In the Case Against Vatican Officials for Rape and Sexual Violence, We've come to the End of the Beginning

By Pam Spees, Senior Staff Attorney

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Last week, lawyers from the Center for Constitutional Rights (CCR) and members of the Survivors Network of Those Abused by Priests (SNAP) completed marathon journeys through Europe after filing a complaint with the prosecutor of the International Criminal Court (ICC) in The Hague seeking an investigation and prosecution of high-level Vatican officials for widespread and systematic rape and sexual violence committed against children and vulnerable adults by Catholic clergy.

Two teams of survivors and lawyers visited 12 cities in seven days, meeting with other survivors, media, and concerned supporters. The response to the filing has been overwhelmingly supportive. The affirmations of the importance and gravity of the issue have had a deeply significant impact on the survivors involved who, like too many others around the world, have been fighting this lonely battle for far too long. Seeing other survivors reaching out through their pain and isolation has been humbling and inspiring. We hope that victims, survivors, and family members keep reaching out and find each other and more support. As SNAP co-founder and survivor Peter Isely said on this trip: "It doesn't matter where victims come from. We are our own country -- of the dispossessed, raped and molested. We can succeed together."

We expected Vatican spokespeople and allies would call this effort a stunt, and some very quickly did. To head that accusation off at the pass, we presented the prosecutor not only with well-founded allegations and legal analysis, but with overwhelming documentation supporting these claims-- approximately 22,000 pages of documentation. One spokesperson for the Vatican also called it "ludicrous." It hardly needs stating that victims' demands for accountability for widespread and systematic rape are not 'ludicrous.' Another Vatican ally has suggested that this effort somehow demeans or undermines victims of crimes against humanity committed in other contexts. This suggestion itself does precisely what it accuses victims of doing -- demeans and minimizes the horrors of child victims of sexual violence at the hands of Catholic clergy and the secondary victimization by church officials.

'Horrifying if Done to Prisoners of War'
These are mass crimes. The magnitude, scope, and depth of harm are nearly unfathomable, especially when one considers that what we know at this point, shocking as it is, is likely the tip of the iceberg. As Peter Isely explained to press in Italy, there are always two crimes: the rape or sexual violence committed by individual clergy and then the cover-ups, betrayals and silencing of victims by church officials in the aftermath -- which deepens and furthers the harm of the primary offense, and facilitates and enables future crimes.

The gravity and depth of the mental harm of this type of sexual violence cannot be overstated and is ongoing. It follows children into adulthood and can color every aspect of their lives. Indeed, studies have shown that victims of childhood sexual abuse are twice as likely as non-victims to attempt suicide and that sexual abuse significantly increases the risk of developing serious health and social problems, including mental illness. Tragically, as we noted in the complaint, a number of suicides documented in different countries have been linked to the sexual violence that victims have suffered and the church’s response to their stories. We know there are many more. In fact, on our journeys last week, we learned from grieving family members of still more recent losses.

Just today, Amnesty International Ireland released a report which affirmed that abuse of children revealed in the Ferns, Ryan, Murphy and Cloyne reports — also summarized and discussed in the complaint to the ICC — “included acts that amounted to torture and inhuman and degrading treatment.”

According to Colm Ó’Gorman, Executive Director of Amnesty International Ireland, “The abuse of tens of thousands of Irish children is perhaps the greatest human rights failure in the history of the state. Much of the abuse described in the Ryan Report meets the legal definition of torture under international human rights law.”

At the launch of the report, Ireland’s Minister for Children and Youth Affairs, Frances Fitzgerald, observed that the treatment described in the report “would be horrifying if it were done to prisoners of war, never mind little boys and girls.”

**The Legal Basis: Setting the Record Straight**

We deeply appreciate the support of this case as a valid, important effort. At the same time, these welcome acknowledgments have come with a number of misapprehensions as to the basis of jurisdiction of the ICC in this particular context. We would like to clarify certain aspects of the legal basis.

We brought this case to the ICC because it belongs there — not only to shine a much needed and long overdue spotlight on the issue.

