

19 May 2011

Via email: otp.informationdesk@icc-cpi.int

Mr. Luis Moreno Ocampo
Prosecutor
International Criminal Court
Post Office Box 19519
2500 CM The Hague
The Netherlands

Re: Communication pursuant to Article 15 of the Rome Statute requesting investigation and prosecution of high-level Vatican officials for rape and other forms of sexual violence as crimes against humanity and torture as a crime against humanity

Dear Mr. Ocampo:

We write to you on behalf of the Survivors Network of those Abused by Priests (hereinafter ‘Network,’ ‘Survivors Network,’ or ‘SNAP’) to urge your office to initiate an investigation and prosecution of high-level Vatican officials, in accordance with the principles of direct and superior responsibility set out in Articles 25(3)(c) and (d) and 28(b) of the Rome Statute, for the widespread and systematic torture, rape and sexual violence committed by priests and others associated with the Catholic church.¹ The International Criminal Court is the appropriate forum to ensure accountability for the longstanding and pervasive system of sexual violence within the church given the magnitude, scope and global reach of these crimes as well as the nature and depth of the physical and mental harm caused by sexual violence particularly when committed by those cloaked in religious authority.

I. The Survivors Network of Those Abused by Priests is committed to assisting the Office of the Prosecutor in its Preliminary Examination, Investigation and Prosecution.

The undersigned attorneys at the Center for Constitutional Rights work with and represent the Survivors Network in their efforts to respond to the global reach of this crisis through mechanisms of international justice. The Survivors Network is a non-profit organization that was founded over 20 years ago by a small group of survivors of rape and sexual violence committed by priests. Today, the Network has over 10,000 members in the United States alone as well as chapters in Australia, Austria, Belgium, Canada,

¹ We use the terms ‘Vatican’ or ‘Holy See’ often interchangeably to refer to the seat of governance or power of the church. We use the terms ‘church’ or ‘Catholic church’ more broadly to also refer to the broader institutions, including churches, dioceses and religious communities as they exist around the world.

England, France, Germany, Mexico, and The Netherlands. SNAP's mission is to help protect the vulnerable, heal the wounded and expose the truth.^{2, 3}

Recalling that you may initiate an investigation *proprio motu* under Article 15, the Survivors Network is determined to assist your office in establishing that a reasonable basis exists to proceed with an investigation. SNAP intends to present the contours and elements of this case more fully in a larger submission in the coming months that consists of victim and witness statements, documentary evidence, and expert opinions. We file this Communication at this time as we are aware that a submission was filed on 14 February 2011 related to the alleged criminal liability of Joseph A. Ratzinger, now Pope Benedict XVI, for a range of actions.⁴ While the February 14th submission includes some overlapping allegations, SNAP and the undersigned lawyers are in no way connected with that submission, and ask that your Office consider the merits of SNAP's communication separately from that set forth in the February 14th submission. As the world's oldest and largest victim-led support and advocacy group with a record of effectiveness in supporting and empowering victims to heal and take public action to expose the acts and prevent future crimes, SNAP is uniquely positioned and committed to assist your office in this regard. The Network is survivor-led and survivor-centered and is not affiliated with any political cause, other group or association; it is not inherently anti-religion nor opposed to the Catholic church or any other religious group. Indeed, many of SNAP's members are observant Catholics whose sole desire, like that of SNAP's, is to protect children and vulnerable adults, end the sexual violence and spare others from the grave harms they have suffered and the grave risks that many Catholics still face today given the ongoing sexual violence and complicity of church officials.

The Survivors Network is positioned to assist in the collection of survivor testimonies, witness statements, as well as experts who can attest to, *inter alia*, church law, policy and practice as well as knowledge and actions of higher church officials who not only failed (and continue to do so) to prevent the crimes by publicizing, exposing and punishing sex offenses, but who took affirmative steps that ensure such offenses continue to be perpetrated. The Network is also positioned to help identify and provide access to mounting documentary evidence that has come to light in recent years which shows that higher church officials, including Ratzinger, knew of, or had ample reason to know of, the widespread perpetration of sexual violence by priests and others within the church, and either ignored or took steps to conceal the offenses and the accused. There is also evidence which demonstrates that in many cases such church officials obstructed justice in national legal systems and engaged in the practice of 'priest shifting,' *i.e.* transferring known offenders to other locations where they continued to have access to children or vulnerable adults and who officials knew continued to commit rape and other acts of sexual violence -- a reckless and deceitful practice that continues today.

² Please visit SNAP's website for more information. SNAP, <http://www.snapnetwork.org> (last visited 19 May 2011).

³ Of the countries where SNAP has chapters and allies, only the United States is not party to the Rome Statute.

