



UNABHÄNGIGE KOMMISSION  
ZUR AUFARBEITUNG  
SEXUELLEN KINDESMISSBRAUCHS

# **Rights and Obligations: How to Investigate into Past Failures to Protect Children from Sexual Abuse in Institutional Settings**

Recommendations to Institutions



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### **About the Independent Inquiry into Child Sexual Abuse in Germany**

Since 2016, the Independent Inquiry into Child Sexual Abuse in Germany has been investigating into the extent, nature and consequences of sexual violence against children and adolescents in the Federal Republic of Germany and the German Democratic Republic. At the core of the inquiry are confidential hearings and written reports from victims and survivors who experienced sexual abuse in institutions, in familial and social contexts during their childhood and adolescence. In this context, institutions are defined as all areas in which children and adolescents may spend time during their upbringing. The Independent Inquiry into Child Sexual Abuse in Germany is affiliated to the Independent Commissioner for Child Sexual Abuse Issues. It was convened in consequence of a resolution of the German Bundestag. In 2019, the Federal Cabinet extended the term by a further five years.

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## WHY SHOULD INSTITUTIONS INVESTIGATE INTO CHILD SEXUAL ABUSE?

Child sexual abuse is a form of violence that not only requires judicial follow-up but also brings with it a responsibility that addresses society on the macro-level. People who were sexually abused in their childhood not only talk about the perpetrators, but also about other people who saw or knew of the abuse but did not intervene and did not try to stop it. They recount experiences with administrative offices and specialists whose offers of help were not sufficient. They bear witness not least to the social concealment of crimes and offences, and thus to the maintenance of a taboo.

Child sexual abuse is powerful in the present day. The consequences of the experiences associated with child sexual abuse influence the lives of adult victims and survivors. It is not only as children or adolescents that victims and survivors have to experience that they are not being listened to and that their reports about the sexual violence they suffered are ignored, trivialised or rejected in general terms. Child sexual abuse also has a profound impact on the way children and adolescents grow up today. The Independent Inquiry into Child Sexual Abuse in Germany (the “Inquiry”) posits that the investigation into child sexual abuse is an essential feature of modern child protection and a prerequisite for the implementation of the right to a non-violent upbringing.

In the past, institutions seldom examined this form of violence, not least because it was little known to the public, was discussed only sporadically in public, and victims and survivors were not heard. This has changed. **Institutions are expected to investigate the child sexual abuse that occurred in their past. They are assigned a duty to assume responsibility for the past in their institution. This expectation is the consequence of the conviction that victims and survivors have a right to investigation.** Although this right is not legally enforceable, no one can ignore the fact that the personal dignity and integrity of children and adolescents is violated the moment child sexual abuse occurs. Institutions therefore have a moral and professional responsibility to set in motion the investigation when they become aware of past sexual violence against children and adolescents.

In addition to victims and survivors, other people are also engaged in investigating child sexual abuse: parents who entrusted their children to an institution early are likely to expect clarification. This also applies to former employees and staff. The findings of the investigations should identify practical recommendations for change in the institution that benefit children and adolescents today as well as their parents. Finally, the investigation appeals to the present-day staff and employees. For them, an investigation can also be beneficial for dealing with potential current cases. Based on the right of victims and survivors to speak out and with a view to the other groups of agents, an investigation should be proactively initiated by the responsible persons of an institution. This sends an important signal and enables a new basis of trust.

## **Target Audience of the Recommendations**

Even though many victims and survivors experience child sexual abuse within the family, the recommendations at hand focus on dealing with sexual violence in institutions. “Institution” hereby refers to any private, public or non-governmental organisation dealing with children in the past or to this day, such as schools, boarding schools, residential child care, sports clubs, recreational facilities, religious organisations, day-care centres, medical facilities or public authorities. The recommendations are addressed to those responsible in these institutions today. They are aimed at salaried managers as well as honorary board members who were aware of incidents of child sexual abuse in the past and who wish and need to have these cases processed. As such, all organisational and administrative levels are addressed, for example the level of the individual organisation, of the association and the provider as well as the level of management and board.

## **Aims of the Recommendations**

To date, there are no binding criteria for investigating child sexual abuse in institutions. Institutions that wish to examine past cases of child sexual abuse therefore often do not know how to proceed. Victims and survivors have also reported on how important it is for them to have transparent and clear guidelines at their disposal and to be able to demand them from the respective institution. This is where the Independent Inquiry into Child Sexual Abuse comes in with these recommendations.

They can be easily linked to the development of child protection concepts that have already been introduced in many institutions. Prevention is important, but in this context looking into the past also is needed. The Independent Inquiry into Child Sexual Abuse is of the opinion that, without looking into the past, preventive measures cannot keep a hidden history of violence from continuing to be effective and reaching into the present.

### **The aim of these recommendations is to:**

- provide information on important framework conditions and conditions for the successful investigation into of child sexual abuse in institutions;
- offer orientation and certainty in action;
- encourage people involved to start the investigation.

The recommendations of the Inquiry on the rights and obligations in the procedure of investigations in institutions relate to sexual violence against children and adolescents.



It is based on an extended concept of childhood that includes adolescents, i.e. persons up to and including the age of 18. Moreover, other forms of violence can also be discussed in these procedures since victims and survivors are often affected by several forms of violence.

These recommendations provide a framework and advise on the areas that every institution should consider. They need to be adapted to the nature and size of the respective institution. Adjustments may also be necessary during the ongoing investigation.

## **1. HOW TO INVESTIGATE CHILD SEXUAL ABUSE IN INSTITUTIONS?**

Violence that has been experienced, concealed and kept quiet affects the present and is an injustice against victims and survivors. An inquiry into sexual child abuse can neither replace police investigation or prosecution nor the individual treatment of the trauma in therapy. It is, however, often the only way in which victims and survivors can make public the injustice they had to experience and thus receive social recognition. Even in cases when legal clarification is possible, an institutional investigation remains necessary as it pursues its own objectives for which criminal proceedings do not provide a framework.

### **1.1 On the Notion of Investigating Child Sexual Abuse**

The objective of investigating child sexual abuse is to expose the culture in which child sexual abuse has taken place in an institution and to expose the structures that may have contributed to perpetrators committing acts of violence against children and adolescents. It also aims to expose those who knew about it but did not prevent it, or did so late. It is intended to make visible whether there was an attitude among those responsible in the institutions at the time of the abuse which favoured violence and devalued children or adolescents, and to clarify whether and, if so, why child sexual abuse was covered up, repressed or concealed in an institution.

On the basis of these findings, this review aims to recognise the suffering as well as the rights and support of adult victims and survivors. It aims to contribute to an improved protection of children and adolescents and to establishing their rights, as well as to sensitise society to the dimensions of child sexual abuse. By means of public reporting and recommendations, the results of an inquiry can lead to better institutional protection for children in the future.

The objective of an inquiry is:

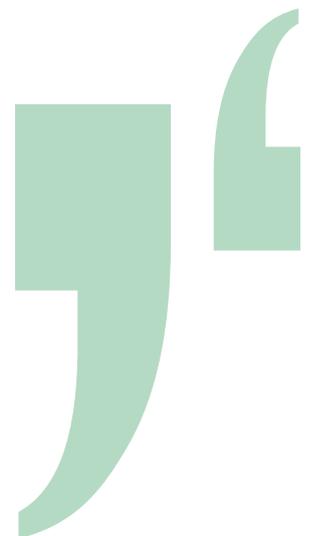
- to give a voice to victims and survivors of child sexual abuse
- to exercise the right of victims and survivors to protection and to be witnesses;
- to identify the injustice suffered and its consequences for the victims and survivors;
- to expose what crimes took place, as well as exposing the perpetrators, accomplices and the people involved in the covering up;
- to understand how institutions have failed to protect children from sexual abuse and to show which circumstances have enabled sexual abuse and prevented its exposure;
- to acknowledge injustice and develop formats of remembrance;
- to draw conclusions for the present that serve the protection of children and adolescents today.

## 1.2 Individual Handling and Coping

Some victims and survivors of sexual abuse begin dealing with their trauma long before it is investigated in the institution; others have not yet started individual processing. Those responsible in institutions need to know what consequences child sexual abuse has and how lasting its effect on adult life can be.

A distinction must be made between the investigation within an institution and individual handling: they often begin at different points in time, are accompanied by different forms of resistance and are confronted with different obstacles. They can develop at different speeds, they can stall, slow down or accelerate. While the investigation within an institution can at least come to a preliminary result or even to a conclusion, individual coping might remain a lifelong task.

As concerns communication with institutions, victims and survivors expect respect and recognition as well as sensitivity in dealing with individual forms of coping. When an investigation is started within an institution, this will trigger something among everyone involved, but especially among the victims and survivors. The institution should reckon with the fact that the investigation is at times experienced as a burden by those who demanded it. It is important to bear in mind this dynamic.





