



THE CENTER FOR JUSTICE & ACCOUNTABILITY

Bringing Human Rights Abusers To Justice.

TESTIMONY OF

**PAMELA MERCHANT
EXECUTIVE DIRECTOR
THE CENTER FOR JUSTICE & ACCOUNTABILITY**

BEFORE THE

**SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**FROM NUREMBERG TO DARFUR: ACCOUNTABILITY FOR CRIMES AGAINST
HUMANITY**

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Chairman Durbin, Ranking Member Coburn, and Members of the Subcommittee; thank you for inviting the Center for Justice and Accountability (CJA) to submit written testimony on the extraordinarily important issue of accountability for crimes against humanity. I am the Executive Director of CJA and a former federal prosecutor.

CJA is a nonprofit legal organization dedicated to deterring torture and other severe human rights abuses and to seeking justice. We represent survivors of torture and other severe human rights abuses in cases against individual human rights abusers in *civil* litigation using the Alien Tort Statute and the Torture Victim Protection Act. In the past ten years, we have brought cases in the U.S. against human rights abusers from Bosnia, Chile, China, El Salvador, Haiti, Honduras, Indonesia, Peru and Somalia. We have successfully sought civil redress for crimes against humanity and indeed brought the first case to do so. We are, therefore, in a unique position to offer insights on accountability for crimes against humanity.

One of our clients, Dr. Juan Romagoza, and I had the great privilege of testifying before this historic Subcommittee last November on a panel entitled, *No Safe Haven: Accountability for Human Rights Violators in the United States*. In those proceedings, among other things, the Subcommittee explored gaps in U.S. federal law that currently prevent the *criminal* prosecution of some of the more egregious human rights abusers who have sought safe haven here, including the fact that the U.S. lacks criminal jurisdiction to prosecute the majority of acts that constitute crimes against humanity.

CJA applauds the leadership of Chairman Durbin and this Subcommittee by holding the first Congressional hearing on crimes against humanity. CJA also applauds the Subcommittee's leadership in closing the gaps in the U.S. criminal code through the introduction and passage of the Genocide Accountability Act of 2007 and the introduction of the Child Soldiers Accountability Act and the Trafficking in Persons Accountability Act.

In this testimony, CJA will briefly summarize the gaps in the current criminal human rights statutory framework and review instances where crimes against humanity has been used successfully in the civil context to achieve justice for survivors of human rights abuses.

Current U.S. Human Rights Law

Current U.S. law provides for the criminal prosecution of perpetrators who commit torture, genocide or war crimes overseas and who have sought safe haven here. The torture statute¹ provides for the criminal prosecution of any person who commits torture outside of the U.S. as long as the perpetrator is within U.S. jurisdiction *and* the torture was committed after the date the statute was enacted. Under the recently enacted genocide statute, a perpetrator may be prosecuted for the "specific intent to destroy in whole or in substantial part, a national, ethnic, racial or religious group."² The war crimes statute provides for the prosecution of those who commit war crimes as long as the victim or the perpetrator is a member of the U.S. armed forces or is a U.S. national.³

As this Subcommittee is well aware, there is no independent basis for prosecuting crimes against humanity, war crimes or extrajudicial killings committed by foreign nationals outside the United States. As a result, our government's ability to hold accountable those human rights abusers who seek safe haven here is very limited compared to our counterparts around the world.

The Need for Criminal Human Rights Prosecutions

It is estimated that more than 400,000 survivors of politically-motivated torture currently reside in the United States.⁴ Every day these survivors strive to become self-sufficient and productive members of their new communities while struggling to reclaim the strength and vitality that were stolen from them by brutal regimes. It is also estimated that thousands of human rights abusers have found safe haven in the United States, including more than one thousand with substantial responsibility for heinous atrocities.⁵ These abusers often live in the same immigrant communities as their victims, causing extreme anxiety and undermining justice and accountability movements in the countries where the abuses occurred.