The ICC was established to end the culture of impunity for the "most serious crimes of concern to the international community as a whole" which "must not go unpunished." It is a popular
misconception that the ICC is a “war crimes” court. In fact, the ICC was established to investigate and prosecute genocide, war crimes, and crimes against humanity, which can occur in conflict as well as non-conflict situations. Indeed, the underlying concept of crimes against humanity was to address crimes and human rights violations that occur on a widespread or systematic basis where the laws of war would not apply -- for example, where leaders, be they state or non-state actors, were committing or allowing violations against their own people. For a more detailed discussion of how these crimes fit within the legal framework of crimes against humanity and the level of intent required, please review the “Legal Framework” and “Individual Criminal Responsibility” sections of the complaint.

Rape and sexual violence are explicitly codified in the ICC as crimes against humanity and as war crimes. They have therefore been recognized as among the most serious crimes of concern to the international community as a whole. Rape and sexual violence have also been recognized as forms of torture in international law, another key allegation in the complaint. The crime against humanity of torture is defined as the "intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused."

In affirming acts of rape and sexual violence as torture, the International Criminal Tribunal for the Former Yugoslavia (ICTY) has held that rape and sexual violence establish per se the suffering of those upon whom they were inflicted and that they necessarily give rise to severe pain or suffering. In another case before the ICTY, a trial chamber described rape as "a despicable act which strikes at the very core of human dignity and physical integrity" and noted that the psychological suffering can be "particularly acute and long-lasting."

Domestic prosecutions, when they occur, tend to address isolated instances of rape or sexual assault against direct perpetrators and, in rare cases, against bishops and diocesan officials for child endangerment or failing to report the crimes. They do not and cannot address the full dimension of the harm and the systemic nature of the offenses or the policies and practices that foster the climate in which sexual violence and cover-ups happen with impunity. Given the global presence of the church and the unique and idiosyncratic ways in which it operates, it takes an international court looking at the situation from a higher altitude to address the systemic violence.

There has been some discussion about the Vatican's statehood and national sovereignty, and whether the ICC could act in this case in light of this purported status. It is important to note that the ICC has jurisdiction over individuals, not entities or states. Moreover, the ICC statute was groundbreaking in rejecting the immunities that had long served as barriers to accountability for grave crimes, such as these. Article 27 of the Rome Statute, entitled "Irrelevance of Official Capacity" clearly sets out the rule that the statute "shall apply equally to all persons without any distinction based on official capacity." In particular, according to Article 27, "official capacity as a Head of State or Government, member of a Government or Parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this
"Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence."

Regarding jurisdiction over the persons named in the complaint, the ICC has jurisdiction if the persons accused are nationals of states parties or if the crimes occurred on the territory of states parties. In this case, the crimes are occurring virtually everywhere the church has a presence and in many countries that are party to the treaty. Additionally, three of the people the complaint identifies as bearing the greatest responsibility for these offenses are also nationals of countries that are party to the ICC statute -- Germany, (Cardinal Joseph Ratzinger, now Pope Benedict XVI), and Italy (Cardinals Angelo Sodano and Tarcisio Bertone).

We have urged that these persons have supervisory responsibility and are liable for the acts of priests and bishops because they knew or had reason to know of these crimes and failed to prevent or punish them and also failed to turn the matter over to proper authorities for investigation. We also urged that the inquiry should look at their roles in directly aiding and abetting the commission of many of these offenses.

The Crimes Are Not a Thing of the Past

Some have questioned whether the bulk of material we presented to the court lies outside the ICC's jurisdiction, either occurring before the ICC statute entered into force (2002) or in countries that have not ratified the statute (e.g. the United States). As we stated in the introduction to the complaint, the material we presented documenting cases prior to 2002 or in countries that are not states parties constitutes crucial evidence that helps establish the widespread and systematic nature of rape and sexual violence, which is precisely what makes an individual offense of rape a crime against humanity. These are not simply "historical violations" that have no bearing on post-2002 crimes or on current policies and practices of the Vatican. This material is necessary for a prosecutor trying individuals for crimes against humanity to prove the widespread and systematic nature of the offenses, and that high-level Vatican officials, including Joseph Ratzinger, were on notice and consistently followed a policy of protecting the church rather than the victims, putting others at risk. Moreover, the harm and the violations are continuing, well past the statute's entry into force.