## **2. HOW CAN THE RIGHT OF VICTIMS AND SURVIVORS TO INVESTIGATE THE PAST BE REALISED?**

### **2.1 Attitude**

Victims and survivors have the right to an investigation within the institution. In many cases, they report resistance and rejection in institutions. An open-minded and non-defensive attitude towards the rights of victims and survivors and the duties of the institution is fundamental for the initiation and implementation of an investigation.

### **2.2 Communication and Access**

The establishment of an inquiry must be made public from the beginning. This is the first step to reaching as many victims and survivors as possible, especially those with whom there has not yet been any contact. A public announcement signals to people that the institution truly wants to reach out to victims and survivors. In order to enable various groups of victims and survivors to exercise their rights, a variety of communication channels are needed. The central issue during the entire procedure, but especially at the beginning, is to create manifold possible approaches for victims and survivors, so that their right to an investigation can actually be realised.

### **2.3 Structures of Participation**

It is important to have structures that enable good participation and consultation of victims and survivors. More precisely, they should have a say in the shaping of the investigation and be able to participate in the committees and meetings that flank the procedure. The objectives of the respective project are to be coordinated with victims and survivors; a representation on the Advisory Board should ensure them the right to become involved in the selection of a third-party inquiry team; working with the press and public relations measures should be coordinated. Possible limits to participation are also conceivable. If they are asserted by the institution, they must be substantiated.

Victims and survivors have a right to an investigation, but they are not obliged to participate in the project. This also means that, under certain circumstances, an investigation may have to be set in motion without victims and survivors wanting to participate. This can change over time, and the involvement of victims and survivors should then be made possible.

## **2.4 Resources**

An important element in the realisation of the right of victims and survivors to an investigation consists in the resources made available to enable them to participate. This includes financing the guidance and counselling of victims and survivors, supporting the networking of victims and survivors (see section 2.7) as well as reimbursing expenses for participation in committee meetings.

## **2.5 Transparency**

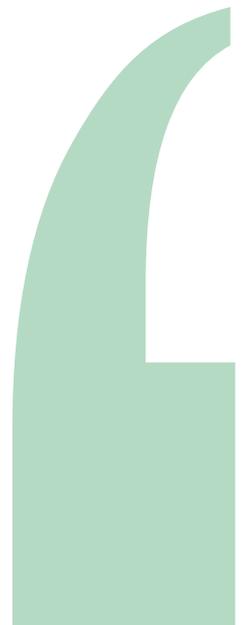
The rights of victims and survivors include safeguarding the transparency of the investigation in all its steps. Changes to the team, time schedule or the collection of data, for example, must be communicated. Transparency is furthermore ensured through continuous reporting.

## **2.6 Support and Guidance Services**

For victims and survivors, the investigation does not necessarily mean re-traumatisation, but it can be stressful. Therefore, support and guidance services must be provided. To this end, institutions are dependent on cooperation with specialised counselling centres or other qualified local support organisations. This ties up resources at the specialist counselling centres; the costs incurred must be planned and made available from the outset. However, victims and survivors should also have the possibility of using a counselling centre of their choice. In both cases, the costs must be borne by the institution (see section 13.5).

## **2.7 Networking of Victims and Survivors**

A successful inquiry requires structures for victims and survivors to network. Institutions should encourage victims and survivors to network and enable this networking to the extent desired by victims and survivors; institutions are also expected to actively support, accompany and financially safeguard this. Victims and survivors need a place where they can meet and exchange information in a self-organised way. On the one hand, victims and survivors can agree on this form of networking with regard to their position and demands towards the institution. On the other hand, the exchange in a group of victims and survivors can be an important form of self-help. Realising that other people had to experience something similar can relieve the strain. In order to support the group of victims and survivors, an external moderation, mediation or, if necessary, supervision should be made available in order to moderate and absorb conflicts or special burdens.



## 3. WHAT ARE THE MOTIVES TO ESTABLISH AN INQUIRY?

### 3.1 Sexual Violence and Its Exposure



In the past, investigation projects of child sexual abuse were in very many cases caused by the reports of victims and survivors who are adults today and who contacted the responsible institution. Occasionally, the exposure was also initiated via parents or employees. Experience to date has shown that especially cases of sexual abuse dating back several decades have given rise to investigations. However, there may also be cases from the recent past. In particular, if there are several victims and survivors and there have been abuses carried out by the same perpetrator, an institution must process its past since this raises profound structural questions. However, even cases that initially look like individual cases can be decisive for a broad investigation procedure.

In acute cases of child sexual abuse, an institution must first clarify the suspicion pursuant to its plan of action for dealing with child welfare risks, and intervene if necessary. It will also have to examine its obligation to report a criminal offence. An acute case of sexualised violence can also be a motive for investigating previous cases, for example if the abuses were committed by a long-standing employee and it can be assumed that there are other victims and survivors. In such cases, employees are also expected to approach the management of the institution concerned to request an inquiry.

### 3.2 Evidence of Active Cover-up

It can happen that victims and survivors come forward who, as children or adolescents, had already contacted a person in charge within the institution, but had no reaction.

Although a perpetrator was transferred, there are no references to the abuse in the relevant personnel file or the files are completely missing. Indications of cover-up are also given if young victims and survivors were expelled from the institution without any consequences for the perpetrator. It may be that victims and survivors as well as perhaps their parents were put under pressure to remain silent about the events.

### 3.3 Reassessment of Suspicious Facts

The public discourse on child sexual abuse and the increasing debate on the subject can lead to a reassessment of earlier indications of sexual violence by employees, parents or other potential contemporary witnesses and a different way of dealing with them. Perhaps memories of one's own observations will be awakened, which have been suppressed so far or which have not been followed up, for example out of fear, shame or insecurity. It is possible that objections to certain rituals were rejected with responses such as, "We have always done it this way", "This cannot happen here" or "We trust this

person in full; they are very popular with the children". Such memories may indicate that protective mechanisms failed in the past.

## 4. WHAT IS THE SPECIFIC OBJECT OF AN INQUIRY?

The question of what the specific object of the inquiry should be is of central importance and must be defined in the commission. The following questions are to be determined:

- What is to be investigated?
- Which period of time should be investigated?
- Which places are the object of the investigation?

The commissioning should be designed in such a way that it is feasible and achievable for the inquiry team but still offers enough freedom to investigate other important areas if these contribute to the investigation. The object of the inquiry should be at least:

- the extent of child sexual abuse in the given context;
- structures that have made abuse possible and encouraged it;
- dealing with cases and their clarification in the past;
- recommendations for recognition of injustice and better child protection on site.

### 4.1 Identification and Clarification of Offences

What happened? The purpose of an inquiry is to identify the acts of violence and to clarify their context of origin. For victims and survivors, the ability to speak about individual experiences of violence and being heard are basic components in the investigation. Therefore, conditions must be created that enable victims and survivors to speak and to report what happened to them and what consequences the offences have had in their lives.

### 4.2 Identification of Perpetrators

Who are the perpetrators and do they still work with children or adolescents today? Did they experience sanctions in the past when they were exposed, have there been charges or convictions? Were the offences associated with tangible professional consequences such as dismissal, transfer for disciplinary reasons or compulsory retirement?



It is possible that perpetrators are no longer active in an institution and can no longer be held accountable. However, the responsibility of the institution to name perpetrators remains. As an inquiry in Germany is not a legal clarification, the publication of real names is only possible under certain circumstances (see section 5.7). However, the management of an organisation must know the real names so that it can react accordingly (see also section 5.10). If possible, the management must take appropriate steps regarding staff and decide in which cases to file a complaint. Victims and survivors report that despite known offences, perpetrators continue to be honoured in institutions, for example in yearbooks. Developing an attitude concerning this is also part of the investigation within an institution.

### **4.3 Identification of Responsibility**

Who was complicit by not doing anything to help the children and adolescents? Can we determine what they would have needed to better protect the girls and boys? Who were the people who covered up crimes and actively protected the perpetrators? What loyalties caused a covering up of perpetrators and made violence possible? Identifying and addressing the responsible persons within and outside the institution is a prerequisite for the comprehensive acceptance of responsibility by the institution. This makes it clear that the full responsibility for the acts of violence lies with the adults and that there was and is no “complicity” of young victims and survivors.

### **4.4 Disclosure of Enabling Conditions**

Which institutional structures and mechanisms have enabled abuse? Sexualised violence against children and adolescents in an institutional context is possible if there are factors within the organisation that favour such abuse and/or if the supervisory duty of higher institutions is not fully exercised.

### **4.5 Consequences for Victims and Survivors**

Violent acts in childhood and adolescence affect the lives of victims and survivors. The personal social consequences of sexualised violence must therefore be documented, such as problems with creating strong and lasting bonds or building trust with fellow human beings. This also includes experiences of social isolation, the difficulty of gaining recognition among peers or experiencing exclusion and devaluation. Mental and physical consequences like anxiety, depression, sexual issues or physical illnesses should also be considered. In addition, professional burdens and financial restrictions as a result of abuse must also be taken into consideration. It is important to understand the diversity of the consequences for victims and survivors. The shame of talking about the individual consequences of the acts of violence is often high, so it is important to allow sufficient time for this topic.

