new circumstances required the Commission to engage in reflection and to make appropriate proposals, so as to provide a more detailed description of the essential features of a Province (see again the new number 121 of the proposed text).

The history of the Order has witnessed more than a few changes at the structural level. When I entered the Order I was incardinated into what was then called the Commissariat of Lugano. This legal entity has not existed for some time.

The simplification of the Order into Provinces and Custodies will also simplify matters with regard to participation in a General Chapter.

The proposals that provide for the possibility of having federations of Provinces or of giving more status to the Presidents of Conferences are steps towards finding suitable solutions to provide a constructive transition for those entities that are experiencing a significant decrease in numbers with little prospect of reversing the trend in the immediate future. In general we are referring to Circumscriptions which have had a glorious past and which we wish to accompany in a positive manner on their journey.

Another very new point is that of enabling Provincial Chapters to be held with universal suffrage, indeed, to make this, as far as possible, the norm for Provinces with fewer than 100 brothers. At the same time the proposed regulation enables Provinces with more than 100 friars to adopt this method of holding their chapters.

With respect to the general governance of the Order the Commission proposes an interesting new departure regarding the General Vicar. While being a member of the General Council, he would be chosen for the specific office of General Vicar, and not as a Councillor for a specific geographical area.

I shall stop here since I want you, my dear brothers, to discover for yourselves the details of the changes which the Commission has proposed. Do not neglect to read the long Introduction which will enable you to better contextualise the reasons for some of the choices.

Dear brothers, it is important now that you send in your critical observations and suggestions. This is an important step even though we know that the final evaluation and decisions will be a matter for the General Chapter, which may approve and adopt the proposals, or go beyond them, or confirm the present legislation.

It only remains for me to invite you to read and reflect. May the Lord give you that love for the Order which alone can generate genuine renewal, as a dynamic response to the challenges of our day.

Br. Mauro Jöhn
General Minister OFMCap

Points for fraternal reflection

Chapter Eight of the Constitutions is the longest and the one which, over the centuries, has undergone the most change. It describes the Order's structures, offices and ministries, and how long they last, attendance at Chapters and so many other subjects. This chapter uses legal language, which means that, at first sight, it doesn't seem very "spiritual". However, don't let the many rules fool you: they are there to make sure that whatever is said in the other chapters about our charism becomes down-to-earth and practicable. Wherever life in community is not regulated, it can easily lead to misunderstandings which soon turn into conflicts. Of course, it is always difficult to make rules that would be generally valid in an Order like ours, spread as it is all over the world in all its variety. This is why the Commission has tried to simplify the Order's structures on the one hand, while seeking to open up more possibilities on the other. This is made clear at length in the introduction. It presents seven key points, on which it proposes some changes to the current text of the Constitutions, and it now asks for the opinions of the brothers in each province and in the other circumscriptions. These points are intended for discussion in the local chapter or in groups. You may find the following questions helpful in your discussions.

1. At the present time the Order "is divided into provinces, vice-provinces, custodies, delegations and houses or local fraternities" (Const. 110.1). Because the dividing-line between **vice-provinces and custodies** has become fluid, we propose that in future there should be only custodies. One reason for this choice is that custody / custos is a concept going right back to Saint Francis, while the term "vice-province" is more recent. In the case of a "vice-province" subject to the General Minister, the term is inaccurate, because the General Minister does not represent any province. This change will cause no downgrading or loss of status in the vice-provinces: It would be more a case of the custodies being raised to the status of the present vice-provinces. What do you think of this simplification, which can be clearly understood by comparing the proposed new text in n. 121,7 with Const. 110,3-4?

2. The Commission has reflected on the **role of the General Vicar**: should he continue to be, as now, elected from among the definitors and "in virtue of his election...become the first definitor" (Const. 118,5), with a definitor's function of representing a particular geographical area? Or should he be elected in addition to the eight general definitors, without representing any (linguistic) region, but, as his vicar, only the General Minister, who is often absent from Rome visiting the brothers? What do you think about this move to strengthen the general government, which would thus be composed of ten people instead of nine (the General Minister, the General Vicar and the general definitors)?

3. The **composition of the general chapter** has already been much discussed. What do you think about the present arrangement, as set out in Const. 116, 4 and 117,1-6? The proposed revision would mean that custodes would attend a general chapter in virtue of their office, and that every province would choose one delegate for every hundred perpetually-professed brothers. Do you think this makes for greater clarity and fairness? What could be done to make sure that the Order's diversity could be represented even better at a general chapter, without making it too complex or cumbersome?

4. The Commission is now giving preference to the **participation of all the brothers in a provincial chapter** and would only allow a **chapter with delegates** in provinces with more than a hundred professed brothers (cf. Proposal 134,2-3). Do you see the increased participation of brothers at a chapter as one way of improving fraternal life? What could be done in your provinces so that the chapter would really lead to the revitalisation and renewal of our vocation?

5. Various proposals have been made regarding the term **of office** of a major superior, both in past General Chapters and in the Conferences. These proposals are presented in the introduction to Chapter 8. The Commission takes the view that the present solution is adequate, but also presents an alternative, namely that the term of office for a General and for the general definitors be increased to **eight** years instead of six. After which a General Minister would no longer be re-eligible, while one half of the definitors could be

elected to a second term. Correspondingly, provincials and custodes could be elected for **four** years (instead of three), with the possibility of re-election for one further term. In this way the election chapter would take place every four years. Guardians would remain in office for four years. What are the advantages and disadvantages of the present system? What arrangement, in your view, should the next General Chapter adopt?

6. Under the heading “Collaboration in the Order” the Commission has introduced a new article (art.IV), dealing with “**Plenary Councils and Conferences of major superiors**” (Proposal n. 131-132). The role of a plenary council remains almost the same as that described in the Constitutions (n. 123); the only changes proposed are in the requirement that it should be held “once or twice in six years” and that its findings must be published, has been diluted.

The proposals of a plenary council are not meant to replace the Constitutions, but to complement them. A conference of major superiors is easier to call together than a plenary council. This is another practical reason why the major superiors’ conference is enhanced in the Commission’s proposals. The Conference can publish special norms for the brothers and circumscriptions of its region (n. 132,5), for example, to foster collaboration or to give common Franciscan witness.

What effect have plenary councils had on you so far, and on your province? What subjects should they deal with in future? What influence has the Conference of Major Superiors had on your province? As the link with the general government of the Order in Rome, should the Conference have more authority? If so, in what way?

7. One final question concerns **terminology**. When we speak of the *definitory* or *definitors*, non-friars ask: what does that mean? Already in the General Chapter of 1968 there was a request – often repeated since then – to replace *definitory* by *council* and *definitors* by *councillors*. The “definitory meeting” would then become the “meeting of the council”. The commission proposes to introduce the new terminology in its revision. The change takes nothing away from the content of the term, but makes it more understandable. What are the factors in favour of and against this change? Probably we have remained faithful to this expression merely out of habit. Or should it be numbered among the “sound traditions” of the Order?

THE GOVERNANCE OF OUR ORDER

PROPOSED REVISION OF CHAPTER VIII

Introduction

INTRODUCTION

1. The revision of chapter VIII of the Constitutions has been longer and more complex than that of the other chapters. The Commission understood that greater attention was needed, given the more technical character of chapter VIII and that reflection on this chapter has been going on for two decades.¹ Therefore it was asked that the sub-commission tasked with the first draft also have legal experts. The request was addressed to the Minister General and his Definitory to indicate, if they believed it opportune, themes about structure and government which, in their judgement, needed more attention in the current development of the Order. In his letter of 1 October 2009 (Prot.N. 685/09) the Minister General offered the following indications:

1. The General Definitory believed it appropriate that the already designated Sub-commission (Br. Paolo Martinelli, coordinator; Br. Mathew Paikada; Br. Leonard Lehmann; Br. Miguel Anxo Pena) work on Chapter VIII;
2. In its work on Chapter VIII the same Sub-commission is to be assisted by two other members of the Commission, both expert in Canon Law: Br. Roberto Genuin and Br. Piotr Stasinski;
3. This extended Sub-commission is to be assisted also by the General Procurator, Br. Vincenzo Mancusi, as a special consultant;
4. The mandate of Br. Vincenzo Mancusi is limited to Chapter VIII;
5. Bearing in mind that Chapter VIII of the Constitutions was the object of study in preparation for the General Chapter in 2000; and that the General Definitory, during the same General Chapter and after appropriate consultation, asked the Commission to take into consideration the study material prepared for the 2000 General Chapter, as well as the minutes of the same Chapter, and so carefully consider and evaluate the suggestions and proposals upon which the 2000 Chapter did not believe it opportune to deliberate.

The extended Sub-commission for some days between May and June 2010 and prepared a first draft. The Commission examined this with much discussion, changes and improved proposals during its July session. However it was decided to wait until the November session for a final draft of Chapter VIII. This would allow time to consider the text further and to reflect on some points which had not yet been given sufficient consideration.² In the meantime, after studying the prepared text, the General Procurator, in a letter of 15 October, presented the need in our legislation for a more realistic adaptation to the changed conditions of the Order, *at least for some clearly identifiable circumstances*, with particular reference to the sub-division of the Order.

While addressing the Commission on the morning of 22 November last, the Minister General himself proposed that the actual situation of the Order be analysed so as to identify incongruities and overlaps in the legislation, and possibility then to simplify the structure. The Commission judged it opportune to study the question in depth. And so the Commission has arrived at the formulation of this *Proposed Revision (PdR) of Chapter VIII* now presented for the attention of the all the Friars.

¹ Cf. GENERAL CHAPTER 2000, *Documento della Commissione per lo studio del capitolo VIII delle Costituzioni*: “The starting point is the decision of the last General Chapter (1994), which translated says: ‘At the opportune time, and with the consent of the Definitory, let the Minister General set up a juridical commission or working group to study Chapter VIII of the Constitutions on the Government of the Order’ (cf. *AOFM Cap.110 [1994] 380*)” in *Atti del 82° Capitolo Generale dell’Ordine dei Frati Minori Cappuccini. Edizione ufficiale*, Roma, 2001, p.191. Herein this document will be cited as *Document 2000*.

² Cf. *Commission Minutes*, IX Plenary Session (5-17 July 2010), p. 2.

2. Some themes drew the particular attention of the Commission and deserve careful attention on the part of the whole Order. These may be summarised as follows:

- The Structure of the Order
- The Vicar General and the General Council
- The make up of the General Chapter
- The Provincial Chapter – universal suffrage or elected delegates
- The length of the term of office
- Plenary Councils and Conferences
- Terminology

I. The Structure of the Order

In n. 110,1 the current Constitutions thus describe the structure of our Order:

Our Order or Fraternity, as far as its government is concerned, is divided into provinces, vice-provinces, custodies, delegations and houses or local fraternities; these structures, taken individually, are true fraternities.

1. The question immediately arises about identifying better criteria for the arrangement of the various circumscriptions. The theme was given full treatment by the Commission tasked with the study of Chapter VIII for the General Chapter 2000, especially in regard to criteria concerning the erection, unification, division, modification and suppression of circumscriptions.³ In this matter it should be remembered that within the Franciscan Order the Province is the fundamental, typical circumscription. For three centuries, from 1637 to 1968, the Constitutions of the Capuchin Order have always maintained some objective criteria for the erection and suppression of Provinces, with particular reference to numbers of friars. The proposals formulated for the General Chapter 2000 in the main also highlight the criterion of numbers but this did not have a follow-up in our legislation.

The matter should be treated much prudence, avoiding reference to numbers only. It is wiser to look at the reality of the Order and carefully observe the direction of history. In fact the Order is growing in the Southern hemisphere while in strong decline in western countries (especially Europe), countries that make up the 'traditional' part of the Order. If we should rely solely on numerical criteria some realities could only become Provinces with some difficulty, while their specific situation, especially because of geographical distances, requires a structural and autonomous stability. Nor does economic autonomy seem to be a correct criterion. From this aspect some realities would never be in a position to be erected as Provinces. Possibly the further development of economic solidarity makes up for this. On the other hand, the situations in decline are represented by Provinces of long tradition and history. Based on the criteria of numbers alone not a few Provinces would have to be suppressed immediately. This would lead to much drama and harm the life of the Order. Furthermore the erection of new Provinces based on numbers alone could result in solutions that do not correspond with our charism and the witness we are called to give. As things stand we believe that this deep and significant problem should, above all, involve the area of animation, that is among the duties of the central government of the Order and in the purpose behind the structures of communion (PCOs, Conferences ...). When it is a question about the unification, division, modification and suppression of Provinces the matter should be handled with great care and prudence. For this reason the Commission confines itself to propose, in the Complementary Code, a better description of the basic criteria for the erection of a Province, naturally a body that is vital in all the expressions of its life. The *PdR* says:

“So that a new province be erected it is necessary, bearing in mind the local situation, that the group of friars and fraternities can express the vitality of our charism within itself and in an openness to the needs of the Order and the Church; that there be a well founded hope to be able to take up responsibly the commitments of vocation animation, formation and the apostolate; to offer a certain possibility to sustain the needs of the life and apostolate of the friars effectively and sufficiently, also in economic terms.

³ *Document 2000*, p.3+; Const. 102,2; 111,1-4.

Particular attention should be given to verify: the friars' sense of belonging to the fraternity at its various levels; the possibility of providing for the responsibilities of government and an effective change in the offices of the fraternity; the ability to accept a missionary commitment; geographic and linguistic unity, as far as possible." (*PdR – Complementary Code 8/2 = The current text of the Constitutions 111,3, with some modifications and supplementary text.*)

As in the current Constitutions, it remains within the competence of the Minister General and his council to evaluate the degree to which these criteria are present and to what degree all these described criteria are present, *bearing in mind different local situations.*

2. The Constitutions actually focus on the Province. However the existence of other entities – (the Friars Minor use the term *entity*) – cannot be ignored while trying to find a terminology that includes all these realities. It seems more opportune and exact to speak of *circumscriptions* unless reference is being made to one of these entities.

Other minor *circumscriptions* have always existed within the Order, e.g. Commissariats. There were in the Order, until 1968, Provinces, Commissariats, Custodies and Missions. The Chapter of 1968 abolished Commissariats and in fact these were suppressed after the General Chapter of 1974. Subsequently the present structural division was adopted: Provinces, General and Provincial Vice-Provinces, Custodies, houses or local fraternities.

The Commission immediately pointed out the need to identify a more appropriate terminology to indicate *General Vice-Provinces*. In n.110,3 the Constitutions describe a *Vice-Province* as a “*part of the Order established in a particular territory entrusted to a Province or directly subject to the General Minister and is governed by a vice-provincial as vicar of the Provincial or General Minister.*” It is immediately apparent that the expression *General Vice-Province* is a contradiction of terms. By its nature, a Vice-Province refers to a Province and the Vice-Provincial refers to a Provincial. The General Minister is not a Provincial nor is the Order a Province as such. Circumscriptions currently defined as general Vice-Provinces are not Vice-Provinces.

The search for an adequate term to describe a General Vice-Province involved extensive reflection: “On deeper analysis it is apparent how the problem is not only one of language, but it also has important juridical implications”⁴ concerning the entire structure of the Order. As has been said, the government of the Order is actually divided into provinces, vice-provinces, custodies, delegations and houses (cf. Const. 110,1), and the ‘normal’ growth of the Order in a territory is thought of in this way:

- * a first settlement (*a house of presence* dependent upon a province with a local superior subject to the provincial);
- * a grouping of houses or fraternities (*a delegation* dependent on a province with a local superior whose authority is delegated by the provincial);
- * at least three houses or fraternities to help the local Church and evangelisation (*a custody* dependent upon a province with a major superior with ordinary authority as vicar of the provincial);
- * at least three houses or fraternities that have begun the implantatio ordinis (*a vice-province* dependent on a province with a major superior with ordinary authority as vicar of the provincial; a general vice-province dependent on the General with a major superior with ordinary authority as vicar of the General);
- * at least three houses or fraternities that have achieved sufficient autonomy in its activities and ordinary management (*a province* governed by a provincial superior who has his own ordinary authority).

The characteristic features of a **province** are: a group of friars, local fraternities, its own territory, a provincial minister (cf. Const. 110,2). The Code describes a province as *a grouping of several houses which constitutes an immediate part of the same institute under the same superior and has been canonically erected by legitimate authority is called a province* (Can. 621).

⁴ *Lettera del Procuratore generale* (15 ottobre 2010).

The characteristic features of a **vice-province** (whether provincial or general) are: a particular territory, dependence on the province or on the General, a vice-provincial (cf. Const. 110.3).

The characteristic features of a **custody** (or **mission**) are: a group of friars, dependence on a province, missionary activity within a specific territory, a custos (cf. Const. 110,4).

The characteristic features of a **delegation** are: transience, a group of friars, dependence on a province, a delegated superior (cf. *Ordinances of General Chapters* 8/17.1.2b).

The characteristic features of a **local fraternity** (or **house**) are: a group of at least three professed friars, a legitimately established house, a guardian (cf. Const. 110,5).

Evident in this comparison is how the differences that exist in the current Constitutions between the various circumscriptions are insufficient to fully define the identity of each specific subdivision. For example, structural transience is only mentioned in regard to delegations. In reality this could also be said for vice-provinces, both general and provincial, as well for custodies. In fact these are structures that serve to prepare a sufficient autonomy for a province. Furthermore a strictly missionary circumscription today does not conform to the postulates of ecclesiology and the mind of PCO III in Mattli. Therefore the province is the only “stable” structure. Therefore it is appropriate to go into the hypothesis of subdividing the Order into:

- *Provinces*
- *Custodies: Vice Provinces should be called Custodies* and they in turn will be distinguished as *Provincial Custodies*, if the Custody is entrusted to a Province (as the normal situation), and *General Custodies*, if the Custody is immediately dependent on the General Minister (as an exceptional arrangement for particular cases or for particular circumstances);
- *Delegations* (which, unlike the first two categories, are not considered to be circumscriptions but simply *structures*);
- *local fraternities*

Straight away it emerges how according to this *hypothesis* all the *Custodies* are to become the same as *Vice-Provinces* and therefore are to be *abolished*. The hypothesis does not provide for the abolition of the Vice-Provinces but of the Custodies (which would be ‘raised’, so to speak, to Vice-Provinces). The Vice-Provinces however will take on the *traditional* name of Custodies. In this way, as will be apparent, they will fully correspond to the commitment expressed by PCO III. In light of this it seems appropriate to outline the historical course of *Custodies* and *Missions* in our Order.

3. Custodies

- The name *Custody* is *traditional* in the Order and we come across it the first time in the Writings of Saint Francis. The approved Rule, the Testament, his Letter to the whole Order all speak of ‘Custos’ (cf. FF 87; 96-97; 127; 215; 231) to whom the Seraphic Father addressed two letters (cf. FF 240-248). Generally the ‘Custos’ refers to an intermediate superior between the guardian and the Minister Provincial. The rapid development of the Order and the spread of the provinces suggested the division of the provinces themselves into various districts or Custodies whose superior or ‘custos,’ although subject to the Minister Provincial, had the task to watch over and govern the friaries and friars entrusted to him. Saint Francis entrusted to the ‘Custodes’ the task of watching over the faith of the friars and, together with the ministers, to take care of the friars. Furthermore, the ‘custodes’ took part in the Pentecost Chapter for the election of the General Minister and deal with matters concerning the Order.⁵

- *The Capuchin Order* kept the old custom of the first Franciscan Order and in the General Chapter of 1549 decided that the Custodes take part in the General Chapter, the number of custodes corresponding to the number of Custodies in each province, though there could not be more than five or less than three. The custodes

⁵ Cf. *Lexicon capuccinum* 483-484.

were elected by the provincial Chapter. In 1642 Urban VIII determined that only two custodes for each province could take part in the General Chapter. These custodes therefore came to be called general Custodes, while the others kept the name of provincial Custodes. Nevertheless a provincial Custos could be elected also be a general Custos at the same time. Finally, on 15 May 1903, Pius X determined that only one General Custos (the first of the two elected by the Provincial Chapter) would take part in the General Chapter.⁶ This was the practice in the Order until 1968.

