

CIO CONSTITUTION AS SETTLED BY THE COURT

**CHARITABLE INCORPORATED ORGANISATION
(ASSOCIATION MODEL)**

Charities Act 2011

CONSTITUTION OF

**ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ST.
MARY OF DEBRE TSION**

Agreed by the Applicants on [date]

Registered on [date]

Charity Number [number]

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Introduction and General Principles

Article I

The Ethiopian Orthodox Tewahedo Church is an ancient church started by the Good News of the Holy Gospel brought by the Ethiopian Eunuch (Acts 8:26) in the first half of the first century (34 AD), and later established by the apostolic service of St Frumentius (Aba Selama), the first bishop of Axum and All Ethiopia. Accordingly, the Ethiopian Orthodox Tewahedo Church is an Apostolic Church which believes that the head of the Ethiopian Orthodox Tewahedo Church is the successor of the Holy Apostles, and as such is entrusted by God and the Ethiopian Orthodox Tewahedo Church to oversee it and to preside over its Holy Synod which is the highest legislative and executive authority. Accordingly the Ethiopian Orthodox Tewahedo Church is a hierarchical church.

Commented [MCQC1]: The Claimants the point that an element of tautology is involved here. However, I dealt with the then rival versions of the Introduction in paragraph 31 of my Judgment dated 2 November 2017, and accepted the Defendants' version subject to deletion of specific references to provisions of the Kale-Awadi. Having reached this decision, I consider that I should now interfere as little as possible with the version that I then accepted. Consequently, I do not propose to remove the words suggested by the Claimants. I would add that whilst an element of tautology is involved, the additional words "Good News of the" to emphasise the importance of the Gospel, make clear to an uninformed outsider what exactly is being referred to.

Article II

The head of the Ethiopian Orthodox Tewahedo Church is known as "the Patriarch of Ethiopia, Archbishop of Axum and Etchegue of the See of St Teklehaimanot". The Patriarch is elected by and presides over the Holy Synod (council of Archbishops, Bishops and Bishops) seated in Addis Ababa, Ethiopia. The Ethiopian Orthodox Tewahedo Church extends to the entire Patriarchy (See) both inside and outside of Ethiopia in accordance with the Kale Awadi.

Commented [MCQC2]: This additional sentence has, as I understand it, been added by the Defendants to their draft since the hearing on 2 November 2017. What applies to the Claimants' further suggested revisions must, in my judgment, apply to this suggested revision by the Defendants. These additional words are seen by the Claimants to be controversial, although I do note that they are derived from Art 52 of the Kale-Awadi. I consider that I should only depart from the form that I approved on 2 November 2017 if really necessary to do so. Having regard to the description already provided as to the role of the Patriarch and the more general references to the Kale Awadi in the Constitution, I do not consider the addition of this sentence to be necessary. I have revised the first sentence slightly so that it reads rather more clearly, and so that it refers to the Patriarch being elected by the Holy Synod, which I do not understand to be controversial.

Article III

The Archbishops, Bishops and Episcopes of each Diocese are members of the Holy Synod and delegated by His Holiness the Patriarch to oversee parish churches found within their Diocesan territory. The Ethiopian Orthodox Tewahedo Church of St Mary of Debre TSION, London is a branch and part of the Ethiopian Orthodox Diocese of Europe (currently North West Europe

Commented [MCQC3]: It is appropriate that these words should remain in the Constitution, particularly bearing in mind that the original Trust Deed dated 11 June 1992 made reference to the church as being a "branch" of the Mother Church in Ethiopia.

CIO CONSTITUTION AS SETTLED BY THE COURT

Diocese) operating under the **spiritual** jurisdiction of the Patriarchate Head Office in Addis Ababa, Ethiopia.

Article IV

The Ethiopian Orthodox Tewahedo Church of St Mary of Debre Tsion, London was first established in the United Kingdom in 1974 by the Holy Synod in Addis Ababa, Ethiopia as a branch of the Mother Church operating under the spiritual jurisdiction of the Patriarch of the Ethiopian Orthodox Tewahedo Church. It was established during the reign of His Imperial Majesty Emperor Haile Selassie I, by the permission of the Holy Synod of the Ethiopian Orthodox Tewahedo Church and the benediction of His Holiness Abune Thephilos, the Second Patriarch, who sent Archimandrite Aba Aregawi Welde Gebriel (later His Grace Archbishop Yohannes) to be its first Priest in Charge.

Article V

Subject to clause 25 below, the relationship between the Ethiopian Orthodox Tewahedo Church of St. Mary of Debre Tsion, London, and the Archbishop and the Diocesan Office shall be one that is consistent with the fundamental precepts of the Kale-Awadi.

1. Name

The name of the Charitable Incorporated Organisation (the "**Church**") is:

ETHIOPIAN ORTHODOX TEWAHEDO CHURCH OF ST. MARY OF DEBRE TSION

or such other working name as the Parish Administrative Council shall from time to time determine.

2. National location of principal office

2.1 The Church must have a principal office in England or Wales. The principal office of the Church is in England.

2.2 The principal office shall be at 1 St. Philip Square, Battersea, London SW8 3RT, or such other place as the Parish Administrative Council shall from time to time determine.

3. Objects

The objects of the Church (the "**Objects**") are:

3.1. to propagate the Gospel of Christ by the advancement of the Ethiopian Orthodox Tewahedo faith in accordance with the principles and regulations of the Ethiopian Orthodox Tewahedo Church; and

3.2. the advancement of education and such other charitable purpose in the United Kingdom and/or other parts of the world as the Parish Administrative Council may decide from time to time.

4. Spiritual Direction, Jurisdiction and Activities

4.1. The Church has been established by the Congregation.

Commented [MCQC4]: Despite my general reluctance to interfere with the wording that I approved in my judgment dated 2 November 2017, I am persuaded that it is appropriate to add the word "spiritual" bearing in mind what I said in that judgment about the spiritual and non-spiritual aspects of the church's governance.

Commented [MCQC5]: I consider it best to leave more detailed reference to the Fetha Negast and the Kale-Awadi to clause 25 (dealing with the status of the Constitution) and the definitions section (clause 29). That was certainly how matters were dealt with in the Art V that I approved on 2 November 2017. I agree that some finessing of this provision is required to cater for the fact that the Defendants' original Art V made reference to specific provisions of the Kale-Awadi, and also to reflect what I said in my judgment of 2 November 2017 regarding the spiritual and non-spiritual aspects of the church's governance.

Commented [MCQC6]: These Arts VI to VII are new provisions added by the Claimants going beyond the introduction that I approved in my judgment dated 2 November 2017. Whilst I recognise that some finessing of the Introduction is required in the light of the fact that specific references are not to be made to Arts 43 and 44 of the Kale Awadi, I consider that best done by the revisions that I have made to Art V above, and the revisions below made to Clause 25, which Art V is expressed to be subject.

CIO CONSTITUTION AS SETTLED BY THE COURT

4.2. The Church is part of the Diocese of North West Europe of the Ethiopian Orthodox Tewahedo Church or such Diocese as shall be determined by the Holy Synod from time to time.

4.3. The Church will carry out its activities in so far as they touch upon spiritual matters in accordance with the spiritual direction of the jurisdiction of the Patriarch and the Holy Synod save that the Parish Administrative Council shall not be required to do anything that would be inconsistent with and/or cause them to be in breach of:

- (a) this Constitution;
- (b) any trustee duty placed upon them as a result of their role as charity trustees (as defined in section 177 of the Charities Act 2011 or any statutory re-enactment or modification of that provision); or
- (c) the Charities Act 2011.

4.5 In fulfilling the Objects the Church will engage in a range of activities either on its own or with others that will vary from time to time with activities being initiated, expanded, or closed, as appropriate. The activities may include but are not restricted to:

- (a) regular public worship, prayer, Bible study, preaching and teaching in accordance with the rites of the Ethiopian Orthodox Tewahedo Church;
- (b) administration of the Holy Liturgy and other Sacraments including Baptism, Holy Matrimony etc.in accordance with the rites of the Ethiopian Orthodox Tewahedo Church which shall normally be observed at least once a week or as and when required;
- (c) evangelical and missionary activities of the Ethiopian Orthodox Tewahedo Church, locally, regionally, nationally and internationally;
- (d) the teaching, encouragement, welcome and inclusion of young people;
- (e) nurture and growth of Christian disciples;
- (f) education and training for Christian and community service;
- (g) giving and encouraging pastoral care;
- (h) supporting and encouraging charitable social action in the United Kingdom and abroad; and
- (i) encouraging relationships with and supporting members of the Ethiopian Orthodox Tewahedo Church and other Christians.

