



THE CENTER FOR JUSTICE & ACCOUNTABILITY

Bringing Human Rights Abusers To Justice.

United States Senate Committee on the Judiciary

“From Nuremberg to Ukraine: Accountability for War Crimes and Crimes Against Humanity” September 28, 2022

Statement of the Center for Justice and Accountability

The Center for Justice and Accountability (“CJA”) is a United States-based nonprofit international human rights organization. We work globally with communities impacted by genocide, crimes against humanity, and other atrocities to seek truth, justice, and redress through innovative litigation and transitional justice strategies. For almost a quarter century, we have brought cases involving war crimes, crimes against humanity, and other serious human rights violations in United States courts on behalf of victims and their families.

We are living in a historical moment where we are witnessing war crimes and crimes against humanity on a massive scale – from the slaughter of civilians by Russian forces in Bucha and throughout Ukraine, to the widespread and systematic attacks against ethnic and religious minorities in Burma by its military, to the horrifying campaign of sexual violence being carried out by Ethiopian forces in Tigray, now entering its second year. More than ever, the United States needs a robust legislative framework to ensure that our institutions are up to the task of combatting impunity for human rights abusers and war criminals, and creating avenues for remedy and redress for victims of these abuses.

Strengthening criminal sanctions for human rights abusers and war criminals

The United States cannot be a refuge for human rights abusers and war criminals. When such individuals are present in the United States, our government must have the means of investigating and prosecuting them for their crimes, even if this conduct took place overseas. As this Committee heard from witnesses representing the Department of Justice and the Department of Homeland Security, there are serious gaps in the federal criminal law which create significant challenges for the investigation and prosecution of war crimes and serious human rights abuses such as crimes against humanity.

The Committee’s witnesses highlighted the challenges that U.S. law enforcement officials would face in prosecuting war criminals from the current conflict in Ukraine. Likewise, there would be similar challenges for prosecutors looking to charge individuals responsible for war crimes and crimes against humanity committed in the ongoing conflict in Syria, even if they were found in the United States. For the most part, neither the perpetrators nor their victims will be U.S. nationals, and the atrocities they oversaw will have taken place entirely in Syria. Current loopholes in the federal criminal law would mean that serious violations such as the targeting of medical facilities – a tactic that Russian forces honed in Syria and are now deploying in Ukraine – and the use of chemical weapons would go unpunished.

The Justice for Victims of War Crimes Act seeks to address at least some of the gaps in the War Crimes Act of 1996 by ensuring that suspected war criminals present in the United States are subject to the jurisdiction of U.S. law enforcement. As Eli Rosenbaum testified before this Committee, the “vast majority” of war

criminals currently present in the United States are jurisdictionally beyond the reach of the Department of Justice. Amending the War Crimes Act to provide for “present in” jurisdiction would not only close this obvious loophole, but also harmonizes the reach of the War Crimes Act to be consistent with the existing jurisdictional scope of criminal prohibitions against torture, genocide, and the use of child soldiers. Bringing the jurisdictional reach of the War Crimes Act in line with other criminal statutes related to international crimes will not be opening the door to unfettered universal jurisdiction – it simply ensures that federal law enforcement has the legislative framework necessary to investigate and prosecute war criminals and human rights violators found in the United States.

The Justice for Victims of War Crimes Act also seeks to eliminate the statute of limitations for the prosecution of war crimes. Sometimes, it takes years to discover that human rights abusers have found their way into the United States. This was the case with Roberto Guillermo Bravo, a former Argentine naval officer that a Florida jury recently found liable for torture and extrajudicial killings carried out during the 1972 Trelew Massacre.¹ Shortly after the Massacre – in which nineteen political prisoners were gunned down in cold blood by members of the Argentine military – Bravo was moved to the United States as part of the military’s coverup of the event. It was not until 2008 that it was discovered that he was living in this country. Sometimes war criminals resettle in the United States years after their crimes, perhaps with the hope and expectation that memories will have faded. But the passage of time does not eliminate the need for accountability. For many victims and survivors of atrocity, persistent impunity only serves to exacerbate harm. At CJA, we know that victims and their families will fight for decades – perhaps their entire lives – to see those responsible for atrocity crimes held to account.

