

BRAZIL: We are currently reviewing these types of matters and will keep your suggestions in mind. Thank you. — Service Committee HSE:HSI February 22, 2016

BRAZIL BRANCH

SDL:SRS October 2, 2014 No. 1477

SERVICE COMMITTEE

Re: Local Needs Parts on Child Sexual Abuse

Dear Brothers:

As foretold in the Bible, the last days have been marked by individuals with wicked attitudes that go from bad to worse. (2 Tim. 3:2-4, 13) This is seen in a rise in the number of cases of child sexual abuse reported in our branch territory. In the last service year we recorded 160 cases of molestation, and the number of calls received regarding child sexual abuse, some of which involving brothers taking the lead in the congregations, has increased significantly.

With a view to preventing future cases, we have considered the following possibilities:

Preparing Local Needs parts alerting parents to their responsibility of providing adequate direction for their children in this matter and alerting young ones to the precautions that they themselves must take. We could include brief demonstrations in these parts. If approved, we will use as a basis the *Awake!* of October 2007 and April 8, 1999.

Preparing a circular letter to the elders, with a copy to circuit overseers. In this letter we would reinforce the importance of the elders being alert to any suspicious signs or behavior on the part of anyone whatsoever. It would remind them of the need to give frank yet dignifying counsel to any that manifest undesirable trends and to stay alert to potentially dangerous family situations. It would also remind them that the legal steps that parents or guardians may wish to take are unrelated to the theocratic steps taken by the congregation.

We look forward to receiving your direction so that we can proceed with any appropriate arrangements. Please be assured of our warm Christian love and best wishes.

Your brother,

Gilson Moreira Marques
For the Brazil Branch Committee

BRAZIL: We know you dear brothers are busy, but we are awaiting your answers to the questions below. Thank you. — Your brothers, WHQ Legal Department LE:LHI March 21, 2018

TIME SENSITIVE: Federal Law on reporting CSA becomes effective in April 2018

BRAZIL: After consulting with the Coordinators' Committee, we provide the following approved comments and our legal opinion. Thank you for informing us about the new child abuse legislation that will go into effect in April of this year. We have reviewed the translated portions of the new law that you provided. We agree that it appears to require anyone (including elders) with knowledge of an allegation of child abuse to make a report to the police or other appropriate secular authorities. However, please consult with your Legal Department and send us their answers and comments to the following questions: (1) Are there any exceptions in the new law or your other laws to the reporting requirement in the new law? For example, some child abuse reporting laws provide exceptions for ministers of religion and lawyers. (2) Does Brazil presently have a professional secrecy privilege or law that requires or allows ministers of religion, including our elders, to not disclose a confession or confidential communications? If so, does the new child abuse reporting law specifically abrogate such professional secrecy privilege or law? (3) What does "has knowledge of" mean under the new law? Does an elder's receipt of any allegation or accusation of child abuse trigger an obligation to report the matter to the police or secular authorities? Since this new law will soon go into effect in April, as soon as possible please also send us your recommendations on what legal reporting advice your Legal Department should give to elders who call the branch starting April 2018 to report that they have received an allegation of child sexual abuse. We will then consult with the Coordinators' Committee and provide you with further comments and direction. Thank you. — Your brothers, WHQ Legal Department LE:LHI February 20, 2018

c: Coordinators' Committee

MEMORANDUM

BRAZIL BRANCH

E:EL February 10, 2018

WHQ LEGAL DEPARTMENT

Re: Legal Obligation to Report Cases of Child Abuse to the Authorities

Dear Brothers:

We write at this time to consider the legal obligation in Brazil to report cases of child abuse to the authorities and to inform you of a new Federal Law (13.431/2017) regarding child abuse.

As you are aware, the circular letter to bodies of elders dated September 1, 2017, (Re: Protecting Minors From Abuse), paragraph 5, states that "*in some jurisdictions, individuals who learn of an allegation of child abuse may be obligated by law to report the allegation to the secular authorities.*" In the past, our Legal Department studied this matter to verify if this would be the case in Brazil. If so, elders who became aware of a child abuse case in the congregation, besides needing to care for the matter theocratically, may also have been under obligation to report the matter to the authorities. However, that was not our conclusion at the time, as explained below.

There is nothing in Brazilian legislation that obligates citizens to report crimes, even in cases of child abuse. There are incentives to do so, but these do not constitute a legal requirement. Thus, when someone becomes aware of a crime, he is not punished if he does not report it to the authorities, as long as he does not assist or contribute in some direct way to the illegal conduct, of course.

Regarding protection of children and adolescents, we can cite, initially, two important articles of Brazilian legislation: article 227 of the Federal Constitution and article 18 of the Statute of the Child and Adolescent (Federal Law 8.069/90). Article 227 of the Federal Constitution states:

It is the duty of the family, society, and the State to give full priority to ensuring to children, adolescents, and young people the right to life, health, nourishment, education, leisure, professional training, culture, dignity, respect, freedom, and family and community life, as well as guarding them from all forms of negligence, discrimination, exploitation, violence, cruelty, and oppression.

Article 18 of the Statute of the Child and Adolescent states:

It is the duty of all to zealously guard the dignity of children and adolescents, protecting them from any inhumane, violent, terrifying, vexatious or coercive treatment.

As you can see, these articles indicate Brazil's concern for the protection of children and adolescents in situations of risk, as in the case of those who are sexually abused, but neither creates a legal obligation or establishes a penalty if a citizen fails to report a crime to the authorities. Thus, the above laws do not create legal duties.

