BRINGING HUMAN RIGHTS ABUSERS TO JUSTICE IN U.S. COURTS: CARRYING FORWARD THE LEGACY OF THE NUREMBERG TRIALS

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I will start with a story about my mother, who left Germany with her family in September 1938 and returned at the age of twenty-three to be an interpreter at the Nuremburg trials. She had the distinction of interpreting for Goering during pre-trial interrogation and also, at times, during the trial. She said he hated the fact that she was his interpreter. Not only was she Jewish, but she was female. The English-speaking world heard him through the voice of a Jewish woman. I always liked the fact that mom was able to upset one of the most evil men alive just by being a Jewish woman. I figured there might be a future for me in that line of work. I was inspired by her outrage at injustice, and was also motivated by her dismay at and, yes, even contempt for, bystanders. She told me that if a German said he couldn't have done anything, he was only a "little man" and she pitied him, but if he said he didn't know what was going on, she felt contempt. She had left Germany in 1938, when she was only sixteen, but she had known what was going on.

I got the chance, in a small way, to follow in my mother's footsteps when four years ago I became the Director of the Center for Justice & Accountability (CJA). CJA, based in San Francisco, tracks down foreign-born human rights abusers who have settled in the United States, and watches for abusers who visit the US. When we believe that we can meet the evidentiary and jurisdictional requirements, we bring civil lawsuits using the Alien Tort Claims Act (ATCA).[1] We track assets and share information with the Department of Homeland Security and the Department of Justice[2] in hopes that we can get our defendants

[*] At the time of this talk, Sandra Coliver was the Executive Director of the Center for Justice and Accountability. For more information about CJA and many of the cases described herein, see www.cja.org. On September 1, 2005, she moved to New York, joined CJA's Board of Directors, and assumed the position of Senior Legal Officer for Freedom of Information and Expression at the Open Society Justice Initiative, whose homepage is at www.justiceinitiative.org.

[1] 28 U.S.C. § 1350 (2000). The ATCA is often referred to as the Alien Tort Statute.

[2] In the DOJ, our chief contact is Eli Rosenbaum, Director of the Office of Special Investigations, with whom I am pleased to share the podium today. In DHS, we work, in particular, with the Human Rights Violators Unit of the Bureau of Immigration & Customs Enforcement. *See, e.g.*, http://www.ice.gov/graphics/news/newsreleases/articles/Ethiopian

criminally prosecuted, denaturalized, and/or deported. As described below, we—and the other non-governmental organizations working on these cases—have had some significant successes.

Interestingly, no cases have been brought against suspected Nazis living in the US, although as discussed by Burt Neuborne, the ATCA has been used against banks and companies that profited from the Holocaust. The fact that there have been no cases against individual Nazis is very likely a testament to, first, the effectiveness of the Office of Special Investigations (OSI), now led by my co-panelist Eli Rosenbaum, in denaturalizing and deporting these individuals, and second, the existence of provisions in US immigration law which, since 1979, have made "participation in Nazi persecution" and "genocide" grounds for exclusion and removal from the US. In contrast, it was only in December 2004 that participation in torture and extra-judicial killing were added to the grounds for exclusion/removal. Participation in crimes against humanity, war crimes and other human rights offenses are still not explicitly covered (although in practice most such acts are covered to the extent that torture and killing under official authority are involved). Moreover, there is no office comparable to OSI that is dedicated to tracking down and deporting modern-day human rights abusers.

The absence of such an office underscores the need for the ATCA, although, indeed, even with such an office, the ATCA would continue to play a crucial role for at least several reasons. First, only through a civil tort action can the victims of abuse seek reparation. Increasingly, human rights groups are targeting abusers with substantial assets, and prospects for recovery in several cases are strong. Second, the ATCA is needed to motivate political will to pursue the worst human rights abusers regardless of their connections, past or present, with US security/intelligence agencies. Third, ATCA plaintiffs consistently remark that the main benefit of their involvement in an ATCA case was the sense of satisfaction they gained from exposing, through *their* efforts, their determination and courage to speak out, the role and responsibility of a human rights abuser. Their active engagement—not possible in government-led actions—goes a long way towards redressing their feelings, and the feelings of their communities, of powerlessness, injustice, and survivor's guilt.