⁴ See, Petition for Criminal Charges against Dr. Joseph Ratzinger, 14 February 2011, *available at* <http://www.scribd.com/doc/49694581/Pope-Benedict-XVI-Lawsuit-Crimes-against-Humanity-According-to-Art-7-ICC-Statute-2011>.

SNAP survivors and allies have compelling evidence about cases that span borders and generations. Survivors and witnesses are prepared to share their information concerning instances where high-level church officials had knowledge that perpetrators were committing offenses and took part in moving them from one location to another where they continued to rape or sexually molest children or vulnerable men and women; where church officials knew that children in countries in Africa had been sexually assaulted and made a conscious calculation that they did not need to be concerned about it; where church officials knew that predator priests were sexually assaulting children but left them overseeing schools, orphanages or churches with access to children or vulnerable adults; where a child was raped by one priest, who also took him to Miami to ‘service’ other priests who had travelled there from Rome; where church officials had full knowledge that a priest, who assisted one of the victims in getting an abortion and who then began using contraceptive methods during the assaults, was serially raping young girls; and where indigenous children were removed from their communities and placed in boarding schools or orphanages and were repeatedly subjected to rape and sexual assault.

Survivors, witnesses and allies are committed to assisting this process because they view it as critical to ensuring true accountability for these offenses, which is a factor that is critical to enable survivor healing and deter and prevent future harm.

II. The ICC has jurisdiction over the situation presented and is an appropriate forum for the investigation and prosecution of these crimes given the global reach, magnitude and scope of the conduct in question.

In accordance with Article 5 of the Rome Statute, the conduct in question constitutes a crime within the jurisdiction of the Court -- namely rape and other forms of sexual violence of comparable gravity as crimes against humanity as set out in Article 7(g) and as a form of torture as a crime against humanity in violation of Article 7(f).

A. Rape and Sexual Violence are among "the most serious crimes of concern to the international community as a whole."

Rape and other forms of sexual violence committed in this context are serious offenses and acts of violence, and should also be investigated and prosecuted as forms of torture. The Rome Statute rightly recognizes these acts as among “the most serious crimes of concern to the international community as a whole.”⁵ Often, these acts are referred to by the church and in the media as ‘sexual abuse.’ Descriptions such as ‘sexual abuse’ tend to minimize the seriousness of the conduct at issue as though it is something other than torture, rape or serious sexual violence when committed by priests or others associated with the church.⁶ Moreover, such terminology also masks the true extent of the harm such

⁵ Rome Statute of the International Criminal Court, preamble, 17 July 1998, 2187 U.N.T.S. 90.

⁶ A study conducted by the John Jay College of Criminal Justice (hereinafter “John Jay Study” or “the Study”) found that of the more than 10,000 credible allegations of ‘child sexual abuse’ reported to church officials in the U.S. between the years 1950 and 2002, a large percentage involved penile penetration or attempted penile penetration or oral sex, acts which constitute rape, attempted rape or sexual violence. See John Jay College of Criminal Justice, *The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States* (2004), available at

acts cause and the severe pain and suffering associated with the abuse of power, violation of trust and bodily autonomy, as well as the alienation and isolation from family, friends, community, and other sources of support. Especially for children, such acts can separate them from their sense of connection to the world and the spiritual foundations through which they are taught to view the world.

The Rome Statute and supplemental texts reflect the evolution of rape law and an understanding of the true nature of rape and sexual violence that reflects the lived realities of victims of these offenses.⁷ Whereas in the past, discriminatory rape laws required a victim to “resist to the utmost,” risking death and serious physical violence to prove a crime of rape, the Rome Statute recognizes the fact that rape and other forms of sexual violence are often committed under coercive circumstances that negate the possibility of genuine consent.⁸ This is especially important in cases involving child victims and vulnerable adults, particularly where, as here, the perpetrator is an authority figure to which the victim feels compelled to submit. The framework of the Rome Statute grew out of a growing body of jurisprudence developed in national jurisdictions, regional human rights mechanisms, United Nations’ mechanisms and the International Criminal Tribunals for Rwanda and the former Yugoslavia which came to recognize that the essence of the crime of rape or other forms of sexual violence is the violation of one’s bodily and sexual autonomy.⁹

B. Rape and Sexual Violence in this Context May Also Constitute Torture.

The acts of rape and other forms of sexual violence in this context may also constitute torture and should be charged as such. Torture is defined in Article 7(2)(e) as:

[t]he intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused. ...