Two of the reports we included in the documentation -- the Cloyne Report from Ireland and the 2011 Philadelphia Grand Jury Report -- show clearly that the rape and sexual violence continue and the same practices and policies are being used to shield perpetrators. This is despite the existence of new reforms and promises on paper. We noted in the complaint that much of the documentation and evidence we submitted to the court is only a small portion of what is now available. During the tour, we heard from more survivors and families of victims and learned of many more cases that fit within the ICC's jurisdiction.

In addition to the wealth of evidence that establishes the widespread and systematic nature of the offenses, we also submitted five new cases for the prosecutor to consider. In four of these cases,
the crimes occurred post-2002, church officials had knowledge of prior acts of sexual violence by the perpetrator, and they left him in ministry to abuse again. Two of these cases involve children who are still minors. A fifth case involves acts that were committed prior to 2002 in the Democratic Republic of Congo and has been submitted as a continuing violation. In that case, the perpetrator is still in ministry and currently working with orphanages in Rwanda, even though officials at the Belgian diocese know that this priest has sexually assaulted more than one child in multiple locations.

One of the complainants is Megan Peterson, a 21-year-old student and artist who was raped repeatedly by a priest in Minnesota when she was 14 and 15. The priest fled to India and, with the help of his bishop there and the Vatican office charged with handling allegations of sexual abuse by priests, has ignored an extradition warrant and Interpol red notice. There are allegations in addition to Megan’s against this priest. A journalist noted that if the issue had been taken seriously by church officials and real reforms had been given effect in 2002 after scandals broke in the U.S., Megan likely would not have been raped. When asked how that made her feel, Megan’s reply was forward-looking: “It shakes me to my core, that he is still out there and could do the same thing to other kids.”

Along the tour, we were occasionally asked by journalists, who, while acknowledging the seriousness of the effort, suggested that this case is a long shot and questioned whether we should have undertaken it in light of what they see as an impenetrable resistance to holding the Pope and others named in the complaint accountable in this way. If we accept the status quo and go along with the idea that children and vulnerable adults should continue to be sacrificed and offered up for horrific abuses just because challenging the authority of this particular institution's leadership is not easy, we become complicit in these crimes. There will be no accountability unless we demand it and challenge those with the power and responsibility to ensure it.

Challenging the Church’s Culture of Impunity

One person close to the Vatican in Italy predicted that this case “won’t go anywhere.” That may or may not turn out to be the case, but we have made one thing clear through this effort: if it doesn’t go anywhere, it will not be because the ICC lacks jurisdiction over these crimes or the men involved; it will be due to a lack of political will to adhere to the principle that no one should be held above or beyond the law. As one survivor on the tour observed, “what does the ICC exist for, if not to protect children around the world?”

The ICC’s clearly-stated mandate begs the question: if it wasn’t the pope, but another leader of a global organization with the worldwide presence the church has who continually followed a policy of protecting the institution and running roughshod over child victims of brutal acts of rape and sexual violence, protecting their perpetrators from civil authorities, shifting them around, and leaving them in their positions knowing they would re-offend, failing to warn congregants and
communities, thereby placing others at risk and knowingly enabling and essentially facilitating the commission of even more crimes—would there even be a question as to the need for accountability and law enforcement intervention?

The idea that accountability in this context is “ludicrous,” a stunt, “won’t go anywhere,” “can’t be done” represents a most insidious and dangerous form of moral relativism — ironically a concept the Church is always quick to denounce but upon which it heavily relies to shield itself from any accountability whatsoever.

Now, with the filing and tour behind us, we have reached the end of this particular chapter. But the work for accountability of high-level Vatican officials to bring an end to the system that condones, accepts, enables, and perpetuates sexual violence — a culture of sexual violence, if you will — is just beginning.