



THE CENTER FOR JUSTICE & ACCOUNTABILITY

Bringing Human Rights Abusers To Justice.

OPENING STATEMENT OF

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

BEFORE THE

**TOM LANTOS HUMAN RIGHTS COMMISSION
UNITED STATES HOUSE OF REPRESENTATIVES**

**NO SAFE HAVEN: LAW ENFORCEMENT OPERATIONS AGAINST FOREIGN
HUMAN RIGHTS VIOLATORS IN THE UNITED STATES**

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Good morning Chairman McGovern, Chairman Wolf and distinguished members of the Tom Lantos Human Rights Commission. I would like to thank you and the Members of the Commission for holding this important hearing on the government's efforts to investigate, prosecute and remove human rights abusers. I have submitted a longer statement for the formal record.

My name is Pamela Merchant. I am the Executive Director of the Center for Justice and Accountability and a former federal prosecutor.

CJA is a nonprofit legal organization dedicated to ending torture and seeking justice for human rights crimes. We represent hundreds of survivors of torture and other human rights abuses in civil litigation using the Alien Tort Statute and the Torture Victim Protection Act in the United States. In addition, we work as a private prosecutor in criminal prosecutions in Spain where we are lead counsel on the *Jesuits Massacre Case* and the *Guatemala Genocide Case*.

Further, we currently represent 45 Civil Parties in the Second Khmer Rouge trial. In the past twelve years, we have brought cases against human rights abusers in the U.S. from Bosnia, Chile, China, Colombia, El Salvador, Haiti, Honduras, Indonesia, Peru and Somalia.

The core problem CJA and our colleagues at DOJ and DHS address is impunity for perpetrators of gross human rights violations. By allowing human rights abusers to live with impunity, survivors and their communities are denied their right to truth, justice and redress.

It is estimated that more than 400,000 survivors of politically-motivated torture currently reside in the United States. It is also estimated that thousands of human rights abusers have found safe haven here. 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.

Real deterrence cannot be achieved unless military and government officials perceive that they may be held individually accountable, not just for committing abuses, but for their failure to

take reasonable action to stop others under their command from committing abuses or for failing to punish their subordinates after the commission of these crimes.

Over the years we have worked closely with attorneys, agents and historians within DOJ and DHS. CJA applauds the work of DOJ and DHS to prosecute and in some instances remove human rights abusers.

We also support efforts to direct more resources to human rights prosecutions and to expand the tools available to law enforcement so they may effectively prosecute human rights abusers in the U.S. and support human rights prosecutions around the world.

U.S. efforts to hold human rights abusers accountable must be undertaken in the context of a broader human rights framework and must conform to international human rights standards.

Whenever possible, the first priority should be to prosecute human rights abusers for human rights crimes, rather than for secondary immigration violations. However, charging the human rights offense may not always be an option under U.S. law.

In such cases, the government may face a choice between extradition or bringing immigration fraud charges. We believe that justice would be better served by extraditing a suspected human rights abuser to an appropriate foreign jurisdiction capable of prosecuting the underlying crime.

We recommend a four-step analysis. **First**, is the offense chargeable under current U.S. statutes? **Second**, if the offense is not chargeable, is there a foreign jurisdiction that is willing and able to prosecute? **Third**, in which venue would justice be better served for the victims of the human rights abuses and for the home country's transitional justice efforts? **Finally**, if neither substantive prosecution nor extradition is available, the fourth step should be to evaluate whether a criminal prosecution could be brought under other laws, for instance, for false statements made on immigration applications.

It is imperative that Congress continue to expand legislation to enable the prosecution of human rights abusers. Almost all of the defendants in CJA's cases who reside in the U.S. could not be prosecuted today for their human rights crimes because of limitations in our current criminal code. The most serious offense most of them can be charged with is immigration fraud because of these limits. Here I am referring to individuals who have already been found responsible by civil juries for torture and other human rights abuses yet continue to live comfortably in the U.S. with impunity, such as former Vice Minister of Defense Carranza and Caravan of Death member Fernandez Larios.

The case of former Salvadoran Generals Vides Casanova and García, who have both been found liable by a civil jury for the torture of our clients, illustrates the shortcomings of the current statutory scheme. While we applaud the recent removal proceedings initiated against them by DHS, it is important to note that the only penalty they will experience is those associated with lying on the immigration forms and any jail time they may serve would be relatively light and they will ultimately be deported to El Salvador where they will be set free.

To that end, we urge the following legislative fixes:

We urge passage of a crimes against humanities law.

We also urge passage of a criminal extrajudicial killing law. Today, an individual can be prosecuted for committing torture, but the same individual cannot be prosecuted for killing someone outright if torture is not involved.

The application of the Torture Statute and other atrocity laws should be retroactive.

As with common law murder, there should be no statute of limitations on human rights crimes.

To enhance the focus on high-level officials, all existing criminal human rights law should incorporate command responsibility as a basis for liability. In addition, ICE should amend immigration forms to include direct questions about participation in human rights atrocities as a commander.

Finally, existing legislation should be more rigorously enforced. It is worth noting that since its enactment in 1994, only a single prosecution has been brought under the Torture Statute. No prosecutions have been brought under the Genocide Act or the Child Soldiers Act.

We also encourage the U.S. to work more cooperatively with governments who seek to prosecute human rights abusers or are using other accountability mechanisms.

Of particular interest to CJA and Chairman McGovern are the two defendants from the *Jesuits Massacre Case* who are in the United States. This May, a Spanish judge issued an indictment and arrest warrants for 20 Salvadoran ex-officers, including these two defendants, charging them with crimes against humanity, murder and state terrorism for their role in the murders of six Jesuit priests and two women. Five of the six Jesuit priests were citizens of Spain and the Spanish government is in the process of seeking extradition of the two defendants who are in the U.S. to face substantive charges there.

Colonel Inocente Orlando Montano has been living in Massachusetts for the past ten years. He was charged with immigration fraud in August and is currently out on bail. Lieutenant Cuenca Ocampo is living in the San Francisco area. Both are named in arrest warrants that have been transmitted by Interpol to the United States. Although Montano is currently facing charges of immigration fraud in the U.S, we believe that real justice for El Salvador and the Salvadorans in this case will be achieved by extraditing him to Spain.

We encourage this Commission to use its influence to ensure that these two defendants are ultimately extradited to Spain to stand trial for their role in the killing of five Spanish citizens by the Salvadoran military.

I would like to take this opportunity to acknowledge the critical role that the U.S. Congress and Chairman McGovern played in the investigation of the Jesuits Massacre and subsequent accountability efforts for El Salvador.

In one more example, the U.S. currently holds in its federal prisons the bulk of the leadership of the Colombian paramilitary organization, known as the AUC who were extradited to the U.S. to face minor drug-trafficking charges. In many instances these human rights abusers have already confessed in Colombia to their role in torture, extrajudicial killing, massacres and other human rights abuses. Their presence in the U.S. has stymied the Colombian government's investigation of their human rights abuses. CJA urges DOJ to perform more due diligence when it seeks to bring human rights abusers who have also committed other crimes, such as drug trafficking, into the U.S. and to be sure to include human rights crimes in the extradition request

Finally, as is addressed more thoroughly in my written testimony, special care and training should be given for investigators and attorneys who are working with witnesses and victims who are survivors. Torture survivors suffer from post-traumatic stress disorder, depression, anxiety, nightmares, chronic pain and other long-term conditions. Moreover, as with organized crime prosecutions, safety protocols need to be established for victims, witnesses and their families.

Thank you very much for this opportunity to submit testimony on these very important matters.