According to this arrangement in our Order

- a Custody was an entity within the Province (a part of the Province);
- the role of the general Custos, a later innovation, corresponded with that today of a Provincial Delegate to the General Chapter.

*In more recent times (the twentieth century) our Order found it necessary to make provision for those groups of religious who, though belonging to a province, found themselves in a different territory some distance from the Province itself. In reference to this situation the Order began to speak of Custodies and then specific legislation was provided for them. In 1937, the General Minister, Fra. Vigilio da Vlastagna determined *Normae pro Custodiis provincialibus*.⁷ Later the *Statutum ad regendas Custodias* was promulgated *ad experimentum* on 2 May 1956.⁸ Examined by the General Chapter of 1958, the Statute was definitively promulgated on 14 November the same year.⁹ According to this Statute, a Custody was to be considered as a “*Coetus domorum religiosarum, qui, iudicio Ministri Generalis cum suo Definitorio, iure ordinario Provinciarum vel Commissariatuum regi nequeunt, ab eodem Definitorio Generali in Custodias constitui possunt*” (art. 1,1). Thus Custodies could already be either a *Provincial Custody*, if *alicui Provinciae concredita est*, or a *General Custody*, if *Ministro generali directe subiecta est* (art. 1,2). As for the nature and purpose of Custodies, the 1958 Statute said: *Custodia, natura sua, formam prae se fert precariam, et ad hoc praecipue ordinata est, ut Ordo noster, fovendis potissimum incolarum vocationibus, propagetur et sacrum ministerium ad norma iuris exerceat* (art. 1,5).*

These structures were precisely the ones that came to be called Vice-Provinces after the General Chapter of 1970.¹⁰ The 1970 regulation, as evident from the context, clearly referred to *provincial custodies*.¹¹ Therefore the Extraordinary General Chapter of 1974 would recognise already existing *general custodies* as vice-provinces immediately subject to the General Minister, with all the rights and obligations of vice-provinces.¹² Because of this, the 1975 edition of the Constitutions says: *Viceprovincia est pars Ordinis, in determinato territorio constituta, alicui provinciae concredita vel immediate ministro generali subiecta, quam viceprovincialis ut vicarius ministri provincialis vel generalis regit* (n. 98,3). As can be seen, apart from the new name as Vice-province, this entity is precisely the one that had been provided for by the *Statutum ad regendas Custodias*.

4. The Missions

In line with this same Statute,

In that same Statute custodies were different to missions. Missions were seen as circumscriptions located in territories entrusted to the juridical competence of Congregation for the Propagation of the Faith or to the Congregation for Eastern Churches. From these two Dicasteries the Order received its mission undertakings in terms of *ius commissionis*. According to this practice particular territories were entrusted to specific institutes who were expected to accept full responsibility for those territories. According to the General Chapter of 1884, “All the missions entrusted to the Order, and all the missionaries who work in them, are subject to the General Minister under direct dependence on the sacred Congregation in charge of missions” (Const. 1925,

⁶ Cf. *Lexicon capuccinum* 484.

⁷ Cf. *Analecta OFMCap* 52 (1937) 110-111.

⁸ Cf. *Analecta OFMCap* 72 (1956) 98-107.

⁹ Cf. *Analecta OFMCap* 74 (1958) 250-256.

¹⁰ Cf. *Analecta OFMCap* 86 (1970) 200-201.

¹¹ Cf. *Analecta OFMCap* 86 (1970) 201.

¹² Cf. *Analecta OFMCap* 90 (1974) 349,5.

n.241). However Fra Bernard Christen von Andermatt, elected General Minister in that Chapter of 1884, was deeply committed to the renewal of the missionary spirit of the Order. Among other things, he adopted the slogan: “One Province – one Mission.” From then on, in fact, although they were subject to the General Minister as supreme moderator of our Fraternity, all the missions of the Order were entrusted to individual provinces as circumscription dependent on the missions. Each mission was governed by a Superior Regular assisted by two discreet (councillors). After a consultative vote both of the missionaries and of the Minister and Definitory of the Province, the General Minister, with the consent of the Definitory, appointed the Superior Regular for three years. The mission was entrusted to the Superior Regular.¹³ The various editions of the *Statum pro missionibus Ordini FF. Minorum Capuccinorum concreditus* followed the same line. The *Statutum* was first published *ad experimentum* in 1887 and definitively approved in 1893. It was later amended in 1929, 1938 and 1971.

The renewed Constitutions of 1968 provided for three circumscriptions:

- A *Province* is understood as a group of friars and local fraternities which has its own territory and is governed by a Minister Provincial;
- A *Custody* is understood as a part of a Province in a territory separated from it, that is governed by a Custos as the Vicar of the Minister Provincial;
- A *Mission* is understood to be a group of friars Who are dependent upon a Province and engage in missionary work in territories acknowledged as Missions by the Holy See and Who are ruled over by a Superior Regular as Vicar of the Minister Provincial (n. 97).
- The General Chapters of 1970 and 1974 kept this triple division of circumscriptions but, as already noted, in the 1970 it was decided that the term ‘Custody’ be changed into that of ‘Vice-Province.’

- In 1978, PCO III (held in Mattli, Switzerland), was dedicated to the theme of the *Missionary Life and Activity of the Order*. Among other things it recognised new contexts for the Church after the Second Vatican Council. While completing the teaching of the previous Vatican Council, it underlined teaching on the episcopate as well as particular or local churches: “It is in these and formed out of them that the one and unique Catholic Church exists” (*Lumen Gentium*, 23). Therefore wherever the Church is established, it is the agent of apostolate and mission. Practical consequences come from this at the organisational level of the Church’s missionary activity. These consequences are regulated by the Instruction *De cooperatione missionali* of 24 February 1969.¹⁴ Hence the Mattli document noted, “Formerly, the ‘ius commissionis’ was in force, according to which defined territories had been entrusted to specific missionary Institutes, which had complete responsibility for them. Now not missionary Institutes but particular Churches, dioceses, are responsible for themselves, even if they are able, as is clear, to take the Institutes into their service on the basis of some form of contract, envisaged in the same Instruction” (Mattli, n.17). Therefore PCO III hoped that “Our present missions should be changed into vice-provinces or provinces, if necessary by merging them with neighbouring vice-provinces and missions” (n.45) and “that those missions which cannot be erected into vice-provinces or provinces be called *custodies* ... Their juridical status will be that of the present missions according to the Constitutions” (n.46). The General Chapter of 1982 welcomed the proposals of PCO III. Therefore the passage in the Constitutions that was approved at that Chapter and is still in force: “Custodia seu missio est coetus fratrum, qui provincia pendent et in aliquo territorio determinato operi missionali incumbunt, quosque superior regularis ut vicarius ministri provincialis moderator” (110,4).

5. Further Considerations

Other considerations should be added to this historical overview to stress, above all, *the change of perspective in the idea of missionary activity*. For the Church and Order that perspective has changed significantly. With the Mattli PCO and the Constitutions of 1982, the perspective has changed from that of *our* missions (entrusted to the Order), to missionary activity as:

- 1) service to young churches

¹³ Cf. *Statutum*... (a. 1938), nn. 37-38.

¹⁴ Cf. *Enchiridion Vaticanum* 3, 462-473, nn. 801-819.

2) commitment to evangelisation of all those in any continent or region who do not believe in Christ. - It is particularly important to note that the mind of the Plenary Council at Mattli was to redress having strictly mission circumscriptions: “*Our present missions should be changed into vice-provinces or provinces, if necessary by merging them with neighbouring vice-provinces and missions...*” (PCO III, n.45). Along the same lines the idea of Custody comes up again as a structure within the Order. So n.46 of the Mattli document proposes that the title *Mission* be changed to *Custody* “for those missions which cannot be erected into vice-provinces or provinces.” Then the Constitutions of 1982 spoke of *Custody or mission*. However it must remain clear that the Mattli PCO proposed that *only* the term ‘Custody’ be used.

- *In fact this change has already occurred within the reality of the Order.* Today we can no longer speak about circumscriptions that are missions only and others that are not. This is not only because of what has just been said, but also because in territories that were once considered missions, the Order is present not just as *Custodiae seu Missiones*, but also as Vice-Provinces and Provinces. More precisely, according to the 2009 Statistics:

- in Africa we have:

- 3 Provinces (Eritrea, Madagascar, Tanzania);
- 5 General Vice-Provinces (Ethiopia, Chad-Central Africa, Congo, Kenya, Mozambique);
- 4 Vice-Provinces (South Africa, Angola, Cabo Verde, Zambia);
- 6 Custodies (Cameroon, Ivory Coast, Benin, Nigeria, Uganda, Zimbabwe);
- 9 Domus praesentiae (Algeria, Burkina Faso, Gabon, Ghana, Equatorial Guinea, Seychelles, Malawi, Namibia, Sudan);

- in Asia (including Turkey, the Near East, Israel) we have:

- 14 Provinces (10 in India, 3 in Indonesia, 1 in the Philippines);
- 2 General Vice-Provinces (Arabia and the Near East);
- 2 Vice-Provinces (Pakistan and Papua New Guinea);
- 6 Custodies (2 in India, 1 in Korea, 1 in Japan, 1 in Malaysia, 1 in Turkey);
- 4 Provincial Delegations (2 in India, 1 in Sri Lanka, 1 in Thailand);
- 3 Domus praesentiae (India, Israel, East Timor).

- In Latin America we have:

- 14 Provinces (10 in Brasil, 1 Argentina, 1 Chile, 1 Colombia, 1 Peru);
- 2 General Vice-Provinces (Central America, Nicaragua-Costarica-Panama; Guatemala-Honduras-Salvador);
- 7 Vice-Provinces (Equador, West Brasil, Amazonia, San Domingo + Haiti, Mexico-Texas, Puerto Rico, Venezuela);
- 1 Custody (Paraguay);
- 1 Provincial Delegation (Cuba);
- 3 Domus Praesentiae (Bolivia, Brazil, Mexico).¹⁵

- *Custodies* have gradually changed and today there seems to be little difference between a Custody and a Vice-province. On the other hand, the *role of the Custodies* as mission circumscriptions only, in the traditional sense, today seems to be superseded. This is because the Catholic Church has been planted in nearly every corner of the earth, and our task for all our circumscriptions (Provinces, Vice-Provinces, Custodies, Delegations and

¹⁵ The Situation is as follows for the other continents:

In *North America* we have 8 provinces (2 in Canada, 6 in the USA); 1 Vice-Province (Guam); 1 Domus praesentiae (USA).

In *Oceania* we have: 1 Province (Australia); 1 Custody (New Zealand);

In *Europe* we have: 43 Provinces (22 in Italy, 5 in Spain, 2 in Poland, 1 in Slovakia, 1 in Slovenia, 1 in Holland, 1 in Austria, 1 in Belgium, 1 in Great Britain, 1 in the Czech Republic, 1 in Croatia, 1 in France, 1 in Germany, 1 in Switzerland, 1 in Ireland, 1 in Portugal, 1 in Malta); 2 Vice-Provinces (Belarus, Ukraine); 3 Custodies (Bulgaria, Romania, Sweden); 2 Provincial Delegations (Hungary, Greece); 4 Domus praesentiae (Iceland, Latvia, Lithuania, Russia).

Domus Praesentiae) is to be of service to the young Churches. It is also because today, in those areas of ancient Christian tradition, the task of a new evangelisation is pressing;

- In regard to Vice-Provinces it seems that the *implantatio Ordinis* today cannot be understood as particularly exclusive or the principle purpose of these circumscriptions *only*. In fact some Vice-Provinces are in territories where the Order has been established or has been present for centuries (e.g. the Vice-Province of the Near East), while in the light of PCO III (cf. n.39) and the current Constitutions (cf. n.177). Custodies also have the task of promoting the *implantatio Ordinis*. At the same time, in many areas of ancient Christian tradition and otherwise ancient presence of the Order (e.g. Europe), there is a need today for a *re-implantatio Ordinis*. The *implantatio Ordinis* is a task that belongs to all the circumscriptions, just as the commitment to mission and evangelisation belong to all the circumscriptions. Therefore distinction among the structures of the Order cannot depend upon their apostolic commitment differentiated according to the circumscriptions.

- From another angle, a careful assessment of the present situation of the Order shows that *there are no substantial differences between Vice-Provinces and Custodies*. At the legislative level the norms in Constitutions regarding the government of a Vice-Province are almost identical for those concerning the government of a Custody and almost overlap one another. Also from *the statistical point of view*, there are Custodies that have more friars than some Vice-Provinces (and even more than some Provinces). And vice-versa. There are some Vice-Provinces with fewer friars than some Custodies. A statistical guideline for the structural division of the Order cannot be absolute, as if the number of friars were to be the decisive criterion. Nor can the number of friars be emphasised as it were the main criterion. By the number of friars alone some Vice-Provinces and Custodies could have already been erected as Provinces and some Provinces would have had to become Vice-Provinces or Custodies. It also happens sometimes, when the number of friars becomes the main consideration and results in the erection of a Province, weaknesses and shortcomings quickly become apparent. By nature, the valid criteria for the establishment of a circumscription are quite different than that of the number of friars.

- It seems fitting to consider the distinctions between the circumscriptions of the Order, starting with the reality of Provinces. The Code of Canon Law (CIC) sees a Province as primary and *immediate part* of an Institute.¹⁶ In a certain sense the Province can be defined as a *natural part* of an Institute. It is a body that makes up the *ordinary structure* of an Institute, while other structures are *characteristically an exception*. From this point of view those structures that are not Provinces may be considered to be transitory, seeing that the conditions for their erection as Provinces do not yet exist. But neither should this aspect be over-emphasised or generalised. A careful look at the actual situation of the Order would lead to the conclusion that between the Vice-Provinces and the Custodies there are circumscriptions that are just as vigorous as some Provinces. Nor may the structural division of the Order be seen as obligatory steps along the way for individual circumscriptions. In recent times some Delegations have become Vice-Provinces without passing through the phase of being a Custody. It follows then that above all pastoral sensitivity by the government of the Order and attention to each individual circumscription is more useful than rigid criteria and specific conditions used for the classification of various circumscriptions.

In actual fact (31 December 2009) there are in the Order nine General Vice-Provinces, seventeen Provincial Vice-Provinces and seventeen Custodies. Each of these circumscriptions, for the above mentioned reasons, can fit within the *traditional* category of Custody, the distinction being made then between a Provincial Custody (when it is entrusted to a Province) or a General Custody (when it is immediately dependent upon the General Minister.)

In reality, Vice-Provinces and Custodies, as in Provinces, have their own characteristics and prerogatives. All circumscriptions, including Provinces, are considered individually on the basis of their history, their vigour, and their future prospects. From time to time the central government of the Order and all the interested parties, after a balanced discernment, have to evaluate whether a Custody should or should not be erected as a Province; or whether taking such a step one Custody should wait a little more, or another a little less; or if in a particular context it might be necessary and adequate to have a Delegation rather than a Custody, or vice versa, whether a Delegation can be erected as a Custody, etc. In the recent history of the Order such proc-

¹⁶ V. DE PAOLIS, *La vita consacrata nella Chiesa*. Bologna 1991; 202

esses have occurred. Furthermore, not only have some Provinces been united but it has also happened that a Province has become a Vice-Province or Delegation.

In reality, therefore, the situations of various circumscriptions of the Order no longer correspond with the descriptions in the Constitutions. Above all it already seems difficult in the Order to clearly distinguish the character of a Vice-Province from that of a Custody. So then, if the identity established by the Constitutions does not present any essential differences, and if in fact the actual arrangement of various structures does not correspond with the juridical identity established by normative text, it is permissible to think about the need to adapt the text to the reality, given that the reality cannot be adjusted to fit the text, even if such an adjustment might mean a partial shift from the instructions given by the General Chapter to remain faithful as possible to the actual content of the text.

6. Bearing all these things in mind, the Commission arrived at the following conclusions:

- The *circumscriptions* [of the Order] are ordinarily **provinces** and **custodies**, united together in a life-giving relationship under the authority of the General Minister (PdR, n.121.2).
 - A province is a *primary part of the Order*, governed by the provincial minister. It has its own viability, enabling it to sustain effectively and with sufficient autonomy the life and activities of the brothers, in particular with regard to vocations promotion and formation, governance, openness to the needs of the Order and the Church and economic resources (PdR, n. 121.6).
 - Present Vice-provinces and Custodies become the one circumscription known as Custodies. A Custody is a part of the Order in which the brothers, placed at the service of the churches and of their pastors in the work of evangelisation (14), gradually develop the presence of the consecrated life through their efforts to implant the Order. It is governed by the *custos*, who has vicarious power (PdR, n. 121.7).
 - A Custody is entrusted either to a province or is directly dependent on the General Minister: A custody, among whose principal purposes is the implantation of the Order in a particular Church, is a *circumscription of the Order entrusted to a province or, because of special circumstances, directly to the General Minister. Custodies that depend on the General Minister have their own statute approved by the same Minister with the consent of his council. The same norms governing custodies dependent on a province are applied to them by analogy* (PdR, n. 140.1).

6.1 In view of this simplification in the basic structure of the Order, keeping in mind the very different situations that continuously emerge in the evolution of the Order, the obligations and faculties of the Minister General are clarified regarding the possible consideration of other types of circumscription: *In particular circumstances the General Minister, with the consent of his council and after consultation with the interested parties, may make different arrangements regarding the exclusivity of the territory, and make provision for other forms of circumscription or groupings of houses, in accordance with these Constitutions and with the Complementary code* (PdR n.121.4).

6.2 Delegations are kept in the Complementary Code (cf. PdF 8/26) and the possibility of federations is mentioned (cf. PdR, 8/3).

The remainder of the legislation is aligned with this proposal. Apart from simplifying the structure and remaining open to the possible adaptation according to times and circumstances, a particular effort is made to overcome inconsistencies concerning ordinary vicarious authority. This is in reference to the Vice-Provincial or Custos who ordinarily acts “as if he were a provincial” within the circumscription. In matters of government, ordinary power is properly so when it is exercised in the exercise of an office and in one’s own name, without any dependence on others. Vicarious power is also ordinary because it is joined to the office. However it is different from proper power because it is exercised in the name of another who is the titular holder of the office for whom the friar is vicar. Consequently the vicar has the same power of the holder of the office for whom he is vicar. However he can only exercise that power in case of *sede impedita* (translator: when the office holder is clearly prevented from fulfilling his pastoral function) or when the office is vacant, or in the absence of the office holder. His vicarious power can be limited by the right that allows the office holder to reserve some matters to himself. For reserved cases the vicar needs the specific delegation of the superior. This is what has been determined by our Constitutions when they require the superior to delegate the proper vicar specifically for the circumstances in number 19 and 36: for admission to the postulancy, to the novitiate and profession (n.19), and for the dismissal of a postulant of novice (n.36). For all the other situations the

vicar has the same power as the titular superior. From this it follows that the vicar-provincial (in a province), the vice-provincial (in a vice-province) and the custos (in a custody) have the same faculties in so far as they are vicar superiors of different structures. Furthermore, if it is clear that the faculties of the vice-provincial of the vice-province and those of the custos cannot be broader than those of the provincial, since they have vicarious power in respect to the provincial. In the case of the general vice-provincial, since his vicarious power is that of the general, he would have the same faculties of the General Minister. Therefore in some cases his faculties would be broader than those of a Provincial. Since our Constitutions establish no precise limits, the anomaly can exist where the superior of a structure that is inferior to a province may have broader authority than a provincial (even if limited only to the particular territory of the General Vice-Province).

These inconsistencies are overcome by making provision for Custodies that are dependent upon the General Minister. Given their particular nature, they should have their own particular statute where it is possible to stipulate better which powers are entrusted to the General Custos (cf. *PdR*, n.140.1). For Provincial Custodies, which can have very different dimensions, character and needs, it will be up to the Minister Provincial to confer on the Custos the delegated faculties that he believes to be appropriate: *From the moment his election is confirmed, the custos enjoys Ordinary vicarious power to exercise his office. The provincial minister must grant to the custos, in writing, the faculties that are delegated to him, and indicate those which he reserves to himself* (cf. *PdR*, n.124.4-5; 140.7). Thus the vicar superior of each dependent structure will be able to have the power to govern that is suited to the structure itself.