The Rome Statute and supplemental texts explicitly affirm the principle of cumulative charging and the negotiating history illustrates that this affirmation was borne out of a concern about crimes of sexual and gender-based violence. Specifically, paragraph 9 of the introduction to the Elements of Crimes Annex provides that “[a] particular conduct

<http://www.usccb.org/nrb/johnjaystudy/>. The study is widely viewed as a conservative estimate of the rates of sexual violence given that it is based on number self-reported by the church in the U.S.

⁷ Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law*, 46 MCGILL L. J. 217, 217-40 (2000).

⁸ Articles 7(1)(g)-1 and 6 of the ICC Elements of Crimes requires that the rape or sexual violence be “committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment...” or that it be “committed against a person incapable of giving genuine consent.” A footnote to both articles specifies that “it is understood that a person may be incapable of giving genuine consent if affected by natural, induced or *age-related incapacity*.” [emphasis added] International Criminal Court, Elements of Crimes, U.N. Doc. PCNICC/2000/1/Add.2 (2000).

⁹ See e.g., *Prosecutor v. Kunarac, et al (Foča Case)*, Case No. IT-96-23/1, Judgement, para. 457 (12 June 2002) (“The basic principle which is truly common to these legal systems is that serious violations of sexual autonomy are to be penalised. Sexual autonomy is violated wherever the person subjected to the act has not freely agreed to it or is otherwise not a voluntary participant”).

may constitute one or more crimes.” While this language appears as a general authorization to charge conduct as different crimes, it originated in a proposal specific to crimes of sexual violence to ensure such acts would also be charged as genocide and torture where appropriate.¹⁰ The language was later made more general to avoid the possible implication that the specificity would preclude cumulative charging of crimes other than those of sexual violence.¹¹

Moreover, the principle reflects the universal treatment and acceptance of rape and sexual violence as forms of torture in the international human rights system.¹² More specifically, the *ad hoc* tribunals in Rwanda and the former Yugoslavia repeatedly recognized such acts as also constituting torture.¹³ The *Foča* case in the ICTY is one of a number of such cases and the Appeals Judgment is instructive in this regard:

Generally speaking, some acts establish *per se* the suffering of those upon whom they were inflicted. Rape is obviously such an act. The Trial Chamber could only conclude that such suffering occurred even

¹⁰ The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence, 50-51 (Roy S. Lee, et al eds, Transnational Pub. 2001).

¹¹ *Id.*

¹² The United Nations Committee Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”) has repeatedly treated rape and other forms of sexual violence as torture. These developments have been accepted by a consensus of State Parties as reflected in the lack of contests to this provision of General Comment 2. United Nations Committee Against Torture (CAT), General Comment 2, UN Doc: CAT/C/GC/2, para 22; *C.T. and K.M. v. Sweden*, (CAT) Communication No. 279/2005, 17 November, 2006; *V.L. v. Switzerland*, CAT Communication No. CAT/C/37/D/262/2005, 20 November 2006. The Human Rights Committee has likewise recognized rape (and other forms of sexual violence) as torture. Human Rights Committee Concluding Observations on Russian Federation, UN Doc: CCPR/CO/79/RUS, 6 November 2003, para 13. General Recommendation 19 of the Committee to End Discrimination Against Women recognizes that violence against women is based on a number of long-standing human rights violations, including torture. United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation 19, Violence Against Women (Eleventh Session, 1992), UN Doc. A/47/38, para 7. The Special Rapporteurs on Torture and Other Cruel, Inhuman or Degrading Treatment from 1988 to the present have recognized rape, and more recently, other forms of sexual violence constitute torture. See 1986 *Report of Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment*, Pieter Kooijmans, UN Doc : E/CN.4/1986/15, pp. 29-30; 1992 *Report of Special Rapporteur on Torture and Cruel Inhuman and Degrading Treatment*, Pieter Kooijmans, UN Doc: E/CN.4/1992/SR.21, 21 February, 1992, para 35 : “Since it was clear that rape or other forms of sexual assault against women held in detention were a particularly ignominious violation of the inherent dignity and right to physical integrity of the human being, they accordingly constituted an act of torture;” 1995 *Report of Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment*, Nigel S Rodley, UN Doc: E/CN.4/1995/34, pp. 8-10; 2008 *Report of Special Rapporteur on Torture and Cruel, Inhuman and Degrading Treatment*, Manfred Nowak, UN Doc : A/HRC/7/3, para 26. The European Court of Human Rights has recognized rape as torture. *Aydin v. Turkey*, Case 57/1996/676/866, Eur. Ct. H.R. paras 64, 186 and 189 (1997). The Inter-American Court of Human Rights has recognized rape as torture. *Miguel Castro-Castro Prison v. Peru*, Inter-Am Ct. H.R. (ser. C) No. 160, 25 November, 2006. The Inter-American Commission on Human Rights has recognized rape as torture. *Raquel Martin de Mejia v. Peru*, Case 10.970, Inter-Am. C.H.R. (1996).

