

DICASTERY FOR LAITY, FAMILY AND LIFE

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Sexual Abuse: How the Church is Responding **Philip Milligan**

Introduction

The goal of this paper is to give an overview of what the Church currently does, and the instruments it uses, in reply to problems of sexual abuse of children and vulnerable adults. This should help us see better how, as ecclesial movements and new communities, we can or should interact with these various instruments and initiatives. In his legal reforms Pope Francis has insisted on how the juridical instruments that canon law gives us are also pastoral instruments, developed to serve the needs of the People of God and to protect each member of Christ's flock¹. This affirmation underscores how important it is for us to consider Church law as something that is part of Church life, intrinsically so, because the Church is a community, rather than as an unfortunate but necessary external constraint. The Pope, as legislator, is no less open to the Holy Spirit than the Pope as Pastor or as Teacher².

1.

Let us look, first, at what happens when a Bishop (or another Ordinary) receives a complaint of sexual abuse or in some other way receives news of abusive behaviour. When a bishop receives news that seems reasonably plausible or has a semblance of truth³, he is obliged to carry out an investigation⁴. This investigation precedes the beginning of any trial or process and precedes any decision to go to trial, so it is called a "preliminary investigation". The news reaching the bishop can come from public information or from a specific accusation or from information given by any person with knowledge of a possible crime. The news can be given in writing or orally. It can be given to the Bishop, to the diocesan chancellor, vicar general or promotor of justice, or to any Parish Priest. The Bishop, either personally or through a delegate, must verify firstly if the facts presented would constitute a violation of canon law in general and of penal canon law in particular. Secondly, he must verify if the circumstances of the violation of the law allow an accused person to be punished⁵. So, for example, no punishment in penal law can be given to someone under the age of 16, to someone who could not have known that this behaviour broke canon law or someone who

¹ See, for example: FRANCIS, *Apostolic Letter M.P. Mitis Iudex Dominus Iesu*, 30 August 2015, Preamble.

² JOHN PAUL II, *Apostolic Constitution Sacrae Disciplinae Leges*, 25 January 1983, Preamble: "As a matter of fact the Code of Canon Law is extremely necessary for the Church. Since the Church is organised as a social and visible structure it must have norms...in order that mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well-defined...".

³ In Latin: *saltem verisimilem*.

⁴ Code of Canon Law 1983, c. 1717.

⁵ CIC 1983, cc. 1323-1327: on attenuating and aggravating circumstances.

was obliged to act by physical force⁶. The Bishop must also verify if the person accused can reasonably be thought to have acted either intentionally or with gross negligence⁷.

The preliminary investigation is not a trial, so the Bishop must take care to protect the reputation of the accused, the possible victim and the accuser (where the accuser is not the victim). From the very beginning of the preliminary investigation of a serious crime against morals, precautionary measures can be imposed on an accused person, with a view to protecting the community by avoiding further scandal, to protecting witnesses or to allowing justice to proceed more effectively⁸. These precautionary measures include removing an accused from holy ministry or from an ecclesiastical office or task; imposing or prohibiting residency in a given place; and a prohibition from taking part publicly in the Eucharist⁹.

2.

Serious crimes against morals form part of the broader category of serious crimes against faith or against morals, collectively referred to under the Latin name: *delicta graviora*. In the next section of this paper we will look at what these serious crimes are. Concerning precautionary measures, we should also note that in investigations into matters not classed as *delicta graviora*, precautionary measures can only be imposed once the trial itself has begun¹⁰. In *delicta graviora* trials these measures are effectively limited to clerics because, as we will see, the *delicta graviora* are themselves limited to clerics. However, in other circumstances, some precautionary measures can be imposed on religious or on laity.

