



Southern African Catholic  
Bishops' Conference

PROTOCOL FOR THE  
INVESTIGATION OF  
COMPLAINTS AGAINST  
CLERICS AND RELIGIOUS  
IN REGARD TO  
SEXUAL ABUSE OF  
MINORS

SACBC PROFESSIONAL CONDUCT COMMITTEE

May 2013

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## PREFACE TO THE 2013 EDITION

### Remarks on the Protocol made by CDF

1. Complying with the request made by the Congregation for the Doctrine of the Faith to all Bishops' Conferences (see letter from the Cardinal Prefect of the CDF which accompanied the *Guidelines in Cases of Sexual Abuse*, 16 May 2011), the Southern African Catholic Bishops' Conference sent the version of this Protocol approved in 2011 to the Congregation. It had been prepared before the publication of the aforesaid *Guidelines* but, after perusing them, the opinion of the Protocols Subcommittee of the SACBC PCC was that the Protocol was in line with the *Guidelines*.
2. The CDF sent its remarks and asked for the text to be sent again after implementing the recommendations made in those remarks. They referred mainly to the advisability of emphasising still more the sections about protection of children (with programs of awareness and education for use in seminaries and as part of the ongoing formation of clergy), integrity in ministry, reporting the allegations to civil authorities, therapy and pastoral care of the accused.
3. It was also pointed out that the Protocol should express more clearly the right of a victim to intervene in canonical procedures as an injured party and, therefore his right to bring a contentious action to repair damages incurred personally from the delict, within the same canonical process in conformity with Code of Canon Law, canon 1729.

### Amendments made in this version

4. Taking advantage of the changes made in response to the CDF request, other amendments have been introduced. Some of them aim at a better systematic arrangement of the Protocol. New norms have also been added. An idea of them is given below.
5. Parts I and II of the previous version were rearranged. Part I now deals with Nature and Ambit of Application of the Protocol, and Part II with Competent Church Authority, Auxiliary Bodies and Officials.
  - The norm about the Protocol not applying to lay faithful, although they may work for the Church, which the previous version included in Part III, Making and Receiving a Complaint (5.1.5.5) is now in Part I, Ambit of Application of this Protocol (2.4-2.5).
  - The list of duties of the Delegate that the previous version had in Part II, Specific Duties of Officials (3.4.1) was shortened moving some of them to Part IV, Preliminary Investigation,

- Action by the Bishops' Delegate and the PCC (18), and Action by the Bishops' Delegate Following the Submission of the Investigators' Report (21).
- In Part II a new section on Appointment of PCC members was added (7.4)
6. To avoid repetitions the sections of the previous version on Values to be Promoted and General Principles of the Preliminary Investigation (Part I, 2 and Part III, 4) were gathered in Part III of the new version.
  7. The references to reporting allegations to civil authorities contained in several sections of the previous version have been gathered and emphasised in Part III, 12.
  8. New directives were added about those cases in which the conclusion of the investigation is that there is significant circumstantial evidence but insufficient direct evidence of abuse: Part IV, Action by the Bishops' Delegate Following the Submission of the Investigators' Report (21.5 - 21.7) and Action by the Church Authority (22.7-22.10). These cases are quite frequent and, although it may not be possible to open a penal process, it may be advisable to adopt some measures.
  9. Part V, Pastoral Response and Care in respect of the Victim includes a new norm (23.7) about the right of a victim to intervene in canonical procedures as an injured party bringing a contentious action to repair damages (see 3 above).
  10. Part VII, Preventive Strategies, contains new references (27-29) to child protection and integrity in ministry. Others were added in the new preamble and in Part III, Values to be Promoted, 15 (see 2 above).
  11. The content of Appendix I of the previous version was added to Part IV, Informing All Parties Involved and Temporary Withdrawal from Active Ministry (19).
  12. The *Norms on "Delicta Graviora"* which the previous version included in Appendix II were moved to the *Vade-mecum for Ordinaries and Personnel of Professional Conduct Committees*. It was deemed preferable to dedicate the Appendixes of the new version to:
    - Appendix I: the legal definition of the crime of sexual abuse in canon law (*Norms on "Delicta Graviora,"* article 16) and a comment on it from *The Procedure and Praxis of the Congregation for the Doctrine of the Faith* regarding "*Graviora Delicta.*"
    - Appendix II: the definition of the crime of sexual abuse in South African law.
    - Appendix III: some brief comments on canon 1717 which is central to the preliminary investigation.

\* \* \*

It is the hope of the SACBC Professional Conduct Committee that the Protocol may be help the Church Authorities and PCC members in carrying out the important task of handling allegations of sexual abuse with justice, transparency and accountability.

Fr Desmond Nair, Chairman,  
SACBC Professional Conduct Committee, May 2013

## PREFACE TO THE 2010 EDITION

Canon 1717 contains the universal law for an investigation by an Ordinary, diocesan or religious, into a canonical offence, preliminary to the criminal process dealt with in canons 1718 ff.

The norms on penal canon law of the 1983 Code of Canon Law were supplemented by a piece of legislation, the *motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, which dealt with the more grave delicts whether against morals or committed in the celebration of the sacraments. Competence to judge these offences had been accorded to the Congregation for the Doctrine of the Faith by article 52 of the Apostolic Constitution *Pastor Bonus* on the Roman Curia dated 28 June 1988. However *Pastor Bonus* did not identify exactly what these “more serious offences” that the Constitution was entrusting to the Congregation, withdrawing them from the jurisdiction of Ordinaries, were. This was done by *Sacramentorum sanctitatis tutela*.

Nine years later the *Norms on More Grave Delicts* of 21 May 2010 were approved by Benedict XVI. They contain modifications to both the substantive and the procedural norms found in *Sacramentorum sanctitatis tutela*. Harmonising the Protocol to this new penal law of the Church has been one of the purposes of the new edition published now.

In a recent article published in *L’Osservatore Romano* and in *La Civiltà Cattolica*, Bishop Juan Ignacio Arrieta, secretary of the Pontifical Council for Legislative Texts, has announced that a revision of Book VI of the Code of Canon Law, the basis of the Church's penal law system, has been under way for almost two years. This means that a new edition of the Protocol will be needed when that revision is completed. Nevertheless the revision will still take time as the process of consultation has to be finalised, at which point it will be presented to the Supreme Legislator for approval.

The Protocol is a detailed application of the directives of canon 1717 and the subsequent legislation to a preliminary investigation into complaints of sexual abuse of minors. It is drafted in the local context of the Church in Southern Africa. The motivation behind this new version has been to move from the 2007 *ad experimentum* or interim document to a text improved both in its content and form which has gained much from the practical experience of Professional Conduct Committees. An added reason was the promulgation of the above mentioned new *Norms on More Grave Delicts of 21 May 2010*.

Based on the universal Church law, this Protocol may be promulgated into law (and thus become substantive law) by the Conference for the region, or by an Ordinary for a particular area: see Canon 455.

The accompanying *Vade-mecum* contains much that may be found useful in the investigation, not only of sexual abuse of minors as per the Protocol, but

also of other offences. Besides containing guide-lines for the application of the Protocol, the *Vade-mecum* offers advice, for instance on the changing relationship between Ordinary and Priest, once an investigation is launched, and makes readily available forms, such as decrees for opening and closing an investigation, and other relevant information.

The *Vade-mecum* usefully clarifies the purpose of the preliminary investigation: determining whether the accusation is credible or not as well as the substance or object of the alleged delict. If the result of the investigation is that the accusation is credible, the Ordinary no longer has power or competence to treat the material in conformity with canon 1718, but he must refer the case to the Congregation for the Doctrine of Faith.

Both the Protocol and the *Vade-mecum* emphasise the duty of Church personnel to report criminal offences to State authorities. They make it clear that the Church process is not parallel, nor in opposition to a State process, since the Church process is suspended, once a crime has been reported to and/or is being investigated by the Police.

The SACBC Professional Conduct Committee of the Conference is ambitious that the Church processes promote transparency, honesty and justice, and be implemented in humility, with sensitivity for the needs of victims and abusers.

Fr Desmond Nair, Chairman,  
SACBC Professional Conduct Committee, December 2010

## PREFACE TO THE 2007 INTERIM EDITION

The purpose of this Protocol is to assist in the application of the canon law norms in regard to the preliminary investigation of allegations of sexual abuse of minors by clerics and religious (canons 1717-1719).

Given its nature – an instruction such as those foreseen in canon 34 – it does not require promulgation. Each Ordinary is to publish it, in his circumscription or institute of consecrated life, if he so desires.

The amendments to the Protocol arise from a resolution of the National PCC at its meeting on 27 March 2007. The intention of the resolution is to limit the assessment of the Protocol to the preliminary investigation of canon 1717. To that end the assessment is called an investigation. Its recommendation is called a report on whether there is a credible accusation for the respondent to answer, and nothing more. The accused is called a respondent. There is no finding on the question of guilt, the decision on which and all consequent steps are the responsibility of the Ordinary.

In future the Protocol will be concerned only with the misconduct of clerics and religious. The wider application to lay persons participating in the ministry of the Church is put aside, and it is recommended that complaints in their regard be handled in the ambit of criminal, civil and labour law.

The motivation for the amendments is not simply legalistic; nor does it seek to downplay pastoral obligations to victims and respondents. In fact the NPCC proposes to consider vigorously the needs of minor complainants and of clerics and religious. Much is being done overseas as reported at the recent meeting of Anglophone Conferences in Rome. This jurisdiction should not be far behind others on this question.

The amendments emphasise that once a complaint of sexual abuse of a minor by a cleric is reported and investigated, with the conclusion that there is a strongly probable case to answer, the matter must be referred to the Congregation for the Doctrine of Faith (CDF), as these offences are reserved to the Holy See (cf. the *motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, art 13).

Note that the *motu proprio* does not refer to sexual abuse by a religious who is not a priest or deacon. This means that, when the preliminary investigation of allegations against a non-ordained religious is finished, the major Superiors are to decide what to do according to canon 1718 and their own constitutions.

Also emphasised, is the requirement that steps taken by an Ordinary to direct that an investigation be undertaken by named investigators, are recorded by decrees. All who take part in an investigation will require an

oath of secrecy. Transcripts of evidence are to be signed by those who gave the evidence, and by a notary.

It is hoped that the amendments will make for more formally complete documentation, or acts for submission to the CDF. Also, the wrongly perceived burden on assessors, of having to make a finding on the guilt of a cleric or religious, is lifted. It is not the role of the investigators to make any finding of guilt.

The SACBC has approved the amended Protocol on an interim basis, the intention being that it is reviewed in time for the January 2009 plenary meeting. Metropolitan and other Professional Conduct Committees and Ordinaries, both diocesan and religious, are asked to make observations, recommendations and requests by October 2008.

The NPCC will provide a *Vade-mecum* of practical guidelines for ordinaries, committees and investigators. The success of this service depends very much on the comments of those who participate in the procedures of the Protocols.

Fr Michael Lewis, SJ, Chairman,  
SACBC Professional Conduct Committee, July 2007

## PREFACE TO THE 2004 EDITION

The issue of sexual abuse of minors by priests and other Church personnel was discussed at the 1994 Annual General Meeting of the Southern African Council of Priests. SACOP resolved to request the Administrative Board of the Bishops' Conference to set up a Committee to investigate the problem, and to make recommendations.

At its Plenary Session in January 1995, the Bishops' Conference entrusted to the Chairman of SACOP, the task of setting up this Committee. A Dossier of articles on the topic was compiled by the Committee, and distributed to all the Bishops and Priests of the Conference area.