#### **4.6 Limits to the Investigation**

An inquiry does not undo injustice. It can neither replace criminal clarification nor individual coping. The duties and objectives must be clearly defined. It must be clearly stated what the participants can and cannot achieve; this is the only way to align expectations. An investigation will not be able to fulfil the institution's wishes for reconciliation or rehabilitation.

#### **4.7 Experiences of Unaffected Former Members of Institutions**

It needs to be clarified whether and to what extent the perception of those who were in the institution as children and did not experience sexualised violence there should be taken into account. The exposure may change their perception of the past, leading to shifts in the image they have of the institution or the people working there. Sometimes it is necessary for these individuals to talk about their own experiences in the institution, and to share their own view of the past.



## 5. WHICH LEGAL ISSUES NEED TO BE CONSIDERED?

It is important that the institution as well as the inquiry team deal with relevant legal issues at the beginning of a procedure. Victims and survivors as well as witnesses must also be informed about the legal framework of an investigation project. Perhaps not all of the following points will be relevant. However, it is important to know and weigh up legal risks so that decisions can be made and the ability to act is safeguarded. In specific individual cases, legal expertise must be obtained, as complex legal issues are often involved.

### 5.1 General Right of Personality

The general right of personality is an expression of the constitutional principles of the inviolability of human dignity and the right to the free development of personality (Article 1 and Article 2 of the Basic Law for the Federal Republic of Germany). It places a variety of aspects of a person's personal development and self-determination under fundamental rights protection. Case law in Germany has developed the following groups of cases: right to one's own image; right to informational self-determination; right to privacy/protection from indiscretion; protection from untruth; right to identity; protection of honour and reputation; and protection from dangers to life and liberty. The right to unhindered development of one's personality and undisturbed child development was added in recent years. In the event of a violation of these rights, victims and survivors can defend themselves with civil law claims for injunctive relief and removal, whereby the objective illegality of an incident is generally sufficient here (which is simpler than in criminal law) and the culpability does not have to be proven.

When investigating child sexual abuse, not only the privacy of victims and survivors is affected, but also their particularly protected personal space when they report on the abuse or its consequences. The inquiry team learns the names, addresses and dates of birth of victims and survivors and of witnesses, as well as seeing photos, testimonies, assessments, medical and psychological statements. All such information and documents are protected with the highest priority against access by unauthorised persons and against misuse. Their use is only permitted with the prior consent of the victims and survivors.

### 5.2 Data Protection

Every investigation thrives on the confidentiality that is assured to victims and survivors as well as to contemporary witnesses. In particular, victims and survivors who have experienced child sexual abuse and a massive loss of trust must be fully informed about the use of their data and information.

In accordance with the provisions of the Federal Data Protection Act (BDSG) and the General Data Protection Regulation (GDPR), victims and survivors as well as contemporary witnesses must be informed of a large number of facts before their details can be accepted. The persons responsible for data protection and record keeping must be named to them, including, if available, the data protection officer. They are also to be fully informed of the purpose of the data collection, the nature of the collection of their personal data and, finally, the nature of the storage and analysis of the data.

The processing of special categories of personal data, such as information on health status or sex life, requires the consent of the victims and survivors (Section 9 Para. 2 lit. a GDPR). In addition, Section 9 Para. 2 lit. j, Section 89 Para. 1 GDPR and Section 27 Para. 4 BDSG must be observed when processing this data, as these are regularly processed within the framework of scientific and historical research.

Finally, victims and survivors as well as contemporary witnesses must be informed of their rights of access to rectification, to the restriction of processing, to erasure and to data portability, as well as of the duration of the data storage. They need also be informed that they can revoke their consent to the processing of their data at any time.

### **5.3 Access to the Archives of the Institution**

The prerequisite for a successful investigation is that the institution is prepared to open itself completely and unreservedly and grants access to its own archives, libraries, collections, private correspondence, secret files and personnel files. The inquiry team needs direct access to these documents and the institution's full availability of information on what documents are available and how they can be found.

Coercive measures such as seizure and confiscation are only available to the public prosecutor's office and the courts, but not to private individuals such as members of the inquiry team. If there is a tangible suspicion that files might be manipulated and/or destroyed during the investigation, involving the law enforcement authorities can be considered.

### **5.4 Access to Public Archives**

The inquiry team has at its disposal government archives and other publicly accessible archives for research, above all the State Archives. It is advisable to cooperate with archivists or experts, especially in smaller archives. Often only these persons have an overview of which material has already been archived. Many State Archives make their holdings available in online databases so that the archival material can be ordered, viewed on site and evaluated. Access is made considerably easier if archival documents have already been digitised.



Access to more up-to-date personal archive materials is restricted for reasons of data protection by so-called terms of protection, which are regulated in the respective archive laws of the German federal states. For example, personal files may not be inspected until ten years after the death of the respective person, unless such inspection is indispensable in the overriding interest of another body or person. The use of the archival material is also to be made possible if it is needed for a particular research project. In doing that, the interests of the victims and survivors or third parties worthy of protection must not be impaired or the public interest must considerably outweigh these interests worthy of protection. The inquiry team should make duly substantiated requests to shorten the respective terms of protection in order to be able to inspect the archive material.

### **5.5 Access to Criminal Records**

Inspection of criminal files may be requested from the respective public prosecutor's offices. The storage times are regulated in special storage ordinances of the individual federal states in Germany. If a file no longer exists, there is still a chance that state archivists recognised its importance in good time and archived it.

According to Sections 476, 477<sup>2</sup>, 478 Strafprozessordnung (StPO, the German Code of Criminal Procedure), public prosecutors may submit personal information for research purposes. The inquiry team may refer to the fact that access to files is necessary for the performance of scientific research and that it is not sufficient to obtain anonymised information. It can also be argued that the right of personality of the accused person or defendant must be weighed against the public interest in the investigation. However, the transfer of data is often rejected with reference to the interests of other victims and survivors worthy of protection and not with reference to the protection of the accused person or defendant. This argument can be countered by presenting a tangible and differentiated concept for data protection. This should already be submitted with the file request.

### **5.6 Victims and Survivors' Access to Their Files**

While the inquiry team is active, victims and survivors often simultaneously demand access to the files kept on them by the institution, such as the student file of a boarding school. A legal right to inspect files is regulated for the school sector, for example, in the school laws of the German federal states. It includes the right to make copies, but not to have the file surrendered. Institutions for which there is no such legal basis should also allow access to files for victims and survivors.

The inquiry team must also develop an attitude in the event that victims and survivors request that their "own file" not be made available to the inquiry team. If victims and survivors give good reasons why the perpetrator's comments and assessments concerning them should not be updated, this should be respected. The victims and survivors should be consulted as to how the file contents can be incorporated.

## 5.7 Possibilities and Limitations of the Publication of Names

Victims and survivors expect from the inquiry that the perpetrators are identified, that the number and severity of the perpetrator's abuses are named – in particular the number of their victims – and last but not least, that the accomplices and supporters are identified. In short, they expect a clear allocation of responsibility on the perpetrators' side and, depending on the fault of those responsible, on the part of the institution.

An inquiry team must weigh up when it speaks of a “perpetrator” – even if there was no criminal procedure or can no longer be one. The following questions need to be answered: When should one no longer speak only of “accused persons” or “persons under suspicion” as the statements of several victims and survivors as well as contemporary witnesses support each other and archive research has also provided further information? When would a term such as “accused person” equate with a refusal of recognition and responsibility? And when should the names of perpetrators be published? It must also be clarified whether persons who have covered up should be named publicly.

In the recommendations at hand, the Independent Inquiry into Child Sexual Abuse has decided to speak of “perpetrators”. This use is not based on an understanding of criminal law because only a few investigation projects were preceded by criminal proceedings resulting in conviction.

It is undisputed that perpetrators also have the right to protect their general right of personality. They are entitled not to be named and not to be identified. In the case of each identified perpetrator, it is necessary to weigh the general right of personality against the seriousness of the offences, the number of abused children, their social and institutional status and the public's interest in knowing names and criminal offences. The prerequisite is, of course, that the offences are considered proven in the course of the investigation. It may also become necessary to weigh up the names of other persons responsible if it emerges that they covered up sexual violence and thus made it possible or even promoted it.

It has not yet been decided to what extent the principles developed for press reporting also apply to inquiries. For the press in Germany, the presumption of innocence is one of the basic principles of constitutional procedures (Article 20, Section 3 and Article 28, Section 1 of the Basic Law for the Federal Republic of Germany). The press in Germany may only speak of an “offender” after a final conviction has been handed down. An offender of child sexual abuse becomes a so-called relative figure of contemporary history. However, it may happen that this person was already an absolute figure of contemporary history, for example due to a prominent position in the public. In this case, the inquiry team can decide to publish the name as described above.

It must also be considered whether the interests at issue for a publication cannot also be fulfilled by not stating the real name of a perpetrator or a person who has covered up acts, and instead stating the function or activity within the institution. If he or she



is at least to remain identifiable within the institution, the first name could be mentioned, while the surname could be indicated with the first letter only.

