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Victims' 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

ICC File No. OTP-CR-159/11

Submitted on Behalf of
The Survivors Network of Those Abused by Priests
And Individual Victims/Survivors

13 September 2011

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C-11	*Gregory Ford, et al, v. Bernard Cardinal Law, et al*, Commonwealth of Massachusetts, Superior Court, Suffolk County Civil Action No. 02-04SS1-TI, "Plaintiffs' Memorandum of Law In Support of Motion in Limine to Admit Evidence of Practices and Policies of the Roman Catholic Archbishop of Boston, A Corporation Sole, Concerning Sexually Abusive Priests Other Than Paul R. Shanley," filed July 21, 2003. ***Exhibit C-11(a):*** CD-Rom containing approximately 1,791 pages of exhibits annexed to Plaintiffs' Motion
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C-21	Assessment of the Human Rights Issues Arising in Relation to the "Magdalene Laundries", Irish Human Rights Commission (November 2010), *available at* http://www.bishop-accountability.org/reports/2010_11_IHRC_Assessment_Magdalene_Laundries.pdf.
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D-1	**Munich-Freising Report – Central Points (English)** Marion, Westpfahl, Central Points of Appraisal Report, *Sexual and Other Physical Assaults by Priests, Deacons and Other Pastoral Workers in the Field of Jurisdiction of the Archdiocese of Munich and Freising Between 1945 and 2009*(2010), *available at* http://www.bishop-accountability.org/reports/2010_12_02_Westpfahl_Munich_and_Freising_Key_Points_English.pdf [hereinafter German report]. • (a) Central points of the appraisal report Sexual and other physical assaults by priests, deacons and other pastoral workers in the field of jurisdiction of the Archdiocese of Munich and Freising between 1945 and 2009 - German • (b) Statement by the Archbishop of Munich and Freising, Cardinal Reinhard Marx, at the press conference on abuse on 3rd December 2010 – English • (c)Statement by the Archbishop of Munich and Freising, Cardinal Reinhard Marx, at the press conference on abuse on 3rd December 2010 – German
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D-7	**England and Wales - "Cumberlege Commission Report"** *Safeguarding with Confidence – Keeping Children and Vulnerable Adults Safe in the Catholic Church*, The Cumberlege Commission Report, Published 2007, *available at*http://www.cathcom.org/mysharedaccounts/cumberlege/pressrelease-070716.htm#. (find PDF)
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	Punitive Damages, 28 March 2011, *available at* http://www.bishop-accountability.org/docs/jesuits/McGuire_Donald/Punitive_Damages_Motion/2011_03_28_Final_McGuire_Motion_Stamped.pdf; with exhibits, http://www.bishop-accountability.org/docs/jesuits/McGuire_Donald/Punitive_Damages_Motion/Exhibits/Final_McGuire_Exhibits_01_72.pdf.
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3	**Green Bay** *Troy J. Merryfield and Todd D. MerryField vs. Catholic Diocese of Green Bay, Inc.*, Motion to Prevent Document Destruction (15 Nov. 2010), Cir. Crt., Civ. Div., WI., No. 2008 – CV -0000001, *available at* http://www.bishop-accountability.org/legal/2010_11_15_Merryfield_v_Green_Bay_Motion_to_Stop_Document_Destruction.pdf.
4	Nuncio - Storeo Letter - Confidential Letter by Archbishop Luciano Storero, Apostolic Nuncio to Ireland, to the Members of the Irish Episcopal Conference, Regarding the Framework Document, 31 Jan.1997, *available at* http://www.bishop-accountability.org/Vatican/Documents/1997_01_31_Storero_Letter_to_Irish_Bishops.pdf[hereinafter Stereo letter].
5	Pican Letter Letter by Cardinal Castrillón Hoyos, Head of the Congregation for the Clergy, to SE Mgr Pierre Pican, Bishop of Bayeux-Lisieux (8 Sept. 2001), *available at* *i*http://www.google.com/url?q=http%3A%2F%2Fwww.katholieknederland.nl%2Fimglib%2Fkn_708227_brief_hoyos_pican.jpg&sa=D&sntz=1&usg=AFQjCNFJQVYUDyTjQznNJG_ESOh5htUZUw (Also annexed in English).
6	*A Series: Runaway Priests Hiding in Plain Sights*, DALLAS MORNING NEWS (20 - 23 June 20-23, 2004 and 12 Sept. 2004) (links to individual sections of the series *available at* http://www.bishop-accountability.org/news/2004_06_20_DMN_Untouchable.htm#articles*)* [hereinafter Dallas Morning News Article].

7	Alessandra Rizzo And Bradley Brooks, *Predator priests shuffled around globe: Victim: Transfer of abusive clerics was called „thegeographical cure*,' ASSOCIATED PRESS, updated 14 April 2010, *available at* http://www.msnbc.msn.com/id/36523444/ns/world_news-world_faith/t/predator-priests-shuffled-around-globe/.	
8	John L. Allen Jr. And Pamela Schaeffer, *Reports of Abuse: AIDS exacerbates Sexual Exploitation of Nuns, Reports Allege*, NATIONAL CATHOLIC REPORTER, 16 Ma. 2001, *available at www.ciberiglesia.net/discipulos/04/ncr.rtf.*	
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Victims' 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

ICC File No. OTP-CR-159/11*

I. BACKGROUND AND INTRODUCTION

1. In recent years, ongoing revelations of pervasive and serious sexual violence against children and vulnerable adults by priests and others associated with the Catholic church in different parts of the world have demonstrated that the problem is not one of isolated, random sexual assaults by errant priests but is occurring on a widespread and systematic basis throughout the church. In the wake of scandals in Canada, Ireland, the United States and elsewhere, experts and investigators who have carefully studied the issue and the evidence have identified policies and practices that allowed the sexual violence to occur and continue and that furthered the harm to direct victims. One after another, the investigations have found intentional cover-ups and affirmative steps taken that serve to perpetuate the violence and exacerbate the harm. The same or similar practices and policies have been found virtually everywhere that cases of sexual violence have been brought to light – in Australia, Austria, Belgium, France, Germany, Italy, the Netherlands, and Mexico among others.

2. As will be shown below, high-level Vatican officials, including Cardinal Joseph Ratzinger, now Pope Benedict XVI, either knew and/or in some cases consciously disregarded information that showed subordinates were committing or about to commit such crimes. The persons identified herein as persons whose roles should be investigated are those high-ranking officials at the church's center of gravity – the Vatican. As will be discussed in

* On 19 May 2011, the Center for Constitutional Rights (CCR) submitted a communication to the Prosecutor of the International Criminal Court (ICC) pursuant to Article 15 of the Rome Statute on behalf of the Survivors Network of Those Abused by Priests requesting he open an investigation and prosecution of high-level Vatican officials for rape and other forms of sexual violence as crimes against humanity and as torture as a crime against humanity. On 6 June 2011,CCR received acknowledgment of the submission from M.P. Dillon, Head of the Information and Evidence Unit. CCR was informed that the communication "has been duly entered in the Communications Registry of the Office." The submission was assigned reference number OTP-CR-159/11.

The undersigned counsel express their deep gratitude to Aliya Hussain and Rebecca Landy for their tireless efforts in assisting with the preparation of the current communication, and we want to acknowledge the work of bishopaccountability.org in compiling and maintaining vast stores of information relating to clergy sex abuse and for making it widely available. Finally, we recognize the significant contribution of Rhonda Copelon to this submission.

more detail below, the Vatican is a highly centralized and hierarchical institution with all authority leading to and ultimately residing in the Pope in Rome. The persons named herein have served in positions of power within the church, have implemented papal policies and laws and have exercised authority over these matters at one time or other. They bear the greatest responsibility for the system that fosters and allows sexual violence.

3. Time and again church officials have chosen the path of secrecy and protecting their ranks over the safety and physical and mental well-being of children and vulnerable adults, families of victims and their communities. As is detailed below, there are documented cases showing that church officials have gone so far as to obstruct justice and/or destroyed evidence in national legal systems and have consistently 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. As is detailed below, there are documented cases of bishops and cardinals purposefully misleading their parishioners and communities about offending priests, lying to victims and their families, and indeed blaming victims and/or their families. Whistleblowers have been punished and those who have endeavored to maintain secrecy and protect the institution have been rewarded. As will be shown in more detail below, it is now clear that the actions of such bishops and cardinals conform to, rather than depart from, Vatican policy. In doing so, they have not just kept rape and sexual violence quiet, they have kept it going.

4. It is important to note at the outset that often the acts of rape and sexual violence in this context are referred to as "abuse." Descriptions such as „sexual abuse' 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. A Grand Jury in Philadelphia noted this tendency and reaffirmed the multi-dimensional effects and gravity of all forms of sexual violence in this context:

> We should begin by making one thing clear. When we say abuse, we don't just mean "inappropriate touching" (as the Archdiocese often chose to refer to it). We mean rape. Boys who were raped orally, boys who were raped anally, girls who were raped vaginally. *But even those victims whose physical abuse did not include actual rape – those who were subjected to fondling, to masturbation, to pornography – suffered*

> *psychological abuse that scarred their lives and sapped the faith in which they had been raised*.[1] (emphasis added)

5. A report issued by experts in Germany also noted this tendency:

> With regard to the misconduct in question, namely the sexual offences, it must be emphasized that euphemistic, trivialising language was used, which, from the point of view of the experts, often gave no more than an inkling of the complete extent of the offence and its effect on the victim.[2]

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.[3]

7. Such terminology masks the true extent of the harm such 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 their family, the spiritual community and foundations through which they are taught to view the world and, indeed, the world itself. One Polish survivor of rape described this dynamic as feeling as though *"we've lost our grounding on Earth."*[4]

8. Indeed, the gravity of the harm is such that while we use the term "survivor" where appropriate throughout this communication to acknowledge, affirm and empower those to whom such violence has been done, we do so advisedly. As is tragically demonstrated in the

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[1] Report of the Grand Jury, *In Re County Investigating Grand Jury*, MISC. NO. 03-00-239, (C. P. Philadelphia, 2003), *available at*http://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf [hereinafter Philly II], at 2-3

[2] Marion, Westpfahl, Central Points of Appraisal Report, *Sexual and Other Physical Assaults by Priests, Deacons and Other Pastoral Workers in the Field of Jurisdiction of the Archdiocese of Munich and Freising Between 1945 and 2009*, (2010), at Exec. Summary, 3, *available at* http://www.bishop-accountability.org/reports/2010_12_02_Westpfahl_Munich_and_Freising_Key_Points_English.pdf [hereinafter Germany report].

[3] Karen Terry et al., *The Nature and Scope of the Problem of Sexual Abuse of Minors by Priests and Deacons,* prepared by John Jay College of Criminal Justice, United States Conference of Catholic Bishops (2004), *available at* http://www.bishop-accountability.org/reports/2004_02_27_JohnJay_revised/2004_02_27_John_Jay_Main_Report_Optimized.pdf [hereinafter John Jay I].

[4] Beata Pasek, *Faithful in Pope's Homeland Press Church to Act on Sex Abuse*, STAR TRIBUNE [Poland], 28 Sept. 2003, *available at* http://www.bishop-accountability.org/news2003_07_12/2003_09_28_Pasek_FaithfulIn.htm **(**quoting WlademarMaziejuk, a 64-year-old farmer and one of a group of villagers who unsuccessfully asked church authorities to reassign an accused priest. Maziejuk went on to say: "The church requires repentance from us, but not from itself.").

reports and investigations summarized below, many have not survived their experiences. The reports summarized herein and annexed hereto document tragic cases of suicides and attempted suicides as a result of not only the sexual violence inflicted on the victims but the psychological violence, including the alienation and isolation, inflicted by the Church in the aftermath – the brutality involved in a system that knowingly exposes and subjects children and vulnerable adults to violent acts and then protects the perpetrators while turning its back on and on condemning the victims.

9. There has been much talk of "reforms" and "zero tolerance" policies by church officials over the past few years. As recent commissions of inquiry and grand jury findings discussed herein demonstrate, sexual violence is still being committed within the church with impunity and the priest-shifting and cover-ups are still happening, also with impunity. There are five recent cases of individual complainants included in this submission – three of whom are taking part on the condition of confidentiality. These cases confirm that the sexual violence is still happening and that the policy and practice of those at the seat of power have not changed. The reforms have been largely cosmetic and have left intact the system of cover-up and secrecy that perpetuates the violence.

10. As is made clear *infra*, evidence of offenses that may have occurred outside the court's territorial or temporal jurisdiction is 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. Those crimes that occurred pre-2002 (the year the Statute of the International Criminal Court entered into force) are not simply "historical violations" that have no bearing on the post-2002 crimes or, indeed, the current policies and practices of the Vatican. The pre-2002 crimes, as well as post-2002 offenses, demonstrate: the widespread and systematic nature of the attack on children and vulnerable adults; that high-level Vatican officials, including Joseph Ratzinger, were on notice of the serious crisis facing the Catholic church in relation to sexual violence committed against children and vulnerable adults, the scope and scale of the crimes; and that the Vatican policy and practice was to protect the Church rather than protect the victims. Moreover, the pre-2002 cases establish many situations where the perpetrator has benefitted from the culture of impunity and may still be a danger to children and vulnerable adults, victims continue to suffer and the systemic cultural of sexual violence continues.

11. Despite the vast amount of evidence presented herewith – the testimony, case studies, expert declarations, letters, statements, photographs, findings of multiple commissions of inquiry and grand juries, guilty pleas of bishops to charges like „failing to report a crime', etc. – it is merely a sample or representation of the vast amount of information and documentation currently available. Even the currently available information is likely just the tip of an iceberg. It must be acknowledged that much of this evidence has come to light through the heroic efforts of survivors, supporters, whistleblowers, lawyers, investigators operating in different places at different times addressing specific situations in different contexts. Eventually, as a result of their efforts and courage, the picture has become clearer as common themes emerged and bishops and cardinals have run out of ways to explain away more and more instances of sexual violence the more the truth continued to slip through the grasp of those who would keep it hidden. The undersigned attorneys and the organization we represent, the Survivors Network of Those Abused by Priests, will remain available and willing to provide additional documentation, evidence, expert assistance and witnesses beyond that which is provided here to assist any investigation.

12. For many, the fact that the Vatican has had a longstanding policy and practice for dealing with sexual violence by priests in ways that have ensured such violence would continue is as shocking as the magnitude and gravity of the offenses themselves. That church officials would place such little value on the children, vulnerable adults and communities they deliberately exposed and placed at risk will no doubt be difficult to comprehend. But the facts speak for themselves. And, the facts will show that, in effect, those with power in the Vatican have helped foster a culture of rape within the church – a culture that, when left to its own devices, accepts it, condones it and, ultimately, perpetuates it.

II. FACTUAL BACKGROUND

13. As will be shown *infra*, the revelations of sexual violence by priests arising in recent years on similar scales in Australia, Austria, Belgium, Canada, Germany, Ireland, Italy, the United States and elsewhere demonstrate that the rates of abuse in any one country or diocese 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.[5] 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.[6] (emphasis added)

14. The sheer numbers of victims and cases of sexual violence that have surfaced around the world are evidence of the widespread nature of this problem, but the offenses are also systematic. The full picture of the systemic quality of sexual violence within the Catholic Church has come into clearer view through the work of Commissions of Inquiry, Grand Juries and other governmental bodies that have issued findings after lengthy and comprehensive inquiries. As well, civil litigation, diocesan commissions and non-governmental analyses in different parts of the world have yielded insights and evidence showing clearly the role Vatican officials have played in constructing and maintaining the climate in which rape and sexual violence have continued essentially unchecked for years.

15. As is demonstrated below, crimes that occurred pre-2002 (the year the Statute of the International Criminal Court entered into force) are not simply "historical violations" that have no bearing on the post-2002 crimes or, indeed, the current policies and practices of the Vatican. The pre-2002 crimes demonstrate: the widespread and systematic nature of the attack on children and vulnerable adults; that high-level Vatican officials, including Joseph Ratzinger, were on notice of the serious crisis facing the Catholic church in relation to sexual violence committed against children and the scope and scale of the crimes; and that the Vatican policy and practice was to protect the Church rather than protect the victims. Moreover, the vast majority of the priests who committed acts of sexual violence against children and vulnerable adults have faced no punishment or criminal sanction for their

[5] 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.
[6] Amnesty International, Annual Report 2011: Vatican (2011), *available at*http://www.amnesty.org/en/region/vatican/report-2011.

actions; many continue to serve, and have privileged access to future victims because of their status as a member of the Catholic clergy. The high-level officials of the Catholic church who failed to prevent and punish these criminal actions, and too often facilitated or encouraged the acts of sexual violence described herein have, to date, enjoyed absolute impunity.

GOVERNMENT AND INTER-GOVERNMENTAL COMMISSIONS, INQUIRIES AND GRAND JURIES

> *Because for the first time in Ireland, a report into child sexual-abuse exposes an attempt by the Holy See, to frustrate an Inquiry in a sovereign, democratic republic...as little as three years ago, not three decades ago.*
>
> *And in doing so, the Cloyne Report excavates the dysfunction, disconnection, elitism, the narcissism, that dominate the culture of the Vatican to this day.*
>
> *The rape and torture of children were downplayed or 'managed' to uphold instead, the primacy of the institution, its power, standing and 'reputation'.*[7]

16. The following is a summary and overview of key findings of governmental and inter-governmental commissions, Grand Juries and other bodies.