At its Plenary Session in August 1995 the Conference decided that the Committee set up by SACOP with the Conference approval would become a subcommittee of the Bishops' Conference. Having studied documents from different countries and Religious Congregations, the Committee decided to adopt the Australian Protocol (Australian Catholic Bishops' Conference, *Towards Healing*, Hectorville, 1996) as its basic document and adapt it for use by the SACBC. After widespread consultation, this Protocol was approved by the Southern African Catholic Bishops' Conference at its Plenary Session held at Pretoria in January 1999. The revised edition was approved by the Conference at its Plenary Session in January 2004.

Together with the principles contained in the Dossier on Child Sexual Abuse and those implicitly or explicitly contained in this Protocol, the Committee presents the following seven guidelines to action which should underlie the response of the Church to accusations of child sexual abuse (cf. Catholic Bishops' Conference, *Child Sexual Abuse: Framework for a Church Response*, Veritas, Dublin, 1996):

- the safety and welfare of minors should be the first and paramount consideration following an allegation of child sexual abuse;
- a prompt response should be given to all allegations of child sexual abuse;
- care should be given to the emotional and spiritual well-being of those who have suffered abuse and their families;
- there should be immediate consideration, following a complaint, of child protection issues which arise, including whether the accused priest or religious should continue in ministry during the investigation;
- the rights under natural justice, civil law and canon law of an accused priest or religious should be respected;
- an appropriate pastoral response to the parish and wider community should be provided, with due regard to the right of privacy of those directly involved, and to the administration of justice;
- adequate positive steps should be taken to restore the good name and reputation of a priest or religious who has been wrongly accused of child sexual abuse.

The Protocol itself may appear very legalistic, but the response of the Church cannot be limited to legal prescriptions. Sexual abuse by priests and religious causes immense pain and inestimable damage. There must be a conscious and sustained effort to heal the hurts, to repair the damage, and to restore the trust that has been broken. Priests, Religious and Church Workers are in positions of trust, and do enormous damage if they betray that trust. They exercise a unique kind of power and can easily abuse that power. They must continue to reflect on the way of life and the standards of behaviour demanded by their Christian calling, and outlined in Integrity in Ministry (Southern African Catholic Bishops' Conference, *Integrity in Ministry*, Pretoria 2001).

Fr Vincent Brennan SMA,  
Chairperson, SACBC Professional Conduct Committee, February 2004

# PROTOCOL

## PREAMBLE

The Catholic Church in South Africa deplores the sexual abuse of minors by clergy and religious. Even if it constitutes a very small part of the sexual abuse that takes place in society at large, it violently contradicts the special identification with Christ to which priests and religious are called by virtue of their vocation as well as the trust deposited in them by the other members of the People of God.

The Southern African Catholic Bishops' Conference wishes to facilitate with this Protocol the work of Bishops, religious Superiors and those who help them in handling allegations of sexual abuse of minors allegedly committed by clerics or religious. The norms of this Protocol are aimed at ensuring that the principles of justice, accountability, transparency, cooperation with civil authorities, etc. are observed in the preliminary investigation of allegations.

The response of the Southern African Catholic Bishops' Conference to sexual abuse of minors by clergy and religious is not limited to the scope of this Protocol. The Conference has published documents on policies and procedures for the protection of minors -*Safeguarding our Children* -, and on ethical standards in pastoral ministry - *Integrity in Ministry*. The directives of these two documents are essential to prevent the sad phenomenon of sexual abuse and therefore Bishops and religious Superiors shall enforce them with a deep sense of responsibility.

## PART I

### NATURE AND AMBIT OF APPLICATION OF THIS PROTOCOL

#### 1. NATURE OF THIS PROTOCOL

- 1.1. The norms of this Protocol define more precisely the manner of applying the provisions of canons 1717-1719 of the Code of Canon Law and of the the *motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, with the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010, about the preliminary investigation of sexual abuse of minors allegedly committed by clerics or religious.
- 1.2. This Protocol does not intend to and cannot derogate from the universal law; rather it urges its observance. In this regard, Ordinaries, major Superiors of lay institutes of consecrated life and Bishops’ Delegates should take into account the special legislation and canons of the Code of Canon Law applicable to the preliminary investigation, among others and in addition to those mentioned in 1.1 above:
  - a) Canons 1321-1330 on the imputability of offences, attenuating, aggravating and excusing circumstances.
  - b) Canon 1395 about canonical offences against the sixth commandment with the precisions that the *motu proprio* “*Sacramentorum sanctitatis tutela*” makes about it in its article 6.
  - c) Since the investigators have the same powers and obligations as an auditor in a process, canon 1428 on the role of auditors as instructors in a court case and canon 1561 on the auditors as interviewers of witnesses.
  - d) Canon 57 on administrative silence and 1732-1739 on hierarchical recourse against administrative decrees.

#### 2. AMBIT OF APPLICATION

- 2.1 In respect of offences, this Protocol applies to accusations of alleged offences which fall under article 6 of *motu proprio* “*Sacramentorum sanctitatis tutela*.” The provisions of civil law on the criminal offence of sexual abuse of minors should also be taken into account (cf. CDF, *Guidelines in Cases of Sexual Abuse*, 16 May 2011, III, a), and the Southern African Catholic Bishops Conference (‘SACBC’) *Vade-mecum for Ordinaries and Personnel of Professional Conduct Committees, 2013*, Protection of Children and Others in South African Law).

- 2.2 In respect of alleged offenders, this Protocol applies to the preliminary investigation of sexual abuse of minors allegedly committed by priests, deacons, seminarians, religious and novices in the territory of the SACBC.
- 2.3 Institutes of consecrated life are entitled to have their own Protocols for investigating allegations against their members.
  - 2.3.1 Nevertheless Ordinaries and major Superiors must take into account that allegations of criminal behaviour, canonical offences or professional misconduct against any priest or religious affect the whole Church.
  - 2.3.2 Hence the critical importance of adopting uniform approaches and working in close co-operation with each other, so that justice may be done, and the good of the whole community better served.
  - 2.3.3 Religious superiors are not to lose sight that misconduct by a religious working in a parish may entail serious repercussions for the diocese in question. In this regard it is to be noted that canon 679 gives authority to the Ordinary to have a religious removed from his Diocese.
  - 2.3.4 Therefore it is important that the major Superior informs the local Ordinary and the Bishop's Delegate of the decisions made and the action taken after the preliminary investigation concludes.
- 2.4 The Protocol does not apply to alleged offences of sexual abuse of minors committed by the lay faithful although they may work in chanceries, parishes, seminaries, religious houses, novitiates, Catholic schools or other Church bodies. In these cases the victim or other affected parties should lay charges at a Police station.
- 2.5 When the above mentioned offences of lay faithful may deserve a canonical penalty, the matter should be brought to the attention of the Church authority. He may decide to open a preliminary investigation as per canon 1717 and this Protocol, after the respondent has been convicted in a criminal or civil court. These cases are not to be sent to the Congregation for the Doctrine of Faith ('CDF').

## **PART II**

### **COMPETENT CHURCH AUTHORITY, AUXILIARY BODIES AND OFFICIALS**

#### **3. COMPETENT CHURCH AUTHORITY**

3.1 The Church authority responsible for the preliminary investigation is:

3.1.1 for allegations against priests and deacons incardinated in a diocese or working there on a contract: the diocesan Bishop;

3.1.2 for seminarians, the diocesan bishop in the case of a diocesan seminary or the bishop who sent the seminarian to the inter-diocesan seminary;

3.1.3 for priests or deacons of a religious institute: the major Superior (regional, provincial or general) of clerical religious institutes of pontifical right, and of clerical societies of apostolic life of pontifical right, who has at least Ordinary executive power (cf. Code of Canon Law, canon 134 §1).

3.1.4 Cases involving religious who are not priests or deacons (i.e. sisters, brothers, or novices) may be dealt with following this Protocol, but they are not to be sent to the CDF. The local Superiors are to follow the directions they receive from their regional, provincial or general Superiors. The latter are the ones to issue the decree opening the preliminary investigation and to delegate the Provincial or Diocesan Professional Conduct Committee ('PPCC' or 'DPCC') for the investigation, if they so decide to follow this Protocol instead of that of their respective Institutes.

3.2 When the expression Church authority is used in this Protocol, it should be understood as referring to one of the authorities listed in the above paragraphs. It is to be noted that the term Ordinary can be applied to both Bishops and major Superiors of clerical institutes of consecrated life but not to major Superiors of lay institutes of consecrated life.

#### **4. BISHOPS' DELEGATION OF THE PRELIMINARY INVESTIGATION**

4.1 Each Ordinary possesses legislative, executive and judicial power (see canon 391). He may delegate his executive and judicial powers to others. Canon 1717 says that as soon as the Ordinary receives a complaint he is to investigate it either personally or through another. This second possibility is an instance of delegation of executive power.

4.2 The Bishops of Southern Africa decided in 2002 to establish Professional Conduct Committees in the different ecclesiastical provinces of the Conference's territory as auxiliary bodies to

carry out the preliminary investigation. Each provincial Committee serves the metropolitan see and the suffragan dioceses of the province unless some of them decide to establish their own Committee.

4.3 This decision meant that, by adopting the Protocol, Bishops opted by the second possibility in canon 1717: doing the preliminary investigation “through another.”

4.4 Still an individual Bishop retains the right to investigate a complaint personally or through one personally appointed by him. Nevertheless all are exhorted to follow the Protocol and delegate the investigation to the chairperson of the Professional Conduct Committee. In this regard, it is advisable to ponder carefully the advantages of delegating the investigation to the Professional Conduct Committee (see 6.3 below) before choosing the other possibility.

## 5. RELIGIOUS SUPERIORS’ DELEGATION OF THE PRELIMINARY INVESTIGATION

5.1 Religious Ordinaries and major Superiors of lay institutes of consecrated life are exhorted to adopt the SACBC Protocol and make use of the Professional Conduct Committees of each ecclesiastical province unless their institute has its own Protocol and Committee (see 2.3).

5.2 If the institute of consecrated life opts to follow this Protocol, the following will be observed:

5.2.1. The major Superior will issue a decree delegating the chairman of the Provincial or Diocesan Professional Conduct Committee to conduct the preliminary investigation.

5.2.2. Because the Professional Conduct Committees are only auxiliary bodies which the institute of consecrated life has decided to use, what is to be done after the investigation concludes rests with the institute’s major Superior.

5.2.3. The principle that those who have a right to know should be kept informed must be adhered to: the major Superior will inform the local Ordinary and the Bishop’s Delegate of the decisions made and the action taken.

5.2.4. Expenses incurred in the investigation are the responsibility of the institute of consecrated life.

## 6. THE ULTIMATE RESPONSIBILITY RESTS WITH THE CHURCH AUTHORITY

6.1 Although in accord with the universal law (canon 1717) and with this Protocol the Church authority may delegate the preliminary investigation to the Professional Conduct Committee, the responsibility for the whole procedure and for the final decision referred to in canon 1718 and article 16 of *motu proprio* “*Sacramentorum sanctitatis tutela*” belongs, in the first place, to the Church authority.