The following is recommended: prior to publication, the inquiry team should seek legal advice in the event of uncertainty.

Finally, the inquiry team must clarify from the outset whether perpetrators and persons who have covered up crimes should and can be heard. The team is not required by law to do so, but may consider it important in consultation with representatives of victims and survivors. This should be carefully considered and, if necessary, further legal advice should be sought.

### **5.8 Reporting of Libel and Slander, Injunctive Relief**

The question of naming names goes hand in hand with the question of the extent to which inquiry teams can be prosecuted under criminal or civil law. Once an investigation has begun, individual perpetrators or persons who have covered up crimes must reckon with the fact that the pieces of information provided by several victims and survivors as well as contemporary witnesses complement and support one another. The inquiry team as well as victims and survivors and contemporary witnesses need to be aware of the fact that their actions will be closely followed by perpetrators or their supporters.

The risk of charges being brought for slander, defamation, libel or civil injunctive relief cannot be ruled out. An inquiry team can only act to the best of its knowledge and belief; legal advice ought to secure the best possible protection. For victims and survivors, this risk does not exist if they have contacted the inquiry team confidentially, it does, though, if they address the public under their name. Victims and survivors need to be informed of this.

As these aspects address complex legal issues, it is advisable to seek legal advice both from members of the inquiry team and from individual victims and survivors. The costs are to be borne by the institution.

### **5.9 Dealing with Non-Statute-Barred Cases**

As part of an institutional review, it is essential to develop a clear plan of action at the beginning of the procedure for dealing with cases in which the actions are not obviously statute-barred, at least in order to inform victims and survivors transparently.

The limitation period in Germany varies between five and 20 years, depending on the severity of the offence. The rules on the commencement of the limitation period have been amended several times in the past. In 2015, the suspension of the limitation period was last extended and now applies to the victims and survivors' age of 29 for offences of child sexual abuse (entry into force: 27 January 2015). This means that the limitation

period does not start until the victim and survivor is 30 years old. Due to the prohibition of retroactive effect provided for in Article 1 of the German Criminal Code (Strafgesetzbuch, StGB), this extension cannot be asserted retroactively. Accordingly, offences which were already statute-barred at the time of its entry into force may no longer be prosecuted.

If offences are not yet statute-barred, two advisory steps become necessary: the victims and survivors are recommended to seek advice from a specialised counselling centre; they are also advised to seek advice from a lawyer specialising in sexual offences; the lawyer then also has the task of protecting the client from the public prosecutor's office. This may be the case if the victims and survivors are not up to the requirements of an interrogation or expert opinion or do not wish to testify. An interrogation held against the will of victims and survivors very often leads to re-traumatisation.

Knowing that the victim and survivor is "well-advised" by a lawyer, the institution can make its own decision and file a criminal complaint with the competent public prosecutor's office. Here, too, the institution should seek legal advice. The guidelines on the involvement of law enforcement authorities<sup>1</sup> developed by the *Runder Tisch Sexueller Kindesmissbrauch (Round Table on Child Sexual Abuse)* also provide an important orientation. The assessment on the basis of the guidelines not only serves the relief of the institution, i.e. the institution avoids the suspicion that a (renewed) cover-up attempt is being made, but also ensures that the interests of victims and survivors are safeguarded.

## **5.10 Dealing with Current Suspected Cases of Child Sexual Abuse**

It cannot be ruled out that an inquiry team may learn of current suspected cases of sexual violence and/or have to suspect that children and adolescents are currently at risk. For example, a coach identified as a perpetrator may still be working in a sports club with children and adolescents, or a young victim and survivor who is currently affected may have contacted a trusted person in search of help.

The inquiry team must agree in advance on how to deal with such suspected cases. It is advisable to agree on a guideline for action, which must be made known to all parties involved. The guideline for action should clearly indicate which measures need to be taken in detail. If there is already a guideline for action within the institution, it should be included in the considerations.

A particular challenge arises from the fact that the inquiry team learns of the suspicion from a person to whom they have assured confidentiality. In this case, a careful balance must be struck between the promised confidentiality and the possible threat to the best interests of the children involved. It is important to remain in conversation with the reporting person about planned and already begun necessary steps, as long as this does not increase the risk situation. A specialist in child protection issues should also be involved for support.

## 6. WHO PLAYS WHAT ROLE IN AN INVESTIGATION?

### 6.1 The Institution

The institution independently bears the responsibility for the investigation. If the institution in which the sexual abuse took place still exists and the providing authority has not changed, this provider is responsible for the investigation. If an institution no longer exists, the legal successor or a state authority is obliged to assume responsibility for an investigation. With institutions of public education no longer existing, this could be, for example, a (state) Ministry of Education.

The overall responsibility includes creating the necessary structures, safeguarding the documents in the registry, granting access to archive holdings, securing and providing funding, communicating with various groups of agents and creating transparency both internally and externally in the course of the investigation. It also commissions the independent documentation. After the completion of the inquiry, it comments on the results, assumes responsibility for past failures and is responsible for the lasting implementation of changes.

### 6.2 Independent Point of Contact for Victims and Survivors

Before an investigation can be started publicly, it must be ensured that victims and survivors have an independent point of contact where they can obtain comprehensive and anonymous information so that they do not have to make contact with the institution in which they experienced violence. Victims and survivors must be able to obtain information and advice on the following topics: objectives, formats, offers for support, commissioned persons, planned procedure, legal framework and agreements on data protection. The independent point of contact must receive complaints from victims and survivors if they encounter resistance during investigation. The point of contact should liaise regularly with the inquiry team.

The point of contact must be low-threshold and independent. It must guarantee anonymity vis-à-vis the institution to victims and survivors. For example, specialised counselling centres can serve as points of contact. Financing must be secured over the entire period in order to guarantee the independence of the body. There should be the possibility for the point of contact to remain in place even after the temporary end of an inquiry, so that victims and survivors can continue to contact them.



### **6.3 The Inquiry Team**

The commissioned inquiry team must be able to lead the complex and emotionally demanding inquiry procedure competently, independently and respectfully. The members of the team become important contact persons for victims and survivors and must guarantee an independent investigation of the past injustice.

A smaller, multidisciplinary team should be commissioned. The team should consist of at least two people. The independence of the parties involved is crucial (see section 7).

The task of the inquiry team is to document the history of abuse through hearings of victims and survivors and critical study of sources. Central tasks are the coordinated and customised application of the chosen method, editing the acquired knowledge, reporting and communicating recommendations.

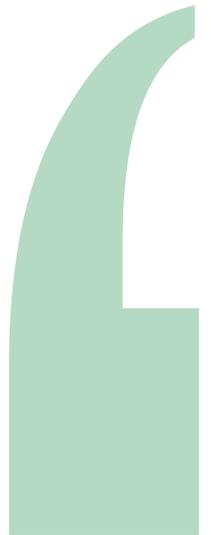
### **6.4 Victims and Survivors of Child Sexual Abuse**

Victims and survivors have a right to investigating the past and must be involved in the procedure from the outset (see section 2.3). The quality, acceptance and longevity of an inquiry vitally depend on the incorporation of the perspectives, knowledge and experiences of victims and survivors. Victims and survivors have experienced how the well-functioning routines, rituals and everyday practices within an institution have a negative effect. They can also draw attention to problematic leadership styles and lack of support structures. Some of them also know about other victims and survivors.

### **6.5 Contemporary Witnesses**

Parents or other family members, employees or unaffected adults who attended the institution as children or adolescents may be important agents. They can initiate inquiries by means of indications, or they can provide important information about the organisational culture of an institution through their personal experiences. This information can contain references to the structures and norms that have made sexual assaults possible.

During the investigation, people who have not experienced violence in the institutions as children and who see the investigation of the past as an attack on the institution may wish to defend it. Victims and survivors are sometimes accused of being “traitors” and of wanting to damage the reputation of the institution, especially if it is a renowned institution. Even parents often prefer to stay in denial of the fact that there was sexual abuse in the institution to which they entrusted their children, and they tend to trivialise or disown the reports of victims and survivors.



The institution and the inquiry team should acknowledge these dissenting voices but at the same time point out why looking into the past is important; they need to clearly position themselves as supporting the rights of victims and survivors.

## **6.6 The Advisory Board**

An Advisory Board should be set up to provide critical support from the outset. It must be assembled and convened at the outset with the help of the institution. The Advisory Board should include a representative of the institution as well as members of the inquiry team, victims and survivors and, if necessary, other third-party experts. The chair should not be held by the institution. In addition, mediation and supervision can offer helpful support.

The tasks of the Advisory Board consist of monitoring the development of the objectives and reviewing them, defining a time frame, selecting the inquiry team, consulting and regularly communicating about interim results as well as making any necessary adjustments to the mandate, including the coordination of working with the press and public relations measures. Depending on individual case requirements, the Advisory Board may also have to play a more decisive steering role.