At the conclusion of the preliminary investigation, if the Bishop considers that there is a case to answer, he must proceed either to a trial or, where appropriate in his judgement, to a lesser punishment¹¹. However, in the case of serious moral crimes this discretion to decide not to proceed to a trial does not belong to the Bishop. It was John Paul II who approved new norms in 2001, at the request of the then Cardinal Ratzinger, to require that for all serious moral crimes, where the preliminary investigation indicates a reasonable plausibility or a semblance of truth, the case must be immediately referred to the Congregation for the Doctrine of the Faith. It is the Congregation for the Doctrine of the Faith who will then decide whether the case should go to trial or not, and whether the trial should be handled in the diocese itself, or handled directly by the Congregation.

The serious moral crimes involving the violation of the 6th Commandment are the following.

In reference to the sacrament of reconciliation:

- the absolution of an accomplice in a sin against the 6th commandment¹²;

⁶ CIC 1983, c. 1323. Also, any possible punishment would be mitigated where the person is a minor of more than 16 years old, or where they have been coerced to act by serious fear or have acted with an imperfect use of reason.

⁷ CIC 1983, c. 1321.

⁸ CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Norms on the Serious Crimes Reserved to the Congregation for the Doctrine of the Faith*, published with JOHN PAUL II, Apostolic Letter M.P. *Sacramentorum sanctitatis tutela*, 30 April 2001, with modifications approved by BENEDICT XVI, 21 May 2010, (hereafter, *2010 Norms*), art. 19.

⁹ CIC 1983, c. 1722; *2010 Norms*, art. 19.

¹⁰ CIC 1983, c. 1722.

¹¹ CIC 1983, c. 1718; cc.1339-1340: a warning, a correction, a penance.

¹² *2010 Norms*, art. 4§1. °1.

- soliciting a sin against the 6th Commandment during, or on the pretext of, the sacrament of confession, involving the confessor¹³.

In reference to immoral behaviour in itself:

- crimes against the 6th Commandment committed by a cleric or a member of an institute of consecrated life or a society of apostolic life, with a minor under 18 years old, or with another person with a habitually imperfect use of reason¹⁴;

- the acquisition or detention or divulgation of pornographic images of a minor for reasons of turpitude¹⁵.

- crimes against the 6th Commandment by a cleric or a member of an institute of consecrated life or a society of apostolic life, committed against any vulnerable person, with violence or threats or committed publicly, or committed with an abuse of authority, in order to force someone to submit to, or perform, sexual acts¹⁶.

The relevant definition of ‘vulnerable person’, modified by Pope Francis in May 2019, is as follows: “any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, *in fact, even occasionally*, limits their ability to understand or to want or to otherwise resist the offence”¹⁷. The same new law adds abuse of authority to the usual forms of coercion – violence or threats¹⁸.

We should note that all these crimes are in reference to the behaviour of clerics and, in cases not involving the sacrament of confession, to members of institutes of consecrated life and societies of apostolic life. However, all Catholics are subject to the canon law crimes against life, and these can often be relevant to cases of sexual abuse. Under canon 1397, it is a crime to kill, wound, imprison or otherwise hold a person against their will, using either violence or fraud. These circumstances would fit with many cases concerning sexual abuse against minors or against vulnerable adults, especially with the broader definition given recently to the term ‘vulnerable person’. Causing someone to have an abortion is a crime for all Catholics under canon 1398, and this can also be relevant to prosecuting cases of sexual abuse against minors or against vulnerable adults.

Most canons in the Code of Canon Law do not have any punishment attached to an infringement. However, it is possible for a bishop to apply penal penalties to canons where there is a violation of canon law, but where no penal effect has been given to that law by the Code¹⁹. More

¹³ 2010 Norms, art. 4§1, °4. Canon 1387 makes any incitement of a penitent to break the 6th Commandment a crime, but the *delicta graviora* is only where the confessor is directly involved.

¹⁴ CIC 1983, c. 1395§2; 2010 Norms, 6§1°2; FRANCIS, *Apostolic Letter M.P. Vos Estis Lux Mundi*, 19 May 2019 (hereafter, VE), art.1§1. VE extends crimes previously referred to clerics only, to include religious and members of all institutes of consecrated life or societies of apostolic life.

