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4 October 2011

Sent by email 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

Thank you for your letter dated 4 July 2011, acknowledging receipt of our communication and confirmation that you will be considering the issues raised.

After further legal consultation and research, we wish to make a supplementary submission. This will be with special regard to Section 2: Genocide, of our original submission (our letter dated 29 June 2011). We shall be providing new evidence from relevant historical documents and precedents in support of our case and clarification of the following points:

- Inclusion of this group as a protected group by the drafters of the *Convention on the Prevention and Punishment of the Crime of Genocide* (the *Genocide Convention*); [We shall furnish evidence that adults and children with Down syndrome were understood at the time to be included for protection provided in the Genocide Convention. This group had been recognized at the time to be one of the groups that had been subjected by the Nazi authorities to what the drafters called ‘biological genocide’];
- That this biological genocide was enacted primarily on ‘racial’ grounds; [The group identified as having Down syndrome was one of the original groups targeted for genocidal acts by the authorities in Nazi Germany according to what was characterized at the time as ‘racial science’ and ‘racial hygiene’];
- That the term ‘imposing’ in “*Imposing measures intended to prevent births within the group*”¹ did not exclude those measures intended to prevent births, which were exercised with less than absolute coercion in Nazi Germany and in Poland and the Eastern Occupied Territories. The ‘intent’ was always the critical factor, while coercion was not always necessary to enact the intent;

¹ Article II (d) *Genocide Convention*.

- That "encouraging" abortion can be an effective measure intended to prevent births within the group; the measures need not be restricted to "compelling" abortions²;and
- That whether individuals ("official capacity" is "irrelevant"³) are "*imposing measures intended to prevent births within the group*" or are merely "facilitating" measures intended to prevent births within the group, both acts of "genocide" and acts of "complicity in genocide" are punishable (and to be prevented).⁴

We expect to provide you with our detailed supplementary submission on the above issues within one month.

Yours Sincerely,

A handwritten signature in blue ink, appearing to read "MSullivan".

Mike Sullivan
Group spokesman for submitters

² Nuremberg Trials Record.

³ Rome Statute Article 27 (1); also Genocide Convention Article IV.

⁴ Genocide Convention Article III (a) & (e) and Rome Statute Article 25 (c).