- 6.2 The Professional Conduct Committees are consultative bodies and cannot substitute for the discernment and power of governance of individual Church authorities (see CDF, *Guidelines in Cases of Sexual Abuse*, 16 May 2011, II § 3 and III § f).
- 6.3 The purpose of delegating the preliminary investigation is that it may be done in an ordered and objective way thus ensuring:
- 6.3.1 That the Church authority distances himself/herself from the preliminary investigation so that, when he/she is presented with the conclusions and makes a decision, there is not even the perception of bias. This "distance" must be balanced with the need for pastoral care of both Respondent and alleged victim.
  - 6.3.2 That there may be greater guarantee of objectivity in so far as the conclusions and recommendations of the investigation are presented to the Church authority as the work of a collegial body.
  - 6.3.3 That the expertise of different specialists is at the disposal of the investigation.
  - 6.3.4 That all allegations of sexual abuse are investigated and that there is no cover-up.
  - 6.3.5 That the same procedure is used for all cases, thus minimising the danger of personal bias or prejudice on the part of the Church authority and freeing it from local pressures and friendships.
- 6.4 The Church authority must be, and be seen to be, impartial, during any preliminary investigation, lest it be perceived by the victim or complainant that the authority is acting in defence of the respondent, or conversely, by the respondent, that the authority is acting against him, overlooking the principle that everybody is presumed to be innocent until proven guilty.

## **7. AUXILIARY BODIES AND OFFICIALS: THE PROFESSIONAL CONDUCT COMMITTEES, CONTACT PERSONS, INVESTIGATORS AND SUPPORT PERSONS**

Provision is made for committees at three levels, namely at the level of the Southern African Catholic Bishops' Conference, the Metropolitan (Archdiocesan) level, and at Diocesan level. Where resources at diocesan level do not allow for a separate Committee, the Bishop of the Diocese will seek the collaboration of the relevant Metropolitan Committee.

### **7.1. At Conference Level: SACBC Professional Conduct Committee**

There shall be established by the SACBC, an SACBC Professional Conduct Committee ('SACBC PCC').

#### **7.1.1. Membership**

1. The following shall be represented, the:

- 1.1. Bishops' Conference, represented by a Bishop and a Chairperson nominated by the Conference;
  - 1.2. Southern African Council of Priests (SACOP); one member;
  - 1.3. Leadership Conference of Consecrated Life (LCCL (SA)); two members, one male, one female;
  - 1.4. Seminaries: one member;
  - 1.5. Religious houses of formation; one member, nominated by (LCCL (SA));
  - 1.6. Each of the five Provincial Professional Conduct Committees by its own Ordinary's Delegate.
2. Ideally, professionals in the following disciplines will be appointed;
    - 2.1. Canon Law
    - 2.2. Civil Law
    - 2.3. Psychology/Counselling
    - 2.4. Moral Theology/Ethics
    - 2.5. Communication and Media.
  3. A reasonable balance between male and female members shall be maintained. A quorum will be five members, which are to include either the bishops' representative, or the chairperson.
  4. Other members may be co-opted when considered necessary or useful for a particular case, for example, a survivor of child sexual abuse.

#### 7.1.2 Functions of the Committee

The functions of the Committee shall be to:

1. study on an on-going basis the literature, the findings and developments at national and international level on the Sexual Abuse of Minors and on issues of professional responsibility for Church personnel;
2. facilitate the appointment of delegates and the setting up of Provincial Committees;
3. organise meetings at national and provincial level for the ongoing education and training of delegates and Provincial and Diocesan Committees;
4. inform the relevant archbishop and the president of the SACBC if the provincial structures as in 3.2 below are not in place or are not functioning properly;
5. act as adviser to the Bishops' Conference in matters concerning professional standards;
6. maintain a confidential and updated statistical record of cases of child sexual abuse investigated by Provincial or Diocesan Committees. Each case's documentation will only be kept by the corresponding Bishop or major Superior;
7. perform whatever other relevant duties may be assigned to it by the Conference.

## **7.2. At Ecclesiastical Province Level: Provincial Professional Conduct Committee ('PPCC').**

The Ecclesiastical Provinces of the SACBC shall each establish a Provincial Committee under the authority of an appointed chairman who will be mandated as Delegate (see Definitions) for each investigation unless there is a reason to mandate another.

### **7.2.1. Membership of the Provincial Committee**

The Committee, as far as possible, should consist of the following members:

1. a Chairman who will be a priest appointed by the Bishops of the province as their Delegate
2. a social worker
3. a canon lawyer
4. a civil lawyer
5. a media spokesperson
6. a social/mental health professional
7. a diocesan priest
8. other members may be co-opted, if considered necessary or useful for a particular case.
9. A quorum will be five members, one of whom must be the bishops' appointee (the delegate).

### **7.2.2. Functions of the Committee**

The duties of the Provincial Committee under the chairmanship of the Bishops' appointee include the following:

1. acting as adviser to all Church bodies in the Province in matters concerning standards of professional conduct;
2. facilitating and assisting with an investigation of any misconduct as requested by any Ordinary of the Province;
3. managing contact with the media as requested by any Ordinary of the Province;
4. compiling a panel of investigators and legal experts, who will be available for consultation;
5. compiling a panel of personnel, and/or investigators and facilities that are available for counselling of complainants, counselling and therapy, for victims and their families, and assessment and therapy for the respondent;
6. facilitating meetings between victims and Church authorities concerning what the Church can, and should do, to assist the victim;
7. acquiring the services of resource persons;
8. ensuring that names of contact persons (see Definitions) are effectively publicised in each diocese.

## **7.3. At Other Levels**

7.3.1. Diocesan bishops may establish a Diocesan Professional Conduct Committee ('DPCC') permanently or ad hoc. Likewise major Superiors may establish a Professional Conduct Committee for a

province of their institute or for the whole institute permanently or ad hoc.

- 7.3.2. Church authorities, in any event, are required to appoint Contact persons and deputies to whom all allegations of misconduct must be reported.

#### **7.4 Appointment of the PCC Members**

The members of the provincial or diocesan Professional Conduct Committees shall be appointed by the corresponding Archbishop or Bishop. Before appointing the Chairperson, the Archbishop will consult the Bishops of the suffragan dioceses since the Chairperson is the Delegate of all the Bishops in the province. It may be advisable that the Archbishop also hears his College of Consultors before making this appointment. A model decree can be found in the section of Documents of the *Vade-Mecum for Ordinaries and Personnel of PCC*.

#### **7.5 Contact Persons**

- 7.5.1 As said above (7.3.2), archdioceses, dioceses and institutes of consecrated life shall have Contact persons and deputy contact persons to receive complaints. They may be members of the Professional Conduct Committee although not necessarily.

- 7.5.2 They should be appointed by decree of the corresponding Archbishop, Bishop or religious Superior and chosen among people with the skills needed for the important task they carry out (see 7.6.3 and 17). A model decree can be found in the section of Documents of the *Vade-Mecum for Ordinaries and Personnel of PCC*.

#### **7.6. Specific Duties of Officials**

##### **7.6.1 The Bishops' Delegate shall:**

1. Convene meetings of the Committee, prepare the agenda and send it to the Committee members.
2. Chair all meetings.
3. Fulfil the duties specified below (see 18 and 21) in the preliminary investigation of each case.
4. Liaise with the Church authority having regular meetings with him to discuss the progress of the cases being investigated and other pertinent matters. The contact person or other Committee member may also take part in these meetings. The Bishops' Delegate shall keep the Committee members informed about the matters dealt with.
5. Liaise with other Church bodies and professional bodies.
6. Be responsible for the safe-keeping of all relevant documentation.
7. Represent the Committee before the SACBC PCC and inform on the work of the Committee he chairs at the meetings of the SACBC PCC.

### **7.6.2 Vice-Delegate**

The Vice-Delegate shall assist the Bishops' Delegate, and fulfil the above duties in the absence of the Delegate.

### **7.6.3 Contact persons**

1. Contact persons shall receive complaints and pass them on to the Church authority.
2. They should be skilled listeners, sensitive to the needs of complainants and victims, and be persons of tact, impartiality and sensitivity.
3. It is advantageous if they have medical or psychological training; but above all, they will be persons of good judgement.
4. A deputy Contact person should be appointed to assist, and/or act, in the absence of the Contact person.

### **7.6.4. Investigators**

1. It is advisable to have a panel of investigators, with competence indifferent languages, and skills necessary to conduct interviews. They are appointed by the Church authority - or his Delegate - for specific cases from the panel compiled by the relevant Conduct Committee.
2. Investigators shall fulfil the duties specified below (see 20) in the preliminary investigation of each case. Investigators will also consider any other relevant information.
3. The investigators are appointed in their professional capacity, and act independently of the authority appointing them.
4. The investigators, insofar as possible, shall be professional practitioners - attorneys, social workers, psychologists. It might be advantageous to appoint for each case a male and a female investigator.

### **7.6.5. Support Persons**

1. The Support Person for the victim represents the needs of the victim to the Church authority and assists, where appropriate, with the care of the victim.
2. The Support Person for the respondent represents the needs of the respondent to the Church authority and assists where appropriate with the care of the respondent.
3. The relevant Support Person should be present each time the respondent or victim is interviewed.
4. The victim or respondent can choose to have a legal representative as Support Person or in addition to the Support Person.

### **7.6.6 The Family**

The traditional role of families in the settling of disputes should be kept in mind at all stages of the investigation. The Conduct Committee and the Church authority will decide at what stage and in what way the families of the respondent and the victim should be involved.

## **PART III**

### **VALUES TO BE PROMOTED IN THE PRELIMINARY INVESTIGATION AND GUIDING PRINCIPLES**

8. **Transparency. Expeditiousness. Respect for canonical and civil norms, and for the rights of all parties involved. Justice, mercy and charity**

The Church authority and its Delegates are obliged:

- 8.1 To ensure that all allegations or reports of alleged offences are investigated and that there is no cover-up.
- 8.2 To act with transparency and accountability.
- 8.3 To open the preliminary investigation and take the successive steps expeditiously aware that justice delayed is justice denied.
- 8.4 To carefully observe the applicable canonical and civil norms.
- 8.5 To respect and protect the rights of all parties involved including those of the accused, possible victims and the community.
- 8.6 To act with justice, mercy and charity.
- 8.7 To show pastoral solicitude for all concerned, whether they be complainant, victim, victims' family, the accused or the wider Church community.

9. **Respect for the good name of the persons involved**

Care is to be taken that the preliminary investigation does not call into question anyone's good name, (canon 1717 § 2) whether complainant, victim or respondent, and their right to privacy. In order to ensure this:

- 9.1 In all matters relating to any conversations and documents and the preliminary and further investigations required under this Protocol, professional confidentiality is to be observed.
- 9.2. An oath of confidentiality should be made annually by members of Committees and ad hoc by investigators.
- 9.3. The Church authority and PCC members shall explain whenever necessary that this confidentiality is of the same nature as that required from many professionals (attorneys, judges, prosecutors, doctors...) regarding what they get to know through their work, and does not have anything to do with a secretive manner of handling allegations on the part of the Church.

- 9.4 This should be accompanied by diligence of the Church authority to issue public statements when in some cases allegations reach the media. These statements shall rectify possible distortions and inform that a preliminary investigation in accord with Church law will take place or has already begun.
- 9.5 All clerics and religious should be exhorted by the competent Church authority to safeguard the reputations of those involved in a complaint, including the complainant, victim and the respondent.