CANADA

17. Canada was among the first countries where the systemic quality of sexual violence in Catholic institutions began to emerge and be identified. In 1989, the Royal Commission of Inquiry into the Response of the Newfoundland Criminal Justice System to Complaints (Hughes Commission) was formed to investigate the systemic physical and sexual violence committed against young boys at the Mount Cashel Orphanage operated by the Christian Brothers in St. John's Newfoundland. The Hughes Commission report noted that the evidence of the sexual violence adduced at the hearings "was of such as nature as to shock profoundly the conscience and susceptibilities of the people of Newfoundland and Labrador."[8] (Hughes Commission report annexed hereto as Exhibit C-1) The Hughes Commission concluded that officials had covered up the sexual abuse at Mount Cashel and

[7] Statement by the Taoiseach (Enda Kenny) on the Dáil Motion on the report of the Commission of Investigation into the Catholic Diocese of Cloyne, in DáilÉireann (20 July 2011), *available at* http://www.taoiseach.gov.ie/eng/Government_Press_Office/Taoiseach's_Speeches_20111/Statement_by_the_Taoiseach_on_the_D%c3%a1il_Motion_on_the_report_of_the_Commission_of_Investigation_into_the_Catholic_Diocese_of_Cloyne,_in_D%c3%a1il_%c3%89ireann,_.html?print=1.

[8] Samuel S.H. Hughes, *Royal Commission of Inquiry into the Response of the Newfoundland Criminal System to Complaints* (Newfoundland, Canada, 1989), at 490, *available at* http://www.lewisday.ca/ldlf_files/pdf/Mt.Cashel%20vol%201.pdf.

routinely transferred offenders. The Archdiocese in Newfoundland also set up a Commission of Enquiry to address the "sexual abuse of children by members of the clergy" at Mount Cashel (Winter Commission). Like the Hughes Commission, the Winter Commission determined that:

> [b]etween 1975 and 1989 the Archdiocesan administration had heard rumours, reports or formal accusations of sexual misconduct between priests and children on many occasions. Nevertheless, neither the current nor the previous Archdiocesan administration took decisive or effective steps to investigate further, to halt the abuse, or to inform parishioners of the risk to their children.[9] (See Winter Commission Report annexed hereto as Exhibit D-5)

18. The Winter Commission concluded as early as 1990 that:

> [t]he events which occurred in the Archdiocese cannot be passed off as the ·manifestation of a disease: both the offenders and the Church management must be held accountable. The Church administration in the Archdiocese chose to deny the abuses and discount the victims' disclosures of criminal activity. Rather than reporting the allegations to civil authorities, the Archdiocesan administration chose to accept repeated denials of the allegations and allowed the abuses to continue.[10]

19. The Catholic Church was also implicated in widespread physical and sexual abuse in Canada's residential schools, beyond the Mount Cashel scandal, where more than 100,000 aboriginal children were forced to attend state-funded Christian boarding schools as part of Canada's process of assimilation.[11] The Catholic church was responsible for more than three-quarters of Canada's residential schools, but it was the "last church to have one its leaders officially address the abuse" and even then it did not amount to a formal apology.[12]

20. In 2006, a settlement agreement was reached in the class action litigation that was brought to address the abuses and violations that took place which called for the

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[9] Gordon A. Winter, *The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy* (Archdiocese of St. John's, Canada, 1990), at 137, *available at* http://www.attorneygeneral.jus.gov.on.ca/inquiries/cornwall/en/hearings/exhibits/Tom_Doyle/pdf/06_Commission.pdf [hereinafter Winter Commission].

[10] *Id.* at 140.

[11] See, Sarah Shenker, *Legacy of Canada's Residential Schools*, BBC NEWS, 11 June 2008, available *at* http://news.bbc.co.uk/2/hi/7438079.stm (last visited 10 Sep. 2011).

[12] *A History of Residential Schools in Canada*, CANADIAN BROADCASTING CORPORATION NEWS, 14 June 2010, *available at*http://www.cbc.ca/news/canada/story/2008/05/16/f-faqs-residential-schools.html.

establishment of a Truth and Reconciliation Commission.[13] There have been serious concerns about the Church's commitment to following through on the provisions of the settlement.[14]

IRELAND

The Ferns Report, 2005

21. The Ferns Commission was the first commission established by Ireland's Minister for Health and Children in the wake of numerous allegations of sexual violence that emerged in 2002. The Ferns Commission report addressed approximately 100 allegations of sexual violence against 21 priests in the Ferns Diocese of County Wexford between 1962 and 2002.[15] (See Ferns Report annexed hereto as Exhibit C-2) At the time of the report, only 11 of the accused priests were still alive. Among the most notorious of cases studied by the Commission was that of Father Fortune who had been charged with more than 60 counts of rape and sexual assault. The reports detail violent and repeated rape as well as knowledge on the part of higher officials in the diocese who left him with access to children and associated the Boy Scouts.[16]

22. As with the Canadian commissions, the Ferns Commission found that offending priests were moved from parish to parish with no warning to parishioners and others with whom they would come into contact; that victims' complaints were not handled in a sensitive or supportive manner, "which led to further hurt and alienation for the complainant" and that other children suffered further sexual violence as a result of these actions and inactions.[17]

23. The report also noted that:

> [P]riests identified the hierarchical structure of the Church as an impediment to dealing effectively with the problem of clerical child sexual abuse. Priests are answerable to their Bishop who in turn is answerable only to the Pope. There is no

[13] *See*, Settlement Agreement in *In re Residential Schools Class Action Litigation,* 8 May 2006, *available at* http://www.residentialschoolsettlement.ca/english_index.html
[14] Bill Curry, *Catholic Church Reluctant to Release Residential School Records*, GLOBE AND MAIL, 6 April 2010, *available at* http://www.theglobeandmail.com/news/politics/catholic-church-reluctant-to-release-residential-schools-records/article1524204/.
[15] Francis D. Murphy, Helen Buckley, and Larain Joyce,*The Ferns Report, Diocese of Ferns*, presented to the Minister for Health and Children (Dublin: Government Publications, 2005), *available at*http://www.bishop-accountability.org/reports/2005_10_Ferns/Complete_Ferns_Report_SO.pdf.
[16] *Id.* at 86.
[17] *Id.* at 30.

> prescribed middle management as would be found in most other organisations.[18]

24. The Commission further noted that one of the bishops "informed the Inquiry that he was very conscious that many Bishops had been overruled by Rome and priests reinstated" and that "he believed that such an outcome would have deeply affected both his credibility and standing in the Diocese and his ability to deliver effective ministry."[19]

The Ryan Report, 2009

25. The Ryan Report was issued by the Commission to Inquire Into Child Abuse and was the result of a 10-year inquiry into the extent and effects of abuse on children from 1914-2004 in Irish institutions for children. (Ryan Report annexed hereto as Exhibit C-3) The majority of allegations related to the system of 60 residential reformatory and industrial schools operated by Catholic Church orders with funding and supervision by the Irish Department of Education.[20]

26. The five-volume report chronicles cases of tens of thousands of children who suffered systematic sexual, physical and mental abuse in the schools. A large section of the report pertains to institutions owned and managed by the Congregation of the Christian Brothers, which was the largest provider of residential care for boys in the country. More allegations were made against the Christian Brothers than all of the other orders combined.

27. The report describes in chilling detail how "[a] climate of fear, created by pervasive, excessive and arbitrary punishment, permeated most of the institutions and all those run for boys. Children lived with the daily terror of not knowing where the next beating was coming from."[21] The violence encompassed rape and other forms of sexual violence, which was particularly „endemic' in boys' institutions:[22]

> Witnesses reported sexual assaults in the forms of vaginal and anal rape, oral/genital contact, digital penetration, penetration by an object, masturbation and other forms of inappropriate contact, including molestation and kissing. Witnesses also reported several forms of non-contact sexual abuse including

[18] *Id.* at 25.
[19] *Id*. at 45.
[20] *The Ryan Report on Irish Residential Institutions*, The Commission to Inquire into Child Abuse, Dublin, Ireland (20 May 2009), *available at* http://www.childabusecommission.com/rpt/index.php.
[21] *Id.* at Vol. IV, Ch. 6, 6.1.1.
[22] *Id.* at Vol. IV, Ch. 6, 6.18.

> indecent exposure, inappropriate sexual talk, voyeurism and forced public nudity.[23]

28. As with the Hughes and Winter Commissions in Canada and the Ferns Commission, the Ryan commission found a policy that protected perpetrators and exposed children to repeated acts of sexual violence. The Ryan Commission, though, noted a clear and damning distinction between the ways that such offenses were handled when committed by lay persons versus members of the clergy:

> Cases of sexual abuse were managed with a view to minimizing the risk of public disclosure and consequent damage to the institution and the Congregation. This policy resulted in the protection of the perpetrator. When lay people were discovered to have sexually abused, they were generally reported to the Gardai. When a member of a Congregation was found to be abusing, it was dealt with internally and was not reported to the Gardaı´. The damage to the children affected and the danger to others were disregarded. The difference in treatment of lay and religious abusers points to an awareness on the part of Congregational authorities of the seriousness of the offence, yet there was a reluctance to confront religious who offended in this way. The desire to protect the reputation of the Congregation and institution was paramount. Congregations asserted that knowledge of sexual abuse was not available in society at the time and that it was seen as a moral failing on the part of the Brother or priest. This assertion, however, ignores the fact that sexual abuse of children was a criminal offence.[24]

29. In July, 2011, the United Nations Committee Against Torture issued its Concluding Observations on Ireland's report to the Committee in accordance with its obligations under the Convention Against Torture. (Concluding Observations annexed hereto as Exhibit C-20)[25] Two aspects of the Committee's observations were relevant to the Ryan report. First, the Committee called on Ireland to "indicate how it proposes to implement all the recommendations of the Commission to Inquire into Child Abuse and indicate a timeframe for achieving them;" to "institute prompt, independent and thorough investigations into all cases of abuse as found by the report, and if appropriate, prosecute and punish perpetrators; and "ensure that all victims of abuse obtain redress, and have an enforceable right to compensation including the means for as full rehabilitation as possible."

[23] *Id*. at Vol. III, Chapter 9, 9.76.
[24] *Id*. at, Executive Summary, p. 21.
[25] United Nations, Concluding observations of the Committee against Torture: Ireland, 56th Sess., ¶ 20, U.N. Doc., 2CAT/C/IRL/CO/ (7 Jun. 2011) [hereinafter CAT Concluding Observations].

30. It is significant that in making these observations and requests, the Committee tasked with overseeing State Party compliance with the Convention Against Torture, expressed its grave concern that "despite the findings of the Ryan Report that „physical and emotional abuse and neglect were features of the institutions and that sexual abuse occurred in many of them, particularly boys' institutions, there has been no follow up by the State party."[26]

The Murphy Report, 2009

31. The Report into the Catholic Archdiocese of Dublin was released by the Commission of Investigation, or the Murphy Commission, in July 2009, shortly after the release of the Ryan Report. (Murphy Report annexed hereto as Exhibit C-4) The Murphy Report focused on the institutional response to sexual abuse within the Archdiocese of Dublin. The report traces the institutional responses in the archdiocese between the years 1974 and 2004 and reviewed 320 cases against 172 priests and how they were handled by the Church. The commission determined that 102 of the cases had the potential for further action and created a representative sample of 46.[27] Of the cases investigated by the Commission, "one priest admitted to sexually abusing over 100 children, while another accepted that he had abused on a fortnightly basis during the currency of his ministry which lasted for over 25 years."[28] Yet the Commission only had approximately 70 complaints before it involving those two priests.[29] A couple of complaints signaled even further concern inasmuch as they involved allegations of abuse by more than one priest. Again, as with the reports of the Hughes, Winter, Ferns and Ryan commissions, the Murphy report concluded that the sole concern of the church was to protect against scandal and its policies placed children and others at risk of rape and other forms of sexual violence:

> [T]here is no doubt that the reaction of Church authorities to reports of clerical child sexual abuse in the early years of the Commission's remit was to ensure that as few people as possible knew of the individual priest's problem. There was little or no concern for the welfare of the abused child or for the welfare of other children who might come into contact with the priest. Complainants were often met with denial, arrogance and cover-up and with incompetence and incomprehension in some cases. Suspicions were rarely acted on. Typically complainants were not told that other instances of child sexual

[26] *Id.*
[27] Judge Yvonne Murphy, Ms. ItaMangan, and Mr. Hugh O'Neill, Commission of Investigation: Report into the Catholic Archdiocese of Dublin (26 Nov. 2009), at 11.1-11.2, *available at* http://www.justice.ie/en/JELR/Pages/PB09000504. [hereinafter Cloyne Report, attached hereto at C-5].
[28] *Id.* at 2.
[29] *Id.*

> abuse by their abuser had been proved or admitted. The attitude to individual complainants was overbearing and in some cases underhanded.[30]

32. It should be noted that Archbishop Diarmuid Martin called for the resignation of four bishops implicated in the scandal described by the Murphy Report. Three of the bishops answer the call and offered their resignations while one bishop refused. Subsequently, Pope Benedict XVI refused to accept the resignations of two of the bishops, overruling Archbishop Martin's attempts to clean house.[31]

The Cloyne Report, 2011

33. The Cloyne Report was issued in July 2011 by the Commission of Investigation, Dublin Archdiocese, Catholic Diocese of Cloyne, (Cloyne Commission) which was comprised of the same commissioners who oversaw the Murphy Commission inquiry.[32] The Cloyne Commission focused on allegations of abuse against 19 members, or 7.6%, of the Cloyne clergy lodged between 1996 and 2009. (Cloyne Report annexed hereto as Exhibit C-5) This time period is significant in that it coincides with the issuance of detailed procedures for dealing with child sexual abuse promulgated in 1996 by the Catholic Church in Ireland entitled *Child Sexual Abuse: Framework for a Church Response,* (Framework Document) which included a requirement to report such allegations to the civil authorities. By letter, the Cloyne bishop, John Magee, notified all priests in the diocese that he had adopted the procedures in 1996.

34. However, the Cloyne Commissioners found that despite his stated position, "the reality is that the guidelines set out in that document were not fully or consistently implemented" during the period between 1996 and 2009.[33] The Commissioners noted that Magee paid little attention to the procedures until 2008, which incidentally also coincided with media exposure of a looming scandal.

35. The Cloyne Commission found that Magee failed to report nine of 15 cases which clearly should have been reported to the civil authorities under the Framework Document. The Commission also found that the diocese failed to report any complaints to the health

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[30] *Id*. at 10
[31] *Victims Criticize Pope's Decision,* RTE News Report, 11 Aug. 2011, *available at*http://www.rte.ie/news/2010/0811/abuse.html (last accessed 5 Sept. 2011)
[31]http://www.justice.ie/en/JELR/Cloyne_Rpt.pdf/Files/Cloyne_Rpt.pdf..
[32] http://www.justice.ie/en/JELR/Cloyne_Rpt.pdf/Files/Cloyne_Rpt.pdf
[33] Cloyne Report at 1.17

authorities between 1996 and 2008, failed to appoint support people for complainants and failed to operate an independent advisory panel as required by the Framework Document.[34]

36. The Commissioners also noted that the Vatican's reaction to and position on the Framework Document was „entirely unhelpful' to any bishop who wanted to implement the agreed procedures:[35]

> The Congregation for the Clergy told the bishops of Ireland that the document was "not an official document of the Episcopal Conference but merely a study document". The Congregation further stated that it contained: "procedures and dispositions which appear contrary to canonical discipline and which, if applied, could invalidate the acts of the same Bishops who are attempting to put a stop to these problems. If such procedures were to be followed by the Bishops and there were cases of eventual hierarchical recourse lodged at the Holy See, the results could be highly embarrassing and detrimental to those same Diocesan authorities. In particular, the situation of „mandatory reporting' gives rise to serious reservations of both a moral and a canonical nature."[36] (See Letter of 31 January 1997 classified as "Strictly Confidential" from Luciano Storero, Papal Nuncio to Members of the Irish Episcopal Conference, annexed hereto as Exhibit F-4)

37. According to the Cloyne Commission, this communication, combined with the Vatican's refusal to recognize the Framework and thereby give it the status of canon law, effectively gave individual Irish bishops the freedom to ignore the procedures to which they had agreed and gave comfort and support to those who dissented from the stated official Irish Church policy of reporting to civil authorities.[37] While the Vatican's reaction and views were entirely unhelpful, they were also entirely consistent with its views and positions it had taken in the past with respect to similar efforts in the United States and Canada to enact policies that would ensure cooperation with civil authorities in cases of rape and sexual abuse of minors, as will be discussed more *infra*.[38]

38. The time period covered by this report is additionally significant because it came after Ireland had been rocked by sex abuse scandal and after the new procedures were to be in place which meant that "the so-called „learning curve' which [the catholic church] claimed excused very poor handling of complaints in other dioceses in the past could not have had

[34] *Id*. at 1.21
[35] *Id*. at 1.18.
[36] *Id*. at 1.18.
[37] *Id*.
[38] See, eg, Letter to Moreno

any basis or relevance' in the current inquiry in Cloyne.[39] Still, as with the Hughes, Winter, Ferns, Ryan and Murphy commissions, the Cloyne Commission found that not only did the diocese fail, or refuse, to report new cases to the civil authorities and fail to provide support to victims and establish an independent review panel pursuant to new policies it claimed to have implemented, the diocese also failed to follow its own canonical procedures for dealing with allegations of sexual abuse.[40] In addition, it found that Bishop Magee intentionally mislead the Irish Minister for Children to believe "that the Framework Document guidelines were fully in place and were being fully complied with."[41]

UNITED STATES

Report of the Grand Jury, 19 June 2002, Westchester County, New York (Westchester Report)

39. In April of 2002, a Grand Jury in Westchester County, New York, was convened in connection with complaints of sexual abuse and misconduct against minors by members of the local clergy. The Grand Jury met on 15 occasions and received testimony from 21 witnesses, including eight victims of sexual violence and reviewed 31 exhibits consisting of thousands of pages documents. The Grand Jury report noted that "the specific types of abuse varied, including instances when the abusing clergy member masturbated the child victim to climax; engaged in oral sex; fondled the victim's penis and buttocks; forced the victim's hand onto the offender's penis; and engaged in mutual masturbation to climax by force" and further that the "overwhelming evidence demonstrated that sexual abuse and/or misconduct by a member of the clergy had shattering psychological effects on the victim-child."[42] (See Westchester Report annexed hereto as Exhibit C-6).