¹³ *Prosecutor v. Akayesu*, Case No. ICTR-96-4-T, Judgement (2 September 1998); *Prosecutor v. Mucic, et al. (Čelebići Case)*, Case No. IT-96-21-T, Judgement (16 November 1998); *Prosecutor v. Kunarac, et al. (Foča Case)*, Case No. IT-96-23/1, Judgement (12 June 12 2002); *Prosecutor v. Kvočka et al.*, Case No. IT-98-30/1-T, Judgement (2 November 2001); *Prosecutor v. Furundžija*, Case No. IT-95-17/1-T, Judgement, (10 December 1998); *Prosecutor v. Bradjanin*, Case No. IT-99-36-A, Appeals Judgement (3 April 2007).

without a medical certificate. Sexual violence necessarily gives rise to severe pain or suffering, whether physical or medical, and in this way justifies its characterization as an act of torture.¹⁴

Additionally, the ICTY Trial Chamber in the *Čelebići* case held that:

The Trial Chamber considers the rape of any person to be a despicable act which strikes at the very core of human dignity and physical integrity. The condemnation and punishment of rape becomes all the more urgent where it is committed by, or at the instigation of, a public official or with the consent or acquiescence of such an official. Rape causes severe pain and suffering, both physical and psychological. The psychological suffering of persons upon whom rape is inflicted may be exacerbated by social and cultural conditions and can be particularly acute and long-lasting.¹⁵

This analysis is especially significant in cases where sexual violence is committed by priests or clergy, who operate with a grant of authority and exploit power imbalances, with the "consent or acquiescence" of the highest-ranking officials within the church. Often, especially with regard to children, the victims are in the effective "custody or control" of their perpetrators -- often in confessional situations, orphanages, boarding schools, seminaries or other educational or religious settings. Additionally, if they or their family members report such abuses, under established Vatican procedure requiring their secrecy, they risked excommunication from the church. The established Vatican procedure thereby further perpetuates the violation and the harm.¹⁶

With regard to the requirement of severe physical or mental suffering, as the ICTY noted in *Kunarac* and *Čelebići*, rape is an act that *per se* establishes "the suffering of those upon whom it is inflicted" and "strikes at the very core of human dignity and physical integrity."¹⁷ It is particularly important to emphasize the mental suffering in this context. There are many situations where victims of sexual violence by priests or clergy resorted to taking their own lives out of desperation and hopelessness after having been so deeply and thoroughly violated – first physically and psychologically by their direct perpetrator and then subsequently by a church hierarchy that knowingly exposed and subjected them to such acts and then protected the perpetrators while turning its back on and publicly attacking and condemning the victims.¹⁸ There are many other instances where survivors

¹⁴ *Prosecutor v. Kunarac, et al*, Case No. IT-96-23/1, para. 150 (12 June 2002) (“*Kunarac* Appeal Judgement”).

¹⁵ *Prosecutor v. Mucic, et al. (Čelebići Case)*, Case No. IT-96-21-T, Judgement, para. 495 (16 November 1998).

¹⁶ This is in contrast to the priests who are not subject to excommunication even when found to have committed violations. See *Crimen Sollicitationis*, *infra* note 31.

¹⁷ *Kunarac* Appeal Judgement *supra* note 14 and *Čelebići* Trial Judgement, *supra* note 15, respectively..

¹⁸ See, e.g., Bill Zajac, *Abuse Seen As Cause of Suicides*, THE SPRINGFIELD, MASS. REPUBLICAN, 12 June 2005, available at http://www.snapnetwork.org/psych_effects/abuse_seen_cause.htm; Thomas Farragher, *Through Kansas Parishes, a Trial of Suicide: Families Blame Deaths on Ex-Priest*, THE BOSTON GLOBE, 18 July 2002, available at http://www.snapnetwork.org/psych_effects/kansas_parishes_trail.htm; Stephen Castle, *Sex Abuse Victims Heard in Belgium*, THE N.Y. TIMES, 11 Sept. 2010, available at <http://query.nytimes.com/gst/fullpage.html?res=9500E0DC1339F932A2575AC0A9669D8B63>; Raf Casert,

have tried to deal with the intense pain they suffer through recourse to drugs and/or alcohol or other self-destructive behaviors, which is further evidence of the deep, traumatic impact of such violations.¹⁹ Others have manifested the trauma and mental suffering caused by such violations in ways that have affected their self-esteem, their ability to have stable, healthy relationships, including friendships as well as familial and intimate relationships, work and day-to-day functioning.²⁰ The toll in terms of lives lost, futures and families harmed and, in some cases, ruined, is incalculable.

