



Frequently Asked Questions

Ochoa v. Rivera Rondón

Ochoa v. Hurtado

What are these cases all about?

They are civil lawsuits brought on behalf of two women, Teófila Ochoa and Cirila Pulido, against two Peruvian Army officers responsible for the killings of their relatives during the notorious Accomarca Massacre in 1985. The women have filed these cases to seek justice on behalf of all the members of the *Asociación de Familiares Afectados por la Violencia Política del Distrito de Accomarca* (Association of Relatives of the Victims of Political Violence in Accomarca) who lost loved ones in the massacre. Telmo Hurtado Hurtado and Juan Rivera Rondón, who now reside in the United States, commanded the patrol units involved in a military operation that resulted in the killings of 69 innocent civilians.

These cases mark the first of their kind filed in the United States for atrocities committed during Peru's twenty year civil war between 1980 and 2000.

The complaints include claims for the extrajudicial killings of the women's relatives and for the torture they personally endured in fearing for their own lives. The complaints also assert claims for war crimes, because the killings and torture occurred in the context of the civil war, and crimes against humanity, because the massacre was part of a widespread or systematic attack by the government against the civilian population of Peru.

The case against Hurtado was filed in Miami in the United States District Court for the Southern District of Florida. The lawsuit against Rivera Rondón is proceeding in Greenbelt, Maryland, in the United States District Court for the District of Maryland.

Who are the defendants?

Telmo Hurtado and Juan Rivera Rondón are residents of the United States who used to be officers in the Peruvian Army. At the time of the Accomarca Massacre in 1985, Hurtado was a second lieutenant and Rivera Rondón was a lieutenant. They were members of Lince Company, a special countersubversive intelligence unit that was mobile and could be deployed quickly to different regions. They commanded the patrol units – Lince 6 and Lince 7 – that were involved in the massacre.

Rivera Rondón came to the United States in the early 1990s and owns a home in Montgomery County, Maryland. He is currently detained on immigration charges in Maryland.

Hurtado fled Peru in 2002 after an amnesty law protecting him from prosecution was nullified by a decision of the Inter-American Court of Human Rights. He is currently incarcerated at the Federal Detention Center in Miami after pleading guilty to two counts of immigration fraud.

Who are the plaintiffs?

Teófila Ochoa and Cirila Pulido are residents of Peru. They were both 12 years old at the time of the Accomarca Massacre. They survived the massacre by hiding from the Army soldiers. Despite her own escape, Teófila's mother, four brothers and a sister were killed. Soldiers murdered Cirila's mother and brother.

The women, along with the other survivors of the massacre, formed the Association of Relatives of the Victims of Political Violence in Accomarca. Most of its members were young children when the massacre occurred. The Association's primary goal is to seek truth and justice for the victims. Teófila and Cirila have filed these cases to seek justice on behalf of all the members of the organization. They also serve on the Association's board of directors.

What role did Hurtado and Rivera Rondón play in the human rights abuses committed against the plaintiffs?

According to the complaints, in August 1985, the Army's Chief of the Political-Military Command for the "emergency zone" that included the district of Accomarca ordered one of his officers to devise an operational plan to "capture and/or destroy terrorist elements" in an area of Accomarca known as Quebrada de Huancayoc. A meeting was convened to discuss the plan and was attended by, among others, Hurtado, Rivera Rondón, and the commander of Lince Company, Major José Daniel Williams Zapata.

At the meeting, the plans of the operation were laid out. Two units from Lince Company would be employed. Williams Zapata chose the Lince 6 patrol unit, commanded by Rivera Rondón, and Lince 7 unit, commanded by Hurtado, to carry out the operation. The attendees were told that any villager appearing in Quebrada de Huancayoc should be considered a terrorist-communist.

On August 14, 1985, Lince 6 and Lince 7 entered Quebrada de Huancayoc. With Rivera Rondón's troops blocking a nearby escape route, Hurtado and his soldiers went house to house forcibly removing villagers from their homes. After soldiers raped some of the women, Hurtado's troops forced approximately 50 people, including several pregnant women and elderly residents, into two buildings. Hurtado then ordered his troops to open fire. Hurtado also threw a grenade toward one of the buildings, causing an explosion and a fire that burned the building with the villagers inside.