5. Powers

The Church has the power to do anything which is calculated to further its Objects or is conducive or incidental to doing so. In particular, the Church's powers include the power to:

- (a) take over either directly or as trustee the property, rights, privileges and undertaking, and to discharge the liabilities of, the charitable trust known as

Commented [MCQC7]: In my judgment dated 2 November 2017, I preferred the Defendants' version of clause 4, and I agree that the inclusion of the Claimants' clause 4.2 would involve including wording derived from the Claimants' Introduction that was before me on 2 November 2017, that I did not accept. I consider that the demarcation between spiritual and non-spiritual matters, and the consequences thereof so far as the governance of the Churches is concerned, is best dealt with in the operative provisions themselves, rather than a declaratory clause of this nature. I have made a minor amendment to clause 4.3 that I consider is the appropriate way of accommodating the Claimants' concerns..

CIO CONSTITUTION AS SETTLED BY THE COURT

"Ethiopian Orthodox Tewahedo Church St Mary of Debre Tsion" (registered charity number: 1060394) and to give such indemnities in connection with the same as may properly and reasonably be required;

- (b) borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The Church must comply as appropriate with sections 124 and 125 of the Charities Act 2011 if it wishes to mortgage land save that the Parish Administrative Council shall not exercise such power in relation to the Church Building unless they have obtained the prior consent of 75% of the Congregation at a General Assembly;
- (c) buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
- (d) sell, lease or otherwise dispose of all or any part of the property belonging to the Church save that the Parish Administrative Council shall not exercise such power in relation to the Church Building unless they have obtained the prior consent of 75% of the Congregation at a General Assembly. In exercising this power, the Church must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;
- (e) make grants or loans of money and to give guarantees in each case with or without security and upon such terms as the Parish Administrative Council may decide save that if the total amount of such grant or loan in question, in any given year of accounts exceeds 10% of the annual average income of the Church over the past 5 years, the Parish Administrative Council must consult and get the prior consent of the Congregation in a General Assembly;
- (f) set aside funds for special purposes or as reserves against future expenditure and (subject to any restrictions applicable thereto) to resort to the capital or income of any such funds for any of the Church's charitable purposes;
- (g) employ, appoint and remunerate such staff, clergy and office holders as are necessary for carrying out the work of the Church. The Church may employ or remunerate a PAC Member only to the extent that it is permitted and non-spiritual matters to do so by clause 7 and provided it complies with the conditions of that clause; and
- (h) deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the Church to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000.

6. Application of income and property

6.1 The income and property of the Church must be applied solely towards the promotion of the Objects:

- (a) a PAC Member is entitled to be reimbursed from the property of the Church or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the Church; and

CIO CONSTITUTION AS SETTLED BY THE COURT

- (b) a PAC Member may benefit from trustee indemnity insurance cover purchased at the Church's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- 6.2** None of the income or property of the Church may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any Congregational Member. This does not prevent a Congregational Member who is not also a PAC Member receiving:
- (a) a benefit from the Church as a beneficiary of the Church; and/or
 - (b) reasonable and proper remuneration for any goods or services supplied to the Church.
- 6.3** Nothing in this clause shall prevent a PAC Member or connected person receiving any benefit or payment which is authorised by clause 7.

7. Benefits and payments to PAC Members and connected persons

7.1 General provisions

No PAC Member or connected person may:

- (a) buy or receive any goods or services from the Church on terms preferential to those applicable to members of the public;
- (b) sell goods, services, or any interest in land to the Church;
- (c) be employed by, or receive any remuneration from, the Church; or
- (d) receive any other financial benefit from the Church;

unless the payment or benefit is permitted by clause 7.2, or authorised by the court or the prior written consent of the Charity Commission has been obtained. In this clause, a "financial benefit" means a benefit, direct or indirect, which is either money or has a monetary value.

7.2 Scope and powers permitting PAC Members' or connected persons' benefits

- (a) A PAC Member or connected person may receive a benefit from the Church as a Congregational Member to the same extent that other Congregational Members benefit from the activities and services of the Church.
- (b) A PAC Member or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the Church where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.
- (c) Subject to clause 7.3, a PAC Member or connected person may provide the Church with goods that are not supplied in connection with services provided to the Church by the PAC Member or connected person.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (d) A PAC Member or connected person may receive interest on money lent to the Church at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
- (e) A PAC Member or connected person may receive rent for premises let by the PAC Member or connected person to the Church. The amount of the rent and the other terms of the lease must be reasonable and proper. The PAC Member concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.
- (f) A PAC Member or connected person may take part in the normal trading and fundraising activities of the Church and benefit from the services provided by the Church and participate in the Church's activities on the same terms as the Congregation and members of the public.
- (g) Any clergy appointed by the Church who are PAC Members (including the Priest in Charge) will be entitled to be paid an agreed and reasonable remuneration or stipend out of the funds of the Church for acting in their capacity as a member of the clergy provided that this shall only be permitted if the PAC Member or any connected person who may benefit directly or indirectly from the proposed remuneration:
 - (i) declares an interest in the proposal before discussion on the matter beings;
 - (ii) absents himself (or in the case of any connected persons themselves) from any part of any meeting at which the proposal is discussed and takes no part in any discussions of it and is not counted in determining whether any such meeting is quorate; and
 - (iii) does not vote on the proposal.

Commented [MCQC8]: For the reasons given below, I consider that the Priest in Charge should be a PAC Member. Consequently, whilst these additional words are strictly unnecessary, I consider that it may assist for clarification purposes to include them .

7.3 Payment for supply of goods only – controls

The Church and the Parish Administrative Council may only rely upon the authority provided by clause 7.2(c) if each of the following conditions is satisfied:

- (a) the amount or maximum amount of the payment for the goods is set out in a written agreement between the Church and the PAC Member or connected person supplying the goods (the "Supplier");
- (b) the amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question;
- (c) the other PAC Members are satisfied that it is in the best interests of the Church to contract with the supplier rather than with someone who is not a PAC Member or connected person. In reaching that decision the PAC Members must balance the advantage of contracting with a PAC Member or connected person against the disadvantages of doing so;
- (d) the supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the Church;

CIO CONSTITUTION AS SETTLED BY THE COURT

- (e) the supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of PAC Members is present at the meeting;
- (f) the reason for their decision is recorded by the PAC Members in the minute book; and
- (g) a majority of the PAC Members then in office are not in receipt of remuneration or payments authorised by clause 6.

7.4 In clause 7.2 and clause 7.3:

- (a) The "**Church**" includes any company in which the Church:
 - (i) holds more than 50% of the shares; or
 - (ii) controls more than 50% of the voting rights attached to the shares; or
 - (iii) has the right to appoint one or more directors to the board of the company.
- (b) "**Connected person**" includes any person within the definition set out in clause 29.7 (Interpretation).

8. Conflicts of interest and conflicts of loyalty

8.1 A PAC Member must:

- (a) Declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the Church or in any transaction or arrangement entered into by the Church which has not previously been declared.
- (b) Absent himself or herself from any discussions of the PAC Members in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the Church and any personal interest (including, but not limited to any financial interest).

8.2 Any PAC Member absenting himself or herself from any discussions in accordance with clause 8.1 must not vote or be counted as part of the quorum in any decision of the PAC Members on the matter.

9. Liability of members to contribute to the assets of the Church if it is wound up

If the Church is wound up, the Congregation have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

10. Membership of the Church

10.1 Admission of new members

(a) **The Congregation**

The members of the Church shall be referred to collectively as the "**Congregation**" and individually as "**Congregational Members**".

CIO CONSTITUTION AS SETTLED BY THE COURT

(b) Eligibility

Membership of the Church is open to any individual who is baptised, has professed their full and whole hearted belief and acceptance of the Ethiopian Orthodox Tewahedo faith, is interested in furthering its purposes, and who, by applying for membership, has indicated his or her agreement to become a Congregational Member and acceptance of the duty of Congregational Members as set out in clause 10.3.

In order to be an eligible registered member of the Church, a registered member of the Church must:-

- (i) be an individual, male or female;
- (ii) be a member for at least one (1) year before being able to vote on all Church matters;
- (iii) be, if he or she is not of sound mind, represented by the Office of the Public Guardian or appropriate office pursuant to UK laws;
- (iv) be a follower of the Ethiopian Orthodox Tewahedo faith;
- (v) act in the best interest of the Church;
- (vi) demonstrate care and concern for the respect and advancement of the Ethiopian Orthodox Tewahedo faith;
- (vii) respect the present Constitution of the Church, the Act and UK laws, and additional bylaws, rules and regulations, internal guidelines and code of conduct that the Church may enact from time to time; and
- (viii) not be a member or a registered member of any other Church or any other Ethiopian Orthodox Tewahedo Church other than the Ethiopian Orthodox Tewahedo Church which is located at 1 St Philip Square, Battersea, London SW8 3RT.