CJA has represented dozens of survivors of torture, crimes against humanity and extrajudicial killing in civil litigation against human rights abusers who have found safe haven in the United States. While our clients have received great satisfaction in receiving civil judgments against their perpetrators, it is clearly not enough. Criminal prosecutions are the most important form of accountability for victims of human rights abuses. The strongest message that the U.S. can send to human rights abusers around the world is that we will criminally prosecute them here when their home country will not.

To our knowledge, since World War II, the federal government has brought only one criminal human rights case against a human rights abuser who has sought safe haven here.⁶ The vast majority of human rights enforcement efforts in this country are removals which result from prosecuting abusers for immigration fraud – for lying about participation in past crimes when they entered the United States. Often these human rights abusers are returned to their home

¹ 18 U.S.C. §2340A. The date of enactment was enacted April 30, 1994.

² 18 U.S.C. §1091.

³ 18 U.S.C. §2441.

⁴ U.S. Department of Health and Human Services, Office of Refugee Resettlement. *Services for Survivors of Torture*, available at http://www.acf.hhs.gov/programs/orr/programs/services_survivors_torture.htm.

⁵ Amnesty International, USA: A Safe Haven for Torturers, 2001.

⁶ In December 2006, Chuckie Taylor, Charles Taylor's son, was indicted under the federal torture statute, 18 U.S.C. §2340A in the Southern District of Florida. *U.S. v. Roy Belfast* (a.k.a. Chuckie Taylor), S. Dist. Fla No. 06-20758-CR-ALTONAGA (2006). The case is expected to go to trial this year and is the first and only case brought under the torture statute since it was enacted in 1994.

countries where they either become repeat offenders or continue to live freely without consequence.

As a former prosecutor, it is clear to me that an important factor in the lack of criminal prosecutions is the limited criminal law framework. Enacting a law that would allow criminal prosecution of human rights abusers responsible for crimes against humanity would be an important next step in closing that gap.

Crimes Against Humanity

The concept of a crime against humanity dates back to the Nuremberg trials where it was first codified as a basis for prosecuting German leaders for massive abuses committed against their own citizens. Crimes against humanity are a constellation of acts made criminal under international law when they are committed in the context of a widespread or systematic attack against any civilian population. This attack can be committed against a civilian population defined along many dimensions: language, race, geography, political opinion, ethnicity or religion.⁷ In contrast, genocide is the destruction, in whole or in substantial part, of a distinct people, defined by nationality, ethnicity, race, or religion.

Enacting a crimes against humanity law would give an invaluable tool to law enforcement and would bring the U.S. criminal code into accordance with modern international criminal law norms.⁸

The Importance of Crimes Against Humanity Law in Future Prosecutions

In our November 2007 testimony to this Subcommittee, we strongly encouraged the government to make the prosecution of human rights abusers for human rights crimes a priority. The enactment of a crimes against humanity law is a critical step towards making human rights prosecutions a reality in the United States.

A prosecution for crimes against humanity is the most important vehicle for holding human rights abusers accountable for *widespread or systematic* attacks directed against civilians. A crimes against humanity charge addresses the severity of human rights abuses that are carried out on a grand scale -- such as the ongoing abuses in Darfur, Burma and Zimbabwe. While prosecuting perpetrators like Chuckie Taylor for individual incidents of torture is an important first step, it is in initiating prosecutions for crimes against humanity that the U.S. government will

⁷ More specifically, crimes against humanity must be committed as part of a *widespread or systematic* attack directed against a civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attacks, and which constitutes the *multiple* commission of any of the following acts: murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment, torture, rape, sexual slavery, persecution against any identifiable group or collectivity, enforced disappearances, apartheid, or other inhumane acts of a similar character intentionally causing great suffering or serious injury. Stephens, *International Human Rights Litigation in U.S. Courts* (2d ed. 2008), 161-164; *See generally*, Van Schaack, *The Definition of Crimes Against Humanity: Resolving the Incoherence*, 37 *COL. J. OF TRAN'L L.* 787 (1999); Bassiouni, *Crimes against Humanity in International Criminal Law* (2d ed. 1999); Aceves and Hoffman, *Pursuing Crimes Against Humanity in the United States: The Need for a Comprehensive Liability Regime*, in *Justice for Crimes Against Humanity* (2003), 161-172.