I will discuss these and other benefits of ATCA litigation more fully in the following sections. But first, I will provide an overview of the ATCA, a related statute, the Torture Victim Protection Act, and the Supreme Court's only decision interpreting those statutes.

010405.htm (press release regarding arrest for deportation of an Ethiopian human rights abuser who had been successfully sued under the ATCA by the Center for Constitutional Rights).

I. OVERVIEW OF THE ALIEN TORT CLAIMS ACT, THE TORTURE VICTIM PROTECTION ACT, AND THE US SUPREME COURT[3]

The ATCA, adopted by Congress in 1789 as part of the first Judiciary Act, provides that "[t]he district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." In 1980, the Second Circuit issued a landmark decision in the case of *Filartiga v. Pena-Irala*,[4] brought by the Center for Constitutional Rights, holding that the "law of nations" today unquestionably encompasses torture, and that jurisdiction may be asserted when the defendant is in the US and physically served with process. In the following years, the federal courts, including the Second, Ninth, and Eleventh Circuits, affirmed this interpretation, extending the list of human rights torts actionable under the ATCA to include extra-judicial execution, disappearance, genocide, crimes against humanity, cruel, inhuman and degrading treatment, and forced labor. In 2004, the Supreme Court upheld this line of authority in *Sosa v. Alvarez-Machain*,[5] holding that ATCA claims must "rest on a norm of international character accepted by the civilized world and defined with the specificity comparable to the features of the 18th-century paradigms we have recognized."[6] Although the Court denied the particular arbitrary arrest claim advanced by Dr. Alvarez, it cited with approval cases, including *Filartiga*, which permitted ATCA claims for violations of international norms that are "specific, universal and obligatory."[7]

Lower courts, in holdings that will likely withstand post-*Sosa* scrutiny, have ruled that claims for torture, summary execution, prolonged arbitrary detention, war crimes, disappearances, genocide, crimes against humanity, and slavery-like practices constitute torts in violation of the law of nations.[8] Many pre-*Sosa* decisions have also recognized that liability can be assessed against not only the person who wielded the torture instrument but also against commanders, co-

[3] These remarks are based on an article I co-authored with Jennifer Green and Paul Hoffman, *Holding Human Rights Violations Accountable by Using International Law in U.S. Courts: Advocacy Efforts and Complementary Strategies*, 19 EMORY INT'L L. REV. 170 (2005).

[4] 630 F.2d 876 (2d Cir. 1980).

[5] 124 S.Ct. 2739 (2004).

[6] *Id*. at 2766.

[7] *Id*.

[8] *See, e.g.*, Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980) (torture); Abebe-Jira v. Negewo, 72 F.3d 844 (11th Cir. 1996) (torture); *In re* Estate of Ferdinand Marcos, Human Rights Litigation, 25 F.3d 1467 (9th Cir. 1994) (summary execution, torture, disappearance); Kadic v. Karadzic, 70 F.3d 232 (2d Cir. 1995) (genocide, war crimes, summary execution, torture); Mehinovic v. Vuckovic, 198 F. Supp. 2d 1322 (N.D. Ga. 2002) (crimes against humanity); Estate of Cabello v. Fernandez-Larios, 157 F. Supp. 2d 1345 (S.D. Fla. 2001), *aff'd*, 402 F.3d 1148 (11th Cir. 2005) (crimes against humanity).

conspirators, and aiders and abetters.[9] At least three post-*Sosa* judgments have affirmed these holdings.[10]

In 1991, the US Congress adopted the Torture Victim Protection Act (TVPA), which President George H.W. Bush signed into law in 1992. The TVPA's legislative history makes clear that Congress intended the TVPA to confirm and supplement, but not supersede, the ATCA, which continues to have "other important uses."[11] The TVPA provides that "an individual who under actual or apparent authority, or color of law, of any foreign nation" subjects another to torture or extrajudicial killing is liable for damages in a civil action.[12] The TVPA provides a remedy to "aliens" and US citizens.

The TVPA is narrower than the ATCA in that it (a) only applies to torture and extrajudicial killing and (b) may be used only against "individuals" who act under "actual or apparent authority of any foreign nation." It is broader in one respect, in that it provides a remedy to US citizens, namely, for torture and summary execution that occur under color of foreign law. The TVPA, by its terms, cannot be applied against individuals acting under the authority of, or in concert with, the US government.