For the avoidance the doubt, only members who are least 18 years or older are entitled to vote at General Assemblies in accordance with clause 11.8(b).

Commented [MCQC9]: The reference to voting eligibility being limited to those of at least 18 years old is more appropriately dealt with here, rather than as one of the conditions of membership as proposed by the Claimants. Further, it is unclear from where it appears whether the Claimants' draft seeks to make the age limit a condition of membership or voting. In any event, I can see no real objection to having non-voting members aged under 18.

(c) Admission procedure

The Parish Administrative Council:

- (i) may require applications for membership to be made in any reasonable way that they decide;
- (ii) may refuse an application for membership if they believe that it is in the best interests of the Church for them to do so;

CIO CONSTITUTION AS SETTLED BY THE COURT

- (iii) shall, if they decide to refuse an application for membership, give the applicant their reasons for doing so, within 21 days of the decision being taken, and give the applicant the opportunity to appeal against the refusal; and
- (iv) shall give fair consideration to any such appeal, and shall inform the applicant of their decision, but any decision to confirm refusal of the application for membership shall be final.

10.2 Transfer of membership

Membership of the Church cannot be transferred to anyone else.

10.3 Duty of members

It is the duty of each Congregational Member to:

- (a) exercise his or her powers as a Congregational Member in the way he or she decides in good faith would be most likely to further the purposes of the Church; and
- (b) to attend worship, participate in the activities of the Church and to act in accordance with his or her rights and obligations.

10.4 Termination of membership

- (a) Membership of the Church comes to an end if:
 - (i) the Congregational Member dies; or
 - (ii) the Congregational Member sends a notice of resignation to the Parish Administrative Council; or
 - (iii) the Congregational Member decides to leave the Church and sends notice of resignation to the Parish Administrative Council; or
 - (iv) the Congregational Member leaves the Church and becomes a member of another parish church including another Ethiopian Orthodox Tewahedo Church; or
 - (v) subject to sub-clause 10.4(b), the Parish Administrative Council decide that it is in the best interests of the Church that the Congregational Member in question should be removed from membership, and pass a resolution to that effect.
- (b) Before the Parish Administrative Council take any decision to remove someone from membership of the Church they must:
 - (i) inform the Congregational Member of the reasons why it is proposed to remove him or her from membership;
 - (ii) give the Congregational Member at least 21 clear days' notice in which to make representations to the Parish Administrative Council as to why he or she should not be removed from the Congregation;

CIO CONSTITUTION AS SETTLED BY THE COURT

- (iii) at a duly constituted meeting of the Parish Administrative Council, consider whether or not the Congregational Member should be removed from membership;
- (iv) consider at that meeting any representations which the Congregational Member makes as to why the Congregational Member should not be removed; and
- (v) allow the Congregational Member, or the Congregational Member's representative, to make those representations in person at that meeting, if the Congregational Member so chooses.

10.5 Membership fees

The Church may require Congregational Members to pay reasonable membership fees to the Church.

11. General Assemblies of the Congregation

11.1 Types of general meeting

- (a) There must be an annual general meeting ("**AGM**") of the Congregation. The first AGM must be held within 18 months of the registration of the Church, and subsequent AGMs must be held at intervals of not more than 15 months. The AGM must receive the annual statement of accounts (duly audited or examined where applicable) and the Parish Administrative Council's annual report, and must elect PAC Members as required under clause 12.5.
- (b) Other general meetings of the Congregation may be held at any time.
- (c) All general meetings of the Congregation (referred to as "**General Assemblies**") must be held in accordance with the provisions set out in clauses 11.2 to 11.9.

11.2 Calling general meetings

- (a) The Parish Administrative Council:
 - (i) must call the AGM of the Congregation in accordance with clause 11.1, and identify it as such in the notice of the meeting; and
 - (ii) may call any other General Assembly at any time.
- (b) The Parish Administrative Council must, within 21 days, call a General Assembly if:
 - (i) they receive a request to do so from at least 10% of the Congregation;
 - (ii) the request states the general nature of the business to be dealt with at the meeting, and is authenticated by the Congregational Member(s) making the request; and
 - (iii) if, at the time of any such request, there has not been any General Assembly of the registered members of the Church for more than 15

CIO CONSTITUTION AS SETTLED BY THE COURT

months, then sub-clause (b)(i) of this clause shall have effect as if 5% were substituted for 10%.

- (c) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.
- (d) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.
- (e) Any General Assembly called by the Parish Administrative Council at the request of the Congregational Member(s) must be held within 28 days from the date on which it is called.
- (f) If the Parish Administrative Council fails to comply with this obligation to call a general meeting at the request of its members, then the members who requested the meeting may themselves call a general meeting.
- (g) A general meeting called in this way must be held not more than 28 days after the date when the members first requested the meeting.
- (h) The Church must reimburse any reasonable expenses incurred by the members calling a general meeting by reason of the failure of the Parish Administrative Council to duly call the meeting, but the Church shall be entitled to be indemnified by the members of the Parish Administrative Council who were responsible for such failure.

Commented [MCQC10]: I consider it best to stick with the full description in order to ensure consistency, and bearing in mind that Parish Administrative Council is not elsewhere defined. Further, I consider it best to use lowercase for the expression "general meeting" bearing in mind the terms of clause 11.1(c).

11.3 Notice of General Assemblies

- (a) The Parish Administrative Council, or, as the case may be, members of the Church who elect to call a General Assembly, must, subject to sub-clause (e) of this clause, give at least 21 clear days' notice of any General Assembly to all members of the Church.
- (b) If it is agreed by not less than 90% of all members of the Church, any resolution may be proposed and passed at the meeting, even though the requirements of 11.3(a) have not been met. This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.
- (c) The notice of any General Assembly must:
 - (i) state the time and date of the meeting;
 - (ii) give the address at which the meeting is to take place;
 - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting;
 - (iv) if a proposal to alter the constitution of the Church is to be considered at the meeting, include the text of the proposed alteration; and
 - (v) include, with the notice for the AGM, the annual statement of accounts and the Parish Administrative Council's annual report,

CIO CONSTITUTION AS SETTLED BY THE COURT

details of persons standing for election or re-election as PAC Members, or where allowed under clause 21 (Use of electronic communication), details of where the information may be found on the Church's website.

- (d) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.
- (e) The Parish Administrative Council shall also ensure that notice of any General Assembly shall be given from the pulpit of the Church on three consecutive Sundays before the General Assembly takes place.
- (f) The proceedings of a meeting shall not be invalidated because a Congregational Member who was entitled to receive notice of the meeting did not receive it because of accidental omission by the Church.

11.4 Guests at General Assemblies

Only the Congregation shall attend a General Assembly, save that the Parish Administrative Council may invite guests to attend any General Assembly, but invited guests shall not have any right to vote at any General Assembly. Guests shall not be permitted to make any representations at the meeting unless invited to/it is agreed they do so by the Chairman.

11.5 Chairing of General Assemblies

- (a) Subject to sub-clause (b) below, the person nominated as the Chairman of the Parish Administrative Council under Clause 18.2 (chairing of meetings) shall, if present at the general meeting and willing to act, preside as chair of the meeting, failing which, the PAC Members present at the meeting shall elect a chair to preside at the meeting.
- (b) In the event of a general meeting lawfully called by the members of the Church pursuant to Clause 11.2(b), such members who are present at that general meeting shall elect a Congregational Member willing to so act to preside as chair thereat.

Commented [MCQC11]: In paragraph 39 of my judgment dated 2 November 2017, I accepted the Claimants' version of this clause in preference to the Defendants' version for the reasons therein given. Oddly, the version now proposed by the Defendants seems to more closely match that which I then preferred than the one now proposed by the Claimants. The version that I now approve is essentially that now proposed by the Defendants with some amendments to ensure consistency with other provisions.

Commented [MCQC12]: I consider that this clause requires further clarification, which I have added.

11.6 Quorum at General Assemblies

- (a) No business may be transacted at any General Assembly unless a quorum is present when the General Assembly starts.
- (b) Subject to the following provisions, the quorum for General Assemblies shall be 10% of the Congregation.
- (c) If the General Assembly has been called by or at the request of the Congregation and a quorum is not present within 15 minutes of the starting time specified in the notice of the General Assembly, the General Assembly is closed.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (d) If the General Assembly has been called in any other way and a quorum is not present within 15 minutes of the starting time specified in the notice of the General Assembly, the chair must adjourn the meeting. The date, time and place at which the General Assembly will resume must be notified to the Congregation at least seven clear days before the date on which it will resume.
- (e) If a quorum is not present within 15 minutes of the start time of the adjourned General Assembly, the Congregational Members present at the General Assembly constitute a quorum.
- (f) If at any time during the General Assembly a quorum ceases to be present, the General Assembly may discuss issues and make recommendations to the Parish Administrative Council but may not make any decisions. If decisions are required which must be made by a General Assembly, the General Assembly must be adjourned.

