

**Supplemental Submission  
To the United Nations Committee on the Rights of the Child  
In Advance of its Review of the Holy See  
During Its 65<sup>th</sup> Session**

**December 2013**

**I. Introduction**

The Center for Constitutional Rights and Survivors Network of those Abused by Priests submit this supplemental information for the Committee's consideration in advance of its review of the Holy See during its 65<sup>th</sup> Session. This information supplements that contained in an alternative report submitted to the committee on 28 February 2013, entitled "Fighting for the Future: Adult Survivors Work to Protect Children & End the Culture of Clergy Sexual Abuse" (hereinafter "Alternative Report").<sup>1</sup> This submission addresses the Holy See's response of 25 November 2013 to the Committee's List of Issues (CRC/C/VAT/Q/2) ("LOI") and further provides additional information on developments since 1 March 2013, particularly in relation to Question 11 of the LOI.

**II. The Vatican's Response to the List of Issues**

We note that the Holy See's response goes to great length to confine its obligations and liabilities under the Convention to the territory of Vatican City State, where it acknowledges citizenship and/or residence of 31 children. The Holy See seeks to redirect responsibility for widespread and systemic violations of the Convention and OPSC occurring in other sovereign territories that were committed, abetted, facilitated or covered up by Catholic officials acting under its authority to other States.

In doing so the Holy See overlooks a critical feature of international law and the extraterritorial obligations of States to respect, protect and fulfill human rights. This Committee has recognized that "the Convention does not limit a State's jurisdiction to 'territory'" and further that "[i]n accordance with international law, the Committee has previously urged states to protect the rights of children who may be beyond their territorial borders."<sup>2</sup> The CRC's position on this point is consistent with a number of human rights monitoring bodies which have found that States' obligations extend to "those within the power or effective control" of the agents of a State Party acting outside its territory,<sup>3</sup> or when

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<sup>1</sup> Center for Constitutional Rights, *Fighting for the Future: Adult Survivors Work to Protect Children & End the Culture of Clergy Sex Abuse*, 28 Feb. 2013, available at <http://www.ccrjustice.org/files/SNAP%20Shadow%20Report%20to%20UN%20CRC.pdf> (hereinafter "Alternative Report"). CCR and SNAP thank Kate Morris for her assistance in the preparation of this Supplemental Submission.

<sup>2</sup> United Nations Committee on the Rights of the Child, *General Comment No. 16 on State Obligations Regarding the Impact of the Business Sector on Children's Rights*, para. 39, UN Doc. CRC/C/GC/16 (2013). [hereinafter *CRC General Comment No. 16*] available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f16&Lang=en).

the “acts and omissions of its agents [...] produce effects or are undertaken outside that state’s own territory”<sup>4</sup> or when there is a “causal nexus between the extraterritorial conduct of the State and the alleged violation of the rights and freedoms of an individual.”<sup>5</sup>

As set out in the Alternative Report, the Holy See has been the chief causal link to violations of the rights of children under the Convention in this context. At the same time, the acts and omissions of its agents have clearly produced effects that resulted in the violation of the rights of children to be free from sexual exploitation and violence. These violations were wholly foreseeable, given the manner in which the Vatican operated on these issues, namely to protect the reputation of the Church and quietly shift offending priests around from one parish or country to another with knowledge that such persons continued to offend.

This representation by the Holy See is particularly disingenuous in light of the all-too-numerous accounts of efforts by bishops, archbishops, cardinals and other Church officials around the world to cover up these crimes and subvert the course of justice in other States, further compounding the harm to victims. Not only have Church officials not cooperated fully in investigations and prosecutions, they have been found to have worked in many cases to ensure that the legal process in other States could not work as intended, i.e. to protect rights, prevent harm and provide redress when it occurs.<sup>6</sup>

The Holy See also attempts to make distinctions between the international legal personality and responsibility of the sovereign state and Catholic entities and organizations around the world without acknowledging the authority, control and oversight it exercises over such institutions, generally, and in particular with regard to allegations of rape and sexual violence by priests and others associated with the Church, like seminarians, brothers and nuns.<sup>7</sup>

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<sup>3</sup> See, Human Rights Committee, *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, para. 10, U.N. Doc. CCPR/C/21/Rev.1/Add. 13 (2004), available at <http://www.unhcr.ch/tbs/doc.nsf/0/58f5d4646e861359c1256ff600533f5f>.

<sup>4</sup> *Victor Saldaño v. Argentina*, Inter-Am. Comm’n H.R., Report No. 38/99, OEA/Ser.L/V/II.95 doc. 7 rev. at 289 ¶ 17 (1998) (a State Party “may be responsible under certain circumstances for the acts and omissions of its agents which produce effects or are undertaken outside that state’s own territory”).