# **7. WHAT DISTINGUISHES A GOOD INQUIRY TEAM?**

## **7.1 Composition and Selection**

The success of an investigation depends vitally on who is commissioned for the inquiry. At least two, preferably three persons must be assigned to the inquiry. The team should be as multi-professional as possible.

The selection of the persons to be commissioned should be made by the Advisory Board, in which the institution and victims and survivors are represented along with other agents (see section 6.6). In the context of an opening event, the procedure and the commissioned team must be presented in order to enable the various groups of agents to initially get to know each other and to build up trust. It is crucial that the inquiry team can communicate convincingly that it is independent of the institution.

## 7.2 Qualification Profile

The selection of the team should be determined by qualifications that have proven to be helpful and necessary for a successful investigation<sup>2</sup>.

Dealing with conflicts of interest

- No professional, financial or private connections with the institution or persons in charge of the institution
- High awareness and sensitivity for dealing with conflicts of interest in order to guarantee independent action

Multidisciplinary expertise

- Expertise in the field of sexualised violence and abuse of power
- Legal, historical, psychological, pedagogical or medical expertise to classify the abuses
- Willingness and experience to work together across professions

Experience with victims and survivors

- Experience in working with victims and survivors of child sexual abuse

Experience with inquiries

- Experience with inquiries or willingness to transfer knowledge from other investigation projects

## 7.3 Supervision

Third-party supervision supports the professional and independent action of the commissioned team. The challenge for the inquiry team is to find and maintain the right balance in interaction and communication with all the dialogue partners involved. Experience shows that investigating child sexual abuse can unfold considerable, partly unconscious dynamics, which can lead to overburdening or over-identification. A third-party supervision can help to reflect these dynamics, to become aware of one's own role as well as of the limits and possibilities. The use of supervision should be discussed during the phase of assembling the team.



## **8. WHAT SHOULD BE TAKEN INTO ACCOUNT WHEN COMMISSIONING?**

If an inquiry project gets started, contractual arrangements should be made in advance and recorded in writing.

### **8.1 Description of Contents, Tasks and Timing**

In one of the first planning meetings, the subject of the commissioning is developed (see section 4). A draft of work packages and sub-steps can be used for structuring and overview. This structuring, which refers both to the tasks to be performed and to the time resources available for them, should be planned realistically and also include room for unforeseen circumstances. For instance, in the course of the investigation, indications may emerge that need to be followed up, which can be time consuming. The confidential hearings may also take considerably more time because more victims and survivors than expected come forward.

### **8.2 Clarification of the Rights of the Inquiry Team**

At the beginning, the rights of the inquiry team should be contractually recorded. It should be regulated, for example, that the inquiry team may uncover all cases of abuse and structural failure on the part of those responsible and make them public, in accordance with the rights of personality. The institution must be prepared to have abuses committed in the past disclosed, especially if they possibly extend to the present and may involve current members of the institution.

### **8.3 Independence of the Inquiry Team**

The commission guarantees the independence of the inquiry team. The institution must not exert any unfair influence on the work of the inquiry team and must not censor the publication of results. Independence must be contractually guaranteed. It is the basis for trust in the inquiry team and acceptance of the investigation and thus its greatest quality.

It should be noted that any aspects which may call into question the independence of the persons to be appointed must be disclosed in advance. Possible conflicts of interest cannot always be avoided and can, for example, result from previous contact. Even if this contact existed only many years before, it could be perceived as a conflict of interest by outsiders. For this reason, it is important to create transparency from the outset about the persons commissioned and to clarify possible conflicts of interest.



In addition, it must be agreed that any possible impairment of independence must be reported to the institution or the Advisory Board. For example, in the course of its work, the inquiry team may be confronted with persons known to it, whether on the part of the victims and survivors or the perpetrators. In order to avoid bias and conflicts of interest, the individual case must be discussed and, if necessary, advice and/or supervision must be obtained. In the event that the independence of the inquiry team or parts thereof can no longer be guaranteed, new staffing arrangements may be required.

#### **8.4 Inspection of Files**

It must be ensured that the inquiry team has access to all records and documents that it identifies as relevant. These can be electronic documents or archived papers. This includes personal files, files on victims and survivors, image and sound documentation, programmatic texts such as concepts, programmes and self-images, as well as session or meeting files such as agendas, minutes or selected correspondence. The estates (lifetime and posthumous) of persons of the institution may also contain relevant notes, diaries and photo albums.

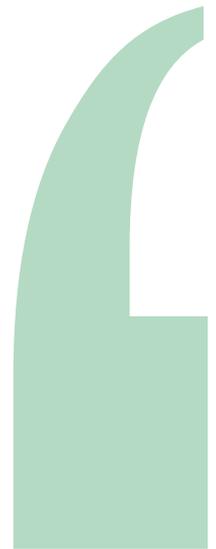
These can be confidential and highly sensitive documents that are subject to legal terms of protection and data protection regulations. Shortened suspension periods should be examined on a case-by-case basis and, if possible, approved. Furthermore, the institution is to inform the inquiry team of the file plans so that documented administrative procedures can be reconstructed. This also enables the inquiry team to evaluate the files in a source-critical manner.

#### **8.5 Determination of the Duration**

The determination of the duration is necessary as a time limitation so that the project has a clear temporal and organisational structure. When planning the duration, the exact sub-projects are formulated and a time schedule is drawn up. However, not every step can be precisely calculated in advance. An investigation is in itself a demanding and complex process, which sometimes also requires flexibility.

#### **8.6 Publication of Names**

The principles and considerations according to which the perpetrators and persons who have covered up crimes are to be named should be laid down contractually (see section 5.7). At the same time, it should be noted that the names of victims and survivors may not be published.



## 8.7 Recommendations

The commissioning must state that the inquiry team make recommendations to the institution. These recommendations are intended to initiate changes for the institution regarding how to deal with victims and survivors of child sexual abuse and to lead to structural changes to ensure the protection of children and adolescents today.

# 9. WHICH METHODS CAN BE USED?

## 9.1 Evaluation Approaches

For investigating child sexual abuse, a methodical approach is needed. There are several possibilities here: in addition to talking to victims and survivors as well as other contemporary witnesses, in certain cases it may also be useful to conduct a quantitative survey, for example of former pupils, using an online survey. Evaluations of files are also possible and frequently necessary. Various formats can be derived from the methodology.

At present, three approaches have emerged for the investigating child sexual abuse:

- **The individual-biographical approach:** Above all, the focus here is on the individual-biographical experiences of victims and survivors as well as contemporary witnesses. Formats are interviews and hearings as well as written reports, but also semi-public panels or public hearings. The focus is on experiencing sexualised violence and embedding it in the individual life history. Individual experiences can be part of collective patterns of experiencing violence.
- **The organisational-analytical approach:** With this approach, the organisational context of individual experiences of violence is explored. The focus here is on the structures and mechanisms that have promoted violence in the respective institution and prevented public exposure. The climate of the institution, the perceived loyalty of the staff and the established networks are investigated. Formats for this can be analyses of organisational documents, such as minutes of meetings, programmatic texts, self-images and personnel files, as well as the evaluation of interviews or hearings of persons from the institution and of victims and survivors.
- **The historical-discourse-related approach:** This approach aims to place the acts of violence in an overall historical context. Analysis here focuses on the social discourse on sexuality and childhood, the established norms and values, as well as on cross-generational relationships. Formats include research of the archives and analysing contemporary documents such as newspaper reports, books, visual presentations (photographs, films, etc.), documents relating to the

respective discourse as well as interviews with contemporary witnesses. These can provide information about social norms, rituals and practices.

The choice of method also includes scientific aspects. It must be safeguarded in principle that the formats are chosen carefully and that there are strategies for the evaluation of the information collected. These strategies should be made transparent. Questions pertaining to the ethos of research can also become relevant during the evaluation<sup>3</sup>.

## 9.2 Anonymisation and Pseudonymisation

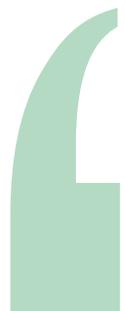
For reasons of data protection, all names and other personal data of victims and survivors as well as contemporary witnesses and relatives must be pseudonymised or anonymised. Both pseudonymisation and anonymisation seek to alienate names and places, for example by means of substituting names, using generic terms (such as big cities or rural areas) and age ranges. With pseudonymisation, it is possible to trace the real name back via pseudonymisation lists, for example in order to establish contact with victims and survivors. With anonymisation, this is no longer possible because the list of name aliases has been deleted. The reports can then no longer be assigned to the real persons.

# 10. WHICH FORMATS CAN BE USED?

Based on its experience and various national and international projects, the Independent Inquiry into Child Sexual Abuse proposes the following formats. Which of these are used and how depends decisively on the method chosen and must be determined by the Advisory Board and the inquiry team.