II. CASES AGAINST FOREIGN INDIVIDUALS

A. *Assessment of Impact to Date of ATCA/TVPA Cases*

Since 1980, a total of 18 perpetrators (including Pena-Irala, the defendant in the *Filartiga* case) have been successfully sued.[13] Two of

9 *See, e.g.*, Ford v. Garcia, 289 F.3d 1283 (11th Cir. 2002) (command responsibility); Hilao v. Marcos, 103 F.3d 762, 776-78 (9th Cir. 1996) (conspiracy and accomplice liability); *Mehinovic*, 198 F. Supp. 2d 1322 (conspiracy, aiding and abetting).

10 *See* Doe v. Liu Qi, 349 F. Supp. 2d 1258 (N.D. Cal. 2004) (judgment issued Dec. 8, 2004 for torture, cruel inhuman and degrading treatment or punishment, and prolonged arbitrary detention for detention of twenty days, and command responsibility); Doe v. Saravia, 348 F. Supp. 2d 1112 (E.D. Cal. 2004) (judgment issued November 2004 for extrajudicial killing and crimes against humanity for single act of assassinating Archbishop Romero, and for aiding and abetting liability); Estate of Cabello v. Fernandez-Larios, 157 F. Supp. 2d 1345 (S.D. Fla. 2001), *aff'd*, 402 F.3d. 1148 (11th Cir. 2005) (conspiracy and accomplice liability for crimes against humanity).

11 S.Rep. No. 102-249, at 4 (1991); H.R. Rep. No. 102-367, at 86 (1991).

12 28 U.S.C. § 1350(2)(a)(1)-(2) (2000).

13 Pena-Irala (Paraguayan police chief), see *Filartiga v. Pena-Irala*, 124 S.Ct. 2739 (2004); Suarez-Mason (Argentinian general), see *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987); Karadzic (Bosnian Serb leader), see *Kadic v. Karadzic*, 70 F.3d 232 (2d Cir. 1995); Gramajo (Guatemalan former defense minister), see *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995); Kavlin (Bolivian), see *Eastman Kodak v. Kavlin*, 978 F. Supp. 1078 (S.D. Fla. 1997); Assasie-Gyimah (Ghanaian), see *Cabiri v. Assasie-Gyimah*, 921 F. Supp. 1189 (S.D.N.Y. 1996); Ferdinand Marcos (former President of the Philippines), see *In re Estate of Ferdinand Marcos, Human Rights Litigation*, 25 F.3d 1467 (9th Cir. 1994) (*Marcos II*); Imee Marcos-

those, at the time the complaints were filed and served on them, were sitting, high-ranking government officials: the Bosnian Serb leader Radovan Karadzic and the Mayor of Beijing Liu Qi. Eight were former high-ranking civilian or military officials who continued to exercise considerable influence, including two presidents and three ministers of defense.[14] All were found to have had substantial responsibility for egregious human rights violations, to be subject to the personal jurisdiction of the court, and not to be entitled to immunity from suit (sovereign, diplomatic, or otherwise). In several cases the courts expressly found that the plaintiffs satisfied the requirements of standing, the statute of limitations, and the doctrine of *forum non conveniens*, and that the cases did not pose a significant interference with US foreign policy.

These cases have accomplished a number of important objectives. They have (1) helped to ensure that the United States does not remain a safe haven for such perpetrators, (2) held individual perpetrators accountable for human rights abuses, (3) provided survivors with some sense of official acknowledgment and reparation, (4) contributed to the development of international human rights law, and (5) built a constituency in the United States that supports the application of international law in such cases and an awareness about human rights violations in countries in all regions of the world. These cases, when taken together with other anti-impunity efforts around the world, are also helping to (6) create a climate of deterrence and (7) catalyze efforts in several countries to prosecute their own human rights abusers.