<sup>5</sup> *Ecuador ex rel. Molina v. Colombia*, Inter-State Petition IP-02, Inter-Am. Comm’n H.R. Report No. 112/10, OEA/Ser.L/V/II.140 doc. 10 (2010) (State liable for extraterritorial harm when there is a “causal nexus between the extraterritorial conduct of the State and the alleged violation of the rights and freedoms of an individual”). See also, U.N. Human Rights Comm., *Munaf v. Romania*, para. 14.2, 96th Sess., July 13–31, 2009, U.N. Doc. CCPR/C/96/D/1539/2006 (Aug. 21, 2009) (extending state responsibility for human rights violations in situations beyond the state’s control of either persons or places when (a) the State Party was a ‘causal link’ in the chain that led to a violation of the International Covenant on Civil and Political Rights and (b) if the state had knowledge that the rights violation was foreseeable); *Georgia v. Russian Federation*, International Court of Justice, Provisional Measure, 2008 I.C.J. 353, ¶ 109 (Oct. 15) (Articles 2 and 5 of the Convention on the Elimination of All Forms of Racial Discrimination “generally appear to apply, like other provisions of instruments of that nature, to the actions of a State party when it acts beyond its territory”). The Inter-American Commission on Human Rights has likewise acknowledged the extraterritorial obligations of States. See *Armando Alejandro Jr. and Others v. Cuba*, Case 11.589, Report No. 86/99, [OAS/Ser.L/V/II.104 doc. 10 rev. at] ¶ 23 (1999) (“the exercise of [the Commission’s] jurisdiction over extraterritorial events is not only consistent with but required by the applicable rules”).

<sup>6</sup> See e.g., Alternative Report, *supra* note 1 at 10-15.

<sup>7</sup> *Id.*; See also, Center for Constitutional Rights, *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 and Torture as a Crime Against Humanity*, ICC File No. OTP-CR-159/11, Sept. 2011, at 51-55, (hereinafter “Victims’ Communication”), available at <http://s3.documentcloud.org/documents/243877/victims-communication.pdf>; and *Center for Constitutional*

Moreover, it is significant that the Holy See acknowledges that cardinals, many of whom oversee large archdioceses around the world, are deemed citizens of Vatican City in light of mounting evidence and documentation that a number of these cardinals have followed policies and practices that covered up the sexual violence, protected offending priests, thwarted investigations, and hindered victims' access to justice.<sup>8</sup>

### III. Select Updates on Policies and Practices related to Sexual Violence by Clergy

As tragic stories continue to unfold in many places around the world, below we provide only a few examples of the many situations that have developed since the submission of the Alternative Report in February. These examples demonstrate that serious breaches of obligations under the Convention continue under the new pope, interests of the Church continue to be preferenced over the best interests of the child, and children remain at risk.

These updates further demonstrate that in addition to violations of the rights to life, and to be protected from sexual exploitation and abuse, and acts of torture or cruel, inhuman or degrading treatment or punishment, the Holy See is further violating the rights of children and survivors of childhood sexual violence by taking affirmative measures to deny their access to justice and to a remedy and reparations.

#### A. Change to Vatican City law, Creation of a Commission

As noted in its response to the Committee's List of Issues, the Vatican announced that it was updating its criminal code with a view to bringing it into alignment with international legal standards, including the Convention on the Rights of the Child and its optional protocols. The reforms, which took effect on 1 September 2013, purport to improve legal protections for children by providing a broader definition of the category of "crimes against minors," including the sale of children, child prostitution, the military recruitment of children, sexual violence against children, and producing or possessing child pornography.<sup>9</sup> Despite having long been a State Party to the Convention and OPSC, these offenses had not previously been criminalized by the Holy See. Sexual offenses existed under the Vatican's penal code only in a general form, as crimes against "good customs," carrying a maximum penalty of 3 to 10 years. Under the revision, the punishments range from 5 to 10 years in prison, with aggravating circumstances increasing the maximum sentence to 12 years with a fine of 250,000 euros.

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*Rights Letter to Mr. Luis Moreno Ocampo with Information Supplementing ICC Communication*, 11 Apr. 2012, available at [http://www.ccrjustice.org/files/Supplemental%20SNAP%20Submission%20to%20ICC%20OTP%20\(11%20April%202012\).pdf](http://www.ccrjustice.org/files/Supplemental%20SNAP%20Submission%20to%20ICC%20OTP%20(11%20April%202012).pdf).