## 10. Assisting and supporting the victims

- 10.1. The Church authority or its delegate should be prepared to listen to the victims and their families, and to be committed to their spiritual and psychological assistance. In the course of his Apostolic trips Pope Emeritus, Benedict XVI, gave an eminent model of this with his availability to meet with and listen to the victims of sexual abuse. In these encounters the Holy Father focused his attention on the victims with words of compassion and support, as we read in his 'Pastoral Letter to the Catholics of Ireland' (n.6): 'You have suffered grievously and I am truly sorry. I know that nothing can undo the wrong you have endured. Your trust has been betrayed and your dignity has been violated'. (cf. CDF, *Guidelines in Cases of Sexual Abuse*, 16 May 2011, I, a)
- 10.2. The Church authority or its delegate should pursue the healing and reconciliation of the victim and the victim's family.
- 10.3. No interview with a victim who is a minor shall take place without the express consent of the minor's parent(s) or guardian(s) and in their presence or in the presence of persons mandated by them.
- 10.4. The complainant should be reassured that the Church is concerned for the welfare of the victim, and that the competent Church authority shall make appropriate arrangements for victims and victims' families to be given advice regarding counselling or therapy, which may, or may not be provided by an agency of the Catholic Church.

## 11. Respect for the rights of the respondent

- 11.1 The fundamental right of the respondent to defence will be respected. Therefore unless the Church authority, after hearing the Professional Conduct Committee, thinks that in some case there are serious contrary reasons, the respondent should be informed of the accusation which has been made, and given the opportunity to respond to it. The prudence of the Church authority will determine what information will be communicated to the accused in the course of the preliminary investigation (see Congregation for the Doctrine of the Faith, *Guidelines in Cases of Sexual Abuse*, 16 May 2011, II § 8 and III § e).

- 11.2 If the Church authority thinks that there are reasons to limit the information to be given to the respondent about the allegations, the respondent should be advised that, if at the conclusion of the preliminary investigation the allegations are not discarded as groundless and a judicial or administrative process is opened, he/she will have full access to all the accusations and proofs and the possibility to refute them. Furthermore, the respondent is to be reminded that in the civil sphere the accused do not have access to all the information gathered by public prosecutors until and if a judicial process is instituted.
  - 11.3 Respondents, complainants and witnesses are to be reminded that a person is presumed innocent until proven guilty. In keeping with this no statements should be made to complainants, victims or any other person implying that:
    - 8.3.1. the accusation is true or not;
    - 8.3.2. there is any liability for damages; or
    - 8.3.4. a particular course of action will follow an investigation.
  - 11.4. What is said in 11.3 notwithstanding, the Church authority is always able to limit the exercise of the respondent's ministry until the accusations are clarified (cf. CDF, *Guidelines in Cases of Sexual Abuse*, 16 May 2011, I, d, 3).
  - 11.5. It should be made clear in all conversations with the complainant, victim (if this is appropriate), victim's family, civil authorities, and any other person that, pending investigation and resolution of the allegation, any temporary withdrawal of the respondent from active ministry is standard procedure. It does not imply any admission of guilt.
  - 11.6. During the course of the disciplinary or penal process the respondent should always be afforded a just and fit sustenance (CDF, *Guidelines in Cases of Sexual Abuse*, 16 May 2011, III, h).
  - 11.7 At the conclusion of the preliminary investigation, the Church authority shall take whatever steps are necessary to restore the respondent's good name if the investigation showed that the accusations were groundless.
- 12. Cooperation with civil authorities**
- 12.1. The Church authority is committed to cooperate with civil authorities.
  - 12.2. The Contact person should advise the victim (or the parents or guardians if the victim is still a minor) of their right and duty to report the case to the Civil Authorities and will encourage them to do so. If the parents or guardians refuse to report to the Civil Authorities the Church authority will do so always following the prescriptions of Civil authorities regarding the reporting of allegations of this kind to the designated authorities, and with due respect for the sacramental seal (cf. 17.6 - 17.8.).

- 12.3. If the Police is investigating the case or a judicial process has been instituted in a criminal or civil court against the respondent, nothing shall be done that could obstruct or influence those proceedings. Normally the Church authority will postpone the opening of the canonical preliminary investigation until the investigation or court case of the civil authorities is concluded.
- 12.4. Regardless of the result of the police investigation or the ruling of the court case, the Church retains her right to open a preliminary investigation in accord to canon 1717 and this Protocol.

**13. Public statements**

- 13.1. The respondent and the alleged victim or his/her parents or guardians should be informed of their interests and rights in the event of being interviewed by the media.
- 13.2. The Church authority shall consult with the Provincial Committee and nominated spokesperson, as to the advisability of any public statement, and its scope, content and form. The minimisation of scandal, as well as the reputations of all involved, should be taken into account. The possibility that silence may be interpreted as an attempt to cover-up the truth should also be born in mind. Any statement that explains a period of temporary withdrawal from active ministry should make it clear that such leave is a routine requirement, which does not imply any admission or presumption of guilt.
- 13.3. Where the matter is being dealt with by the police, or where legal proceedings are pending, no public statement should be made before legal advice is sought

**14. Reparation of the scandal, restoration of justice and reform of the offender**

Canon 1341 lays down the principles that should guide the action of the Church authority in the face of offences: to repair scandal, restore justice and reform the offender. They should be kept in mind throughout the preliminary investigation.

**15. Preventive policies for the protection of minors and integrity in ministry**

- 15.1. The Catholic Church is not satisfied with merely responding to the sexual abuse of the young. She seeks to safeguard and protect the young from any form of abuse. Analogously she expects a high degree of integrity in all her priests, religious and lay workers.
- 15.2. The Southern African Catholic Bishops' Conference has published two documents laying down the policies to be implemented in all Church institutions for the protection of

minors, and the policies to be followed by priests, religious and other Church workers in order to ensure integrity in ministry.

- 15.3. The focus of this Protocol is not on these policies but rather on the way of carrying out the preliminary investigation of sexual abuse of minors allegedly committed by clerics or religious. However, Part VII of the Protocol deals briefly with preventive strategies and awareness.

## **PART IV**

### **PRELIMINARY INVESTIGATION**

#### **16. MAKING AND RECEIVING A COMPLAINT**

Any person who becomes aware of child sexual abuse by Church personnel or suspects that such abuse is occurring is obliged to report it immediately to the contact person or to any Church official.

16.1. Complaints may be made by the following:

1. the victim
2. the victim's family
3. a person who is aware of, or suspects, criminal behaviour
4. civil authorities.

16.2. Complaints may be made to the following:

1. the Contact person
2. the Church authority.

16.3. Frequently complaints are made in letters addressed to the Church authority:

16.3.1 The latter will expeditiously forward a copy to the Contact person and the Bishops' Delegate.

16.3.2 The Church authority shall acknowledge receipt of the complaint and inform the complainant that his/her complaint is being passed on to the Contact person or Deputy who will get in touch with him/her with a view to having the complaint investigated. This should be done without delay: within 24 hours if possible.

16.4. All complaints must be received with respect, understanding and compassion.

16.5. As soon as a complaint is received, the complainant will be told that the Contact person will get in touch with him/her with a view to having the complaint investigated.

16.6 Particular action is called for in the following extraordinary circumstances:

1. If the Contact person is the subject of the allegation (i.e. respondent), the case will be referred directly to the Delegate.
2. If the Delegate is the respondent, the Vice-Delegate assumes the duties of the Delegate until the case has been concluded.
3. If a Bishop is the respondent, the President of the SACBC will immediately be informed. As the competence to investigate and to judge complaints of more grave delicts

- against bishops belongs to the Congregation for the Doctrine of the Faith (cf. *motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, with the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010, Article 1 § 2), the President of the SACBC will report the complaint to the CDF through the Apostolic Nuncio.
4. If the respondent is a religious Superior (a major Superior: provincial, etc.), the Bishop of the diocese where that Superior resides will be informed. The Bishop will forward the complaint to the supreme moderator of the religious institute.
  5. In the event of a complaint being made against a lay employee of a Church institution or organisation, the complainant is to be advised that the matter should be referred to the criminal or civil authorities.
- 16.7. Every attempt should be made to offer assistance to the victim and his/her family where necessary, by way of confidential counselling or other pastoral support as soon as the complaint is received. This is not to be interpreted as an admission of guilt by the respondent or assumption of guilt by the Church authority.
  - 16.8. Complaints emanating from the media should be noted and the complainant contacted to verify the existence of a complaint and informed that the complaint will be attended to. The matter will be referred immediately to the Contact person.
  - 16.9. General inquiries from the media should be referred to the nominated media spokesperson who shall be fully briefed by the competent Church authority and/or the Delegate.
  - 16.10. The contact person and the competent Church authority will decide on what to do about an anonymous complaint.
  - 16.11. If it is not the Contact person or the Deputy Contact person who receives the complaint, then the complainant will be informed that it will be passed on to the Contact person or Deputy. This should be done without delay: within 24 hours if possible.
  - 16.12. Where the first information of a complaint arises from criminal proceedings (such as an arrest or court appearance of a potential respondent), an investigation in terms of this Protocol must be held in abeyance pending the decision of a court of law (where a prosecution is instituted), or the decision of the prosecuting authority not to institute a prosecution, as the case may be.
  - 16.13. The decision to institute a prosecution, or any verdict of a court of law pursuant to a trial, does not preclude a subsequent investigation in terms of this Protocol.

## **17. ACTION BY THE CONTACT PERSON**

- 17.1. The Contact Person will interview the complainant. This will be done without delay, within twenty-four hours if possible. He or she will prepare a written record of this interview which is to be signed by the complainant and the Contact Person. It is advisable to use the form included in the section of documents of Vade-Mecum for Ordinaries and Personnel of PCC for the Contact person's reports: having this form at sight during the interview will help the Contact Person not to omit questions which the complainant should be asked.
- 17.2. If the complainant is not the alleged victim, the Contact person will also interview the victim after discerning the appropriateness of such an interview (cf. no. 4.1) and obtaining the express consent of the minor's parent(s) or guardian(s), and in their presence or in the presence of persons mandated by them (cf. no. 4.1.1). A written record is to be made, signed by the victim or guardian and the contact person in the form mentioned in 17.1.
- 17.3. All complaints must be received with respect, understanding and, when the complainant is the alleged victim or someone who feels especially affected by the situation reported, with compassion.
- 17.4. The precautions mentioned in 11.3 and 11.5. derived from the presumption of innocence of the respondent until proven guilty are to be observed by the Contact Person in the interviews he/she conducts.
- 17.5. Having interviewed the complainant, and/or the victim (as the case may be), the Contact and Deputy Contact persons, if possible, will meet to discuss the complaint. The contact person will then submit a written report to the relevant Church authority and to the Delegate, attaching a copy of the above interviews and, if he/she would like to make any comments or recommendations for further action, shall attach a note with them. Particular attention is to be paid to child protection issues.
- 17.6. This report (17.5.) shall specify that the Contact person advised the victim or his/her parents or guardians in the case of minors or the complainant (when this is different to the victim or his her parents or guardians) about reporting the case to the civil authorities (see 12.2).
- 17.7. If they refused to do so the Contact person shall point out in his/her report to the Church authority and to the Delegate that the reporting to the civil authorities is to be done. The Contact person can report the case to the civil authorities unless the Church authority and the Delegate indicate that some other person should do it.
- 17.8 Reporting to Civil Authorities by the Church authority will obviously be done with due respect for the sacramental seal.

This should not be a problem since the allegations received by the Contact Person or by the Church authority will have taken place outside the sacramental internal forum and will provide enough basis to report to Civil Authorities.

**18. ACTION BY THE BISHOPS' DELEGATE AND THE PCC**

18.1 The Contact person will discuss his/her report with the Bishops' Delegate. They will consider whether the complaint appears to be valid, frivolous or malicious, whether an investigation is required, or would be superfluous, and the Bishops' Delegate shall advise the Church authority accordingly.

