



THE CENTER FOR JUSTICE & ACCOUNTABILITY

Bringing Human Rights Abusers To Justice.

**TESTIMONY OF**

**C. DIXON OSBURN  
EXECUTIVE DIRECTOR  
THE CENTER FOR JUSTICE & ACCOUNTABILITY**

**BEFORE THE**

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

**PURSUING ACCOUNTAILTY FOR ATROCITIES**

**JUNE 13, 2019**

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**Before the  
Tom Lantos Human Rights Commission  
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**Pursuing Accountability for Atrocities**

**June 13, 2019**

Good morning Chairman McGovern, Chairman Smith 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 efforts to pursue accountability for mass atrocity crimes. I would also like to applaud the Tom Lantos Commission on your extraordinary leadership in promoting, defending and advocating for internationally recognized human rights.

My name is Dixon Osburn. I am the Executive Director of the Center for Justice and Accountability (CJA) based in San Francisco. I spent 26 years in Washington, D.C. championing human rights on a bipartisan basis, including advocating for the release of the Senate Intelligence Committee's report on the CIA's detention and interrogation program after 9/11; advocating for the release of prisoners from Guantanamo who had been cleared for release by the intelligence agencies; and leading the effort to repeal don't ask, don't tell.

Mr. Chairman, I request that this written testimony be made part of the record.

About the Center for Justice & Accountability

The Center for Justice and Accountability is a nonprofit international human rights organization. CJA's mission is to deter torture, war crimes, crimes against humanity, and other severe human rights abuses around the world through litigation and other advocacy strategies.

CJA was founded in 1998 on the principle, first used during the Nuremberg trials after World War II, that certain crimes are so egregious that they represent offenses against all humankind.

For 20 years, CJA has sought to bring human rights abusers to justice. We represent survivors of torture and other human rights abuses in civil litigation in the United States using the Alien Tort Statute, the Torture Victim Protection Act, and other civil statutes.

For example, on May 21, 2019, a Virginia jury found Col. Yusuf Abdi Ali responsible under the Torture Victim Protection Act for the torture of semi-nomadic Somali herder Farhan Warfaa, a client of CJA. Col. Tukeh was a high-ranking military commander in Siad Barre's decades-long military dictatorship in Somalia. The jury awarded Mr. Warfaa \$500,000 in

damages, including \$100,000 in punitive damages. This was the third case where CJA has pursued accountability for the atrocities committed by the Barre regime, prior U.S. courts having found former Somalia Minister of Defense General Mohamed Ali Samantar and investigations chief of the Somali National Security Service Colonel Abdi Aden Magan, both of whom were living in the United States, liable for torture and killing during the Barre regime

On January 31, 2019, the U.S. District Court for the District of Columbia held Syria's government liable for the targeting and killing of an American journalist, Marie Colvin, as she reported on the shelling of Homs in 2012, the earliest days of a war that has killed ½ million people. CJA represented the family of Marie Colvin. The case was brought under the Foreign Sovereign Immunity Act which allows suits against sovereign states in the limited circumstance where the state is listed as a state sponsor of terrorism and an American citizen has been harmed. The decision could help ease the way for war-crimes prosecutions arising from the Syria conflict.

In addition to litigating cases in the United States, CJA has defended the Mayan-Ixil community from Guatemala in cases in both Spain and Guatemala, seeking accountability for a genocide that killed thousands; and we have represented 145 Cambodian Americans before the international hybrid tribunal in cases against former leaders of the Khmer Rouge regime, which led to the death of 1,700,000 people.

NGOs around the world play a critical role in pursuing accountability for atrocity crimes. Our sister organizations Civitas Maxima in Geneva and the Global Justice Research Project in Monrovia, Liberia, for example, have researched and prepared criminal dossiers against individuals identified by Liberia's Truth and Reconciliation Commission as responsible for atrocities committed during Liberia's two civil wars. Their work has assisted the U.S. government in successfully prosecuting Philadelphia residents Thomas Woeweyu and Mohammed Jabbate for immigration fraud and other charges. CJA has filed a Torture Victim Protection Act case against another Philadelphia resident, Moses Thomas, whom we allege was responsible for the massacre of 600 men, women and children seeking safety in a Red Cross designated site at the St. Peter's Lutheran Church in Monrovia. These U.S. cases not only send the signal that those who commit the worst human rights crimes cannot find safe haven in the United States, they have inspired civil society organizations in Liberia to demand that the government of President Weah finally adopt the recommendation of the Truth and Reconciliation Commission to establish a war crimes tribunal to address past atrocities. Liberia has not yet established a war crimes tribunal.