II. The Vicar General and the General council

The current Constitutions prescribe in number 118,3.5-6:

“Then, according to the norm of “Order for the Celebration of a General Chapter”, the general definitors are elected according to the number fixed by the General Chapter Ordinance. No more than half of those elected at the previous Chapter may be elected. – The Vicar General is elected from among these definitors. In virtue of this election he becomes the first definitor. – According to the norm of the Constitutions and according to the Statute of the General Curia approved by the General Chapter, the task of the definitors is to help the General Minister in the government of the whole Order.”

The Ordinances (n.8/9) specify:

“The number of general definitors is eight.”

The Document on Chapter VIII prepared by the relevant Commission for the General Chapter of 2000 discussed the role and number of general definitors whose task is to help the General Minister in the government of the whole Order. This norm of the Constitutions (118,6) is rather vague. However, perhaps it is better that way so that the “unique” role of the General Minister in our Fraternity be completely clear and undiminished. In this way a rather widespread, even if not completely explicit, idea may be debunked. This mentality sees the Definitors as responsible for specific areas, as if they were General Ministers. However it is obvious that the General Definitors are at the service of the whole Order in assisting the General Minister.

Nonetheless we cannot ignore the practice in the Order according to which the General Minister normally entrusts the task of visiting the circumscriptions of the Order to the General Definitors. Many other activities are added to this one. Therefore the work of the General Definitors is truly significant and needs a wise evaluation. In the General Chapter of 2000 it was decided to transfer the prescription about the number of General Definitors to the Ordinances. Today the Ordinances lay down: *The number of General Definitors is eight* (Ordinance 8/9).

In this matter our Commission has not thought to propose other numbers but stopped to consider, rather, the part of the Vicar General. Unlike the General Definitors, even though he is part of the Definitory, the Vicar General is a major superior with ordinary vicarious authority. He has the task of substituting the General Minister if he is absent or impeded, according to what is laid down by the law of the Church and the Or-

der. He is the first collaborator of the General Minister. In actual fact he too is usually entrusted with the task of visiting an area of the Order. In light of the complexity of our Order and its spread all over the planet; of the duty of the General Minister to visit his friars and the consequent frequent absence from Rome; of the need to always have in Rome a major superior to refer to; and the differences between the roles of the Vicar General and the General Definitors – it seems appropriate that the Vicar General be distinguished from the Definitors. Therefore **it is proposed that the Vicar General be elected in a similar way to the General Minister, that is, irrespective of groups and conferences, without being bound to a particular service of a specific area.** Then the election would be for eight definitors (or however many the General Chapter may wish to determine), according to the nominations of the various groups. This way would benefit the service of definitors for areas entrusted them. It would also better define the service of the Vicar General, and the central government of the Order would take this shape: General Minister, Vicar General, General Definitors (cf. *PdR*, n.127.2-3). Naturally the Vicar General would continue to be a member of the General Minister's council (*PdR*, n.127.4). It is also clarified that seniority among the councillors is no longer coincidental but is determined by Profession (cf. *PdR*, 128.5). Up until now, precedence among definitors has been determined by order of election and consequently left somewhat to chance (by lots).

Naturalmente il Vicario generale non cessa di essere membro del consiglio del ministro generale (*PdR*, n. 127.4). Si precisa anche che la decananza tra i consiglieri non è più casuale, ma viene stabilita dalla Professione (cfr. *PdR*, n. 128.5); finora la precedenza tra i definitori è stabilita per ordine di elezione, e risulta piuttosto affidata al caso (per sorteggio).

III. Composition of the General Chapter

There are two aspects to underline in this regard: the participation of the Custodes at the General Chapter and the delegates at the General Chapter. Both aspects must be connected to the new proposal to structure of the Order into *Provinces* and *Custodies*.

1. *The participation of Custodes at the General Chapter*

The current Constitutions lay down:

“The following have active voice at both ordinary and extraordinary General Chapters: the General Minister, the General Definitors, the former Minister General from the previous six-year term, Provincial Ministers, Vice-Provincials, the General Secretary, the General Procurator, and the delegates of the Provinces and Custodies, and other perpetually professed friars according to the norms of the Ordinances for General Chapters” (n.116,4).

If the proposed structure of the Order considered by the PDR in the simple division of the Order into Provinces and Custodies is accepted, it follows that the actual regular superiors of the Custodies will participate by right in the General Chapter. Therefore the new text proposed for the Constitutions is this:

The following have active voice in a general chapter, whether Ordinary or extraordinary: the General Minister, the General Vicar, the general councillors, the last General Minister in the sexennium immediately following the end of his term of office (6), provincial ministers, the custodes, the general secretary, the general procurator, the delegates of the provinces and other brothers in accordance with the norms of the Complementary Code. (n.116.4)

Consequently that laid down by the paragraph on Custodies in Ordinance (8/7.4) would lapse.

2. *Delegates to the General Chapter*

Ordinance 8/7 §1 says:

“Once the General Chapter has been called, all the friars in perpetual vows, in each province with at least one hundred professed friars, shall elect a delegate and his substitute for the General Chapter.”

However, §2 adds:

“Each province shall elect another delegate and his substitute for every two hundred friars over and above two hundred.”

It is difficult to understand the reason for this second prescription since it no longer serves any purpose today, considering the present numerical composition of all the Provinces of the Order.

Conscious that every proposal will have its limitations and weaknesses, the Commission believed it appropriate to reconsider the hypothesis presented to the General Chapter of 2000¹⁷, referring back to n.100 on the calculation of the number of delegates. Therefore we propose:

“Once the General Chapter has been called, in each province for every hundred friars, all the friars in perpetual vows shall elect a delegate and his substitute for the General Chapter” (PdR, Complementary Code 8/10.1= the current text in force [Ord. 8/7.1-2] with modifications).

In this way the current norm in force is simplified. Bearing in mind the new proposal concerning the structure of the Order in Provinces and Custodies, the paragraph regarding Custodies is also suppressed (Ordinance 8/7.4).

IV. The Provincial Chapter by Universal Suffrage or by Delegates

In regard to how Provincial Chapters are to be celebrated (by direct suffrage or by delegates) the *PdR* presents a substantial change in perspective.

According to the criterion of the present Constitutions, the norm is for Provinces to celebrate chapters with delegates. The smaller circumscriptions are to celebrate it by direct suffrage.

The current norm corresponded to quite a different situation in the Order when the provinces had many friars and the other circumscriptions were numerically poor. Currently many provinces do not even have one hundred friars. For these provinces chapters by direct suffrage would not present great difficulties.

Therefore actual developments in the Order may be the occasion to regain the fraternal sense of the Chapter, inspired by the experience of Saint Francis and his first companions.¹⁸ At the beginning, the purpose of the Chapter in the Order was *to see how to better observe the Rule* (= faithfulness to our vocation and consecration) and to *promulgate holy laws* (= *planning* in order to build up the life of the Order [and/or the Province] in the light of the Rule, the Constitutions, the signs of the times, the context in which we live and work, etc). It was also a privileged time for *formation*. (It was on the occasion of the Chapters that Francis addressed his admonitions to the Friars).

Considering this three-fold purpose, the Chapter should gather together all the friars of a circumscription and so be celebrated by direct suffrage.

Therefore the Commission has aimed to overcome the distinction between the Provinces and the other circumscriptions currently used as a criterion to determine whether a chapter should be celebrated by delegates or by direct suffrage. So then, to facilitate chapters by direct suffrage as much as possible, we propose the *numeric criterion*.

More specifically, bearing in mind realistically that all the friars will never be present because of their age, illness or other reasons, it is believed that *all the circumscriptions with a number of friars below one hundred can easily celebrate their chapter by direct suffrage*.

At the same time, on reasonable consideration of the difficulties that too great a number present, *the possibility of chapters by delegates is envisaged for those with circumscriptions with more than one hundred friars*. Naturally, even if these circumscriptions have a large number of friars, they should retain the choice to celebrate the chapter by direct suffrage.

¹⁷ Cf. *Document 2000*, Tema IV, 5.5, b.

¹⁸ Cf. 1*Cel* 29; FF366; JULIAN OF SPEYER, *Life of Saint Francis*, 19.

The process that is provided for the passage from one way of celebrating the chapter to the other (cf. Const. 125,2; *Ord.* 8/15-16) was simplified by the General Chapter of 2000. This should remain unchanged because it is necessary to avoid the harm of endless changes. However the process takes on a different meaning. In the final analysis, the celebration of provincial chapters by delegation used to be defended before. The new scheme intends to protect the participation of all the friars at the chapter thus making the transition to chapters by delegate more difficult in the circumscriptions with less than one hundred friars. Our journey as a fraternity will benefit from this.

V. Length of the term of office

The Commission often stopped during its work to consider the question about the length of the term of office of the superiors at various levels. However no agreement was reached. It was decided to leave the current text as is and to present the problem to the Order so as to receive possible suggestions from the friars. The question was presented in depth to the General Chapter of 2000. However the Chapter did not accept the proposed formulations. So that each friars may reflect upon the question and give his opinion, we present here the same points presented by that Commission:

1. The Discipline of the Code of Canon Law before 1983

- 1.1 According to the Constitutions prior to 1968 the *General Minister* could be elected for a sexennium, after which he could not be immediately re-elected (Const. 1925, n.165). And for at least one year he could not hold any office as superior, not even as local superior.
- 1.2. At the conclusion of his triennium the *Provincial Minister* could not be re-elected in the same Province (Const. 1925, n.148). He too had to be free of any office of superior for at least a year. However the General Minister and his Definitory could grant him passive voice for election, *institis de causis*.
- 1.3 The *Superior Regular* was to be appointed by the Minister General. If the mission was entrusted to a Province, the appointment was to be made after the consultative vote of the Provincial Minister and his Definitory. His term of office lasted three years, but he could be re-elected again, while still observing the pre-requisite consultative vote.
- 1.4 The *local superior* or *Guardian* was appointed for three years (Cont. 1925, n.158). At the end of that term he could not be appointed for another triennium in the same place unless there were just reasons. After six years as superior he had to be free of office for a year.

2. The actual practice

NB: We have thought that the problem is only related to the length of the term of office of *superiors* and not that of councillors, a question that would require a longer study.

- 2.1 The *General Minister* is elected for six years and can be re-elected only for one consecutive sexennium (Const. 118,2).
- 2.2 The *Provincial Minister* and *Vice-Provincial* are elected for a triennium and be re-elected only for a further triennium (Const. 127,4; 133,3).
- 2.3 The *Superior Regular* is to be elected for three years by all the perpetually professed friars who work in the Custody. He can be re-elected for only one further triennium. He may, however, be elected as councillor if this has been determined by the *Order of Celebrating a Chapter* of the Custody (Const. 136,1-2).
- 2.4 The *Local Superior* is to be appointed by the Provincial Minister and his Definitory for three years. However he can be appointed for another three years and for “a third triennium in case of manifest necessity” and for just reasons “even in the same house” (const. 140,3).

3. Suggestions of the Conferences

- 3.1 Concerning the *General Minister* two Conferences (CCB and CIMPCap) propose that he be elected for nine years, though without the possibility of re-election.
- 3.2 For the *Provincial Minister* one Conference (CCB) proposes that the mandate last four years, but without the possibility of reconfirmation.
- 3.3 Another Conference (CCMSI) proposes four years, but also with the possibility of re-confirmation. The proposal is made by only two members of the Conference, while the other four are for maintaining the status quo.
- 3.4 Another Conference (CECOC) is of the opinion that the term finish after four years, but without saying whether he be re-confirmed or not.
- 3.5 CIMPCap says that the term could extend to five or six years, but without re-confirmation.
- 3.6 NACC (the province of New York/New England) proposes that the term of Provincials, Vice Provincials, Custodes and Local Superiors and their respective councils last for four years.

4. Project for new legislation – Proposal by the Commission

All things considered, the Commission is of the view that the present system is still the most suitable. Nevertheless is the Chapter should decide to change the length of the term of office, we present the following alternatives for the vote of the General Chapter:

- 4.1 For the *General Minister* and councillors, that the mandate last *eight years*, without the possibility of immediate re-election for the General Minister. This would meet with the wish often expressed in the General Chapters to allow a certain greater space for the government, since *three* years for major and local superiors and *six* years for the General Minister do not seem to allow sufficient time to deal with all the problems.

The change to be voted on for the Const. 118,2:

“The outgoing General Minister *cannot* be re-elected immediately for *a further eight years*.”
Concerning the term of office of the *Major Superiors* (Provincials, Vice-Provincials e Regular Superiors) we have accepted and present the proposal to extend the term of office of these superiors to *four years*, with the possibility of immediate re-election.

The changes to the Constitutions to be voted on:

- 4.1 *Const. 124,2*: “The ordinary Provincial Chapter called and convoked by the Provincial Minister every *four years*.”
- 4.2 *Const. 127,4*: “The outgoing Provincial Minister, is he was elected during the previous Chapter, can be re-elected immediately *a further four years* only.”
- 4.3 *Const. 128,1*: “... This appointment, however, cannot be repeated for two consecutive *four year* periods.”
- 4.4 *Const. 133,2*: “The Vice-Provincial and councillors are elected for a period of *four years*, at the end of which they can be re-elected. However the Vice-Provincial can only be immediately re-elected for a further *period of four years*.”
- 4.5 *Const. 136,2*: “The superior regular can be re-elected immediately only for a further *period of four years*.”

Concerning the term of office for *local Superiors*:

Const. 140,2: Local superiors are appointed by the Provincial Minister with the consent of the Definitory for a period of four years, but they can be appointed immediately for a further *period of four years*...”

VI. Plenary Councils and Conferences of Major Superiors

The Commission discussed the function of Plenary Councils (cf. *Const.* n.123) and Conferences of Major Superiors (cf. *Const.* n.131) and arrived at the proposal to unite the legislation regarding them into one article (article IV of the *PdR*) specially dedicated to *Collaboration in the Order*. This is because the Plenary Council and the Conference of Major Superiors are both means of collaboration within the Order (cf. *PdR*, nn.131-132).

And so some other considerations took shape.

The PCO was established by the General Chapter of 1970. The General Chapter of 1968 had already thought of the PCO as a *permanent* means of collegiality, more in function of government than animation. This avowal of collegiality deserves full attention and should be affirmed and established more broadly within the Order. Today, however, we use faster and more efficient means for the exercise of collegiality. The reference is to the Conferences and, regarding the relationship with the central government, to the Presidents of the Conferences. This appears to be most suitable *coetus* or group for the exercise of collegiality in particular areas or fields. On the other hand, in practical terms, it is much easier to convene and assemble Conference Presidents than a Plenary Council.

As for the Plenary Council, it can and should keep the prerogatives that the Constitutions confer upon it, especially its nature as a *means for study and consultation for the animation of the Order*, beginning with and subordinate to the Constitutions, in accord with the Constitutions and not contradicting them. Particular attention should be given to the documents of a PCO. Such documents are not obligatory, that is, it is not necessary that each PCO conclude with a document. However the dictum in *Const.* n.123.6 in no way infers that there is an intrinsic requirement that the *acta* of a Plenary Council become part of the Constitutions, or that they be considered as texts to be included in the Constitutions sooner or later, one way or another. To operate in that way would gradually put the Constitutions into crisis. However that would be contrary to all wisdom, formation pedagogy and animation. We can refer to the Assemblies of the Synod of Bishops as an analogy. We should highlight that the results of those Assemblies never have an effect upon the Code of Canon Law. The Church never interferes with her *Lex fundamentalis* with Synod *Propositiones* or post-synodal documents. Nor does the Church require Institutes of Consecrated Life to modify their own law.

As for Conferences, the theme is very important because of the importance of the role they have taken on the life and animation of the Order. It is hoped that these acquire greater authority.

In view of these considerations the Commission has arrived at the following conclusions:

1. that the text regarding the Plenary Council in the Order *remain* substantially the same, with some more precise re-wording, while proposing that the celebration of at least one PCO per sexennium not be obligatory. However the insertion of the adverb *ordinarily* in the current text suggests that there may be reasons why a PCO should not be celebrated during a sexennium;
2. to *propose* some modifications and enhancements for the Conferences of Major Superiors. In particular, the prudent approach that considers the same Conferences as means of *collaboration and communion* remains unchanged in defining them as *intermediate levels of government*. At the same time the requirement that they act according to the special statutes approved by the General Minister and his council does not preclude the possibility that they be granted specific delegated powers by the same statute for some acts of government. Thus a possible way is opened for the Conferences to have some greater influence on the life of the Order. Conscious of the reality in each Conference, they can be more effective since they can read more closely the different situations and needs of their respective areas. It would then be codified that the presidents of the conferences meet with the General Minister at least every two years. The purpose of the Conferences would be clarified, namely to encourage openness and co-responsibility between the Provincial Ministers and the whole Order.

VII. Terminology

The Commission continues to propose to substitute the terms *definitor* and *definitory* with the more understandable terms *councillor* and *council*. Out of love for the truth it should be remembered that the “The question was already raised in the special General Chapter of 1968 by Fedele da Pamplona: *Definotores, definitorium. Deleantur haec verba et ponantur: consilarii vel aliud verbum. Ratio: verbum definitor hodie nihil dicit, sapit saecula praeterita.* The terms were kept out of respect for tradition. In the General Chapter of 1988 the proposal to swap the term *definitor* with *consiliarius* received only 80 votes of 144 voters. Consequently it was not accepted.”¹⁹ The same in the General Chapter of 2000.

Now the Order is asked again to express the thinking of the Order on this question.

As said at the beginning, these are the themes that drew the greatest attention of the Commission during its work on Chapter VIII of the Constitutions. The same themes deserve careful consideration by the whole Order in view of the preparation next year of the text to present to the General Chapter of 2012. Naturally the PdR also presents other variations and/or inclusions in the current text. These will be explained and justified in the explanatory notes.

For the Commission:

*Br. Francesco Polliani, OFMCap
Commission Secretary*

*Br. Felice Cangelosi
Vicar General OFMCap
Commission President*

Rome, 20 December 2010.

¹⁹ Cf. *Analecta OFMCap*. 104 [1988] p. 229.

Technical Notes

The Commission invites the brothers to keep in mind the suggestions already set out in the *Introductory Notes* to Chapter One. With regard to Chapter eight be especially aware that

- 1) To facilitate the understanding and study of the proposals, the new texts have been placed side by side in columns: the first column contains the text of the Constitutions in force at present *in one's own language*; the second column contains the text of the "revised version" *in one's own language*; when required, the third column contains the text of the norms that are envisaged as belonging to the supplementary Code, again *in one's own language*.
- 2) In the second and third columns the text of each paragraph is preceded by a rubric: *current text* (when the text currently in force has not be changed); *current text with additions* (when the text that is currently in force has been retained with new elements added); *current text with changes and additions* (when the text which is currently in force has been partly changed and new elements have been added); *new text* (when the text is completely new).
- 3) Each proposal is accompanied by explanatory notes, which appear after the summary of each individual number in the text. The explanatory notes contain only what in the opinion of the Commission is regarded as necessary for the understanding of changes or additions or the introduction of a new text. Reference to the documents of the Church or of the Order is restricted to what is necessary and the bibliographical references have been greatly reduced.
- 4) The following are presented in another table: the *Latin* text of the Constitutions appears in the first column; the *Latin* text of the "revised proposals" appears in the second column; when required the *Latin* text of the norms that are envisaged as belonging to the supplementary Code is presented.
- 5) The Order is invited to consider the proposed text, evaluating in particular the changes put forward, the new additions and in some cases the new arrangement of the content presented with some transfer of text.
- 6) Respecting the freedom of each brother to express individually his own opinion, the work would be greatly assisted if the observations were shared by groups of brothers or collected and sent in by the Ministers themselves, using the sheets provided following the attached models.
- 7) The evaluation of each number or paragraph is to be made using the sheets provided following the model prepared by the Commission Secretariat.