Manotoc (daughter of former Philippine President), see In *re Estate of Ferdinand Marcos, Human Rights Litigation*, 978 F.2d 493 (9th Cir. 1992) (*Marcos I*); Barayagwiza (Rwandan radio owner and political party leader), see *Mushikiwabo v. Barayagwiza*, No. 94 Civ. 3627, 1996 WL 164496, at *1 (S.D.N.Y. 1996); Panjaitan (Indonesian general), see *Todd v. Panjaitan*, Civ. A. No. 92-1225-PBS, 1994 WL 827111, at *1 (D. Mass. 1994); Avril (Haitian former military ruler and self-declared president), see *Paul v. Avril*, 901 F. Supp. 330 (S.D. Fla. 1994); Vuckovic (Bosnian Serb paramilitary), see *Mehinovic v. Vuckovic*, 198 F. Supp. 2d 1322 (N.D. Ga. 2002); Negewo (Ethiopian former municipal official), see *Abebe-Jira v. Negewo*, 72 F.3d 844 (11th Cir. 1996); Fernandez Larios (Chilean former military death squad member), see *Estate of Cabello v. Fernandez-Larios*, 157 F. Supp. 2d 1345 (S.D. Fla. 2001), *aff'd*, 2005 WL 580533 (11th Cir. 2005), and 205 F.Supp. 2d 1325 (S.D. Fla. 2002), aff'd 402 F.3d. 1148 (11th Cir. 2005); Saravia (Salvadoran key organizer of Archbishop Romero assassination), see *Doe v. Saravia*, 348 F.Supp.2d 1112 (E.D. Cal. 2004); Liu Qi (Beijing Mayuor), see *Doe v. Liu Qi*, 349 F. Supp.23d 1258 (N.D. Cal. 2004); Garcia (Salvadoran general and former defense minister) and Vides Casanova (Salvadoran general and former defense minister), see *Romagoza-Arce v. Garcia*, No. 02-14427, 2006 U.S. App. LEXIS 65 (11th Cir. 2006), vacating 400 F.3d 1340 (11th Cir. 2005), and upholding jury verdicts.

[14] Ferdindand Marcos (former President); Avril (former military ruler and self-declared president); Gramajo, Garcia, and Vides Casanova (former ministers of defense); Suarez-Mason and Panjaitan (former generals); Barayagwiza (radio owner and party leader).

1. Ensuring that the US Does Not Remain a Safe Haven for Human Rights Abusers

CJA estimates that several hundred human rights with substantial responsibility for heinous atrocities abusers now live in the United States, and that several dozen high-level perpetrators visit every year. These figures are supported by estimates from the US Bureau of Immigration and Customs Enforcement (ICE).[15] The abusers have come from more than seventy countries. Only a few dozen have been deported, in addition to the approximately one hundred who were denaturalized, deported, or extradited for Nazi-era crimes. Most of the non-Nazis have been deported since 2000. Most of them are low-level abusers and nearly half are Haitian.[16] Many of them are identified in the asylum process when they declare that their fear of persecution is based on the fact that they were part of a unit that participated in human rights atrocities. No human rights abuser has been criminally prosecuted for torture committed outside the US, despite the fact that Congress adopted a law in 1994 that empowers the US government to prosecute such crimes.[17]

The ATCA cases have resulted in the removal or departure of numerous human rights abusers who were either high-level or directly involved in committing atrocities. Of the eighteen individuals who have been successfully sued using the ATCA, one was deported based on

[15] ICE Fact Sheet, *available at* http://www.ice.gov/graphics/news/factsheets/nosafehaven.htm; *see also* Amnesty International, USA, *USA: A Safe Haven for Torturers*, *available at* http://www.amnestyusa.org/stoptorture/safehaven.pdf (Apr. 10, 2002) (quoting an immigration service source).

[16] For information on the number of Haitians placed in deportation proceedings as human rights abusers, see Alfonso Chardy, *2 More Haitian Torture Suspects are Arrested in S. Florida Pending Deportation*, MIAMI HERALD, Dec. 20, 2003, *available at* http://www.miami.com/mld/miamiherald/news/local/7535658.htm.