40. As is the case in the preceding reports, the Westchester Grand Jury also found that when it became aware of the abuse, the religious institution "rather than seeking to alleviate the trauma to the victim, increased it,"[43] and that it uniformly failed to report the offenses to civil law enforcement authorities.[44] Likewise, the Grand Jury also found that the religious institution "consistently shuttled the abuser from place to place each time an allegation came

[39] Cloyne Report, at 1-2.
[40] *Id* at 1.77
[41] *Id*.
[42] Report of the Westchester County (New York) Grand Jury Concerning Complaints of Sexual Abuse and Misconduct Against Minors by members of the Clergy, at 2-3, 19 June 2002, *available at* http://www.bishop-accountability.org/resources/resource-files/reports/WestchesterGrandJuryReport.pdf [hereinafter Westchester Report].
[43] *Id.* at 5.
[44] *Id.* at 6.

to light"[45] and purposefully kept the new congregation in the dark which served to "put more children at risk"[46] and further that the institution's "internal investigation of the allegations was primarlily geared to delay, with the hope that the victim and his family would not persist in pursing their claim" and to protect the institution from adverse publicity and its economic welfare.[47]

41. Among the more insidious aspects of the church's practice was the lengths to which it would go to discredit the victims. The practice was summarized by the Grand Jury in this way:

> The Grand Jury also heard testimony and viewed evidence that, after an allegation of abuse became public by the filing of a lawsuit or otherwise, there was a concerted effort on the part of the religious institution to mislead the community: defending the abuser while simultaneously attempting to humiliate the victims and their families – even in the face of mounting credible evidence against a particular abuser. Congregants where the abuser was employed were lied to during religious services in their house of worship. Articles in newspapers sponsored by the religious institution questioned the victim and his family's motives; further, the religious institution used the media to lie about the past record of certain clergy members, thereby willfully misleading the public. In one case in particular, the religious institution sent a high level religious official to the congregation to vouch publicly for an abuser against whom multiple claims had been lodged by separate victims.[48]

Report of the Grand Jury, 17 January 2003
Suffolk County, New York (Suffolk Report)

42. In May 2002, a special Grand Jury was empanelled to investigate the Rockville Center Diocese in New York. After interviewing 97 witnesses and reviewing the secret files of 43 priests, the Suffolk Grand Jury issued its report in January 2003. According to the report, the cases reviewed involved rape, sodomy, sexual abuse, endangering the welfare of a child and use of a child in a sexual performance. The report described the cases as follows:

- One priest who raped and fondled 4 teenage girls was sent to psychological treatment where it was found he should not be sent back to his parish. This advice was ignored and he was returned to the parish, which was attached to a school, only to reoffend.

[45] *Id.* at 8.
[46] *Id.*
[47] *Id.* at 7.
[48] *Id.* at 8-9.

- One priest repeatedly raped a 15 year old girl until she was 19, and started a pattern of continuous fondling and masturbation of her sister when she was 12.

- Another priest assault four brothers. The first was only 9 when this began, with the Priest performing oral sex on him while he was sleeping, and continued with touching and oral sodomy until the age of 16. One of the brothers committed suicide.

- One priest who was an alcoholic would supply boys with drinks and when they passed out they would awaken to him masturbating them or performing oral sodomy.

- Another Priest sexually abused a minimum of six boys who ranged in age from 10 to 17, engaging in oral and anal sex with them.

43. As in all of the reports outlined above, the Suffolk Grand Jury concluded that the Rockville Diocese shifted predator priests from one parish to the next, deceived victims and prioritized protecting the diocese from scandal. The Grand Jury observed:

> Abusive priests were transferred from parish to parish and between Dioceses. Abusive priests were protected under the guise of confidentiality; their histories mired in secrecy. . . Aggressive legal strategies were employed to defeat and discourage lawsuits even though Diocesan officials knew they were meritorious. Victims were deceived; priests who were civil attorneys portrayed themselves as interested in the concerns of victims and pretended to be acting for their benefit while they acted only to protect the Diocese. These officials boldly bragged about their success and arrogantly outlined in writing mechanisms devised to shield them from discovery. These themes framed a system that left thousands of children in the Diocese exposed to predatory, serial, child molesters working as priests.[49]

44. The Grand Jury further concluded that while "the protection of children was the written policy of the Diocese of Rockville Centre it was not the practice"[50] and, further, that this was no accident:

> The Grand Jury concludes that this was more than simple incompetence. The evidence before the Grand Jury clearly demonstrates that Diocesan officials agreed to engage in conduct that resulted in the prevention, hindrance and delay in the discovery of criminal conduct by priests. ***They conceived and agreed to a plan using deception and intimidation to***

[49] Grand Jury Report, Suffolk County (New York) Supreme Court, Special Grand Jury Term 1D, May 6, 2002, foreperson Rosanne Bonventre, at 107, dated 17 Jan. 2003, *available at* http://www.bishop-accountability.org/resources/resource-files/reports/SuffolkGrandJuryReport.pdf [hereinafter Suffolk Report].
[50] *Id.* at 131.

prevent victims from seeking legal solutions to their problems.[51] (emphasis added)

Report of the Office of the Attorney General On the Investigation of the Diocese of Manchester, Concord, New Hampshire, 3 March 2003 (Manchester Report)

45. The office of the New Hampshire Attorney General launched an investigation in February 2002 "into the manner in which the Roman Catholic Diocese of Manchester handled allegations that priests committed sexual assaults against minors – an investigation that established that the Diocese endangered the welfare of children."[52] (See Manchester Report annexed hereto as Exhibit C-8) The report stated that the Attorney General's office was prepared to present indictments to the Hillsborough County Grand Jury in December 2002 charging the Diocese with multiple counts of endangering the welfare of a minor but that the Bishop negotiated with prosecutors and agreed and acknowledged that the "State had evidence likely to sustain a conviction against the Diocese for child endangerment."[53]

- One victim described his most painful memory was of taking a road trip with the offending priest and three other boys to Indiana for four to six weeks. He described the trip as a "rape fest" – Father Aube engaged in sexual contact with one boy after the other, in the same "session." Aube was accused of assaulting 17 victims, and was also reported as using physical pain and violence to get victims to agree to various sex acts.

- Another Priest, Gordon MacRae, who had 39 allegations against him, videotaped some his sexual activity with his victims. Other victims of this priest reported being raped by McRae as well as two of his associates and being threatened by McRae.

- Although Roger Fortier was not convicted until 1998, the Diocese first learned that Fortier was a sexual threat to minors in 1984. He was indicted on 16 counts of sexual assault. One of his 14 yr old victims was subject to fellatio one to three times per a month for a year.

46. As with the Hughes, Winter, Ferns, Ryan, Murphy, and Cloyne Commissions and the Westchester and Suffolk Grand Jury reports, the Manchester report concluded that Diocese knowingly exposed children to sexual violence, engaged in deception and misdirection and prioritized avoidance of scandal and protection of church officials over the protection of children. Among the significant findings of the report:

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[51] *Id.* at 173.
[52] Report on the Investigation of the Diocese of Manchester, New Hampshire. Attorney General of the State of New Hampshire, Jan. 2003, at 1, *available at* http://www.bishop-accountability.org/resources/resource-files/reports/NewHampshireAGReport.pdf [hereinafter Manchester Report]
[53] *Id.*

> The specific facts supporting a conclusion that the Diocese acted "knowingly" will be addressed in subsequent memoranda in the context of each case. However, at this juncture it is appropriate to address some generally applicable principles that will apply across the board to each of the charges. In some instances the Diocese took some steps to address complaints that a priest had molested children, including referring the priest to counseling. The State was prepared to prove that the steps taken by the Diocese were so ineffective that they did not ***negate the fact that the Diocese "knowingly" endangered the welfare of a minor***.[54]
>
> […]

47. As discussed in the fact section of this report, the investigation uncovered instances where Diocesan officials made apparently false statements in the context of civil lawsuits and in the course of a presentencing investigation conducted by the Department of Corrections for the purpose of the sentencing of a Diocesan priest. ***This conduct may have constituted perjury, false swearing, or unsworn falsification***.[55]

> […]
>
> The Task Force obtained information that Diocesan officials may have secured confidentiality agreements from victims of sexual assaults in return for civil settlements and other benefits such as providing counseling to victims. This evidence demonstrates that the Diocese required confidentiality in return for remuneration***. In at least one instance, the investigation revealed that one of the reasons for the Diocese's insistence on a confidentiality agreement was to prevent the victim from speaking with law enforcement about the sexual offenses of the priest. Such conduct would support a charge that the Diocese engaged in compounding***.[56]

48. In exchange for not proceeding with the indictments, the Attorney General's office obtained an admission of guilt from church officials who acknowledged "that certain decisions made by it about the assignment to ministry of priests who had abused minors in the past resulted in other minors being victimized."[57] The agreement also required that the diocese participate in a system of accountability and state oversight to ensure transparency and protection of children.

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[54] *Id.* at 6.
[55] *Id.* at 13.
[56] *Id.*
[57] *Id.* at 3.

49. The Attorney General hired an independent firm to monitor the Diocese's compliance with the agreement. In its report released in 2007, the firm determined that the Diocese of Manchester still wasn't meeting abuse-prevention requirements negotiated with the attorney general's office four years before and further that there were „critical gaps' in programs to protect children from sexual abuse and that church leaders were reticent in complying. [58]

Attorney General Report Regarding the Archdiocese of Boston, July 2003 (Boston Report)

50. As a result of media exposure of widespread and shocking accounts of sexual violence by priests and cover-ups in the Boston Archdiocese, the Massachusetts Attorney General office headed by Thomas F. Reilly launched an investigation which took 18 months and ultimately "revealed a dark side to the Church's relationship with its children."[59] (See Boston Report annexed hereto as Exhibit C-10)

51. The Massachusetts Attorney General's report revealed that 250 priests and church workers stood accused of acts of rape and sexual assault of children and concluded that sexual mistreatment of children was "so massive and so prolonged that it borders on the unbelievable."[60] As with the aforementioned reports of the Hughes, Winter, Ferns, Ryan, Murphy and Cloyne Commissions, and Westchester, Suffolk and New Hampshire reports, the Boston Report concluded that "perhaps most tragic of all, much of the harm could have been prevented"[61] and that despite the knowledge and awareness of top officials in the archdiocese of the extent of "widespread sexual abuse of children," they "regularly addressed and supported the perceived needs of offending priests more than the needs of children who had been or were at risk of being, abused."[62]

52. Like findings of the previous reports, the Boston Report concluded that "For decades, Cardinals, Bishops and others in positions of authority within the Archdiocese chose to protect the image and reputation of their institution rather than the safety and well-being of children."[63]

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[58] Associated Press, *Audit Says Diocese Flouts Abuse Guides*, THE BOSTON GLOBE, 5 May 2007, *available at* http://articles.boston.com/2007-05-05/news/29234397_1_diocese-sexual-abuse-audit. (last visited 5 Sept. 2011).
[59] Office of the Att'y Gen., The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston (2003), at p. 1-1 Appendix, *available at*http://www.bishop- accountability.org/resources/resource-files/reports/ReillyReport.pdf [hereinafter Reilly Report] (Annexed hereto as Exhibit C-10).
[60] *Id.* at 2-3.
[61] *Id.* at 1-2.
[62] *Id.* at 30.
[63] *Id.* at 2-3.

53. The Attorney General's report also served to dispel claims of ignorance of the abuse which had been made by high-ranking church officials, including Cardinal Bernard Law, as the scandal unfolded in the media. In particular, according to the report:

> Cardinal Law and his senior managers had direct, actual knowledge that substantial numbers of children in the Archdiocese had been sexually abused by substantial numbers of its priests.[64]

54. And further that:

> Law had direct knowledge of the scope, duration and severity of the crisis experienced by children in the Archdiocese; he participated directly in crucial decisions concerning the assignment of abusive priests, decisions that typically increased the risk to children.[65]

55. Subsequent to the scandal, Law submitted his resignation as Archbishop of Boston which was accepted by Pope John Paul II in December 2002. Law left Boston at that time and relocated to Rome. In May 2004, he was appointed to a privileged position in Rome as archpriest of St. Mary Major Basilica, a church under direct Vatican jurisdiction described by one Vatican official as "one of the four most important basilicas" in Rome where he "will be in charge of the administration of the priests and anything related to the basilica."[66]

Three Philadelphia Grand Juries, 2003-2011
Pennsylvania

56. The comprehensive and painstaking work of three separate Philadelphia grand juries over the past decade has yielded perhaps some of the most telling and striking insights into the practices, policies and priorities of the Church with regard to the problem of sexual violence by clergy. Rather than showing an improvement in the situation in Philadelphia, the findings of the latest grand jury demonstrate that the same dynamics continue to exist including the cover-ups, lack of concern for victims and exposing them to risk of sexual abuse, and obstruction. The findings suggest that the so-called reforms implemented by U.S. bishops with the consent of the Vatican are largely cosmetic and leave plenty of room for same maneuvers utilized historically by bishops and cardinals as documented in all of the aforementioned reports.

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[64] *Id.* at 25.
[65] *Id.* at 31.
[66] Al Baker, Laurie Goodstein, & Daniel J. Walkin, *Cardinal Law Given Post in Rome*, NY TIMES, 28 May 2004, *available at* http://www.nytimes.com/2004/05/28/us/cardinal-law-given-post-in-rome.html (last visited 5 Sept. 2011).

Philadelphia Grand Jury I, September 2003

57. In April 2002, the first Philadelphia grand jury was convened to investigate allegations of sexual abuse by priests and others in the Archdiocese of Philadelphia. Prior to the formation of the grand jury, and as noted in the Grand Jury's report (Grand Jury I Report), the Philadelphia archdiocese issued a statement suggesting that it had only received credible allegations of sexual abuse against 35 priests over the course of 52 years. Soon afterward, Cardinal Anthony J. Bevilacqua assured the public in a television interview that he had a "zero tolerance" policy and had never transferred any priest who had abused a child to another assignment where he would have access to children. (See Grand Jury I Report annexed hereto as Exhibit C-14)

58. The investigation of the grand jury encountered a much different and darker scenario. The investigation found that over the past 35 years more than 120 priests serving in the Philadelphia archdiocese had been accused of sexual abusing hundreds of adolescents and younger children and of conduct ranging from fondling to oral, vaginal and anal rape. The evidence established that Cardinal Bevilacqua and his predecessor knowing transferred priests who had been credibly accused of molesting children to new assignments where they retained access to, and control over children:[67]

> We find that despite those identified risks, these Archdiocesan managers continued and/or established policies that made the protection of the Church from "scandal" more important than the protection of children from sexual predators. These policies were followed, even at the cost of giving priests who had not only been accused of, but in many cases admitted to, sexually assaulting children, access to untold thousands of additional innocent children. We find that Archdiocesan managers as a whole acted not to prevent the sexual abuse of children by priests but to prevent the discovery that such abuse had occurred.[68]

59. The first Grand Jury observed that "the human toll of the Archdiocesan policies is staggering. Children suffered the horror of being sexual assaulted by priests" and "were then

[67] Report of the Philadelphia Grand Jury, *In Re County Investigating Grand Jury*, MISC. NO. 01-00-89444, Philadelphia, PA (2001), at 1-2, *available at* http://www.bishop-accountability.org/reports/2003_09_25_First_Philadelphia_Grand_Jury_Report.pdf [hereinafter Philly I].

