

# FROM THE UNITED STATES TO CANADA: THE SEARCH FOR TRANSNATIONAL JUSTICE MOVES NORTH

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## **Abstract**

This essay explores the slow death of the Alien Tort Statute in the United States and the use of Canadian courts as an alternative for victims of human rights abuses seeking a court willing to entertain extraterritorial claims. In *Kiobel*, the U.S. Supreme Court eliminated all ATCA cases originating from a foreign-based controversy, save those that closely “touch and concern” the United States. At roughly the same time, Canadian courts have begun to entertain cases against foreign states that sponsor terrorism, Canadian mining companies accused of complicity in human rights violations committed abroad, and enforcement of foreign judgments. In addition, at least one high-profile Canadian firm has engaged in a unique alternative dispute resolution mechanism aimed at providing compensation for serious criminal activity and the government of Canada is encouraging similarly situated Canadian firms to do the same thing. Taken as a whole, the shift from the U.S. to Canada for this form of justice is likely to 1) promote a tighter nexus between U.S. and Canadian based human rights violators and any court likely to sit in civil judgment of such actions, and 2) deny victims of atrocities that do not fit into select categories any opportunity at redress.

**Key words:** *Human rights; sovereign immunity; extraterritorial claims; Alien Tort Statute; remedies.*

Beginning in the early 1980s, the Alien Tort Claims Act (1789) (also known as the Alien Tort Statute or ATS), occupied pride of place for human rights advocates pressing civil claims for serious abuses committed abroad.<sup>2</sup> Under the Act, victims of serious abuses filed civil cases in U.S. federal courts in an effort to remedy atrocities committed around the world, many of which had little connection to the United States. This form of transnational public law litigation sought to vindicate rights and

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<sup>2</sup> See *Filartiga v. Pena-Irala* (1980) (permitting the family of a Paraguayan torture victim to seek damages under the ATS against a foreign defendant present in the U.S. and properly served).

values through judicial remedies – a peculiarly symbolic and uniquely American phenomenon.<sup>3</sup> For Dolly Filartiga – who sued her brother’s Paraguayan torturer in the Eastern District of New York – and hundreds of other human rights litigants, the ATCA allowed victims or their families to convert privately held knowledge into a form of public acknowledgement.

The ATCA represents the creative reappropriation of a statute originally drafted to address non-human rights issues, principally tortious assaults on ambassadors and acts of piracy. Foreigners alleging a tort in violation of the law of nations may use the Act to bring suit in U.S. federal court. The watershed case of *Doe v. Unocal Corp.* (2002) embodied the use of the statute to vindicate human rights claims. In *Unocal*, Burmese villagers alleged that the company, directly or indirectly, subjected the plaintiffs to forced labor, murder, rape, and torture when the defendants constructed a gas pipeline through the Tenasserim region. By finding the defendant potentially liable, *Unocal* gave rise to a second generation of ATS cases, against corporations alleged to aid and abet atrocities rather than individuals, and emboldened dozens of other suits, including *In re South African Apartheid Litigation* (2004); *Sarei v. Rio Tinto* (2008); and *Presbyterian Church of Sudan v. Talisman Energy, Inc.* (2009). *Unocal* also led to a sizable but confidential settlement. For almost a decade after *Unocal*, U.S. courts proceeded on the assumption that the ATS can provide jurisdiction over corporations.<sup>4</sup>