11.7 Taking decisions at General Assemblies

- (a) The consultation of the Congregation and the involvement of Congregational Members in decision making is an important principle within the Church. Congregational Members are encouraged to listen carefully to each other and express views that will aid decision making before reaching a decision.
- (b) Except for those decisions that must be taken in a particular way as indicated in this Constitution, the Charites Act 2011, the General Regulations or Dissolution Regulations, decisions of the Congregation may be taken as provided by sub-clause 11.7 of this Constitution.

11.8 Voting at General Assemblies

- (a) Wherever possible and where there is a clear agreement among the Congregation they may reach a decision by consensus without a vote, provided that a decision taken is clearly recorded in the minutes as a decision of the Congregation.
- (b) Each Congregational Member, **aged 18 years and older**, shall have one vote which they may use at a meeting of the Congregation after hearing about the issues and any comments or questions raised by other Congregational Members in advance of the vote.
- (c) For matters requiring a formal decision or resolution a vote shall be taken and the outcome of the vote recorded as the resolution of the Congregation.
- (d) Any decision other than one falling within clause 11.9 shall be taken by a simple majority of votes cast at the General Assembly.
- (e) A resolution put to the vote of a General Assembly shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the Congregation present in person at the General Assembly.
- (f) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such manner

Commented [MCQC13]: This should be included to ensure consistency with clause 10.1 above, and to minimise the risk of disputes arising.

CIO CONSTITUTION AS SETTLED BY THE COURT

as the chair of the General Assembly shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.

- (g) A poll may be taken:
 - (i) at the General Assembly at which it was demanded;
 - (ii) at some other time and place specified by the chair; or
 - (iii) through the use of postal or electronic communications.
- (h) In the event of equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second, or casting vote.
- (i) Any objection to the qualification of any voter must be raised at the General Assembly at which the vote is cast and the decision of the chair of the General Assembly shall be final.

11.9 Decisions that must be taken in a particular way

- (a) Any decision to remove a PAC Member must be taken in accordance with clause 14.3.
- (b) Any decision to amend this Constitution must be taken in accordance with clause 27.
- (c) Any decision to wind up or dissolve the Church must be taken in accordance with clause 28. Any decision to amalgamate or transfer the undertaking of the Church to one or more other charities must be taken in accordance with the provisions of the Charities Act 2011 and following consultation with the Holy Synod.

11.10 Adjournment of General Assemblies

The chair may with the consent of a General Assembly at which a quorum is present (and shall if so directed by the meeting) adjourn the General Assembly to another time and/or place. No business may be transacted at an adjourned General Assembly except business which could properly have been transacted at the original General Assembly.

12 Charity trustees

12.1 Functions and duties of the Parish Administrative Council and of the PAC Members as Trustees of the Church

The Parish Administrative Council shall manage the affairs of the Church and may for that purpose exercise all the powers of the Church. It is the duty of each PAC Member:

- (a) To exercise his or her powers and to perform his or her functions as a trustee of the Church in the way he or she decides in good faith would be most likely to further the purposes of the Church taking into account the basis of the Ethiopian Orthodox Tewahedo faith and the spiritual direction of the Patriarch and the Holy Synod.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (b) To exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:
- (i) any special knowledge or experience that he or she has or holds himself or herself out as having; and
 - (ii) if he or she acts as a PAC Member of the Church in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

12.2 Eligibility for trusteeship

- (a) Every PAC Member must be a natural person, must be admitted as a Congregational Member in accordance with Clause 10.1 above and must show that he or she:
- (i) attends Church services on a regular basis; and
 - (ii) participates in the Sacramental services of the Church and receives Holy Communion.
- (b) No one may be appointed as a PAC Member in any of the following cases:
- (i) if he or she is under the age of 25 years;
 - (ii) if he or she has any criminal record;
 - (iii) if he or she is member of the leadership of a political party
 - (iv) if he or she has not been a member of the church for at least one year; and
 - (v) if he or she does not have a right for the time being to reside in the UK.
- (c) No one may be appointed as a PAC Member if he or she would automatically cease to hold office under the provisions outlined in Clause 14.2(f).
- (d) No one is entitled to act as a PAC Member whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the Parish Administrative Council decide, his or her acceptance of the office of PAC Member.

Commented [MCQC14]: I have done my best to make sense of and to reconcile the respective versions of this clause. Given the central importance of Holy Communion as a sacrament, it does seem to me only right that members of the Parish Administrative Council should be communicant members of the Church, i.e. members who receive Holy Communion.

Commented [MCQC15]: I consider that there may be some difficulty with the concept of "permanent leave" to remain in the UK, and that this may be unduly restrictive. However, I do consider it reasonable that those serving as members of the Parish Administrative Council should have the right to reside in the UK for the time being in order that they carry out their functions.

I considered that the Defendants have a good point that a clean DBS will only be required for the carrying out of certain specific functions within the Church involving contact with children and/or vulnerable adults, and not more general duties as a member of the Parish Administrative Council. On this basis I do not consider it necessary to require that all members should have a clean DBS and that the question as to who ought to have a clean DBS is best dealt with by rules or by-laws or as a matter of internal management.

12.3 Number of PAC Members

- (a) The Parish Administrative Council shall comprise the following:
- (i) not less than 5 nor more than 7 PAC Members elected in accordance with clause 12.5;
 - (ii) Subject to Clause 12.9(h) below, 1 PAC Member being the person appointed pursuant to clause 12.9 to hold the office of the Priest-in-Charge; and

Commented [MCQC16]: Subject to a few tweaks, I accept the Defendants' version of clause 12.3. I accept that the Defendants' version does, once the specific references to the references to the Kale Awadi are removed, broadly reflect the version before me on 2 November 2017. As the Defendants point out, I did, at paragraph 44, say that I was satisfied that the draft proposed by the Defendants achieved a proper balance between the congregation and the church hierarchy subject to the question of how the Priest in Charge was appointed. That broadly remains my view, and for that reason I consider that I should approve this version albeit that it does place more power in the hands of the clergy than does that proposed by the Claimants.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (iii) 1 PAC Member being the person appointed pursuant to clause 12.10 to hold the office of Parish Secretary.
- (b) There must be at least 7 PAC Members. If the number falls below this minimum, the remaining PAC Member of PAC Members may act only to call a meeting of the Parish Administrative Council to seek nominations for additional PAC Members and to convene a meeting of the Congregation where elections can be made.
- (c) The maximum number of PAC Members that can be appointed is as provided in clause 12.3(a). No PAC Member appointment may be made in excess of these provisions.
- (d) The members of the Parish Administrative Council to be elected in accordance with clause 12.5 (and to whom reference is made at clause 12.3(a)(i) above) shall be elected in accordance with arrangements by the PAC so that the PAC shall include:
 - (i) no fewer than two members of the Clergy Council nominated in accordance with clause 12.6(c); and
 - (ii) no fewer than one member of the Sunday School nominated in accordance with clause 12.6(c);

Commented [MCQC17]: I assume that this should be a reference to fewer rather than more, otherwise the provision does not make a great deal of sense when read together with the proviso. I will, if necessary, entertain further submissions on this.

Commented [MCQC18]: Please see the last comment.

provided that nothing in this sub-clause shall prevent any member of the Clergy Council or the Sunday School from being nominated to the PAC in accordance with clause 12.6(b).

12.4 First PAC Members

The first PAC Members of the Church are:

- (a) [INSERT FULL NAME OF INDEPENDENT CHAIR] until the conclusion of the first General Assembly after the date on which the Church was incorporated;
- (b) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated;
- (c) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated;
- (d) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated;
- (e) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated;
- (f) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated;
- (g) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated;

Commented [MCQC19]: I do not consider the additional wording to be necessary given that the scheme/directions will provide that the Independent Chair and first PAC Members will only continue in office until the election of new PAC Members takes place at the first General Assembly. Further the scheme/directions will prescribe the role of the First PAC Members and so there is no need to repeat it here.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (h) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated; and
- (i) [INSERT FULL NAME OF PAC MEMBER] until the conclusion of the first General Assembly after the date on which the Church was incorporated.