[68] *Id*. at 3.

victimized a second time by an Archdiocesan administration that in many cases ignored, minimized or attempted to conceal their abuse."[69]

Philadelphia Grand Jury II, September 2005

60. Because the first Grand Jury could not complete its investigation before the its term ended, a second Grand Jury was impaneled in 2003 to continue with the investigation. On 15 September 2011, Grand Jury II issued its 423-page report detailing its findings about the "careful methods by which the Archdiocese accomplished its concealment of … crimes."[70] (Philadelphia Grand Jury II Report annexed hereto as Exhibit C-15)

61. The Grand Jury was able to document child sexual abuse by at least ***63 different priests*** in the Archdiocese of Philadelphia. We have no doubt that there were many more. The evidence also revealed ***hundreds of child victims*** of these sexual offenders. Again, we have no doubt that there were many more.[71]

62. The report also summarized what the evidence confirmed about some of the cases reviewed by the Grand Jury:

> ■ A girl, 11 years old, was raped by her priest and became pregnant. The priest took her in for an abortion.
>
> ■ A 5th-grader was molested by her priest inside the confessional booth.
>
> ■ A teenage girl was groped by her priest while she lay immobilized in traction in a hospital bed. The priest stopped only when the girl was able to ring for a nurse.
>
> ■ A boy was repeatedly molested in his own school auditorium, where his priest/teacher bent the boy over and rubbed his genitals against the boy until the priest ejaculated.
>
> ■ A priest, no longer satisfied with mere pederasty, regularly began forcing sex on two boys at once in his bed.
>
> ■ A boy woke up intoxicated in a priest's bed to find the Father sucking on his penis while three other priests watched and masturbated themselves.

[69] *Id*. at 5.
[70] *Id*. at 29.
[71] Report of the Grand Jury, *In Re County Investigating Grand Jury*, MISC. NO. 03-00-239, at 2 (C. P. Philadelphia, 2003), *available at*http://www.bishop-accountability.org/reports/2005_09_21_Philly_GrandJury/Grand_Jury_Report.pdf [hereinafter Philly II].

> ■ A priest offered money to boys in exchange for sadomasochism – directing them to place him in bondage, to "break" him, to make him their "slave," and to defecate so that he could lick excrement from them.
>
> ■ A 12-year-old, who was raped and sodomized by his priest, tried to commit suicide, and remains institutionalized in a mental hospital as an adult.
>
> ■ A priest told a 12-year-old boy that his mother knew of and had agreed to the priest's repeated rape of her son.
>
> ■ A boy who told his father about the abuse his younger brother was suffering was beaten to the point of unconsciousness. "Priests don't do that," said the father as he punished his son for what he thought was a vicious lie against the clergy.[72]

63. According to the Grand Jury, the "archdiocese leaders employed deliberate strategies to conceal known abuse" and even conducted „non-investigations' designed to avoid establishing priests' guilt, and "bullied, intimidated, lied to and even investigated" victims of sexual assault."[73] The Grand Jury Report also described in detail the evidence which showed that Cardinal Bevilacqua engaged in priest shifting and „reciprocity' in harboring priests from other diocesan communities. One abusive priest was transferred so many times, according to the report, that according to the Archdiocese's own records, "they were running out of places to send him where he would not already be known."[74] In terms of harboring priests from other dioceses, the report noted that:

> Cardinal Bevilacqua also reciprocated with other dioceses, as part of what an aide referred to as the "tradition of bishops helping bishops." For five years, beginning in 1988, Cardinal Bevilacqua secretly harbored a New Jersey priest, Fr. John Connor, at Saint Matthew parish in Conshohocken so that the bishop in Camden could avoid scandal there. Cardinal Bevilacqua, despite an earlier acknowledgement that Fr. Connor could present a "serious risk," did not inform Saint Matthew's pastor of the danger. In fact, he told the pastor that Fr. Connor had come to the parish from another diocese because his mother was sick and he wanted to be near her. The pastor never knew, until he read it years later in a newspaper, that Fr. Connor had been arrested in his home diocese of Camden for sexually abusing a 14-year-old. As a result of his ignorance, the pastor did not worry, as he should have, when

[72] *Id.* at 3
[73] *Id.* at 29, 31, & 50.
[74] *Id.* at 5.

> Fr. Connor showered attention and gifts on a boy in the parish grade school.[75]

64. After reviewing all of the evidence and testimony presented, the Grand Jurors observed:

> In concealing the crimes of sexually abusive priests while keeping them in ministry, the Cardinal and his aides did not merely fail to protect children from terrible danger***. They greatly increased the danger and the harm to Archdiocese children. When Cardinals Krol and Bevilacqua promoted and celebrated known abusers – rapists and molesters of children – and left them in positions as pastors, parish priests, and teachers, they in effect vouched for their holiness and trustworthiness and encouraged parents to entrust their children to them.*** When Church leaders hid allegations against priest child molesters and deliberately placed them in parishes where unsuspecting families were kept in the dark, they minimized parents' ability to protect their children. When they transferred the priests to new parishes to avoid scandal, they greatly increased the numbers of potential victims. When they withheld from parents knowledge of their child's abuse, they sentenced that child to years of lonely suffering. By not reporting the crimes to law enforcement, they frustrated safeguards designed to protect children in society at large.
>
> What makes these actions all the worse, the Grand Jurors believe, is that the abuses that Cardinal Bevilacqua and his aides allowed children to suffer – the molestations, the rapes, the lifelong shame and despair – did not result from failures or lapses, except of the moral variety. ***They were made possible by purposeful decisions, carefully implemented policies, and calculated indifference.***
>
> (emphasis added)

Philadelphia Grand Jury III, February 2011

65. Like the Cloyne Report concerning the diocese in Dublin, the third set of Grand Jurors impaneled to look into the handling of allegations of sexual assault in the Philadelphia archdiocese had the opportunity to see what effect new reforms were having on the handling of allegations of sexual assault. In Cloyne, the new reforms were embodied in the Framework Document adopted by Irish bishops in 1996. In Philadelphia, the reforms were those introduced by the U.S. bishops known as the Dallas Charter of 2002.

[75] *Id.* at 38.

66. Unfortunately, the report demonstrates that even the policy that the church now holds out as a model for dealing with allegations of 'child sexual abuse' was, at least in Philadelphia, a sham. As discussed more *infra*, the United States Conference of Catholic Bishops adopted what it called a 'zero tolerance policy' in the wake of the scandal in Boston, 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.[76]

> Most disheartening to the grand jury was what we learned about the current practice toward accused abusers in the Philadelphia Archdiocese. We would have assumed, by the year 2011, after all the revelations both here and around the world, that the church would not risk its youth by leaving them in the presence of priests subject to substantial evidence of abuse. That is not the case. In fact, we discovered that there have been at least 37 such priests who have been kept in assignments that expose them to children. Ten of these priests have been in place since before 2005 – over six years ago.[77]

67. In fact, the jurors concluded 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... [t]he procedures implemented by the Archdiocese to help victims are in fact designed to help the abusers, and the Archdiocese itself."[78]

68. The current Grand Jury investigation began because two men came forward to report more recent abuse. During the course of the investigation, it became clear to the Grand Jury that dozens of credibly accused priests were still in active ministry.

69. The report described the case of "Billy," who at 10-years-old, was raped orally by one priest and then "passed around" to two of the priest's colleagues, also priests, who also orally

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[76] Gloria Campisi, Rigali Puts Another Two on Leave - But Doesn't Name Them, PHILI. DAILY NEWS, 31 Mar. 2011, available athttp://www.philly.com/philly/news/pennsylvania/118954554.html.

[77] Report of the Philadelphia Grand Jury, *In Re County Investigating Grand Jury XXIII,* MISC. No. 0009901-2008, at 9, Philadelphia PA. 23 Jan. 2011, *available at* http://www.bishop-accountability.org/reports/2011_01_21_Philadelphia_Grand_Jury_Final_Report_Clergy_Abuse_2.pdf [hereinafter Philly III, attached hereto as C-16].

[78] *Id* at 1..

and anally raped him. He reported that afterward he stopped talking with friends and began doing drugs and "would often gag and vomit for reasons that doctors could not discern."[79] The other case investigated by the Grand Jurors involved another priest who was accused of sexually assaulting "Mark" from the age of 10 until finally anally raping him at the age of 14.[80]

70. According to the report,

> The present grand jury, however, is frustrated to report that much has not changed. The rapist priests we accuse were well known to the Secretary of Clergy, but he cloaked their conduct and put them in place to do it again. The procedures implemented by the Archdiocese to help victims are in fact designed to help the abusers, and the Archdiocese itself. Worst of all, apparent abusers – dozens of them, we believe – remain on duty in the Archdiocese, today, with open access to new young prey.[81]

71. The grand jurors also noted problems with the way that the Archdiocese's review board, also mandated by the 2002 reforms, has functioned in these cases and found that when it has taken action, "the results have often been even worse than no decision at all."[82]

> In one case, a 44-year-old man said he had been abused by a priest while in second grade. The board calculated that the man would have been in the second grade in 1969. The priest in question did not arrive in the parish until 1970. Therefore, ruled the board, the man must not be telling the truth. Apparently there was no possibility that, after almost four decades, the victim could have been off by a few months about the date, but still right about the conduct. A year after this "incredible" report, the same priest was the subject of an independent allegation by another victim. Despite a wealth of corroborating evidence, the board also declared this second man incredible. The man killed himself shortly after the board's decision.
>
> In another case, the accused priest submitted to a lie detector test. He was asked whether he had shown pornographic movies to minors, whether he had fondled himself in front of children, and whether he had touched boys' genitals. He flunked every question. The board nonetheless declared the victim's accusations "unsubstantiated." The same thing happened to a woman who came forward to report that two priests had

[79] *Id* at 31-41.
[80] *Id* at 3.
[81] *Id* at 1.
[82] *Id* at 9.

> fondled her when she was a teenager. One of the priests admitted the report was true. The other denied it, but then flunked his polygraph test. The review board initially found the report about him credible, but then took a re-vote two months later, on the ground that some of the board's members had been absent the first time due to "inclement weather." This time, on the same evidence as the original vote, the board gave the second priest a clean bill of health – as if the victim had some reason to tell the truth about the first priest, who admitted it, but was lying about the second priest, who just happened to flunk the lie detector for no reason. That priest remains in good standing, still "ministering" to men, women, boys, and teenage girls.

72. The jurors concluded that even with the so-called reforms in place, such as the review board, *"[t]hese are simply not the actions of an institution that is serious about ending sexual abuse of its children. There is no other conclusion.*[83](emphasis added)

Arizona

Agreement Between Maricopa County District Attorney and Bishop Thomas O'Brien

73. In June of 2003, a prosecutor in Maricopa County, Arizona, announced an agreement with the Bishop of Phoenix which required that the bishop acknowledge his criminal actions and agree to cooperate with state officials to work to ensure the safety of children in exchange for not be prosecuted for obstruction of justice. (Maricopa County Agreement annexed hereto as Exhibit C-12) The text of the agreement confirmed that a Grand Jury had been investigating and considering information relating to the criminal sexual misconduct by diocesan personnel and "whether Bishop Thomas J. O'Brien or the diocese placed or transferred priests or other Diocesan personnel in or to a position to commit additional criminal conduct after becoming aware of prior criminal conduct." [84]

74. The agreement also noted that while no credible evidence had been received that would establish that O'Brien himself personally engaged in criminal sexual misconduct, the investigation did develop evidence that he "failed to protect the victims of criminal sexual misconduct of others associated with the Roman Catholic Diocese of Phoenix."[85]

75. In the agreement, Bishop Thomas J. O'Brien stated:

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[83] *Id* at 9-11.

[84] Agreement between the State of Arizona, Maricopa County Attorney, and the Bishop of the Roman Catholic Diocese of Phoenix, 3 May 2003, at 1, *available at* http://www.bishop-accountability.org/az-phoenix/phoenix-agreement-resignation.htm [hereinafter Maricopa County Settlement].

[85] *Id*. at 2.

> I acknowledge that I allowed Roman Catholic priests under my supervision to work with minors after becoming aware of allegations of sexual misconduct. I further acknowledge that priests who had allegations of sexual misconduct made against them were transferred to ministries without full disclosure to their supervisor or to the community in which they were assigned. I apologize and express regret for any misconduct, hardship or harm caused to the victims of sexual misconduct by Roman Catholic priests assigned to the Diocese.[86]

76. In addition to acknowledging the criminality of his conduct, O'Brien was required to agree to a series of conditions aimed at ensuring the diocese's compliance with all applicable laws relating to criminal sexual conduct by its priests and others associated with the diocese. The conditions included, *inter alia*, the appointment of a Youth Protection Advocate responsible for implementation and enforcement of policy on sexual misconduct by Diocesan personnel. The policy was to be reviewed and modified with input of the Maricopa County Attorney's Office. [87]

Ohio

77. In Cincinnati, prosecutors worked out a deal which actually required Archbishop Daniel E. Pilarczyk to plead to five counts of "failure to report a crime" as part of a settlement agreement after an 18-month long investigation into allegations of sexual violence by priests and cover-ups in the archdiocese. (See Hamilton County Settlement Agreement annexed hereto as Exhibit C-18) When Pilarczyk entered the guilty pleas to the charges, Judge Richard Niehaus observed that the church officials covered up the crimes "at the expense of the victims" and further stated:

> I believe that this case today is an extremely tragic event… I believe that a religious organization that not only should follow the civil law but also the moral law lost its way… I am disappointed as a citizen that any religious organization would be involved in criminal activity… such that I believe self-preservation exceeded their moral duty to minister to those people and to prevent future abuse.[88]

78. As in Maricopa County, the Cincinnati Archdiocese had to agree to a number of conditions and reforms in exchange for the plea to the misdemeanor offenses, including

[86] *Id*. at Tab A.
[87] *Id*. at paras 1-14.
[88] See, Kimball Perry, *Archdiocese guilty of Coverup*, THE CINCINNATI POST, 21 Nov. 2003, *available at* http://www.bishop-accountability.org/resources/resource-files/timeline/2003-11-21-Perry-Coverup.htm.

establishing a victim's compensation fund and establishing reporting procedures and transparency.[89]

INTER-GOVERNMENTAL BODIES AND ORGANIZATIONS

> *"Notably at national, and at more local level as well, the Catholic Church is presented with allegations and suspicions of covering up and protecting members of their clergy, where priests having committed child abuse were simply transferred to other dioceses or functions where they could commit similar crimes. Msgr Charles J. Scicluna, "Promotor of Justice" of the Congregation for the Doctrine of the Faith, recently indirectly confirmed such an approach of the Catholic Church to the issue of child abuse... "*[90]

United Nations Committee Against Torture

79. In addition to addressing Ireland's follow-up to the Ryan Report as discussed above, the United Nations Committee Against Torture also noted the failure of Ireland to "protect girls and women who were involuntarily confined between 1922 and 1996 in the Magdalene Laundries, by failing to regulate their operations and inspect them, where it is alleged that physical, emotional abuses and other ill-treatment were committed amount to breaches of the Convention."[91] The Magdalene Laundries were operated by four Roman Catholic religious orders in Ireland in 10 separate locations during that time period. The Committee made similar recommendations to the government of Ireland with respect to the victims of the Laundries as it did with regard to the institutions named in the Ryan Report, including that it

> …should institute prompt, independent, and thorough investigations into all allegations of torture, and other cruel, inhuman or degrading treatment or punishment that were allegedly committed in the Magdalene Laundries, and, in appropriate cases, prosecute and punish the perpetrators with penalties commensurate with the gravity of the offences committed, and ensure that all victims obtain redress and have an enforceable right to compensation including the means for as full rehabilitation as possible.[92]

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[89] Settlement Agreement between Archdiocese of Cincinnati and the Hamilton County Prosecuting Attorney, 20 Nov. 2003, *available at* http://www.bishop-accountability.org/resources/resource-files/courtdocs/2003-11-20-Pilarczyk-Agreement.pdf

[90] *Child Abuse in Institutions: Ensuring Full Protection of the Victims,* Report by Ms. Marlene Rupprecht, Special Rapporteur to the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 12358, 20 Sept. 2010, *available at*http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12358.htm.

[91] CAT Concluding Observations, at ¶ 21,

[92] CAT Concluding Observations, *supra* note 25, at ¶ 21.

80. It should be noted that, like Ireland, the Holy See is also a "State Party" to the Convention Against Torture but is delinquent in submitting its first report to the Committee and therefore non-compliant, procedurally – in addition to the non-compliant substantively as the instant communication bears out. Upon ratification of the Convention, the Holy See issued the following declaration:

> The Holy See considers the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment a valid and suitable instrument for fighting against acts that constitute a serious offence against the dignity of the human person. In recent times the Catholic Church has consistently pronounced itself in favour of unconditional respect for life itself and unequivocally condemned "whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself" (Second Vatican Council, Pastoral Constitution Gaudium et spes, 7 December 1965).
>
> The law of the Church (Code of Canon Law, 1981) and its catechism (Catechism of the Catholic Church, 1987) enumerate and clearly identify forms of behaviour that can harm the bodily or mental integrity of the individual, condemn their perpetrators and call for the abolition of such acts. On 14 January 1978, Pope Paul VI, in his last address to the diplomatic corps, after referring to the torture and mistreatment practised in various countries against individuals, concluded as follows: "How could the Church fail to take up a stern stand ... with regard to torture and to similar acts of violence inflicted on the human person?" Pope John Paul II, for his part, has not failed to affirm that "torture must be called by its proper name" (message for the celebration of the World Day of Peace, 1 January 1980). He has expressed his deep compassion for the victims of torture (World Congress on Pastoral Ministry for Human Rights, Rome, 4 July 1998), and in particular for tortured women (message to the Secretary-General of the United Nations, 1 March 1993). In this spirit the Holy See wishes to lend its moral support and collaboration to the international community, so as to contribute to the elimination of recourse to torture, which is inadmissible and inhuman.
>
> The Holy See, in becoming a party to the Convention on behalf of the Vatican City State, undertakes to apply it insofar as it is compatible, in practice, with the peculiar nature of that State.[93]

[93] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment, Holy See, Reservations and Declarations, U.N. GA. Res. 39/46 Annex, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/708, Annex (1984), *available at* http://www.bayefsky.com/pdf/holysee_t2_cat.pdf.