3 See KOH (1991).

4 The slow death of the ATS may have been foretold by the 2004 case of *Sosa v. Alvarez-Machain* (2004). There, the Supreme Court clarified that the ATCA did not create a separate ground of suit for violations of the law of nations but was limited to providing courts with jurisdiction over those violations accepted by the “civilized world” and defined with specificity by the original statute (piracy, assault on ambassadors, and safe conduct). Because Alvarez-Machain’s claim did not fall into one of these traditional categories, it was not permitted by the ATS. To guide future cases, the Court established a flexible framework for determining which torts constitute causes of action under the ATS. Four key principles underpin the framework: universality, obligatory nature, specificity, and prudential considerations: **Universality.** A cause of action must be universally recognized by the *law of nations* as a prohibited norm in order to be actionable. Given the shift in American jurisprudence away from *natural law*, the *law of nations* (from the U.S. standpoint) now consists of: mutual obligations that nations have traditionally observed in conduct with one another; “arbitrary law of nations,” or norms that nations have *voluntarily* agreed to either explicitly (e.g., via treaties) or implicitly (e.g., via customary practice); and *jus cogens* norms. **Obligatory Nature.** The prohibitive norm must be *binding* or *obligatory*, not merely hortatory, in order to be actionable. **Specificity.** *Sosa* requires specificity similar to the 18th century *common-law* causes that were actionable under the ATS at the time of its passage – causes such as piracy, torts against foreign ambassadors, and violations of safe passage. The Court points to *United States v. Smith* as a model of the kind of specificity with which piracy was defined. The specificity in *Smith* covers the typical elements of a criminal cause of action, such as *actus reus*, *mens rea*, harm, causation, remedy, and defenses. This implies that the *law of nations* must provide courts with a detailed rule of decision in order for the cause of action to be justiciable. **Prudential Considerations.** A cause of action can be non-justiciable even though it meets the criteria discussed above **IF** prudential factors weigh in favor of nonjustifiability, including: public policy, separation of powers, political questions, reticence of domestic courts to command foreign relations, and judicial restraint in legislating new common law.

In 2013, however, the United States Supreme Court dramatically narrowed the scope of the statute. *Kiobel v. Royal Dutch Petroleum* (2013) holds that “principles underlying the presumption against extraterritoriality” constrain courts in crafting a common law cause of action for claims under the ATS arising on foreign soil. As Professor Sarah Cleveland has written,

The Court thus articulated a ‘*Kiobel* presumption’ against extraterritoriality, for the ATS only, which it necessarily adapted to the purposes of that statute. The Court held that the presumption could be displaced where the claims ‘touch and concern’ US territory with sufficient force, but that the ‘mere corporate presence’ of Royal Dutch Petroleum was not enough.<sup>5</sup>

Justice Breyer, who mused at oral argument that it would be appropriate to refer to modern day human rights abusers as “Torture, Inc.,”<sup>6</sup> concurred with the majority’s dismissal of the case but argued that the ATS should continue to provide

jurisdiction [...] where (1) the alleged tort occurs on American soil, (2) the defendant is an American national, or (3) the defendant’s conduct substantially and adversely affects an important American national interest, and that includes a distinct interest in preventing the United States from becoming a safe harbor (free of civil as well as criminal liability) for a torturer or other common enemy of mankind.<sup>7</sup>

Justice Kennedy wrote in his one-paragraph concurrence that “[t]he opinion for the Court is careful to leave open a number of significant questions regarding the reach and interpretation of the Alien Tort Statute. In my view that is a proper disposition.”<sup>8</sup> Justice Alito with Justice Thomas joining found that “a putative ATS cause of action will fall within the scope of the presumption against extraterritoriality – and will therefore be barred – unless the domestic conduct is sufficient to violate an international norm that satisfies *Sosa*’s requirements of definiteness and acceptance among civilized nations.”<sup>9</sup>

*Kiobel* involves a second question that the Court left unresolved, namely whether a corporation can ever be a defendant in an ATS case. Three years before the Supreme Court decided the case for Shell, the Second Circuit Court of Appeals found that corporations cannot be liable for human rights abuses under customary international law and that, accordingly, there was no subject-matter jurisdiction under the ATCA. The Supreme Court appeared to avoid the issue of corporate liability itself and does not preclude non-state actors from suing corporations in other

5 Cleveland (2014), p. 551.

6 Oral Argument at *Kiobel v. Royal Dutch Petroleum Co.* (2013), 50: pp. 8, 14.

7 *Kiobel v. Royal Dutch Petroleum Co.* (2013), p. 31 (Breyer, J., concurring).

8 *Kiobel v. Royal Dutch Petroleum Co.* (2013), p. 26 (Kennedy, J., concurring).

9 *Kiobel v. Royal Dutch Petroleum Co.* (2013), p. 29 (Alito, J., concurring).

contexts.<sup>10</sup> Accordingly, *Kiobel* creates more stringent standards for U.S. corporations than their foreign counterparts (because of the territorial nexus to the firm). A case against ExxonMobil in Indonesia, for example, is proceeding because ExxonMobil “sprung from Standard Oil and is currently headquartered in Texas”.<sup>11</sup>