<sup>8</sup> Alternative Report, *supra* note 1 at 11-15. See also, Survivors Network of those Abused by Priests, *SNAP's 'Dirty Dozen' list – the 'papabile' who would be the worst choice for children*, 5 March 2013, available at [http://www.snapnetwork.org/snap\\_s\\_dirty\\_dozen\\_list\\_the\\_papabile\\_who\\_would\\_be\\_the\\_worst\\_choice\\_for\\_children](http://www.snapnetwork.org/snap_s_dirty_dozen_list_the_papabile_who_would_be_the_worst_choice_for_children)

<sup>9</sup> Vatican City State Law No. VIII, of 11 July 2013, containing *Supplementary Norms on Criminal Law Matters*, available at <http://www.vaticanstate.va/content/dam/vaticanstate/documenti/leggi-e-decreti/Normative-Penali-e-Amministrative/Law%20N.%20VIII%20-%20Supplementary%20Norms%20on%20Criminal%20Law.pdf>.

The laws apply only within the 0.2 square miles of the Vatican City State and the 31 children who are citizens and/or residents of VCS; they have no effect on the actions of Church officials in the rest of the world. Neither did the Holy See provide information about whether there had been previous allegations of rape or other forms of sexual exploitation of children within the confines of VCS, nor do the new provisions aim to promote and ensure compliance and international cooperation with other secular authorities and their long-established laws on sexual abuse.

On 5 December 2013, the Vatican announced that Pope Francis created a commission to advise him on the crisis of sexual violence within the church, which reportedly will be comprised of clergy and lay persons and place an emphasis on the “pastoral response” and less on the “judicial parts.”<sup>10</sup> As set out in the Alternate Report and in victims’ submissions to the International Criminal Court, the Vatican has promised and put forward purported reforms before. As grand juries and commissions of inquiry have learned, the same policies and practices of secrecy and obstruction have been found behind the veil of so-called reforms.<sup>11</sup> At no point has there been an effort to systemically address the culpability of higher-level church officials who have been responsible for holding in place the system of cover-up and enabling of offenses.

The Holy See has refused to impose meaningful sanctions against its officials across the world who have been, and continue to be, complicit in sexual violence, including those who have covered it up and failed to cooperate with civil authorities. The Holy See has continued to oppose meaningful reforms to secular laws in ways that serve to obstruct justice for survivors of abuse, such as restrictive statutes of limitations. The Church has actively resisted similar legislative efforts in states across the U.S., even hiring lobbying and public relations firms to assist their cause.<sup>12</sup> In 2013, for example, Church officials waged an extensive lobbying campaign in California against SB 131, a bill that would allow complainants extra time to file lawsuits for sexual abuse. The bill was ultimately vetoed by the governor of California.<sup>13</sup>

In one notable case arising in the state of Ohio in 2006, a bishop who broke with the Ohio Conference of Catholic Bishops by publicly supporting extending the statute of limitations

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<sup>10</sup> VATICAN RADIO, *Pope Francis establishes commission on protection of minors*, 5 Dec. 2013, available at <http://www.news.va/en/news/pope-francis-establishes-commission-on-protection>. See also, Elisabetta Povoledo, Alan Cowell, and Rick Gladstone, *Pope Setting Up Commission on the Sexual Abuse of Children by Priests*, THE NEW YORK TIMES, 5 Dec. 2011, available at <http://www.nytimes.com/2013/12/06/world/europe/pope-setting-up-commission-on-clerical-child-abuse.html?adxnnl=1&adxnnlx=1386619841-0fAvYZuOlw9xYJKwmYJFYQ>.

<sup>11</sup> Alternative Report, *supra* note 1 at 2-3, 16-18; Victims’ Communication, *supra* note 7.

<sup>12</sup> See, e.g., Laurie Goodstein and Erik Eckholm, *Church Battles Efforts to Ease Sex Abuse Suits*, THE NEW YORK TIMES, 14 June 2012, available at <http://www.nytimes.com/2012/06/14/us/sex-abuse-statutes-of-limitation-stir-%20battle.html?pagewanted=all&r=1&>; and Tara Murtha, *Catholic Church Fights to Kill PA’s Statute of Limitation Reform*, Philadelphia Weekly, 8 Feb. 2012, available at <http://www.philadelphiaweekly.com/news-and-opinion/cover-story/138884039.html?page=2&comments=1&showAll>.