[17] In 1994, Congress passed legislation (18 U.S.C. § 2340A) to implement some of the obligations the U.S. government accepted when it ratified the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The law enables criminal prosecution of persons who committed torture outside of the United States so long as the perpetrator is either a national of the United States or physically present in the United States. To date, the DOJ has not filed any indictments using this authority, although it did temporarily detain a suspect in 2000 whom it then had to release when the Acting Secretary of State declared, in a controversial decision, that he had diplomatic immunity. *State Department Helped Peruvian Accused of Torture Avoid Arrest*, N.Y. TIMES, Mar. 11, 2000, at A7. The DOJ also has the capacity to prosecute human rights abusers for fraud or misrepresentation in obtaining entry to the United States. *See* 18 U.S.C. §§ 1001, 1426, 1546 (2000). These crimes carry a penalty of up to five years' imprisonment. Foreigners who seek to gain entry into, or permanent residency in, the United States must complete certain immigration forms, depending on the nature of the visa or status they seek. A few of these forms require the applicant to swear that he or she had not "participated in the persecution of any person." It is likely that hundreds of human rights abusers now in the United States have committed perjury in completing these forms. Until 2001, not one had been prosecuted for perjury. The immigration service has stated that a handful of investigations are currently underway.

information uncovered by the plaintiffs; one was denaturalized, detained, and placed in deportation proceedings; one was extradited; one died; and ten left the country never to return (as far as we know), including five who had moved to the United States to settle.[18] Only four of the eighteen remain in the United States[19] and, of those, all are subject to deportation investigations based in large part on evidence uncovered during the course of the ATCA cases.

Moreover, these cases have deterred numerous human rights perpetrators from coming to the United States, although the evidence is necessarily only anecdotal. Following the ATCA case against Paraguayan police chief Pena-Irala, the US consulate in Paraguay reported a decrease in visas to visit the United States requested by Paraguayan officials and military officers.[20] The Shah of Iran was the last major human rights abuser to seek medical treatment openly in the United States.[21] Although Baby Doc Duvalier of Haiti came to Miami in 1986 after he was forced into exile, he quickly left for France. Salvadorans who have been watching for the entry of Salvadoran military officers who used to travel regularly to Miami and southern California report that they are no longer coming here. Immigration agents have confirmed this observation.

2. Holding Perpetrators Accountable

ATCA cases hold individuals accountable, a component of both justice and deterrence. Although the punishment does not fit the severity of the crimes, these civil cases are generally the *only* remedies available to survivors.[22] Criminal prosecution would, of course, be a

[18] Pena Irala was deported; Negewo was denaturalized in 2001 and arrested, detained, and served with a deportation order in 2005. *See* Teresa Borden, *Deportation in Motion for Torturer*, ATLANTA J. CONST., Jan. 5, 2005, at A1; Inside ICE Newsletter, ICE Makes First Human Rights Arrest Under New Intelligence Act Authority, http://www.ice.gov/graphics/news/insideice/articles/insideice_011805_Web1.htm (last visited Feb. 15, 2006). Suarez Mason was extradited; Ferdinand Marcos died. Five defendants were successfully sued who were on visits to the United States, all of whom left shortly after the lawsuit was filed: Karadzic, Gramajo, Kavlin, Assasie-Gyimah, Liu Qi. Five defendants who were resident in the United States (in the United States more than six months or manifested clear intent to stay) left following the filing of the lawsuit: Imee Marcos-Manotoc, Barayagwiza, Panjaitan, Avril, and Vuckovic. See fn. 14, *supra*, for more about these abusers and their cases.

[19] Fernandez-Larios, Saravia, Garcia and Vides Casanova.

[20] *See* WILLIAM ACEVES, THE ANATOMY OF TORTURE: A DOCUMENTARY HISTORY OF *FILARTIGA V. PENA-IRALA* (forthcoming 2006).

[21] Although Imelda Marcos has come to the United States for treatment, she has always first obtained an order from the judge in the Marcos human rights cases permitting her to come.

[22] Civil cases offer some benefits beyond criminal prosecution: the victims and witnesses generally play a much more significant role in civil cases; and the burden of proof, while demanding, is not as high as in criminal cases.

more fitting punishment. However, the US government lacks the political will to prosecute many abusers, and in any event, the legislative mandate to prosecute is limited.

The cases expose what the perpetrators have done and cause embarrassment to the perpetrators. In some cases, being sued under the ATCA or TVPA may limit the careers of foreign officials if their advancement depends on their ability to travel to the United States without controversy. The lawsuits prevent foreign human rights violators from visiting or resettling in the United States with impunity. This can be a substantial penalty, especially for persons from countries with close relations with the United States or whose citizens often travel or retire to the United States, such as Indonesia and several countries in Latin America.