The aforementioned John Jay study also confirmed numerically what advocates and survivors have known and reported for some time: Very few incidents are reported at the time they occur; rather, more often than not, they emerge slowly, over time:

Allegations of child sexual abuse are made gradually over an extended time period and it is likely that further allegations will be made with respect to recent time periods covered in our surveys. Less than 13% of allegations were made in the year in which the abuse allegedly began, and more than 25% of the allegations were made more than 30 years after the alleged abuse began.²¹

These violations are continuing and the vast majority of the most recent instances may likely not be reported for some time, given the particular nature of the harm done through sexual violence against children and vulnerable men and women. An effective prosecution that seeks to ensure accountability for those responsible for maintaining a system in which these types of crimes are perpetuated can help bring an end to these offenses by deterring future acts and thereby protecting others from the harm and perhaps hastening the healing process for those already harmed.

C. The Preconditions to Exercise of the ICC's Jurisdiction Are Met

The ICC has jurisdiction over the conduct in question, in accordance with the Statute's preconditions to the exercise of jurisdiction contained in Article 12(2)(a) and (b), given that these offenses have been committed, and continue to be committed, on the territories of States Parties to the Rome Statute, and by nationals of States Parties. Virtually no place where the church has a presence is immune from these crimes. Australia, Belgium, Canada, England, Germany, Ireland, Italy, Mexico are among the most recent countries where widespread and systematic sexual violence has been revealed. Information and/or evidence is available to the Office of the Prosecutor in the public domain to clearly

Priest Sex Abuse Linked to 13 Suicides in Belgium, ASSOCIATED PRESS, 10 Sept. 2010, available at <http://abcnews.go.com/International/wireStory?id=11603050>.

¹⁹Shanta R. Dube, et al., *Long-term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. OF PREVENTIVE MED. 430 (2005) (“A history of suicide attempt was more than twice as likely among both male and female victims as among nonvictims.”); See also, *Boys, Too, Suffer Long-term Consequences of Childhood Sexual Abuse*, SCI. DAILY, 19 May 2005, available at <http://www.sciencedaily.com/releases/2005/05/050519082907.htm> (“[s]exual abuse significantly increases the risk of developing health and social problems -- such as drug and alcohol abuse, mental illness, and marital strife -- in both men and women.”).

²⁰ *Id.*

²¹ John Jay College of Criminal Justice, *supra* note 7, Executive Summary.

establish that crimes within the ICC's jurisdiction have occurred in territories or have been committed by persons who are subject to the Court's jurisdiction; the Survivors Network will facilitate this evidence collection as well as that of non-public information.²² Additionally, evidence of offenses that may have occurred outside the court's jurisdiction is also widely available and useful to further establish the threshold requirements of crimes against humanity - that these offenses have been committed, and are still being committed, on a widespread *and* systematic basis.

D. The Conduct in Question Constitutes a "Widespread or Systematic Attack Directed Against a Civilian Population"

Contrary to frequent claims by Vatican representatives, the conduct in question is not a situation of occasional or sporadic sexual abuse by a few bad apples that happened to slip through the cracks of Vatican oversight. By the Vatican's own account, it has suggested that "only" about 1.5-5% of Catholic clergy were involved in child sexual abuse.²³ In the Vatican's most recently released worldwide statistics, it reported there were 410,593 priests worldwide as of 2009.²⁴ Using these figures, the number of offending priests would range from 6,158 to 20,529.

A study undertaken by the John Jay College of Criminal Justice is considered to be a conservative estimate of the extent of the sexual violence by priests in the United States as it was commissioned by the United States Conference of Catholic Bishops ("USCCB") in response to the scandal that broke out in 2002 over the news that the Boston archdiocese had covered up pervasive sexual violence for years. The study is based on self-reported data from dioceses, religious communities and eparchies for the years 1950-2002 and includes only allegations of 'child sexual abuse' against priests which were never withdrawn nor shown to be false. The numbers do not, therefore, encompass unreported allegations, reports made by adult victims, or reports involving allegations against those other than priests. The survey concluded that, based on the available numbers, between 3%-6% of priests in the United States were alleged to have 'sexually abused' minors under the age of 18 between 1950 and 2002 and that this range did not vary greatly from one region to another.²⁵ According to the study, there were 10,667 individuals reporting 'child sexual abuse' by priests during that time period and that 17.2% of those reporting abuse also had siblings who had also been sexually abused.²⁶

The John Jay study noted that according to the self-reported data, there were 4,392 credibly accused priests serving in the U.S. during that time period.²⁷ Since the survey, the USCCB has supplemented the numbers with what it considers credible allegations

²² For example, Pope Benedict XVI, formerly Cardinal Joseph Ratzinger, is believed to maintain his German citizenship. A number of other high-ranking officials of the church believed to be complicit and criminally responsible in these offenses are known to be nationals of States Parties to the Rome Statute.