12.5 Election of PAC Members

- (a) Apart from the first PAC Members and those PAC Members referred to in Clauses 12.3(a)(ii) and (iii) above, every elected PAC Member must be appointed by a resolution of the Congregation at a General Assembly in accordance with the procedure set out in clauses 12.6 and 12.7 of this Constitution and they shall, subject to clause 15, be appointed for term that lasts until the conclusion of the third AGM after the AGM at which they are appointed.
- (b) The Congregation may at any time decide to elect a new PAC Member, whether in place of a PAC Member who has retired or been removed in accordance with clause 14, or as an additional PAC Member, provided that the limit specified in clause 12.3(a)(i) on the maximum number of elected PAC Members would not as a result be exceeded. A person so appointed by the Congregation shall retire in accordance with the provisions of clause 12.5(a).
- (c) The Parish Administrative Council may decide to appoint a new PAC Member in place of a PAC Member who has retired or been removed in accordance with clause 14. A person so appointed by the Parish Administrative Council rather than by the Congregation shall retire at the conclusion of the AGM next following the date of his appointment.

Commented [MCQC20]: Bearing in mind that PAC Members are, apart from the Priest in Charge and the Parish Secretary, to be elected, I consider that the power to appoint additional PAC Members should, in the circumstances remain with the Congregation.

Commented [MCQC21]: However, I consider that it would be a useful expedient to provide for the Parish Administrative Council to fill vacancies until the next AGM as this additional clause proves for.

12.6 Nominations

- (a) Nominations for the role of PAC Member, other than the Priest in Charge and the Parish Secretary, shall be made to the electoral committee elected and appointed, from time to time, by the Congregation, not later than three Sundays before the meeting of the Congregation at which the election is to be held.
- (b) Nominations must be submitted in writing with the signatures of at least two Congregational Members and the consent of the candidate. No Congregational Member may nominate more candidates than there are places vacant.
- (c) Nominations for the PAC Members that are to come from the Clergy and Sunday School as set out in clause 12.3(d) shall be nominated as follows:
 - (i) Clergy: shall be nominated by the members of the Clergy Council; and
 - (ii) Sunday School: shall be nominated by the members of the Sunday School.

Commented [MCQC22]: These words should be included given my finding that the Priest in Charge and the Parish Secretary should be ex officio members of the Parish Administrative Council.

CIO CONSTITUTION AS SETTLED BY THE COURT

The process for deciding who shall be nominated by the Clergy and Sunday School members in accordance with clause 12.6(c) shall be determined by the Parish Administrative Council.

Commented [MCQC23]: in light of my finding in respect of clause 12.3, this wording should, in my view, be included.

- (d) Requests for nominations shall be made at all services on the three Sundays (or at other regular weekly meetings when the Church gathers together) immediately before that Sunday when nominations cease.
- (d) The electoral committee shall:
- (i) confirm that each individual nominated for election meets the eligibility criteria set out in clause 12.2 of this Constitution; and
 - (ii) seek confirmation from the Clergy Council and the Parish Administrative Council that any Clergy nominated for election are eligible;
 - (iii) Seek confirmation from the Sunday School and the Parish Administrative Council that any Sunday School member nominated for election is eligible;

Commented [MCQC24]: I do not consider that these additional words proposed by the Claimants should be included. They are inconsistent with clause 12(b)(iv) above.

Commented [MCQC25]: The Claimants intend that the expression "Assembly" should be used in place of "Council". However, the Claimants' definition of "Clergy Assembly", and the Defendants' definition of "Clergy Council" are very similar, and I deal with any issues in this respect when commenting on these definitions in clause 29 below.

Commented [MCQC26]: I see no good reason for excluding this sub-clause as suggested by the Claimants.

following which they shall confirm to the Congregation the names of those nominated for election not later than two Sundays before the meeting of the Congregation at which the election is to be held.

12.7 Voting method

- (a) Voting shall be by secret ballot at the meeting of the Congregation.
- (b) The Congregation shall be asked to vote for those candidates whom they believe could serve the Church well as PAC Members. They shall vote for no more candidates than there are vacancies.
- (c) Scrutineers shall be appointed by the Congregation at the General Assembly to count the votes and report in writing and in confidence to the person chairing the meeting the number of votes cast for each candidate.
- (d) The number of candidates, being not more than the number of vacancies, receiving the highest number of votes shall be declared to be elected provided that each candidate so declared has received votes from at least two-thirds of those Congregational Members present and eligible to vote .
- (e) The candidate receiving the highest number of votes shall be declared to be elected provided that each candidate so declared shall have received votes from at least two thirds of those members voting. All the names of elected candidates will be read out for the Congregation and the remaining individuals will be saved as reserves to replace PAC Members who cease to serve due to resignation, termination, death or any other reason, in which case the reserve receiving the next highest number of votes shall take that person's place for the remainder of their term of office.

12.8 Appointments of Officers

CIO CONSTITUTION AS SETTLED BY THE COURT

The Parish Administrative Council shall decide who, from among their number, should be the Vice-Chair, Treasurer and Accounting Officer of the Parish Administrative Council. The Chairman of the Parish Administrative Council shall be as provided for by Clause 18.2 below.

Commented [MCQC27]: As chairmanship of the Parish Administrative Council, and the position of Parish Secretary are dealt with elsewhere, I do not consider that this particular provision should deal with them save to draw attention to clause 18.2.

12.9 The Priest in Charge

- (a) The Church shall have a Priest in Charge who shall be a member of the Clergy Council and a person who would be eligible for membership of the Parish Administrative Council as provided for by clause 12.2 above.
- (b) The Priest in Charge shall accept the Ethiopian Orthodox Tewahedo faith and must be an active member of the Clergy of the Ethiopian Orthodox Tewahedo Church of St Mary of Debre Tsion, London.
- (c) The tasks fulfilled by the Priest in Charge will vary depending upon individual ability and gifting, but the Priest in Charge is normally expected to be involved in the activities of the Church with an emphasis on the charring of the Parish Administrative Council, and spiritual matters including the leading of worship and prayer, the teaching of the Ethiopian Orthodox Tewahedo faith and the pastoral care of individuals.
- (d) The Priest in Charge shall be appointed by the Patriarch following the process set out below:
 - i. the Clergy Council shall nominate up to three individuals from among the members of the Clergy;
 - ii. the nominations shall be put to a vote of the Congregation present and voting at a General Assembly and the name of the individual receiving the highest number of votes cast shall be submitted to the Archbishop;
 - iii. the Archbishop may review or reconsider the election if he finds irregularities. If the Archbishop accepts the Congregation's nomination as being regular, he will propose the individual with his recommendation, to the Patriarch for approval and appointment, and
 - iv. following which the appointment must be confirmed or rejected by the Patriarch, whose decision on this matter shall be final.
- (e) The Priest in Charge may be dismissed by:
 - i. a resolution passed by 75% of the Congregation present and voting at a meeting of the Congregation and a copy of such resolution shall be sent to the Archbishop of the Diocese or the Patriarch whereupon such dismissal shall take effect;
 - (ii) the Patriarch after prior consultation (either by himself or by the Archbishop of the Diocese) with the Parish Administrative Council.
- (f) The Priest in Charge shall only be permitted to stand and be elected to this role for a maximum of two consecutive terms of service.

Commented [MCQC28]: I agree with the Defendants that the additional qualifications for the Priest in Charge sought to be introduced by the Claimants are unduly onerous. I consider that a proper balance can be struck by the additional words that I have added to the end of this sub-clause (a).

Commented [MCQC29]: The inclusion of this clause would be inconsistent with my other findings as to the role of the Priest in Charge. I consider that it should therefore be deleted.

Commented [MCQC30]: It is apparent from my judgment dated 2 November 2017 at paragraph 44 that I consider that the appointment of the Priest in Charge was a spiritual matter, and a matter therefore ultimately for the appropriate church hierarchy, i.e. the patriarch, so long as there was a mechanism that involve the congregation in the way considered in my judgment. Consequently, I see no objection to the reference to the patriarch at this point. Indeed, paragraph 45 of my judgment specifically envisaged the patriarch having the final word. I accept that there may, as identified by the Claimants, be an issue if the patriarch were to veto the candidate that emerged as the Congregation's choice. However, that, seems to me, to be necessary result of the Church being a church within the Ethiopian Orthodox Tewahedo Church hierarchy, and one is to hope that such difficulties do not arise.

Commented [MCQC31]: I do not see any need to appoint an electoral committee for this purpose. This is, as I see it, a process that that could properly be overseen by the Parish Administrative Council.

Commented [MCQC32]: This wording follows that in paragraph 44 of my judgment dated 2 November 2017, and I see no good reason to revise it in the way proposed by the Claimants.

Commented [MCQC33]: Contrary to the Defendants suggestion, I did not in terms approve this particular part of clause 12.9 dealing with dismissal, although I did deal in detail with the terms of appointment where I considered that the appointment was ultimately one for the hierarchy, i.e. the Patriarch, to approve. However, it does seem to me that the Priest in Charge should command the support of both the Congregation and the Patriarch, particularly given that the Defendants contend that the Priest in Charge should play a greater role (e.g. as member and chair of the Parish Administrative Council), than the Claimants would wish. In these circumstances, I consider that the right balance between spiritual and non-spiritual matters, and the proper governance thereof is achieved if both the Congregation (by 75% majority) and the Patriarch (following consultation) should be able to dismiss the Priest in Charge. The version of clause 12.9(e) that I approve so provides.