<sup>13</sup> See Ashley Powers, *Catholic Church lobbies to avert sex abuse lawsuits*, LOS ANGELES TIMES, 15 July 2013, available at <http://articles.latimes.com/2013/jul/15/local/la-me-church-bill-20130715>; Al Donner, *Jerry Brown Vetoes Calif. Statute of Limitations Bill*, NATIONAL CATHOLIC REGISTER, 14 Oct. 2013, available at <http://www.ncregister.com/daily-news/jerry-brown-vetoes-calif.-statute-of-limitations-bill/>; Marci Hamilton, *Gov. Jerry Brown’s Recent Veto of Child Abuse Legislation and What It Tells Us About the Civil Rights Movement for Children*, VERDICT, 17 Oct. 2013, available at <http://verdict.justia.com/2013/10/17/gov-jerry-browns-recent-veto-child-abuse-legislation-tells-us-civil-rights-movement-children>.

and providing a one-year window for victims of past harm to seek justice in court, was notified by the Vatican that he had violated canon law and was forced to resign from his post as pastor and asked to resign from his office of auxiliary bishop.<sup>14</sup> The swiftness and manner in which the Vatican responded to the conduct of a bishop who supported more access to justice for victims stands in stark contrast to the manner in which it responds to the conduct of bishops and cardinals when there is evidence they have covered up cases of sexual violence.

Although time limits have been lifted or significantly eased in over 30 U.S. jurisdictions, the Catholic Church has successfully beaten back such proposals in many states.<sup>15</sup> Further, as discussed below with respect to developments in the Archdiocese of Minneapolis, Wisconsin, Church lawyers have once again, and so far successfully, asserted freedom of religion as a defense to shield against judicial inquiries into whether archdiocesan officials committed bankruptcy fraud by failing to report the transfer off Church books of more than \$50 million.<sup>16</sup>

## B. Australian Commissions, Inquiries

As mentioned in the Alternative Report, in the wake of a police investigation detailing the suicides of 40 people who had been sexually abused by clergy in Australia, an inquiry was established in the state of Victoria.<sup>17</sup> The police investigation suggested that Church officials had known about a shockingly high rate of suicides and premature deaths but had “chosen to remain silent.”<sup>18</sup> On 12 November 2013, the Victorian commission tabled its report in the State Parliament.<sup>19</sup> Upon tabling the report, a member of the inquiry told the Legislative Council:

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<sup>14</sup> See Zoe Ryan, *Retired bishop asked to leave Detroit parish for testimony*, NATIONAL CATHOLIC REPORTER, 4 Nov. 2011, available at <http://ncronline.org/news/accountability/retired-bishop-asked-leave-detroit-parish-testimony>. See also, Testimony of Bishop Gumbleton to Ohio House of Representatives, 11 Jan. 2006, available at [http://www.bishop-accountability.org/news2006/01\\_02/2006\\_01\\_11\\_SNAP\\_TestimonyOf.htm](http://www.bishop-accountability.org/news2006/01_02/2006_01_11_SNAP_TestimonyOf.htm).

<sup>15</sup> Laurie Goodstein & Erik Eckholm, *Church Battles Efforts to Ease Sex Abuse Suits*, NY TIMES, 14 Jun. 2012, available at [http://www.nytimes.com/2012/06/14/us/sex-abuse-statutes-of-limitation-stir-battle.html?\\_r=0](http://www.nytimes.com/2012/06/14/us/sex-abuse-statutes-of-limitation-stir-battle.html?_r=0); Margaret Hartmann, *Catholic Church Lobbies Against Allowing More Sex Abuse Suits*, NY MAGAZINE (14 Jun. 2012), <http://nymag.com/daily/intelligencer/2012/06/church-lobbies-against-allowing-more-abuse-suits.html>.

<sup>16</sup> See, e.g., James Robertson, *Archbishop Used Immunity in Civil Suit*, Sidney Morning Herald, 9 July 2012, available at <http://www.smh.com.au/world/archbishop-used-immunity-in-civil-suit-20120708-21pkh.html>. See also, *John V. Doe v. Holy See*, No. 06-35563, Decision of the United States Court of Appeals for the Ninth Circuit on Appeal from the United States District Court for the District of Oregon, 3 March 2009, cert. denied, *Holy See v. John V. Doe*, 09-1 (U.S. June 28, 2010) (denying *certiorari* and letting stand a case that denied the Holy See immunity under the Foreign Sovereign Immunities Act) available at <http://cdn.ca9.uscourts.gov/datastore/opinions/2009/03/03/0635563.pdf>; See also, *Doe v. Roman Catholic Archdiocese of St. Louis*, Decision of the Missouri Court of Appeals, Eastern District, No. ED94720, 5 July 2011, cert. denied, *John Doe AP v. Roman Catholic Archdiocese of St. Louis*, 11-840 (U.S. Mar. 19, 2012). Available at <http://www.courts.mo.gov/file.jsp?id=4762>.

<sup>17</sup> Alternative Report, *supra* note 1 at 6.