²³ UN: *Vatican Child Rights Report 13 Years Overdue*. ASSOCIATED PRESS, 15 July 2010, available at http://www.bishop-accountability.org/news2010/07_08/2010_07_15_AP_UnVatican.htm.

²⁴ *Vatican Statistics Show Overall Increase in Number of Priests*, CATHOLIC NEWS SERVICE, available at <http://www.catholicnews.com/data/stories/cns/1100568.htm>.

²⁵ John Jay College of Criminal Justice, *supra* note 7, Executive Summary.

²⁶ *Id.*

²⁷ *Id.*

received since the study, with the exception of the year 2003, and acknowledges a total of 5,948 credibly accused priests.²⁸ A prominent watchdog group in the U.S. has reported that the percentages of accused priests are "markedly higher" in U.S. dioceses that are compelled to release their internal files to law enforcement or the public, with rates ranging from 7.7% to more than 10%.²⁹

The revelations of sexual violence by priests arising in recent years on a similar scale in Australia, Belgium, Canada, Germany, Ireland and Italy, demonstrate that the rates of abuse in the U.S. are not an anomaly but part of a much larger pattern and practice. In light of these revelations, some observers have estimated that the number of victims of sexual violence occurring between the years 1981-2005 is likely approaching 100,000, and will likely be far greater as more situations come to light in Latin America and Africa.³⁰ Notably, that particular period coincides with the years in which Joseph Ratzinger was head of the Congregation for the Doctrine of the Faith, which has been the entity tasked with overseeing proceedings against those accused of 'child sexual abuse.' Indeed, even Amnesty International's recently released yearly human rights report cited the Holy See for the first time and noted that:

[I]ncreasing evidence of *widespread* child sexual abuse committed by members of the clergy over the past decades, and of the enduring failure of the Catholic Church to address these crimes properly, continued to emerge in various countries. Such failures included not removing alleged perpetrators from their posts pending proper investigations, not co-operating with judicial authorities to bring them to justice and not ensuring proper reparation to victims.³¹ (emphasis added)

The sheer numbers of victims and cases are evidence of the widespread nature of this problem, but the offenses are also systematic. Documents forced out of church officials' possession through litigation and commissions of inquiry reveal that there has been a system in place which prioritized secrecy and a concern for the church's image above all else – at the expense of the safety, physical and mental well-being, and, indeed, the lives of children and vulnerable adults.³² *Crimen Sollicitationis* is a key document that exemplifies the Vatican's preoccupation with secrecy in these cases and the wall of silence to which even victims were required to adhere. It required all actors involved, including victims, their family members and witnesses, to maintain secrecy at the risk of excommunication.³³ Excommunication constitutes an extreme penalty for breaking the

²⁸ Bishopaccountability.org, *Number of Priests Accused of Sexually Abusing Children as Reported by the U.S. Conference of Catholic Bishops with Numbers of Persons Alleging Abuse*, 3 May 2011, http://www.bishop-accountability.org/AtAGlance/USCCB_Yearly_Data_on_Accused_Priests.htm.

²⁹ Bishopaccountability.org, *What percent of priests were accused?*, http://www.bishop-accountability.org/AtAGlance/data_priests.htm#fuller_disclosure.

³⁰ Geoffrey Robertson, *The Case Against Vatican Power*, NEWSTATESMAN, 8 Sept. 2010, available at <http://www.newstatesman.com/law-and-reform/2010/09/vatican-rights-state-italy>.

³¹ Amnesty International, *Annual Report 2011: Vatican* (2011), available at <http://www.amnesty.org/en/region/vatican/report-2011>.

³² *Crimen Sollicitationis* (Vatican's unofficial translation), available at http://www.vatican.va/resources/resources_crimen-sollicitationis-1962_en.html.

³³ *Id.*

silence in that, for many believers, it not only means being ostracized from a community, but also being excluded from the protection of the faith and condemned to eternal damnation.³⁴ This stands in stark contrast to the penalty for an accused if found guilty in the canonical process of having committed the actual rape or sexual violence as the possible repercussions do not include excommunication.