18.2 If the Church authority decides that a preliminary investigation is required, he will by decree mandate the Bishops' Delegate to institute a preliminary investigation and to appoint two investigators and an alternate investigator from the listed panel to conduct the investigation. The Bishops' Delegate will inform the PCC within 48 hours of the mandate being given.

18.3 Mindful that the preliminary investigation is a difficult and trying time for all concerned, particularly the victim and the respondent, the Bishops' Delegate shall seek to ensure that the principles and values laid down in Part III of this Protocol (see 8-15) are observed and that all parties adhere to them. Specifically the Bishops' Delegate is to:

18.3.1 Ensure that copies of the decree mentioned above are put in possession of the Provincial or Diocesan Professional Conduct Committee, of the complainant and the respondent.

18.3.2 Ensure that the investigation is undertaken as quickly as possible, is carried out without unreasonable delay and is as transparent as possible for all concerned.

18.3.3 Ensure that the preliminary investigation does not call into question anyone's good name.

18.3.4 Advise the Ordinary to consider, in consultation with the PCC and the SACBC Communications Officer, whether it is opportune to make a public statement when the allegations have been echoed by the media.

18.3.5 Ensure that appropriate pastoral care as well as counselling or therapy, if needed, is offered to the complainant, to the respondent, and to the other faithful who may be directly affected by the allegations.

18.3.6 After hearing the opinion of the PCC, advise the Church authority to consider whether it would be advisable to temporarily withdraw the respondent from active ministry (cf. 19.6).

**19. INFORMING ALL PARTIES INVOLVED AND TEMPORARY WITHDRAWAL FROM ACTIVE MINISTRY**

- 19.1 As soon as the Church authority issues a decree opening a preliminary investigation, he/she shall inform the respondent within 48 hours that a complaint has been made against him/her, and will send him/her a copy of the decree opening a preliminary investigation.
- 19.2 The Church authority shall inform also the complainant(s) and the victim or his/her parents or guardians in the case of minors and send copies of the decree to them.
- 19.3 All parties involved - clerics, religious, lay faithful - and those who may come to know about the allegations, especially the parishioners when the respondent is a parish priest, should be exhorted by their Bishop or religious Superior to safeguard the reputation of all who may be involved in a complaint, including the complainant, victim and the respondent.
- 19.4 The respondent will be advised of the risks involved in speaking to the media, on or off the record, and to refer questions from the media to the nominated spokesperson.
- 19.5 The respondent will be instructed not to make contact with the complainant(s) and/or the victim/or the family.
- 19.6 Temporary withdrawal from active ministry

The *motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, with the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010, Article 19, confers on the Ordinary the right to impose from the outset of the preliminary investigation the cautionary measures foreseen in canon 1722 of the Code of Canon Law as a possibility during the judicial process.

- 19.6.1 Consequently, the Ordinary can «prohibit the accused from the exercise of the sacred ministry or of some ecclesiastical office and position, or impose or forbid residence in a certain place or territory, or even prohibit public participation in the blessed Eucharist» (canon 1722).
- 19.6.2 Canon 1722 points out as reasons for these cautionary measures: prevent scandal, protect the freedom of witnesses and safeguard the course of justice. One more reason becomes of paramount importance in the cases of sexual abuse: the protection of minors.
- 19.6.3 If this measure seems necessary (see 18.3.6 about the opinion to be given by the PCC), the Ordinary is to discuss it with the respondent. If the respondent agrees to stand aside, the decision will be communicated to him/her in a letter setting its terms.

- 19.6.3 If the respondent does not agree, the Ordinary can enforce it by a decree (canons 47-58) which will likewise define clearly its implications. See model of the decree in the section of Documents of the *Vade-Mecum for Ordinaries and Personnel of PCC*.
- 19.6.4 Enforcing these measures by means of decree affords the respondent the opportunity of lodging a hierarchical recourse against them in accordance with canon 173 ff.
- 19.6.5 Whether withdrawal from active ministry is voluntary or not, the subject of the allegation is entitled to the following:
1. To receive a statement of the decision in writing. When the respondent agrees to it, this can be done in a letter from the Ordinary which the respondent shall sign to acknowledge receipt. A sample letter can be seen in the *Vade-Mecum for Ordinaries and Personnel of PCC*.
  2. To receive the reason for the request/requirement to withdraw from active ministry (though not the details of this). The individual is entitled to know that an allegation has been received, and that it is an allegation relating to the protection of minors. The details cannot be passed on at this point and it is necessary for close liaison to take place between the Diocese or Institute of Consecrated Life and the Statutory Authorities to ensure that information passed to the respondent does not interfere with a Police investigation process.
  3. The individual is entitled to legal and canonical representation.
  4. Details of the information that would be placed in the public domain, bearing in mind the principle of canon 1717 §2: «Care is to be taken that this investigation does not call into question anyone's good name. »
  5. Confirmation that temporary withdrawal from active ministry does not constitute removal from office (canons 192 196).
  6. Information regarding the remuneration and residence of the individual during temporary withdrawal from active ministry (canon 281 §1).
  7. Details of the restrictions placed upon the individual during the temporary withdrawal.
  8. It should be made clear that the respondent has not been suspended but is on temporary withdrawal from active ministry, with full pay, while standing aside, and that this measure does not imply an assumption of guilt.

## 20. ACTION BY THE INVESTIGATORS

- 20.1. The Committee may cause one of its members to act as case manager to make arrangements for interviews.
- 20.2. If the respondent has admitted to the accusation it may be advantageous that the investigators, in considering the interests of the victim, first meet with the respondent.
- 20.3. The investigators shall read the texts *Guidelines for Investigators* and *A Model Investigators' Report (A Hypothetical Case)* in the *Vade-Mecum for Ordinaries and Personnel of PCC* before carrying out the interviews and writing their report. They should also read Appendix III, 5 in this Protocol.
- 20.4 Meeting the complainant (if this is not the victim)
  - 20.4.1 The two investigators may discuss the matter in full with the Contact person before interviewing the complainant.
  - 20.4.2 They will interview the complainant.
  - 20.4.3 Under no circumstances shall there be any attempt to improperly influence or intimidate the complainant or dissuade him/her from proceeding with the complaint or to offer him/her financial compensation to terminate the procedure.
  - 20.4.4 A written account of this interview will be signed by the complainant and the two investigators.
- 20.5 Meeting the victim
  - 20.5.1. The two investigators will meet the alleged victim after discerning the appropriateness of such an interview if the victim is a minor (cf. no. 4.1) and obtaining the express consent of the minor's parent(s) or guardian(s), and in their presence, as well as in the presence of the Support person and/or a legal representative (cf. 10.3.).
  - 20.5.2. Under no circumstances shall there be any attempt to improperly influence or intimidate an alleged victim or dissuade him or her from proceeding with the complaint or to offer him/her financial compensation to terminate the procedure.
  - 20.5.3. Victims will be reminded of their right and duty to report to the civil authorities.
  - 20.5.4. A written report of the interview will be signed by the alleged victim and the two investigators.

20.6. Meeting the respondent

20.6.1. The Bishops' Delegate or the case manager, if any, will arrange for the investigators to interview the respondent. Ideally two investigators are to be present for this interview; if that is not possible, the interview, for that reason, is not invalid.

20.6.2. When the interview is arranged, the respondent will be informed of the right to obtain independent legal advice and to have other person present during interviews (his/her Support person and/or a legal representative). Legal advice shall be at the expense of the respondent. If the respondent is a religious, his/her institute will be responsible; if he is a diocesan priest, the Ordinary may decide to assist with legal fees.)

20.6.3. The respondent will also be informed of the right to remain silent, that he/she may admit to an offence but is not bound to do so, nor may an oath be administered (canon 1728 § 2).

20.6.4. The investigators shall remind the respondent that, in both civil and Church law, a person is presumed innocent until proven guilty.

20.6.5. A written account of this interview will be signed by the respondent and the two investigators.

20.7. Meeting Others as Required

The investigators shall interview any other person or persons who could be of assistance, keeping in mind the need for confidentiality.

20.8. Informing the Support persons

The victim Support person and the respondent Support person or their respective legal representatives shall have ready access to appropriate information from the investigators. Regarding the possibility of this information being limited in some cases, see 11.1 and 11.2. The Support persons or legal representatives shall have the responsibility of keeping the victim and the respondent respectively informed of the progress of the investigation.

20.9. Submission of Report

20.9.1 After the investigation, the investigators shall consider the facts and circumstances before them and whether they can come to the conclusion that the allegations made against the respondent are credible and that the alleged offence is imputable to the respondent.

20.9.2 Besides considering whether the alleged facts constitute sexual abuse (cf. Definition) of minors, they are also to take into account the document *Integrity in Ministry* and assess whether any infractions other than sexual abuse have occurred.

20.9.3 They shall provide the transcriptions or accounts of the interviews to the Bishops' Delegate along with a written report expressing their conclusions and recommendations. Perusing the texts of the *Vade-Mecum for Ordinaries and Personnel of PCC* mentioned in 20.3 above will ensure that the report is complete and in keeping with the purpose assigned by canon 1717 to the preliminary investigation.

**21. ACTION BY THE BISHOPS' DELEGATE AND THE PCC FOLLOWING THE SUBMISSION OF THE INVESTIGATORS' REPORT**

21.1. Before submitting the report and documentation to the Church authority the Bishops' Delegate and the Committee shall consider whether the investigation was adequate and complete and that there were no irregularities.

21.2. The Delegate and the Committee shall add their own comments and recommendations to the Church authority. They shall also do so when it is only to say that they agree with the conclusions and recommendations of the investigators.

21.3. Mindful that the opinion of a collegial body like the PCC is a valuable support in the exercise of the Church authority's power of governance, the Delegate and the other PCC members shall take care to form and express their opinion with a deep sense of responsibility.

21.4. Before handing the documents to the Church authority, the Delegate shall ensure that:

21.4.1. The statements or transcripts of interviews have been signed and dated by the investigators or the Contact Person and the interviewees.

21.4.2. The conclusions and recommendations of the Contact Person, investigators and PCC are also signed and dated. The conclusions of the PCC are to be signed by the Delegate and accompanied by a covering letter.

21.4.3. Any other documents of the preliminary investigation are included: the decree with which it was opened as well as letters received by the Church authority, Contact Person, complainants, investigators, etc. which are relevant for the investigation.

21.5. In some cases, although there may be significant circumstantial evidence, there is insufficient direct evidence of abuse for the matter to proceed criminally (according to South African law) and/or penally (according to canon law).