¹⁵ 2010 Norms, art. 6§1, °2; VE art. 1§2, b. VE extends the definition of child pornography and refers it to all minors, while before it was referred to images of minors under 14 years old.

¹⁶ VE, art. 1§1, a, i).

¹⁷ VE, art. 1§2, c. (emphasis added).

¹⁸ VE art. 1§1, a, i).

¹⁹ CIC 1983, c. 1399.

simply, a Bishop can give a specific person an order (also called a precept) including a warning (also called an admonition) about future behaviour, and then attach a punishment for breach of this order²⁰.

3.

A penal canonical trial can have one of two forms: either a contentious trial or an administrative trial. As is common in the Church, both are documentary procedures. There is no courtroom confronting of witnesses by lawyers, or of direct confrontation between accuser and accused. Witnesses can be asked to give evidence before judges, but it is the written statement of that evidence, signed by the witness, which is admitted as evidence. Both forms of criminal trial require that both parties have access to all evidence, that both parties have advocates, and both exclude the involvement of the persons who conducted the preliminary inquiry from being judges²¹.

In cases involving the sacrament of confession (considered *delicta graviora*), the identity of the accuser is protected unless the accuser gives consent, and in any case where there is a risk of breaking the seal of confession²².

There are time limits for beginning a penal trial. The normal statute of limitations is three years from the date at which the events in question took place²³, while crimes referred to the Congregation of the Doctrine of the Faith as *delicta graviora* have a time limit of twenty years from the date at which the events in question took place. For minors, the calculation of time begins when they reach 18 years old. It is also possible for the Congregation for the Doctrine of the Faith to make exceptions to this twenty-year time limit²⁴. When it does not do so, no trial can be held, and so no penal punishment can be given. However, a bishop could still impose a precept or admonishment with restrictions of activity etc.

4.

This leads me to talk briefly about punishment in the Church. There are three reasons for punishing someone in Church penal law: to eliminate the scandal attached to a crime (and therefore to protect the community); to re-establish justice (and therefore to repair the evil done); and to allow the correction and the conversion of the guilty²⁵.

Any punishment given for a crime has all three of these reasons to satisfy. Most punishments are, therefore, not intended to be permanent: to give two examples, the exclusion from the sacraments that comes with excommunication, and a cleric's suspension from dispensing the sacraments²⁶. Among the more striking punishments are dismissal from the clerical state and restriction of residence to a specific place. All of these punishments, however, demonstrate the

²⁰ CIC 1983, c. 1319; cc. 1339-1340.

²¹ CIC 1983, c.1717§3.

²² 2010 Norms, art. 24.

²³ CIC 1983, c. 1362.

²⁴ 2010 Norms, art. 7.

²⁵ CIC 1983, cc. 1341.

²⁶ CIC 1983, c. 1331 and 1333.

limits on the power of the Church, as a voluntary society with almost no means of coercion, to punish. The Church has no prisons, and it has no absolute means of compelling someone to obey. Exclusion from the sacraments is irrelevant to someone who does not seek the sacraments; restriction to a place of residency in order to do penance is ineffective against someone who decides to defy the authority of the Church to limit his or her movements; dismissal from the clerical state is a blunt instrument which, at the same time as it imposes a quasi-permanent punishment on someone, also deprives the Church of the means at its disposal to watch over a cleric and control his actions: because, thereafter, he is no longer a cleric.

Also, by its nature, the Church cannot allow itself to simply expel and forget those convicted of crimes. It has a duty to lead them to salvation and give them the means for this. They remain part of the Body of Christ, and they never become undeserving of the Church's help or deprived of their fundamental baptismal dignity.

5.

As well as the system for investigation and for canonical trials, there are other instruments available to the Church in facing the challenge of protecting children and vulnerable adults from sexual abuse.