That the ATS landscape has been altered post-*Kiobel* is not in doubt. *Kiobel* clearly forecloses federal court cases where the plaintiff, defendant and situs of the violations are all foreign (so called “foreign cubed” cases). In *Sarei v. Rio Tinto PLC* (2008), for example, plaintiffs from Papua New Guinea alleged that a joint Australian/British aided and abetted the actions of the government of Papua New Guinea during a civil war in which the state is accused of committing serious violations of international humanitarian law. Following the *Kiobel* decision, the *Sarei* plaintiffs sought voluntary dismissal of the suit. The U.S. Supreme Court also added a personal jurisdiction barrier in a case brought in part under the ATS, *Daimler AG v. Bauman* (2014), ruling that a German parent company is not within the general jurisdiction of the state courts simply because it has an in-state subsidiary unconnected to the plaintiffs’ underlying claims. *Kiobel* rendered the *Bauman* plaintiffs’ claims untenable, because all the allegedly wrongful conduct occurred abroad. ATS suits also face the additional hurdles posed by *forum non conveniens* considerations.<sup>12</sup> As Laurie Weiss and William Panlilio explain,

[t]he plaintiffs in *Sinaltrainal v. Coca-Cola Co.* failed to satisfy that more stringent pleading standard, 578 F.3d 1252 (11th Cir. 2009), *abrogated on other grounds by Mohamad v. Palestinian Authority*, 132 S. Ct. 1702 (2012). In that case, plaintiffs from Colombia alleged that their employers – two bottling companies in Colombia – collaborated with Colombian paramilitary forces that purportedly engaged in systematic intimidation, kidnapping, detention, torture, and murder of Colombia trade unionists [...] The court rejected what it found to be the plaintiffs’ vague and conclusory allegations as well as formulaic recitations on which they based their ATS allegations. According to the court, the plaintiffs [...] failed to allege sufficient facts to nudge the ATS claims from conceivable to plausible.<sup>13</sup>

Only one category of cases remains with a high degree of certainty: ATS claims against individuals for serious violations of international human rights law where the

10 “*Kiobel* v. Royal Dutch Petroleum: Beyond the Alien Tort Statute—Broadly Extending the Presumption Against the Extraterritorial Reach of US Law”, JD SUPRA (Apr. 26, 2013) (Lexis-Nexis, News, Most Recent 90 Days); “Supreme Court Leaves Much Unclear In Opinion on Alien Tort Statute”, INSIDE U.S. TRADE (Apr. 26, 2013).

11 “Indonesians Sue ExxonMobil in US court; Villagers in Aceh Claim ExxonMobil is Responsible for Human Rights Abuses Committed by Indonesian Soldiers Guarding its Natural Gas Pipeline and Processing Facility”, GLOBALPOST: BEATS (NORTH AMERICA) (Apr. 26, 2013) (Lexis-Nexis, News).

12 See *Aguinda v. Texaco, Inc.* (2002), and the heightened federal pleading standards of *Twombly* and *Iqbal*.

13 WEISS and PANLILIO (2013).

defendant has a substantial connection to the United States. Indeed, the presumption against extraterritoriality in avoiding foreign conflicts appears to recognize that claims which sufficiently “touch and concern” the United States include: conduct that occurs in part on U.S. territory, perpetrators who are U.S. nationals or are domiciled in the United States, and claims implicating significant U.S. national interests, including piracy and the denial of safe haven to serious human rights violators. In *Al Shimari v. CACI International* (2014), four Iraqi citizens alleged that CACI, a U.S. government contractor providing “interrogation services” to Iraq’s Department of the Interior, violated international law by torturing and mistreating prisoners at Abu Ghraib. After reviewing CACI’s “ties to the territory of the United States”, the Court concluded that the plaintiffs’ ATS claims “touch[ed] and concern[ed] the territory of the United States [...] with sufficient force to displace the presumption against extraterritorial application”.<sup>14</sup> In *Mwani v. bin Laden*, the DC District Court had no trouble finding that foreign plaintiffs injured by the al-Qaeda attack on the U.S. Embassy in Nairobi meet the *Kiobel* “touch and concern” standard.<sup>15</sup> Likewise, Judge Lamberth of the D.C. District Court allowed plaintiffs to amend their complaint against ExxonMobil relating to the company’s actions in Indonesia in order to try to meet the “touch and concern” standard.<sup>16</sup> The Ninth Circuit adopted the same reasoning in permitting plaintiffs to amend their claims against a U.S. subsidiary of Nestlé to substantiate a U.S. nexus to allegations of child slavery in Cote D’Ivoire.<sup>17</sup>

Notwithstanding the successes discussed above, more than 70% of ATS cases pending at the time of *Kiobel* have been dismissed.<sup>18</sup>

Absent an equivalent to the ATCA, Canada has had comparatively less experience adjudicating complex civil litigation for human rights claims originating outside the country. Since *Kiobel* was decided, however, Canada has become the unsuspecting home to four distinct kinds of human rights-based claims: claims against state sponsors of terrorism, enforcement of foreign judgments, direct actions against Canadian companies accused of aiding and abetting atrocities committed abroad, and an emerging alternative dispute resolution mechanism pioneered by a Canadian gold mining company.