<sup>18</sup> *Id.*

<sup>19</sup> See, Family and Community Development Committee, Parliament of Victoria, *Betrayal of Trust: Inquiry into the Handling of Child Abuse and Religious and Other Non-Government Organisations*, November 2013, (hereinafter “Betrayal of Trust”), available at [http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child\\_Abuse\\_Inquiry/Report/I](http://www.parliament.vic.gov.au/images/stories/committees/fcdc/inquiries/57th/Child_Abuse_Inquiry/Report/I)

The Catholic church minimized and trivialized the problem; contributed to abuse not being disclosed, or not being responded to... ensured that the Victorian community remained uninformed of the abuse; and ensured that perpetrators were not held accountable with the tragic result being that children continued to be abused. We found that today's church leaders view the current question of abuse of children as a 'short term embarrassment', which should be handled as quickly as possible to cause the least damage to the church's standing. They do not see the problems as raising questions about the church's own culture.<sup>20</sup>

The inquiry further concluded that those at the "highest levels of... [the Catholic] Church would know a great deal about what has been happening, not only in Australia but worldwide."<sup>21</sup> The Victorian inquiry has recommended that the criminal law be amended to criminalize concealment of child abuse even where it is of no benefit to the concealer, and removal of the civil statute of limitations.

Similarly, the Governor-General of the Commonwealth of Australia appointed a six-member Royal Commission to investigate institutional responses to child sex abuse in January 2013. The Commission is to prepare an interim report by 30 June 2014 with final reporting scheduled for the end of 2015.<sup>22</sup> However, on 9 December 2013, the Commission heard testimony that revealed that \$43 million had been paid to victims through its "Towards Healing" program but that the money often came with requirements of secrecy, reportedly even requiring victims to keep the settlements secret from their own family members.<sup>23</sup> In November 2012, another inquiry was established in the state of New South Wales to investigate police handling of cases of rape and sexual violence by Catholic clergy after a senior detective brought forward claims of a cover-up. The Commission's report is due on or before 28 February 2014.<sup>24</sup>

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nquiry into Handling of Abuse Volume 1 FINAL web.pdf; See also, David Marr, *Child abuse report reveals betrayal of trust 'beyond comprehension': 'Children were betrayed by trusted figures in organisations of high standing and suffered unimaginable harm,' says report*, The Guardian, 12 Nov. 2013, available at <http://www.theguardian.com/world/2013/nov/13/child-abuse-report-reveals-a-betrayal-of-trust-beyond-comprehension>.

<sup>20</sup> Marr, *supra*.

<sup>21</sup> Betrayal of Trust, *supra* note 19 at 10.

<sup>22</sup> See Website of the Royal Commission into Institutional Responses to Child Sexual Abuse, <http://www.childabuseroyalcommission.gov.au/>.

<sup>23</sup> Janet Fife-Yeomans, *Hush fund: Catholic Church paid \$43 million to keep abuse secret*, THE DAILY TELEGRAPH, 10 Dec. 2013, available at <http://www.dailytelegraph.com.au/news/nsw/hush-fund-catholic-church-paid-43-million-to-keep-abuse-secret/story-fni0cx12-1226779292848>. See also, Royal Commission into Institutional Responses to Child Sexual Abuse, Transcript from Public Hearing – Case Study 4, Dec. 2013, available at <http://www.childabuseroyalcommission.gov.au/public-hearings/transcripts/>.

<sup>24</sup> See Special Commission of Inquiry into matters relating to the Police investigation of certain child sexual abuse allegations in the Catholic Diocese of Maitland-Newcastle, Terms of Reference, November 2012, available at [http://www.lawlink.nsw.gov.au/lawlink/Special\\_Projects/ll\\_splprojects.nsf/pages/sisa\\_index](http://www.lawlink.nsw.gov.au/lawlink/Special_Projects/ll_splprojects.nsf/pages/sisa_index). See also, ABC NEWS, *NSW announces commission into police handling of abuse claims*, 9 Nov. 2012, available at <http://www.abc.net.au/news/2012-11-09/nsw-announces-commission-into-police-handling-of-abuse-claims/4363454>.