## 10.1 Confidential Hearings

Hearings and interviews with victims and survivors as well as contemporary witnesses are among the central instruments in the investigation in order to gain knowledge about child sexual abuse. With this narratively oriented format, what has happened can be comprehensively explored from a biographical perspective. Hearings are based on a thematic guideline, but at the same time, they are an open format that allows victims and survivors to tell their story self-determinedly. The victims and survivors decide what they would like to communicate to the inquiry team. They set the content and the pace. Nevertheless, the hearing should be limited to about two hours, inter alia to protect victims and survivors. Hearings should be conducted in a team of two people. Victims and survivors can take a confidant with them. Support from specialist counselling centres should be organised in advance so that any crises can be dealt with appropriately. Hearings can be a first step towards recognition for victims and survivors.



## 10.2 Archive Research



An important element for the historical reconstruction of the past is the research in archives, old records and document collections of the institution. Thorough research in archives can help to identify historical facts in particular and to discover correlations. First of all, it must be checked which archives and document collections are suitable for investigating child sexual abuse, which files and documents are stored where, what period they relate to and who has access to them. It must be clarified which persons or groups of persons previously had access to the archive and how regularly it was used. This is linked to the question of whether the stored documents and file collections have remained unchanged or whether files and documents may have been changed or removed in the meantime. It needs to be clarified for whom comprehensive access to the documents can be guaranteed and whether the documents may be reproduced and analysed. The management of the archives that hold these collections should actively support the inquiry team in clarifying the aforementioned issues.

The analysis of documents such as student files, holiday camp documentation, minutes of meetings or other sources can provide information about historical facts that can be used to trace the origins of the abuse at a particular time. In addition to the individual-biographical approach, which is the main focus of hearings and interviews, archive research can also help to obtain an organisational-analytical or historical-discourse-related approach.

## 10.3 Public Expert Discussions and Hearings

A further format is the establishment of public or semi-public panels, hearings and discussion groups. In these formats a protected or public space is created. In such discussion groups, different groups of agents can get into conversation with each other; the need to be supported by respectful moderation and clear structuring. For a number of victims and survivors, it is important to be heard in public. At the same time, particularly careful preparation, accompaniment and follow-up are required in order to enable victims and survivors to have a safe space for speaking.

The quality of these formats is particularly outstanding when they have a clear thematic focus, a carefully considered structure and offer space for informal exchange. These discussion groups are important both for those who share and discuss on the podium and for those who listen and possibly participate by means of individual contributions.

## 10.4 Documentation

It is important to clarify issues relating to the collection, documentation and archiving of highly sensitive data. For document management, the decisive factor is how the collected data is sorted and systematised. A database should be created with relevant personal data, documents and audio material, containing all data in a systematised and stored form.

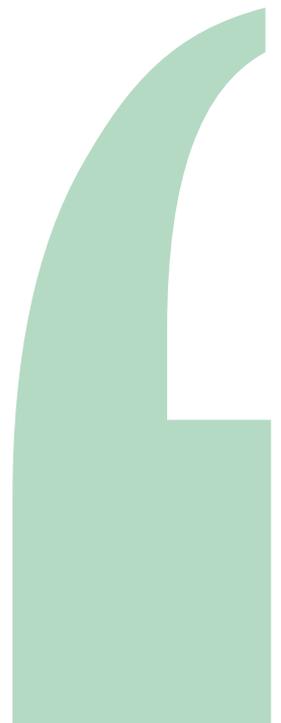
Data collected includes personal data on victims and survivors or perpetrators, data of third parties from hearings with victims and survivors and interviews with contemporary witnesses, as well as confidential documents from archives. A data protection concept must be developed for this purpose. It must be clarified where and how data is collected, stored and archived. It should also specify who has access to the pseudonymised data and until when, what happens to the data after the completion of the project and which erasure periods are appropriate or must be observed (see also section 5.2).

## 11. HOW TO WORK WITH THE MEDIA

The institution's public reporting and the resulting media coverage play an important role in the investigation. Central steps as well as findings must be communicated to the public. Both, working with the press and public relations serve the initiation, accompaniment, support, critical commentary and classification of the inquiry. They support, inter alia, the following objectives:

- They enable victims and survivors to gain knowledge of the inquiry, to obtain further information and to participate, be it by contacting the institution, its independent point of contact or other victims and survivors. In this way, contemporary witnesses, relatives and former members of institutions can also be addressed.
- They help to ensure that victims and survivors are heard and that their experiences and life situation are publicly recognised.
- They enable reflection and debate on institutional and social silence and neglect.
- They sensitise the public to the need to talk about child sexual abuse, to approach victims and survivors and to learn from the past in order to better protect children and adolescents in the future.

In this respect, the public and the media should be seen as strengthening partners in the investigation.



Before the reporting can support the inquiry, the possibilities and objectives of the institution's communication and public relations must be clarified. At the heart of these considerations should be these questions, which are explained below:

- Which topics and contents should be part of the public reporting?
- Which communication paths and channels can be used for this purpose?
- How is the press involved?
- Who is responsible for external communications and who is the contact person for the press?
- How can victims and survivors be supported in their contact with journalists?

### **11.1 Topics and Contents**

Working with the press and public relations should primarily serve to communicate the beginning, the development and the results to third parties and to create transparency in an investigation. Partial results should only be made available to the public in a well-coordinated manner in order to avoid possible misunderstandings. This can be done, for example, by means of an interim report. In all stages of working with the press and public relations, strict attention should be paid to the protection of the rights of personality of the victims and survivors as well as of contemporary witnesses.

### **11.2 Communication Channels**

In order to inform the public, own channels such as Internet pages, newsletters, social media, member newspapers or circulars can be used. This requires coordination regarding what information should be published at what time and by whom.

### **11.3 The Press**

The press can be actively or passively involved. After an examination and agreement with the responsible persons, either incoming inquiries from journalists can be answered and dialogue partners mediated (passive), or contact with the press can be established in a targeted manner (active). This can be in the form of a press release or a press conference, or by offering individual journalists background discussions. For press releases and discussions with journalists, please note the following: the essential information must be contained, comprehensible and as compact as possible; no pressure may be exerted on journalists; critical questions should be answered and reacted to objectively.

## 11.4 Persons Responsible and Press Contacts

Journalists need competent and accessible contacts. If a press office cannot be set up, the Advisory Board and the inquiry team should select a contact person who has at least basic knowledge of working with the press and public relations or who will acquire this knowledge through further training or coaching<sup>4</sup>. This person should primarily be responsible for communication with the public and the media. This has the advantage that this person can pool all activities and has an overview of past and future public relations. This prevents different people from communicating different information to third parties and creating an inconsistent picture or disseminating false information. When planning personnel resources, it should be noted that working with the press in particular is very labour-intensive and time-consuming in its preparation, implementation and follow-up.

## 11.5 Victims and Survivors in Contact with Journalists

If victims and survivors want to support the investigation within the framework of working with the press, this should be made possible. All too often, victims and survivors are talked about, but they themselves have no opportunity to speak up for their cause. Generally, victims and survivors can best convey their experiences and messages themselves. Making contact with journalists, however, must be thoroughly considered and closely accompanied, since most victims and survivors have no experience in dealing with representatives of the press.

With regards to reporting with the contribution of victims and survivors, careful preparations must be made, both concerning the victims and survivors themselves and the journalists. The victims and survivors will have the situation of the conversation explained to them and will be asked to specify conditions regarding the conversation. They will also be made aware of their rights and, ideally, be offered media-competent support. Preliminary telephone calls should also be arranged between victims and survivors and journalists, so that victims and survivors have the opportunity to decide afterwards whether or not to have an official conversation.

In principle, in any cooperation with the media the data protection regulations must be adhered to. This means that personal data such as name, place of residence, professional situation, family circumstances, pictures or contact data of victims and survivors, relatives and other contemporary witnesses are not to be passed on directly to representatives of the press. This may only be done if the persons have expressly consented to this in writing. For some victims and survivors, it is an important part of their individual coping if they are publicly mentioned with their own name and can thus self-determinedly describe their own experiences. Others prefer to remain anonymous and to be named using a pseudonym, in order to protect themselves, their family and their social and professional environment. These conditions must be communicated in advance to and taken into account by representatives of the press.



Good follow-up care that takes into account the condition of the victims and survivors after the interview is equally important. Talking about the sexual violence experienced can be very stressful. If the person is not well after the interview, it may be helpful to recommend psychosocial counselling.

When it comes to child sexual abuse, it is also important to present a differentiated report and to avoid stereotypical, one-dimensional images of perpetrators or victims and survivors. The objective must be that the image of the victims and survivors conveyed in the media is respectful and dignified and does not repeat and manifest the portrayal of a weak, helpless and broken victim. Journalists need to be made aware of this problem and of the role of language in this context. In principle, the use of the term “victim and survivor” instead of just “victim” is recommended. Ideally, there should be a direct coordination between the interviewee and the interviewer. In consultation with the journalist, victims and survivors can decide for themselves how they would like to be portrayed and named.

### **11.6 Interim Report**

The publication of an interim report is an important instrument for involving the public in the investigation project. This will safeguard that results are not only reported at the end of the procedure, but that a mid-term review is carried out after one stage of the procedure, with the participation of the public. In addition, an interim report can draw the attention of other victims and survivors to the investigation.