- 21.6. This may happen because often the alleged victims are reluctant to come forward and be interviewed. Also often their parents support their children in this regard or even encourage this approach.
  - 21.7. In some of these situations the PCC may consider that, based on the balance of probabilities and taking into account that all decisions should put the welfare of children as paramount, the committee must recommend that a priest or religious should not return to active ministry, at least without an adequate risk assessment.
  - 21.8. After the Church authority closes the preliminary investigation the Delegate shall inform the chairman of the SACBC PCC of the date and nature of the complaint and the conclusion of the investigation. This information is for statistical purposes only. Therefore it does not include names of the persons involved.
- 22. ACTION BY THE CHURCH AUTHORITY FOLLOWING THE SUBMISSION OF THE INVESTIGATORS' REPORT**
- 22.1 The Church authority will examine the written reports of the Contact Person, the investigators and the Professional Conduct Committee.
  - 22.2. The Church authority shall assess conscientiously the allegations and the reports and recommendations of the investigation. When doing so, the Church authority may meet with the Delegate to discuss the documentation received.
  - 22.3. The Church authority may refer the case back to the Committee and the investigators for clarification or further investigation.
  - 22.4. If the result of the preliminary investigation is that the allegations are credible and that therefore an offence seems to have occurred, the Ordinary no longer has power or competence to treat the material in conformity with can. 1718: he must refer the case to the CDF (cf. *motu proprio "Sacramentorum sanctitatis tutela"* of 30 April 2001, with the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010, Article 16, and *The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding "Graviora Delicta," B. Some Notes on Procedure. The Notitia criminis*). The *Vade-Mecum for Ordinaries and Personnel of PCC* includes the form that should accompany the acts of the preliminary investigation when sending them to the CDF.
  - 22.5. If the conclusion of the preliminary investigation is that the allegations are not credible and the Church authority is satisfied with this conclusion, the Ordinary will not send the acts of the investigation to the CDF.
  - 22.6. In both cases (nos. 4 and 5 above) the Church authority shall close the preliminary investigation:

- i. with a decree if the allegations were not credible (see model in the *Vade-Mecum for Ordinaries and Personnel of PCC*);
  - ii. with a letter saying that the investigation was closed and its acts sent to the CDF.
  - iii. The Church authority shall send the decree or the letter to the Committee, the Complainant and the Respondent.
- 22.7. When the conclusion of the investigation is that there is significant circumstantial evidence but insufficient direct evidence of abuse and the PCC recommends that a priest or religious should not return to active ministry, at least without an adequate risk assessment (see 21.5 - 21.7), the Church authority should consider implementing this recommendation.
- 22.8. In these cases allow these clergy to return to ministry without such assessment or even without supervision, or, if he is a priest from another diocese or a religious, send him out of the diocese may not be a responsible solution: it would mean simply transferring the risk.
- 22.9. When the situation referred to in 21.7 arises, not infrequently it can be seen that the priest or religious under investigation has neglected some of the recommendations contained in *Integrity in Ministry*. This may provide enough grounds for the Church authority to have recourse to the penal remedies of warning (canon 1339 §1), correction (canon 1339 §2) or public penance (canon 1340), which do not require a process (canons 1718 § 1, 2 and 1341).
- 22.10. In any case the existence of significant circumstantial evidence will be a reason for the Church authority to exercise special supervision over that priest or religious.
- 22.11. When the respondent is a non-ordained member of an institute of consecrated life or society or apostolic life the major Superior (who has elected to use this protocol) shall follow the steps pointed out in 22.1 - 22.3.
  - 22.11.1. If the result of the preliminary investigation is that the allegations are credible and that therefore an offence seems to have occurred, the acts of the investigation are not to be sent to the CDF.
  - 22.11.2. The major Superior shall make a decision in accordance with canon 1718, §§ 1-3 of the Code of Canon Law: either to open a judicial or administrative process to impose or declare a penalty (canon 1718 § 1, 1) or to have recourse to the penal remedies of warning (canon 1339 §1), correction (canon 1339 §2) or public penance (canon 1340), which do not require a process (canons 1718 § 1, 2 and 1341).
  - 22.11.3. If he/she thinks that a judicial or extra-judicial process should be opened, he/she may need to

consult the supreme moderator of his/her institute on the way forward.

- 22.11.4. In making this choice the major Superior shall carefully weigh if the solution to be adopted meets the requirements of canon 1341: that the scandal be sufficiently repaired, justice restored and the offender reformed.
  - 22.11.5. If the conclusion of the preliminary investigation is that the allegations are not credible and the major Superior is satisfied with this conclusion, he/she shall close the investigation with a decree (cf. *Vade-Mecum for Ordinaries and Personnel of PCC*).
  - 22.11.6. In both cases (nos. 1-2 above) the major Superior shall inform the Committee, the Complainant and the Respondent explaining to them that
    - i. the allegations were considered credible and the supreme Moderator has been consulted about opening a judicial or extra-judicial process to try the offence
    - ii. or sending to them a copy of the decree with he/she closed the preliminary investigation if the allegations were not credible.
- 22.12. The application of penal remedies (see 22.9 and 22.11.2) needs to be recorded in writing (cf. canon 1339 § 3).

## **PART V**

### **PASTORAL RESPONSE AND CARE**

#### **23. IN RESPECT OF THE VICTIM**

The Church authority, or a mediator appointed by him or her, will make the following response to the victim:

- 23.1. Arrange a meeting between the Church authority and the victim (or parents or guardians if the victim is still a minor) to inform him/her of the outcome of the investigation. Both victim and Church authority will have one other person present with them.
- 23.2. If the accusation does not seem to be credible, the alleged victim will be informed of this. He/she will be treated with compassion and given whatever help and support are considered necessary and reasonable.
- 23.3. If the allegations have been found to be credible the Church authority or his/her mediator will outline the findings of the Committee and will seek to know the needs of the victim and a possible response of the Church to these needs.
- 23.4. As already stated (cf. 10.4.), if appropriate, counselling or other pastoral support may be offered. When making this offer it will be advisable to explain that this is not to be interpreted as an admission of guilt by the respondent or assumption of guilt by the Church authority since still a judicial or administrative process is going to follow in order to weigh the evidence gathered.
- 23.5. The victim or, if he/she is still a minor, his/her parents shall be informed of their right to bring a contentious action to repair damages incurred personally from the alleged abuse, within the same canonical process which will follow the preliminary investigation (cf. Code of Canon Law, canon 1729).
- 23.6. If for some reason a canonical process does not follow, there exists also the possibility foreseen in canon 1718 § 4: with the parties' consent, the Ordinary or the investigator could make a decision, according to what is good and equitable, about the question of harm.
- 23.7. The victim or, if he/she is still a minor, his/her parents shall be informed of their right to seek compensation in a civil court instead of doing so in the Church. They should know that if they do so the canonical process will not start until the civil process is completed (cf. 12.3). The fact that the preliminary investigation has been done means that there had not been a civil process. Otherwise the Church investigation would have been held in abeyance.

## **24. IN RESPECT OF THE RESPONDENT**

- 24.1. If the preliminary investigation showed that the allegations were not credible or if, as a result of a police investigation no prosecution was instituted or the respondent was acquitted by a court of law and the Church authority concurs, the Church authority shall take whatever steps are necessary to restore his or her good name and to repair the damage that has been done. These steps may include:
- 24.1.1. a public and well-publicised statement that the respondent has been found innocent and is returning to full ministry;
  - 24.1.2. a visit by the local Ordinary to the parish of the respondent and a declaration that the accusations were false or could not be substantiated;
  - 24.1.3. an offer of spiritual and psychological help to enable the respondent deal with the inevitable trauma;
  - 24.1.4. clear supportive structures that will facilitate full recovery and reintegration into the community.
- 24.2. If the respondent has admitted the abuse or has been found guilty in a court of law or the complaint has been found to be proven at the conclusion of the canonical judicial or extra-judicial process which follows the preliminary investigation, a just penalty will be imposed, not excluding dismissal from the clerical state (cf. canon 1395 § 2).
- 24.3. Offenders should never be given back the power they have abused and should never be placed in a situation where they have access to the age group they have targeted in the past. (It is to be kept in mind that, at present, fixated paedophilia is considered incurable)

## **25. IN RESPECT OF OTHERS AFFECTED**

- 25.1. Abuse profoundly affects the whole family. The victim may be rejected and parents blame themselves for not taking better care of their children. The Church authority will seek ways and means of assisting in their psychological and spiritual healing.
- 25.2. Often the offender is a very popular member of a school or parish community. Clerics, religious and laity may be divided in their loyalties. The diocese, the Parish and/or Religious Community experience shock, shame and embarrassment. Reactions may include anger, disappointment, disgust, betrayal, disbelief, grief, compassion. Priests and religious feel under suspicion. They can no longer relate to young people as in the past. Trust has been broken.
- 25.3. The Church authority will give serious consideration to ways of dealing with these conflicting emotions and of bringing healing to a community where a case of abuse has occurred. Keeping in mind the confidentiality to be observed regarding the details known through the investigation and/or the ensuing process, as well as the demands of justice, the Church authority will

discuss with relevant individuals and groups the best response to the above.

- 25.4. Extreme care will be taken in the choice of the priest who takes over a parish in which abuse has occurred.
- 25.5. Generally, a personal visit by the Church authority to the affected community is necessary for healing to take place.

## PART VI

### LEGAL RECOURSE

#### 26. RECOURSE AGAINST THE DECISIONS MADE IN CASES OF SEXUAL ABUSE OF MINORS

- 26.1. If when receiving information about alleged offences the Ordinary considers that it does not have the semblance of truth and decides not to open a preliminary investigation, this decision cannot be challenged. It falls within the margin of discretion which canon 1718 confers upon the Ordinary.
- 26.2. The decision made by the Ordinary to open a preliminary investigation cannot be challenged. It is an obligation imposed upon him whenever he receives information which has at least the semblance of truth about an alleged offence (cf. Code of Canon Law, canon 1717 §1 and *The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding "Graviora Delicta," Section B, Some Notes on Procedure. The "Notitia criminis"*).
- 26.3. When the result of the preliminary investigation is that the allegations are credible and that therefore an offence there seems to have occurred, the Ordinary no longer has power or competence to treat the case in conformity with canon 1718, but he must refer it to the Holy See, as the competence to deal with offences against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years, is reserved to the Congregation for the Doctrine of the Faith (cf. *Norms on More Grave Delicts Approved by Benedict XVI on 21 May 2010, Article 16, and The Procedure and Praxis of the Congregation for the Doctrine of the Faith regarding "Graviora Delicta," Section B, Some Notes on Procedure. The "Notitia criminis"*)
- 26.4. When the CDF considers that further penal action is required, it may decide:
- 26.4.1. To present the case directly to the Holy Father for an *ex-officio* dismissal from the clerical state of the accused cleric. This is reserved for particularly grave cases in which the guilt of the cleric is beyond doubt and well documented. It is the praxis of the CDF to request that the Ordinary ask the guilty cleric if he would prefer to seek himself a dispensation from his priestly obligations. If the cleric refuses, or does not respond, the case proceeds. The Disciplinary Section of the CDF prepares a report for the Holy Father, who himself, decides the case. The prescript will be communicated to the Ordinary. There is no appeal, nor recourse, against the decision of the Holy Father.

- 26.4.2. To authorise a penal administrative procedure according to the Code of Canon Law, canon 1720. If the Ordinary is of the opinion that the case merits the imposition of the penalty of dismissal from the clerical state, he must refer his opinion to the CDF which, in turn, will decide to impose the penalty or not. Against such a decision, recourse may be made to the CDF *Feria IV* at an ordinary session of the CDF.
- 26.4.3. To authorise the Ordinary to conduct a penal judicial process in the diocese, with the proviso that, in every case, an appeal will be reserved to the Tribunal of the CDF. The judges, the promoter of justice, the notaries, as well as the advocates, must be priests or qualified lay persons, or be dispensed from this prerequisite. Article 26 of the *Norms on More Grave Delicts Approved by Benedict XVI on 21 May 2010* further requires that the acts of the case be transmitted *ex-officio* to the CDF at the conclusion of the first instance.
- 26.4.4. When this judicial process (26.4.3) concludes, the Promoter of Justice of the Congregation has the faculty to appeal the first instance sentence within thirty days. This time-limit begins to run from the day when notice of the sentence reached the Promoter. In these cases, the CDF has the faculty to validate any acts of procedural law of inferior tribunals. The decision of the Tribunal of the CDF in second instance does not admit of appeal, and therefore, becomes a *res iudicata*, i.e. adjudged matter (cf. Articles 26-27 of the *motu proprio "Sacramentorum sanctitatis tutela"* of 30 April 2001, with the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010).