As will be set forth in future submissions, the “attack directed against any civilian population” in this case satisfies the definition set forth in Article 7(2)(a) in so far as it constituted a course of conduct involving the multiple commission of acts referred to in Article 7(1)(f) (torture) and (g) (rape and other forms of sexual violence) of the Rome Statute, against a civilian population, pursuant to or in furtherance of an organizational policy to commit such acts. The organizational (i.e., Vatican) policy to commit such an attack was implemented by both a deliberate failure to take action in some respects and by organizational action in others. Additionally, a number of documents signed by high-ranking officials of the Vatican reveal knowledge and efforts to maintain secrecy, obstruct justice, protect the perpetrators and, ultimately, expose others to danger.³⁵

Indeed, even the policy that the church now holds out as a model for dealing with allegations of 'child sexual abuse' has been clearly shown in recent weeks to be, in effect, a sham. The USCCB adopted its 'zero tolerance policy' in the wake of multiple instances of egregious abuse that came to light in 2002 in the United States, according to which accused priests are to be removed from ministry upon allegations of abuse pending investigation. Yet the Philadelphia archdiocese, which had been certified as functioning properly and in accordance with the model policy, was shown to have 37 credibly accused predator priests still freely serving in ministry with access to congregants as recently as February 2011. In fact, Philadelphia Grand Jurors considering criminal charges concluded that “abuse was known, tolerated, and hidden by high church officials, up to and including the Cardinal himself,” that the Archdiocese “continues to engage in practices that mislead victims, that violate their trust, that hinder prosecution of their abusers and that leave large numbers of credibly accused priests in ministry” and further,

³⁴ ‘Excommunication’ is defined in The Catholic Encyclopedia as a “spiritual penalty that deprives the guilty Christian of all participation in the common blessings of ecclesiastical society. Being a penalty, it supposes guilt; and being the *most serious penalty that the Church can inflict, it naturally supposes a very grave offence.*” (emphasis added) Excommunication’s “object and its effect are loss of communion, i.e. of the spiritual benefits shared by all the members of Christian society” and constitutes “the privation of all rights resulting from the social status of the Christian as such.” Additionally, the excommunicated person can “be considered as an exile from Christian society and as non-existent... in the sight of ecclesiastical authority” and his “status before the Church is that of a stranger. He may not participate in public worship nor receive the Body of Christ or any of the sacraments.” The Catholic Encyclopedia (Charles G. Haberman, et al eds., The Encyclopedia Press, 1912), available at <http://oce.catholic.com/oce/browse-page-scans.php?id=1ac56a24100661e57532727ad0a22a03>.

³⁵ Brian Rokus, *Sex Abuse Victim Learns of Pope’s Role*, <http://religion.blogs.cnn.com/2010/09/24/sex-abuse-victim-learns-of-pope%E2%80%99s-role/>; Nicholas Kulish and Katrin Bennhold, *Memo to Pope Described Pedophile Priest*, N.Y. TIMES, 25 March 2010, available at <http://www.nytimes.com/2010/03/26/world/europe/26church.html>; Jeff Anderson & Associates, Press Release: Documents Reveal Ratzinger’s Involvement in Refusal to Defrock California Priest, <http://andersonadvocates.com/Posts/News-or-Event/110/PRESS-RELEASE-Documents-reveal-Ratzinger.aspx>.

that “[t]he procedures implemented by the Archdiocese to help victims are in fact designed to help the abusers, and the Archdiocese itself.”³⁶ (emphasis added)

E. Pope Benedict XVI and other high-level Vatican officials should be investigated and prosecuted in accordance with the principles of direct and superior responsibility set out in Articles 25(c) and(d) and 28(b) of the Rome Statute.

The Vatican has had a longstanding policy and practice of dealing with sexual violence by priests and others associated with the church in ways that ensured such violence would continue. The Vatican is a highly centralized and hierarchical institution with all authority leading to and ultimately residing in the Pope in Rome.³⁷ The most recent statistics released by the Vatican show that there are 5,065 bishops operating worldwide, all of whom are directly answerable to the Pope.³⁸ At least since the Lateran Treaty of 1929, the Vatican has portrayed itself and operated in many respects as, and been accorded certain privileges of, a State, albeit with no mechanisms of accountability to guard against corruption, abuse of power or authority, nor even a constant citizenry. Its presence is virtually global with a clearly centralized authority.

With regard to the individual criminal responsibility of non-military superiors, the Rome Statute provides in Art. 28(b) that a superior

[...] shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:

- (i) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
 - (ii) The crimes concerned activities that were within the effective responsibility and control of the superior;
- and

³⁶ Report of the Grand Jury, *In Re*, MISC. NO. 0009901-2008, 1, 76 (C. P. Philadelphia, 2008), available at http://www.bishop-accountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Clergy_Abuse_2.pdf.

³⁷ See 1983 Code c.331, available at http://www.vatican.va/archive/ENG1104/_P16.HTM (providing that the Pope has “supreme full, immediate and universal ordinary power” and that “he can always freely exercise this power”).