However, article 13, paragraph 2, of the Brazilian Penal Code states that, in some cases, if someone fails to act, doing nothing to prevent the outcome, he could also be held criminally liable. This is so when a relevant omission takes place, in which, according to the article in question: *the party who fails to act should have and could have acted to avoid the outcome. Taking action is the duty of those who: a) by law have the obligation to care for, protect or watch over; b) in some other way assumed the responsibility of preventing the outcome; c) by their previous conduct, created a risk that the outcome might occur.*

As you can see, in the event that one is expected to act to prevent a crime (and he truly has the means to do so), and despite this he does nothing, this is considered by Brazilian law to be a relevant omission, and the person may be held criminally liable.

In cases of child abuse, in theory, merely hearing the accused, the victims and the witnesses does not put the elders under obligation to report such facts to the authorities. However, in some situations, especially when minor victims are still at risk, some authorities could consider that the elders have the legal obligation to report the abuse, since, considering the trust that the victim or his family places in them, such an omission would be considered relevant.

For this reason, our Legal Department has furnished the following legal advice when elders report cases of child abuse, in harmony with the direction in the circular letter of September 1, 2017:

1 – The case came to light when the victim was an adult: in this situation, there may be no legal obligation for the elders to report the matter to the authorities, since the victim himself is able to take any legal measures he deems appropriate, and he is informed by the elders that he has the right to do so.

2 – The case came to light when the victim was still a minor: in this case, usually, the elders make sure the parents or legal guardians are aware of the matter. If so, the parents or legal guardians have the obligation to take measures to protect the victim. They would be the ones who would be held legally responsible if they failed to take action to protect the minor.

3 – The case has come to light, the victim is still a minor and nothing is being done to remove the victim from the situation of risk: the parents may be negligent (or even responsible for the abuse), or the victim does not have parents or legal guardians that are capable of protecting him. In this situation, our Legal Department may recommend that, from a legal standpoint, the recommended action is to report the

matter to the authorities, so as both to protect the victim and to protect the Organization from potential legal action. The matter is then presented to our Service Department, which will consider whether or not to follow the legal advice given. In certain situations, the Branch Committee or even the WHQ Legal Department may be consulted before the branch provides direction to the elders.

There are other situations that do not fit the above, since they do not follow the standard pattern, and before providing direction to the elders, it is our procedure to consult the WHQ Legal Department. But the vast majority of cases occur as above. In general, we try to avoid a situation in which the elders are considered as having committed a relevant omission, and we always make sure that the victims are safe from the situation of risk.

There is no specific legal definition as to what constitutes a relevant omission. In practice, it depends greatly on what the authorities, such as judges, understand as having been a relevant omission in the specific case under consideration. Our Legal Department gives direction on a case-by-case basis, taking into account theocratic direction, the law, the opinion of specialists in the area, and the decisions of the courts.

However, on April 5, 2017, a new law was signed in Brazil (Federal Law 13,431/2017) that deals with protection of children and adolescents. This law will become effective in April of 2018, and we are sending a translated copy for your consideration. It has brought about some improvements. For example, it explicitly defines sexual violence against minors and abuse of minors, in its article 4, III (previously there was no express definition in Brazil):

III – sexual violence, understood to be any conduct that coerces the child or adolescent to practice or witness sexual intercourse or any other libidinous act, including the exposure of the body in photographs or on video by electronic means or otherwise, which includes:

- a) sexual abuse, understood to be any action that uses the child or adolescent for sexual purposes, be it sexual intercourse or any other libidinous act, carried out in person or by electronic means, for the sexual stimulation of the agent or a third party;*
- b) commercial sexual exploitation, understood to be the use of the child or adolescent in sexual activity in exchange for remuneration or any other form of compensation, independently or with the sponsorship, support or incentive of a third party, whether in person or by electronic means;*
- c) human trafficking, understood as the recruitment, transportation, transfer, accommodation or reception of the child or adolescent, within Brazilian territory or abroad, for the purpose of sexual exploitation, by threat, use of force or other form of coercion, abduction, fraud, deception, abuse of authority, exploitation of vulnerability or delivery or acceptance of payment, among other cases provided for in the legislation;*

Article 13 of this law also introduced an innovation that can totally change the legal scenario concerning the obligation to report child abuse to the authorities. It states: *Any person who has knowledge of or witnesses an act or omission, practiced in a public or private place, that constitutes violence against children or adolescents, has the duty to communicate the fact immediately to the service that receives and monitors complaints, to the child protection council or to the police authority, who, in turn, will immediately inform the Public Prosecutor's Office.*

With this article, we now would have in Brazil the legal obligation to always report cases of child abuse to the authorities. According to the legislation, knowledge of the fact is all that is needed to make one responsible to report such cases. Once again, the law did not stipulate a punishment for those who fail to comply. However, failure to comply could be the basis for a suit for damages in the civil sphere or could constitute a relevant omission, since now the duty to act is explicitly stated in law.

A Brazilian legal expert in this area, commenting on this new provision, states: *“the new law, when establishing an important system to guarantee the rights of child and adolescent victims or witnesses of violence, orders any person who has knowledge or witnesses an act or omission, practiced in a public or private place, that constitutes violence against a child or adolescent, to immediately communicate the fact”* to the authorities.

We do not yet know how the courts and other Brazilian public institutions will interpret this article, especially since the law will only become effective starting in April of this year. We will continue following closely the effects of this law in practice, and will keep you informed of any developments.

Please be assured of our warm Christian love and best wishes.

Your brothers,

Brazil Branch

Attachment