

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security
"Genocide and the Rule of Law"
2141 Rayburn House Office Building
October 23, 2007

Testimony Submitted By:

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Senior Fellow
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Mr. Chairman, and Honorable Members of the Subcommittee:

Thank you for giving me this opportunity to testify on an issue that has plagued us in the past, challenges us today, and will confront us in the future. I testify here today not as a legal authority, but as someone who has lived all sides of the issues that give rise to genocide. I have spent 20 years living and working in Africa as a journalist, NGO worker, and specialist on development and conflict. I also served as a policymaker at USAID and the National Security Council, where I was the Senior Director for African Affairs, during the Clinton Administration. Today, I am a Senior Fellow at the Center for American Progress, where I co-founded the ENOUGH Project to end mass atrocities and genocide.

I believe that H.R. 2489, the Genocide Accountability Act, is of critical importance as a matter of both principle and policy. Genocide is a crime without borders. As a matter of principle, amending the law to allow the prosecution of non-U.S. nationals resident in the United States for acts of genocide committed outside our borders is, quite simply, the right thing to do. For other grave international crimes, Congress has rightly extended the jurisdiction of U.S. courts to include non-U.S. citizens or actions taken beyond American borders. U.S. prosecutors have jurisdiction over cases involving terrorism and terrorist financing, hijacking and hostage taking, and torture, even if the action occurred outside the United States. Logic demands that if tortures can be held

accountable in U.S. courts, so too must the perpetrators of genocide.

We can also right a perverse wrong, as the prevailing situation allows perpetrators of genocide who may enter or who reside in the United States to use the loophole in existing law to provide what is in essence safe haven from prosecution. Even more important, we can send a signal to the world, and to both those who are victims of genocide and its perpetrators, that the United States stands against genocide wherever it may occur, and will not allow its perpetrators to avoid justice in the United States. As a matter of principle, we should do no less.

There are three ways that genocide can be brought to a halt: the international community can intervene; its victims can militarily defeat its perpetrators; or the actions of the international community can force the perpetrators to alter their calculations. Even though this legislation focuses on punishment, it can significantly impact the latter of these methods, strengthening the tools available to policymakers in their efforts to end genocide. If would-be perpetrators know that the long arm of U.S. law can reach out and hold them accountable for their actions, that may change the equation and serve as a meaningful deterrent to launching a campaign of genocide and mass atrocity.

There are also important matters of policy at stake, and across the board, closing the loophole that now prevents the prosecution of non-U.S. nationals within the United States will have a positive impact:

First, it will reinforce America's commitment to the rule of law. Significantly, H.R. 2489 will give teeth to the Convention on Prevention and Punishment of the Crime of Genocide, to which the United States is a signatory. Despite the passion underpinning and potency of this Convention, the failure of the international community to act swiftly upon it - in, for example, Rwanda and Darfur - has weakened it. By ensuring that the perpetrators of genocide can and will be prosecuted in the United States, we can uphold our commitment to the Convention and begin the arduous but necessary process of rendering the Convention a tool for change rather than a lofty but powerless statement of intent.

Second, it will contribute to our and other international efforts to break the cycle of impunity that allows for and perpetuates acts of genocide. In many cases, genocide and crimes against humanity occur in cycles, and those cycles are not broken until and unless justice is served. The wave of killings that constituted the Rwandan genocide, for example, were not the first in modern history. The U.S. government knows of individuals who were involved in the genocides in Bosnia and Rwanda that currently live in the United States. It is unconscionable that we know of people accused of these grave crimes yet we are powerless to prosecute them in our courts. David Scheffer, U.S. Ambassador at Large for War Crimes from 1997 to 2001, has often described his ultimately fruitless struggle to find the legal means to detain and put on trial Pol Pot and other senior Khmer Rouge figures due to the inability to prosecute him in U.S. courts. He eventually did find a third country willing to hold Pol Pot, but the drawn out negotiating process meant that he died before he could be captured and the deal subsequently collapsed. By closing the loophole in current law, the United States can contribute to broader efforts to break the cycle of impunity by ensuring that non-U.S. citizens who commit acts of genocide can and will be prosecuted in the United States.

Third, it will send a real-time signal to perpetrators who remain outside the law that there is a mechanism in place to hold them accountable for their crimes. This point is critical, as in Darfur today, one of the primary challenges we face is that the Government of Sudan and its proxy, the janajaweed militia, have no reason to believe that there is a cost for their actions. They have defied the will of the international community and rejected the findings of the International Criminal Court. However reprehensible their denial of responsibility may be, it is understandable. There has been no cost because the international community's words have not been reinforced by actions. Though in and of itself, closing this loophole is not sufficient to change this dynamic, it can make clear that the United States will impose a price for the commission of genocide.

Fourth, it could - in a small but significant way - initiate the critical but tardy process of giving meaning to the doctrine of the responsibility to protect. Endorsed by a majority of members of the United Nations, and invoked

in many a speech given by American policymakers, the doctrine of the "responsibility to protect" posits that where a government is unable or unwilling to protect its own citizens, the international community has a responsibility to act. It is a principled doctrine that aspires to translate into policy the best features of our common humanity.

It is also, at present, an empty doctrine. I have just returned from Darfur, where, as they enter the fifth year of abuse, violence, directed attacks, rape and displacement, the people of Darfur are waiting for a UN force - agreed a full four years after their nightmare began - that as yet has received no offers of armored helicopters or the other equipment necessary for a successful protection mission.

They are experiencing first-hand our failure to act on the responsibility to protect. They are watching as those indicted by the International Criminal Court continue in positions of power, and those known to have played a role in the destruction of their homes, livelihoods and communities roam free. Amending our laws will not protect them today or tomorrow; it will, however, provide us with the legal means to take action against the perpetrators in the United States and could thus serve to protect Darfur's people in the future.

Fifth and finally, it will affect people's lives. You may recall a case in the 1990s, when a young Ethiopian woman working in an Atlanta hotel came face to face with the man who had tortured her during what was called the "Red Terror" in Mengistu Haile Mariam's Ethiopia. Because hers was a case of torture, U.S. law allowed her to bring suit in the United States, ultimately with success. One of the women who attended the trial - a victim herself, told the *New York Times* that "Before I was tied up and hanging upside down. But this time I am standing up and facing him. I don't have to be afraid of him." She went on to say that "This is everybody's case, not just mine."

Honorable Chairman and Members of the Subcommittee, this is the point - amending our laws to ensure that non-U.S. citizens who commit acts of genocide can be tried in the United States is everybody's case. It is obviously of paramount importance to genocide's victims, but the case is

also ours if we are to stand up for accountability, the rule of law, and justice.