Approximately 69 unarmed civilians were killed by the Army during the operation.

After the massacre, Hurtado and Rivera Rondón submitted written reports about the operation. In their reports, neither Hurtado nor Rivera Rondón made any mention of the interaction with civilians in Quebrada de Huancayoc or the fact that troops had killed dozens of people.

Why are Hurtado and Rivera Rondón in jail?

The two men were arrested on March 30, 2007. Hurtado was charged with two criminal counts of immigration fraud. He was accused of lying on a visa application on which he indicated that he had never been arrested or convicted of a crime even though he had been found guilty in

Peruvian military courts of abuse of authority. Hurtado has now pled guilty to those charges. He was sentenced on June 29, 2007 to six months in prison.

Rivera Rondón is in immigration detention and does not face criminal charges. He was arrested by officials from Immigration and Customs Enforcement (ICE) and placed in deportation proceedings. The immigration action is connected to a previous criminal case in which Rivera Rondón pled guilty to a charge of “contributing to a minor child in need of assistance.”

Although the men’s involvement in the massacre was cited as a key reason for their arrests, the criminal and immigration charges do not directly concern the killings in Accomarca or the defendants’ role in human rights abuses in Peru. CJA’s cases against Hurtado and Rivera Rondón seek to hold them accountable for the crimes they committed against Peru’s civilian population and to give a voice to the survivors of Accomarca.

What do the plaintiffs and CJA hope to achieve with this case?

The plaintiffs are seeking justice, first and foremost. They seek official acknowledgement by a court of law that Hurtado and Rivera Rondón were responsible for the massacre and the killings of their relatives. They speak for the other members of the Association of the Relatives of the Victims of Violence in Accomarca, and for the many other victims during the civil war who cannot themselves speak out.

The lawsuits play a key role in CJA’s strategy to seek accountability for human rights abusers whether through civil suits, criminal prosecutions, deportations or extraditions. CJA works to ensure that the United States and other countries will not be safe havens for torturers and war criminals. In addition, all victims of severe human rights abuses have a right to redress. As in all lawsuits, CJA also hopes to uphold that right by recovering a measure of compensation for the suffering the victims have endured.

What outcome do you expect?

If the defendants are found liable, as we expect they will be, they will be legally obligated to pay the plaintiffs whatever amount of damages the courts assess. The plaintiffs will have the right to take possession of any of the defendants’ assets until the full amount of the judgments is paid off. Unfortunately, findings of liability in these cases will not result in further jail time for the defendants.

What is the legal basis of the suit?

The Alien Tort Statute (ATS), adopted in 1789, gives non-U.S. citizens who are survivors of serious abuses committed anywhere in the world the right to bring suit in U.S. federal courts against perpetrators who are in the United States. Since 1980, the law has been used successfully in cases involving torture, extrajudicial killing, crimes against humanity, war crimes, genocide and other severe abuses. The law was upheld in 2004 by the Supreme Court in the case of *Sosa v. Alvarez-Machain*.

The Torture Victim Protection Act (TVPA), passed in 1992 and signed into law by President George H.W. Bush, gives similar rights to U.S. citizens and non-citizens alike to bring claims for torture and extrajudicial killing committed in foreign countries. Under both laws, the perpetrator

ordinarily must be served with the lawsuit in the United States in order for the court to have jurisdiction.

These statutes reflect a commitment to the growing international movement toward universal jurisdiction. Under this principle, certain egregious human rights abuses are acknowledged to be so abhorrent by the international community that their perpetrators may be tried in any country.

Why wasn't the case filed in Peru?

The survivors of the massacre have sought accountability in Peru but their efforts have been continually thwarted. Cases cannot currently proceed against Hurtado and Rivera Rondón because they are not present in Peru.