### The Problem: Impunity for Gross Human Rights Violations

The core problem CJA and our colleagues at the Department of Justice (DOJ) and the Department of Homeland Security (DHS) address is a lack of accountability 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.

By the end of 2017, there were 68.5 million people who had been displaced as a result of persecution, conflict, violence, or human rights violations.<sup>1</sup> It is estimated that more than 1,300,000 survivors of politically-motivated torture currently reside in the United States.<sup>2</sup> It is also estimated that there are 1,750 human rights violators in the United States from 95 different countries.<sup>3</sup> Thousands of human rights abusers have found safe haven in the United States, including those with substantial responsibility for heinous crimes. These abusers often live in the same immigrant communities as their victims, causing extreme distress and undermining justice and accountability movements in the countries where the abuses occurred.

### U.S Leadership in Pursuing Accountability for Atrocities

Since World War II, the U.S. has been a leader in pursuing accountability for mass atrocity crimes. From the Nuremberg and Tokyo Tribunals after World War II, to the tribunals and special courts for the former Yugoslavia, Rwanda, and Cambodia, the U.S. has led in establishing and funding efforts to investigate and punish those guilty of war crimes, genocide and crimes against humanity. The United States also is the only nation that has established a position for Ambassador-at-Large for War Crimes.

It is also the case that the United States' leadership is lagging in important respects. Ensuring that there is no safe haven for perpetrators of atrocities, however, has enjoyed bipartisan support. CJA applauds the recent passage of the Elie Wiesel Genocide and Atrocities Prevention Act.

CJA applauds the Department of Justice for the successful prosecution for torture of Emmanuel "Chuckie" Taylor, Charles Taylor's son and the former leader of Liberia's notorious Anti-Terrorism Unit.<sup>4</sup> It is worth noting, however, that since it was enacted in 1994, this is the first and only time this statute has been used. No human rights prosecutions have been brought to date under the Genocide Accountability Act or the Child Soldiers Accountability Act.

We also applaud the removal of Salvadoran General Vides Casanova in 2015 and General García in 2016 for their role and responsibility for the torture of our clients and countless others. They now face criminal prosecution in El Salvador.

We also support efforts, consistent with U.S. treaties and international obligations, to extradite human rights abusers to other countries to stand trial in national courts, including the extradition of Colonel Inocente Montano in 2017 whom we allege is one of those responsible for the Jesuits Massacre in El Salvador. I want to take a moment to acknowledge and thank Representative McGovern for his tireless efforts in pursuing justice for the people of El Salvador dating back to the investigation of the Jesuits Massacre by the Moakley Commission.

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<sup>1</sup> <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html>

<sup>2</sup> <https://www.cvt.org/news-events/press-releases/us-home-far-more-refugee-torture-survivors-previously-believed>

<sup>3</sup> <https://www.ice.gov/human-rights-violators-war-crimes-unit>

<sup>4</sup> *U.S. v. Belfast*, 611 F.3d 783 (11th Cir. 2010) *cert. denied*, 131 S. Ct. 1511 (2011).

Over the years we have worked closely with attorneys, agents and historians within DOJ and DHS on human rights enforcement efforts. We support efforts to direct more resources to human rights prosecutions and to expand the tools available so they may effectively prosecute human rights abusers in the U.S. and support human rights prosecutions in national courts and other internationally recognized forums.

I would now like to offer specific policy recommendations.

### Recommendations

It is imperative that Congress continue to expand legislation to strengthen efforts to hold human rights violators accountable through both civil and criminal avenues. For criminal prosecution, the Department of Justice must have available all tools in the toolbox to effectively prosecute perpetrators who have sought safe haven in the United States. To that end, we urge this Commission to consider the following legislative and regulatory measures.

1. *Amend the Torture Victims Protection Act.* Adopted in 1992, the TVPA permits civil causes of action for torture and extrajudicial killing, but does not provide a civil cause of action for other mass atrocities, including war crimes, genocide and crimes against humanity. A TVPA amendment could close the mass atrocity loophole, and provide an important tool for victims and survivors to hold accountable perpetrators of atrocity crimes. A TVPA amendment should also extend application to individual non-state actors, so that members of ISIS and other such groups if found in the U.S. could not escape liability.
2. *Adopt a Crimes Against Humanity Bill.* “Crimes against humanity” was a crime charged at Nuremberg and has been supported by the United States since then in the crimes established at other tribunals. Twenty-six out of the twenty-eight NATO members prohibit crimes against humanity under national law. Only the United States and Iceland do not.<sup>5</sup> In addition, other key strategic allies prohibit crimes against humanity, including: Israel, Mexico, Brazil, Colombia, Australia, South Korea, Philippines, South Africa, Kenya, and many more.<sup>6</sup> 104 of the U.N.’s 193 member states have national legislation prohibiting crimes against humanity.<sup>7</sup> Any crimes against humanity bill should grant jurisdiction to U.S. courts to prosecute perpetrators of human rights abuses who reside in the United States.<sup>8</sup>

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<sup>5</sup> Source: Arturo J. Carrillo & Annalise K. Nelson, *Comparative Law Study and Analysis of National Legislation Relating to Crimes Against Humanity and Extraterritorial Jurisdiction*, 46 GEO. WASH. INT’L L. REV. 481, 482 (2014).