All the parts of each sheet must be filled in, keeping in mind that anonymous sheets are not acceptable, or those sent in by "a group of brothers..." without any signature.

Whether you agree with the proposed text or not it is sufficient to "briefly" express your own opinion.

If instead you propose an alternative text this should be presented clearly and concisely. You must provide the reason for the alternative text which is being proposed.

The evaluation sheets for chapter 8 and the proposals for the same should reach the Commission by 31st May 2011.

Rome, 20 December 2010.

Br. Francesco Polliani, OFM^{Cap}
Secretary of the Commission

Model form to be sent to the Secretary of the Commission
(PLEASE SEND BY E-MAIL NO LATER THAN 31ST MAY 2011)

C o m m i s s i o C o n s t i t u t i o n u m

costituzioni@ofmcap.org

EVALUATION

of each no. or § of the “Proposed revision of Chapter VIII”.

Indicate as clearly and concisely as possible whether you agree with the proposed text or not. You may propose an alternative text, giving your reasons.

♦ Name of the Circumscription:

♦ Brother/s:

Name:

Surname:

Name:

Surname:

Name:

Surname:

Name:

Surname:

(...)

♦ THE EVALUATION refers to n. () of the “Proposed revision of Chapter VIII”.

♦ EVALUATION:

♦ Proposed alternative text (if you think it is necessary):

♦ Reasons for the alternative text:



Commissio Constitutionum

CHAPTER VIII

THE GOVERNANCE OF OUR ORDER (1)

N. 120 (109)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
109 1. Our Fraternity, led by the Holy Spirit, is an integral part of the Mystical Body of Christ through which the brothers, united in following Christ, contribute to the building up of the Church in love by various offices and ministries.	Current text (109,1) with changes and additions 1. Our Fraternity, led by the Holy Spirit, is an integral part of the Mystical Body of Christ. <i>It is a communion of consecrated persons who, following the Master, seek to accomplish together the Father's will</i> (2), and contribute to building up the Church in love through various offices and ministries.	
2. Let the brothers, therefore, feel obligated to favor the good of the Church and the Fraternity according to their own grace and vocation, so that they may be fully incorporated into the mystery of Christ.	Current text (109,2) with changes 2. Let us therefore see it as our specific duty to foster the good of the Church and the Fraternity according to the grace we have received and our Capuchin vocation (3).	
3. In Order to strengthen the spiritual and visible unity of our Order, chapters and ministers bind the members together and, in a spirit of service, exercise offices and responsibilities received from God through the ministry of the Church.	Current text (109,3) with changes and additions 3. Chapters and superiors, as expressions of the spiritual and visible unity of the Order, <i>nourish the bond of communion among the brothers</i> . In a spirit of service and with pastoral solicitude they exercise authority received from God through the ministry of the Church in accordance with universal law and these Constitutions (4).	

Explanatory notes

- (1) In line with the principle adopted in all the other chapters, we also propose to change the title of chapter VIII (*The governance of our Order*). The Commission agrees that the addition *or fraternity* can be deleted as unnecessary, since in the very first paragraph the text says that the Order is a fraternity and n. 121,1, which immediately follows, begins: *Our Order or Fraternity...*
- (2) Text revised in a Trinitarian perspective and with reference to God's will: Cf. CICLSAL, *The service of authority and obedience*, Instruction (11 May, 2008), n. 1.
- (3) Text changed to personal form. The insertion *so that they may be fully incorporated into the mystery of Christ* is omitted because it seems superfluous after the changes made to 109,1.
- (4) To limit the role of chapters and superiors to merely binding the members together is reductive. Therefore the text has been modified with reference to PC 14; CICLSAL, *The service of authority and obedience*, n. 9; 11; CIC, can. 618. Besides, the current text, drafted in its final form by the post-capitular redaction commission (1982), is perhaps not altogether exact. The text drafted at the 1982 Chapter said: *and in a spirit of service they exercise the office (munus) they have*

received from God through the ministry of the Church. The post-capitular Commission saw fit to say: *and in a spirit of service they exercise the offices and tasks (officia et munia) received from God through the ministry of the Church*²⁰. In fact, if it is legitimate to state that the *office of ruling* and the *power of governance* or *authority* come from God, this is not true of every *officium* or *munus* (office and task).

ARTICLE I
The structure (1) of the Order

N. 121 (110)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
110 1. Our Order or Fraternity, as far as its government is concerned, is divided into provinces, vice-provinces, custodies and houses or local fraternities; these structures, taken individually, are true fraternities.	New text with elements of the current text (110,1) 1. Our Order or Fraternity <i>is made up of brothers</i> (2), <i>each of whom is incorporated into a circumscription</i> (3) <i>and assigned to a local fraternity</i> (4).	
	New text with elements of the current text (110,1) 2. <i>The circumscriptions are ordinarily provinces and custodies</i> , (5), <i>united together in a life-giving relationship under the authority of the General Minister</i> (6).	
	New text with elements of the current text (110,1) 3. <i>All the circumscriptions are made up of a group of brothers gathered in local fraternities or houses</i> (7) <i>and having their own exclusive territory</i> (8), <i>which must be determined in the decree of establishment. Each of these structures, taken individually, is a true fraternity.</i>	New text 8/1 <i>The decree establishing the circumscriptions must determine a proper and exclusive territory.</i>
	New text (cf. 122,2) 4. <i>In particular circumstances the General Minister, with the consent of his council and after consultation with the interested parties, may make different arrangements regarding the exclusivity of the territory, and make provision for other forms of circumscription or groupings of houses, in accordance with these Constitutions and with the Complementary code</i> (9).	
	New text 5. <i>Every circumscription that is canonically established by a formal decree of the General Minister acquires juridical personality</i> (10).	
2. A province is a group of brothers and local fraternities having its own territory presided over by a provincial minister.	Current text (110,2) with changes and additions 6. A province is <i>the primary unit of the Order</i> (11), governed by the provincial	

²⁰ Cfr. FR. IGLESIAS (a cura di), *Constitutiones Fratrum Minorum Capuccinorum post Concilium Vaticanum II retractatae (a.1968-1988)*. I. *Textus*. Romae, Curia generalis OFM Cap., 1988; I, 99, notes 5 and 6.

	<p>minister. <i>It has its own consistency, enabling it to sustain effectively and with sufficient autonomy the life and activities of the brothers, in particular with regard to vocations promotion and formation, governance, openness to the needs of the Order and the Church and economic resources</i> (12).</p>	
<p>3. A vice-province is a part of the Order established in a particular territory entrusted to some province or directly subject to the general minister and presided over by a vice-provincial as vicar of the provincial or general minister.</p>	<p>New text with elements of the current text (110,3-4; 132,1) (13)</p> <p>7. A custody is a part of the Order in which the brothers, placed at the service of the churches and of their pastors in the work of evangelisation (14), gradually develop the presence of the consecrated life through their efforts to implant the Order. It is governed by the <i>custos</i> (15), who has vicarious power.</p>	
<p>4. A custody or mission is a group of brothers who are dependent on a province and engaged in missionary work in some determined territory and governed by a superior regular as vicar of the provincial minister.</p>	<p><i>Integrated into the previous §.</i></p>	
<p>5. A local fraternity is a group made up of at least three professed brothers who dwell in a legitimately established house presided over by a local superior or guardian.</p>	<p>Current text (110,5)</p> <p>8. A local fraternity is a group made up of at least three professed brothers who dwell in a legitimately established house governed by a local superior or guardian.</p>	
<p>6. The general minister with the consent of the definitory can decide that a particular local fraternity or house is immediately dependent on himself. If the situation warrants it, it may have its own statutes.</p>	<p>Current text (110,6) with changes and additions</p> <p>9. The General Minister, with the consent of the <i>council</i> (16), can decide that a particular local fraternity (17) is immediately dependent on himself. If the situation warrants it, it may have its own statutes.</p> <p><i>Similarly, he may decide that a local fraternity will depend directly on a Conference of Major Superiors and will have its own statutes</i> (18).</p>	
<p>7. Whatever in these Constitutions is said of a province also applies to a vice-province and custody unless the contrary is evident from the nature of the case or from the text or context.</p>	<p>Current text (110,7) with changes</p> <p>10. Whatever in these Constitutions is said of a province also applies to <i>custodies</i> (19), unless the contrary is evident from the nature of the case or from the text or context.</p>	

Explanatory notes

- (1) *Structure* is preferable to the term *division*, which has negative connotations.
- (2) The Order is made up of people (brothers), not structures, and it seems necessary to highlight this fact. This was clear in the text from 1968 to 1982: *The Order is made up of brothers, who, as far as governance is concerned, are grouped together into ...*,

- (3) The term “circumscription” includes all groupings.
- (4) The specification is necessary to avoid legitimising the situation of isolated brothers. There is no such person as a brother incorporated into the Order who is not at the same time *incorporated into a circumscription and assigned to a local fraternity*.
- (5) After the initial statement (§ 1), the circumscriptions of the Order are listed. It is proposed to eliminate the circumscription hitherto known as a vice-province, absorbing it into the single entity of the *custody*. Ordinarily the Order is divided into provinces and custodies. Later on (cf. 121,4) it will be established that the General Minister has the faculty to establish *other forms of circumscription*, according to particular needs that may arise. The Complementary Code already makes explicit provision for delegations (8/25) and the possibility of federations (cf. 8/3).
- (6) Together with the recognised authority of governance enjoyed by the General Minister, the addition in the final sentence brings out the life-giving communion that ought to exist among all the circumscriptions of the Order. This addition was made to prevent an excessive growth of autonomy and, conversely, to educate the brothers towards a sense of inter-dependence, in conformity with the spirit of St. Francis. The proposed text aims to bring out the description of the Order as a “*network of fraternities*” (John Corriveau: “*The Capuchin Order is structured as a network of provincial fraternities*”), underlining the need for strong bonds of close reciprocity and inter-dependence, knitting and binding the brothers together in such a way that they converge into a single living body (*Our Fraternity... is an integral part of the Mystical Body of Christ*: Const. 109,1), in a reality that is completed by the presence of all, and excludes none. This is the foundational charism of the Order, as Benedict XVI reminded us in the General Audience of 13th January, 2010: “Lesser Brothers and Preachers travelled with missionary zeal from one place to another. Consequently they organized themselves differently in comparison with the majority of monastic Orders. Instead of the traditional autonomy that every monastery enjoyed, they gave greater importance to the Order as such and to the Superior General, as well as to the structure of the Provinces. Thus the Mendicants were more available to the needs of the universal Church. Their flexibility enabled them to send out the most suitable friars on specific missions and the Mendicant Orders reached North Africa, the Middle East and Northern Europe. With this adaptability, their missionary dynamism was renewed”.
- (7) For the reason given above (note n. 2), we have modified the current text, which speaks of *brothers and local fraternities*, (cf. gathered *in local fraternities*), which is more correct and precise. The personal aspect must always be protected, because it has priority over structures, and this applies to all circumscriptions.
- (8) The general principle of territoriality is expressed here, avoiding the need to repeat it when the different circumscriptions are described.
- (9) Because of complex situations that can be constantly evolving in different parts of the world, it seemed wise and reasonable to foresee the possibility of other groupings in the Order, which could be further described in the Complementary Code. Thus, the General Minister is given the faculty (already allowed for in the specific case of art.111,2 of the current Constitutions) to make other arrangements, in a case of particular need.
- (10) This is a declaration that a circumscription, once canonically established, receives from the law itself the recognition of its juridical personality.
- (11) The purpose here is to indicate the pre-eminence of the Province, as the *principal* structure in the Order, to which all others tend. Cf. Const. 23,5.
- (12) We propose a brief description of a province: as the *principal* structure in the Order, and considering the functions entrusted to it by the Constitutions, the Province must be able to show a certain effectiveness, at least in the main areas: the life and activity of the brothers, the vocations apostolate, formation, governance, openness to the needs of the Order and the Church, economic resources. These areas are explained in more detail in the Complementary Code (8/2).
- (13) Foreseeing the suppression of the vice-provinces, we propose a simplification of the Constitutions at this point by putting together paragraphs 3 and 4 to form a new text. We insert the principle of *implantation of the Order*, which the current Constitutions give as the main purpose and characteristic of a Vice-province.
- (14) As things are today, a number of provincial custodies are no longer “missions” in the traditional sense (*custodia seu missio*), meaning areas of first evangelisation. Most are at the service of the newer Churches, or of Churches with an ancient tradition but which are in need of new evangelisation. The proposed formulation, while not excluding the missionary dimension in the strict sense, enables one to apply the term “missionary” to any work of evangelisation, while stressing availability for service to the Churches.
- (15) Because of the proposed division of the Order into Provinces and *Custodies*, it is preferable to call the superior of a custody by the single title of *Custos*. We therefore propose that the title *regular superior*, traditionally applied to the superior of a missionary circumscription (*Mission*), be no longer used.
- (16) We propose to replace the term *definitior* with *councillor*, *definitory* with *council*, because they are more easily understandable. If the proposal is accepted, it will be applied to all texts in the Constitutions.
- (17) We see no need to repeat *or house*, because it is already anticipated in §3.
- (18) The provision for a fraternity or house to be directly dependent on a Conference is already a fact in some cases,

but it is not regulated. The question of the nature and competence of Conferences of Major Superiors will be further studied in the rest of chapter VIII (cf. Article IV, n. 132).

(19) Reference to a vice-province deleted, in line with what was said previously. The same observation applies in similar cases throughout the rest of the chapter.

N. 122 (111-112)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>111 1. It is the responsibility of the general minister with the consent of the definitory, after consulting the Conference of Major Superiors of the region, as well as the provincial ministers and councils concerned, to decide on the establishment, union, division, alteration, or suppression of provinces, observing the requirements of law.</p>	<p>Current text (111,1) with changes 1. It is the responsibility of the General Minister with the consent of <i>his council</i>, after consulting the Conference of Major Superiors and <i>the major superiors</i> and <i>respective councils</i> concerned, to decide on the establishment, union, division, alteration, or suppression of <i>circumscriptions</i>, observing the requirements of law.</p>	
<p>2. In the same way, because of particular circumstances, the general minister with the consent of the definitory can establish provinces consisting of a number of regions. Such provinces may have special statutes approved by the general minister with the consent of the definitory. Should there ever be a difficulty in applying the Constitutions in these [statutes], the general minister with the definitory can advise concerning the more appropriate way of proceeding.</p>	<p><i>Deleted</i> (1)</p>	
<p>3. For the brothers to constitute a new province, there must be a sufficient number of them according to local conditions. The new province must be able to contribute to both an apostolic witness and the life of the Order, and have a certain geographical unity.</p>		<p>8/2 Current text (Cost 111,3) with changes and additions 1. In Order to establish a new province, it is necessary that, taking the local situation into account, <i>the group of brothers and fraternities be such as to express the vitality of our charism, both internally and in its openness to the needs of the Order and the Church. It should give solid grounds for hope that it can responsibly assume the obligations of vocations promotion, formation and the apostolate. It should show a certain possibility of sustaining effectively and with sufficient autonomy the needs of the brothers in their life and activities, including the economic aspect. Particular care should be taken to verify: the brothers' sense of belonging to the fraternity at its different levels; the possibility of providing leadership in governance</i></p>

		<i>and an effective turnover of office-holders; the capacity to take on missionary commitments, and geographical and linguistic unity, as far as possible (2).</i>
4. The general minister with the consent of the definitory, after consulting the brothers in perpetual vows, appoints the major superiors and definitors of new jurisdictions and determines the composition of the first chapter.		Current text (Const 111,4) with changes 2. The General Minister with the consent of the <i>council</i> , after consulting the <i>perpetually-professed</i> brothers <i>concerned</i> , appoints the major superiors and <i>councillors</i> of new circumscriptions and determines the composition of the first chapter.
		8/3 New text 1. <i>In particular circumstances the General Minister, observing the conditions for altering the circumscriptions (3), may establish a federation of several provinces, with its own statute (4).</i>
		New text 2. <i>A federation entails unity of governance: a single provincial minister, with his council, who has jurisdiction over all the federated provinces.</i>
		New text 3. <i>Once a federation of provinces is established by decree, the General Minister, in accordance with the Constitutions and with the Complementary Code, appoints the provincial minister and councillors and determines the composition of the first federal chapter, which must be held within one year of the establishment of the federation.</i>
112 1. It is the responsibility of the provincial minister, with the consent of the definitory, after obtaining the consent of the chapter, to establish houses canonically, observing the prescriptions of law.	Current text (112,1) with changes 1. It is the responsibility of the provincial minister, with the consent of the <i>council</i> , after obtaining the consent of the chapter, to establish houses canonically, observing the prescriptions of law. However, if the case is urgent and the vote of the chapter is lacking, the consent of the General Minister and his <i>council</i> is also required.	
2. It pertains to the general minister, however, with the consent of the definitory, to suppress houses, either at the request of the interested party, observing strictly the prescriptions of the first paragraph concerning the required consent, or for some other cause, observing the norms of law.	Current text (112,2) with change 2. It pertains to the General Minister, however, with the consent of the <i>council</i> , to suppress houses, either at the request of the interested party, or for some other cause, observing the norms of law.	

Explanatory notes

- (1) The norms contained in this number are included in the foregoing number. 121,4, which is more complete.
- (2) The fundamental principles for the establishment of a new province are presented.
- (3) Conditions for altering a circumscription are given in n. 122,1 (consent of the council, observance of legal requirements, consultation with the Conference of major superiors, as well as with the major superiors and councils involved).
- (3) We propose the new possibility of a *federation*, as described in the following paragraphs. The new structure is justified by the present situation in the Order, especially in its traditional regions, where it is not always possible to suppress ancient circumscriptions that are historic foundations. There may be historical, cultural, traditional or heritage reasons in favour of establishing a federation.

N. 123 (113)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>113 1. Each brother, incorporated into the Order by profession, is a member of the province, vice-province or custody for which the major superior has accepted his profession.</p>	<p>Current text (113,1) with changes 1. Each brother, incorporated into the Order by profession, becomes a member of the <i>circumscription</i> for which the major superior admitted him to profession.</p>	
<p>2. Seniority in the fraternity is determined by temporary profession.</p>	<p>Current text (113,1) 2. Seniority in the fraternity is determined by temporary profession.</p>	
<p>3. It pertains to the general minister, after consulting his definitory, considering the good of the whole Order and the needs of the provinces or individual brothers, and listening to the respective provincial ministers and their councils, to send brothers from one province to another either temporarily or, with the consent of the definitory, permanently.</p>	<p>Current text (113,3) with changes and additions 3. It pertains to the General Minister, considering the good of the whole Order and the needs of the <i>circumscriptions</i> or individual brothers, and having consulted the respective <i>major superiors</i> and their councils, to <i>assign</i> brothers to another <i>circumscription</i>, either temporarily <i>after consulting the council</i>, or, if permanently, <i>with its consent</i>. (1) <i>In this case the regulations given in the Complementary Code must also be observed.</i></p>	
<p>4. Let the provincial superiors, in a spirit of fraternal collaboration, be willing to meet such needs by sending brothers temporarily into another province.</p>	<p>Current text (113,4) 4. Let the provincial superiors, in a spirit of fraternal collaboration, be willing to meet such needs by sending brothers temporarily to another province.</p>	<p>8/4 Current text (Ord. 8/2.1) 1. When it is necessary to meet the needs of a circumscription temporarily, i.e. not beyond three years, the major superiors have the faculty to send their own brothers without needing to have recourse to the General Minister. This time-limit does not apply to service rendered to a circumscription that depends on one's own. For other services which are expected to last beyond three years, or which one wishes to extend after the three years have elapsed, letters of obedience must be requested from the General Minister.</p>

<p>5. Each brother exercises his right to vote only in one circumscription of the Order, unless he has it in another territory as well by reason of office. Those who have been sent into another circumscription by reason of service exercise rights only in that circumscription and not in their own. But brothers who for another reason dwell in a different circumscription exercise rights only in their own circumscription.</p>	<p>Current text (113,5) with changes and additions 5. Each brother exercises his right to vote in only one circumscription of the Order, unless he has it in another territory as well <i>for other (2) reasons</i>. Those who have been sent to another circumscription by reason of service exercise voting rights in that circumscription <i>in accordance with the Complementary Code</i>, and not in their own. But brothers who for another reason dwell in a different circumscription exercise rights only in their own circumscription.</p>	<p>Current text (Ord. 8/2.2) with additions 2. The right to vote mentioned in <i>n.124,5</i> of the Constitutions is no longer exercised in one's own circumscription, but in the circumscription in which the service is rendered, <i>unless determined otherwise in the statute of a delegation</i>. However, voting rights are exercised after the end of the first year of service.</p>
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Explanatory notes

(1) Cf. the text of 8/4 of the Complementary Code, corresponding to the current Ordinance 8/2.1.