⁸ The limited reach of our criminal code stands in stark contrast to many of our allies who have enacted crimes against humanity laws including Argentina, Australia, Canada, Germany, The Netherlands, New Zealand, South Africa, Spain, and the United Kingdom.

see the most impact and reward in its human rights efforts. In order to achieve true accountability, the punishment must fit the crime.

Crimes against humanity prosecutions have the most impact on survivor communities around the world – a fact that has proven to be true in our civil cases. For example, our two cases against former Peruvian military officials responsible for the Accomarca Massacre would be incomplete without including allegations and claims of crimes against humanity. While it is no doubt important that the two plaintiffs in the case receive justice for the torture and extrajudicial killing of their immediate family members, the crimes against humanity claim makes the case an accountability vehicle on a larger scale. By bringing crimes against humanity claims, the case acknowledges *all* the victims and their relatives who were affected by the abuses initiated by the perpetrators. The level of collective ownership of the case and the impact it can have in the home country and around the world is therefore exponentially increased.

Moreover, charging crimes against humanity will send a clear signal to the international community that we are not “under-prosecuting” perpetrators who commit large scale, systematic abuses. To prosecute a perpetrator without addressing his or her role in the overall pattern of abuses and repression sends a message of indifference. It also sends a mixed message about our overall commitment to human rights, the sanctity of life, and each individual's right to freedom from state-sponsored abuses. Again, the punishment must fit the crime.

Crimes Against Humanity Claims in U.S. Civil Cases

In contrast to the gaps in our criminal code, the United States has a relatively well developed *civil* liability regime for punishing serious human rights abusers using the Alien Tort Statute and the Torture Victim Protection Act.⁹ Using those laws, CJA has brought successful civil cases for crimes against humanity against numerous human rights abusers who have all sought safe haven in the United States.¹⁰

The following are three examples of successful crimes against humanity cases brought by CJA against human rights abusers who came to the United States. The following individuals, who were all found liable for crimes against humanity in civil cases brought by CJA, would likely escape criminal prosecution due to gaps in the federal law.

Col. Carl Dorélien and the Raboteau Massacre

Colonel Dorélien was a member of the High Command of the Haitian Armed Forces during the military dictatorship in Haiti from 1991 to 1994. Dorélien's presence in the U.S. became widely known after he won \$3.2 million in the Florida state lottery in 1997. When

⁹ 28 U.S.C. §1350; 28 U.S.C. (note).

¹⁰ See, e.g., *Cabello v. Fernandez-Larios*, 402 F 3d 1148, 1158 1161 (11th Cir. 2005)(upheld jury verdict for crimes against humanity in connection with Pinochet's "Caravan of Death" in Chile); *Doe v. Saravia*, 348 F. Supp. 2d 1112, 1156-57 (E.D. Cal. 2004)(assassination of Salvadoran Archbishop Oscar Romero); *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322, 1354 (N.D. Ga. 2002) (first crimes against humanity judgment in the U.S. in connection with ethnic cleansing in Bosnia); *Chavez v. Carranza*, W.D. Tenn. No. 03-2932 M1/P (Nov. 18, 2005)(jury verdict for crimes against humanity against former Salvadoran Vice Minister of Defense); *Jean v. Dorelien*, S.D. Fla. No. 03-20161 CIV-KING (February 23, 2007)(jury verdict for crimes against humanity against Haitian Colonel).

democracy was restored to Haiti, Dorélien, along with many other members of the Haitian military, fled to the U.S. where they lived with impunity.¹¹

The military dictatorship in Haiti was characterized by widespread state-sponsored human rights violations, including abuses committed by the military and death squads. Human rights reports implicate the military in extrajudicial killings, disappearances, torture, and arbitrary arrests and detention. Several thousand Haitians were killed during this period, and tens of thousands more fled the country.