<sup>6</sup> *Id.* at 518.

<sup>7</sup> *Id.*

<sup>8</sup> See Testimony of Pamela Merchant before the Subcommittee on Human Rights and the Law Committee on the Judiciary, U.S. Senate, “From Nuremberg to Darfur: Accountability for Crimes Against Humanity.” June 24, 2008.

3. *Pass a criminal extrajudicial killing statute.* An extrajudicial killing statute would fill a gap in the current criminal torture statute, and its addition to that statute would significantly aid prosecutors. It would also bring the U.S. criminal code in line with international law. Extrajudicial killing is prohibited both in the Geneva Conventions and in customary international law.<sup>9</sup> Moreover, Congress already defined and created tort liability for extrajudicial killings under color of foreign law in the Torture Victim Protection Act.<sup>10</sup>
4. *Modernize current atrocity crimes statutes.* Current atrocity crime statutes should be updated so that they:
  - *Apply to non-state actors.* The torture statute, for example, does not apply to non-state actors, like ISIL or Boko Haram (18 U.S.C. § 2340A).
  - *Apply retroactively.* Consistent with international law, the application of the Torture Statute and other atrocity laws should be retroactive. There should be no *ex post facto* concerns for torture, extrajudicial killing, genocide and crimes against humanity, which have been considered punishable crimes since the Nuremberg trials. The Torture Statute's current effective date of November 1994 renders the statute ineffective for all abuses committed, for example, in Latin America and Africa during the eighties and early nineties.<sup>11</sup>
  - *Eliminate statute of limitations.* As with common law murder, there should be no statute of limitations on torture or other human rights crimes.<sup>12</sup>
  - *Ensure consistent application of rules of jurisdiction.* Per Ambassador David Scheffer, "There should be consistent application of the rules of jurisdiction in the coverage of atrocity crimes in the federal criminal code, including application to all U.S. citizens, to U.S. government employees and contractors, and to all aliens present in U.S. territory for the commission of atrocity crimes anywhere in the world."<sup>13</sup> For example, the war crimes statute should be amended to apply when a foreign perpetrator or victim is found in the United States. Currently, the war

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<sup>9</sup> See Note by the Secretary-General, Extrajudicial, Summary or Arbitrary Executions, A/61/311, Sept. 5, 2006, at <[www.extrajudicialexecutions.org/reports/A\\_61\\_311.pdf](http://www.extrajudicialexecutions.org/reports/A_61_311.pdf)> last viewed Dec. 19, 2008; Geneva Convention Relative to the Treatment of Prisoners of War; August 12, 1949 (Geneva Convention III"), Arts. 129, 130; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949 (Geneva Convention IV"), Arts 146, 147. See also Nigel S. Rodley, *The Treatment of Prisoners in International Law*, at 192.

<sup>10</sup> 28 U.S.C. § 1350 Note (2006).

<sup>11</sup> 18 U.S.C. §§ 2340-2340A (2006).

<sup>12</sup> Today, there is no statute of limitations if the torture results in death or creates a foreseeable risk of death or serious bodily injury. 18 U.S.C. §2340A(a), 18 U.S.C. §3281, 18 U.S.C. §3286(b) and 18 U.S.C. §2332b(g)(5)(B). In a torture case where death or serious bodily injury does not occur, the statute of limitations is eight years. 18 U.S.C. §3286(a). The eight-year statute of limitations may be suspended an additional three years if the evidence is located in a foreign country. 18 U.S.C. §3292. The Child Soldiers Act has a ten year statute of limitation. The Genocide Accountability Act has no statute of limitations.

<sup>13</sup> David Scheffer, "Closing the Impunity Gap," *Northwestern Journal of International Human Rights*, Volume 8, Issue 1 (Fall 2009).

crimes statute only applies outside the U.S. only when the perpetrator or victim is a U.S. national (18 U.S.C. § 2441).