(2) Voting rights do not derive simply from an *office*; for example, being a delegate is not an office.

ARTICLE II
Superiors and offices in general

N. 124 (114)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>114 1. Under the supreme authority of the Supreme Pontiff, these are the superiors of the Order with Ordinary power in their own right: the general minister in the whole Order, the provincial minister in his province, and the local superior or guardian in his fraternity.</p>	<p>Current text (114,1) 1. Under the supreme authority of the Supreme Pontiff, these are the superiors of the Order with Ordinary power in their own right: the General Minister in the whole Order, the provincial minister in his province, and the local superior or guardian in his fraternity.</p>	
<p>2. There are also superiors with Ordinary but vicarious power: the general vicar, the provincial vicar, the vice provincial, the superiors regular, and the local vicar.</p>	<p>Current text (114,2) with additions 2. Superiors with Ordinary vicarious power are: the General Vicar, the provincial vicar, the <i>custos</i> and the local vicar</p>	
<p>3. All the above, with the exception of the guardian and his vicar, are major superiors.</p>	<p>Current text (114,3) 3. All the above, with the exception of the guardian and his vicar, are major superiors.</p>	
<p>4. Whatever is said in these Constitutions concerning the provincial ministers applies equally to the vice provincials and superiors regulars, unless the contrary is evident by nature of the case or from the text and context.</p>	<p>Current text (114,4) with changes and additions 4. Whatever is said in these Constitutions <i>and in the Complementary Code (1)</i> concerning the provincial ministers applies equally to the <i>custodes</i>, unless the contrary is evident <i>from the delegations received (2)</i>, from the nature of the case or from the text and context.</p>	

	<p>New text</p> <p>5. <i>Ordinary vicarious power does not extend to those matters which proper law recognises as being exclusive to the superior who is the office-holder, unless an explicit delegation has been given for those matters. If the provincial minister is prevented from exercising his office, or if it is vacant, the custos should refer to the provincial vicar (3).</i></p>	
		<p>8/5</p> <p>Current text (Ord. 8/3) with one change</p> <p>In exceptional cases the major superiors are not bound to convoke their council when it is only a case of consulting them. Outside of a meeting, they may consult the council <i>in a suitable way</i>. The consultation and the decision taken by the superior must be noted in the council minutes. The same may be done in the case of consulting a group of people.</p>

Explanatory notes

- (1) The addition *and in the Complementary code*, is made to avoid having to repeat the same text in the Complementary code itself.
- (2) The power of a vicar is also determined by the specific delegations.
- (3) The introduction of this new text in § 5 is more detailed about how vicarious power is exercised: the custos, if the provincial's office is vacant, assumes the faculties of the provincial minister, except those which the law reserves to the provincial. In such a case, the custos will refer to the provincial vicar for any specific delegations.

N. 125 (115)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
115 1. Offices in the Order are conferred by either election or appointment.	Current text (115,1) 1. Offices in the Order are conferred by either election or appointment.	
2. In conferring offices let the brothers proceed with a proper intention, simply and canonically.	Current text (115,2) 2. In conferring offices the brothers are to proceed with a right intention, simply and canonically.	
3. For the good of the Order an appropriate preliminary consultation concerning those to be elected may be made, but it must be made in case of those to be appointed.	Current text (115,3) 3. For the good of the Order an appropriate preliminary consultation concerning those to be elected may be made, but it is obligatory in case of those to be appointed.	
4. If an election requires confirmation, it must be requested within eight days of available time.	Current text (115,4) 4. If an election requires confirmation, it must be requested within eight days of available time.	
5. Let the brothers, as true minors, not be ambitious for office; but if they are called to it by the confi-	Current text (115,5) 5. Let the brothers, as true minors, not be ambitious for office; but if	

<p>dence of the brothers, they should not obstinately refuse to serve as a superior or in some other office.</p>	<p>they are called to it by the confidence of the brothers, they should not obstinately refuse to serve as a superior or in some other office.</p>	
<p>6. Since we are an Order of brothers, according to the will of Saint Francis and the genuine Capuchin tradition, any brother in perpetual vows may assume any office or position excepting those that flow from Sacred Orders; if there is a question of superiors, a minimum of three years after perpetual profession is required for validity.</p>	<p>Current text (115,6) 6. Since we are an Order of brothers, according to the will of Saint Francis and the genuine Capuchin tradition, any brother in perpetual vows may assume any office or position excepting those that flow from Sacred Orders. In the case of superiors, a minimum of three years after perpetual profession is required for validity.</p>	
<p>7. When offices are conferred by election, postulation is admissible in our Order. Acceptance of the postulation, and dispensation from the impediment, are within the competence of the authority having the faculty to confirm the election, namely, of the General Minister or the provincial minister. Authority to accept the postulation of the General Minister rests with the Holy See.</p>	<p>Current text (115,7) 7. When offices are conferred by election, postulation is admissible in our Order. Acceptance of the postulation, and dispensation from the impediment, are within the competence of the authority having the faculty to confirm the election, namely, of the General Minister or the provincial minister. Authority to accept the postulation of the General Minister rests with the Holy See.</p>	<p>8/6 Current text (Ord. 8,4) The postulation is valid only if the candidate, in the first scrutiny, obtains two thirds of the votes of the vocals present. Otherwise, further postulations are excluded, and the voting resumes in the normal way, starting with the first scrutiny.</p>
	<p>New text (1) 8. <i>It pertains to the General Minister to accept the act of resignation from the offices of provincial, provincial vicar, provincial councillor, general custos and their respective councillors. It is for the provincial minister to accept the resignation of the custos and the respective councillors.</i></p>	
	<p>New text 9. <i>For removal from offices which brothers exercise within or outside the Order, the law of the Church and the Complementary Code are to be observed. Removal from office, even when it has no penal character, does not entail the granting of a new office.</i></p>	<p>8/7 New text 1. <i>A major superior may be removed by the General Minister, with the consent of his council, for a serious reason, including repeated neglect or violation of his duties even after an admonition, or for maladministration.</i></p>
		<p>New text 2. <i>The local superior, as also the delegate, can be removed by the provincial minister, with the consent of his council, for a just cause, that is, if the good of the fraternity, whether local or provincial, or of the particular Church, requires it.</i></p>

Explanatory notes

(1) The new texts in n. 125, §§ 8-9 and in the Complementary Code 8/7, 1-2 are suggested because it is appropriate, in the context of the conferral of offices, to mention at least a summary of laws relating to resignation and removal from office. In this way a gap in the current text is filled.

ARTICLE III

The general governance of the Order

N. 126 (116)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>116</p> <p>1. The general chapter, the eminent sign of the union and solidarity of the entire Fraternity gathered together as one by means of its representatives, enjoys supreme authority in the Order.</p>	<p>Current text (116,1) with addition</p> <p>The General Chapter, an eminent sign <i>and instrument</i> (1) of the union and solidarity of the entire Fraternity gathered together as one by means of its representatives, enjoys supreme authority in the Order.</p>	<p>8/8 New text</p> <p>1. <i>The chapter, at all levels, is a temporary collegial body which exercises its own authority in accordance with the competence accorded to it by the Constitutions</i> (2).</p>
<p>2. The Ordinary chapter, announced and convoked by the general minister, is celebrated every six years near to the solemnity of Pentecost, unless the general minister, with the consent of the definitory, judges another time of the year more appropriate.</p>	<p>Current text (116,2) with changes</p> <p>2. The Ordinary chapter is announced and convoked by the General Minister, and <i>is to be held with the frequency indicated in the Complementary Code</i> (3).</p>	<p>Current text (Const. 116,2)</p> <p>2. The Ordinary General Chapter is held every six years (4).</p>
<p>3. For special reasons, in addition to the Ordinary chapter, the general minister with the consent of the definitory may convoke an extraordinary chapter in which matters of great importance to the life and activity of the Order are discussed.</p>	<p>Current text (116,3) with one change</p> <p>3. For special reasons, in addition to the Ordinary chapter, the General Minister, with the consent of the <i>council</i>, may convoke an extraordinary chapter (5).</p>	
<p>4. The following have active voice in a general chapter, whether Ordinary or extraordinary: the general minister, the general definitors, the former general minister from the immediately preceding six-year term, provincial ministers, the general secretary, the general procurator, vice provincials, and the delegates of the provinces and custodies.</p>	<p>Current text (116,4) with changes and additions</p> <p>4. The following have active voice in a general chapter, whether Ordinary or extraordinary: the General Minister, <i>the General Vicar</i>, the general <i>councillors</i>, the <i>last</i> General Minister <i>in the sexennium immediately following the expiry of his term of office</i> (6), provincial ministers, <i>the custodes</i>, the general secretary, the general procurator, the delegates of the provinces <i>and other brothers in accordance with the norms of the Complementary Code</i>.</p>	<p>8/9</p> <p>Current text (Ord. 8/6) with changes</p> <p><i>The General Minister, bearing in mind the need for certain specializations and representation, having consulted the presidents of the Conferences and with the consent of his Council, may appoint other brothers as members of the general chapter, but not more than ten.</i></p>
<p>5. The provincial vicar goes to the chapter when the provincial minister is prevented by a grave cause known to the general minister or if the office of the provincial minister is vacant.</p>	<p>5. The provincial vicar goes to the chapter when the provincial minister is prevented by a grave cause known to the general minister, or if the office of the provincial minister is vacant.</p> <p><i>But if the custos is prevented, or his office is vacant, the first councillor attends the chapter</i> (7).</p>	
<p>(*)The General Chapter of 2000 de-</p>		<p>8/10</p>

<p>cided to transfer n. 117 to the <i>General Chapter Ordinances</i>, and making some changes to this number. (cf. <i>Ordinances</i>, n. 8/7).</p>		<p>Current text (Ord. 8/7.1-2) with changes 1. Once the general chapter has been announced, in every province all the brothers shall elect one delegate to the general chapter and his substitute <i>for every hundred</i> (8) brothers.</p>
		<p>Current text (Ord. 8/7.3) with changes 2. This election is conducted in the manner determined by the provincial chapter, and the results <i>are published</i> at least three months before the general chapter. (9)</p>

Explanatory notes

- (1) The General Chapter cannot be considered only as a *sign* of unity, but is certainly also an *instrument* of it.
- (2) We thought it appropriate to add a general note about the authority of chapters, whether general or in other circumstances: chapters have their own authority, which is exercised within precise time limits. The scope of its competence is determined by the Constitutions. In this way, it is easier to understand the exact meaning of the expression *supreme authority* with reference to the General Chapter (n. 126,1) or *primary authority* with reference to the provincial chapter (n. 133,1).
- (3) For some time now the General Chapter is no longer held around the solemnity of Pentecost and we do not know whether and when this custom will be resumed. It goes back to a long tradition dating from the first days of the Franciscan Order. There seems to be little sense in maintaining an obsolete precept.
- (4) We propose to transfer to the Complementary Code the number relating to how frequently the chapter should be held. It may be subject to change, and in those cases there is no need to modify the Constitutions.
- (5) We delete the last phrase in this number of the current Constitutions *in which matters of great importance to the life and activity of the Order are discussed*, because this happens not only in an extraordinary chapter; every chapter, whether ordinary or extraordinary, deals with matters of great importance to the Order. With regard to the matters dealt with at a chapter, cf. n. 127,1.
- (6) The text has been reformulated to make it clearer and more logical: it is talking about the *last* General Minister, and about the sexennium immediately following the *expiry of his term of office*.
- (7) The proposal fills a lacuna by providing for a case in which the custos is impeded.
- (8) There is a change in the number of the professed, to make the representation more proportional.
- (9) The current text in Ordinance 8/7.4 is deleted: “*In a custody that has at least thirty professed friars, the perpetually professed friars shall elect a delegate for the General Chapter. If, on the other hand, the custody has fewer than thirty professed friars they shall be counted among the members of the province on which they depend and the perpetually professed friars shall participate in the province’s election of a delegate*”. It is no longer required, given the new arrangements for custodies.

N. 127 (118-119)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>119 1. Matters pertaining to the preserving and renewing of our life as well as the development of apostolic activity are to be treated in the chapter.</p>	<p>Current text (119,1-2 + 116,3) with changes 1. The Chapter, both Ordinary and extraordinary, should deal with <i>everything relating to fidelity to our sound traditions, to the renewal of our form of life, the development of apostolic activity, and to problems of great importance for the Order</i>(1), about which the brothers are to be consulted in ad-</p>	<p>8/11 New text 1. <i>Preparation for the general chapter and the consultation of the brothers about the agenda shall take place in accordance with the norms for conducting a general chapter.</i></p>

	<i>vance.</i>	
2. Let all the brothers be consulted in an appropriate manner concerning the questions put before a chapter and their suggestions sent to the general minister.	<i>cf. §1</i>	
3. All the capitulars should be informed in good time about the agenda drawn up for consideration by the general minister with the consent of his definitory. But the chapter itself decides the questions to be treated.		Current text (119,3) with changes 2. The General Minister, with the consent of his <i>council</i> , <i>prepares a list of items to be dealt with, and informs</i> all the capitulars in good time. But the chapter itself decides the questions to be treated.
118 1. In an Ordinary general chapter the general minister, who acquires full authority over the entire Order and all the brothers, is to be elected first, as prescribed by the 'Rite of Celebrating the General Chapter'.	Current text (118,1) 2. In an Ordinary general chapter the General Minister, who acquires full authority over the entire Order and all the brothers, is to be elected first, as prescribed by the 'Procedures for Conducting the General Chapter'.	
2. The outgoing general minister may be immediately elected but only for another six years.		8/12 Current text (118,2) with changes 1. <i>At the general chapter</i> the outgoing General Minister may be <i>re-elected immediately once only, without prejudice to the provisions of n. 125,7.</i>
		Current text (Ord. 8/8) 2. If the General Minister is elected from outside the chapter, the chapter is suspended until the new General Minister arrives at the chapter.
3. Eight general definitors are then elected, as decreed in the 'Rite of Celebrating the General Chapter', of whom four at the most can be from those elected in the previous chapter.	Current text (118,3) with changes and additions 3. Next, as decreed in the 'Procedures for Conducting the General Chapter', the <i>General Vicar is elected, (2); then</i> the general <i>councillors according to the number determined in the Complementary Code</i> ; of these, one half at the most can be from those elected in the previous chapter.	8/13 Current text (Ord. 8/9) with changes <i>There are eight general councillors.</i>
4. The outgoing general minister has only active voice in the election of the general definitors.		8/14 Current text (Const n. 118.4) with additions 1. In the election <i>of the General Vicar</i> and of the general <i>councillors</i> the outgoing General Minister has only active voice.
5. The general vicar is elected from the eight definitors and, thereby, becomes first definitor.	<i>Deleted.</i>	
		Current text (Ord. 8/10) with changes and additions 2. <i>A general Vicar and general council-</i>

		<i>lors</i> elected from outside the chapter are ipso facto members of the chapter.
6. The duty of the general definitors is to assist the general minister in the government of the entire Order according to the norms of the Constitutions and the statutes of the general curia as approved by the general chapter.	New text 4. <i>The council of the General Minister is made up of the General Vicar and the general councillors</i> (3).	8/15 Current text (Const. 118,6) with changes <i>The General Vicar, who is the first co-worker of the General Minister, and the general councillors</i> (4) assist the General Minister in the government of the entire Order according to the norms of the Constitutions and the statutes of the general curia as approved by the general chapter.
		8/16 Current text (Ord 8/11) with additions and changes During their term of office, <i>the General Vicar</i> and the <i>general councillors</i> , do not have passive voice in the election of the major superiors <i>of the circumscriptions</i> .

Explanatory notes

- (1) The current text has been slightly modified to adapt it to the description of the aims of a General Chapter, and restoring what was omitted from the present n. 116, 3.
- (2) The meaning of this proposal has already been explained in the Introduction. In this way the choice made at the 1968 Chapter is completed. Previously – according to the Constitutions at the time – the General Procurator, chosen from the elected council, acted as Vicar General. In 1968 the Order decided that the General Procurator should be appointed by the General Minister and his council, but at the same time it introduced into our legislation the figure of the General Vicar in the strict sense, in accordance with the law of the Church. What we are now proposing corresponds to the practice of many religious Institutes and is very appropriate for an Order the size of ours, spread as it is in all parts of the world. This necessarily means that the General Minister, because of the ministry assigned to him, must be frequently absent from the General Curia. Therefore it becomes equally necessary that the General Vicar be able to deputise for him effectively in taking care of the Order's business, without being bound by service to a specific area. We therefore propose to distinguish the General Minister and the General Vicar, who are major superiors, from the other councillors, who are not. From this fact derives the proposed change in the law, and the consequent adjustment in other numbers concerned with the subject.
- (3) Although elected separately from councillors, the General Vicar is *a member of the General Minister's council*.
- (4) For a better description of the role of the General Vicar, it seems appropriate to insert here what is already codified in the Statute of the General Curia (art 9, § 2), in particular by stating that he is the first collaborator of the General Minister.

N. 128 (120)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
120 1. The general minister and his definitors should reside in Rome.	Current text (120,1) with changes and additions 1. The General Minister, his <i>councillors</i> and <i>the General Vicar</i> are to reside in Rome.	.
2. When the general minister is absent from Rome, the general vicar takes his place.	Current text (120,2) 2. When the General Minister is absent from Rome, the General	

	Vicar takes his place.	
3. However the confirmation of provincial ministers, appointment of general visitators and other matters that he has reserved to himself are reserved to the general minister.	Current text (120,3) 3. However, the confirmation of provincial ministers, the appointment of general visitators and other matters that he has reserved to himself are reserved to the General Minister.	
4. Should the general minister be impeded from exercising his office, the general vicar is to administer the Order in all things. He should report important matters to the general minister at an appropriate time.	Current text (120,4) 4. Should the General Minister be impeded from exercising his office, the General Vicar is to administer the Order in all things. He should report important matters to the general minister at an appropriate time.	
5. If the general vicar is also impeded, the next definator according to the Order of election takes the place of the general minister.	Current text (120,5) with changes and additions 5. (1). If the General Vicar is also impeded, the <i>councillor who is senior by profession</i> (1) takes the place of the General Minister. <i>By that very fact, the councillor is delegated for all acts of governance, and for the faculties proper to the General Minister. However, within a maximum time limit of two months, he is bound to have recourse to the Holy See.</i> (2).	

Explanatory notes

(1) The seniority of a councillor is no longer determined by chance, but by seniority of profession.

(2) Since a councillor is not a major superior, he does not have the power to perform acts of governance, but needs delegation to perform them. So, in this specific case, the law itself (in this paragraph) provides the necessary delegations, but for the limited time indicated.

