

Carlos Castresana Fernández

Public Prosecutor at the Court of Auditors of Spain

I. Education

Graduated in Law, 1974-1979, from the School of Law of University Complutense of Madrid. In 1978 pursued a course of studies at the Institut International des Droits de l'Homme. Strasbourg. France. From 1986 to 1989, after preparing and passing the competitive National Exam, gained access to the Judicial School of Spain, becoming Member of the Career of Public Prosecutors. Appointed Assistant Prosecutor in 1990, Senior Prosecutor in 1996, Prosecutor of the Supreme Court in 2005 and Prosecutor of the Court of Auditors in 2020.

II. Professional activity as Public Prosecutor

I began my career as Public Prosecutor in 1990 in the Circuit Courts of Barcelona, and then Madrid, dedicated to the investigation, prosecution and trials in criminal matters. I specialized in the prosecution of organized crime, corruption and international crimes.

In 1993 I was selected by the Attorney General to become a member of the Special Prosecution Office against Drug Trafficking. I gained a wide experience in investigating, prosecuting and bringing to trial before the National Court of Justice transnational criminal organizations responsible for international drug smuggling and money laundering offenses. I acquired a vast experience in international judicial co-operation.

In 1995, after another appointment by the Attorney General, I was transferred to the Special Prosecution Office against Corruption and mandated with investigations and prosecutions, (including trial phase, appeal and cassation) of high-level corruption cases before the National Court of Justice. I led the staff, worked with police investigators, forensic and expert witnesses in complex investigations involving taxes, accounting, public budget and expenditure, banking and other financial matters. I addressed substantive issues of corruption, diplomatic and state immunity when indicting Mr. Berlusconi, from Italy. During this period, I also acquired experience in extradition, EU and international law, and asset recovery.

I was appointed Public Prosecutor of the Supreme Court by Royal Decree 727 June 20th, 2005. I was assigned to the Criminal Affairs Section and dealt with investigations, prosecutions and courtroom interventions in criminal cases against high-level Government officials and members of Parliament, and also with appeals in cassation.

By Royal Decree 994 November 10th 2020, I was appointed Public Prosecutor of the Court of Auditors, the highest Constitutional organ in the matter, in charge of investigations of mismanagement of public Spanish and European funds.

III. Other services in the Administration of Justice and as Attorney-at-Law

I was incorporated as a litigating lawyer for the first time in 1980, working mostly as public defender, until I was appointed in 1986 - simultaneously with the preparation of the exam for access to the School of the Judiciary - substitute Magistrate of the Territorial Court of Madrid. Since 1987, I have served as temporary District and Investigating Judge in civil and criminal proceedings.

In 2014 I requested the status of *excedencia* - absence without salary – with regard to my career as Prosecutor. I then became a practising Attorney-at-Law at Ejaso ETL Global - a prestigious law firm based in Spain and Portugal, member of the German European Tax and Law (ETL) Group - and an international consultant, until 2020 when I resumed my career as Public Prosecutor.

IV. International Commission Against Impunity in Guatemala. 2007-2010

On September 14th 2007 I was appointed by the UN Secretary General of the United Nations as Commissioner -equivalent to UN Assistant Secretary General- of the International Commission Against Impunity in Guatemala (CICIG), a treaty-based, international and independent prosecutorial body. The CICIG was intended as an innovative hybrid rule of law UN mechanism to strengthen the law enforcement institutions of Guatemala.

We began our task by creating Special Police Units, a Special Prosecution Office, and Courts of Expanded Jurisdiction. The CICIG also developed a database for analysis and intelligence.

We promoted vetting processes for public institutions. In the National Civil Police, we supported the Government's dismissal of the Director, Deputy Director and 10% of the staff; in the Attorney General Office, the Attorney General and ten Chief Prosecutors were asked to recuse themselves; in the Judiciary, three Justices and three candidates of the Supreme Court, and twenty Magistrates of Courts of Appeal were removed. A second Attorney General was dismissed in 2010 by the Constitutional Court upon our request.

I brought proposals for legal amendments to the Congress, including laws on arms and ammunitions control, the prosecution of organized crime and plea bargaining, witness protection and wiretapping, and the creation of Courts of Expanded Jurisdiction for high risk cases.

We began to investigate and prosecute 27 high-impact cases (trans-national drug trafficking, networks of professional *sicarios*, the dismantling of civil police and military criminal clandestine structures, judicial and political corruption, extrajudicial killings, forced disappearances, illegal adoptions and human trafficking networks; most of the defendants were allegedly perpetrators of international crimes during the previous armed conflict). We secured 139 arrest warrants, (105 arrests, 74 defendants held without bail) including a former President of the Republic, former Ministers of Defence and Finance, four Ministers of the Interior, several generals and other officers of the army, congressmen and other politicians and high-ranking officers, lawyers, businessmen, drug traffickers. During my tenure, seven high-profile cases were brought to trial, and seven convictions were granted, 100% (statistical rate of convictions in the country at the time, 2%).