Hector Gramajo, a Guatemalan ex-general, was one of those who fled the United States after being served with an ATCA complaint in 1991. He had been grooming himself to run for the presidency of his country and had come to the United States to obtain a degree from the Kennedy School at Harvard. On his graduation day, he was served with the lawsuit.[23] He immediately returned to Guatemala, his US visa was revoked, and his party decided not to choose him as its presidential candidate. His inability to travel to the United States without embarrassment was a liability. Gramajo's political ambitions were harmed by the lawsuit and the public exposure surrounding it.

Kelbessa Negewo, held responsible by a federal court in Atlanta for acts of torture during the "Red Terror" in Ethiopia, lost several jobs as a result of the civil judgment and eventually was denaturalized and placed in deportation proceedings, largely based on evidence produced at the civil trial.[24] The filing of an ATCA claim in 1987 caused a Chilean torturer to avoid competing in the Pan-American games in Indiana for fear of having his horse attached.[25]

The collection of ATCA monetary judgments, however, has been difficult. It is believed that there has been money collected from only four of the individual defendants: a little more than $1 million from the estate of Philippine President Ferdinand Marcos,[26] approximately

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[23] Jennifer Kaylin, *Yale Law School Team Takes on an Alumnus*, N.Y. TIMES, Apr. 11, 1993, at 6.

[24] *See* Abebe-Jira v. Negewo, 72 F.3d 844 (11th Cir. 1996). Federal officials conducted an additional investigation in Ethiopia.

[25] Bernard Fernandez, *Retired Colonel Retreats to Chile Ahead of Suit*, PHILA. NEWS, Aug. 18, 1987, at 76 (Gonzalez, scheduled to compete on Chile's equestrian team, abruptly left the United States after being accused of torture in a civil suit).

[26] A $150 million settlement was approved in the Marcos case, but the Philippine courts blocked the transfer of Marcos's assets after the Philippine government intervened to claim the assets for itself. As a result, the settlement was never funded. Of course, all of the Holocaust Assets cases included ATCA claims, and billions of dollars in settlements have been achieved in those cases. Lawyers involved in these suits, including Professor Burt Neuborne, have credited

$1,000 each from General Suarez-Mason and Kelbessa Negewo, and $270,000 from General Vides Casanova, one of the defendants in the *Romagoza* case.[27]

CJA has put special focus on collecting the assets of the individual defendants it sues and on taking cases where such collection is possible. For example, CJA pursued a Haitian perpetrator who had won $3.2 million in the Florida state lottery in a recent case and obtained an order from a state judge to transfer more than $1 million of those assets to the state court pending further court order.[28] It is likely that other human rights perpetrators have assets that may be reached through ATCA/TVPA litigation.

3. Official Acknowledgment and Reparation for the Human Rights Victims and Survivors

These cases often help survivors experience a sense of justice, a sense of meaning in their survival, and tremendous satisfaction in knowing that they have brought dignity to the memories of those who were killed or tortured. Moreover, the cases are a way of setting the historical record straight—not just about *what* happened but also about *who* was responsible. As such, the cases serve as mini-truth commissions. Plaintiffs and community leaders have been eloquent in describing the impact of the cases on their own healing processes and on repairing their community's sense of loss.

For instance, Juan Romagoza, a Salvadoran torture survivor, stated:

> When I testified, a strength came over me. I felt like I was in the prow of a boat and that there were many, many people rowing behind. I felt that if I looked back, I'd weep because I'd see them again: wounded, tortured, raped, naked, torn, bleeding. So, I didn't look back, but I felt their support, their strength, their energy. Being involved in this case, confronting the generals with these terrible facts—that's the best possible therapy a torture survivor could have.[29]

Similarly, Maria Julia Hernandez, Director of the Legal Aid Office of the Archdiocese of El Salvador, stated:

I have worked for 20 years to achieve justice for the victims of the

the foundation of ATCA jurisprudence as being crucial in their efforts to obtain justice for victims of the Holocaust. *See, e.g.*, Burt Neuborne, *Preliminary Reflections on Aspects of Holocaust-Era Litigation in American Courts*, 80 WASH. U. L.Q. 795, 806 nn.29-30 (2002).