N. 129 (121)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
121 1. If the office of the general minister becomes vacant, the general vicar succeeds him and notifies the Apostolic See of the vacancy as soon as possible.	Current text (121,1) 1. If the office of the General Minister becomes vacant, the General Vicar succeeds him and notifies the Apostolic See of the vacancy as soon as possible.	
2. Should the office of the general vicar become vacant more than a year before the chapter, after the election of an eighth definator, a general vicar is to be elected by the general minister and his definity by secret ballot from among the defintors.	Current text (121,2) with changes and additions 2. Should the office of the General Vicar become vacant more than a year before the chapter, the General Minister and his <i>council, collegially</i> , are to elect a <i>new</i> General Vicar by secret ballot. <i>They then elect another</i>	

	<i>councillor.</i> <i>But if the office becomes vacant less than one year before the general chapter, the new General Vicar is elected in the prescribed manner, but without the election of a new councillor (1).</i>	
3. Should the office of a general definator become vacant more than a year before the chapter, the general minister and the definity, after hearing the Conference of Major Superiors of the capitular group to which the definator being replaced belonged, elect another who takes his place as the last definator.	Current text (121,3) with changes and additions. 3. Should the office of a general <i>councillor</i> become vacant more than a year before the chapter, the General Minister and <i>his council</i> , after consulting the Conference of Major Superiors of the capitular group to which the <i>councillor</i> belonged, elect another <i>collegially</i> (2).	

Explanatory notes

- (1) Given the distinction between the General Vicar and the councillors, the manner of electing a new General Vicar and a new councillor in the case of vacancy also varies. The addition of *collegially* is intended to express unequivocally that in this case, and in others where the same expression recurs, the General Minister is also part of the electing college. Conversely, in actions for which the General Minister needs the consent of his council, only the councillors and the General Vicar (who together form the General Minister's council; cf. above n. 127, 4) may vote (Cf. *PCCI-CAI, Response II* (14 May 1985), in *AAS*(1985) 771.
- (2) In this case too, with the full number of councillors restored, seniority will depend on religious profession.

N. 130 (122)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
122 1. The following assist the general minister and his definity in carrying out their responsibilities: the general secretary, the general procurator concerned with matters dealing with the Holy See, the general postulator responsible for dealing with the Holy See concerning the causes of the canonization of the Servants of God, the general assistant of the Secular Franciscan Order, the general secretary for the promotion of the missions, and other officials sufficient in number for expediting matters.	Current text (122,1) with changes and additions 1. The following assist the General Minister and his <i>council</i> in carrying out their responsibilities: the general secretary, the general procurator concerned with matters dealing with the Holy See, <i>the general bursar, the general secretary for formation</i> (1) the general postulator, responsible for <i>processing Causes</i> with the <i>Congregation of Saints</i> , the general assistant of the Secular Franciscan Order, the general secretary for mission promotion, and other officials sufficient in number to deal with the business.	
2. All of these are chosen and appointed by the general minister from different regions with the consent of the definity.	Current text (122,2) with changes 2. All these are chosen by the General Minister from the different <i>circumscriptions</i> with the consent of the <i>council</i> .	

<p>3. The responsibilities and duties of the general curia are assigned and carried out according to the norms of the special statute approved by the general chapter.</p>	<p>Current text (122,3) with changes and additions 3. The responsibilities and duties of the general curia are assigned and carried out accordance with the Statute of the General Curia and with any instructions that may be given by the General Minister (2).</p>	<p>8/17 New text (cf. Ord. 8/12) <i>The Statute for the General Curia is approved by the General Chapter. It should describe the responsibilities of each office and the specific nature of this local fraternity, which is immediately subject to the General Minister and is of fundamental importance for the life of the Order. (3).</i></p>
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Explanatory notes

- (1) While it is impossible to indicate all the offices of the General Curia, it does seem necessary to add to those listed in the current text at least *the general bursar* and the *secretary general secretary for formation*, because the importance of these offices is constantly growing.
- (2) Here the Statute for the General Curia is explicitly mentioned, with the details being given in n. 8/17 of the Complementary code. The expression, *and any instructions that may be given by the General Minister* is added because it is reasonable to assume that practical needs and developments in the Order may well call for the Curia to adapt in ways that are not always, or not entirely, provided for in the Statute. On this point, cf. how much the current Ordinances in 8/12 entrust to the General Minister and his council: “The Statute of the General Curia, regarding articles 1-18, was drafted and approved by the General Chapter. As far as the drafting of the remaining articles is concerned, the General Chapter gave the necessary authority to the general council”²¹.
- (3) The text proposed for the Complementary Code should be linked to that of § 1. In it, the intention is to express the need for the General Curia to be a fraternity whose purpose is not only to transact official business, but to live and develop precisely as a Capuchin fraternity.

ARTICLE IV
Collaboration in the Order
The Plenary Council and the Conferences of Major Superiors (1)

N. 131 (123)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>123 1. A Plenary Council of the Order is intended to express the vital exchange between the whole Fraternity and its central government, to promote an awareness of the co-responsibility and cooperation of all the brothers, and to foster unity and harmony in the pluriformity of the Order.</p>	<p>Current text (123.1) 1. A Plenary Council of the Order is intended to express the vital exchange between the whole Fraternity and its central government, to promote an awareness of the co-responsibility and cooperation of all the brothers, and to foster the Order’s unity and communion in pluriformity.</p>	
	<p>Current text (123,5) with changes 2. <i>The Plenary Council is a forum for reflection and consultation, which studies</i></p>	

²¹ *Analecta OFMCap* 86 (1970) 188. The Statute of the General Curia, after the General Chapter had drafted the part that was entrusted to it, was published on January 20, 1971 [cf. *Analecta OFMCap* 87 (1971) 8-20] and then subsequently revised and republished on October 23, 1993 (cf. *Analecta OFMCap* 109 (1993) 342-354]. The latest edition of the General Curia Statute goes back to 2003, and its preface states: “In response to the changed circumstances and the experience acquired since then, the General Minister, with the consent of his Council, undertook a revision of the Statute of the General Curia approved on October 23, 1993. The text, carefully drafted in every detail, is now published. Articles 1-18, which concern the constitutional norms of the Order and its governance, approved by the General Chapter of 1970, substantially reproduce the text of the 1971 Statute; in 1993, they were updated with a number of references to the universal law of the Church and to the Order’s own law (cf. Ordinances of the General Chapters, 2002 edition, 8/12 and note 29)”.

	<i>questions of particular importance and offers its own collaboration in the governance of the Order, in the formation of the brothers and in their apostolic mission for the growth of the Order and its renewal in accordance with the times (2).</i>	
2. The members of the Council are the general minister, the general definitors and delegates of the Conference of Major Superiors according to a certain proportion established by the general minister with the consent of the definitory.	Current text (123,2) with additions and changes 3. The members of the Council are the General Minister, <i>the General Vicar</i> , the general <i>councillors</i> and the delegates of the Conference of Major Superiors according to a certain proportion established by the General Minister with the consent of <i>his council</i> .	
3. The delegates need not be selected from among the members of the Conferences of Major Superiors. 4. The manner of their selection is determined by each Conference.	New text (cf. current text 123,3-4) 4. <i>Each Conference determines the manner of choosing the delegates from among its own circumscriptions. Delegates need not necessarily be major superiors of the Conference itself (3).</i>	
		8/18 New text <i>Other brothers may attend the sessions of the Plenary Council as auditors, after the necessary permission has been obtained from the General Minister (4).</i>
5. The responsibility of the Plenary Council is: to foster communication between the general definitory and the Conferences and among the Conferences themselves; to establish a center for reflection; to examine the problems of greater importance and propose solutions to the Order; to offer to the general minister and definitors through constructive collaboration assistance in bringing about an updated renewal of the Order; and to care for the growth of the Order and the formation of the brothers.	<i>Cf. n. 131,2</i>	
6. The Plenary Council has a consultative vote. In Order that the value of its reflections as a directive norm may not be lost, it is appropriate that the general minister, by his judgement and with consent of the definitory, confirm with his authority the	New text (cf. current text n. 123,6) 5. <i>The conclusions of the Plenary Council are to be communicated to all the brothers. The General Minister, according to his judgement and with the consent of the council, may confirm them by his authority and draw from them practical consequences for the Order. (5).</i>	

acts of the Council and propose them to the Order.		
7. As a general rule, a Plenary Council of the Order may be convoked by the general minister, with the consent of the definitory, once or twice in a six-year term. 8. The Plenary Council is governed by its own statute that is drawn up by itself and approved by the general minister and his definitory.	Current text (123,7-8) with changes 6. The General Minister with the consent of his <i>council may convoke a Plenary Council, which is conducted in accordance with regulations</i> approved by the General Minister <i>with the consent of his council</i> (6).	

Explanatory notes

- (1) We propose to introduce into chapter VIII a new article on *Collaboration in the Order*, and to transfer to it all the references to the Plenary Council (at present placed in article III on the *general governance of the Order*; cf. current text n. 123) and to the Conferences (currently in article IV on *governance of the provinces*; cf. current text n. 131). In fact, both the Plenary Council and the Conferences of major superiors have collaborative structures in the Order.
- (2) We anticipate here a text of the Constitutions which is currently placed in §5. It seems more logical to describe the Plenary Council's competence after having described its purpose in §1. The text has been partially reformulated and expanded, and also simplified to avoid repetitions from other paragraphs (specifically §§1 and 6)
- (3) Text reformulated for greater clarity.
- (4) This proposed text is intended to encourage some other brothers who may be interested to attend the Plenary Council. However, attendance would need the permission of the General Minister, to avoid situations that might adversely affect the actual meeting of the Plenary Council itself.
- (5) The current text of the Constitutions is rather confused; we therefore propose a new formulation to provide for: a) the conclusions of the PCO to be communicated to all the brothers; b) the General Minister to confirm them with his authority and use them as a source of possible operational guidelines for the whole Order.
- (6) §§ 7 and 8 of the current text have been merged and made more flexible, to avoid obliging the General Minister to convoke a Plenary Council during his six-year term. Besides, in the current text the adverb *ordinarily* already shows an understanding that there may be reasons for not holding a plenary council during the sexennium.

N. 132 (131)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
131 1. Conferences consisting of provincial ministers, vice provincials and superiors regular of a particular region or territory, are established by the general minister, with the consent of the definitory, to promote collaboration among provinces, vice-provinces and custodies, with Episcopal Conferences, with Unions of Major Superiors of Men and Women, to deal with current questions, and to preserve uniformity of administration, as far as this is possible. 2. These Conferences have their own statutes approved by the gen-	New text with parts of the current text (131,2). 1. The Conferences (1) <i>of major superiors are an intermediary level of governance between the authority of the General Minister and that of the individual major superiors. They operate in accordance with the General Statute for Conferences and the statutes proper to each of them, which are approved by the General Minister with the consent of the council. They meet at least once a year.</i>	8/19 New text <i>The presidents of the Conferences, called together by the General Minister, meet with him and his council at least every two years</i> (2).

<p>eral minister with the consent of the definitory and meet at least once a year.</p>		
	<p>Current text (131,1) with changes and additions 2. Conferences, consisting of the provincial ministers <i>and custodes</i> of a particular territory, are established by the General Minister, with the consent of the <i>council</i>.</p>	<p>8/20 New text <i>Meetings of the Conferences are attended by the representatives of delegations and of the houses of presence in the territory. General councillors delegated by the General Minister also attend the meetings by right. All of the afore-mentioned do not have the right to vote (3).</i></p>
	<p>Current text (131,1) with changes and additions 3. The purpose of the Conferences is <i>to foster the responsibility of each major superior for the Order</i>; to promote collaboration by the <i>circumscriptions</i> among themselves <i>and with other ecclesiastical entities, especially those analogous to religious</i>; and to ensure, as far as possible, <i>unity of action and in the apostolate in their territory</i> (4).</p>	
	<p>New text 4. <i>Each Conference, according to the general statutes and its own, elects a president, his council and a secretary. The president has delegated power from the General Minister, which he exercises in accordance with particular law or, in special cases, with the specific delegations he has received</i> (5).</p>	
<p>3. It is within their competence to carry out the duties entrusted to them by the Constitutions, by their own statutes and by the general minister, and to provide for the common good of the Order in their territory, as well as to promulgate, for their territories, special norms. In Order to take effect, these norms must be approved by the respective councils and by the general minister with the consent of his definitory.</p>	<p>Current text (131,3) with changes and additions 5. <i>In Order to carry out the duties entrusted to them by the Constitutions, by the statutes and by the General Minister, and to provide for the common good of the Order [...], the Conferences may propose special norms for the brothers and circumscriptions in their territory. In Order to take effect, these norms must be approved by the president of the Conference with the consent of his council in matters for which he has been delegated by the General Minister. Otherwise they must be approved by the General Minister with the consent of his council</i> (6).</p>	
<p>4. In Order to foster solidarity between the brothers of our Order living in a particular continent, let major superiors take care that the brothers, by united efforts, pursue updated forms of Franciscan witness that transcend the boundaries of their own nations or political areas to renew Christian life and</p>	<p>Current text (131,4) with changes 6. The major superiors <i>and their councils should gladly work together actively with the Conference for greater co-ordination in the introduction of updated forms of Franciscan witness and formation, to renew the life of faith, and to promote peace, justice and respect for creation</i> (7).</p>	

promote peace, justice and tranquillity.		
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Explanatory notes

- (1) Because of the importance the Conferences of Major Superiors have assumed in recent years in the Church and in the Order, we propose a new structuring of the current text of the Constitutions, to show: a) what are Conferences of Major Superiors; b) how they are set up; c) what is their purpose; d) how they function. The current text, in n. 132,3, is not totally accurate when it says that the Conferences can *promulgate special norms*. This could give rise to a certain ambiguity and confusion. In reality, since at present the Conferences do not enjoy the power of governance, they cannot establish any norms, whether special or not (they can, if necessary, suggest or propose.... But not establish). This is why the Proposals for Revision do not define Conferences as *structures of governance*, but as *intermediary levels of governance*. They must act in accordance with the *General Statute for Conferences of OFM.Cap Major Superiors*²² and with each Conference's own statute, as provided for in the *General Statute* (cf. n. 2). All the Statutes of individual Conferences have to be approved by the General Minister with the consent of his council; the individual Statutes may contain specific delegations relating to governance. Only in the area of the delegations envisaged in the Statute or, in particular cases, for specific delegations by the General Minister (cf. § 5), will the Conferences, and on their behalf the president and his council, enjoy the power of governance (cf. § 4: new text). In this way, on the one hand the prudential attitude remains unaltered, by which the conferences are considered as structures for *collaboration and communion*. On the other hand, the possibility remains that the conferences may take on a more incisive role in some aspects of the Order's life, especially those related to the Conference, and be more effective because they are closer to the areas concerned and can interpret more accurately the different situations and needs. The resulting norms ought to be sufficient to ensure that the specific needs of each conference are covered.
- (2) Our *General Statute for Conferences* already encourages meetings of the conference presidents with members of different conferences (cf. n. 6,1), but at the same time it says: "The General Minister with the consent of his council shall summon the conference presidents to meet together, when there are questions of major importance to the Order to be tackled and to organise and plan the General Chapter" (n. 4.6). In fact, according to the General Chapter Procedures, the General Minister calls a meeting of the conference presidents two years before the General Chapter in order to begin preparations. Furthermore, in the last two sexennia the conference presidents have been summoned more than once, and that meetings proved extremely beneficial both to the general government and to the circumscriptions of the Order. Therefore, the new addition now placed in the Complementary Code does no more than codify a practice that is proving more and more useful in the life of the Order.
- (3) The new text in the Complementary Code corresponds to what is already current practice. We point out that the representatives of the delegations and of the houses of presence, as well as delegates of the General Minister, do not have the right to vote, since none are members of the Conference.
- (4) The aims of the conference are explicitly stated: to foster collaboration among the circumscriptions, and to encourage openness and shared responsibility among the provincial ministers in relation to the whole Order. The explicit reference to *episcopal conferences* and *Unions of major superiors* is deleted, because these do not coincide with the areas of the world comprised by our conferences. However, the need to be attentive to the local Church and to various ecclesial and religious bodies remains unaltered. Lastly, we have not repeated *uniformity of governance* as one of the purposes of a conference, because its meaning is ambiguous. Instead we introduce the aspect of giving attention to *unity of action and in the apostolate*.
- (5) Cf. what is said in note 1.
- (6) Cf. note 1.
- (7) The changes introduced in the current text are intended to simplify it, and at the same time to express more strongly the need for greater effort in co-operation and solidarity among the circumscriptions of the Order. One of the purposes of the Conferences is to promote these aspects of reciprocity and interdependence in our Fraternity.

²² This Statute was approved by the 81st General Chapter in 1994. Cf. *Analecta OFM.Cap* 110 (1994) 425.427.

ARTICLE V
The governance of the provinces

N. 133 (124)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>124</p> <p>1. The provincial chapter in which the members gather in fraternal communion in the name of the whole province is the primary provincial authority.</p>	<p>Current text (124,1)</p> <p>1. The provincial chapter is the primary authority in the province. (1).</p>	
<p>2. The Ordinary provincial chapter is announced and convoked every three years by the provincial minister with permission of the general minister and his definitory. The faculty of permitting the celebration of a chapter, for a just cause, six months before or after a three year term belongs to the general minister with the consent of the definitory.</p>	<p>Current text (124,2) with changes</p> <p>2. The ordinary provincial chapter is announced and convoked by the provincial minister, after obtaining the consent of the General Minister and his <i>council</i>, and is held with the frequency indicated in the Complementary Code (2).</p>	<p>8/21</p> <p>Current text (Const 124,2) with one change</p> <p>1 The Ordinary provincial chapter is announced and convoked every three years. The General Minister has the faculty to permit the chapter, for a just cause, to be held six months before or after a three year term <i>has elapsed</i>.</p>
<p>3. An extraordinary chapter, convoked by a provincial minister with the consent of the definitory, may be held in which the principal matters concerning the life and activity of a province and its vice-province and custody are discussed.</p>	<p>Current text (124,3) with changes</p> <p>3. <i>For particular needs, as well as the Ordinary chapter</i>, the provincial minister, with the consent of <i>his council</i>, may <i>convoke</i> an extraordinary chapter, <i>which may not conduct elections</i> (3).</p>	
<p>.</p>	<p>Current text (124,3; 127,1) with changes</p> <p>4. In a provincial chapter, <i>whether ordinary or extraordinary</i>, matters relating to the life and activity of the province <i>and of the custody</i> are discussed, concerning which all the brothers are to be consulted beforehand (4).</p>	<p>Current text (127,2) with one change</p> <p>2. All the capitulars are to be informed in due time about the list of proposed questions drawn up by the provincial minister and his <i>council</i>. The chapter itself, however, decides which business is to be treated.</p>

Explanatory notes

- (1) The phrase *whose [i.e. the Chapter's] members gather in fraternal communion in the name of the whole province* has not been deleted but transferred to n. 134,2, which deals with a chapter with delegates.
- (2) The frequency of the provincial chapter is determined by the Complementary Code, as is the case with the General Chapter (cf. n. 126,2; Complementary Code 8/8.2 and explanatory note 4).
- (3) The text has been reformulated to improve it, with the addition that elections do not take place at an extraordinary chapter.
- (4) § 4 brings together two prescriptions in the current text (n. 124,3 and n. 127,1) which refer to the matters dealt with at a chapter, without making any distinction between an Ordinary and an extraordinary chapter. This avoids a num-

ber of repetitions and stresses the fact that we are dealing with a single Institution, namely the provincial chapter, which has the same competences except for elections. § 2 of n. 127 (current text) is transferred to the Complementary Code.

N. 134 (125)

Preliminary note

In this number the most important element concerns the conduct of a chapter with universal suffrage or with delegates, according to the considerations we present in the notes and in the Introduction. On the basis of the proposal made in § 2, the entire text is given a new structure.