The first category involves the amendment of Canada’s State Immunity Act in 2012 to allow individuals to sue foreign governments in Canadian courts. Per the Justice for Victims of Terrorism Act (2012), states designated as sponsors of terrorism no longer enjoy immunity. To date, only Iran and Syria have been labeled as state sponsors of terror.<sup>19</sup> In 2016, an Ontario court awarded \$13 million to U.S.-citizen plaintiffs seeking to enforce U.S. judgments.

14 *Al Shimari v. CACI International* (2014).

15 [www.gpo.gov/fdsys/pkg/USCOURTS-dcd-1\\_99-cv-00125/pdf/USCOURTS-dcd-1\\_99-cv-00125-3.pdf](http://www.gpo.gov/fdsys/pkg/USCOURTS-dcd-1_99-cv-00125/pdf/USCOURTS-dcd-1_99-cv-00125-3.pdf)

16 *Doe v. Exxon Mobil Corp.* (2014).

17 *Doe v. Nestlé USA, Inc.* (2014).

18 BELLINGER and ANDERSON (2015).

19 The Canadian legislation is modeled on the anti-terrorism exception contained in the U.S. Foreign Sovereign Immunities Act (1976).

The second category of enforcement actions is most readily apparent in proceedings related to the Ecuadorian judgment entered against Chevron Corporation stemming from the human and environmental costs associated with oil development in the Oriente region.<sup>20</sup> After more than two decades of litigation in the U.S. and Ecuador, Ecuadorian courts awarded a \$9.5 billion judgment to a group of 30,000 residents of the affected region.<sup>21</sup> Chevron has aggressively fought the plaintiffs in U.S. courts and has refused to acknowledge or pay the debt. Since Chevron does not hold any Ecuadorian assets, the plaintiffs commenced enforcement of judgment actions in Brazil, Argentina and Canada. In the Canadian case, plaintiffs filed an action for recognition and enforcement of the Ecuadorian judgment in the Ontario Superior Court of Justice. “Canadian courts, like many others, have adopted a generous and liberal approach to the recognition and enforcement of foreign judgments”, the Canadian Supreme Court said in its unanimous ruling.<sup>22</sup> The Ontario Court will now determine the dual questions of whether the original judgment is valid and if Chevron’s assets may be seized to satisfy the Ecuadorian order. Whatever the outcome, it is plain that plaintiffs in the Lago Agrio/Oriente odyssey have stretched the battlefield and forced Chevron to defend its actions in Canada and other third-country locales.

The third category of case involves direct claims against Canadian corporations for their role in human rights abuses committed abroad. In March 2011, eleven Guatemalan women filed suit against Hudbay Minerals and its subsidiary HMI Nickel Inc. in Ontario Superior Court. The plaintiffs alleged that companies were complicit in the gang rapes suffered by the women at the hands of security personnel hired by the defendant firms. The women claim that the gang rapes occurred in January 2007 during forced evictions of members of the Mayan Q’eqchi’ community living in El Estor, Guatemala, the site of the companies’ nickel mining operation, also known as the Fenix project. Members of this community have also challenged the legitimacy of the mining concession granted for the Fenix project. The plaintiffs argue that the concession is on their ancestral land and was granted to Hudbay by the government without adequately consulting the Q’eqchi’ community. They have

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20 See PATEL (2012), p. 77 (noting that the chief sources of environmental damage were leaching or discharge of “formation water” and “produced water,” drilling wastes, accidental discharge from the pipeline, and deliberate dumping of wastes); DHOOGHE (2009), p. 7 (noting contaminated water and livestock, decreased life expectancy, and a rate of cancer three times higher in the Oriente than in other Amazon provinces); KIMERLING (2006/2007), p. 451 (arguing that Texaco and other companies ignored Ecuadorian environmental laws and that the government failed to implement and enforce such laws).