[27] *See* Romagoza-Arce v. Garcia, No. 02-14427, 2006 U.S. App. LEXIS 65 (11th Cir. 2006).

[28] *See* Jean v. Dorelien, No. 04-CA-001524 (Fla. Cir. Ct. Sept. 10, 2004) (Order Transferring Money to Court's Account), *available at* http://www.cja.org/cases/doreliendocs.shtml.

[29] Statement of Juan Romagoza, posted at http://www.cja.org/forSurvivors/reflect.doc.

> war in El Salvador. The process and the verdict in this case [against the generals] is an accomplishment in a long and most difficult fight, the fight against impunity . . . . It is a case in which all the victims of El Salvador who have not been able to be plaintiffs emerged and were represented by these brothers and this sister. When I attended the first days of the trial I felt that for the first time a real trial was happening. Such administration of justice is what we have always hoped to realize in El Salvador. Now each of us has been touched in a way that inspires us to continue on this road, guided by our brothers and sister who suffered, survivors of torture, to be able to carry that hope for justice to all of the other victims.[30]

Therapists have confirmed the broad remedial impact of the ATCA/TVPA cases. As stated by Dr. Mary Fabri, Director of the Center for Victims of Torture in Minneapolis:

> This legal recourse presents the opportunity for torture survivors living in the United States to seek justice and confront impunity. The few who are able to take their cases to court create a collective voice for all torture victims, bringing the issue of human rights atrocities into the public eye. This opportunity also presents a means for psychological healing of torture's wounds by breaking the silence, confronting perpetrators and refuting impunity.[31]

4. Contributing to the Development of Human Rights Law

These cases have created a foundation for the further use of international law to obtain justice for victims against a variety of human rights violators, including government officials in the United States and corporations complicit in human rights violations in connection with their activities abroad.[32]

ATCA cases are now an essential part of international human rights curricula at law schools, are taught in international relations courses, and are regularly addressed at judicial education seminars on international law. ATCA cases have demonstrated relevance not only to learning about international law but also to a host of subsidiary issues

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[30] *See also* Statement of Plaintiff Zita Cabello, http://www.cja.org/forSurvivors/ZitaforSurvivors.shtml ("I brought this lawsuit to honor the men and women who have had the moral courage to challenge the inevitability of injustice; all of those who have come to the realization that peace based on accommodation rather than on accountability necessarily leads to the repetition of past tragedies; to those who have chosen to work in favor of human dignity, peace, solidarity and justice."); *see also* www.nosafehaven.org for additional testimony by plaintiffs and a brief submitted to the Supreme Court about the impact of ATCA cases on survivors.

[31] Mary Fabri, *Torture and Impunity: Legal Recourse May Lead to Healing*, TRAUMATIC STRESS POINTS, Vol. 16, No. 2, Spring 2002, *available at* http://www.istss.org/Pubs/TS/Spring02/torture.htm.

[32] *See supra* notes 9-11.

that are crucial to the decisions of human rights cases, including the act of state and political question doctrines, immunities, *forum non conveniens*, exhaustion of domestic remedies, equitable tolling of the statutes of limitations, standing to sue, and theories of liability (command responsibility, aiding and abetting, conspiracy, vicarious liability, and direct liability).

5. Building a Human Rights Constituency in the United States

ATCA cases filed on behalf of often very sympathetic plaintiffs against specific perpetrators "put a human face" on human rights violations and have attracted considerable media coverage that highlights the need for the ATCA and the need to fight against impunity generally.[33] These cases, and survivors' testimony, compellingly illustrate that the ATCA provides survivors of human rights violations not only an important, but for most the *only*, means for redress in the United States.[34]

6. Deterrence

When taken together with other anti-impunity efforts around the world, ATCA cases make an important contribution to a climate of deterrence. The fact that ATCA cases have caused some human rights violators to leave the United States and have deterred others from entering is, to be sure, only a modest form of deterrence. However, when viewed together with developments in other countries, the combined impact has been to restrict substantially the number of countries to which human rights violators can travel. In particular, there is a history of such violators enjoying retirement, health care, education of their children, or vacations in the United States, a reality now made difficult by the threat of ATCA and TVPA litigation. Such considerations undoubtedly deter some foreign officials from engaging in human rights violations, especially those whose human rights abuses are part of a pattern of illegal conduct aimed at improving their and their children's lives.