81. In light of the Vatican's pronouncements, it is ironic that the government of Ireland is being held responsible by the Committee Against Torture for its failings in protecting children and vulnerable adults from the ravages they experienced in Catholic-run institutions spanning decades and which were often covered-up by officials in those institutions.

Report of Rapporteur to the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe

82. In September 2010, Ms. Marlene Ruprecht, presented a report of the Social, health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe entitled, "Child Abuse in Institutions: Ensuring Full Protection of the Victims." (See European Council Report annexed hereto as Exhibit C-19) The report notes the prevalence of cases concerning institutions affiliated with the Catholic Church

> with allegations and suspicions of covering up and protecting members of their clergy, where priests having committed child abuse were simply transferred to other dioceses or functions where they could commit similar crimes. Msgr Charles J. Scicluna, "Promotor of Justice" of the Congregation for the Doctrine of the Faith, recently indirectly confirmed such an approach of the Catholic Church to the issue of child abuse by stating that only in about 20% of cases concerning priests suspected of paedophilia, have penal or administrative processes taken place in the diocese in question. In a further 60% of cases, mainly due to the advanced age of the accused priests, only disciplinary measures have been taken against them, leading to them being forbidden to celebrate mass in public or to the obligation to retire. In the 20% of worst cases, based on watertight evidence, the Pope himself has taken the responsibility to defrock priests from their religious status and functions. Despite an understanding for Catholic institutions with regard to their particular function and sensitive position in our societies, the rapporteur recalls that church institutions have to respect and should rigorously apply the same national legislation as all other public and private organisations.[94]

83. The report contained a number of recommendations for future action including the introduction of regulations in member states providing for ex officio prosecution of all abuse cases involving minors and addressing legal hurdles such as prescriptive periods.

[94] *Child Abuse in Institutions: Ensuring Full Protection of the Victims,* Report by Ms. Marlene Rupprecht, Special Rapporteur to the Social, Health and Family Affairs Committee of the Parliamentary Assembly of the Council of Europe, Doc. 12358, at para. 29, 20 Sept. 2010, *available at*http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12358.htm.

FINDINGS OF CHURCH-APPOINTED COMMISSIONS AND EXPERTS, NON-GOVERNMENTAL REPORTS ALSO PRESENT EVIDENCE OF THE WIDESPREAD AND SYSTEMIC BASIS OF SEXUAL VIOLENCE IN THE CHURCH.

"You see how they just kept moving him around. He could keep doing it like before.'

-Wilfried Fesselmann[95]

BELGIUM

The Adriaenssens Report, September 2010

84. After a series of scandals in recent years in Belgium, Catholic Church officials appointed Dr. Peter Adriaenssens to head up an independent inquiry into cases of sexual assault in the church from the 1960's the 1990's. One of the goals of the commission was to address older cases for which there would be no legal recourse due to the statute of limitations. The report detailed evidence pertaining to 476 cases and included anonymous testimony by victims to ensure their voices could be heard.

85. The report found that 13 people were believed to have committed suicide as a result of the sexual assault by clerics and that six others were reported to have attempted suicide as a result. The report also noted that the youngest reported victim was two-years-old at the time of the assault. The reported noted that "the law of silence reigns throughout society… often a church official was informed but decided to protect his family, the church." The report further suggests that "many consider there to be an organised system of concealment."

GERMANY

Munich/Freising Report, December 2010

86. After similar scandals broke out in Germany, church officials commissioned an inquiry to look at structural deficiencies that contributed to the offenses and inadequate responses by church leaders. Attorney Marion Westphal was appointed to lead the effort which involved examining approximately 13,000 documents spanning 1945 to 2009. Upon the release of the report, Westphal noted that there were allegations of abuse against 159 priests but emphasized that "we must assume the real number is much higher" given that

[95] Rachel Donadio & Nicholas Kulis, Vatican Sees Campaign Against the Pope, NY Times, 14 Mar. 2010,*available at* http://query.nytimes.com/gst/fullpage.html?res=9d01e7da113df937a25750c0a9669d8b63.

countless documents that are believed to have served as evidence of wrongdoing were missing or appeared to have been purposely destroyed.[96]

> Wherever the experts encountered limits to the clarification of individual events in the past, these were imposed, not by any restriction on what was made available, but rather by the regrettable state of what was available. And this, by the way, is one of the reasons why the already mentioned, considerable number of undetected cases must be assumed. All the more so because, according to the findings of the experts, destruction of documents took place in considerable measure, and wide-ranging collections of documents were stored outside the Palace in private dwellings, and thus made susceptible to manipulation. In addition, the documents were not secured against unauthorised access even on the Palace premises. For these reasons, there were in many cases obvious gaps in the documentation. It was repeatedly impossible to reconstruct events. Vital documentation, affecting for example former activities of the person under investigation or the reasons for a change of diocese in the case of incardinated priests, was missing in most cases. There was no reliable, central registration of the documentation, so that, again and again in the course of investigation, documents or parts thereof appeared surprisingly at the most varied places.[97] (executive summary p 3)

87. The report also concluded that the Church used the fact of cultural and societal taboos on sexual topics to its advantage in its cover-ups, with further alienated and isolated child victims of abuse:

> Instead of following its own mission and abiding by its moral precepts by stemming itself against attitudes that assign victims – and in particular victims of sexual offences – a joint responsibility, and place sexual topics under taboo, the Church has used this long-standing, prevalent social context to promote non-detection of misconduct. To the same extent, it has not stood up for the rights of the children entrusted to it, and thus shares the responsibility for the fact that the victimised children, through the attitude adopted towards them, have often

[96] Marion, Westpfahl, Central Points of Appraisal Report, *Sexual and Other Physical Assaults by Priests, Deacons and Other Pastoral Workers in the Field of Jurisdiction of the Archdiocese of Munich and Freising Between 1945 and 2009* (2010), at 2, *available at* http://www.bishop-accountability.org/reports/2010_12_02_Westpfahl_Munich_and_Freising_Key_Points_English.pdf [hereinafter German report].
[97] *Id.* at 3.

> been exposed to the stress of childhood isolation in addition to that of the offence itself.[98]

88. As with all of the aforementioned reports, the Munich/Freising report also confirmed the practice of transferring offending priests from one place to another to avoid scandal and detection, a fact which illustrated a contempt for the victims and future victims. The report also noted the inconsistency in this regard and in the treatment of offenders for such serious acts as sexual violence versus the type of sanctions threatened against lay people for even slight offences.

UNITED STATES

John Jay Report I

89. The United States Conference of Catholic Bishops (USCCB) commissioned a study entitled, "The Nature and Scope of the Problem of Sexual Abuse of Minors by Catholic Priests and Deacons in the United States." The study, conducted by the John Jay College of Criminal Law was is widely viewed as a conservative estimate of the rates of sexual violence given that it is based on self-reported data supplied by dioceses and church entities. 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.[99] The survey showed that there were 4,392 credibly accused priests serving in the U.S. during that time period.[100]

90. Since the survey, the USCCB has supplemented the numbers with what it considers credible allegations received since the study, with the exception of the year 2003, and acknowledges a total of 5,948 credibly accused priests.[101] 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.[102] Notably, the study only included allegations of „abuse' against priests which were never withdrawn nor shown to be false and did not encompass unreported allegations or allegations

[98] *Id.* at 3-4.
[99] John Jay I, *supra* note 3, at Executive Summary.
[100] *Id*.
[101] 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 (last visited 11 Sept. 2011).

[102] *Id*.

made by adult victims or reports involving allegations against those other than priests. 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%.[103]

COMMON PRACTICES FOUND IN DIFFERENT CONTEXTS THAT AID IN THE COVERUP OF CASES OF SEXUAL VIOLENCE.

Refusing to Cooperate with Civil Authorities

91. Vatican leadership has consistently resisted the idea that it could be subject to laws of other governing authorities, whether at the national, international and local levels. This dynamic is reinforced in the oaths to which priests and bishops swear and in the statements and policies which issue from the Vatican itself.

92. In February 2002, when he was secretary for the Congregation of the Doctrine of the Faith, Italian Archbishop Tarcisio Bertone commented on the new Vatican norms that had gone into effect in 2001 and rejected the applicability of civil laws:

> In my opinion, the demand that a bishop be obligated to contact the police in order to denounce a priest who has admitted the offense of pedophilia is unfounded. Naturally civil society has the obligation to defend its citizens. But it must also respect the „professional secrecy' of priests, as it respects the professional secrecy of other categories, a respect that cannot be reduced simply to the inviolable seal of the confessional. If a priest cannot confide in his bishop for fear of being denounced, then it would mean that there is no more liberty of conscience.[104]

92. Bertone now serves as the Vatican's Secretary of State and as Camerlengo.[105]

93. In 2001, French Bishop Pierre Pican was sentenced to a three-month suspended sentence for not reporting the rapes and sexual assaults of 10 boys by one of the priests of his diocese. Pican also allowed the priest to work despite the fact that he acknowledged his guilt. The perpetrator was sentenced to 18 years. Cardinal Dario Castrillon Hoyos, who was serving as Prefect of the Congregation for the Clergy at the time, wrote to Pican with the approval of Pope John Paul II, to tell him he had "acted wisely" and that he was "delighted to have a

[103] Bishopaccountability.org, *What percent of priests were accused?*,http://www.bishop-accountability.org/AtAGlance/data_priests.htm#fuller_disclosure (last visited 11 Sept. 2011).
[104] JOHN ALLEN, ALL THE POPE'S MEN 241 (2004)..
[105] Expert Opinion of Thomas Doyle, Exhibit A-1.

fellow member of the episcopate who, in the eyes of history and of other bishops, *would prefer to go to prison rather than denounce his priest-son*." (emphasis added) Moreover, Castrillon Hoyos informed Pican that he would use him as example for other bishops to follow when he wrote: "This Congregation, *in order to encourage brothers in the episcopate in this delicate matter, will forward a copy of this letter to all the conferences of bishops.*" (See Letter from Cardinal Castrillon Hoyos to Bishop Pierre Pican, annexed hereto as Exhibit F-5)

93. Similarly, as noted above, when the Irish bishops adopted the aforementioned Framework Document in the wake of scandals in Ireland in an attempt to address the sexual abuse with reporting and cooperation requirements, Papal Nuncio Luciano Storero advised the bishops that 'mandatory reporting' gave rise to "serious reservations of both a moral and a canonical nature" and advised the bishops that the document was "not an official document of the Conference but merely a study document" and that the procedures and dispositions "appear contrary to canonical discipline."[106]

Priest-shifting

94. The reports summarized above contain findings concerning the practice of "priest shifting," when bishops, cardinals or other high-ranking officials have transferred 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. As the Westchester Grand Jury noted: "the religious institution consistently shuttled the abuser from place to place each time an allegation came to light" and "the new congregation was purposefully kept in the dark… By virtue of this reassignment strategy, the religious institution put more children at risk."[107]

95. As a more recent Philadelphia Grand Jury noted, Cardinal Bevilacqua followed the practice referred to as "bishops helping bishops" and harbored abusers transferred from other dioceses in addition to shifting priests around in his own.[108] Indeed, the Philadelphia report

[106] Confidential Letter by Archbishop Luciano Storero, Apostolic Nuncio to Ireland, to the Members of the Irish Episcopal Conference, Regarding the Framework Document, 31 Jan.1997, *available at* http://www.bishop-accountability.org/Vatican/Documents/1997_01_31_Storero_Letter_to_Irish_Bishops.pdf [hereinafter Stereo letter] (Appendix B-6A).

[107] Westchester Report, *supra* note 42, at 2.
[108] Philly II, *supra* note 1.

found that Bevilacqua had transferred one priest so many times that the diocese was running out of places to send him where he was not already known.[109]

93. In June 2004, the *Dallas Morning News* began running a series entitled "Runaway Priests in Hiding" that examined the practice of "priest shifting" on a global scale. The year-long investigation that reached six continents found:

> From Latin America to Europe to Asia, these priests have started new lives in unsuspecting communities, often with the help of church officials.
>
> They are leading parishes, teaching and continuing to work in settings that bring them into contact with children, despite church assertions to the contrary.
>
> The global movement has gone largely unnoticed - even after an abuse scandal swept the U.S. Catholic Church in 2002, forcing bishops to adopt a "zero tolerance" policy and drawing international attention.
>
> […]
>
> Nearly half of the more than 200 cases we identified involve clergy who tried to elude law enforcement. About 30 remain free in one country while facing ongoing criminal inquiries, arrest warrants or convictions in another.
>
> Most runaway priests remain in the church, the world's largest organization, so they should be easier to locate than other fugitives. Instead, Catholic leaders have used international transfers to thwart justice, a practice that poses far greater challenges to law enforcement than the domestic moves exposed in the 2002 scandal.
>
> Police and prosecutors, however, often fail to take basic steps to catch fugitive priests.
>
> Church discipline, such as the U.S. bishops' new policy, doesn't keep all offenders out of ministry. Dozens of priests who are no longer eligible to work in this country have found sanctuary abroad.[110]

94. The cases examined by the *Dallas Morning News* include:

- Fr. Carlos Peralta: Peru, 1991 – caught with a boy in his bedroom around midnight; 1995 – after several students report having been abused by Father Peralta, church disciplinary board concludes that "unspeakable things have occurred" and that the priest must be kept away from children; 1996 – transferred to another school in Peru and is alleged to continue misconduct;

[109] Philly II, *supra* note 1.
[110] *Untouchable Accused Of Molesting Children, They Hop Borders and Start Anew, Often Aided By Guardian Angels - Their Catholic Leaders*, DALLAS MORNING NEWS, 20 June 2004, page 1A (Exhibit F-6, p. 7; full series Ex F-6, pp. 1-71).

1997 – sent to a clergy abuse treatment centre in Argentina; 1998 – transferred to parish in Chicago (U.S.), with a permission-to-work form signed by top Salesian official in Peru stating Fr. Peralta enjoys a good reputation and has no problem working with minors; 1999 – Fr. Peralta accused of abuse in Chicago and sent for treatment in Virginia, lawsuit filed in Chicago alleging that he molested four boys; 2001 – Fr. Peralta begins work in Mexico City; 2002- Chicago police urge Fr. Peralta's superior to return him for questioning, but Fr. Peralta remained in Mexico.[111]

- Fr. Enrique Vasquez: has received help in various countries (Costa Rica, Nicaragua, United States, Mexico and Honduras) in avoiding accountability, following allegations that he is a child molester. For example, in October 2002, following a request by a Costa Rican prosecutor through Interpol to verify that Fr. Vasquez is working in a parish in Connecticut, the FBI questions Fr. Vasquez n the presence of the Hartford Auxiliary Bishop Peter Rosazza. Fr. Vasquez is not detained and disappears that night, showing up in Mexico at a clergy treatment centre; the priest who runs the center says that the Costa Rican bishop and the cardinal from Guadalajara, Mexico approved Fr. Vasquez being at the centre.[112]
- Fr. Yusaf Dominic (who has a number of possible aliases): arrested for molesting children in the Westminster Archdiocese while later serving as a priest in London; bailed out of jail by a priest in England, while out on bail in England, returns to Pakistan, works as a priest in Newark, N.J and then in Albissola Marina, Italy.[113]

96. The following case provides further insight into how this practice has played out:

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[111] *A Long Trail of Trouble*, DALLAS MORNING NEWS, 20 June 2004, page 20A (Exhibit F-6, pp. 2-3).

[112] *Friends in High Places*, 21 June 2004, page 8A. (Exhibit F-6, pp. 16-17); *see also,* Brendan M. Case & Brooks Egerton *, Sanctuary Cardinal Oscar Rodríguez Could Be The Next Pope. He Also Recently Sheltered An Admitted Child Molester. With Priest's Accusers Calling For Justice And Interpol On His Trail, Cleric Vanishes Once More*, DALLAS MORNING NEWS, 21 June 2004, page 1A (Exhibit F-xx, pp. 18-21); Brendan M. Case and Brooks Egerton*, Arrested Man May Be Fugitive Priest Nicaragua Says He Fits Molester's Description*, DALLAS MORNING NEWS, 14 July 2004, page 1A. (Exhibit F-6, pp. 42-44).

[113] *See* Brooks Egerton& Reese Dunklin, *Safe harbor 'That's when your hair stands on end and your blood boils' Church aid, legal lapses free cleric to roam, recently to Italy's Riviera*, DALLAS MORNING NEWS, 23 June 2004, page 1A. (Exhibit F-6, pp. 33-36); *The Wanderer*, DALLAS MORNING NEWS, 23 June 2004, page 12A (Exhibit F-6, pp. 37); Brooks Egerton, *The Human Toll*, DALLAS MORNING NEWS, 23 June 2004, page 13A (Exhibit F-6, pp. 32).