### C. Cases in the United States

1. Rev. Xiu Hui “Joseph” Jiang, Cathedral Basilica of St. Louis, Missouri: In July 2013, a lawsuit was filed alleging child sexual abuse by Rev. Jiang and an attempted cover-up by Archbishop Robert Carlson.<sup>25</sup> The suit alleges that, in 2012, Jiang engaged in improper contact with a teenage girl whose family attended the cathedral where he was associate pastor, and that he then left the girl’s family a \$20,000 check as “hush money.”<sup>26</sup> The suit further charges that Archbishop Carlson knew that Jiang was dangerous to children before the complainant was abused, and that the Archbishop was supervising Jiang closely when the alleged abuse occurred. The lawsuit alleges that the Archbishop asked the complainant’s family to hand over the \$20,000 check in order to dispose of evidence, but they had already turned it over to the police.<sup>27</sup> According to the suit, the complainant’s parents asked Archbishop Carlson if Jiang would be removed from priesthood, and that Carlson responded that he would remove Jiang if he had sex with a child, but not for any other activities.<sup>28</sup> In court, the archdiocese argued that the civil case should be dismissed, partly on grounds that the alleged abuse occurred away from church property. Archbishop Carlson successfully used the same defense in 2011 in a case involving Fr. Thomas Cooper, whom archdiocesan staffers admit sexually abused children, but whom they nevertheless continued to assign to parishes where he continually abused children.<sup>29</sup> Jiang is the fifth priest at the Cathedral Basilica of St. Louis who has been sued for alleged child sexual abuse; the only bishop convicted of failing to report sexual abuse in the United States also worked at the Cathedral.<sup>30</sup>
2. Fr. Clarence Vavra, Twin Cities Crisis, Minnesota: In November 2013, a whistleblower who had long been aware of cases and allegations of sexual abuse involving a priest who had worked in different parishes in Minnesota finally went public with the information.<sup>31</sup> The ensuing investigation placed the entire St. Paul/Minneapolis (i.e. the “Twin Cities”) archdiocese under scrutiny, which has resulted in a long string of revelations

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<sup>25</sup> Tim Townsend, *Lawsuit says St. Louis archbishop knew priest was threat to kids*, ST. LOUIS TODAY, 17 July 2013, available at [http://www.stltoday.com/lifestyles/faith-and-values/lawsuit-says-st-louis-archbishop-knew-priest-was-threat-to/article\\_3997d8d9-8081-5692-b360-700d728e121f.html](http://www.stltoday.com/lifestyles/faith-and-values/lawsuit-says-st-louis-archbishop-knew-priest-was-threat-to/article_3997d8d9-8081-5692-b360-700d728e121f.html).

<sup>26</sup> *Id.*

<sup>27</sup> Kevin Killeen, *Suit Accuses Archbishop Carlson of ‘Attempted Tampering’*, CBS ST. LOUIS, 17 Jul. 2013, available at <http://stlouis.cbslocal.com/2013/07/17/suit-accuses-archbishop-carlson-of-attempted-tampering/>.

<sup>28</sup> Townsend, *supra* note 25.

<sup>29</sup> *MO - Victims appeals “bizarre” ruling*, SNAP NETWORK (27 Nov. 2013), [http://www.snapnetwork.org/mo\\_victim\\_appeals\\_bizarre\\_ruling](http://www.snapnetwork.org/mo_victim_appeals_bizarre_ruling).

<sup>30</sup> See, John Eligon and Laurie Goodstein, *Kansas City Bishop Convicted of Shielding Pedophile Priest*, THE NEW YORK TIMES, 6 Sept. 2012, available at <http://www.nytimes.com/2012/09/07/us/kansas-city-bishop-convicted-of-shielding-pedophile-priest.html>. See also, Joshua J. McElwee, *Lawsuit Alleges Finn, KC Diocese, Placed Child in Harm’s Way*, NATIONAL CATHOLIC REPORTER, 16 Nov. 2011, available at [http://www.bishop-accountability.org/news2011/11\\_12/2011\\_11\\_16\\_McElwee\\_LawsuitAlleges.htm](http://www.bishop-accountability.org/news2011/11_12/2011_11_16_McElwee_LawsuitAlleges.htm); Joshua J. McElwee, *Judge Orders Kansas City Bishop to Stand Trial in Abuse Case*, NATIONAL CATHOLIC REPORTER, 5 Apr. 2012, available at <http://ncronline.org/news/accountability/judge-orders-kansas-city-bishop-stand-trial-abuse-case>; Glenn E. Rice, Judy L. Thomas and Mark Morris, *Bishop Finn Avoids Indictment by Entering Diversion Program*, THE KANSAS CITY STAR, 14 Nov. 2011, available at <http://www.kansascity.com/2011/11/15/3267619/bishop-finn-avoids-indictment.htm>.