In 1993, CJA client Lexiuste Cajuste was arbitrarily detained and severely tortured by Haitian military forces under Dorélien's command because of his role as a union organizer and pro-democracy activist. Under international pressure, Cajuste was finally released and fled to the United States. Miraculously, he survived the beatings but, fourteen years after the ordeal, still suffers severe physical disabilities relating to his torture.

CJA client Marie Jeanne Jean lost her husband Michel Pierre in the 1994 Raboteau massacre. On April 22, 1994, military and paramilitary forces gunned down Michel Pierre during the attack against civilians in the impoverished seaside neighborhood of Raboteau in the city of Gonaives. Military and paramilitary units invaded Raboteau, terrorizing the community and killing at least two dozen and possibly as many as one hundred unarmed civilians. Many of those killed were shot in boats and fell or were later thrown into the ocean, thus making it impossible to know the total death toll. Some of the bodies -- mutilated by their attackers or by sharks -- were washed back to shore. More than fifty homes were destroyed.

Mr. Cajuste, Ms. Jean and Ms. Jean's two minor children brought crimes against humanity and extrajudicial killing claims against Dorélien in 2003. After CJA filed its suit, Dorélien was deported to Haiti on immigration charges and was placed in detention in Port au Prince. A few months later, during the 2004 uprising that removed Aristide from power, Dorélien was released from prison. He remains at large.

On February 23, 2007, a federal jury in Miami found Colonel Carl Dorélien liable for the extrajudicial killing and crimes against humanity claims.¹²

A better result clearly would have been the criminal prosecution of Dorélien in the U.S. for human rights abuses. Unfortunately, our current laws would not reach Dorélien. The torture act only applies to torture committed after the date it was enacted which was April 30, 1994.¹³ The genocide act would not apply because the Raboteau massacre was directed at a community for their political beliefs (pro democracy activists), not because of their "national, ethnic, racial or religious" identity.

Fernández Larios and the Caravan of Death

The first civil jury verdict in a crimes against humanity case was brought against former Chilean Army and secret service officer Armando Fernández Larios. *Cabello v. Fernandez-Larios*. Fernández Larios also served as one of the members of the "Caravan of Death." The

¹¹ In addition to Col. Dorélien, Jean-Claude Duperval (who worked openly for Walt Disney World Resort for three years), and Herbert Valmond (who worked as a pastor in Tampa, Florida) also fled to the U.S. They were both deported to Haiti where they continue to evade prosecution.

¹² *Jean v. Dorelien*, 03-20161-Civ/King/Garber (SD Fla. February 23, 2007).

¹³ 18 U.S.C. §2340A.

Caravan of Death was a military death squad responsible for killing 75 civilian political prisoners after the Pinochet-led coup in 1973. The members traveled from prison to prison in a helicopter, inspecting military garrisons and then ordering — or carrying out themselves — the execution of the detainees, the murders being committed with small arms and bladed weapons. The victims were then buried in unmarked graves. It is estimated that over 3,000 civilians were killed during the Pinochet junta by the military and its death squads. Fernández Larios came to the U.S. in 1987 and lives in Miami, Florida.¹⁴

Winston Cabello was a well-regarded regional planning official in the ousted government of President Salvador Allende. Cabello was arrested after the coup in September 1973 and held for five weeks without charge. On October 16, 1973, Cabello was taken from the garrison by members of the Caravan of Death, including Fernández Larios, and killed along with twelve other civilian prisoners also detained after the coup. Winston was 28 years old at the time.

CJA clients Zita Cabello Barrueto, Karin Moriarty, Aldo Cabello, and Elsa Cabello, are the sisters, brother, and mother of Winston Cabello. They came to the U.S. soon after Winston was killed and are now U.S. citizens.