## PART VII

### PREVENTIVE STRATEGIES AND MEDIA RELATIONS

#### 27. PROTECTION OF MINORS: POLICIES TO ENSURE SAFE ENVIRONMENTS FOR THEM

As already said (see 15.1 and 15.2 above), the Catholic Church is not satisfied with merely responding to the sexual abuse of the young. It seeks to safeguard and protect the young from any form of abuse.

27.1. The primary responsibility for the safety and well-being of children lies with the parents and the immediate family, but parents need the active support of the whole community, and an important part of that community is the Church.

27.2. Ministry to the young is an essential part of the mission of the Church, given to it by Christ Himself. Young people spend a lot of their time in the Church and in Church-related activities. The whole Catholic community has a duty to ensure that these and other activities take place in an environment that is safe physically, spiritually and emotionally.

27.3. In order to ensure this safe environment for the young the provisions of the SACBC document *Safeguarding our Children* on policies and procedures for the protection of minors should be carefully observed in all Church institutions.

#### 28. INTEGRITY IN MINISTRY

The Church expects a high degree of integrity in all its workers, clerical and lay.

28.1. In Southern Africa she has published a document of ethical standards called *Integrity in Ministry*. Its aim is to enable all priests, religious, seminarians, novices and lay Church workers to develop and maintain the highest possible standards in pastoral ministry. *Integrity in Ministry* is based on the values of the Gospel. The point of reference is Jesus Christ, the Way, the Truth and the Life.

28.2. The directives of this document are to be well known and fulfilled by all priests, religious, seminarians, novices and lay Church workers.

#### 29. AWARENESS

29.1 Testimonial of suitability for ministry

29.1.1 Before a cleric or religious is transferred from one jurisdiction to another, the receiving Church authority will ask for a written guarantee that he has never been suspended or otherwise canonically disciplined, that no

criminal charges have ever been brought against him, and he has no criminal record.

- 29.1.2 A possible form for this testimonial can be found in the *Vade-Mecum for Ordinaries and Personnel of PCC*. This form includes the assurance by the sending Bishop that the transferring person has never behaved in such a way as to indicate that he is likely to deal with children or vulnerable adults in an inappropriate manner nor have any allegations ever been made against him with respect to such inappropriate behaviour.
- 29.1.3 This statement will be requested from the sending Ordinary and from all other jurisdictions in which the transferring person worked. This and all similar documents must remain confidential and be kept in the Ordinary's secret archives.
- 29.2. Volunteers and prospective employees will be carefully screened, keeping in mind both child protection concerns and Labour Law regulations.
- 29.3. As soon as there is well-founded concern about the behaviour of any priest, deacon, religious, seminarian, or novice, it will be brought to the attention of that person and steps will be taken to assess if the behaviour is a symptom of a deeper problem. Cf. Code of Canon Law, canons 277, 599, 731 § 2, 247 and 1037.
- 29.4. Each Ordinary and major religious Superior will ensure that the following documents are distributed to all priests, deacons, religious, full-time lay Church personnel and Parish Councils: *Safeguarding our Children, Integrity in Ministry; Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* and *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*. After distributing the new editions of these documents to the personnel in the diocese or institute, copies will be given to new personnel joining it.
- 29.5. Bishops and major religious Superiors are encouraged to include on a regular basis courses and workshops on the documents *Safeguarding our Children* and *Integrity in Ministry* as part of the clergy ongoing formation. In-service workshops will be conducted on the above documents for all Church personnel.
- 29.6. Workshops on these documents will also be conducted for the religious of lay institutes and for the members of Diocesan and Parish Pastoral Councils.
- 29.7. The Church authority will make sure that all Church personnel are made aware of the seriousness of the crime of child abuse and that for priests it is sufficient grounds for dismissal. (Research shows that as many as one out of every four girls and

one out of every ten boys are sexually abused before they reach their eighteenth birthday. It is found in all classes, races, social and religious groups, and is unaffected by sexual orientation or gender, or whether a person is celibate or married)

- 29.8. The names of diocesan Contact persons must be announced in every parish and Church institution.

### **30. SCREENING AND FORMATION PREVENTIVE STRATEGIES**

For candidates to the priesthood and religious life screening and formation preventive strategies should include the following:

- 30.1. All Vocation Directors and Directors of Formation should be made aware of the seriousness of the crime of Child Sexual Abuse. They should be aware of the indicators of this problem and the high risk of recidivism.
- 30.2. This issue should be discussed regularly at conferences and meetings of Vocation Directors and Directors of Formation.
- 30.3. Prior to acceptance, prospective candidates for a seminary or institute should be asked to warrant that they are not aware of any circumstances which might lead to an allegation of criminal behaviour.
- 30.4. Even a single incident of criminal behaviour that relates to minors should be considered grounds for dismissing a seminarian from a seminary or a candidate from an institute's programme of formation.
- 30.5. Courses and workshops on the documents *Safeguarding our Children* and *Integrity in Ministry* as well as on the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* and the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)* should be included in the syllabus of seminaries and houses of formation for the religious.

### **31. MEDIA RELATIONS**

- 31.1. Child sexual abuse is both immoral and criminal. It strikes against the most vulnerable members of society, and abused minors are left with scars that may last a lifetime. The Catholic Church wishes to see responsible media as her ally in exposing and helping to eradicate this evil. Concealing the truth is unjust to victims, a disservice to offenders and damaging to the Church and the wider community.
- 31.2. To keep the public informed and to ensure active cooperation with media practitioners, the Church authority directly or through the SACBC will ensure that:

- 31.2.1. The names and contact details of the Conference Spokesperson and its Media Officer are communicated to all media houses.
- 31.2.2. Each diocese appoints a Media Spokesperson and that such name and contact details are made known at diocesan and national level.
- 31.2.3. Copies of the documents *Safeguarding our Children, Integrity in Ministry*, of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* and of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*, will be made available to the media.
- 31.2.4. All changes in policies and Protocols will be published in the form of a press statement.

## **32. CONCLUSION**

- 32.1. Interpretation of any of the provisions of this document is reserved to the SACBC National Professional Conduct Committee.
  
- 32.2. Abuse of minors by Church personnel has caused great scandal and has done inestimable damage to the Church. Nevertheless the scandal itself has become a wake-up call to the Church and especially to her leaders. It is a call to vigilance and transparency, to honesty and justice, to humility and holiness. If she listens to this call the Church can continue to grow into a loving and caring community that lives by the values of Jesus Christ who once said, "Let the little children alone, and do not stop them coming to me; for it is to such as these that the kingdom of Heaven belongs." (Matthew 10:14)

## APPENDIX I

### THE OFFENCE OF SEXUAL ABUSE OF MINORS IN CANON LAW

The texts of the Code of Canon law and of the *Norms on More Grave Delicts* that typify the offence of sexual abuse of minors are included below along with a commentary on them contained in *The Procedure and Praxis of the Congregation for the Doctrine of the Faith* regarding “*Graviora Delicta*.”

#### 1. Code of Canon Law, canon 1395

«§ 2 *A cleric who (...) has committed an offence against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.*»

#### 2. *Motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, with the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010, Article 16

«§ 1. *The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:*

«1° *the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor;*

«2° *the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.*»

«§ 2. *A cleric who commits the delicts mentioned above in § 1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.*»

#### 3. *The Procedure and Praxis of the Congregation for the Doctrine of the Faith* regarding “*Graviora Delicta*,” Section A

This *Procedure and Praxis of the CDF* quotes the *Motu proprio* “*Sacramentorum sanctitatis tutela*” of 30 April 2001, without the amendments made to it in the *Norms on More Grave Delicts* of 21 May 2010. However what it says about the offence of sexual abuse of minors is still relevant in order to understand its notion.

«a) the *motu proprio* speaks of a “*delictum cum minore*”. This does not mean only physical contact or direct abuse, but includes

indirect abuse also (for example: showing pornography to minors; lewd indecent exposure in front of minors).

«Included also is the possession of, or downloading from the internet of pedophilic pornography. This type of behaviour is also a civil crime in some nations. While “browsing” may be involuntary, it is difficult to see how “downloading” could be considered so, since not only does it involve making a choice or choosing a specific option, but often involves payment by credit card and the furnishing of personal information by the purchaser which can be traced back to him. Some priests have been incarcerated for possession of thousands of pornographic photos of children and youth. According to the praxis of the CDF such behaviour is considered a *delictum gravius*.»

- «b) Can. 1395 § 2 CIC speaks of a delict with a minor under 16: “cum minore infra aetatem sedecim annorum”. The *motu proprio*, on the other hand, speaks of a delict with a minor under 18: “delictum ... cum minore infra aetatem duodeviginti annorum”. Therefore the classification of the delict becomes more complex.

«Some experts, in fact, speak not only of pedophilia (the sexual attraction to prepubescent children) but also of ephebophilia (the sexual attraction to adolescents), of homosexuality (the sexual attraction to adults of the same sex) and of heterosexuality (the sexual attraction to adults of the other sex).

«Between sixteen and eighteen years of age, some “minors” may indeed be perceived as objects of homosexual or heterosexual attraction. Some civil jurisdictions consider a person of sixteen years as capable of giving consent for sexual activity (whether hetero- or homosexual).

«The *motu proprio*, however, stigmatises as a delict every violation of the Sixth Commandment with a minor under eighteen years of age whether based on pedophilia, ephebophilia, homosexuality or heterosexuality.

«This differentiation has, nevertheless, an importance from the psychological, pastoral and juridical points of view. It helps, no doubt, both the Ordinary and the judge in grasping the gravity of the delict and choosing the path necessary for the reform of the guilty cleric, the reparation of scandal and the restitution of justice (cfr can. 1341).»

## APPENDIX II

### THE OFFENCE OF SEXUAL ABUSE OF MINORS IN SOUTH AFRICAN LAW

1. The RSA Legislature enacted detailed laws pertaining to the protection of minors. The laws are
  - the Children’s Act, No 38 of 2005;
  - the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No 32 of 2007 and
  - the Children’s Amendment Act, No 41 of 2007.

As an analysis or attempt at concordance is beyond the scope of this note, reference will be made to only certain salient features.

2. NOT ONLY PROTECTION OF MINORS

Whilst Acts 38 of 2005 and 41 of 2007 (which must be taken together) apply only in respect of children and child care (a child being defined as meaning “a person under the age of 18 years”), Act 32 of 2007 also includes protection of persons over the age of 18 years by creating certain offences in respect of the latter.

3. SEXUAL OFFENCES

After an extensive review of all aspects relating to sexual offences, the legislature enacted the aforesaid Act 32 of 2007. It is both a comprehensive and a consolidating amendment statute. [For ease of reference Act 32 of 2007 will also be referred to as “the Offences Act”.]

The main features of the Offences Act are the following:

- Where common law offences (such as Rape and Indecent Assault) have been repealed, they are replaced by new and expanded offences. In addition, further and new offences are created.
- The Offences Act criminalises all forms of sexual penetration without consent (irrespective of gender), of all forms of sexual violation without consent, of certain compelled acts of penetration or violation and of the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child pornography and the engaging of sexual services of an adult.
- The creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the

creation of child pornography - despite some of such offences being similar to offences created in respect of adults - aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse and exploitation.