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[33] *See, e.g.*, Joshua E.S. Phillips, *The Case Against the Generals*, WASH. POST, Aug. 17, 2003, at W06; see also other articles available at http://www.cja.org/cases/romagozanews.shtml, http://www.cja.org/cases/cabellonews.shtml, and www.nosafehaven.org.

[34] This argument was made by CJA, National Consortium of Torture Treatment Programs, and individual ATCA plaintiffs in their amici curiae brief in support of Respondent before the Supreme Court in *Sosa v. Alvarez-Machain*, *available at* http://www.nosafehaven.org/_legal/atca_pro_cntrJustAccntNCTTP.pdf.

7. Contributing to Transitional Justice

ATCA cases can serve as a catalyst for the process of transitional justice in the home country. They can bring hope to activists who have labored long without significant successes and to survivors who feel solidarity with the plaintiffs. By demonstrating that impunity can be challenged, ATCA cases can stimulate discussion about the crimes of the past and build support for bringing perpetrators to justice in their own domestic courts. For instance, the *Abebe-Jira* case had an effect on public opinion in Ethiopia and on the commitment of the Ethiopian government to move forward with trials of former officials of the Dergue.[35]

Similarly, the $54 million jury verdict in July 2002 against two Salvadoran former Ministers of Defense was seen by leading human rights figures as strengthening the foundation of the rule of law in El Salvador,[36] fueled debate in El Salvador regarding repeal of that country's amnesty law, and caused consternation among the country's top military officers.[37]

The *Romagoza* case also stimulated witnesses to come forward with evidence against two more Salvadoran perpetrators who have lived in the United States for more than fifteen years: one of the organizers of the 1980 assassination of Archbishop Oscar Romero and Colonel Carranza, Head of the Hacienda (Treasury) Police, who was forced out of the military in 1985 as a result of his responsibility for atrocities which endangered the continuation of US military aid to El Salvador. Following the issuance of the verdict in the Romero case in September 2004, key representatives of the Catholic Church in El Salvador for the first time called for revisions to the amnesty law and a reopening of the criminal investigation into the assassination.[38] The Archbishop of San Salvador stated that the verdict should help to establish Archbishop Romero's martyrdom by proving who was involved in the assassination plot.[39]

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[35] Plaintiffs' counsel was invited to give a nationally televised address during a visit to Ethiopia after the trial in March 1994. The case received substantial publicity within Ethiopia and within Ethiopian communities outside the country.

[36] Fr. José Tojeira, President of UCA, the Jesuit university in San Salvador, commented: "It is important to pursue international alternatives as a means to pressure the Salvadoran justice system. These Salvadorans brought their case in the United States . . . to help construct an El Salvador that is based on the truth. To fail to pursue the commanders endangers the rule of law and the foundation of our society."

[37] Statement to CJA lawyer by Benjamin Cuellar, Director of the Human Rights Center at UCA (Sept. 19, 2002).

[38] CO-LATINO (a leading Salvadoran paper), Sept. 7, 2004.

[39] Fernando Saenz Lacalle, Archbishop of San Salvador, quoted in a Reuters report, Sept 7, 2004 ("Saravia's conviction could help with the process of Romero's beatification, a possibility studied by the Vatican since 1994.").

CONCLUSION

The cases I have mentioned demonstrate the vitality of the Nuremberg precedents, and the creativity of lawyers in using those precedents, layered on top of an ancient US law, to pursue modern day war criminals. The cases also demonstrate the concrete benefits these cases bring to survivors, many of whom describe their responsibility to those who were silenced by unspeakable atrocities in terms reminiscent of the post-Holocaust testimonies. The cases also draw attention to the number of human rights abusers and war criminals who have found safe haven in the US and the surprisingly limited steps the US government has taken to prosecute or deport them. The law passed by Congress in 1994 to prosecute torture wherever committed has not once been used, and only in December 2004 was participation in torture and unlawful killings added to the list of conduct that can justify exclusion or expulsion from this country. While the current US administration may place a low priority on international justice, the US courts—with the help of courageous survivors and an active human rights network—have been able to bring hope in the possibility of justice to survivors not only in the US but in countries throughout the world. That is a legacy of which Americans rightfully should be proud.