<sup>31</sup> Madeleine Baran et. al., *Abusive priest hid in plain sight for years, retired quietly to New Prague*, MPR NEWS, 11 Nov. 2013, available at <http://minnesota.publicradio.org/collections/catholic-church/2013/11/11/abusive-priest-hid-in-plain-sight-for-years-retired-quietly-to-new-prague/>.

about clergy sex crimes and cover-ups, described by survivors groups as the “Twin Cities Crisis.”<sup>32</sup> The whistleblower, a former chancellor for canonical affairs at the archdiocese, revealed information concerning Fr. Clarence Vavra. In a psychological evaluation in May 1995, Fr. Vavra admitted sexually abusing several young Native American boys on Rosebud Indian Reservation in South Dakota. The evaluation report, which was stored in the vicar general’s filing cabinet at the archdiocese’s chancery, was kept secret by the Church for nearly two decades, during which time Vavra remained in the ministry. Despite several high-ranking church officials knowing about Vavra’s history, they never reported him to the authorities or warned the public that he was a danger to children. Vavra was simply moved to new parishes – he was transferred 11 times in 20 years – and given payments above his pension in exchange for agreeing to retire early. Ultimately, Vavra worked in 16 parishes in the archdiocese of St. Paul and Minneapolis before retiring in 2003.

On 5 December 2013, pursuant to court order, Archbishop Nienstedt released a list of names of 30 priests credibly accused of sexually abusing children, seven of which had been held secret for decades.<sup>33</sup> The list spans allegations between 1950 and 2012 concerning priests who worked in 92 parishes in the archdiocese and confirms that some priests on the list were transferred to at least a dozen different parishes, without warnings to families or congregations of alleged or confirmed sexual misconduct.<sup>34</sup>

3. Saint Luke’s Institute, Maryland: Saint Luke’s Institute, a Catholic treatment center for abusive priests in Maryland, was named as a defendant in a civil clergy sexual abuse and cover-up lawsuit in November 2013.<sup>35</sup> The Institute has been a destination for the treatment of hundreds of Catholic monks and priests accused of sexual abuse of children, who were thereafter given “fit to serve” labels and released back into the ministry. The plaintiff in the lawsuit alleges that he was victimized by Fr. Hoefgen, a Minnesota priest who was treated at the Institute and who subsequently reassumed a church position with no warning to the parishioners. Hoefgen continued to be a member of the St. John’s order until 2011, when he left voluntarily. According to the suit, Hoefgen admitted to police nearly 30 years ago that he sexually abused a boy while assigned to St. Boniface of Cold Spring in 1983. The admission did not result in criminal charges, with local prosecutors determining that the “interests of justice” did not require prosecution. In 1984, Hoefgen was sent for treatment at Saint Luke’s Institute, following which he was assigned to work at St. Boniface in Hastings, where he allegedly sexually abused the plaintiff. The suit charges that the Institute, St. John’s Abbey and the archdiocese concealed Hoefgen’s past abuse and failed to warn parents in Hastings, even though they were aware of the dangers to children. The former priest who was assigned to replace Hoefgen in Hastings has remarked that the case is a classic illustration of how

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<sup>32</sup> Barbara Dorris, *Twin Cities crisis gets worse & weirder*, SNAP, 18 Nov. 2013, [http://www.snapnetwork.org/twin\\_cities\\_crisis\\_gets\\_worse\\_weirder](http://www.snapnetwork.org/twin_cities_crisis_gets_worse_weirder).

<sup>33</sup> Madeleine Baran, *Archdiocese’s list shows it kept secret seven priests credibly accused of sexually abusing children*, MINNESOTA PUBLIC RADIO, 5 Dec. 2013, available at <http://minnesota.publicradio.org/collections/catholic-church/2013/12/05/archdiocese-list-shows-it-kept-secret-7-priests-credibly-accused-of-sexually-abusing-children/>. See also, Jean Hopfensperger, Tony Kennedy and Richard Meryhew, *St. Paul and Minneapolis Archdiocese name priests accused of sexual abusing minors*, STAR TRIBUNE, 6 Dec. 2013, available at <http://www.startribune.com/local/234605261.html?page=all&prepage=1&c=y#continue>.

<sup>34</sup> Hopfensperger, *et al*, *supra*.

<sup>35</sup> Kennedy & Mayhew, *Abuse suit filed against St. Luke, id.*; Complaint, *Doe 27 v. The Order of St. Benedict a.k.a. St. John’s Abbey*, 19HA-CV-13-4599 D. Ct. (Minn.), available at [http://www.andersonadvocates.com/documents/Father\\_Francis\\_Hoefgen/Complaint%20filed%202011-19-13.pdf](http://www.andersonadvocates.com/documents/Father_Francis_Hoefgen/Complaint%20filed%202011-19-13.pdf).

church officials work to cover up clergy sex abuse, adding that the Church's apparent goal was to get ahead of potential criminal cases and stave off embarrassing charges.<sup>36</sup>