War crimes are a category of conduct so reprehensible that there should be no expiry for criminal sanction. The United States government must have the ability to prosecute war criminals whenever they are found in the United States. Indeed, it has the international obligation to do so. “No safe haven” for war criminals cannot simply rely on enforcement of immigration laws, though the Department of Justice and the Department of Homeland Security have seen success there. Since the horrors of World War II, the community of nations has repeatedly come together through treaties and collective action to reinforce the idea that war crimes and other serious human rights abuses are considered “universally unlawful”. Our obligation is to prosecute the torturers, war criminals, and genocidaires of today as we did the pirates of old – as enemies of all humankind. In order to deter further commission of these crimes, they must be prosecuted for what they are, not as administrative offences or violations of immigration law, but as crimes against all civilized nations.

Criminalizing crimes against humanity

Currently, the federal criminal law does not prohibit crimes against humanity. As the Committee heard from Mr. Rosenbaum, the United States is virtually alone among NATO states in failing to criminalize crimes against humanity – widespread or systematic attacks against a civilian population. This accountability gap is even more startling given that that federal courts in the United States have repeatedly found crimes against humanity to be enforceable customary international law in civil cases, such as CJA’s case involving the Lutheran Church Massacre. There, a federal court in Pennsylvania found Col. Moses Thomas liable for crimes against humanity for his role in leading soldiers from the Liberian military in a brutal attack in which over 600 civilians were shot or hacked to death in a Red Cross shelter.² CJA brought civil action against

¹ <https://cja.org/what-we-do/litigation/camps-v-bravo/>

² *Jane W. v. Thomas*, 560 F. Supp. 3d 855 (E.D. Pa. 2021).

Col. Thomas because there was no way to hold him criminally accountable for his horrific conduct under existing federal law.

There are many other such examples. During the Committee's hearing, Mr. Rosenbaum explained that absent a criminal statute prohibiting crimes against humanity, the U.S. government would have limited ability to prosecute the Chinese officials responsible for the persecution of the Uyghers, even if they are found in the United States. Members of ISIL responsible for mass slaughter of civilians and the deliberate targeting of religious and ethnic minorities such as Christians and the Yazidis cannot be held criminally accountable for crimes against humanity, though their savagery are textbook definitions of crimes against humanity. Mr. Watson noted in his testimony the case of Mohammed Jabbateh (also known as "Jungle Jabbah"), a Liberian war criminal living in the United States. Jungle Jabbah was a commander in one of the rebel factions during the Liberian civil wars. His organization was responsible for atrocities including massacres of civilians, sexual violence, torture, ritual cannibalism, and enslavement. In 2017, he was convicted of immigration fraud. Had a crimes against humanity offense or present-in-jurisdiction for war crimes been available, the United States may have instead been able to prosecute him for substantive human rights violations. Likewise, Colombian paramilitaries who were extradited to the United States to face narco-trafficking charges could also have been charged with crimes against humanity if such an offense had been available. Today, there are former paramilitary leaders in the United States who have been implicated in crimes against humanity in Colombia, but were not indictable under the War Crimes Act at the time of their extradition.

It is critical that Congress take action to prohibit crimes against humanity. In doing so, it should not create any exceptions to its application. Federal criminal statutes prohibiting genocide, war crimes, and torture do not exempt members of the United States military from their reach. Neither should any prohibition against crimes against humanity. The requirements for establishing a crime against humanity are strict – the burden of proof is on the prosecution to establish that a widespread or systematic attack against a civilian population has taken place. The United States needs to make clear that its laws and institutions cannot condone or seek to protect any individual committing such acts, which would be made even more egregious if done wearing the uniform of the United States military.

Providing a path to justice for victims

Even with these necessary statutory reforms to the federal criminal framework, there will be war criminals and human rights abusers in the United States that the criminal law cannot reach. Civil remedies for victims and survivors are crucial for filling those accountability gaps. For almost a quarter century, CJA has worked with victims of atrocity and their communities to bring civil suits against perpetrators of serious human rights abuses using federal statutes such as the Torture Victim Protection Act³. Each of our cases involved a suspected war criminal or human rights abuser present in the United States, living in impunity. These civil suits allowed victims and survivors to seek accountability where none was possible from the government. Any legislative reform aimed at enhancing the legal system's ability to combat impunity must include pathways for victims of rights abuses to seek civil remedies against their abusers. Accordingly, we support efforts to expand civil liability under the Torture Victim Protection Act to allow any person who has suffered injury or loss caused by an act of genocide, war crimes, crimes against humanity, torture, or

³ Pub. L. 102–256, codified at 28 U.S.C. § 1350, note.

extrajudicial killing to bring civil suit against whoever within or outside the United States is responsible for such acts or has aided in the commission of such acts.

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The United States has an important role to play both at home and abroad in promoting accountability for war crimes and crimes against humanity. Congress can set an example for survivor-centered accountability by ensuring that our own domestic legal framework is conducive for accountability.