Commented [MCQC34]: Dealt with below

CIO CONSTITUTION AS SETTLED BY THE COURT

(g) The Priest in Charge for the time being shall automatically, by virtue of holding that office, be a PAC Member as provided for by Clause 12.3(a)(ii) above but subject to Clause 12.9(h) below.

Commented [MCQC35]: the inclusion of this clause necessarily follows from what I have already provided for.

(h) If unwilling to act as a PAC Member, the Priest in Charge may:

(i) Before accepting appointment as a PAC Member, give notice in writing to the Parish Administrative Council of his unwillingness to act in that capacity.

(ii) After accepting appointment as a PAC Member, resign under the provisions contained in clause 14.

In either case, the office of ex officio PAC Member will then remain vacant until the Priest in Charge ceases to hold office.

Commented [MCQC36]: I consider that the Defendants make a good point that the role may differ as between different Priests in Charge, and there is nothing therefore objectionable in my opinion including a provision that allows the Priest in Charge to take a lesser role in matters such as chairing the Parish Administrative Council.

(i) The Priest in Charge will be entitled to be paid an agreed and reasonable remuneration or stipend out of the funds of the Church in accordance with the provisions of Clause 7.2(g) of this Constitution whether or not he is PAC Member.

12.10 Parish Secretary

(a) The Church may have a Parish Secretary who shall be a member of the Clergy and appointed by the Parish Administrative Council

Commented [MCQC37]:

Commented [MCQC38R37]: This is a role envisaged by the Kale-Awadi as being held by a clergyman – see Art 17, and also Arts 17 and 35(2) of the 2006 Byelaws. I see no good reason to depart from this in this instance.

(b) The tasks fulfilled by the Parish Secretary will vary depending upon individual ability and gifting, but the Parish Secretary is normally expected to be involved in the clerical activities of the Church with an emphasis on coordinating the Parish Office;

Commented [MCQC39]: I do not consider this to be necessary or appropriate given the ability of the Parish Administrative Council to remove the Parish Secretary, which I do not consider should be subject to appeal to the Archbishop.

(c) The Parish Secretary may be dismissed by a resolution passed by the Parish Administrative Council.

Commented [MCQC40]: I do not consider it appropriate for the Parish Secretary to have a right of appeal to the Archbishop. I consider it important that any Parish Secretary should retain the confidence of the Parish Administrative Council. If the Parish Secretary has lost that confidence, then the Parish Administrative Council should be entitled to replace the Parish Secretary.

(d) Notwithstanding that the Parish Secretary is a Parish Administrative Council Member, he is to be entitled as an office-holder to reasonable remuneration out of the funds of the Church in such sum as may be agreed by the Parish Administrative Council in accordance with Clause 7.2(g) of this Constitution.

Commented [MCQC41]: Unlike the Priest in Charge, who has a more spiritual role, I see no reason for the Parish Secretary having this sort of opt-out, which would make him less accountable.

13 out of those elected to the Parish Administrative Council. Information for new PAC Members

Commented [MCQC42]: The Ethiopian Orthodox Church does not, as I understand it, ordain women.

The Parish Administrative Council will make available to each new PAC Member, on or before his or her first appointment:

Commented [MCQC43]: I see no good reason for this provision. Some overlap with elected members of the Parish Administrative Council might well be desirable to ensure continuity. Any newly elected Parish Administrative Council could always dismiss any Parish Secretary who they reasonably considered ought to be dismissed.

- (a) A copy of this constitution and any amendments made to it.
- (b) A copy of the Church's latest trustees' annual report and statement of accounts.
- (c) A summary of key issues that have recently been under consideration by the Parish Administrative Council with sufficient background information to enable the newly appointed PAC Member to gain an understanding of the ways of

Commented [MCQC44]: I understand from the Claimants' submissions that they maintain that the Parish Secretary should be one of the elected PAC Members. However, the Claimants' drafting is somewhat unclear as to how this is to be achieved. In any event, I am not satisfied that it is necessary or appropriate the Parish Secretary should be appointed out of those elected to the Parish Administrative Council.

Commented [MCQC45]: This is dealt with at sub-clause (c) above.

CIO CONSTITUTION AS SETTLED BY THE COURT

working among the Parish Administrative Council with the intention that a newly appointed PAC Member will be helped to understand the work of the Church and their responsibilities so as to contribute positively to the Parish Administrative Council's meetings as soon as possible after their appointment.

14 Retirement and removal of PAC Members

14.1 The Priest in Charge shall cease to hold office as a PAC Member if he ceases to be the Priest-in-Charge.

14.2 A PAC Member ceases to hold office if he or she:

- (a) Retires by notifying the Church in writing (but only if enough PAC Members will remain in office when the notice of resignation takes effect to form a quorum for meetings);
- (b) Is absent without the permission of the Parish Administrative Council from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;
- (c) Dies;
- (d) In the written opinion, given to the Church, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a director and may remain so for more than three months; or
- (e) Is removed by the Congregation in accordance with clause 14.4.
- (f) Is disqualified from acting as a PAC Member by virtue of section 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision)

14.3 A PAC Member shall be removed from office if a resolution to remove that PAC Member is proposed at a General Assembly called for that purpose and properly convened in accordance with clause 11, and the resolution is passed by a two-third's majority of votes cast at the General Assembly.

14.4 A resolution to remove a PAC Member in accordance with clause 14.3 shall not take effect unless the individual concerned has been given at least 14 clear days' notice, in writing, that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written representations to the Congregation.

15 Reappointment of PAC Members

Any person who retires as a PAC Member is eligible for reappointment. A PAC Member who has served for two consecutive terms may not be reappointed for a third consecutive term but may be reappointed after an interval of at least three years.

16 Taking of decisions by the Parish Administrative Council

Any decision may be taken either:

Commented [MCQC46]: I see no reason for deleting this as apparently proposed by the Claimants. It would be undesirable for a Priest in Charge who had ceased to hold office as such, to remain as an unelected member of the Parish Administrative Council.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (a) At a meeting of the Parish Administrative Council.
- (b) By resolution in writing or electronic form agreed by all of the PAC Members, which may comprise either a single document or several documents containing the text of the resolution in like form to each of which one or more PAC Members has signified their agreement.

17. Delegation by the Parish Administrative Council

17.1 The Parish Administrative Council may delegate any of their powers or functions to a committee or committees, and, if they do, they must determine the terms and conditions on which the delegation is made. The Parish Administrative Council may at any time alter those terms and conditions, or revoke the delegation.

17.2 This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the PAC Members, but is subject to the following requirements:

- (a) A committee may consist of two or more persons, but at least one member of each committee must be a PAC Member.
- (b) The acts and proceedings of any committee must be brought to the attention of the Parish Administrative Council as a whole as soon as is reasonably practicable.
- (c) The Parish Administrative Council shall from time to time review the arrangements which they have made for the delegation of their powers.

18. Meetings and proceedings of the Parish Administrative Council

18.1 Calling meetings

- (a) Meetings of the Parish Administrative Council will be called by the PAC Chairman provided for by Clause 18,2below.
- (b) Any PAC Member can request the PAC Chairman to call a meeting of the Parish Administrative Council.
- (c) In the event that the PAC Chairman shall fail to meet any request as aforesaid to call a meeting of the Parish Administrative Council, then the PAC Members shall decide how their meetings are to be called, and what notice is required.

Commented [MCQC47]:
Commented [MCQC48R47]: The revisions to this Clause 18.1 follow-on from the way that I consider that Clause 18.2 ought to be revised as set out below.

18.2 Chairing of meetings

- (a) Provided that the office of ex officio PAC Member shall not remain vacant as provided for by Clause 12.9(h) above, then the Priest in Charge for the time being shall be the PAC Chairman. In the event that the office of ex officio PAC Member shall remain vacant as aforesaid, then the PAC Chairman shall be elected by the Parish Administrative Council to serve during that vacancy.
- (b) The PAC Chairman so nominated shall chair all meetings of the Parish Administrative Council, provided that if the PAC Chairman is unwilling or unable to preside or is not present within ten minutes after the time of the meeting, then the Vice-Chair shall chair the meeting and if the Vice-Chair is

Commented [MCQC49]: I consider that the default position ought to be that the Priest in Charge chairs the meetings of the Parish Administrative Council. Not only would this be consistent with the Kale-Awadi, but it would also be consistent with paragraph 44 of my judgment dated 2 November 2017, and by finding that provisions such as this proposed by the Defendants ought broadly to be accepted as striking the right balance, subject to the point in paragraph 45 regarding the Clergy Council. However, provision does need to be made for when the Priest in Charge is not a PA Member as provided for by clause 12.9(h).