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>125</p> <p>1. The general minister, if he presides, the provincial minister and the definitors of the province, the brothers to whom the provincial chapter shall give the right, the vice provincials, superiors regular, delegates of the province and delegates of the vice-provinces and custodies have active voice in Ordinary and extraordinary chapters, attentive to those matters prescribed in number 113,5.</p>	<p>Current text (125,1) with changes and additions</p> <p>1. The following have active voice in ordinary and extraordinary chapters: the General Minister, if he presides, the provincial minister and the provincial <i>councillors, the custodes, the perpetually professed</i> (1) <i>brothers</i> of the province and delegates <i>of the custodies, according to the criteria laid down in the Complementary Code and in the Provincial Chapter Procedures.</i></p>	
	<p>New text with elements of n. 124,1</p> <p>2. <i>A provincial chapter may be held with all the perpetually professed brothers taking part (direct suffrage) or with delegates</i> (2). <i>In a chapter of delegates the members, gathered in fraternal communion, represent the whole province.</i></p>	<p>8/22</p> <p>New text</p> <p>1. <i>In a chapter with delegates, the number of participants by right must be less than the number of delegates</i> (3).</p>
<p>2. Provinces that wish to celebrate the Chapter with direct suffrage, that is, with the participation of all the perpetually professed brothers, decide this by a majority of two-thirds of all the perpetually professed brothers. This fact is then recorded in the directory for the celebration of the chapter.</p>	<p>Current text (125,2) with additions and changes</p> <p>3. <i>Provinces with one hundred brothers or fewer conduct their chapter with direct suffrage. Provinces with more than one hundred brothers conduct a chapter with delegates.</i> (4).</p> <p>If a province <i>with more than one hundred brothers</i> wishes to conduct the Chapter with direct suffrage, or if a province <i>with one hundred or fewer brothers</i> wishes to hold a chapter with delegates, this must be decided by a majority of two-thirds of the voters in a general consultation, in which at least seventy-five percent (75%) of all the perpetually professed brothers must participate. The decision</p>	

	is then recorded in the Chapter Procedures.	
All the brothers in perpetual vows are bound to attend the chapter. Anyone prevented from attending must report the impediment to the provincial minister and his definitory who have the right of knowing and judging the matter. Only the brothers who are actually present in the chapter have the right to vote.	Current text (125,2) with changes 4. All the brothers in perpetual vows <i>who have the right to vote</i> (5) are bound to attend the chapter. Anyone prevented from attending must report the impediment to the provincial minister (6) whose responsibility it is to judge the matter. Only the brothers who are actually present in the chapter have the right to vote.	New text 2. <i>Non-capitulars in a province may attend the chapter as auditors, unless the Chapter Procedures determine otherwise.</i> (7).
		Current text (Ord. 8/14) 3. Brothers who are capitulars lose active voice if, without lawful dispensation, they are not present at the chapter for the whole time of the chapter itself, whether it is held with delegates or with direct suffrage.
3. Moreover, a vice provincial, superior regular and delegates of a vice-province and custody may participate in a provincial chapter according to the directory for the celebration of a provincial chapter. Should the superior of a vice-province or custody be impeded for a serious reason known to the provincial minister and his definitory, or his office become vacant, the first or another councillor participates in a chapter if possible.	Current text (125,3) with changes 5. Should the superior of a <i>custody</i> be unable to attend the chapter for a serious reason known to the provincial minister (8), or if his office is vacant, the first or second councillor participates in the chapter if possible.	

Explanatory notes

- (1) The insertion of *perpetually professed brothers*, not found in the current text, is necessary in the light of what is said later in §§ 2-3.
- (2) The opening lines of this number already suggest the proposed new order: a) by direct suffrage; b) with delegates. While giving both possibilities, our preference is for direct suffrage wherever it is reasonably possible, because it fosters the participation and shared responsibility of all the brothers in the life of the circumscription. Universal, or direct, suffrage as a form of chapter is closer to the sensitivities of St. Francis, who called all the brothers to chapter to discern and discuss the life of the brotherhood.
- (3) This detail in the Complementary Code may seem obvious, but it is necessary: if the number of participants by right exceeded the number of delegates, this would damage effective participation by all the brothers, even in a chapter with delegates, because it would make true delegation impossible.
- (4) The general line indicated in the current Constitutions is as follows: a) the province holds a chapter with delegates; if it wants to change to universal suffrage it must decide this by applying the entire procedure provided; b) smaller circumscriptions (a vice-province, custody) hold their chapter by universal suffrage; if they want to change to a delegate chapter they must decide this by applying the entire procedure provided.
In the revision proposed by the Commission, on the basis of the actual situation in the circumscription, the reference point is the number of brothers, and the general line becomes: a) all circumscriptions having fewer than a hundred (100) brothers will normally hold their chapter by universal suffrage, but if they wish to do so with delegates, they must decide this by applying the entire procedure provided; b) circumscriptions with over a hundred (100) bro-

thers hold their chapter with delegates; if they wish to do so with universal suffrage they must decide this by applying the entire procedure provided.

The Commission felt that *one hundred* was an appropriate “bench mark” for deciding between the two forms of provincial chapter. For Provinces with 100 brothers or fewer, it is likely that some of them (either because they are still in temporary vows, or because of age or sickness or some other impediment) will be unable to attend the chapter and that the actual participation will be around the 70/80 mark. A body of that size can work effectively and well, while a higher number would make things more difficult, even if not impossible. The Proposed Revision confirms the procedure to be followed in order to change from a delegate chapter to direct suffrage and vice versa. The legislation on this point, while it was somewhat streamlined by the General Chapter in 2000, is still demanding and tends to preclude frequent changes which, in an organisation such as ours, would be harmful. Furthermore, with the new proposal, the complexity of the norm protects the principle of participation by all the brothers.

- (5) The text is drafted on the basis of the proposals in § 2. So, it speaks of *brothers who have the right to participate in a chapter*: these can be all the perpetually professed in a direct suffrage chapter; or those who are capitulars by right, plus the delegates, if it is a chapter with delegates.
- (6) It is obviously prudent and appropriate that the judgement about a brother’s reasons for being absent should be reserved to the provincial minister alone. Should he think it appropriate or necessary, he may consult his council, but he is not bound to do so.
- (7) The current practice in several circumscriptions is merely codified in the Complementary code.
- (8) Cf. the reasons given in note (6).

N. 135 (126)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>126 1. After the announcement of a provincial chapter, all of the currently perpetually professed brothers, excepting those belonging to other vice-provinces and custodies, may elect delegates and alternates, unless all the brothers are obliged to attend the chapter.</p>	<p>Current text (126,1) with changes and additions 1. After the announcement of a provincial chapter <i>with delegates</i>, (1) all the brothers <i>who are</i> perpetually professed <i>at that date</i>, (2) except those belonging to <i>the</i> custodies, <i>and those deprived of active and passive voice</i> (3), shall elect delegates and alternates.</p>	<p>8/23 Current text (Ord. 8/13) with changes <i>Brothers who have been declared unlawfully absent, and those who have submitted a request for exclaustation or for dispensation from religious vows and from the duties connected to sacred Ordination, are deprived of active and passive voice. If the request is submitted after the chapter has been convoked, they are excluded from the chapter without being substituted. In the judgement of the provincial minister, with the consent of the council, brothers who have submitted a request to be absent from the religious house may be deprived of active and passive voice (4).</i></p>
<p>2. Brothers of the vice-provinces and custodies shall elect their delegates and their alternates.</p>	<p>Current text (126,1) 2. The brothers <i>of the custodies</i> shall elect their own delegates and their alternates.</p>	
<p>3. The number of delegates whether of a province or of vice-provinces and custodies as well as the manner of electing them are determined by the provincial chapter.</p>	<p>Current text (126,1) with additions from n. 125,1 3. The provincial chapter determines <i>which brothers participate by right</i>, the number of delegates of the province <i>and of the custody</i> and the manner of electing them.</p>	

Explanatory notes

- (1) The addition is necessary because – according to the Proposed Renewal – a chapter with delegates is not the general rule, nor can the alternative form (a direct suffrage chapter) be considered as an exception to the rule.
- (2) Reference to the date is added to avoid any doubts when counting the brothers having the right to elect delegates.

- (3) The addition *and (excepting) those deprived of active and passive voice* fills a lacuna in the existing constitutional text.
- (4) The additions proposed in the Complementary Code reflect the following considerations: 1) brothers who have been declared *unlawfully absent*, or who have requested *exclusion* or *dispensation from vows or from the obligations of ordination*, have already manifested verbally or by some corresponding choice that they no longer wish to live our form of life. In such situations, it does not seem reasonable that the provincial minister with his council should be able to *grant* active or passive voice, not even in particular cases. 2) It does on the other hand seem reasonable that the provincial minister with his council should be able to *deprive* brothers of their active and passive voice if he has granted them a period of *absence from the religious house*. In practice, the reasons for granting such an indult can be of various kinds: not all have to do with difficulties with the religious or fraternal life, and therefore do not affect the rights and duties connected with active and passive voice. If on the other hand the reasons for granting the absence have to do with grave difficulties with our form of life, and may be the prelude to a variety of choices, it is reasonable to limit the right to active and passive voice, at least temporarily. The judgement is left to the provincial minister and his council because they are the people who have the best knowledge of the situation and can be more cautious in their intervention.

N. 136 (127)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
127 1. Matters relating to the life and activity of the province are discussed in a provincial chapter concerning which all the brothers may be consulted beforehand.	<i>Transferred (cf. n. 133,4)</i>	
2. All the capitulars are to be informed in due time about the list of proposed questions drawn up by the provincial minister and his definitory. The chapter itself, however, decides which business is to be treated.	<i>Transferred (cf. Ord. 8/21, 2)</i>	
3. In an Ordinary chapter, the provincial minister is elected according to the directory for celebrating a chapter as approved by the provincial chapter itself.	Current text (127,3) 1. In an ordinary chapter, the provincial minister is elected according to the directory for conducting a chapter as approved by the provincial chapter itself.	8/24 New text <i>The provincial minister and the councillors are elected for a period of three years.</i>
4. The outgoing provincial minister, if he had been elected in the previous chapter, may be elected immediately but only for another three-year term.	Current text (127,4) with changes 2. The outgoing provincial minister, if he had been elected in the previous chapter, may be elected immediately but only for another term, without prejudice to the provision in n.126,7 (1).	
5. According to the directory mentioned above, four provincial definitors are then elected, unless the general minister with the consent of the definitory decides that a larger number is more suitable; of these, only half may be from those elected in	Current text (127,5) with changes 3. According to the Procedures mentioned previously, four provincial <i>councillors</i> are then elected, unless the General Minister with the consent of <i>his council</i> decides that a larger number is more suitable; of these, only half may be from those	

the previous chapter.	elected in the previous chapter.	
6. Then the provincial vicar is elected from among the definitors and becomes the first definitor by virtue of his election.	Current text (127,6) with changes 4. Then the provincial vicar is elected from among the <i>councillors</i> and becomes the first <i>councillor</i> by virtue of his election.	
7. The outgoing provincial minister has only active voice in the election of the definitors.	Current text (127,7) with changes 5. In the election of the <i>councillors</i> the outgoing provincial minister has only active voice.	
8. The elected provincial minister exercises his office as a delegate of the general minister until his election is confirmed.	Current text (127,8) 6. The elected provincial minister exercises his office as a delegate of the General Minister until his election is confirmed.	
9. After the election or appointment of the provincial minister and definitors, the brothers continue to exercise their respective offices until other provisions are made. These norms, with the necessary modifications, also apply to vice-provinces and custodies.	Current text (127,9) with changes 7. After the election or appointment of the provincial minister and <i>councillors</i> the brothers continue to exercise their respective offices until other provisions are made. This norm, with the necessary modifications, also applies to [...]custodies.	

Nota esplicativa

(1) This refers to the case of a postulation.

N. 137 (128)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
128 1. The general minister with the consent of the definitors may appoint a provincial minister and definitors for serious reasons, after obtaining in writing the consultative vote of all the brothers in perpetual vows in the province; but this cannot be done for two consecutive three-year terms.	Current text (128,1) with changes 1. The General Minister, with the consent of the <i>council</i> , may, for serious reasons, appoint a provincial minister and <i>councillors</i> after obtaining in writing the consultative vote of all the brothers in perpetual vows in the province; but this cannot be done for two consecutive [...] <i>terms</i> . (1)	
2. After this appointment, a chapter should be celebrated at an appropriate time to deal with provincial affairs.	Current text (128,2) 2. After this appointment, a chapter is to be held at an appropriate time to deal with provincial affairs.	

Explanatory note

(1) The generic word “term” is used because – according to this Proposed Revision – the Constitutions do not specify the precise length of the term of office; that is fixed by the Complementary Code (cf. above (8/24)). But the General Chapter is free to make a different choice.

N. 138 (129)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>129</p> <p>1. It is the responsibility of the provincial vicar to help the provincial minister in whatever has been entrusted to him and, when the provincial minister is absent or impeded, to manage the affairs of the province, excepting those which the provincial minister has reserved to himself.</p>	<p>Current text (129,1)</p> <p>1. It is the responsibility of the provincial vicar to help the provincial minister in whatever has been entrusted to him and, when the provincial minister is absent or impeded, to manage the affairs of the province, excepting those which the provincial minister has reserved to himself.</p>	
<p>2. If the office of provincial minister becomes vacant, the provincial vicar is bound to have immediate recourse to the general minister and governs the province until he receives further instructions.</p>	<p>Current text (129,2)</p> <p>2. If the office of provincial minister becomes vacant, the provincial vicar is bound to have immediate recourse to the general minister and governs the province until he receives further instructions.</p>	
<p>3. Should the vacancy occur more than eighteen months before the provincial chapter, the general minister, with the consent of the definitory, after a consultative vote of all the brothers in perpetual vows, shall appoint a new minister to complete the three-year term. When it is completed, a chapter is celebrated.</p>	<p>Current text (129,3) with changes</p> <p>3. Should the vacancy occur more than eighteen months before the <i>natural expiry of the term of office</i> (1), the General Minister, with the consent of <i>his council</i>, after a consultative vote of all the brothers in perpetual vows, shall appoint a new minister <i>who governs the province until the chapter is held</i>.</p>	
<p>4. If the provincial vicar is impeded, the next definator in line exercises his office.</p>	<p>Current text (129,4) with changes and additions</p> <p>4. If the provincial vicar is impeded, the next <i>councillor</i> in order of election exercises his office <i>temporarily as a delegate of the provincial minister</i> (2).</p>	
<p>5. When the office of a provincial definator becomes vacant more than a year before the provincial chapter, the general minister, with the consent of the definitory, after hearing the provincial minister and his definitory, shall appoint another definator who then becomes the last definator.</p> <p>If the office of the provincial</p>	<p>Current text (129,5) with changes and additions</p> <p>5. When the office of a provincial <i>councillor</i> becomes vacant more than a year before the provincial chapter, the General Minister, with the consent of <i>his own council</i>, after hearing the provincial minister and his <i>council</i>, shall appoint another <i>councillor</i>, who then becomes the last <i>councillor</i>. <i>But if the office of the provincial vicar becomes vacant, the num-</i></p>	

<p>vicar becomes vacant, the provincial minister and his definitory elect by secret ballot another provincial vicar from the body of the definitory. The general minister is informed of this matter.</p>	<p><i>ber of councillors is first restored (3), after which the provincial minister and his council elect collegially by secret ballot another provincial vicar from the members of the council. The General Minister is informed of this matter.</i></p>	
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Explanatory notes

- (1) Current law provides for a three-year term of office, but the chapter can be anticipated or postponed by up to six months. In proposing this formulation we wish to indicate a sure date by which to calculate the number of months, independently of whether the chapter were either anticipated or postponed subsequently.
- (2) Since, as we have already observed, councillors do not have the power of governance, it is opportune that in the specific case of the provincial vicar being impeded, the law itself should temporarily grant the necessary powers to the councillor as the delegate of the provincial minister.
- (3) The new formulation makes the current text more explicit, and underlines the fact that the council must first be reconstituted, after which the new provincial vicar is elected.

N. 139 (130)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>130 1. The provincial secretary, as well as officials needed for business transacted in the provinciate and, if necessary, for directing other special offices, may be appointed by the provincial minister, with the consent of the definitory, from among the brothers in perpetual vows.</p>	<p>Current text (130,1) with one change 1. The provincial minister, with the consent of the <i>council</i>, shall appoint from among the brothers in perpetual vows a provincial secretary, as well as other officials needed to transact the business of the provinciate and, if necessary, to take charge of other special offices.</p>	
<p>2. The provincial secretary is subject only to the provincial minister. It is the responsibility of the provincial chapter, however, to decide whether other officials may be accountable to the provincial minister alone.</p>	<p>Current text (130,2) 2. The provincial secretary is subject only to the provincial minister. It is the responsibility of the provincial chapter, however, to decide whether other officials shall be accountable to the provincial minister alone.</p>	
<p>3. It is recommended that commissions be established in individual provinces by the provincial minister, with the consent of the definitory, to deal with special matters.</p>	<p>Current text (130,3) with changes 3. It is recommended that commissions be established in individual provinces by the provincial minister, with the consent of the <i>council</i>, to deal with special matters.</p>	

ARTICLE VI
The governance of the custodies

N. 140 (133)

Preliminary note

This number has been restructured as far as the order of the material is concerned, while respecting the substance of its content. The proposed changes, as explained in the explanatory notes, are partly a consequence of the change of vice-provinces into custodies and partly due to the harmonisation of legislation that applied to the two different circumscriptions. (Const. art. V and VI, n. 132-136), with a few further details or enrichments of the text.

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
	<p>Current text (110,3-4 e 7; 132,1) with changes</p> <p>1. A custody, among whose principal purposes is the implantation of the Order in a particular Church, is a <i>circumscription of the Order entrusted to a province or, because of special circumstances, directly to the General Minister. Custodies that depend on the General Minister have their own statute approved by the same Minister with the consent of his council. The same norms governing custodies dependent on a province are applied to them by analogy.</i> (1).</p>	
<p>133</p> <p>1. A vice provincial with two councilors governs each vice-province.</p> <p>2. It belongs to the general minister, with the consent of the definitory, and after consulting the provincial minister, to determine a larger number of councilors.</p>	<p>Current text (110,4; 133,1-2; 135,1-2) with changes</p> <p>2. Each <i>custody</i> is governed by a <i>custos</i> with <i>his council</i>. It is for the <i>provincial minister with the consent of his council to determine the number of councilors, which can vary according to need, but cannot be less than two.</i>(2) <i>The General Minister must be informed of any change in the number of councilors.</i></p>	
	<p>Current text (133,6; 136,1 and 4) with changes</p> <p>3. <i>It pertains to the custos, having first obtained the consent of the provincial minister, to announce and convoke the chapter of the custody, in which all the perpetually professed brothers have active voice, as well as the provincial minister, if he presides. As regards the brothers who are unable to attend the chapter, the same arrangements apply as for the provincial chapter.</i></p>	
<p>3. The vice provincial and councilors are elected for a three-year term, after which they can be re-elected. The vice provincial may be immediately re-elected for</p>	<p>Current text (133,3 and 5; 136,1-2; 137,1)</p> <p>4. <i>The custos and the councilors are elected by the chapter with universal suffrage, in accordance with the procedure determined by the chapter of the custody,</i></p>	<p>8/25</p> <p>New text</p> <p><i>The chapter is held every three years. The custos and his councilors are elected for the same length of time.</i></p>

only another three-year term.	<i>and they may be re-elected; but the custos may be immediately re-elected only for a second term. The length of office is indicated in the Complementary Code.</i>	
4. The vice-provincial chapter determines whether the outgoing vice provincial has passive voice in the election of councilors.	Current text (133,4; 136,3) with changes 5. <i>The outgoing custos does not have passive voice in the election of the councilors (3).</i>	
5. The vice provincial and councilors may be elected by all the brothers in perpetual profession, in the manner established by the vice-provincial chapter and after they have obtained consent of the provincial or general minister. If there is a just cause, the general minister with the consent of the definitory can permit in particular cases the election of superiors and councilors by a chapter with delegates.	<i>Cf. above § 4.</i>	
6. If the election by the chapter is done by direct suffrage, the vice provincial, with the consent of the provincial or general minister, himself convokes the chapter in which the brothers present have an active voice as well as the provincial or general minister, if they preside. Whatever is said for the provincial chapter concerning brothers prevented from participating in a chapter is valid in this instance.	Current text (133,8 and 10; 137,2) with changes 6. <i>The elected custos must be confirmed by the provincial minister. Until this confirmation, he exercises his office as the delegate of the provincial minister, who is responsible for informing the General Minister of the election.</i>	
7. When the voting takes place outside a chapter, let the votes be tallied in the vice-province itself by the vice provincial, his councilors and two brothers elected by the local chapter of the place where the tally is taken in the presence of the provincial or general minister or the respective delegate. The elections are then promulgated.	<i>Cf. above § 2.</i>	
8. The elected vice provincial exercises his office as the delegate of the provincial or general minister until the election is confirmed.	<i>Cf. below § 12 (4)</i>	
9. From the moment his elec-	<i>Cfr. above § 6</i>	

