



NIKOLAS T. NIKAS  
President, General Counsel  
[ntnikas@bdfund.org](mailto:ntnikas@bdfund.org)

DORINDA C. BORDLEE  
Vice President, Senior Counsel  
[dbordlee@bdfund.org](mailto:dbordlee@bdfund.org)

BIOETHICS DEFENSE FUND  
6811 E. Voltaire Avenue  
Scottsdale, Arizona 85254  
(480) 483-3597  
[www.BDFund.org](http://www.BDFund.org)

9 October 2012

Sent by email [otp.informationdesk@icc-cpi.int](mailto:otp.informationdesk@icc-cpi.int)

OTP-CR-178/11

International Criminal Court

Office of the Prosecutor

Communications

Post Office Box 19519

2500 CM The Hague

The Netherlands.

Dear Sirs,

**ICC Reference OTP-CR-178/11: Crimes against humanity and genocide by the Government of New Zealand towards people with Down syndrome**

Our legal organization, Bioethics Defense Fund, writes on behalf of submitter Mike Sullivan of Saving Downs regarding the above referenced matter.

In accord with the norms of due process recognized by international law, along with the Rules of Procedure and Evidence as recognized as applicable in Article 21 of the Rome Statute, we write to respectfully request the full reasons, in writing, undergirding your conclusion expressed in your letter of 22 August 2012 that “the allegations described in your communication do not appear to fall within the Court’s subject-matter jurisdiction.”

We refer to the submission dated 29 June 2011 and the supplementary submissions dated 25 October 2011 and 22 February 2012, regarding the complaint that the New Zealand Government’s “Antenatal Screening for Down Syndrome and other Conditions - Quality Improvements,” (the

Programme) introduced in February 2010 is in violation of:

- Articles 6 and 7 of the Rome Statute of the International Criminal Court, and
- Article 2(d) of the UN Convention on the Prevention, and Punishment of the Crime of Genocide: Imposing measures intended to prevent births within the group.

We note that without providing supporting reasoning or analysis, your letter of 22 August 2012 concluded, “the allegations described in your communication do not appear to fall within the Court’s subject-matter jurisdiction.” The letter then restated the conclusion: “In other words, the conduct described does not appear to meet the definition of genocide, crimes against humanity or war crimes as defined in Articles 6 to 8 of the Rome Statute and as further elaborated in the Elements of Crimes.”

In the ICC letters dated below, we were understandably advised that “meaningful analysis of these factors can take some time.” However, we were also given assurances that the Prosecutor would provide “reasons” for the decision reached:

“As soon as a decision is reached, we will inform you, in writing, and provide you with **reasons** for this decision.” (ICC Letter, 4 July 2011)(emphasis added)

“As soon as a decision is taken on whether there is a reasonable basis to proceed with an investigation, we will advise you promptly and we will provide **reasons** for the decision.” (ICC Letter, 26 June 2012)(emphasis added).

We are pleased that, in accord with your concluding letter of 22 August 2012, “the decision not to proceed may be reconsidered in the light of new facts or information.”

In order to submit relevant “facts or information” that may justify the Prosecutor’s reconsideration pursuant to Article 53(4), it is crucial that the ICC provide the full reasoning and analysis undergirding its conclusion that the allegations do not meet the Rome Statute definitions. Such reasoning would be necessary to evaluate relevant submissions of new facts or evidence, whether to this Court or to other national or international authorities.

As you know, our submissions provided detailed analysis supporting the conclusion that the Programme does indeed meet definitions of “genocide” and/or “crimes against humanity” under Article 6 and 7 of the Rome Statute, as well as outlining the gravity of the crimes given the Programme’s goal of exterminating [of the identifiable group of prenatal human beings with Down Syndrome] by “intentional infliction of conditions of life. . .calculated to bring about the destruction of part of a population” (Rome Statute, Art. 7(2)(b)).

In sum, without the full reasoning explaining why you disagree with our analysis that the allegations do indeed meet the definition of genocide and/or crimes against humanity, we will remain unable to determine what new “facts or information” would warrant the ICC’s reconsideration of the complaint, especially in the event that the facts or information changes as to the Programme’s policy or application.

Respectfully submitted,

/s/ Nikolas T. Nikas

/s/ Dorinda C. Bordlee

Nikolas T. Nikas

Dorinda C. Bordlee

cc: Mike Sullivan  
4 Johnson Street  
Onerahi  
Whangarei 0110  
New Zealand