Rita Milla's Case

97. Beginning at the age of sixteen, Rita was sexually molested by Father Santiago Tamayo who she met when volunteering at St. Philomena Church in Carson, CA. Rita was from a very devout Catholic family, was considered somewhat of solitary figure with not many friends and she planned to become a nun. Tamayo's sexual aggression began with physical touching in the confessional booth, and escalated to the point two years later when he and another priest coerced into sex. Father Tamayo then introduced her to six other priests with whom he coerced her to have sex, which ultimately happened with each of the seven priests as often as once a week.

98. When Rita was 21 years old, she became pregnant. Father Tamayo urged her to get an abortion but she could not bring herself to that decision. Tamayo then arranged for her to be sent to the Philippines, telling her parents she was studying there and admonishing her to maintain complete silence and secrecy about what had happened. While in the Philippines, Rita was neglected and malnourished, resulting in illness and her considering suicide. She fell into a coma and gave birth to her daughter while in a coma at Tamayo's brother's clinic.

95. Rita's mother found out that her daughter was ill and without letting anyone in the diocese know tracked her down in the Philippines and was able to help nurse her daughter back to health. According to Rita, "I almost died protecting them. That's the part that woke me up. I went to the archdiocese really, really confident that they were going to listen to me. They were going to be appalled."[114]

96. When Rita returned she reported the priests to the archdiocese. Bishop Ward of the Roman Catholic Church in Los Angeles promised to investigate the matter but after a year, he told her there was nothing he could do. In 1984, Rita filed a lawsuit against the Los Angeles archdiocese alleging fraud, clergy malpractice, and conspiracy. When the suit was filed, all seven priests seemed to disappear from their parish offices and eventually the archdiocese was excused as a defendant, which resulted in the case being dismissed. The lawsuit was lost in the state Court of Appeals because the statute of limitations had expired.

97. In March 1991, Tamayo returned to California and confessed and apologized face-to-face to Rita, announcing at a news conference that the Los Angeles Archdiocese had been

[114] Chris Oregan, *California Church Cover-up?,*CBS NEWS, 11 Feb. 2009, *available at*http://www.cbsnews.com/stories/2002/04/23/eveningnews/main507039.shtml.

paying him to remain in the Philippines for years after the baby was born. Tamayo also produced letters which showed that he was being paid by the diocese and urged to keep that fact secret. (See Letter from Msgr John Rawden to Rev. Santiago Tamayo of June 15, 1984, annexed hereto as Exhibit F-1-b) In a letter dated December 29, 1987 then-Msgr. Thomas Curry urged Tamayo not to return to Los Angeles because "given all that has taken place" it was not "advisable" and because the lawyers informed the diocese that Tamayo was liable to potential suits arising of his "past actions." In the letter, Curry advises Tamayo that "the archdiocese would like to pay you a salary beginning as of December 1, 1987." (See Letter from Msgr. Thomas Curry to Tamayo of 29 December 1987 annexed hereto as Exhibit F-1-b).

98. After Curry's 1987 letter to Tamayo urging him to stay away, Tamayo returned anyway. He then received another letter from Curry which stated the following:

> *I was surprised to learn by way of your Sister's phone call to this office that you are in the Los Angeles area.*
>
> *In my letter to you of December 29, 1987, I stated that you continue to be liable for personal suits arising out of your past actions, which suits would do damage to you, your family, and anyone concerned, including the Archdiocese. I advised you to settle elsewhere.*
>
> *We initiated salary payments to assist you while you were pursuing the possibility of permanent settlement in the Philippines.*
>
> *I cannot emphasize too strongly that there has been no change in the situation. Therefore I am requesting that you return to the Philippines promptly.* (Letter from Curry to Tamayo of 26 August 1988 annexed hereto as Exhibit F-1-b).

99. Tamayo has since died, but before he died, he was defrocked not for what he did to Rita, but for getting married. A court-ordered paternity test showed that one of the priests, Valentine Tugade, was the biological father of Rita's child. When asked about it by a journalist, Tugade admitted, "I do remember her. What happened was we had intercourse with her, a lot of us." But, he adds, "she wanted it, and so I don't have to apologize to her. I

have repented a long time ago."[115] Rita has never let her daughter go to church because she does not think it is a safe place.

100. Today, Rita stands willing and ready to assist the Office of the Prosecutor in its investigation by sharing her story and experience as one of many who have come forward to help shed light on the coverup of sexual violence within the church.

Destruction of Evidence / Obstruction of Justice

101. There are a number of cases cited in the reports summarized above where it has been documented that not only did church officials not submit the matter to the competent authorities for investigation and prosecution, some went so far as to obstruct investigations and prosecutions and encouraged others to do so as well.

102. Sometimes this has involved waiting out the statutes of limitations, a problem that has been noted repeatedly and which is also borne out in Rita's story above or, as noted by a Philadelphia Grand Jury: "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."[116]

103. The same thing was noted by the Westchester Grand Jury: **"**In many instances, the religious institution's internal investigation of the allegations was primarily geared to delay, with the hope that the victim and his family would not persist in pursuing their claim."

104. Sometimes the efforts have been more overt -- as noted by the experts investigating the Munich and Freising Archdiocese:

> Wherever the experts encountered limits to the clarification of individual events in the past, these were imposed, not by any restriction on what was made available, but rather by the regrettable state of what was available. And this, by the way, is one of the reasons why the already mentioned, considerable number of undetected cases must be assumed. All the more so because, according to the findings of the experts, ***destruction of documents took place in considerable measure,*** and wide-ranging collections of documents were stored outside the Palace in private dwellings, and thus made susceptible to manipulation. In addition, the

[115] Alex Tresniowski, *Unholy Fathers*, People Magazine, 3 June 2002, at Vol. 57, No. 21, *available at* http://www.people.com/people/archive/article/0,,20137201,00.html.
[116] Philly III.

> documents were not secured against unauthorised access even on the Palace premises. For these reasons, there were in many cases obvious gaps in the documentation. It was repeatedly impossible to reconstruct events. Vital documentation, affecting for example former activities of the person under investigation or the reasons for a change of diocese in the case of incardinated priests, was missing in most cases.[117] (emphasis added)

105. More recently, destruction of evidence was uncovered in a civil case in the United States when a high-ranking official in a diocese acknowledged during a deposition the destruction of documents concerning priests that were accused of sexually molesting minors. (See, e.g., Motion to Prevent Document Destruction in *Troy J. Merryfield, et al, v. Catholic Diocese of Green Bay, Inc.,* annexed hereto as Exhibit F-3).

106. Former Milwaukee Archbishop Rembert Weakland testified to routinely shredding documents that he received on a weekly basis relating to sexual abuse cases, stating he would "try to remember anything that is quite serious and important."[118]

107. One bishop was recorded advising other church lawyers gathered at a conference to remove documents from the personal files of suspected priests when he told a meeting of bishops: „If there's something you really don't want people to see, you might send it off to the apostolic delegate because they have immunity.'

108. And, indeed, the use of the nuncio has been apparent in cases like that of Father Lawrence Murphy when Bishop Rembert Weakland attempted to communicate via the nuncio about Murphy's case. (See Letters from Bishop Rembert Weakland to Rev. Agostino Cacciavillan, annexed hereto at Exhibit E-5)

Punishing Whistleblowers, Rewarding Coverups

109. Another common theme that runs through the various findings from Grand Juries and commissions is the punishment of whistleblowers and, concomitantly, the reward of those who maintain the silence.

110. The Philadelphia Grand Jury II found that Diocesan officials:

[117] Germany Report at Exec. Summary, 3.
[118] Bruce Vielmetti, *Weakland Shredded CopiesoOf Sex Abuse Reports*, *Documents Say*, MILWAUKEE WISC. J. SENTINEL, 3 Dec. 2009, *available at* http://www.jsonline.com/news/milwaukee/78431087.html.

- intimidated and retaliated against victims and witnesses who came forward about abuse;

- Fired a nun from her position as director of religious education after she complained about a priest who was still ministering to children.

- A seminarian who revealed that he himself had been abused as an altar boy was accused of homosexuality and dismissed from the diocese.[119]

111. The expression of a policy in this regard can also be seen in three cases involving significant figures in the church:

Fr. Gerald Fitzgerald

112. As discussed in the Expert Opinion of Patrick J. Wall, Fr. Gerald Fitzgerald was founder of the Servants of the Paraclete, which was founded 1947 to assist 'fallen' priests, mainly for alcoholism and other addictions. (See Expert Opinion of Patrick J. Wall annexed hereto as Exhibit A-3). Eventually, the center became the place to send priests who sexually offended. Fitzgerald is widely viewed as having put the Church on notice of the pervasive problem of sexual abuse. Fitzgerald repeatedly attempted to alert Vatican officials and bishops around the world to the dangers of child predator priests, corresponding regularly with bishops as well as making his views known to three popes.[120] He wrote to in 1957, "We are amazed to find how often a man who would be behind bars if he were not a priest is entrusted with the cura animarum."[121] As Wall notes, Fitzgerald:

> held a firm position that any cleric who violated a child should be reported to Rome for involuntary laicization. His position was congruent with Canon Law and Crimens I & II but again ran afoul of the unwritten policy and not surprisingly, Father Fitzgerald was retired as Superior General at Via Coeli in 1969.[122]

Cardinal Law

113. One prominent U.S. bishops who came under intense criticism and scrutiny for his role in covering up and mishandling allegations of sexual abuse are Cardinal Bernard Law. As discussed above, Law was singled out by the Massachusetts Attorney General when

[119] Philly II, *supra note* 1, at 4.

[120] http://www.bishop-accountability.org/news2009/03_04/2009_04_02_Goodstein_EarlyAlarm.htm

[121] Letter from Gerald Fitzgerald to Matthew Francis Brady, Bishop of Manchester, New Hampshire, 1957.

[122] Wall Expert Opinion, Ex. A-3 para. 18

investigating the exploding sex abuse scandals in the Boston Archdiocese, concluding that "Law had direct knowledge of the scope, duration and severity of the crisis experienced by children in the Archdiocese; he participated directly in crucial decisions concerning the assignment of abusive priests, decisions that typically increased the risk to children."[123] Law was ultimately forced to seek to resign from his post due to the public pressure; but he was given a home in the Vatican where he now serves as Archpriest of the Basilica di Santa Maria Maggiore a church under direct Vatican jurisdiction described by one Vatican official as "one of the four most important basilicas" in Rome.

OTHER EVIDENCE OF POLICIES AND PRACTICES THAT SERVE TO PERPETUATE THE VIOLENCE

Fr. Michael J. Teta

114. As discussed in the Expert Declaration of Thomas P. Doyle, the case of Michael Teta was described as having a "satanic quality." Teta was alleged to have raped and sexually assaulted a number of boys. The case took several years to adjudicate on the local diocesan level in Arizona before a final decision was given and dismissal imposed. The case was sent to the Congregation for the Doctrine of the Faith (CDF) for the appeal and ratification of the decision. In spite of repeated appeals to Cardinal Joseph Ratzinger for a decision within a reasonable period of time the CDF delayed the final decision for slightly over 7 years with no reasonable explanation, while the Diocese was supporting Teta. (See Correspondence pertaining to Teta's case annexed hereto as Exhibit E-1)

Father Lawrence Murphy

115. Another case in which abuse and knowledge thereof spanned decades as children were being sexual assaulted is the case of Fr. Lawrence Murphy of the archdiocese of Milwaukee. Murphy sexually abused at least 200 deaf minor boys at a school where he was chaplain and had been denounced to the Vatican for this in 1956 but there was no action taken. In 1997 Murphy was convicted by a canonical tribunal of the Archdiocese of Milwaukee, convicted and sentenced to dismissal. The decision was appealed to the CDF. The archbishop of Milwaukee, the bishop of Superior, Wisconsin and the auxiliary bishop of Milwaukee went to the CDF and met with the secretary, Archbishop Bertone, and urged the CDF to ratify the dismissal. They had already appealed in writing and received no action.

[123] Reilly Report, Report p. 31

After their personal intervention the CDF, then under the direction of Cardinal Ratzinger, decided not to complete the appeal process and to allow Murphy to remain a priest.[124] (See Correspondence and Documentation related to Case of Father Lawrence Murphy annexed hereto as Exhibit E-5)

Father Stephen Keisle

116. The third case involved a priest from the Oakland, California diocese named Stephen Kiesle. Kiesle voluntarily asked to be laicized primarily because he was a confirmed child abuser and had no future as a priest. His case was sent to the CDF and Cardinal Ratzinger replied that it would be delayed because the "Faithful" would be scandalized if a priest under 40 were laicized. No account was taken of the offenses neither of Keisle nor of the bishop's clear plea that for the good the people the man should be removed.[125] (See Correspondence and Documentation Relating to Kiesle case annexed hereto as Exhibit E-3)

Father Marcial Maciel

117. To Canon Lawyer and Expert Doyle, the most 'notorious' case of interference with the canonical process is that of Fr. *Marcial Maciel-Degollado,* mentioned above. The canonical process was interrupted by the Secretariat of State presumably with the approval of the pope. It was re-opened in 2004 but never carried to completion. Rather, Maciel was ordered to cease public ministry and to lead a life of prayer and penance. Maciel was the founder of a religious order called the Legion of Christ. He had been accused by former members of the order of sexually abusing them when they were minor seminarians. They preferred to pursue their case in the canonical courts. The case was in process at the level of the Congregation for the Doctrine of the Faith. In 1997 at the order of Pope John Paul II the process was stopped for no reason. It was only re-opened shortly before the pope's death when he was incapacitated.[126]

Father Alvin Campbell

118. Father Alvin Campbell was convicted of sexual abuse of seven boys and sentenced to 14 years in prison in 1985. For several years, his bishop, Daniel Ryan petitioned Cardinal Ratzinger to defrock the priest rather than putting the victims through a church trial.

[124] Expert Opinion of Thomas Doyle, Exhibit A-1Doyle opinion, p. 17
[125] *Id.*, p. 18
[126] *Id*., pp. 8-9, 17

Ratzinger repeatedly denied the request because Campbell himself had not directly requested laicization until Campbell could be convinced years later to request the defrocking himself.[127] (See Correspondence Relating to Campbell Case annexed hereto as Exhibit E-4)

Father Jude Hahn[128]

119. Father Jude Hahn, a member of the Cappuchin Order, is another example of a case where church officials waited and delayed the exit from ministry of a confirmed child abuser. Hahn taught math St. Lawrence Seminary, a boarding school for boys, and admitted 1993 to sexually abusing boys in the 1970's and 1980's. Church officials had knowledge from as early as 1981 that he had inappropriate contact with students. Still there was no move to oust him, although the Cappuchins were interested in relocating him to tamp down the controversy.

120. Hahn eventually resigned because he did not want to accept the transfer to Detroit. He eventually requested his own laicization. [129]

Victim blaming

121. Victim-blaming is another common theme that recurs in the reports and findings and is perhaps among the most insidious and cruel practices used in the Church. The Winter Commission noted this:

> Within the Archdiocese and elsewhere, victims of child sexual abuse have been wrongly blamed for their own victimization. The offender often contrives to gain the victim's apparent co--operation, but this in no way mitigates the offence. There is evidence that alcohol was offered to many of the victims for this purpose, and in some instances the offender drank excessively. But even without such inducements an adolescent is particularly vulnerable because an offender takes advantage of an adolescent's confused sexual feelings and offers friendship during a difficult period. Offenders may use other tactics that boost the self-esteem of adolescents to make them feel privileged by the offender's friendship.[130]

[127] Sex abuse victim learns of Pope's role, available at: http://religion.blogs.cnn.com/2010/09/24/sex-abuse-victim-learns-of-pope%E2%80%99s-role/
[128] Church Reacted Slowly to Abuse Case Despite Reports of Sexual Contact, Capuchin Leaders Kept Priest in Post at Seminary for a Decade By Marie Rohde and Tom Kertscher Journal Sentinel Online, April 19, 2002, available at: http://www.bishop-accountability.org/news10/2002_04_19_Rohde_ChurchReacted.htm.
[129] *Id*.
[130] Winter Commission, Exhibit D-5, at 137

122. As did the Ryan Report: "At worst, the child was blamed and seen as corrupted by the sexual activity, and was punished severely."[131]

123. The Grand Jury in Westchester County found this as well: "... the religious institution, when it became aware of the abuse, rather than seeking to alleviate the trauma to the victim, increased it."

> The Grand Jury also heard testimony and viewed evidence that, after an allegation of abuse became public by the filing of a lawsuit or otherwise, there was a concerted effort on the part of the religious institution to mislead the community: defending the abuser while simultaneously attempting to humiliate the victims and their families – even in the face of mounting credible evidence against a particular abuser. Congregants where the abuser was employed were lied to during religious services in their house of worship. Articles in newspapers sponsored by the religious institution questioned the victim and his family's motives; further, the religious institution used the media to lie about the past record of certain clergy members, thereby willfully misleading the public. In one case in particular, the religious institution sent a high level religious official to the congregation to vouch publicly for an abuser against whom multiple claims had been lodged by separate victims. [132]

COMPLAINANTS AND WITNESSES

Wilfried Fesselmann

124. Wilfried Fesselmann was abused at 11-years-old in 1979 at a church-run vacation camp in Essen by a priest who was then transferred to Munich - with the consent of the archbishop, Joseph Ratzinger (now Pope Benedict XVI.). Till today these traumatic memories follow Wilfried, while his perpetrator is has been protected by the church. The priest who abused him was still in active ministry till 2010 when Wilfried's case became known widely. Due to higher media attention Wilfried fights for more education in order to protect other potential victims and to stop further crimes.

