



THE CENTER FOR JUSTICE & ACCOUNTABILITY

Bringing Human Rights Abusers To Justice.

**U.S. Commission on International Religious Freedom  
Tom Lantos Human Rights Commission**

**“Ending Genocide: Accountability for Perpetrators”  
July 18, 2021**

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Chair McGovern, Chair Smith, Chair Maenza, Vice-Chair Turkel, Commissioners, and esteemed guests – thank you for your work on this pressing issue and for the opportunity to speak at today’s hearing – “*Ending Genocide: Accountability for Perpetrators*”.

The Center for Justice and Accountability is a 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.

Through our work, we know that accountability can take many forms. Accountability is truth-telling and the development of a shared collective understanding of critical events. It means ensuring meaningful consequences for wrongdoing. Accountability is redress and reparations for victims and communities, and recognizing societal and intergenerational harms. Regardless of the form it takes, however, accountability is ultimately about non-recurrence – ensuring that atrocity does not beget atrocity.

I have been asked to provide some remarks on barriers to accountability for perpetrators and challenges to access to justice for survivors. My remarks today will focus on challenges to legal accountability – the type of accountability we seek through prosecutions or other legal processes.

Accountability for perpetrators of atrocity crimes

One key barrier to accountability for perpetrators of atrocity crimes is insufficient support for local civil society.

Documentation of human rights abuses serves as the basis of any accountability effort. In many situations, the first on the scene are local civil society. Immediate access can be difficult for professional investigators and international human rights organizations, particularly in situations where genocide and other atrocity crimes are taking place. In those situations, civil society are on the frontlines documenting abuses, from citizen journalists filming violations taking place in their communities to local human rights organizations, who find themselves having to learn how to capture, store, and transmit evidence of serious international crimes while operating under threat of ongoing instability and violence.

This necessary documentation is often conducted in the midst of internet shutdowns and communications blackouts, frequently at serious risk to the individuals carrying out the work. We have seen this illustrated

vividly over the past several months, from the local human rights defenders documenting the extrajudicial killings of anti-coup protestors in Myanmar to the citizen journalists collecting evidence of mass killings and sexual violence in the Tigray region of Ethiopia.

Increasingly, prosecutors, international criminal investigators, and others engaged in seeking legal accountability for serious international crimes recognize the importance of citizen evidence, particularly in situations where the crime sites are inaccessible to international actors. Some of the most significant prosecutions taking place for atrocities committed during the Syrian conflict are the result of criminal complaints initiated by non-governmental organizations and Syrian documentation groups. In the context of the Rohingya genocide and the decades of war crimes against ethnic and religious minorities in Myanmar, it has been Burmese civil society that has led the collection of evidence that ultimately fed into the United Nations' Independent International Fact-Finding Mission on Myanmar. International justice relies on the work of local civil society. In order to support legal accountability efforts, local actors must have funding to maintain operations and the technical assistance to carry out their documentation work safely, securely, and to a standard that can survive judicial scrutiny.

Long-term investment in local civil society is particularly important if we want to see legal accountability for crimes such as genocide. Legal cases involving mass atrocity can take years to build. Generating the political will necessary to bring cases either at the international level or in a post-conflict society may take even longer. Sustained support for local civil society ensures that when legal accountability is finally possible, there are domestic actors able to advance an accountability agenda. If we want to see accountability for perpetrators of atrocity crimes, the United States and the international community need to devote resources to support civil society on the frontlines.

And to be clear: Impunity for international crimes as serious as genocide is not an option. Prolonged impunity for human rights abuses takes a devastating toll on societies. It also creates risk for international security and stability. The current crisis in Myanmar is a clear example. For almost sixty years, the Tatmadaw – Myanmar's military – has engaged in forced displacement, sexual violence, torture, and extrajudicial killings against the country's ethnic and religious minorities. Until very recently, there has never been a proper accounting for any of the Tatmadaw's many crimes. It should come as little surprise, then, that the architects of the Rohingya genocide are the heads of the military junta that has imprisoned the civilian leadership and now purports to govern Myanmar. Impunity emboldens oppressors and creates a cycle of ever-escalating violations.

### Justice for survivors

Accountability for perpetrators and justice for victims may not always mean the same thing. A significant barrier when it comes to accessing justice for victims and survivors is often the system itself – when legal accountability is insufficiently inclusive.

Accountability processes must be inclusive in the broadest sense of the word. One dimension to inclusivity is ensuring that legal accountability reflects the full scope of the perpetrator's wrongdoing. In the context of genocide, what that means is national governments must adopt an approach to criminal prosecutions that include human rights offenses.