My team and I faced a wide variety of very difficult situations and worked under constant threats, but successfully carried out our mandate. I made extensive efforts to preserve the independence of the

Commission and the impartiality of our prosecutions by refusing to bow to political pressures, by assuming the responsibility for the CICIG's performance, and thus gaining the respect of a cohesive multinational team of committed professionals - 200 investigators and prosecutors, lawyers and police, economists, analysts and administrators, representing 27 distinct nationalities. I worked with them to build confidence and mutual support; designing successful work plans and strategies for the dismantling of illegal structures, while creating synergy with political parties, trade unions, indigenous organizations, the business sector, and some 35 civil society organizations and engaging with with diplomatic representatives.

I made every effort to keep our investigations and prosecutions within the strict limits of CICIG's mandate. Our jurisdiction was contested 16 times before Guatemalan Courts. All the claims were dismissed.

I signed a MoU with the United Nations Development Program (UNDP) to create a Trust Fund for donor countries. During a period of three years, we met with representatives of donor States, gathering pledges for an average of 15 to 20 million USD per year. Additionally, I signed agreements for the secondment of personnel and made agreements for the free implementation of the CICIG's witness protection program, and provided States-donated equipment to our Guatemalan counterpart. CICIG was always properly funded and financially managed. Between 2007 and 2010, in my role as Commissioner, I attended almost one thousand working meetings with different stakeholders. In 2009, the CICIG was discussed 4.485 times in the Guatemalan media despite the fact that CICIG had no budget for advertising.

In August 2009 the Secretary General re-appointed me as Commissioner for a new period of two more years. I resigned in June 2010 and re-joined the Spanish Supreme Court.

V. International consultancies after 2010

Bahrain. United Nations Development Program. After the events of the Arab spring and the recommendations of the BICI (Bahrain International Commission of Inquiry) Report, the UNDP invited me to train Bahraini prosecutors. In 2014, the training transitioned to the signature of an agreement of cooperation between the UNDP and the Attorney General's Office for a project of institutional strengthening and the creation of a Special Investigative Unit (SIU) in the Attorney General's Office to prosecute torture and other cruel, inhuman or degrading treatment. I was appointed Senior Project Advisor. The SIU was created, organized with investigative prosecutorial functions, and supported by a police unit, medical and psychiatric services and a database for intelligence and analysis. The experience is to be extended to Abu Dhabi and Kuwait.

Colombia. Federal Government of Switzerland. After the signature of the peace agreement, the Special Jurisdiction of Peace (SJP) was created in September 2017 with the mandate of providing retributive/restorative justice for the victims of the armed conflict and of establishing the responsibilities of both State and non-State actors - in coordination with the ICC. The enormous task ahead threatened to overwhelm the Special Court. The Swiss Ministry of Foreign Affairs offered to provide an expert advisor for the SJP. This arrangement was agreed upon in April 2018. Since then, I have been advising the SJP concerning structural and organizational issues as well as on substantive matters related to the nature of the crimes, the requisites for amnesties and alternative penalties, the criteria for prioritization of cases, and prosecutorial strategy.

Nepal. Federal Government of Switzerland. In 2017, the Swiss Ministry of Foreign Affairs began facilitating a dialogue between the Government of Nepal, the political opposition and civil society, concerning different mechanisms of transitional justice to deal with the human rights abuses of the recent armed conflict in that country. A first round of discussions was held in Bangkok that year which I attended as a guest expert. In July 2018, representatives of the same stakeholders were invited to attend the Advanced Learning Course on Dealing with the Past in Switzerland where I serve as a guest lecturer. In November 2018 another meeting was organized in Bangkok to develop a roadmap for the implementation of the transitional justice process.

Philippines. Federal Government of Switzerland. The Ministry of Foreign Affairs has been accompanying the peace process after the signature of the Comprehensive Agreement on the Bangsamoro (CAB) in 2014. The Transitional Justice and Reconciliation Commission (TJRC), chaired by a Swiss expert, issued its report in December 2015. In my role as guest lecturer in the Dealing with the Past course, I have been training representatives of the signatories to the CAB for the past several years. I also participated in a workshop with the bodies responsible for implementing the recommendations of the TJRC organized in Manila in June 2019 as an expert invited by the Swiss Government. The main challenges are not only dealing with the crimes of the armed conflict, but also building a new, efficient and reliable judiciary in the autonomous Bangsamoro region, and to merge or at least to balance the application of Filipino civil law and Sharia law, as it applies to the Muslim community in the Bangsamoro.