125. Wilfriend is able and willing to assist with an investigation into these matters.

[131] Ryan Report, Exhibit C-3, Executive Summary, p. 22.
[132] westchester 8-9

Benjamin Kitobo

126. Benjamin Kitobo was born in Likasi, Zaire (now, the Democratic Republic of the Congo) on June 19, 1967. Before fleeing his war torn home, living in a refugee camp in Benin, and being resettled by the UNHCR in the United States, he was a student in a catholic seminary training to become a priest. Benjamin was recruited to be a student in the seminary of Kanzenze in DRC, by a priest from Belgium, who came to his home and convinced Benjamin's parents to enter him in seminary. This meeting was the commencement of years of trauma for young Benjamin, who was sexually assaulted by the priest for four years. The incidents took place in Benjamin's room in the seminary and in the priest's room at the Mission. The priest, who was a teacher and later the head of the seminary, would visit Benjamin's room on at least a monthly basis and anally and orally rape and force Benjamin to perform oral sex. Benjamin also knew of two other boys at the seminary who had told him the priest was doing the same to them. When Benjamin eventually told school officials what was going on, they helped him to understand it was wrong, but at the time did nothing to remove the priest.

127. Finally, at the age of seventeen, Benjamin had the courage to confront the priest, and the sexual violence stopped. Several years later, Benjamin tried to tell the Bishop of the Diocese of Ghent, Belgium, about what the priest had done to him, but got no response.

128. Through investigation Benjamin learned that his priest was originally sent to DRC because of an incident in Belgium and then after Benjamin left the seminary was sent back to Belgium due to an incident of sexual violence against another boy in the seminary. Benjamin contacted the an inquiry commission in Belgium and reported his abuse there. Despite the fact that the internal commission recommended to the Church that the priest no longer work with children, no action was ever taken against him and he continues to receive a pension from the Church. Today, the priest continues to have access to young children, running an orphanage in Rwanda. Benjamin is willing to assist any investigation into these matters.

Megan Peterson

129. Megan Peterson is a 21 year old artist and college student from Minnesota. When she was 14-years-old she was raped and sexually assaulted repeatedly by a priest visiting her diocese. Her case was reported to law enforcement authorities by a counselor. An arrest warrant and extradition warrant were issued as the priest who raped her fled the jurisdiction. He is believe to be residing in India. The Congregation for the Doctrine of the Faith, headed by Cardinal William J. Levada, was notified of the charges. The CDF has done nothing to facilitate Levada's return to face the charges or to ensure he does not have access to children. As of last year, he was known to be heading approximately 40 schools in the diocese of Ootacamund in Tamil Nadu. Prosecutors in Roseau County Minnesota are trying to have him extradited to face criminal charges. Megan is willing and prepared to assist any inquiry or investigation should your office pursue it.

Confidential Complaints 1, 2, and 3

130. Three witnesses who wish to maintain confidentiality with respect to the public are ready and willing to share information with OTP investigators about their own experiences of sexual assaults by priests.

131. More information and documentation related to the cases of all of the above are on file with the undersigned, should your office pursue this matter further. In additional, the Survivors Network of Those Abused by Priests is willing and able to assist and requests that your office notify it of any future steps taken with respect to these matters.

III. THE STRUCTURE OF THE CATHOLIC CHURCH

"The church is not a democracy, and no one from below can decide on the truth"

- Pope John Paul II

132. For a detailed discussion of the structure and organization of the Catholic Church, the obligations and responsibilities of various authority figures within the Church, the obligations of bishops and religious superiors to respond to claims of sexual „abuse' and the actual response of the institutional Church to such allegations, taking into account the penal system

under the Code of Canon Law, the Prosecutor is referred to the Expert Opinion of Thomas P. Doyle, J.C.D., C.A.D.C., attached hereto as Exhibit A-1.

THE STRUCTURE: CHAIN OF COMMAND

133. The Vatican is a highly centralized and hierarchical institution that is monarchical in practice,[133] with all authority leading to and ultimately residing in the Pope in Rome.[134] Canon law provides that the Pope has "supreme full, immediate and universal ordinary power" and that "he can always freely exercise this power."[135] The 1983 code of canon law goes on to describe just what is meant by "supreme full, immediate and universal ordinary power" that the pope "can always freely exercise:"

> By virtue of his office, the Roman Pontiff not only possesses power offer *[sic]* the universal Church but also obtains the primacy of ordinary power offer *[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.[136]

134. Under the Pope, the "basic governmental office" is the bishop.[137] Bishops are the heads of dioceses.[138] While bishops are responsible for the clergy who serve in their dioceses, they are in turn subject to the directions and limitations imposed on them by the Pope, and by the Code of Canon Law.

135. An archdiocese is a major diocese and is led by an archbishop.[139] Archbishops are subject to the directions and limitations imposed on them by the Pope, and by the Code of Canon Law.

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[133] *See* Website of Vatican City State, State Departments, available at: http://www.vaticanstate.va/EN/State_and_Government/StateDepartments/index.htm ("Vatican City State is governed as an absolute monarchy. The Head of State is the Pope who holds full legislative, executive and judicial powers.")

[134] *See* Expert Opinion of Thomas Doyle, Exhibit A-1, para. 12 (d) ("The governmental system of the Catholic Church is defined officially as a *hierarchy*. […]In practice the governmental system of the Catholic Church is *monarchical* in that power is vested in individual persons and not in groups or communal bodies. There is no separation of the three essential functions of government in the Catholic Church") and para. 12 (e) ("The pope is the supreme judge, executive, legislator and teacher for the entire Catholic Church. His authority and power is absolute.") *Id.* at paras. 21-27.

[135] *See* 1983 Code c.331, *available at* http://www.vatican.va/archive/ENG1104/__P16.HTM

[136] 1983 Code c. 333 §1

[137] *See* Expert Opinion of Thomas Doyle, Exhibit A-1, para. 12 (f).

[138] See *Id.,* para. 22.

[139] *See Id.,*, para. 23.

136. Dioceses are comprised of parishes, which are headed by a pastor. A pastor must be a priest. A vertical line of authority runs from the priest to the bishop to the Pope. The Pope can, however, by-pass all intermediate levels of authority.[140]

137. Various collective bodies also exist within the governing structure of the Catholic Church. The "pre-eminent collective body" is the College of Cardinals.[141] Cardinals are appointed by the Pope. While the College of Cardinals serves as the Pope's "supreme advisory body," it still remains under the authority of the Pope.[142]

138. The Code of Canon Law sets forth:

> 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.[143] (emphasis added)

139. The Secretariat of State, headed by the papal Secretary of State (who must be a cardinal), is the "highest level of authority" under the Pope.[144] "The Secretary of State is, in practice, the second in command of the Catholic Church."[145] The secretariat is responsible for *inter alia* affairs pertaining to the various dioceses and relations with the heads of foreign governments.[146]

CHURCH STRUCTURE AND GUIDING POLICIES RELATED TO SEXUAL 'ABUSE' CLAIMS

140. The Congregation of the Doctrine of the Faith (CDF), originally known as the "Sacred Congregation of the Universal Inquisition" and given its current name in 1965, was founded

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[140] *See Id.,*, paras. 25-26.
[141] *See Id.* para. 29.
[142] *See Id.*, para. 29. *For more information*, see Vatican web-site , *available at*: http://www.vatican.va/news_services/press/documentazione/documents/cardinali_index_en.html.
[143] 1983 Code c.334, *available at*http://www.vatican.va/archive/ENG1104/__P16.HTM.
[144] Expert Opinion of Thomas Doyle, Exhibit A-1, para. 34.
[145] *Id. See also* Vatican web-site, "*Secretariat of State": „The Secretariat of State is the dicastery of the Roman Curia which works most closely with the Supreme Pontiff in the exercise of his universal mission*," citing to *Pastor Bonus*, Art. 39, available at: http://www.vatican.va/roman_curia/secretariat_state/.
[146] Expert Opinion of Thomas Doyle, Exhibit A-1, para. 34.

in 1542 "to combat heresy" and has as its primary duty to safeguard "faith and morals" throughout the Church.[147]

141. The CDF is the entity tasked with overseeing proceedings against those accused of „abuse' against children.[148]

142. 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*.

143. *Crimen Sollicitationis,* first issued in 1922, grants the CDF with explicit jurisdiction over sexual „abuse' of minors, and sets out procedures for processing such cases.[149] *Crimen Sollicitationis* was updated in 1962 to include religious orders, in addition to dioceses.[150]

144. *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.[151] Excommunication constitutes an extreme penalty for breaking the 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.[152] 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.

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[147] *Id.*, para. 49.
[148] *See, e.g., Id.*, para. 49-50.
[149] *Id*, para. 87.
[150] 1962 Instruction - (*Crimen* or *Crimen Sollicitationis*), Instruction on the Manner of Proceeding in Cases of Solicitation, *The Decree Crimen Sollicitationis*, The Vatican Press, 16 Mar. 1962, Exhibit B-5.
[151] *available at*http://www.vatican.va/archive/ENG1104/__P16.HTM.
[152] „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.

145. *Sacramentorum sanctitatis tutela* was issued in May 2001 by the CDF, pursuant to the Apostolic Letter issued by Pope John Paul II on 30 April 2001.[153] Under this instruction, after investigation of claims at the local level, all claims of „abuse' must be referred to the CDF.[154] Following the referral of a case to CDF, the CDF determines whether to refer the case to a diocese for processing or whether to retain the case and process it itself. Cardinal Joseph Ratzinger was head of CDF at the time that *Sacramentorum sanctitatis tutela* was issued.

146. Cardinal Ratzinger issued a letter to all bishops of the Catholic Church on 18 May 2001 informing them of the new norms and that all cases of clerical abuse are "reserved to the apostolic tribunal of the Congregation for the Doctrine of the Faith."[155] The letter further states that "the criminal action on delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by a prescription of ten years. The prescription runs according to the universal and common law; however, in the delict perpetrated with a minor by a cleric, the prescription begins to run from the day when the minor has completed the 18th year of age."[156]

147. Changes were added to certain norms of theinstruction by the Holy See in 2003.[157]

IV. INDIVIDUAL HIGH-LEVEL VATICAN OFFICIALS

148. Based on the foregoing, taking into account the structure of the Catholic Church, based on the positions held by the following individuals and the actions or omissions of each, the following individuals may be considered persons who can be considered to bear the greatest responsibility for the crimes detailed above.

POPE BENEDICT XVI (PREVIOUSLY CARDINAL JOSEPH RATZINGER)

[153] Apostolic Letter Given *Motu Propio re: Sacramentorum Sanctitatis Tutela*, Pope John Paul II, 30 April 2001, Exhibit B-7; *Sacramentorum Sanctitatis Tutela,* Congregation for the Doctrine of Faith (2001), Exhibit B-8 and 10. *See also* CNS and Staff, *Doctrinal Congregation Takes Over Priestly Pedophilia Cases*, AMERICA: THE NATIONAL CATHOLIC WEEKLY, 17 Dec. 2001, *available at* http://www.americamagazine.org/content/article.cfm?article_id=1352..

[154] Specifically, the instruction states that all delicts against the Sixth commandment by a cleric when committed with a minor below the age of 18 must be "reserved" for the CDF. *See Letter from Congregation for the Doctrine of the Faith to Bishops of the Entire Catholic Church, et al, Regarding the More Serious Offenses reserved to the Congregation for the Doctrine of the Faith,* 18 May 2001, Exhibit B-9.

[155] *Id.*

[156] *Id.*

[157] *Sacramentorum Sanctitatis Tutela*, (2001 with 2003 changes), Congregation for the Doctrine of the Faith, 2003, Exhibit B-10.

149. Joseph Ratzinger was born on 16 April 1927 in Marktl am Inn, Germany. He was ordained a priest on 29 June 1951.

150. On 25 November 1981, Cardinal Joseph Ratzinger he was nominated by John Paul II Prefect of the Congregation for the Doctrine of the Faith and held this position until 2005. Among the other positions held are Vice Dean of the College of Cardinals (elected in 1998) and Dean of the College of Cardinals (elected in 2002). On 19 April 2005, Cardinal Ratzinger was elected as the new pontiff, and became Pope Benedict XVI.

151. Through the positions he has held, and that which he continues to hold, Pope Benedict XVI ordered, encouraged, facilitated, directed or otherwise aided and abetted those policies and practices related to the cover-up of credible sexual violence claims, the obstruction of justice and destruction of evidence, the practice of "priest shifting," the punishment of whistle-blowers, the blaming of victims and the atmosphere of near-absolute secrecy regarding such claims, which have resulted, and will continue to result in the sexual assault of children and vulnerable adults by members of the Catholic clergy. He has further failed to prevent or punish acts of sexual violence committed by his subordinates against children and vulnerable adults.

152. In 2001, Cardinal Ratzinger's oversight over sexual assault by clergy was expanded and made more explicit by Pope John Paul II when he issued new norms for dealing with such acts. Indeed, Cardinal Ratzinger informed all bishops of the centralization of all cases of clerical sexual abuse in the CDF in his letter of 18 May 2001. [158] As Prefect of the CDF, Ratzinger continued to implement the longstanding policy of the church which prioritized secrecy and concealment even at the risk of exposing others to harm.

153. As pope, he wields supreme and sole authority over all entities and persons within the Church, including the CDF, and is ultimately responsible for policies and practices of the Church as a whole. According to Canon Law, 1938 Code c. 331, the Pope has "supreme full, immediate and universal ordinary power" and "he can always freely exercise this power." Canon law additionally provides that he "not only possesses power [over] the universal Church but also obtains the primacy of ordinary power [over] all particular churches and groups of them." Bishops and Cardinals, according to Canon law, assist the pontiff in

[158] *See Letter from Congregation for the Doctrine of the Faith to Bishops of the Entire Catholic Church, et al, Regarding the More Serious Offenses reserved to the Congregation for the Doctrine of the Faith,* 18 May 2001, Exhibit B-9.

exercising his power in performing their functions as defined by the law and norms over which the Pope has sole authority to determine.

154. Because of the positions he has held, and his acts and omissions in the capacity as Pontiff (2005 - present), and formerly as Prefect of the Congregation for the Doctrine of the Faith, (1981 - 2005), the entity tasked with overseeing the handling of allegations of sexual assault by priests, Pope Benedict XVI can be considered a person of interest in this case.

CARDINAL ANGELO SODANO

155. Angelo Sodano was born on 23 November 1927 in Isola d'Asti, Italy. He was ordained a priest on 23 September 1950.

156. Cardinal Angelo Sodano currently serves as Dean of the College of Cardinals, having replaced Cardinal Ratzinger upon his appointment as Pope. Prior to that, from 1991-2006, Sodano served as the Vatican's Secretary of State, a position that required him to assist the Pope (first John Paul II then Benedict XVI) to implement and oversee the Pope's and Church's, policies, practices, canon law, and procedure. Cardinal Sodano maintains the title Secretary of State Emiritus.

157. In these roles, Cardinal Sodano was in a position to prevent and punish crimes of rape and sexual violence, which he has referred to as "petty gossip," but instead furthered the Church's practice of concealment and protecting predator priests. Through the positions he has held, and that which he continues to hold, Cardinal Sodano ordered, encouraged, facilitated, directed or otherwise aided and abetted those policies and practices related to the cover-up of credible sexual violence claims, the obstruction of justice and destruction of evidence, the practice of "priest shifting," the punishment of whistle-blowers, the blaming of victims and the atmosphere of near-absolute secrecy regarding such claims, which have resulted, and will continue to result in the sexual assault of children and vulnerable adults by members of the Catholic clergy. He has further failed to prevent or punish acts of sexual violence committed by his subordinates against children and vulnerable adults.

158. Because of the positions he has held, and his acts and omissions in the capacity as Dean of the College of Cardinals and formerly as Secretary of State, Cardinal Sodano can be considered a person of interest in this case

CARDINAL TARCISIO BERTONE

159. Tarcisio Bertone was born 2 December 1934 in Romano Canavese, Italy. He was ordained on 1 July 1960.

160. Tarcisio Bertone serves as the Vatican Secretary of State (2006-present) and also serves as the Camerlengo (2007-present). He previously served as Secretary for the Congregation for the Doctrine of the Faith (1995-2002) under Joseph Ratzinger.

161. Through these positions, Cardinal Bertone has had authority to help oversee and implement church policy with respect to sexual violence by priests. He has openly rejected the notion that "a bishop be obligated to contact police to denounce a priest who has admitted paedophilia," and instead furthered the Church's practice of concealment and protecting predator priests. Through the positions he has held, and those which he continues to hold, Cardinal Bertone ordered, encouraged, facilitated, directed or otherwise aided and abetted those policies and practices related to the cover-up of credible sexual violence claims, the obstruction of justice and destruction of evidence, the practice of "priest shifting," the punishment of whistle-blowers, the blaming of victims and the atmosphere of near-absolute secrecy regarding such claims, which have resulted, and will continue to result in the sexual assault of children and vulnerable adults by members of the Catholic clergy. He has further failed to prevent or punish acts of sexual violence committed by his subordinates against children and vulnerable adults.

162. Because of the positions he has held, and his acts and omissions in the capacity as Secretary of State and formerly Secretary for the Congregation for the Doctrine of the Faith, Cardinal Bertone can be considered a person of interest in this case.