4. The “Cemetery Trust” and Redress for Victims: In July 2013, in the context of lengthy bankruptcy proceedings involving hundreds of victims of sexual violence by priests as potential creditors, the Archdiocese of Milwaukee, Wisconsin, released thousands of pages of documents under pressure from a federal judge which had previously been sealed in the proceedings and which the archdiocese had long resisted making public.<sup>37</sup> In addition to documents showing the frequent transfer of offending priests without warning to parishioners, and Vatican obstruction, delay and at times refusal to remove or take other action against offending priests, the documents also revealed that then-Archbishop Timothy Dolan (now Cardinal in New York) sought authorization from the Vatican to move \$57 million off the archdiocese's books and into a “cemetery trust” to protect the funds from “any legal claim or liability.”<sup>38</sup> The transfer was not reported to the bankruptcy court, leading to accusations of federal bankruptcy fraud.<sup>39</sup>

After the bankruptcy judge ruled that the archdiocese could not use the First Amendment of the U.S. Constitution's protection of the free exercise of religion to shield the court's scrutiny of the possibly fraudulent transfer of the funds, a federal district court judge reversed that ruling. On 29 July, Judge Rudolph Randa agreed with the Church's lawyers when he ruled that the right of the archbishop to free exercise of religion did in fact shield against any scrutiny of the transfer of funds and that canon law should be respected and not inquired into by a civil court.<sup>40</sup>

In November, survivors of sexual violence along with an alliance of clergy sent a formal request to the Vatican to rescind the transfer of the \$57 million so that it can be used for the benefit of victims.<sup>41</sup> So far, there has been no response.

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<sup>36</sup> Kennedy & Mayhew, *supra* note 13.

<sup>37</sup> Annysa Johnson and Ellen Gabler, *Then-Archbishop Timothy Dolan tried to protect money from claims, records show*, JOURNAL SENTINEL, 2 July 2013, available at <http://www.jsonline.com/news/religion/Cardinal-Dolan-sought-to-protect-money-from-claims-struggled-with-Vatican-to-defrock-abusers-b9943953z1-213832541.html>.

<sup>38</sup> *Id.*

<sup>39</sup> SNAP Wisconsin, *Dolan 2007 letter to Vatican is “smoking gun” proving he committed federal bankruptcy fraud, victims say*, July 2013, available at <http://03409bc.netsolhost.com/snapwisconsin/2013/07/01/dolan-2007-letter-to-vatican-is-smoking-gun-proving-he-committed-federal-bankruptcy-fraud-victims-say/>.

<sup>40</sup> SNAP Wisconsin, *Milwaukee Federal Appeals Judge, in stunning and dangerous reversal, rules that Catholic Canon law trumps US Federal Law*, July 2013, <http://03409bc.netsolhost.com/snapwisconsin/2013/07/31/milwaukee-federal-appeals-judge-in-stunning-and-dangerous-reversal-rules-that-catholic-canon-law-trumps-us-federal-law/>; See also, Annysa Johnson and Gina Barton, *In win for Milwaukee Archdiocese, judge shields funds from creditors*, THE JOURNAL SENTINEL, 30 July 2013, available at <http://www.jsonline.com/news/religion/in-victory-for-milwaukee-archdiocese-judge-shields-cemetery-funds-from-creditors-b9965070z1-217602891.html>. See also, *In re Archdiocese of Milwaukee*, United States District Court, Eastern District of Wisconsin, Bankruptcy Case No. 11-20059, Decision and Order of 29 July 2013, available at [http://03409bc.netsolhost.com/snapwisconsin/wp-content/uploads/2013/07/Randa\\_Order\\_7-29-13.pdf](http://03409bc.netsolhost.com/snapwisconsin/wp-content/uploads/2013/07/Randa_Order_7-29-13.pdf).

<sup>41</sup> Annysa Johnson, *Abuse victims ask Vatican to reconsider archdiocese cemetery funds*, THE JOURNAL SENTINEL, 26 Nov. 2013, available at <http://www.jsonline.com/news/religion/milwaukee-priest-abuse-victims-ask-vatican-to-rescind-cemetery-letter-b99150936z1-233491791.html>.

#### **IV. Conclusion**

As set out above and in the Alternative Report, as well as reports by other survivors groups and advocates, the Holy See's policies and practices continue to pose risk of and do serious harm to children around the world. While the Holy See would prefer to cast its responsibility for meeting its obligations under the Convention as beginning and ending within the confines of Vatican City State, the reality is that it has facilitated and enabled widespread and systemic abuse – and is still doing so – in Catholic institutions and parishes around the world. It has done so with a wilful and callous disregard for the grave and in many cases lifelong harm of such violence. Only after public attention and pressure has been brought to bear has the Vatican made any gesture to the existence of the problem. Its responses, even the most recent responses, fail to even begin to address the heart of the problem.