### **11.7 Cooperation between the Institution and the Inquiry Team**

With regard to external communications, the responsibilities of the institution as commissioning entity and of the inquiry team as contractor should be clearly defined. There must be precise agreements as to who gives what information to third parties and who informs whom about what at what time. This form of division of tasks can be communicated by referring to the respective responsibilities in the event of enquiries from the media, politicians or the public. Clear and transparent rules concerning responsibilities prevent the institution, the Advisory Board and the inquiry team from disseminating inconsistent information to the public. Internal conflicts or disagreements between the commissioning entity and the contractor with regard to the realisation of the investigation should, ideally, be clarified internally.



## 12. HOW IS THE REPORT PUBLISHED?

The publication of the final report must be scheduled in good time. It should be accompanied by a press release. Consideration should be made as to whether the report should be presented at a press conference or a press briefing in order to attract more attention from journalists, but also to be able to respond directly and clarify any queries.

Every report should be accessible free of charge in order to guarantee inclusive, democratic and unlimited access to this knowledge<sup>5</sup>. In any case, a version must be available online, and ideally also a printed version. Beyond that, a professional publication may be considered. Effort, costs and benefits as well as the interests of victims and survivors must be taken into consideration.

Before the start of the inquiry, the financing of the publication must be secured. The report should contain a trigger warning and offers of assistance (e.g. telephone numbers of counselling centres) and should be written in a language that is easy to understand. Abuses should be clearly identified while avoiding notions of voyeurism.

Efforts should be made to take into account the different experiences of victims and survivors in all reports. With regard to data protection and questions of rights of personality, it should be noted that, in particular, data that may reveal the identity of victims and survivors may not be published. Quotations from victims and survivors must have been authorised by them in writing beforehand.

The report should not only pool the results of the independent review, but is also to contain recommendations for future action in the institution. Such recommendations come in the form of proposals and suggestions individually tailored to the institution, which can be derived from the results and at the same time take into account local conditions. Such recommendations can be made at different levels, for example targeting the level of the organisation and the providing authority, the level of the staff and the level of the pedagogical concept. The report must also contain recommendations concerning forms of recognition of the injustice suffered. The institution is responsible for its realisation. However, the inquiry team may come to the conclusion that further steps are necessary. These should then be part of the recommendations.



## **13. WHAT NEEDS TO BE CONSIDERED IN TERMS OF FUNDING?**

### **13.1 Developing a Financial Plan**

A realistic and sound budget calculation is essential for the planning and implementation of a an inquiry.

Costs are incurred for:

- the inquiry team;
- the Advisory Board;
- project coordination;
- psychosocial support and networking of victims and survivors;
- publications;
- events, press work and public relations.

### **13.2 Costs of the Inquiry Team**

The financing of the inquiry team must be guaranteed for the entire duration of the project. The amount of the costs is determined by the duration and scope of the planned commissioning as well as the personnel requirements. Costs may vary depending on the size of the institution and the methods chosen.

Costs may be incurred for, among other things:

- Sessions;
- Public appeal and website;
- Hearings and interviews;
  - room rental;
  - catering;
- Travel expenses;
- Documentation;
  - recorders;
  - transcription;
  - data protection measures;
- Surveys;
- Archive research;
- External expertise;
- Typing up the analysis;
- Publishing the reports.

### **13.3 Costs of the Advisory Board**

The financial calculation must take into account necessary meetings, planning discussions, work meetings and workshops that are to take place. This also includes the meetings of the Advisory Board. Costs that may be incurred are:

- room rental;
- travel and accommodation expenses;
- expense allowances for victims and survivors;
- costs for mediation or supervision.

### **13.4. Costs of Project Coordination**

The institution must provide personnel resources for the coordination, administration and support of the inquiry. This concerns, for example, personnel resources of the management, the project management, working with the press and public relations.

### **13.5 Costs of Psychosocial Support and Networking for Victims and Survivors**

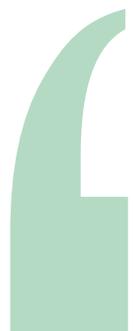
Victims and survivors should find the best possible conditions to be able to attend the investigation. Financial resources must be made available for psychosocial support for victims and survivors, for networking among victims and survivors and, where appropriate, for mediation.

### **13.6 Cost of Events, Work with the Press and Public Relations**

For the publication of a report, it is necessary to plan its approximate extent. The costs for editing, proofreading, typesetting and printing and/or publication via a publisher are based on this. A publication may be accompanied by press briefings or a press conference, which come with corresponding costs. Public events should be scheduled at the beginning, during and at the end of the inquiry.

### **13.7 Other Costs**

Further costs may arise, for example, for legal advice to the institution, the inquiry team or the victims and survivors (see section 5).



## 14. WHAT FORMATS OF RECOGNITION ARE PLANNED?

An inquiry cannot undo injustice. Institutions often want reparation, rehabilitation or reconciliation. What can and must be achieved is the assumption of responsibility by the institution and the recognition of injustice. The question of possible forms of recognition of injustice is therefore part of the investigation.

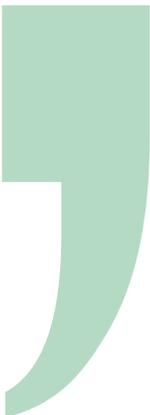
### 14.1 Public Acceptance of Responsibility

In the investigation, the institution has the opportunity to publicly accept responsibility for the suffering inflicted on victims and survivors in the institution. The beginning of the investigation already represents an important step in this direction. If the investigation shows that structures and/or responsible persons of the institution have failed in the past, persons of the institution responsible today have to take a clear stand for the failure, for looking the other way and for not acting. Accepting responsibility should also include the current situation of victims and survivors and should lead to measures that can improve their situation.

### 14.2 Remembering and Commemoration

The organisation of a commemoration ceremony can be a symbolic gesture of recognition of the injustice experienced by victims and survivors in the institution. It recalls the violence and injustice suffered, for which the institution assumes responsibility. Such an event, which could be supported by political representatives, can contribute to documenting and remembering the actions of the perpetrators, the suffering of victims and survivors and the complicity of others, for example, by looking away. The objective should be for the suffering of victims and survivors and the responsibility of the institution to become part of its self-image and history.

Together with victims and survivors who wish to contribute, forms of commemoration should be developed and implemented that help to process the past and at the same time keep the memory alive. Forms of remembering enable experiences to enter the collective memory of the institution and knowledge of violence to be stored in the institution. Forms of remembering can include books recording the experiences of victims and survivors, memorials or other symbolic gestures of remembrance. Remembering also encourages society as a whole to recognise the suffering of victims and survivors of child sexual abuse.



### **14.3 Attitude to Compensation**

A further task consists of examining compensation issues. For victims and survivors, the consequences of sexualised violence have psychological, physical, mental and financial disadvantages. Compensation can be a contribution to supporting victims and survivors. This should be decided by a separate body.

## **15. HOW CAN PREVENTION AND THE PROTECTION OF CHILDREN BE STRENGTHENED?**

### **15.1 Actions at Institutional Level**

In a next step, the findings from the research project concerning the structures, routines and practices that have favoured sexualised violence against children and adolescents in the institution must be used as the starting point for establishing or further developing a protection concept. In addition to a code of conduct, this includes further training for the staff, preventive measures and a complaints procedure<sup>6</sup>. The objective of a protection concept is to make the facility as safe as possible for children and adolescents. Organisational and institutional structures that made abuse possible and prevented disclosure were identified. For these identified weaknesses, actions must be defined and implemented that lead to organisational and cultural change and minimise potential risks for girls and boys. Only in this way can protection concepts have a lasting effect.

### **15.2 Actions at State Level**

Ultimately, the state administration also has a responsibility to draw the consequences of institutional investigations. This could lead to the recognition that the underlying framework for prevention needs more support, that appropriate agents, such as specialist counselling centres, be strengthened and that steps taken by the state administration to protect children and young people be improved. Among other things, shortcomings in the control of homes and schools or the lacking resources of youth welfare offices could come to light. If state administration structures have failed to a serious degree, it may also be necessary for the government to deal with them in individual cases, for example within the framework of a committee of inquiry.



# CHECKLIST TO INVESTIGATING CHILD SEXUAL ABUSE IN INSTITUTIONS

## 1. Rights and Obligations

- Those responsible at the institution have recognised the importance of investigating and their duty to carry this out. For its implementation, they are guided by the rights of victims and survivors.
- The right of victims and survivors to investigating is realised by the following actions:
  - victims and survivors are addressed through various communication channels and a public announcement of the project;
  - there are structures that allow for good participation of and consultation with victims and survivors;
  - resources will be provided to enable victims and survivors to participate;
  - transparency over the investigation procedure is safeguarded;
  - help and guidance services are provided and financially secured;
  - victims and survivors are encouraged to network, and this networking is actively facilitated, accompanied and sponsored.