21 In 1993, a class of Ecuadorian plaintiffs sued Texaco in New York alleging massive environmental contamination that had caused elevated rates of cancer and birth defects. The case was dismissed on *forum non conveniens* grounds and refiled in Ecuador. After President Rafael Correa came to power, the case accelerated in the Ecuadorian courts, ultimately resulting in an \$18 billion judgment (a figure that grew to \$27 billion and was later reduced to \$9.5 billion). The plaintiffs have attempted to enforce the Ecuadorian judgment in the U.S. where they have met fierce opposition from Chevron.

22 *Chevron Corp. v. Yaiguaje* (2015), see <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do>.

protested the development of the project and opposed the removal and resettlement of their homes and community. Two related suits have been filed against Hudbay Minerals stemming from violent incidents at the Fenix mine (one is based on the killing of a protester;<sup>23</sup> the other involves a plaintiff who was paralyzed as a result of a shooting by Hudbay's security forces) for wrongful death, battery, negligence, false imprisonment and a failure to supervise security forces. On July 22, 2013, the Ontario Superior Court ruled that the lawsuits can proceed to trial. In late June 2015, the Court ordered Hudbay Minerals to disclose internal corporate documentation including information regarding its corporate structure and its control over its subsidiary in Guatemala.

In addition to the Hudbay case, NevSun Resources was recently sued for allegedly employing slave labor in Eritrea. Likewise, Goldcorp has been accused of being involved in the abuse of indigenous groups in Guatemala and is now defending an action on that basis. Anvil Mining recently successfully defended a suit over its alleged involvement in a massacre in the Democratic Republic of Congo and Tahoe Resources is a defendant in a Canadian case stemming from its role in the shooting of protesters in Guatemala, where its license to operate has been suspended.<sup>24</sup> So common are these claims that the government of Canada launched an initiative to promote the interest of Canadian mining companies abroad if they will agree to take part in a dispute resolution process with local communities.<sup>25</sup>

The fourth category consists of alternative dispute resolution mechanisms and draws inspiration from the compensation commission established by Canadian mining giant, Barrick. In response to an epidemic of sexual violence committed by security personnel at the Porgera gold mine in Papua New Guinea, Barrick Gold established the Olgeta Meri Remedy Framework. After a two-year process, 119 women were awarded remedies under the framework – including monetary compensation, medical care, counseling, school fees and business training – for sexual violence committed between 1990 and 2010. Eleven women represented by Earth Rights International (ERI) rejected the remedy offered by the Framework and ultimately reached a separate settlement.<sup>26</sup> Although ERI and several law-school based international human rights clinics prepared for public litigation, no cases have been filed in the courts of Papua New Guinea, Canada or elsewhere. Instead, the architects

23 *Choc v. Hudbay Minerals Inc.* (2013) (the most intriguing part of the ruling is the Court's finding that "the plaintiffs have pled all material facts required to establish the constituent elements of their claim of direct negligence as against Hudbay, separate and distinct from any claims framed in vicarious liability as against it".)

24 See <https://www.earthrights.org/blog/canadian-government-tries-protect-reputation-its-mining-companies-its-got-its-work-cut-out>

25 [http://www.economist.com/news/business/21633871-government-promises-keep-promoting-miners-and-energy-firms-interests-abroad-if-they?fsrc=scn/tw\\_ec/reputation\\_management](http://www.economist.com/news/business/21633871-government-promises-keep-promoting-miners-and-energy-firms-interests-abroad-if-they?fsrc=scn/tw_ec/reputation_management)

26 See <http://www.barrick.com/files/porgera/Enodo-Rights-Porgera-Remedy-Framework-Independent-Assessment-Executive-Summary.pdf>; <https://www.earthrights.org/blog/many-valuable-lessons-barricks-remedy-framework-its-cheaper-rape-poor-women-should-not-be-one>; <http://www.rightingwrongsporgera.com/>

of the process have aligned the Framework with the Guiding Principles on Business and Human Rights and sought to expedite compensation to a deserving group of victims.<sup>27</sup> To the extent the Olgeta Meri process serves as a model, it could well be replicated in the seafood, garment and cacao industries where global firms have been accused of abetting the commission of systematic human rights abuses.<sup>28</sup>