The Pontifical Commission for the Protection of Minors. Bishops' Conferences and also Dicasteries of the Roman Curia receive invaluable help from the Pontifical Commission for the Protection of Minors, particularly through the work of its permanent secretariat here in Rome. The PCPM assisted and advised this Dicastery over several years in the development of the "Orientations" sent to each of your associations last year. The Commission also drew up the guidelines for bishops' conferences that we attached with our own orientations, and is currently working on ways of harmonising approaches between bishops' conferences and institutes of consecrated life. The Commission will also be involved in evaluating the norms and guidelines this Dicastery has received from your associations up until now, in order to help us determine how adequate they are.

Diocesan vetting and training offices. Many bishops' conferences have developed offices and structures for vetting people who either work or volunteer with children or vulnerable adults. Some have gone further, and actively train these workers and volunteers: in awareness to questions of protecting minors and the vulnerable; and in good practice for receiving and transmitting news of possible abuse. Often the work is organised at a diocesan level. Generally, this has happened in countries where State law requires vetting and training, and where State agencies evaluate the adequacy of child protection measures within all voluntary or charitable organisations.

Listening and advice services. In some bishops' conferences there are offices or listening services whose purpose is to receive news of possible abuse, to relay it to the Church authorities, and also to advise bishops, religious congregations and associations in the Church on how to proceed in investigating canonically, and in how to fulfil obligations to report possible crimes to State or Civil authorities. When fully functioning, these services cover questions of sexual abuse not

only concerning clerics or religious, but also within Catholic schools and parishes, and, therefore, concerning laity too.

It is clear from the meeting held in the Vatican in February 2019 with the Presidents of bishops' conferences from across the world, that the Church in many countries has much work to do in developing these instruments for protection of children and the vulnerable. Often, this is the case where civil society has itself been slow to acknowledge the need for such measures. In these cases, it is to be hoped that the work the Church will do can serve as a reference point for governments and legislators.

6.

Last month, as we have already mentioned, the Pope promulgated new norms on this question: *Vos estis lux mundi*, effective as of June 1st 2019, valid for the whole Church, with minimum criteria to be applied in all countries, explicitly as a way of making future progress in protecting the vulnerable from sexual abuse. In some cases, what the Church requires of its members applies a higher standard than that required by State or Civil law. *Vos estis* gives bishops one year, either alone or in concert with other dioceses, to guarantee: “one or more public, stable, easily accessible systems for submission of reports”, requires them to keep the Nuncio informed of their progress²⁷ and requires that these systems respect the duty of confidentiality currently applied to all diocesan curial offices²⁸. *Vos estis* also introduces duties to report news of sexual abuse perpetrated by a cleric or by a member of an institute of consecrated life or a society of apostolic life; and introduces duties to report news of an obstruction or interference with civil or canonical investigations into sexual abuse against a cleric or a member of an institute²⁹. It does so specifically where this obstruction is by a cardinal, bishop or papal legate, and - relative to the period where they were in charge - by the head of a personal ordinariate or prelatore, by the supreme moderators of Pontifical right institutes of consecrated life or societies of apostolic life, and the heads of *sui iuris* monasteries.

Vos estis imposes this duty to report upon all clerics and all members of institutes of consecrated life or societies of apostolic life³⁰. It applies where he or she receives news, or otherwise has well-founded motives for believing, that either sexual abuse or a cover-up of sexual abuse has taken place. *Vos estis* requires that they report this to the competent Church authority, and it sets out which authorities are competent in which cases. It excludes the possibility of divulging something heard in confession³¹. It also makes it not compulsory to report where the information was received during a cleric's sacred ministry or otherwise involves professional confidentiality³², but allows information received in situations of sacred ministry or professional confidentiality to be

²⁷ VE, art. 2§1.

²⁸ CIC 1983, c. 471 °2.

²⁹ VE, art. 6, and art. 1§1, b.

³⁰ VE, art. 3.