Ukraine. European Union. After the Maidan protest in 2014, the European Union launched the European Union Anti-Corruption Initiative (EUACI), supporting the efforts of Ukraine to create new institutions and pass legislation to combat corruption effectively. In 2017 the EU created the International Anticorruption Advisory Board (IACAB) with the primary purpose of advising the Congress in the legislation to be approved. I was invited to join as an expert, and was appointed Chairperson of the Board, visiting Kiev on successive occasions, meeting the Government, the political opposition, civil society, and the media, and expressing the opinion of the Board, principally in the Congress.

Sri Lanka. International Truth and Justice Project. In 2017 the ITJP requested me to bring charges against a Sri Lankan Army general on counts of war crimes and crimes against humanity allegedly committed during the armed conflict (2008-2009). The general had been appointed after the war to serve as ambassador to several Latin American countries. I prepared and filed a lawsuit simultaneously in Brazil, Chile, Colombia and Peru, coordinating with the prosecutors in all four jurisdictions. The Sri Lankan ambassador subsequently resigned, fled the region and sought refuge in his home country.

Government of Switzerland. Since 2010 the Federal Department of Foreign Affairs has invited me to serve as a guest lecturer in its annual Advanced Learning Course in Dealing with the Past, designed to train its own diplomatic staff in the Human Security Division and its international partners on the topics of transitional justice. The non-Swiss participants include government and civil society representatives primarily from post-conflict contexts in Europe (Kosovo, Georgia, Bosnia and Herzegovina, Russia, Serbia, Ukraine, North Macedonia, as well as Norway, France, United Kingdom, Spain, Austria, Netherlands), Latin America (Mexico, Peru, Colombia, Guatemala), Africa (Mali, Burundi, Cameroun, Liberia, South Africa, Chad, Tunisia, Libya, DR Congo, Egypt, Zimbabwe, Kenya and Nigeria), Middle East (Kuwait, Lebanon, Israel, Palestine) and Asia (Sri Lanka, Indonesia, Nepal, Pakistan, Kyrgyzstan, Armenia, Philippines, Myanmar and Thailand).

UNICRI (United Nations Interregional Crime and Justice Research Institute). Based in Turin, Italy, the Institute develops academic and research programs in partnership with UN Member States on issues such as international criminal law, counterterrorism de-radicalization of extremists, prevention of synergies between terrorist and organized crime groups, cybercrime, BCRN (biological, chemical, radiological and nuclear) control. As such, the UNICRI is intended to become the UN System think-tank for developing global criminal policies to address the most serious international and transnational criminal activities. I was invited to join the Board in 2014, elected by ECOSOC, was re-elected in 2019, and have now been re-appointed as Deputy Chairperson of the Board of Trustees.

Other relevant consultancies: 2006. UNODC Regional Office for Mexico and Central America, Coordinator of the Project AD/MEX/03/H32 for Crime Prevention and Abuse and Illegal use of Drugs. 2003. Expert by appointment from UNODC for a Mission in Ciudad Juárez (México) concerning the murder of women in that town. 1990-2003. Council of Europe, expert and speaker at conferences and programs addressed to promote democracy, rule of law and accountability in Eastern European countries. Azerbaijan, Bulgaria, Estonia. European Union: Member of international judicial co-operation programmes organized in 1994 by the European Anti-fraud Office (OLAF). 1993-1995. Schengen Working Group on Drugs.

Expert activities in Africa: In addition to the training of experts from thirteen African nations, I've researched for Open Society Justice Initiative the illegal exploitation of natural resources in Equatorial Guinea; I was appointed by UNDP as expert to advise the Truth Commission in Tunisia in order to develop anticorruption strategies; I work for the Institute for Integrated Transitions in transitional justice projects for Nigeria and Libya.

VI. Academic activities

2014: Guest Professor, Haverford College, Pennsylvania, United States. International Criminal Justice and Transitional Justice. 2011: Guest researcher Institut Dag Hammarskjöld. Uppsala, Sweden. 2003-2006: Professor International Criminal Law and Program Director Human Rights Center for Law and Global Justice, University of San Francisco, California. 2000-2003: Associate Professor, Universidad Carlos III of Madrid, School, Criminal Law. Speaker in courses and congresses in European and American universities, on human rights, international humanitarian law and international criminal law, invited by the World Bank, UNIFEM, the Max Planck Institute, the Lelio Basso Foundation, the Konrad Adenauer Foundation, Transparency International, Amnesty International, UC Berkeley, Yale, Stanford, NYU, Drexel, CUNY and Harvard Universities, the Open Society Foundation, the US Departments of Defence, Justice and State.