Commented [MCQC50]: General Meetings are dealt with in clause 11.5 above, and the inclusion of these words would be inconsistent with clause 11.5(b).

CIO CONSTITUTION AS SETTLED BY THE COURT

unwilling to preside or is not present within ten minutes after the time of the meeting, then the PAC Members present may appoint one of their number to chair that meeting.

18.3 Procedure at meetings

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum is more than half of the number of PAC Members, A PAC Member shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.
- (b) PAC Members are encouraged to listen carefully to each other and express views that will aid decision making, before reaching a decision. Where there is a clear agreement they may reach a decision by consensus without a vote, provided that the decision is clearly recorded in the minutes as a decision of the PAC Members.(b)Questions arising at a meeting shall be decided by a majority of those present or participating in the meeting and eligible to vote and each such PAC Member shall have one vote.
- (c) In the case of an equality of votes, the chair shall have a second or casting vote.

18.4 Participation in meetings by electronic means

- (a) A meeting may be held by suitable electronic means agreed by the Parish Administrative Council in which each participant may communicate with all the other participants.
- (b) Any PAC Member participating at a meeting by suitable electronic means agreed by the Parish Administrative Council in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

18.5 Confidentiality

The PAC Members have an obligation (subject to any overriding legal binding requirement to the contrary) to keep confidential the affairs of the Parish Administrative Council.

19. Saving provisions

19.1 Subject to clause 19.3, all decisions of the Parish Administrative Council, or of a committee of PAC Members, shall be valid notwithstanding the participation in any vote of a PAC Member:

- (a) who was disqualified from holding office;
- (b) who had previously retired or who had been obliged by the constitution to vacate office; or

CIO CONSTITUTION AS SETTLED BY THE COURT

- (c) who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise.

19.2 If, without the vote of that PAC Member being counted in the quorum, the decision has been made by a majority of the PAC Members at a quorate meeting.

19.3 Clause 19.1 does not permit a PAC Member to keep any benefit that may be conferred upon him or her by a resolution of the Parish Administrative Council or of a committee of PAC Members if, but for Clause 19.1, the resolution would have been void, or if the PAC Member has not complied with clause 8.

20. Execution of documents

The Church shall execute documents:

- (a) by signature of at least two (2) members of the PAC assigned by PAC members for the purpose of signing, sealing and executing documents; and
- (b) by affixing the Church's seal which:
 - (i) must comply with the provisions of the General Regulations; and
 - (ii) must only be used by the authority of the Parish Administrative Council or of a committee of PAC Members duly authorised by the Parish Administrative Council.

21. Use of electronic communications

The Church will comply with the requirements of the Communications Provisions in the General Regulations and in particular:

- (a) The requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form.
- (b) Any requirements to provide information to the Charity Commission in a particular form or manner.

To the Church

Any Congregational Member or PAC Member may communicate electronically with the Church to an address specified by the Church for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the Church.

By the Church

- (i) Any Congregational Member or PAC Member, by providing the Church with his or her email address or similar, is taken to have agreed to receive communications from the Church in electronic form at that address, unless the member has indicated to the Church his or her unwillingness to receive such communications in that form.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (ii) The Parish Administrative Council may, subject to compliance with any legal requirements, by means of publication on its website:
 - (A) Provide the Congregation with the notice referred to in clause 11.3.
 - (B) Give PAC Members notice of their meetings in accordance with clause 18.1.
- (c) The Parish Administrative Council must:
 - (i) Take reasonable steps to ensure that the Congregation and PAC Members are promptly notified of the publication of any such notice or proposal.
 - (ii) Send any such notice or proposal in hard copy form to any Congregational Member or PAC Member who has not consented to receive communications in electronic form.

22. Keeping of Registers

The Church must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, registers of its Congregation and PAC Members.

23. Minutes

The Parish Administrative Council must keep minutes of all:

- (a) Appointments of officers made by the Parish Administrative Council.
- (b) Proceedings at General Assemblies.
- (c) Meetings of the Parish Administrative Council and committees of PAC Members including:
 - (i) the names of the PAC Members present at the meeting;
 - (ii) the decisions made at the meetings; and
 - (iii) where appropriate the reasons for the decisions.
- (d) Decisions made by the Parish Administrative Council otherwise than in meetings.
- (e) Each set of minutes of a General Assembly shall be approved by the Congregation attending the next General Assembly. The Congregation shall have the opportunity to review the minutes and to correct any errors of fact before a formal vote on the approval of the minutes is taken. If the minutes are approved the person chairing the General Assembly shall confirm the Congregation's acceptance of the minutes by signing and dating them as a correct record of the preceding General Assembly. Any minutes signed in this manner shall be conclusive evidence of the decisions taken at the General Assembly to which they relate.

CIO CONSTITUTION AS SETTLED BY THE COURT

24. Accounting records, accounts, annual reports and returns, register maintenance

24.1 The Parish Administrative Council must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of accounts, and to the preparation of annual reports and returns. The statements of accounts, reports and returns must be sent to the Charity Commission, regardless of the income of the Church, within 10 months of the financial year end.

24.2 The Parish Administrative Council must comply with their obligation to inform the Charity Commission within 28 days of any change in the particulars of the Church entered on the Central Register of Charities.

25. Status of Constitution and Rules

(a) This Constitution is intended in all respects to be applied and given effect to in a manner consistent with and so as to encompass the general precepts of the Fetha Nägäst and the Kale Awadi provided that if there is any inconsistency between any of the provisions of this Constitution and the provisions of the Fetha Nägäst and/or Kale-Awadi, the provisions of this Constitution shall prevail.

(b) The Parish Administrative Council may from time to time make such reasonable and proper rules or bye-laws and/or prepare a church handbook as they may deem necessary or expedient for the proper conduct and management of the Church provided that such rules, bye-laws and/or church handbook are not inconsistent with any provision of this Constitution and provided also that before any such rules, bye-laws and/or church handbook take effect they shall first be:

(i) sent to the Diocese or the Patriarchate Head Office for review and guidance (but not prior approval);

(ii) approved by the Congregation at a General Assembly held pursuant to Clause 11 above.

(c) Copies of any such rules or bylaws or church handbook currently in force must be made available to a congregational Member on request.

26. Disputes

If a dispute arises between Congregational Members about the validity or propriety of anything done by members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by using the internal church structures of the Ethiopian Orthodox Tewahedo Church in the first instance. If this is not possible, the parties to the dispute should attempt to settle matters by means of Alternative Dispute Resolution (ADR), such as mediation, before resorting to litigation.

27. Amendment of Constitution

As provided by clauses 224-227 of the Charities Act 2011:

Commented [MCQC51]: I consider that some reference to the Fetha Nagast and to the Kale-Awadi should be made at this point. This would be consistent with paragraph 29 of my judgment dated 2 November 2017. However, I consider that the Defendants are going too far with the wording that they propose. In my judgment it is sufficient if it is made clear that the Constitution should be applied and given effect in a manner consistent with and so as to encompass the general precepts of the relevant documents. This will ensure that if any ambiguity arises, it can be resolved by reference to the latter. It is, in my view, somewhat dangerous to provide for any lacuna to be filled by a strict application of the relevant documents given the uncertainty involved, and that that might result in an unintended result.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (a) Without prejudice to the jurisdiction (if any) of the Charity Commission or the Court, this Constitution can only be amended:
 - (i) by resolution agreed in writing by all the Congregation;
 - (ii) by a resolution passed by a 75% majority of votes cast at a general meeting of the members of the General Assembly; and
 - (iii) with the prior written approval of the Holy Synod.
- (b) Any alteration of clause 3, clause 28, this clause, or of any provision where the alteration would provide authorisation for any benefit to be obtained by PAC Members or Congregational Members or persons connected with them, requires the prior written consent of the Charity Commission.
- (c) No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- (d) A copy of any resolution altering the constitution, together with a copy of the Church's constitution as amended, to be sent to the Holy Synod within 15 days from the date on which the resolution is passed.
- (e) A copy of any resolution altering the constitution, together with a copy of the Church's constitution as amended, must be sent to the Charity Commission within 15 days from the date on which the resolution is passed. The amendment does not take effect until it has been recorded in the Register of Charities.

Commented [MCQC52]: I consider it undesirable to prescribe particular circumstances in which it may, or may not, be appropriate to apply to the Charity Commission or the courts. On the other hand, I can see no harm in making it abundantly clear that this provision is not intended to seek to oust the jurisdiction of the Charity Commission or the Court even if, which it cannot, that jurisdiction could be ousted.