³¹ CIC 1983, c. 1550 § 2, 2°; c. 1548 § 2.

³² VE, art. 3§1.

used in a report without this constituting a violation of duties of ministerial or professional confidentiality³³.

Vos estis sets out extensive provisions for how an investigation of a superior for a cover-up or for sexual abuse is to be done: generally by the local archbishop, under instructions given by the relevant dicastery of the Roman Curia, with provisions for time-limits, for hiring personnel and for costs, and with final decisions after investigation all being made in Rome³⁴. If the news is manifestly unfounded in the archbishop's opinion, he must still inform the nuncio; if it is not manifestly unfounded - a lower standard of proof even that 'reasonably plausible' - then he must contact the Roman Curia, and ask to be allowed to investigate, and ask for specific instructions on how to proceed.

7.

How can the Ecclesial Movements be part of this response

Some of the points set out in this most recent Papal document correspond to elements contained in the orientations sent to you in summer 2018. These are, therefore, the first points where the work you do in protecting children and vulnerable adults can interconnect with the Church's response, set out above.

Firstly, a preamble. Our own experience in the Dicastery, consistent with statistics at all levels of the Church and society, tells us that sexual abuse within ecclesial movements is committed by laity also, and not only by clergy. Families in our communities must know that the movement expects them to tell it about abuse committed against a child by a member of the movement, be it a lay person or a cleric. Adults should know that the movement expects them to tell it about abuse, by a lay person or by a cleric, committed against them or another adult. They should know that they will be listened to in confidentiality and that the movement will not hide the accusation. They should know that the movement will take the necessary precautionary steps to separate an accused person from situations of potential risk in community life and in apostolate. They should know that the movement will inform this Dicastery, as the competent authority in canon law for vigilance over their government, of any canonical or civil investigations when they are begun. They should know that a person guilty of sexual abuse will be expelled from the movement.

Now let me mention several points of interconnection.

The first: *creating clear pathways for reporting abuse*. It is clear from what the Prefect has already said that this is a priority. Given the time already elapsed since the orientations were sent to you, it seems reasonable to give ourselves another six months, at most, to make sure that, at every level of your movement's apostolate and its community life, these pathways for reporting are clear, are known, and are staffed with competent people.

³³ VE, art. 4§1.

³⁴ VE, arts. 7-18. We should note that there is no preliminary investigation here before the local archbishop reports the news to the Roman Curia (VE, art. 10).

Secondly, *the duty to comply with State and Civil law duties on reporting*. You are international realities, and so we know that this is not an easy task, because it requires knowledge of so many jurisdictions. Nonetheless, this is an urgent requirement, also needed in order to protect your own members. However, you are not alone in this task and here, country by country, you can often work with the structures and offices already set up by dioceses or bishops' conferences. Indeed, I am sure that in many countries, in order to do apostolate currently, you are already complying with national laws for vetting and for child protection. Similarly, the orientations we sent you also indicate your duty to comply with requirements set out by the bishops locally, and these requirements themselves generally comply with State and Civil law.

We will talk more this afternoon about programmes and practices for training, and how your own movements' pedagogy and experience can contribute to their development. Clearly, the diocesan and national programmes that exist for training volunteers are a resource for your movements and communities too, as you seek to fulfil your own duties in this field.

Thirdly, let me talk a little more about *the canonical duty to report*, as set out in the most recent norms, and about how to apply this logic in your own movements. In these considerations, I wish to look at the question of how we reconcile duties to report with duties of confidentiality.

The first canonical requirement for clerics, and for members of institutes, is that civil law on reporting, country by country, must be complied with. This is, therefore, a canonical norm, and those who disregard civil law duties here break canon law too.

