

Published on *National Catholic Reporter* (<https://www.ncronline.org>)

June 18, 2013 at 1:38pm

International Criminal Court declines to pursue 'crimes against humanity' case against Vatican

by Brian Roewe

A prosecutor of an international court has opted not to pursue a case against multiple Vatican officials for crimes against humanity related to the widespread clergy sex abuse of minors within the Catholic church.

The case was brought to the International Criminal Court at The Hague in the Netherlands in September 2011 by the Center for Constitutional Rights and the abuse victims advocacy group Survivors Network of those Abused by Priests, who made public the decision Thursday.

In a 71-page complaint accompanied by more than 22,000 pages of supporting materials, the two organizations sought charges brought against four Vatican prelates for "enabling and concealing sexual violence worldwide": Secretary of State Cardinal Tarcisio Bertone; former Secretary of State Cardinal Angelo Sodano; Cardinal William Levada, former prefect for the Congregation for the Doctrine of the Faith; and Pope Emeritus Benedict XVI.

According to the letter, dated May 31, the prosecutor determined that the case fell outside the court's jurisdiction because it did not satisfy several preconditions necessary for examination. Those included issues with "temporal jurisdiction" and "subject-matter jurisdiction."

The ICC's governing rules, known as the Rome Statute, limits the court to exercising jurisdiction over crimes committed after July 2002, or since the court's establishment. Additionally, its scope is limited to "the most serious crimes of concern to the international community as a whole," specifically genocide, war crimes, crimes of aggression and crimes against humanity.

"From this analysis, I advise you that the matters described in your communication do not appear to fall within the jurisdiction of the Court," the letter read, indicating the decision could be reconsidered in light

of new evidence.

Vatican spokesman Jesuit Fr. Federico Lombardi said he "never doubted this would be the response [of the ICC], given the total groundlessness of the accusation," according to Religion News Service.

Barbara Blaine, SNAP president and founder, said though she had hoped the case would go farther, she was not surprised at the outcome. Despite the case's denial, she said she was happy the prosecutor didn't indicate the Vatican officials named were "somehow immune from prosecution."

"When we started, we didn't even know if the information that we were able to compile even met the criteria for being a crime against humanity," Blaine told *NCR*.

"All we were trying to do was to protect other kids and get the church officials to stop the cover-up and stop putting more and more kids at risk. So in that sense, we think we've achieved something," she said.

Pamela Spees, a senior staff attorney with the Center for Constitutional Rights who brought the case to the ICC, said the court identified several jurisdictional hurdles and "left the door open to reconsider" its decision.

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"We obviously knew going in that the ICC is supposed to be a court of last resort. But we said it's the only institution that is really set up to deal with the global nature of these crimes, and no one national system can realistically have the capacity to deal with the actual breadth and scale of this system," she told *NCR* Friday.

"We'll continue until there's some form of justice and accountability and the system changes," Spees said.

The International Criminal Court was established in June 1998, accelerated by early 1990s conflicts in Bosnia-Herzegovina, Croatia and Rwanda after decades of efforts and talks. Initially, 120 countries voted in favor of the Rome Statute, while seven nations (including the United States) voted against it.

Requiring 60 nations to ratify the treaty, the final state did so in April 2002, with the court entering into force that July. As of February, 122 nations are parties to the court; the U.S. and the Holy See have yet to sign on to the treaty.

As for going forward, Blaine said SNAP will continue to compile additional evidence from across the globe in hopes the court will eventually take up the case. Spees indicated they could turn their attention to national judicial systems for a ruling before revisiting the ICC.

Possible jurisdictional sites include nations that are parties to the court and where evidence of clergy sex abuse and cover-up attempts are rampant, Spees said. They could also seek judicial intervention in court-member countries whose citizens have committed crimes or been involved in cover-ups in territories outside the court's jurisdiction.

"It's not only about the direct offender; it's about those in the hierarchy who've in some way touched those cases that played a role in the system of cover-up and whether [ICC] could exercise jurisdiction over those individuals," she said.

"The biggest key in all of this," Spees said, "is showing that these things are still happening on the same

scale and in the same way, and when we can do that, there's going to have to be action."

Outside observers have pointed toward another challenge: proving that the abuse and cover-up fit the court's definition of a crime against humanity. The International Criminal Court describes a crime against humanity as any number of acts -- murder, enslavement, deportation, torture, rape and sexual violence, among others -- "when committed as part of a widespread of systematic attack directed against any civilian population, with knowledge of the attack."

Megan Fairlie, an assistant law professor at Florida International University who has written about international human rights law for a decade, told *NCR* this case's difficulty comes in establishing that the abuse and cover-up followed a defined church policy to do so.

"Rape would qualify as a crime that could give rise to a charge for crimes against humanity. And certainly there's evidence or information within SNAP's filing that suggest that there was the widespread commission of that crime, but nothing to suggest that those crimes were part of an attack on the civilian population, that they were being carried out pursuant to some church policy," she said.

Spees, who participated in the negotiations of the Rome Statute along with her co-counsel, recalled the process of defining the parameters of what constituted crimes against humanity as controversial. Even under the narrow scope that emerged, she said she believes the church's actions -- or inactions -- still meet the standard.

"There's a recognition in the statute that sometimes ... the policy to have these things happen can be inferred from an omission. So it's doing things to make sure these things happen, but it's also omitting to do things from which you can infer a policy that these things happen," she said.

Acknowledging there is a public opinion hurdle in addition to proving abuse continues on a large scale, Spees dismissed allegations that the case was less legal pursuit and more publicity stunt.

"We didn't just file a request to the prosecutor asking them to prosecute the pope based on nothing. We went in with a very well-developed legal framework and analysis and thousands and thousands of pages of documentation to back that up," she said.

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