- For the purposes of the Offences Act child is defined the same as in the Children's Act, viz. "a person under the age of 18 years". However, with specific reference to two of the provisions of the Offences Act (ss. 15 and 16), child is defined as "a person 12 years or older but under the age of 16 years".
- In respect of the element of the absence of consent, it is to be noted that it is irrefutably presumed that a person (male or female) under the age of 12 years or a mentally disabled person, is incapable of consenting to a sexual act.
- Whilst the Offences Act formally defines a sexual offence as meaning "any offence in terms of Chapters 2, 3 and 4 and sections 55 and 71 (1), (2) and (6) of this Act", the term sexual act "means an act of sexual penetration or an act of sexual violation". (Those concepts are in turn further defined.)
- In terms of the Children's Act, sexual abuse "in relation to a child, means -
  - (a) sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;
  - (b) encouraging, inducing or forcing a child to be used for the sexual gratification of another person;
  - (c) using a child in or deliberately exposing a child to sexual activities or pornography; or
  - (d) procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial exploitation of a child".

The kinds of conduct referred to will also fall to be dealt with under the Offences Act.

- An innovation in RSA law is the establishment in terms of Chapter 6 of the Offences Act of a National Register for Sex Offenders. This is a far-reaching measure. (It is a subject on its own.)
- Another innovation is the provision for Extra-territorial Jurisdiction: in certain circumstances a RSA court has jurisdiction to try an offence charged even if the act alleged to constitute a sexual offence or other offence under the Offences Act occurred outside the Republic, whether or not the act constitutes an offence at the place of its commission.

## APPENDIX III

### SOME COMMENTS ON CANON 1717

*Canon 1717: §1 Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.*

*§2 Care is to be taken that this investigation does not call into question anyone's good name.*

*§3 The one who performs this investigation has the same powers and obligations as an auditor in a process. If, later, a judicial process is initiated, this person may not take part in it as a judge.*

Regarding whether the Church authority enquires personally or through some suitable person, and that the investigation does not call into question anyone's good name, see 4-6 and 9 above respectively.

#### I. CREDIBLE ALLEGATIONS

1. Canon 1717 §1 says: *Information, which has at least the semblance of truth, about an offence.*
  - a) This means that the information received seems credible and leads to consider as probable the commission of an offence.
  - b) The purpose of the preliminary investigation is to see whether the semblance of truth (credibility) of the allegations is confirmed.
  - c) However, it will only be in the judicial or administrative process which may follow the preliminary investigation where the moral certainty needed to impose a penalty is to be attained (cf. canon 1608).
  - d) That is why at the end of the preliminary investigation the accused is not considered guilty, except when he/she has admitted to the commission of the offence.
2. A possible equivalence between the terminology of the Code of Canon Law and that of civil law would be:

Canon Law	Civil Law
What is needed	
a) To open a preliminary investigation: semblance of truth (credibility) of the information received	Credibility of the information received

b) To open a process: initial credibility reinforced after the investigation	There is a strongly probable case for the Respondent to answer, a <i>prima facie</i> case
c) For Judges to convict an accused: moral certainty (canon 1608)	Judges consider the allegations proved beyond reasonable doubt

3. Canon 1717 §1 says: *unless this enquiry would appear to be entirely superfluous*. The investigation would appear to be entirely superfluous if, for instance, the Respondent has admitted to having committed the alleged offence, or in the case of public and notorious offences. However in the latter case it will be necessary to gather evidence to be used in the penal process (cf. commentary on canon 1717 in *Exegetical Commentary on the Code of Canon Law*, Gratianus Series, Montreal/Chicago, Wilson & Lafleur/MWTF, 2004).

## II. OBJECT OF THE INVESTIGATION

4. As regards the purpose of the preliminary investigation, canon 1717 §1 says: *to enquire carefully... about the facts and circumstances, and about the imputability of the offence*.

### A. FACTS

- 4.1 The investigation shall try to establish whether the facts seem to have happened or not (bearing in mind the standards referred to in nos. 1-2 of this Appendix) and:
- a) if they correspond to behaviours categorised in article 16 of the *Motu proprio "Sacramentorum sanctitatis tutela"* (30 April 2001), with the amendments made to it in the *Norms on More Grave Delicts* (21 May 2010), as «more grave delicts against morals»
  - b) or rather correspond to inappropriate behaviours which are referred to in the SACBC *Integrity in Ministry* protocol or are contrary to the duties of clerics and religious laid down in the Code of Canon Law.

### B. CIRCUMSTANCES

- 4.2 The investigation should consider the circumstances surrounding the facts which may increase or decrease the gravity of the offence or its imputability. They could be attenuating, aggravating or excusing circumstances. See canons 1323-1330.

### C. IMPUTABILITY

- 4.3 The investigation shall analyse if the facts alleged seem imputable to the Respondent. Imputability is the quality of an action or omission which makes it attributable to its author in so far he/she has intentionally or negligently violated the law.

4.4 In Penal Canon Law there are two forms of imputability: intentional violation of the law and violation of the law out of negligence. The Code of Canon Law deals with these two forms of imputability in canon 1321:

*§1 No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability.*

*§2 A person who deliberately violated a law or precept is bound by the penalty prescribed in that law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.*

*§3 Where there has been an external violation, imputability is presumed, unless it appears otherwise.*

### III. THE INVESTIGATORS' TASKS

5. Concerning the investigators, canon 1717 §3 says: *The one who performs this investigation has the same powers and obligations as an auditor in a process. If, later, a judicial process is initiated, this person may not take part in it as a judge.*

5.1 In a judicial process auditors can be appointed by the judge as instructors of the court case (cf. canon 1428). Instructing a case means gathering the proofs:

- a) hearing the parties - victim and respondent -, witnesses (cf. canon 1561) and experts,
- b) and receiving whatever documents are of interest to find out the truth (cf. canons 1539-1546).

5.2 In a judicial process once the auditor completes his task, he submits the proofs to the judge. In the preliminary investigation the investigators submit their findings to the Professional Conduct Committee which will pass them on to the Church authority.

5.3 However the findings of the investigators are not evidence with a proper judicial character. For them to have a probative value and be used in the sentence, if the preliminary investigation is followed by a judicial process, they will have to be submitted to the judge and weighed by him.

5.4 As already said (see nos. 1-2 of this Appendix), when doing so the judge will use a standard of proof (moral certainty, beyond reasonable doubt) which is more demanding than the standard of discernment (not of proof) in the preliminary investigation (credible allegations).

## DEFINITIONS AND RELEVANT TERMINOLOGY

For the purpose of this Protocol, the following definitions apply:

**Canonical Offence (also called Delict):** a crime in canon law, an external violation of a law or precept gravely imputable by reason of malice or negligence. See Title VI Part II of the Code of Canon Law.

**Child Sexual Abuse/Sexual Abuse of Minors:** See Appendixes I and II. Sexual abuse can be defined as contacts or interactions between a minor and an adult when the minor is being used as an object of sexual gratification for the adult.

A minor is abused whether or not this activity involves explicit force, whether or not it involves genital or physical contact, whether or not there are discernible or harmful outcomes. (Cf. Sexual Offences and Related Matters Amendment Act, 32 of 2007; Children's Act, 38 of 2005 referred to in the *Vade-mecum for Ordinaries and personnel of Professional Conduct Committees*) It includes incest, sexual assault, sexual molestation and the use of minors for pornography or prostitution.

When the perpetrator is a priest or religious or lay Church worker, the abuse involves an abuse of power, a betrayal of trust and is inconsistent with the integrity of the pastoral relationship between a Church worker and the people.

Child Sexual Abuse may be either paedophilia or ephebophilia (see Appendix I, A.3).

**Church Authority:** Bishops and religious Superiors (see 3.1. and 3.2).

**Church Personnel:** Clerics (including deacons), and members of a Religious Institute.

**Civil Authority:**

1. Provincial department/s of Social Development;
2. Designated Child Protection organisations;
3. Police officials and
4. Director/s of Public Prosecutions.

**Complainant:** The person who has alleged misconduct against Church personnel. The context will indicate if the complainant is also the victim.

**Contact Person:** The person appointed in terms of 3.4.3 above to receive complaints.

**Delegate:** A person appointed by decree of an Ordinary to investigate a complaint. He is usually the chairperson of the PCC.

**Delict:** See **Canonical Offence**

**Diocesan PCC:** A Professional Conduct Committee established by a Diocesan ordinary in terms of 7.3 above.

**Ephebophilia:** The condition of an adult who has recurrent intense sexual urges, and sexually arousing fantasies involving sexual activity with a pubescent minor or adolescent through the age of seventeen. The youngest age of the minor is arbitrarily set at fourteen years and the adult is at least five years older than the minor.

**Imputability:** The quality of an action or omission which makes it attributable to its author in so far as he/she has intentionally or negligently violated the law.

**Investigation, preliminary:** An enquiry or probe into facts, circumstances and imputability of an alleged canonical offence, and whether the allegations seem credible.

**Investigator:** A person or persons appointed by an Ordinary to investigate a case reported to the Committee by the Diocesan contact person.

**Mediator:** A person who is to set up and lead a meeting between the Ordinary and the victim at the end of the investigation.

**Minor:** In South African law, a minor is 'any person under the age of 18 years'. (Cf. Children's Act, No 38 of 2005) In canon law a minor is a person under the age of 18 years. (Norms on More Grave Delicts, 21 May 2010, Article 6 § 1, 1°)

**Ordinary**

1. the diocesan Bishop if the alleged offender is a diocesan priest, a deacon, or a seminarian; it should be noted however that cases of sexual abuse involving seminarians are not reserved to the Congregation for the Doctrine of Faith;
2. the major Superiors (regional, provincial or general) of clerical religious institutes of pontifical right and of clerical societies of apostolic faith of pontifical right, who have at least Ordinary executive power (cf. Code of Canon Law, canon 134 §1).

**Offender:** A person who has admitted to an offence, or who has been found guilty in a court of law or by due process of Canon Law.

**Paedophilia:** The condition of an adult who has recurring intense, sexual urges and sexually arousing fantasies involving sexual activity with a prepubescent minor. The age of the minor is arbitrarily set at thirteen years or younger and the adult is at least five years older than the minor.

**Pastoral Care:** The action aimed at helping someone in his/her spiritual life by means of preaching, administering the sacraments, providing personal spiritual guidance, etc. In this Protocol it is applied to the special spiritual help needed by complainants, alleged victims, respondents, witnesses, etc. of alleged offences.

**PCC:** A professional Conduct Committee.

**Professional Misconduct:** This term is synonymous with the term canonical offence.

**Provincial PCC:** This Committee is set up at ecclesiastical Province level. It is chaired by the Ordinaries' appointee who is called the Bishops' Delegate (see 7.2).

**Recourse Action:** Action which can be undertaken by the complainant or the respondent in order to challenge the decision of an Ordinary in terms of Canon Law. See 26 above in this Protocol.

**Religious:** This term is used in the Protocol as equivalent to the more precise one of member of an institute of consecrated life. Therefore, it includes the members of religious institutes (cf. Code of Canon Law, canons 710-730) and societies of apostolic life (cf. Code of Canon Law, canons 731-746).

**Respondent:** A Church person (see Church Personnel) against whom a complaint of professional misconduct has been brought.

**SACBC PCC:** This is a Committee established by the Bishops' Conference to advise the Conference on Professional Conduct issues involving Church personnel. Its Chairman is appointed and its members approved by the Conference.

**Support Person:** A person who acts as a support to the complainant or respondent during the course of the Investigation, keeping them informed and providing whatever pastoral care is needed and possible and responding on behalf of the Church to ongoing needs.

**Victim:** The person against whom the abuse was directed.