## 2. Object of the Inquiry

- It should be defined what specifically will be investigated, along with the period of duration and the locations.
- The investigation project includes at least the following points:
  - the extent of child sexual abuse in a given context;
  - structures that have made abuse possible and have encouraged it;
  - dealing with cases in the past;
  - recommendations for recognition of injustice and better child protection.
- Those responsible in the institution develop an attitude and a new way of dealing with identified perpetrators and, if possible, take sanctions against involved personnel.
- It is clearly indicated whether there were responsible people who looked the other way or covered up actions.



### 3. Legal Issues

- In case of complex legal issues, legal advice is obtained in individual cases.
- Victims and survivors as well as contemporary witnesses are informed about the collection and use of their data on the basis of a data protection concept. Victims and survivors as well as contemporary witnesses agree to the use.
- The institution gives the inquiry team access to files.
- The institution provides victims and survivors access to their files (e.g. student or home files).
- There is an understanding as to whether and in which cases the terms “perpetrator” or, for example, “accused person” are to be used.
- The inquiry team carefully considers conflicting interests in order to decide whether and how names of perpetrators and those complicit in covering up are to be named.
- The risk and the effects of a criminal complaint for defamation as well as a libel action are considered in detail.
- There is an action plan for dealing with cases that are non-statute-barred.
- There is an action plan for current suspected cases of child sexual abuse.

### 4. Clarification of Roles

- Prior to the initiation of the investigation project, an agreement is reached regarding the role of the various parties involved.
- The institution bears the overall responsibility for the investigation by creating the necessary structures, assuming responsibility for the failures of the past and taking responsibility for the implementation of changes.
- A point of contact independent of the institution offers victims and survivors the possibility of an anonymous initial contact and serves as an external complaints office.
- The inquiry team documents the injustice that children and adolescents had to experience as well as the failures of the institution. It makes recommendations to the institution.

- Victims and survivors are involved in the investigation project.
- Contemporary witnesses such as employees, parents or other relatives, as well as unaffected former members of institutions, can participate in the investigation project.
- An Advisory Board accompanies the investigation project critically.

## 5. Inquiry Team

- The inquiry team consists of at least two persons who lead the project competently and independently.
- The members of the inquiry team are to cover the following requirements:
  - high sensitivity in dealing with conflicts of interest;
  - multidisciplinary expertise;
  - experiences in working with victims and survivors;
  - experiences with inquiries.
- The choice of the persons to be commissioned is made by the Advisory Board.
- The procedure and the commissioned inquiry team will be presented at an opening event.
- The inquiry team makes use of supervision.

## 6. Commissioning the Inquiry Team

- The subject and the duration of the inquiry are laid down in contracts.
- The independence of the inquiry team is defined contractually.
- There are guidelines for dealing with conflicts of interest.
- Access to files, documents and file plans is guaranteed.
- The institution undertakes not to influence, let alone censor, the publication of the report.
- It is agreed that the inquiry team will make recommendations regarding prevention and forms of recognition.

## 7. Methodology

- There is a strategy for evaluating the information collected, which takes into account the following three approaches as far as possible, whereby a single approach can also be given priority:
  - the individual-biographical approach;
  - the organisational-analytical approach;
  - the historical-discourse-related approach.
- It has been clarified how the information is anonymised and pseudonymised in order to protect the identity of victims and survivors as well as contemporary witnesses.

## 8. Formats of Investigations

- Based on the chosen method, the formats are defined.
  - At confidential hearings, victims and survivors report on their experiences. Hearings will be conducted in a team of two people, guided by a set of best practice guidelines.
  - Through archive research, historical contexts are reconstructed and an organisational-analytical approach is adopted.
  - In public hearings or discussion groups, the topic is brought into society and discussed in public.
  - The information and findings are documented and evaluated.

## 9. Working with the Media

- The public is informed by regular reports.
- The media are recognised as strengthening partners in the investigation project.
- Own communication channels are used and contact to the press is sought. There is a permanent contact person for the press.
- Victims and survivors are carefully accompanied in contact with the press.
- An interim report provides an initial review.

## 10. Publishing a Report

- The final report can be viewed free of charge and is available online and, ideally, also in printed form.
- The publication is flanked by active work with the press.
- Quotations from victims and survivors are authorised; their identity is protected.
- The report contains recommendations for the recognition of injustice suffered and for improved protection of children and adolescents.

## 11. Funding

- There is realistic planning and securing of the budget, which covers the costs of the following:
  - the inquiry team;
  - the Advisory Board;
  - the independent point of contact;
  - the project coordination;
  - the psychosocial support and networking of victims and survivors;
  - the publication of reports;
  - events;
  - press-related work and public relations;
  - other costs (e.g. lawyer's fees).

## 12. Formats of Recognition

- The institution publicly accepts responsibility for the suffering and injustice suffered by victims and survivors.
- Together with victims and survivors, forms of remembrance and commemoration are developed.
- In addition to the actual project, a discussion about issues pertaining to compensation also takes place.

### 13. Prevention and Protection Concepts

- The findings of the inquiry are used to further develop or introduce protection concepts within the institution.
- As regards the identified weaknesses, actions are defined and implemented that lead to organisational and cultural change and minimise potential risks for girls and boys.
- Under certain circumstances, government actions to improve the protection of children and adolescents may be identified.



## ENDNOTES

- 1 See Federal Ministry of Justice and Consumer Protection (2019):  
Verdacht auf sexuellen Kindesmissbrauch in einer Einrichtung – Was ist zu tun?  
[https://www.bmju.de/SharedDocs/Publikationen/DE/Verdacht\\_Kindesmissbrauch\\_Einrichtung.ht%20ml;jsessionid=BF21E6C0E76C2C29A3CA1ABE51778B60.2\\_cid324](https://www.bmju.de/SharedDocs/Publikationen/DE/Verdacht_Kindesmissbrauch_Einrichtung.ht%20ml;jsessionid=BF21E6C0E76C2C29A3CA1ABE51778B60.2_cid324)  
(retrieved 30 September 2019)
- 2 See also González, E.; Varney, H. (2013): Truth Seeking.  
Elements of Creating an Effective Truth Commission.  
<https://www.ictj.org/sites/default/files/ICTJ-Book-Truth-Seeking-2013-English.pdf>  
(retrieved 30 September 2019)
- 3 See Bonner Ethik-Erklärung. Empfehlungen für die Forschung  
zu sexueller Gewalt in pädagogischen Kontexten (Bonn Declaration of Ethics.  
Recommendations for research on sexual violence in educational contexts) (2015)  
[https://www.bmbf.de/files/Ethikerklaerung\(1\).pdf](https://www.bmbf.de/files/Ethikerklaerung(1).pdf) (retrieved 30 September 2019)
- 4 See also “Praxisleitfaden Presse- und Öffentlichkeitsarbeit. Für spezialisierte  
Fachberatungsstellen gegen sexualisierte Gewalt in Kindheit und Jugend” by the  
Independent Commissioner for Child Sexual Abuse Issues and the Federal Coordi-  
nation Specialised Counselling against Sexualised Violence in Childhood and Youth  
(BSKF). The practical guide contains important principles and practical tips that  
can be used as a guideline not only by specialised counselling centres but also by  
other institutions that have little experience in working with the press.  
<https://beauftragter-missbrauch.de/praxisleitfaden-presse-und-oeffentlichkeitsarbeit-fuer-spezialisierte-fachberatungsstellen>(retrieved 1 January 2020)
- 5 On its website, the Independent Inquiry into Child Sexual Abuse in Germany  
has made available a list of reports on the investigation of child sexual abuse.  
<https://www.aufarbeitungskommission.de/infothek/hintergrundmaterialien/>  
(retrieved 30 September 2019)
- 6 A description of the content and the establishment  
of protection concepts can be found on the website of  
The Independent Commissioner for Child Sexual Abuse Issues.  
<https://beauftragter-missbrauch.de/praevention/schutzkonzepte>  
(retrieved 30 September 2019)



## GENESIS AND ACKNOWLEDGEMENT

This publication emerged in a multi-stage process. The first draft concept was published in the review report of the Independent Inquiry into Child Sexual Abuse. It was based on the experience of the work of the Independent Inquiry into Child Sexual Abuse and on the institutional inquiries in which individual commissioners had participated.

At an expert discussion on 9 May 2019, four experts commented on the draft concept. On this basis, a next draft was produced, which the Independent Inquiry into Child Sexual Abuse discussed with victims and survivors as well as representatives from the fields of science and research in two input groups. This was followed by a lengthy process of revision of the content, in which various people were involved.

The Independent Inquiry into Child Sexual Abuse would like to thank all those involved for their expertise. A special thanks to Renate Bühn, Dr med. Jochen-Friedrich Buhrmann, Claudia Burgsmüller, Kerstin Claus, Dr Julia Encke, Ursula Enders, Ingo Fock, Prof Dr Edith Glaser, Iris Hax, Robert Köhler, Dr Marlene Kowalski, Max Mletzko, Winfried Ponsens, Sven Reiß, Prof Dr Wolfgang Schröer, Ulrich Weber and Hjördis Wirth.

## **LEGAL NOTICE**

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