Cardinal William Levada

163. William Levada was born on 15 June 1936 in Long Beach, California. He was ordained a priest on 20 December 1961.

164. In 2005, Cardinal Levada was named Prefect for the CDF and continues to hold that position, and as such has been in the position tasked with overseeing the handling of allegations of sexual assault by priests. Prior to that, he served as Archbishop of Portland, Oregon, from 1986-1995 and then as Archbishop of San Francisco from 1995-2005. From 1976-1982, he served as a secretary at the CDF and for part of that time served under Joseph Ratzinger. He was then named Executive Director of the California Catholic Conference of

Bishops. During his tenure in both Portland and San Francisco, Levada oversaw the handling of numerous cases of sexual assault by priests.

165. Through these positions, Cardinal Levada has had authority to help oversee and implement church policy with respect to sexual violence by priests. He has furthered the Church's practice of concealment and protecting predator priests. Through the positions he has held, and those which he continues to hold, Cardinal Levada ordered, encouraged, facilitated, directed or otherwise aided and abetted those policies and practices related to the cover-up of credible sexual violence claims, the obstruction of justice and destruction of evidence, the practice of "priest shifting," the punishment of whistle-blowers, the blaming of victims and and the atmosphere of near-absolute secrecy regarding such claims, which have resulted, and will continue to result in the sexual assault of children and vulnerable adults by members of the Catholic clergy. He further failed to prevent or punish acts of sexual violence committed by his subordinates against children and vulnerable adults.

166. Because of the positions he has held, and his acts and omissions *inter alia* in the capacity as Prefect for the Congregation for the Doctrine of the Faith, Cardinal Levada can be considered a person of interest in this case.

V. THE LEGAL FRAMEWORK

"Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes"

- *ICC Statute, Preamble*

INITIATION OF INVESTIGATION

167. Article 15 of the Rome Statute of the ICC allows the Prosecutor to initiate an investigation upon his own initiative "on the basis of information of crimes within the jurisdiction of the Court."[159] Once information is received about such crimes, the Prosecutor "shall" analyse the seriousness of the information, and may ask for additional information from a range of sources, including States, intergovernmental organizations, non-governmental organizations "or other reliable sources that he deems appropriate," receiving the information in written or oral form.[160]

[159] ICC Statute, Art. 15 (1).
[160] ICC Statute, Art. 15 (2).

168. If the Prosecutor concludes that there is a "reasonable basis" to proceed with an investigation, he shall submit a request to the pre-trial chamber for authorization of an investigation, and victims "may make representations" to the pre-trial chamber.[161]

169. In considering the Prosecutor's request to open an investigation related to post-election violence in Kenya, the pre-trial chamber observed that the "reasonable basis to believe" test is "the lowest evidentiary standard provided for in the Statute," and that this is "logical" as this is the first stage of examination.[162] The information is not intended to be comprehensive or conclusive.[163] Under the "reasonable grounds to believe" standard, the conclusion reached need only be "a reasonable conclusion alongside others (not necessarily supporting the same finding), which can be supported on the basis of the evidence and information available."[164]

170. As demonstrated by more than 20,000 of pages of supporting materials a "reasonable basis to proceed" with an investigation exists, and the Prosecutor is urged to submit a request to the pre-trial chamber to proceed with an investigation. The facts presented above demonstrate that a crime that falls within the jurisdiction of this Court has been – and indeed, is being – committed, in that the acts described herein constitute a crimes against humanity under Article 7 of the Statute; fulfill the temporal requirements set forth in article 11 of the Statute; sand meets both the *ratione loci* and *ratione personae* jurisdictional requirements set

[161] ICC Statute, Art. 15 (3).
There can be no doubt that the crimes set forth herein satisfy the gravity requirement under article 53(1)(b) of the Statute. Factors to consider when assessing the gravity of the crimes include "(i) the scale of the alleged crimes (including assessment of geographical and temporal intensity); (ii) the nature of the unlawful behaviour or of the crimes allegedly committed; (iii) the employed means for the execution of the crimes (i.e., the manner of their commission); and (iv) the impact of the crimes and the harm caused to victims and their families. In this respect, the victims' representations will be of significant guidance for the Chamber's assessment." *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 62.
[162] *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 27
[163] *Id.*
[164] *See Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 33, referring to Appeals Chamber, Judgment on the appeal of the Prosecutor against the "Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir," 3 February 2010, para. 33. *See also id.*, para. 35 (the Prosecutor must satisfy the Pre-Trial Chamber "that there exists a sensible or reasonable justification for a belief that a crime falling within the jurisdiction of the Court ,has been or is being committed").

forth in Article 12 of the Statute in so far as the crimes have been committed on the territory of a State Party to the Statute and/or have been committed by a national of any such State.[165]

THE SITUATION PRESENTED SATISFIES THE JURISDICTION REQUIREMENT IN THAT IT CONSTITUTES CRIMES AGAINST HUMANITY

171. 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).

172. Crimes against humanity are among the most serious crimes that can be committed and have been recognized as such by the international community. "Crimes against humanity in the end offend against and offend a transcendent good, the value of the human being in the moral code, a value that cannot be compromised."[166] Crimes against humanity are "characterized by strong element of cruelty and a particularly odious quality which make them intolerable to the conscience of the international community."[167]

173. Article 7 (1) of the ICC Statute states that a "„crime against humanity' means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Torture, rape and any other form of sexual violence of comparable gravity are each listed in Article 7(1).

174. As discussed below, each element of crimes against humanity is satisfied in this case.

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

i. Widespread or systematic

175. Although it was a point of discussion at the Rome Conference establishing the ICC, it is well established – and clear from the text of Article 7(1) of the Statute – that the attack

[165] *See, e.g., Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 39; Pre-Trial Chamber I, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-3, para. 36.

[166] *B. et al.*, Case, 4 May 1948, in *Entscheindungen des Obersten Gerichtshofes für die Britische Zone in Strafsachen*, Vol. 1 (1950) 3, quoted in A. Cassese, *Crimes Against Humanity*, p. 355, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY, Vol. 1A, A. Cassese, P. Gaeta and J. Jones (Eds.), Oxford University Press: 2002.

[167] A. Cassese, *Crimes Against Humanity*, p. 363, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY, Vol. 1A, A. Cassese, P. Gaeta and J. Jones (Eds.), Oxford University Press: 2002.

need be *either* widespread *or* systematic. The requirements that acts be widespread or systematic was agreed upon as the appropriate "threshold" in order to distinguish crimes against humanity from common or local crimes,[168] and to bar sporadic acts from being considered crimes against humanity.[169] It has been explained that the rationale behind this contextual element is "to exclude isolated or random acts from the notion of crimes against humanity."[170] Moreover, it is the attack, and not the alleged individual acts, which must be widespread or systematic.[171]

176. In a recent decision by the pre-trial Chamber related to the *Situation in the Republic of Kenya,* it found that the attack was understood as reflecting "the large scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims."[172] "Widespread" refers to "both the large-scale nature of the attack and the number of resulting victims."[173] It can be the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."[174]

177. It further found that the attack was systematic because it was "organized and followed a consistent pattern."[175] A systematic attack further refers to the "improbability of their random occurrence."[176] The systematic nature of an attack can "often be expressed through a pattern of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis."[177] *Id.*

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[168] Darryl Robinson, The Elements of Crimes Against Humanity, in THE INTERNATIONAL CRIMINAL COURT: ELEMENTS OF CRIMES AND RULES OF PROCEDURE AND EVIDENCE, 57, 58 (Roy S. Lee ed., 2001).
[169] A. Cassese, *Crimes Against Humanity*, p. 357, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY, Vol. 1A, A. Cassese, P. Gaeta and J. Jones (Eds.), Oxford University Press: 2002.
[170] *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 94 (citations quoted herein omitted).
[171] *Id.*
[172] *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 95, citing *Bemba*, para. 83.
[173] *Id.* at para. 95.
[174] *Id.* (citations omitted).
[175] *Id*.
[176] Situation in the Democratic Republic of the Congo in the Case of *Prosecutor v. Katanga and Chui*, ICC-01/04-01-04, Decision on the confirmation of the charges, 30 September 2008, para. 394 (citations omitted). *See also Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 96. (citations omitted) (qualification of "systematic" is understood to reflect the "organized nature of the acts of violence and the improbability of their random occurrence.")
[177] *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 96.

178. The crimes set forth herein literally span the globe and encompass tens of thousands of victims – with many more victims unknown. Furthermore, as demonstrated through the pattern and practices of "priest shifting," obstructing justice or otherwise failing to cooperate with civil accountability mechanisms, and operating under a tightly controlled system of reporting that placed secrecy ahead of the safety and well-being of children, the acts of sexual violence committed by members of the Catholic clergy, and tolerated by high-level officials of the Vatican, cannot be described as "random occurrences."

ii. Attack directed against any civilian population

179. Article 7(2)(a) of the ICC Statute defines "attack directed against any civilian population" as "a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack."

180. The Elements of Crimes states that "policy" is understood to mean when an organization "actively promote[s] or encourage[s]" the attack. It is further clarified that "[s]uch a policy may, in exceptional circumstances, be implemented by a deliberate failure to take action, which is consciously aimed at encouraging such an attack. Lack of action governmental or organizational action cannot be the sole factor upon which a policy is inferred.[178] The purpose behind the policy requirement is to ensure that spontaneous or isolated criminal acts or "crime sprees" are not improperly framed as crimes against humanity,[179] and indeed, reflects qualities of "widespread" or "systematic" such as the presence of a pattern or acts that are not isolated or sporadic in nature.[180] And to the extent that it is argued that the policy requirement of crimes against humanity is intended to reach "the authors of the decisions and the policy-makers that set in motion the chain of events that brings about the specific conduct of individual perpetrators who commit the [underlying criminal] acts,"[181] the individuals identified above certainly satisfy that requirement.

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[178] Elements of Crimes, n. 6.
[179] *See, e.g.,* "[T]he policy element only requires that the acts of individuals alone, which are isolated, un-coordinated, and haphazard, be excluded." R. Dixon, C.K. Hall, "Article 7," in O. Triffterer (ed.), *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2d. ed., 2008, p. 236.
[180] *See, e.g., Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, paras. 83-86, and cases cited therein.
[181] C. Bassiouni, CRIMES AGAINST HUMANITY IN INTERNATIONAL CRIMINAL LAW, 2d ed. 1999, Kluwer International Law, p. 247

181. It is recalled that there is no doubt that the victims and survivors of the crimes at issue in this case are civilians. Indeed, the target of predator priests was most often children who they encountered in the course of their ministry, at school and at church.

182. An attack is not limited to a military attack.[182] An "attack" is characterized by a "course of conduct involving the multiple commission of acts referred to in article 7(1)."[183]

183. 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)[184] 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. The pattern and practice of the Vatican described in detail above in regard to priest-shifting, silencing victims and whistle-blowers, discouraging and mandating against informing civil authorities of suspected and confirmed cases of sexual offences committed against children by priests, and instituting detailed policies that put the interests of the institution of the church and the perpetrators

[182] The Elements of Crimes states that the "acts need not constitute a military attack." *See, e.g., Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 80. *See also* A. Cassese, *Crimes Against Humanity*, p. 356, in THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY, Vol. 1A, A. Cassese, P. Gaeta and J. Jones (Eds.), Oxford University Press: 2002. Cassese elaborates on the sources for this conclusion: Control Council No 10, 20 December 1945; national legislation, post-World War II case-law including the *Einsatzgruppen* and *Justice* cases, the 1948 Genocide Convention, the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, and the 1973 Convention on Apartheid.

[183] *See, e.g., Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 80.

[184] For the purposes of Article 7 of the ICC Statute, an organization is understood a group that "has the capability to perform acts which infringe on basic human values." *Situation in the Republic of Kenya*, No. ICC-01/09, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, 31 March 2010, para. 90. Among the factors to consider when determining whether a group can be characterized as an "organization" is *inter alia* whether the group is under a responsible command, or has an established hierarchy; and whether it possesses the means to carry out a widespread or systematic attack against a civilian population. *Id.*, para. 93. Notably, the pre-trial chamber emphasized that these factors are only intended to "assist" its analysis and the factors it cites "do not constitute a rigid legal definition, and do not need to be exhaustively fulfilled." *Id*. For example, in the *Muthura et al case*, the Pre-Trial Chamber relied on its findings that *inter alia* the Mungiki operate "as a large and complex hierarchical structure featuring various levels of command and a clear division of duties in the command structure," that "obedience to the internal rules of the Munguki is achieved by way of strict disciplinary measures," and that its power is sustained by "control over core societal activities in many of the poor residential areas." *Situation in the Republic of Kenya in the Case of the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, 8 March 2011, Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, para. 22.

ahead of the interests of innocent children, all reflect a pattern and practice of action and inaction that facilitated, promoted or otherwise encouraged the attack.

184. As has been demonstrated above, 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.

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

185. 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."[185] Often, these acts are referred to by the church and in the media as „sexual abuse.' As discussed above, 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. Moreover, such terminology also masks the true extent of the harm such 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.

186. 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.[186] 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.[187]

[185] Rome Statute of the International Criminal Court, preamble, 17 July 1998, 2187 U.N.T.S. 90.
[186] Rhonda Copelon, *Gender Crimes as War Crimes: Integrating Crimes against Women into International Criminal Law,* 46 MCGILL L. J. 217, 217-40 (2000).
[187] 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

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.[188]

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

187. 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. …

188. 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 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.[189] 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.[190]

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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).

[188] *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").

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

[190] *Id*.

189. Moreover, the principle reflects the universal treatment and acceptance of rape and sexual violence as forms of torture in the international human rights system.[191] More specifically, the *ad hoc* tribunals in Rwanda and the former Yugoslavia repeatedly recognized such acts as also constituting torture.[192] 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 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.[193]

190. 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

[191] 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 Kooijimans, 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).

[192] *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).

[193] *Prosecutor v. Kunarac, et al*, Case No. IT-96-23/1, para. 150 (12 June 2002) ("*Kunarac* Appeal Judgement").

> 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.[194]

191. 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.[195]

192. 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."[196] 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.[197] There are many other instances where survivors 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

[194] *Prosecutor v. Mucic, et al. (Čelebići Case),* Case No. IT-96-21-T, Judgement, para. 495 (16 November 1998).
[195] 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.
[196] *Kunarac* Appeal Judgement *supra* note 14 and *Čelebići* Trial Judgement*, supra* note 15, respectively..
[197] *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, *Priest Sex Abuse Linked to 13 Suicides in Belgium*, ASSOCIATED PRESS, 10 Sept. 2010, *available at* http://abcnews.go.com/International/wireStory?id=11603050.

violations.[198] 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.[199] The toll in terms of lives lost, futures and families harmed and, in some cases, ruined, is incalculable.

V. INDIVIDUAL CRIMINAL RESPONSIBILITY:

THE 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.

193. 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
> (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.

194. As demonstrated above, 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

[198] Shanta 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.").

[199] *Id*.

Faith ("CDF"), Cardinal Levada as head of CDF, Cardinal Bertone, as Secretary of State and formerly, as Secretary of the CDF, and Cardinal Sodano, as Dean of the College of Cardinals and formerly Secretary of State, "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," both in terms of punishment (head of CDF) and influencing and/or setting policy for other senior positions. Moreover, as prefect of the CDF, Ratzinger and later Cardinal Levada as prefect of the CDF, have been tasked with handling reports of sexual abuse by priests. 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."

195. The evidence outlined above 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. As set forth in a number of cases above, there is compelling evidence that demonstrates that not only did they not submit the matter to the competent authorities for investigation and prosecution, some officials -- including the high-level Vatican officials named herein – went so far as to obstruct investigations and prosecutions and encouraged others to do so as well.

196. 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."[200] Among the "any other ways" in which individuals have been found to have contributed to the commission of the act under Article 25(3)(d) of the Statute is by exercising authority and directing subordinates not to obstruct the commission of the crimes.[201]

VI. CONCLUSION

197. It is respectfully submitted that on the basis of the information set forth herein, complete with more than 20,000 pages of supporting material, crimes within the jurisdiction of the International Criminal Court have been committed by high-level Vatican officials that warrant the Prosecutor initiating an investigation into these crimes.

198. The Prosecutor is therefore requested to open such an investigation and receive additional information regarding these crimes, including in the form of oral testimony heard at the seat of the Court, from relevant sources, including the survivors of abuse by priests and other members of the Catholic clergy, about the crimes set forth herein.

Respectfully Submitted,

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[200] The Pre-Trial Chamber recently affirmed that the elements for this mode of liability are: (i) a crime within the jurisdiction of the Court is attempted or committed; (ii) the commission or attempted commission was carried out by a group of persons acting with a common purpose; (iii) the individual contributed to the crime in any way other than those set out in article 25(3)(a) to (c) of the Statute; (iv) the contribution is intentional and (v) the contribution is made either (a) with the aim of furthering the criminal activity or criminal purpose of the group or (b) in the knowledge of the intention of the group to commit the crime." *Situation in the Republic of Kenya in the Case of the Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali*, No. ICC-01/09-02/11, 8 March 2011, Decision on the Prosecutor's Application for Summonses to Appear for Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali, para. 47.
[201] *Id*., para. 49.