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Crime and punishment in the church gets a new look

John L. Allen Jr. | Mar. 3, 2011 NCR Today

ROME -- By the end of 2012, the Vatican may be ready to issue a set of comprehensive revisions to the laws governing crime and punishment in the church -- adding rigor and specificity to the procedures and penalties to be imposed for, among other things, sexual abuse by clergy.

To be clear, the looming revisions to the penal section of the church?s internal Code of Canon Law are not intended as an alternative to reporting acts which are also crimes under civil law, including sexual abuse, to police and prosecutors. Instead, the revisions are intended to beef up the church?s internal response to these offenses -- and, according to Vatican officials responsible for the revisions, to intervene earlier to nip potential abuse in the bud.

The project is being carried out by the Pontifical Council for Legislative Texts, which is sort of the Attorney General?s office of the Vatican, responsible both for interpreting and updating the church?s Code of Canon Law.

For the past two years, the council has been working on a revision of the penal section of the code, which is found in book six. In late January a draft was finalized and sent privately to roughly thirty consulters, mostly experts in canon law around the world, who will have a couple of months to study it and submit their recommendations.

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By the summer a new draft will be prepared incorporating those reactions, which will be printed and set out to bishops? conferences for comment. The idea is to have a final version ready to submit to Pope Benedict XVI by the end of 2012. [1]

For a long time, the penal section was sort of the poor stepchild of the Code of Canon Law -- largely forgotten about and ignored. Even many of the world?s leading experts in canon law today say they didn?t really study it in school, and over the last half-century bishops rarely used the formal procedures of the code to actually impose penalties.

The penal section has come roaring back to life, however, in the wake of the sexual abuse crisis, which created a perceived need to remedy a lack of discipline, and to ensure that clerics who abuse their office are held accountable.

I sat down this week with Bishop Juan Ignacio Arrieta, secretary of the Pontifical Council for Legislative Texts, to discuss the project. A former professor of canon law at the Opus Dei-run Santa Croce University, Arrieta is the Vatican official who last December penned a high-profile essay in L?Osservatore Romano in which he revealed a previously unpublished piece of correspondence from then-Cardinal Joseph Ratzinger back in 1988, pushing for a tougher line on abuser priests.

In coming days I?ll publish excerpts from my interview with Arrieta. For now, here are three highlights.

First, Arrieta highlighted two overall aims of the revisions. First, the idea is to get bishops to actually use the penal section of the code, seeing it as a pastoral instrument to deal with problems, rather than thinking it?s somehow uncharitable to inflict punishments. Second, the revisions try to achieve uniformity in application of the law by restricting the liberty of bishops in some instances ? rather than simply referring to the need for a ?just punishment,? for instance, the revisions specify what those punishments must be.

One reason for the current lack of uniformity, Arrieta said, is that the new penal law of 1983, incorporating the vision of the Second Vatican Council, left tremendous discretion in the hands of individual bishops.

?There are something like 2,500 dioceses in the world,? Arrieta said. ?In the post-Vatican II code, every bishop has a great deal of latitude in terms of deciding whether or not to punish someone, and if so, which punishment to impose.?

?As a result, the response of the church to the problems it faced was incredibly diverse,? he said. ?Paradoxically, in order to respect the liberty of the bishops, the code effectively created a risk to the unity of the church.?

Second, Arrieta clearly wants bishops to use the penal section earlier in the game, with more minor infractions, rather than waiting for problems to metastasize and only then invoking punishment, which in grave cases is often laicization.

In practice, Arrieta said, laicization has become the only formal ecclesiastical penalty most bishops ever impose. It?s as if, he suggested, criminal justice systems in the civil sphere stopped putting people in jail for robbery, and instead waited for them to do something really awful and then put them to death.

?The other penalties are never applied and gangrene takes over, to the point where the only option left is the ?death penalty?,? Arrieta said.

?Penal legislation is another instrument for pastors to deal with problems before they get to that point. For instance, a bishop can say to someone [who commits a minor offense], ?If you continue with this, you?ll be suspended for a month.? Hopefully problems can be resolved before the ultimate penalty is necessary.?

Third, I asked Arrieta about a concern voiced by some priests that under the new procedures adopted to combat the sexual abuse crisis, their rights are not adequately protected. In particular, I raised the practice of administrative suspension after a credible accusation, which in some cases can leave a priest in limbo for an extended period, especially if the evidence for the charge isn?t a slam-dunk.

In general, Arrieta argued, the problem isn?t the law itself, but the failure to apply it. In truth, he said, the post-Vatican II revision of the Code of Canon Law put a great deal of emphasis on the protection of individual rights.

One interesting point he made is this: When a bishop suspends a priest, he doesn?t always have to do so *sine die* , meaning indefinitely. He could opt to suspend the priest for a month, with the option of renewing that suspension as many times as necessary, but once a month the bishop would be forced to ask himself: Are we honoring this person?s right to a fair and timely process of law?

John Allen is in Rome for the next week. Check back toNCRonline.org[2] frequently for more reports and exclusive coverage.

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