An important example arises from our work on the Yazidi genocide. In May 2015, U.S. Special Operations forces raided the home of Abu Sayyaf al-Iraqi, a senior ISIL leader. He and his wife, Umm Sayyaf, enslaved

Yazidi women and girls. Abu Sayyaf was killed in the raid, but Umm Sayyaf was captured. U.S. forces eventually transferred her to the custody of the Kurdistan Regional Government (KRG). In February 2016, federal prosecutors filed a criminal complaint in the Eastern District of Virginia with a single count under 18 U.S.C. §2339(b) for “knowingly and intentionally [...] conspir[ing] to provide material support to a terrorist organization.” Meanwhile, the KRG launched criminal proceedings against Umm Sayyaf in Erbil. To our knowledge, no witnesses were examined. The trial was closed to victims and the media. Sometime in the spring of 2016, Umm Sayyaf was reportedly convicted of a crime related to ISIL membership.

Umm Sayyaf was never charged with torture, enslavement, or genocide. She was never held accountable for her crimes against the women and girls she enslaved. Meanwhile, the U.S. prosecution of Umm Sayyaf has not advanced since the complaint was filed in 2016. Despite an outstanding U.S. federal arrest warrant against Umm Sayyaf, there is no indication that U.S. authorities have requested her extradition from Iraq so she can stand trial in U.S. court. Nor has the United States been willing to ensure that the charges against Umm Sayyaf properly reflect the totality of her crimes, including torture and complicity in the genocide of the Yazidis. An inclusive accountability demands that prosecutors consider the full scope of the crimes committed by a perpetrator, particularly their human rights crimes.

Another aspect of inclusivity is simply having a seat at the table. In order for survivors of genocide to access justice, there has to be space for them in legal accountability processes. International justice processes have made important efforts to create greater inclusivity for impacted communities. When the Extraordinary Chambers in the Courts of Cambodia were established almost two decades ago to prosecute genocide and other international crimes committed by the Khmer Rouge, it established a formal process for survivors to take part in the legal proceedings as civil parties. This provided an important opportunity for survivors to play an active role in the proceedings, with legal rights of participation. Today, our colleagues at UNITAD take seriously the imperative for civil society engagement, holding regular meetings with local and international civil society, and explicitly recognizing a broad range of survivor interests as it carries out its investigative mandate. Inclusivity is central to meaningful justice and foundational to rebuilding societies.

Yet, more remains to be done. Within survivor communities, not all voices are equally recognized. Historic marginalization and discrimination can be replicated within civil society. Women and religious, ethnic, and sexual minorities may find themselves excluded from decision-making around accountability priorities. This exclusion impacts everything from prioritizing which atrocities are investigated to how mass graves are exhumed. Legal accountability needs to reflect the desires of the impacted community, particularly its most marginalized.

### Strengthening the U.S. legal framework to promote accountability

Finally, legal accountability is only possible if we have the legal framework for it. For over twenty years, CJA has successfully held accountable perpetrators of some of the most serious international crimes using civil litigation in U.S. courts. Early in CJA’s history, we brought cases for crimes against humanity and genocide under the Alien Tort Statute (ATS). It would be difficult to bring those same cases now – decades of judicial erosion of the Alien Tort Statute’s reach has radically narrowed the range of human rights claims that can be heard in U.S. courts, particularly those involving genocide and crimes against humanity. Fortunately, perpetrators of torture and extrajudicial killings can still be held civilly liable through the

Torture Victim Protection Act, which Congress passed in 1991 as a supplement to the ATS. But no equivalent statute exists for genocide or crimes against humanity.

The current U.S. legal framework also poses significant barriers to survivors seeking to hold accountable corporations that aid and abet the commission of serious international crimes, such as the American manufacturers of the surveillance systems being used by the Chinese government in its oppression of the Uyghers. But atrocity does not take place in a vacuum, and crimes on the scope and scale of a genocide cannot be committed without aiders and abettors. This was recognized in the Nuremberg Trials, which included prosecutions of bankers and the German industrialists who supplied poison gas for Nazi concentration camps.

There is a legislative solution. In her testimony before the Commission in May 2021, Professor Beth Van Schaack of Stanford Law School laid out her recommendations for legislative action to expand legal authorities to enable U.S. prosecutions of all atrocity crimes and to extend the jurisdictional reach of the U.S. War Crimes Act. We endorse those suggestions, and would add to them our recommendation that Congress amend the ATS to make its extraterritorial application explicit and codify a civil cause of action for genocide and crimes against humanity so that survivors have their own avenue for legal accountability if the Department of Justice declines to pursue a viable prosecution.

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In closing, the United States has an important role to play, both at home and abroad in promoting accountability for perpetrators of genocide and an inclusive justice for survivors. The United States can set an example for survivor-centered accountability by ensuring that local civil society actors are supported and strengthened, that accountability processes are inclusive in the broadest sense of the word, and that our own domestic legal framework is conducive for accountability. Thank you again for holding this hearing and drawing attention to these important issues. I would be pleased to answer any questions you might have.