Almost 30 years later, in September 2003, a Florida jury found Fernández Larios liable for torture, crimes against humanity, and extra judicial killing for his role as a member of the "Caravan of Death." The jury awarded four million in damages to our clients. The trial marked the first time a member of the Caravan of Death has stood trial for *any* of the killings perpetrated during its journey, as well as the first jury verdict for crimes against humanity in the United States.¹⁵ The Eleventh Circuit upheld the jury verdict for crimes against humanity based on evidence that Cabello's killing was part of a pattern of "politically motivated killings."¹⁶

Once again, the atrocities that Fernández Larios committed through his participation in the Caravan of Death would not have been actionable under existing criminal law. The victims of the Caravan of Death were targeted for their political beliefs, not because they were part of a distinct ethnic, racial or religious group as would be required to establish a genocide claim.

Accomarca Massacre

The Accomarca Massacre was a military operation which resulted in the death of 69 civilians in a rural area of Peru in 1985. From 1980 to 2000, the government of Peru was engaged in a civil war against insurgent groups, including the Maoist Sendero Luminoso (Shining Path). Throughout that time, the Peruvian Army and other government forces were responsible for widespread and systematic human rights abuses against the civilian population of Peru. During the 1980s, the Army carried out massacres, disappearances and torture in the Andean highlands, and particularly in the department of Ayacucho. According to Peru's Commission for Truth and Reconciliation, 26,259 people died or disappeared in the department of Ayacucho during the civil war.

¹⁴ In 1987 Fernández Larios reached an agreement with U.S. federal prosecutors and pleaded guilty to being an accessory to the 1976 car-bomb assassination of former Chilean ambassador Orlando Letelier and his American assistant Ronni Moffett in Washington, DC.

¹⁵ Criminal charges against General Pinochet in Spain and in Chile were based on Pinochet's alleged role in ordering the killings perpetrated by the Caravan. However, Pinochet escaped liability after being found mentally unfit to stand trial by the Chilean courts.

¹⁶ *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1161 (11th Cir. 2005) (crimes against humanity verdict upheld).

CJA's clients, Teófila Ochoa and Cirila Pulido, were 12 years old at the time of the massacre and survived by hiding from the soldiers. Teófila Ochoa's mother, four brothers and a sister were killed. Cirila Pulido's mother and brother were killed. The two officers who commanded the military units involved in the massacre, Telmo Hurtado Hurtado and Juan Rivera Rondón, both reside in the United States. They have been charged with crimes against humanity, war crimes and extrajudicial killing in the civil cases filed on behalf of our clients.

Despite the severity of the crimes they committed in Peru, both defendants ended up facing relatively minor immigration fraud charges in the U.S., which do not directly concern the killings at Accomarca.¹⁷ Once again, with better laws, these defendants could have been charged and held accountable for their role in killing over 69 civilians -- primarily women and children.

Finally, as this Subcommittee is also aware, the Salvadoran Generals who were found responsible for the torture of Dr. Juan Romagoza, also could have been charged with crimes against humanity in connection with the widespread and systematic abuses committed by the Salvadoran Army against its civilian population. Generals Garcia and Vides Casanova currently live in Florida.¹⁸ It is clear that one of the reasons they were never prosecuted criminally is because the Department of Justice does not have sufficient tools.

We urge the Subcommittee to submit crimes against humanity legislation so that survivors, such as Dr. Juan Romagoza, will have justice -- and that perpetrators -- such as Generals Garcia and Vides Casanova -- will be held accountable in a court of law.

Thank you very much.

¹⁷ Captain Rivera Rondón came to the U.S. in the early 1990s and owns a home in Montgomery County, Maryland. He is currently detained on immigration charges in Maryland. Major Hurtado came to the U.S. in 2002 after an amnesty law protecting him from prosecution in Peru was nullified. He was sentenced to six months after pleading guilty to two counts of immigration fraud and is being detained in Florida.

¹⁸ From 1980 to 1992 over 75,000 civilians were killed, and tens of thousands of others suffered from other serious human rights abuses at the hands of Salvadoran military forces. *See*, U.N. Security Council, *Report of the United Nations Truth Commission on El Salvador*, § III (April 1, 1993).