28. Voluntary winding up or dissolution

28.1 As provided by the Dissolution Regulations, the Church may be dissolved by resolution of the congregation after consultation with the Holy Synod. Any decision by the members to wind up or dissolve the Church can only be made:

- (a) At a General Assembly called in accordance with clause 11, of which not less than 14 days' notice has been given to those eligible to attend and vote:
 - (i) by a resolution passed by a 75% majority of those voting, or
 - (ii) by a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the General Assembly; or
- (b) By a resolution agreed in writing by all of the Congregation.

28.2 Subject to the payment of all the Church's debts:

- (a) Any resolution for the winding up of the Church, or for the dissolution of the Church without winding up, may contain a provision directing how any remaining assets of the Church shall be applied.
- (b) If the resolution does not contain such a provision, the Parish Administrative Council must decide how any remaining assets of the Church shall be applied in consultation with the Holy Synod, in line with the Charities Act 2011.

CIO CONSTITUTION AS SETTLED BY THE COURT

- (c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the Church.
- 28.3** The Church must observe the requirements of the Dissolution Regulations in applying to the Charity Commission for the Church to be removed from the Register of Charities, and in particular:
- (a) The Parish Administrative Council must send with their application to the Charity Commission:
- (i) a copy of the resolution passed by the Congregation;
- (ii) a declaration by the Parish Administrative Council that any debts and other liabilities of the Church have been settled or otherwise provided for in full; and
- (iv) a statement by the Parish Administrative Council setting out the way in which any property of the Church has been or is to be applied prior to its dissolution in accordance with this constitution;
- (b) The Parish Administrative Council must ensure that a copy of the application is sent within seven days to every Congregational Member and employee of the Church, and to any PAC Member who was not privy to the application.
- 28.4** If the Church is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.

29. Interpretation

In this Constitution:

- 29.1** “**Archbishop**” means the member of the Holy Synod who governs the Archbishopric within which the Church is located.
- 29.2** “**Church Building**” means 1 St. Philip Square, Battersea, London SW8 3RT or such other building as shall be agreed from time to time by 75% of the Congregation at a General Assembly.
- 29.3** “**Clergy**” means an individual member of the clergy of the Ethiopian Orthodox Church who has been validly ordained as a Priest and/or Deacons by an Archbishop and/or Bishop; whose ordination is recognised by the Holy Synod; and satisfies the eligibility criteria required to be a Congregational Member as set out at clause 10.1(b) of this Constitution. For the avoidance of doubt, members of the Clergy must be members of the Congregation.
- 29.4** “**Clergy Council**” means the Priest in Charge and those Priests and Deacons whose membership of the Clergy Council has been approved by a resolution passed by the Congregation at a General Assembly held pursuant to Clause 11 above. However no such priest or deacon shall be eligible for membership of the Clergy Council unless he, in a paid or voluntary basis, is actively serving in the Church, is registered in the register of clergy, approved, maintained and regulated by the Parish Administrative Council and is aged 18 years old and above. Subject as aforesaid, the Clergy Council is accountable to the Parish Administrative Council.

Commented [MCQC53]: I cannot see any good reason for omitting this definition, which allows for the Congregation, by a 75% majority vote, to move to an alternative location. To

Commented [MCQC54]:

Commented [MCQC55R54]: I prefer the Defendants' definition over that of the Claimants. The Claimants' definition is somewhat repetitive and ambiguous. Bearing in mind my findings in my judgment dated 26 June 2017 as to the Church's allegiance to the Holy Synod in Addis Ababa, I consider it entirely appropriate that clergy should be limited to those whose ordination is recognised by that Holy Synod. Further, I see no need for matters such as the necessity to have a clean DBS record to be dealt with in the Constitution. That is a matter that can be dealt with by way of internal management once the Constitution is in place.

Commented [MCQC56]: In paragraph 45 of my judgment dated 2 November 2017 dealing with clause 12.9, and the appointment of the Priest in Charge, I said this: “Unfortunately, the Defendants’ draft as presently drafted, whilst providing a definition of Clergy Council, makes no provision for how that Clergy Council is to be composed or authorised. In my judgment, so long as there is some provision within the Constitution that provides for the congregation effectively to be in a position to nominate the Clergy Council, then the provision proposed provides a fair system for the identification and appointment of the Priest in Charge. Consequently, subject to this last point, I prefer the Defendants’ version of clause 12.9”. The Defendants’ version of clause 12.9 has, broadly speaking, been adopted above. In the circumstances, I consider that the definition of “Clergy Council” ought to make some provision for the latter to be nominated by the congregation. I have therefore revised this definition in order to include such provision.

CIO CONSTITUTION AS SETTLED BY THE COURT

29.5 “**Communications Provisions**” means the Communications Provisions in Part 10, Chapter 4 of the General Regulations.

29.6 “**Congregation**” means the registered individual members of the Church and the individual members of the Church are referred to as “**Congregational Members**”.

29.7 “**Connected person**” means:

- (a) a child, parent, grandchild, grandparent, brother or sister of the PAC Member;
- (b) the spouse or civil partner of the PAC Member or of any person falling within clause 29.7(a) above;
- (c) a person carrying on business in partnership with the PAC Member or with any person falling within clause 29.7(a) or clause 29.7(b) above;
- (d) an institution which is controlled:
 - (i) by the PAC Member or any connected person falling within clause 29.7(a), clause 29.7(b) or clause 29.7(c) above; or
 - (i) by two or more persons falling within clause 29.7(d)(i), when taken together;
- (e) a body corporate in which:
 - (i) the PAC Member or any connected person falling within clause 29.7(a) to clause 29.7(c) has a substantial interest; or
 - (ii) two or more persons falling within clause 29.7(e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 applies for the purposes of interpreting the terms used in this constitution.

29.8 “**Diocesan Office**” means the Office of the Archbishop.

29.9 “**Dissolution Regulations**” means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

29.10 “**Ethiopian Orthodox Tewahedo Church**” means the Mother Church in Ethiopia run by the Holy Synod in Addis Ababa and operating under the spiritual jurisdiction of the Patriarch.

Commented [MCQC57]:

29.11 “**Fetha Nägäst**” means (the Law of Kings) a legal code compiled from apostolic writings, canons of ecumenical councils and writing of early church fathers, which is accepted by the Coptic Orthodox Church and the Ethiopian Orthodox Tewahedo Church which is used to regulate ecclesiastical affairs, outlining the structure of the Ethiopian Orthodox Tewahedo Church hierarchy, administration of sacraments and such matters.

Commented [MCQC58]: As this is been referred to, it should be defined.

29.12 “**General Regulations**” means the Charitable Incorporated Organisations (General) Regulations 2012.

CIO CONSTITUTION AS SETTLED BY THE COURT

- 29.13** “**Holy Synod**” means the council of Archbishops, Bishops and Bishops which is the highest legislative and executive authority of the Ethiopian Orthodox Tewahedo Church.
- 29.14** “**Kale-Awadi**” means the general regulation, from time to time, which governs parish churches and monasteries of the Ethiopian Orthodox Tewahedo Church, and outlines the legislative and executive relationship between Parishes, Provinces, Dioceses and Patriarchate Head Office. The Kale Awadi is revised from time to time. A fourth edition was released in October 2017 in Amharic.
- 29.15** “**PAC Member**” means a charity trustee of the Church, collectively referred to as the “**Parish Administrative Council**” as provided for by Clause 12 above.
- 29.16** “**Parish Secretary**” means the individual appointed in accordance with clause 12.10.
- 29.17** “**Patriarch**” means the Patriarch of the Ethiopian Orthodox Tewahedo Church, who is nominated and appointed by the Holy Synod from time to time to chair the Holy Synod, and is based in Addis Ababa, Ethiopia, and whose official title is Patriarch of Ethiopia, Archbishop of Axum and Etchegue of the See of St Teklehaimanot.
- 29.18** A “**poll**” means a counted vote or ballot, usually (but not necessarily) in writing.
- 29.19** “**Priest in Charge**” means the Priest in Charge appointed pursuant to Clause 12.9 above.
- 29.20** “**Sunday School**” means the fellowship of children and young adults for spiritual instruction, ecclesiastical education and guidance for the Sunday School Members. The Sunday School is accountable to the Parish Administrative Council.
- 29.21** “**Sunday School Members**” consists of all children and young adults over the age of seven years old and up to, and including, the age of 30 years old, who are registered in the register of Sunday School Members maintained and approved by the Parish Administrative Council who satisfy the eligibility criteria required to be a Congregational Member as set out at clause 10.1(b) of this Constitution. For the avoidance of doubt, members of the Sunday School, aged 18 years and above must be members of the Congregation.

Commented [MCQC59]: Again, as it has been referred to, it should be defined.

Commented [MCQC60]: Given the nature of the dispute that I decided on 26 June 2017, I consider it appropriate that the Patriarch is defined, and is defined in this way.