After evidence of the massacre came to light in 1985, parallel investigations by civilian and military judicial authorities commenced. Hurtado and Rivera Rondón, among others, were indicted in the military courts. The Peruvian Supreme Court eventually ruled that the cases could only continue in the military system. Two years later, a military court absolved all the defendants of homicide and convicted Hurtado only a minimal charge of “abuse of authority.” He was sentenced to four years in prison. Later the military’s highest court overturned the lower court’s rulings and remanded the case for further proceedings. Hurtado was not re-tried until 1992, when he received a six year sentence. Rivera Rondón and the others were exonerated. Eventually, in 1995, Hurtado was given amnesty under a law passed during the regime of Alberto Fujimori. Even prior to the passage of the amnesty law, Hurtado had only served a fraction of his sentence and was actually promoted in rank and remained active in the military.

The amnesty law was eventually declared illegal after the Inter-American Court’s decision in the Barrios Altos case. The Attorney General’s office then filed criminal charges in a civilian court against a number of officers responsible for the massacre, including Hurtado and Rivera Rondón. However, the cases against Hurtado and Rivera Rondón cannot continue while they are in the United States.

What is CJA?

The Center for Justice and Accountability is an international human rights organization dedicated to ending torture and other severe human rights abuses around the world and advancing the rights of survivors to seek truth, justice and redress.

CJA uses litigation to hold perpetrators individually accountable for human rights abuses, develop human rights law, and advance the rule of law in countries transitioning from periods of abuse.

CJA recognizes that the need for justice is an integral component of a torture victim's recovery process and that healing cannot take place when the perpetrator continues to live without consequence. CJA has pioneered a survivor-centered approach to the quest for justice that combines legal representation with medical and psycho-social services to both empower and heal torture survivors and their communities.

Who is on the legal team?

CJA is joined on the case by pro bono co-counsel Morgan, Lewis & Bockius LLP.

Can you give examples of other, similar trials?

The first civil lawsuit brought against a foreign-born human rights abuser under the Alien Tort Statute was *Filartiga v. Peña-Irala*. In 1976, the family of a young man who had been killed in Paraguay in police custody discovered that the Paraguayan police inspector responsible for the murder was living in New York City. They called the immigration service which arrested him for overstaying his visitor's visa. The family sued the police inspector and, in 1980, the court of appeals in New York upheld their claims, opening the way for other cases using the ATS.

One of the most publicized cases was the suit against former Philippines President Ferdinand Marcos. Eventually, a U.S. court ordered his estate to pay nearly \$2 billion to his victims.

In 2004, CJA won a landmark case against an architect of the assassination of Archbishop Oscar Romero of El Salvador, one of the most important voices for peace, justice and equality in the twentieth century.

CJA has also won other multi-million dollar judgments against a member of the Haitian High Command, a Bosnian war criminal, the former mayor of Beijing, two Salvadoran Ministers of Defense and a Vice-Minister of Defense, a Honduran Chief of Military Intelligence, a Chilean death squad member, and a Haitian paramilitary leader. Information about these cases, including the complaints and judgments, can be found on CJA's website: www.cja.org.

Are the plaintiffs ever able to gain possession of the defendants' assets?

CJA has recovered over \$900,000 that a former member of Haiti's High Command won in the Florida Lottery. CJA has also collected over \$300,000 from one of the two former Salvadoran Ministers of Defense against whom CJA's clients won a \$56 million judgment in 2002.

Although collection has proven extremely difficult, CJA is committed to investigation and pursuit of defendants' assets in order to maximize the rights of our clients to compensation and redress.

Why a civil suit? Why not a criminal prosecution?

Only the U.S. Department of Justice (DOJ) has the authority to initiate criminal prosecutions. A federal law gives jurisdiction to U.S. courts to hear criminal cases for torture committed anywhere in the world but the law does not apply to any other human rights abuses and only entered into force in November 1994. DOJ maintains, therefore, that it can only prosecute acts of torture committed after November 1994.

Until recently, DOJ had never pursued a criminal conviction for torture under this statute. In December 2006, the U.S. government filed criminal charges against Chuckie Taylor, the son of Charles Taylor, for torture committed in Liberia. He currently awaits trial in Miami.