VII. Pro Bono activities

2019. Elected President of the Asociación pro Derechos Humanos de España, the most renowned human rights NGO in my country.

2017-Present. Transparency International. Designated member of the Executive Board of the Spanish Chapter of TI.

2017-Present. Institute for Integrated Transitions. Member of the Law and Peace Practice Group.

2011-Present. Harald Edelstam Foundation. Stockholm, Sweden. Member of the Board of Trustees.

2009. Expert by appointment of the Inter American Commission on Human Rights before the Inter-American Court of Human Rights. *Case Campo Algodonero v. Mexico*. Author of the written expert testimony on behalf of women victims of gender violence in the northern Mexican town of Ciudad Juárez, leading to the most important judgment of the Inter-American Court concerning the right of women to a life free of violence, and the State's duty to investigate, prosecute and punish perpetrators of gender violence and provide reparations to victims. Expert witness in the cases *Diario Militar v. Guatemala* and *Palacio de Justicia v. Colombia*.

1996 *Pinochet Case*. Author of the first lawsuits against members of the former military juntas of Argentina and Chile, which gave rise to the proceedings before the Spanish National Court of Justice (*Pinochet case*). Author, on behalf of the Public Prosecutors' Progressive Union, of reports on genocide, terrorism, torture, enforced disappearances, crimes against humanity and against internationally protected persons, immunity, universal jurisdiction, extradition, statute of limitation, *ne bis in idem*, due obedience, amnesty and international legal co-operation, at the request of the Board of Prosecutors of the Supreme Court of Spain in order to obtain the detention of General Jorge Rafael Videla in Argentina and the detention of General Augusto Pinochet in London.

VIII. Selected publications

- “*Corruption, organized crime and international crimes. Lessons for prevention*” Politorbis, Swiss Ministry of Foreign Affairs, 2020.
- “*Una Nueva Política Criminal para México*”. Instituto Nacional de Ciencias Penales, México, 2018.
- “*Justicia Transicional en Chile*”. Universidad Católica, Chile, 2016.
- “*Hipergarantismo: el caso de Guatemala*” Instituto Nacional de Ciencias penales, México 2011.
- “*Torture as a Greater Evil*”, Johns Hopkins University Press, U.S.A., 2007.
- “*De Nüremberg a Madrid*” Revista de Jueces para la Democracia, n. 54, November 2005.
- “*The Legacy of the Pinochet Case*”, in the Berkeley Review of Latin American Studies. University of California, Berkeley, 2005.
- “*The Role of Civil Society and the Media in Building a Culture against Corruption: the Experience of Spain*” in “Global Action against Corruption, the Mérida papers”. UNODC, Vienna, 2004.
- “*La Jurisdicción Universal en la Jurisprudencia de la Sala II del Tribunal Supremo*” in Revista del Poder Judicial, nº 73. CGPJ. 2004.
- “*Corrupción, Globalización y Delincuencia Organizada*”, in La Corrupción en un mundo globalizado. Análisis interdisciplinar. Ed. Ratio Legis, 2004.
- “*La Corrupción Económica en las Comunidades Europeas*” in Protección de los Intereses Financieros de la Comunidad Europea. Trotta, 2001.
- “*El Juicio en Cortes Extranjeras a los Miembros de las Juntas Militares Argentina y Chilena*” in Justicia Penal Internacional. Universidad Iberoamericana, 2001.
- “*Il caso Pinochet. I Crimini Contro l’Umanità fra Política e Diritto*”. Fondazione Internazionale Lelio Basso, 1999.
- “*Fundamentación de la Competencia de la Justicia Española en Los Delitos de Lesa Humanidad*” in Contra la Impunidad, en Defensa de los Derechos Humanos. Icaria, 1998.

IX. Principal Honours and Awards

- 1997. Human Rights National Award, Spain.
- 2003. Doctor Honoris Causa, University of Guadalajara, Mexico.
- 2004. Certificate of Honor. City Council of San Francisco, California.
- 2006. Doctor Honoris Causa, Central University Santiago de Chile.
- 2006. Medal of Honor of the Vice Presidency of the Chilean Senate.
- 2010. Order of the Legion of Honor. Republic of France, grade Official.
- 2010. Order of the Stella della Solidarietà, Repubblica Italiana, grade Commendatore.
- 2010. Order of the Quetzal, República de Guatemala, grade Gran Cruz.
- 2010. Order of the Mérito Civil. Kingdom of Spain, grade Encomienda de Número.
- 2016. Prize for Transparency, Integrity and Fighting Corruption by the General Counsel of Attorneys of Spain and Transparency International.
- 2018. Doctor Honoris Causa, National Institute of Criminal Sciences, Mexico.

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