5. *Incorporate command responsibility as a basis for liability* in all existing criminal human rights laws to enhance the focus on high-level officials. Command responsibility is a well-established U.S. theory of liability which covers military officers or civilian superiors for crimes committed by their subordinates and who knew or should have known about these abuses and failed to take steps to stop the abuses or punish the offenders. It has been developed and applied in criminal trials in the U.S. and later internationally, as well as in civil litigation.<sup>14</sup>
6. *Increase The Number of Mutual Legal Assistance Treaties Between the United States and Other Nations.* Mutual legal assistance treaties allow designated agencies in each country the power to summon witnesses, to compel the production of documents and other real evidence, to issue search warrants, and to serve process. When addressing transnational crimes, like atrocity crimes, the mutual assistance both increases the investigative ability and decreases the investigative cost. The U.S. currently has nineteen in force and another thirteen not yet in force.<sup>15</sup> Congress should request a review that prioritizes countries where the U.S. would most benefit from such a treaty and the feasibility of securing those commitments from both parties.
7. *Increase Funding for Agencies Responsible for International Criminal Accountability.* Congress should fund more fully the FBI International Human Rights Unit,<sup>16</sup> DOJ's Human Rights Special Prosecutions Unit, ICE's Human Rights Violators Unit, the State Department's Office of Global Criminal Justice, as well as those responsible for implementing the Global Magnitsky Act, including the Office of Foreign Asset Control, State's Bureau of Democracy, Rights and Labor, and State's Bureau of International Narcotics and Law Enforcement Affairs. Those agencies with prosecutorial responsibilities should prioritize international human rights prosecutions under the Torture Act, War Crimes Act, Child Soldiers Accountability Act, and Genocide Accountability Act, and related human rights statutes. We applaud efforts to prevent the dissolution of the Office of Global Criminal Justice. We encourage Congress to also oppose proposed efforts to dismantle the FBI's International Human Rights Unit.

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<sup>14</sup> See, e.g., *Yamashita v. Styer*, 327 U.S. 13-15 (1946) (application of command responsibility doctrine in a criminal case); *Kordic and Cerkez*, No. IT-95-14/2-T, Feb. 26, 2001, para. 401 (International tribunal: "[T]hree elements must be proved before a person may incur superior responsibility for the crimes committed by subordinates: (1) the existence of a relationship of superiority and subordination between the accused and the perpetrator of the underlying offence; (2) the mental element, or knowledge of the superior that his subordinate had committed or was about to commit the crime; (3) the failure of the superior to prevent the commission of the crime or to punish the perpetrators."); *Ford v. Garcia*, 289 F.3d 1283, 1288 (11th Cir. 2002).

<sup>15</sup> <https://corporate.findlaw.com/law-library/mutual-legal-assistance-in-criminal-matters-treaties.html>

<sup>16</sup> <https://foreignpolicy.com/2019/02/18/the-fbi-is-dismantling-its-war-crimes-unit/>

8. *Amend Immigration Restrictions.* While we believe the current travel ban based on Presidential Proclamation No. 9645, 82 Fed. Reg. 45161 (2017) violates both domestic and international law, and should be repealed, it and broader immigration restrictions particularly impede legal efforts to hold accountable serious human rights violators living in the United States, when trial participants (plaintiffs, witnesses, experts) cannot get visas to travel to the United States for the purpose of testifying and providing evidence against human rights violators.

### Conclusion: Benefits of A More Robust Atrocity Accountability Efforts

Today's hearing is timely as we commemorate the 75<sup>th</sup> anniversary of D-Day and the 70<sup>th</sup> anniversary of the Geneva Conventions. World War II's clarion call of "Never Again" has not yet been achieved. The United States must lead in the global effort to prevent mass atrocities and to hold accountable those responsible. It is not only a moral imperative, it is in our self-interest.

If we do not want the United States to provide safe haven for war criminals, we must pass and enforce laws that hold them accountable.

If we seek enduring peace and stability, which is part of the Sustainable Development Goal #16,<sup>17</sup> we must hold accountable those whose crimes against humanity disrupted peace and stability. Accountability is a key to prevent future atrocities as what is done with impunity may be repeated without fear.

If we seek to prevent costly war, the rule of law can ameliorate. A recent study by the World Bank and the United Nations found that every \$1 spent to prevent violence had saved \$16 over two decades.<sup>18</sup>

In short, pursuing accountability for mass atrocities is in our moral, legal, political, national security, and financial interests.

Thank you very much for this opportunity to submit testimony.

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<sup>17</sup> <https://www.undp.org/content/undp/en/home/sustainable-development-goals/goal-16-peace-justice-and-strong-institutions.html>

<sup>18</sup> <https://www.un.org/press/en/2018/ga12031.doc.htm>