<p>tion is confirmed, the vice provincial enjoys juridical power to exercise his office with Ordinary vicarious power. At the same time, the faculties spoken of in numbers 19 and 36 of the Constitutions should be expressly conferred on him by the provincial or general minister.</p>		
<p>10. The provincial minister then informs the general minister of that election.</p>	<p>Current text (133,9; 137,3) with changes 7. From the moment his election is confirmed, the <i>custos</i> enjoys Ordinary vicarious power to exercise his office. The provincial minister must grant to the <i>custos</i>, in writing, the faculties <i>that are delegated to him, and indicate those which he reserves to himself</i> (5).</p>	
<p>11. With the permission of the provincial or general minister, the vice provincial may convoke an [extraordinary] chapter to treat various matters. It is appropriate that the provincial or general minister preside and have active voice.</p>	<p>Current text (133,11) with changes 8. With the <i>previous consent</i> of the <i>provincial minister</i>, the <i>custos</i> may convoke an <i>extraordinary</i> chapter. It is appropriate that the provincial minister <i>should also</i> preside, and <i>he has</i> active voice.</p>	
	<p>Current text (133,14; 139,3) with changes 9. The chapter of the <i>custody</i> shall prepare its own procedures and the statute of the <i>custody</i>, both of which must be approved by the provincial minister. <i>The subjects that are to be dealt with in the chapter of the custody should be agreed between the provincial minister and the custos, after consultation with the respective councils</i> (6).</p>	
<p>12. Should the vice provincial be absent or impeded, the first councillor or, if he is impeded, the next councillor in Order of election takes his place.</p>	<p>Current text(133,12; 138,1) with changes and additions 10. Should the <i>custos</i> be absent or impeded, the first councillor, or <i>after him</i> the next councillor in order of election, takes his place. <i>The provincial minister must confer the appropriate delegations on the councillor who temporarily assumes the office of custos, or, if he can, the custos does so if he has the faculty to sub-delegate</i> (7).</p>	
<p>13. Should the office of vice-provincial or councillor be vacant for whatever reason, the matter is be referred to the provincial or general minister who shall proceed as prescribed in number 129.</p>	<p>Current text (133,13; 138,2) with changes 11. If the office of councillor is vacant for whatever reason, the matter is be referred to the <i>provincial</i> minister, who shall proceed as prescribed in number 140,5.</p>	

<p>14. In the statutes drawn up by the vice-provincial chapter and approved by the general or provincial minister, other matters concerning government shall be treated. These statutes may determine, among other things, the vocals of a chapter to take charge of various matters as well as those matters that can be dealt with only with the permission of the provincial or general minister</p>		
	<p>Current text (137,4; cf. Const. 133,5-7) with changes <i>12. With permission from the General Minister, the provincial minister with the consent of his council may, for grave reasons, appoint a custos and his councillors, after having obtained a written consultative vote of the brothers of the custody. However, this cannot be done on two consecutive occasions.</i></p>	

Explanatory notes

- (1) The *general custody* replaces the general vice-province. The reference to *particular circumstances*, which may vary greatly in kind, suggests it is advisable to provide general custodies with their own statute. By analogy, all the regulations that apply to a custody dependent on a province are also applied to a general custody.
- (2) Competence is reserved to the provincial minister with his council. The number of councillors should be proportional to the number of brothers and to actual needs, but it can never be less than two.
- (3) The option that the outgoing custos should *not* have passive voice in the election of councillors is proposed in the light of some unfortunate experiences: to elect an outgoing custos as councillor brings more difficulties than advantages.
- (4) Some of the norms in nos. 133, 5-7 of the current Constitutions are no longer needed, in view of the new proposals regarding universal suffrage and with delegates; the case of elections outside a chapter is included among the grave reasons mentioned in n. 133,12, and follows the proposed rules.
- (5) There can be more delegations to be conferred than are mentioned in the current Constitutions (nos. 19 and 36), and with all the more reason now, since – according to the Proposed Revision– a *custody* comprises circumscriptions which even today are vary diverse, and for them it is reasonable to envisage a diverse range of delegations. It also seems appropriate not to specify the exact moment for conferring these delegations.
- (6) It is difficult for a statute to foresee which *problems can be dealt with only with the permission of the provincial or general minister* (Const. 113,14). It is more practical and reasonable that the provincial minister and the custos should agree among themselves about the matters to be dealt with in the chapter of the custody, having consulted their respective councils.
- (7) In this case the law does not grant the necessary delegations automatically, but the councillor receives them from the provincial or from the custos.

N. 141 (134)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>134 1. The vice provincial is to meet with his councillors at least four</p>	<p>Current text (134,1; 139,1-2) with changes 1. The <i>custos</i> is to meet with his councillors at least four times a ye-</p>	

times a year. He needs their counsel or consent in the same cases that, according to the Constitutions, the provincial minister needs the counsel or consent of his definitory.	ar. He needs their counsel or consent in the same cases where, according to the Constitutions, the provincial minister needs the counsel or consent of his <i>council</i> .	
2. Let him propose to the provincial or general minister innovations that involve burdens of greater moment for the province or vice-province.	Current text (134,2) with changes and additions 2. He should propose to the provincial minister any initiatives that involve considerable burdens for the <i>custody</i> . <i>In all cases involving the opening of new houses, changes in the use of existing houses or the transfer of formation houses, he must request the consent of the provincial minister and his council.</i> (1).	

Explanatory notes

- (1) The proposed addition makes the current text more specific, by mentioning some areas where the nature of the case requires that the lower authority should not act autonomously.

N. 142 (132)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
132 1. Among the principal goals of vice-provinces is the implantation of the Order in a particular Church to give Gospel witness to the Franciscan charism.	<i>Transferred to n.140,1 above</i>	
136 5. All those are considered members of a custody who have received letters of obedience for missionary work from the general minister, even if temporarily, as well as, all brothers affiliated to a custody by profession, even if they live elsewhere for formation or some other reason.	Current text (136,5) with changes and additions 1. All those brothers <i>belong</i> to the custody <i>who were incorporated into it, definitively or temporarily, by the competent authority, and the brothers who made profession in it</i> , even if they live elsewhere for the purpose of formation or some other reason (1).	
2. For this reason care must be taken in the vice-provinces for the vocations of inhabitants of the place. To this end that life and pastoral activity must be properly fostered which are adapted to the conditions of the region.	Current text (132,2) reworked 3. <i>In the exercise of the apostolate let the custody pay constant attention to the care of vocations. For this, together with the testimony of a coherent lifestyle, it should develop pastoral activities that are attentive to the real requirements of the people and the varying needs of the region.</i>	
3. Let a province send, as far as possible, as many religious to a vice-province committed to it as the needs of the vice-province require.	Current text (132, 3) with additions 4. The province should send to a custody committed to it as many religious as the needs of the <i>custody</i>	

	require, according to its possibilities. <i>It should also foster expressions of effective mutual collaboration and service among the brothers of different circumscriptions. (2).</i>	
4. In selecting religious to be sent or recalled, the superiors, after listening to the vice provincial and his council, should consider the specific qualifications of the brothers in relation to local conditions, the formation of the young and the apostolate exercised in the vice-province.	Current text (132,4) with changes and additions 5. In selecting religious to be sent or recalled, the <i>provincial minister</i> , after consulting <i>the custos</i> and his council, should take into account the specific qualifications of the brothers in relation to local conditions, the formation of the young and the apostolate exercised in the <i>custody</i> . <i>Similarly, the custos should also act in harmony with the superiors (3).</i>	
5. The vice provincial, with the consent of the council, considering the needs of the vice province and with the consent of the provincial and general ministers, may enter into appropriate agreements with other provinces or Conferences of Major Superiors. These agreements are to be submitted to the provincial and general minister for ratification.	Current text (132,5) with changes and additions 6. The <i>custos</i> , after consulting his council, taking the needs into account, and with the consent of the provincial minister, may enter into appropriate agreements with other provinces or Conferences of Major Superiors. These agreements are to be submitted to the provincial minister and, <i>if the case requires</i> , to the General Minister for ratification	

Explanatory notes

- (1) The proposed text refers to what is at present in force in n. 136,5, but no longer mentioning – for obvious reasons - *brothers who have received a missionary obedience from the General Minister*. As for the brothers *who were incorporated into it [the Custody] definitively or temporarily, by the competent authority*, the regulations prescribed in 8/4 of the Complementary Code should be followed (cf. Current text [Ord. 8/2.1]).
- (2) The current text is enriched by a reference to collaboration and solidarity of personnel.
- (3) The new formulation makes the current text a little more precise and completes it by reminding the custos that when inviting brothers from the province, or sending them home, or when sending brothers from the custody, he should work in harmony with the provincial minister.

DELEGATIONS

In Order to give a complete overview of the material contained in the Complementary Code, we insert here the provisions of the Ordinances regarding delegations, with some additions and specifications.

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
(cf Ord. 8/17) 1. A delegation is a temporary structure of the Order, consisting of a group of brothers and some local fraternities, dependent upon a province. Its purpose is to preserve fraternal life in a geographical area which does		8/26 Current text (Ord. 8/17.1) with changes 1. A delegation is a structure of the Order that is transitory in nature. It is made up of a group of friars <i>gathered in</i> local fraternities, and is entrusted to a province. Its purpose is to ensure fraternal life in geographical areas that lack the prerequi-

not yet have the necessary elements to become a custody or vice-province, in a place where no other circumscriptions of the Order are established.		sites for establishing a custody and/or a vice province, or where other circumscriptions of the Order are not possible.
		Current text (Ord. 8/17.2a) 2. The authority to establish a delegation, change its juridical character or suppress it rests with the General Minister with the consent of the <i>council</i> , after consultation with the Conferences of Major Superiors concerned.
		Current text (Ord. 8/17.2f) 3. A delegation has its own Statute, approved by the provincial minister with the consent of his council.
		Current text (Ord. 8/17.2b) with additions 4. A brother delegated by the provincial minister shall be placed in charge of each delegation, and he shall be assisted by two councillors. <i>It is his duty to represent the delegation, in the name of the provincial minister, in dealings with the local ecclesiastical and civil authorities, as far as this is possible.</i>
		Current text (Ord. 8/17.2c) with changes and additions 5. The delegate <i>and the two councillors are appointed</i> by the Provincial Minister <i>in accordance with the statute</i> with the consent of <i>his council</i> , after <i>previous consultation</i> with the perpetually professed friars of the delegation. <i>However, the delegate may not be reappointed for a longer time than in the case of a local superior.</i>
		Current text (Ord. 8/17.2d) with changes and additions 6. The delegate, <i>who</i> is not a major superior, <i>is to receive from the provincial minister, in writing, the necessary delegations</i> to facilitate practical, pastoral and administrative governance, and in order to encourage a certain amount of autonomy of action in the group, especially in view of <i>service to the local Church and of the implantation of the Order.</i>
		Current text (Ord. 8/17.2e) 7. Brothers of the delegation retain all the rights and duties of their respective province.
		Current text (Decision by the General Definitory, 21-6-2004)

		8. Brothers of another circumscription who are serving in the delegation exercise their voting rights in their own circumscription.
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ARTICLE VII
Governance of the local fraternity

N. 143 (140)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>140</p> <p>1. At the provincial chapter, or afterwards at an appropriate time, the provincial minister with the consent of his definitory shall form the local fraternities and appoint local superiors according to number 115,3, after consulting the brothers as much as possible and paying attention to preserving the form of our life, to fostering fraternal relationships, as well as to the special services to be done in individual houses.</p>	<p>Current text (140,1) with changes</p> <p>1. <i>After the provincial chapter (1), at an appropriate time, the provincial minister with the consent of the council, having consulted the brothers as far as possible, shall form the local fraternities and appoint a guardian and vicar in each. The brothers whom it is intended to appoint to these offices should be consulted in advance (2)</i></p>	
<p>2. The fraternities and their superiors in vice-provinces and custodies are to be established in the same way, keeping in mind their special circumstances.</p>	<p>Current text (140,2) with changes</p> <p>2. The fraternities and the <i>corresponding guardians and vicars</i> in the <i>custodies</i> are to be established in the same way, keeping in mind their special circumstances.</p>	
<p>3. Local superiors are appointed by the provincial minister with the consent of the definitory for a three-year term. They may be appointed for a second or, in case of manifest necessity, a third three-year term, even in the same house if there are just reasons.</p>		<p>8/27</p> <p>Current text (140.3) with changes</p> <p>1. <i>The guardian is appointed for one three-year term. He may be appointed for a second or, in case of manifest necessity, a third consecutive three-year term, even in the same house if there are just reasons.</i></p>
<p>4. Those who have exercised the office of local superior for six or, in case of necessity, for nine consecutive years shall remain free from such a responsibility for at least one year.</p>	<p>Current text (140,4) with changes</p> <p>3. <i>A brother who has been guardian for the maximum time allowed shall remain free of that office for at least one year.</i></p>	

	<p>Current text (Ord. 8,18) with changes</p> <p>4. In order that they might be true animators of their fraternities, <i>guardians</i> should not accept work that entails long or frequent absences from the house.</p>	
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Explanatory notes

- (1) The opening words of the § have been changed, because it is anachronistic to imagine that the new fraternities can be formed during the chapter; this now always happens after the chapter is concluded.
- (2) The obligation to consult before conferring an office is made explicit. Cf. CIC, can 625,3; *Const* 115,3; *PdR* 125,3. We propose to delete the second part of n. 140, 1, because it is very similar to n. 88, 2 of the Constitutions: “When forming fraternities in our own or in rented dwellings, ministers should consider the personalities of the brothers and the requirements of the fraternal life and the apostolate, and so help the brothers to work together”. (Cf. *PdR* n. 97,1: “In establishing fraternities, the different personalities of the brothers and the necessities of life and the apostolate should be taken into account”.

N. 144 (141)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
<p>141</p> <p>1. In each fraternity a vicar is to be appointed by the provincial minister with the consent of the definitory. He has the responsibility of assisting the superior as a councillor in governing the community and of governing the fraternity himself when [the superior] is absent or prevented or his office becomes vacant.</p>	<p>Current text (141,1) with changes and suppressions (cf. 143.1)</p> <p>1. The vicar has the responsibility of assisting the <i>guardian</i> as a councillor in governing the community, and of governing the fraternity himself when <i>the guardian</i> is absent or prevented, or if his office becomes vacant.</p>	
<p>2. In every house with at least six brothers, in addition to the vicar, who is the first councillor by law, let one or two councillors be elected by all the perpetually professed brothers. Their responsibility is to advise the local superior in spiritual and material matters.</p>	<p>Current text (141,2) with changes and additions</p> <p>2. In every house with at least six brothers, in addition to the vicar, who is the first councillor by law, <i>the local chapter is to elect a councillor from among the perpetually professed brothers. In houses with more than ten brothers, the chapter itself decides how many councillors to elect (1). The councillor’s task is to advise the guardian in spiritual and material matters.</i></p>	
<p>3. In matters of greater importance, the councillors have a deliberative vote according to the Constitutions and regional and provincial statutes.</p>	<p>Current text (141,3) with changes</p> <p>3. In matters of greater importance, according to the Constitutions and <i>the proper statutes of each circumscription, the consent of the council is required (2).</i></p>	
<p>4. When the guardian and vicar are absent or impeded, the brother designated by the norms of the provincial chapter presides</p>	<p>Current text (141,4)</p> <p>4. When the guardian and vicar are absent or impeded, the brother designated by the norms of the</p>	

over the fraternity.	provincial chapter presides over the fraternity.	
5. If the office of the local superior becomes vacant more than six months before a provincial chapter, another shall be appointed by the provincial minister with the consent of the definitory. Should the office be vacated within six months of the provincial chapter, the vicar governs the fraternity.	Current text (141,5) with changes 5. If the office of the local superior becomes vacant more than six months before <i>the natural end of the term of office</i> , the provincial minister, with the consent of the <i>council</i> , shall appoint another superior. Should the office be vacated within six months of the <i>natural end of the term of office</i> , the vicar governs the fraternity. (3)	

Explanatory notes

- (1) The text determines when other councillors can be elected.
- (2) This expresses the situation more precisely: the superior is the one who decides; the councillors do not deliberate but, depending on the case, they give their opinion or their consent.
- (3) Current text modified to avoid confusion about the date on which the term expires.

N. 145 (142)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
142 1. The local chapter consists of all the professed brothers.	Current text (142,1) 1. The local chapter consists of all the professed brothers.	
2. It is the responsibility of the local chapter, under the guidance of the guardian, to strengthen the fraternal spirit, promote an awareness of the common good among all the brothers, establish a dialogue concerning everything that regards fraternal life, especially when it touches on fostering prayer, preserving poverty, and promoting fraternal formation so that the will of God may be sought together.	Current text (142,2) with changes 2. It is the responsibility of the local chapter, under the guidance of the guardian, to strengthen the fraternal spirit, promote an awareness of the common good among all the brothers, establish a dialogue about every aspect of fraternal life, especially with regard to fostering prayer, preserving poverty, promoting <i>ongoing formation and supporting apostolic activity</i> , in a common search for the will of God (1).	
3. The local chapter is to be celebrated frequently in the course of the year and the major superiors should effectively promote and animate it at times by their own presence.	Current text (142,3) 3. The local chapter is to be held frequently in the course of the year and the major superiors should effectively promote it, occasionally animating it by their own presence.	
4. Let the superiors not only inform but also consult the brothers by suitable means about matters that should be treated in a chapter.		8/28 Current text (Const 142,4) with changes 1. Let the <i>guardians</i> not only inform but also consult the brothers by suitable means about matters that should be treated in a chapter.

5. The votations of a local chapter are consultative unless universal or particular law determines otherwise.		Current text (Const 142,5) 2. Voting in a local chapter is consultative unless universal or particular law determines otherwise.
6. Only perpetually professed brothers have the right to carry out elections and to vote regarding the admittance of brothers to profession according to the norms of the Constitution.		Current text (Const 142,6) with additions and changes 3. Only perpetually professed brothers, <i>except for the election of local councillors</i> , have the right to participate in <i>other</i> elections and to vote on the admittance of brothers to profession, in accordance with the norms of the Constitutions.

Explanatory notes

(1) The tasks of the chapter have been reformulated.

N. 146 (143) (1)

CURRENT CONSTITUTIONS	PROPOSED REVISION: CONSTITUTIONS	PROPOSED REVISION: COMPLEMENTARY CODE
143 1. In the generalate and provincialate, in the houses of the vice provincial and superior regular, as well as in each of our houses there should be an archive in which all necessary documents are preserved diligently and with confidentiality and all matters worthy of remembrance are accurately recorded by the one to whom this has been entrusted.	Current text (143,1) with changes and additions 1. In the General Curia, <i>in that of each circumscription</i> and in all our houses, there should be an archive, <i>which in principle is private, with access to it available only by permission of the competent superior. In it</i> are preserved and ordered all documents <i>that are generated and received concerning the spiritual and temporal affairs of the brothers and of our life.</i>	8/29 New text 1. <i>In the generalate and provincialate and in the residence of the custos there should in addition be a private archive, in which are carefully kept all documents that must remain confidential.</i>
2. Let there be an inventory of the documents kept in the archive.	<i>deleted</i>	
		New text 2. <i>In the management of the archives the methods and the limits prescribed by the Church and by our own law are to be observed.</i>
		New text 3. <i>The archives should be entrusted to qualified brothers who, with the permission of the major superior, may be assisted by external helpers.</i>

Explanatory note

(1) The entire number has been summarised and reformulated. We believe it is sufficient to retain a mention of the archives in the Constitutions, with the regulations more suitably transferred to the Complementary code.