The second canonical requirement, for clerics and for members of institutes, is to report. As we have already said, this duty does not affect the secrecy of confession: nothing in confession is to be reported. The new norms underline that duties of confidentiality are maintained for information received in other forms of sacred ministry and in ecclesiastical office. So there is no canonical duty to report here, but there is a permission to report things said in a confidential pastoral setting or in ecclesiastical office, when they concern sexual abuse. This means, therefore, that there is no breach of confidence if, in order to comply with a State or Civil law duty to report, information about sexual abuse is transmitted or reported. Similarly, it is legitimate to report news of sexual abuse here, even if no State or Civil duty requires this.

It is clear that this leaves a margin of personal appreciation for a cleric in ministry or for all people, including laity, exercising ecclesiastical office. Is this information reasonably plausible? Has the person already reported it to either State or Church authorities? Can I be certain they will report it soon? Is there a current risk to others from the person accused of abuse?

However, there are others questions that the person receiving the report really should pass on to other people, perhaps with specific competency in State or Canon law. Is this conduct criminal? Can the accused person be convicted? Do I have a duty to report this conduct in civil law? Are there other legal criteria to take account of, such as time limits, criminal responsibility, age,

fitness to stand trial, etc.? In all of this, there is a need to connect a person's duty or right to report, with the spaces available for reporting, staffed by people trained to analyse reports and to give advice.

Therefore, it seems reasonable within our own spheres of community life and of apostolate, to apply these same criteria for laity who learn of sexual abuse or receive news about sexual abuse. In civil law, is there a duty to report this information, given the seriousness of the allegation, that supersedes any duty of confidentiality I might have? In canon law, given the seriousness of the allegation, is there a duty to report, or a justification for reporting, that supersedes any duty of confidentiality? Are there not circumstances where a confidence received requires an immediate reaction, saying to the person: 'what you are telling me is something I cannot keep for myself, and it is something you should tell the authorities about too'?

Fourthly, *to listen is not to judge*. identifying these pathways for reporting also allows us to distinguish between different activities: listening and reporting on one hand; and judging reports on the other hand. It is important that within our movements and communities there is a broadly-shared, and real, availability to listen to people who come to give news or make accusations concerning sexual abuse. Unfortunately, for too long and in too many places, there are people who have not been listened to. We need to play our part in developing the Church's ability to change this. At the same time, we need to be secure and trusting in the knowledge that the people we report news to are able to evaluate what we tell them with prudence and according to objective criteria, to apply presumptions of innocence, to distinguish between a credible allegation and a proven allegation, and to protect the right to defence from false accusations³⁵. To listen is not to judge. To report is not to judge. The reporter is not the judge.

Fifthly, *vulnerable adults*. sexual abuse is often thought of in the narrow context of a) clerical abuse, b) against children or people psychologically equivalent to children. Together, *Vos estis*, the orientations given by the Dicastery and the work we will do together today, should help us understand, on one hand, that sexual abuse is not reserved to clerics and, on the other hand, that adults can suffer from it too. The broad definition of 'vulnerable adult' given in the new papal norms should give us pause. It requires us to better train our members in order to avoid situations of risk, and in order to identify situations of abuse. It should make us more aware of how seemingly consensual sexual activity between adults can, because of the state of mind or the situation of one of the persons, actually be a situation of sexual abuse. The new norms make such abuse punishable in canon law when it is done by a cleric or by a member of an institute; but the definition of vulnerable person is still valid for cases involving laity who might be considered to have abused a position of authority.

Conclusion

³⁵ Much work is required in the difficult task of protecting reputations and the presumption of innocence, in cultural contexts where Church authorities might be tempted to infringe on the rights of those accused in order to demonstrate they are taking accusations seriously.



We have looked briefly at the concrete measures and instruments developed by the Church to provide a pastoral response to the problem of sexual abuse. Undeniably, the Church has much, much more to do in this field. We have also seen how these instruments are in tune with what is being asked of the international ecclesial movements and new communities. In your attention to these points, you are part of how the Church as a whole attempts to authentically respect and care for the People of God, and in doing so give an evangelical witness that rejects sin and embraces holiness.