³⁸ 1983 Code c. 333 §1 (“By virtue of his office, the Roman Pontiff not only possesses power over [sic] the universal Church but also obtains the primacy of ordinary power over [sic] all particular churches and groups of them. Moreover, this primacy strengthens and protects the proper, ordinary, and immediate power which bishops possess in the particular churches entrusted to their care”); 1983 Code c.334 (“Bishops assist the Roman Pontiff in exercising his office. They are able to render him cooperative assistance in various ways, among which is the synod of bishops. The cardinals also assist him, as do other persons and various institutes according to the needs of the times. In his name and by his authority, all these persons and institutes fulfill the function entrusted to them for the good of all the churches, according to the norms defined by law”).

- (iii) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

As will be set forth in greater detail in subsequent communications, there is ample evidence demonstrating that Pope Benedict XVI, both in his capacity as Pontiff and as head of the Congregation for the Doctrine of the Faith (“CDF”), “either knew, or consciously disregarded information which clearly indicated,” that “subordinates were committing or about to commit such crimes.” Additionally, the crimes concerned activities that were clearly “within the effective responsibility and control of the superior.” All power and authority lies with the Pope. Moreover, as prefect of the CDF, Ratzinger and subsequent heads of the CDF, have been tasked with handling reports of sexual abuse by priests. Two key documents which set out the procedures for handling allegations of sexual violence by priests, *Crimen Sollicitationis* and *Sacramentorum sanctitatis tutela*, which supplemented *Crimen*, establish unequivocally that the activities were within the responsibility and control of these Vatican officials. The evidence additionally tends to show that successive popes and other high-ranking officials in the church “failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.”

The available evidence demonstrates that not only did superiors in the church fail to take all necessary and reasonable measures within their power to prevent or repress the commission of the sexual violence, they took steps that actually served to perpetuate such violence. Moreover, there are a number of cases where the evidence demonstrates that not only did they not submit the matter to the competent authorities for investigation and prosecution, some officials went so far as to obstruct investigations and prosecutions and encouraged others to do so as well.³⁹

Among other actions, it is their active participation in the cover-ups, often in ways which ensured that sexual violence would continue, which should compel an inquiry into their direct responsibility for such offenses in accordance with Articles 25(3)(c) and (d). Article 25(3)(c) provides for individual criminal responsibility for any person who “aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission.” Article 25(3)(d) provides for individual responsibility for one who, “[i]n any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose” when the contribution is “made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court,” or is made “in the knowledge of the intention of the group to commit the crime.”

³⁹ Report of the Grand Jury, *supra* note 34 (“The previous grand jury was frustrated that it could not charge either the abusers or their protectors in the church, because the successful cover-up of the abuse resulted in the expiration of the statute of limitations.”).

F. Additional Considerations of Complementarity and Jurisdiction Ratione Temporis also Warrant the Court's Intervention.

With respect to complementarity, no national system has shown that it is able or willing to prosecute high-level Vatican officials for their direct and/or superior responsibility for these offenses. When they occur, domestic level prosecutions often only address individualized instances and symptoms and do not address the larger, more systemic underpinnings of these crimes. Moreover, with respect to jurisdiction *ratione temporis*, these offenses are ongoing and continuing. Rape and sexual violence is still occurring in this context and children and others are still very much at risk. This will continue until the culture of impunity that has prevailed for too long in the highest reaches of the church hierarchy is brought to an end once and for all.

IV. Conclusion

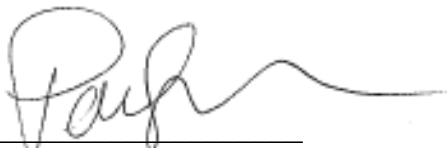
Given the global scope and magnitude of the problem, and the gravity of the resulting harm, the ICC is an appropriate forum for the investigation and prosecution of these crimes. If the ICC is to meet the critical goals set out in the Rome Statute's preamble – “that the most serious crimes of concern to the international community as a whole must not go unpunished” and “to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,” it means that even the highest, most powerful individuals, whether political or religious figures, must not be held to be above or beyond the law.

The lives and well-being of children and others are at stake every day that those who could have, and still could, stop these crimes against humanity go unpunished; everyday that their lives and well-being are subordinated to political calculations and deemed expendable in order to preserve an institutional hierarchy corrupted by a desire to preserve an archaic culture of impunity.

As noted above, SNAP is determined to assist with an investigation into these matters and respectfully requests that your office notify it of any future steps taken with respect to these matters. All inquiries, communications and notices in this regard may be made through undersigned counsel.

Thank you in advance for your attention to this urgent matter.

Sincerely,



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