Unsurprisingly, the limiting of ATS cases –which once had the centrifugal power to draw claims to the U.S.– has caused the proliferation of cases, threats of litigation and the development of non-judicial remedies in other jurisdictions, principally Canada.<sup>29</sup> To the extent the “touch and concern” language of *Kiobel* drives cases to judiciaries in states with a genuine nexus to the controversy, the effect may be predictable (the tragedy for the *Kiobel* plaintiffs is that Nigeria has so such judiciary). Canada can, and should, assume jurisdiction of those human rights claims that involve Canadian actors. Equally important, the shift to Canadian courts provides Canadian judges with an opportunity to give voice to human rights norms, to draw boundaries around suspect cases, to engage in burden-sharing and to elaborate on the project begun by generations of ATS cases in the United States.

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27 See <http://www.barrick.com/files/porgera/Enodo-Rights-Porgera-Remedy-Framework-Independent-Assessment-Executive-Summary.pdf>

28 For non-judicial remedial schemes to produce some of the benefits of public litigation, they must be accessible, affordable and part of the toolkit available to human rights advocates and corporate defendants alike. In the best case scenario, remedial mechanisms will be inclusive, transparent, expeditious and as free of political interference as possible. The goal of any such scheme should be to align corporate activity with best practices, including the Guiding Principles on Business and Human Rights, and to incent corporations to avoid violations in the first place. When human rights abuses do occur, the delivery of real remedies for victims, including non-monetary assistance, ought to be the measure of success.

29 Canada is not the only locale where human rights cases are advancing. In December 2015, a Dutch Appeals Court offered a postscript to *Kiobel* by holding that Shell may be responsible for its subsidiaries’ oil spills in Nigeria. See <http://business-humanrights.org/en/shell-lawsuit-re-oil-pollution-in-nigeria>



## BIBLIOGRAPHY CITED

- BELLINGER, John B. and ANDERSON, R. Reeves (2015). "As *Kiobel* Turns Two", U.S. Chamber Institute For Legal Reform, available at [www.instituteforlegalreform.com/uploads/sites/1/Kiobel\\_v6.pdf](http://www.instituteforlegalreform.com/uploads/sites/1/Kiobel_v6.pdf).
- CLEVELAND, Sarah H. "After *Kiobel*" (2014). *Journal of International Criminal Justice*, Vol. 12, pp. 551-577.
- DHOOGHE, Lucien J. (2009). "Aguinda v. ChevronTexaco: Mandatory Grounds for the Non-Recognition of Foreign Judgments for Environmental Injury in the United States", *Journal of Transnational Law & Policy*, Vol. 19, pp. 1-59.
- KIMERLING, Judith (2006/2007). "Transnational Operations, Bi-National Injustice: ChevronTexaco and Indigenous Huaorani and Kichwa in the Amazon Rainforest in Ecuador", *American Indian Law Review*, Vol. 31, pp. 445-508.
- KOH, Harold Hongju (1991). "Transnational Public Law Litigation", *Yale Law Journal*, Vol. 100, pp. 2347-2402.
- PATEL, Suraj (2012). "Delayed Justice: A Case Study of Texaco and the Republic of Ecuador's Operations, Harms, and Possible Redress in the Ecuadorian Amazon", *Tulane Environmental Law Journal*, Vol. 26, pp. 71-110.
- WEISS, Laurie Strauch and PANLILIO, William B. (2013). "Defending Against Alien Tort Statute Cases Post-*Kiobel*: What Are The Key Defenses?", available at <https://www.orrick.com/api/content/downloadattachment?id=9f77ce2d-5dd1-457a-afbf-41bf91b2f734>.

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## CASES CITED

### Canada:

*Choc v. Highbay Minerals Inc.* (2013), 2013 ONSC 1414 (Can.)

*Chevron Corp. v. Yaiguaje* (2015), 2015 SCC 42.

### United States:

*Filartiga v. Pena-Irala* (1980), 630 F.2d 876 (2d Cir. 1980).

*Aguinda v. Texaco, Inc.* (2002), 303 F.3d 470, 477 (2d Cir. 2002).

*Doe v. Unocal Corp.* (2002), 395 F.3d 932 (9th Cir. 2002).

*In re South African Apartheid Litigation* (2004), 346 F. Supp. 2d 538 (S.D.N.Y. 2004).

*Sosa v. Alvarez-Machain* (2004), 542 US 692 (2004).

*Sarei v. Rio Tinto PLC* (2008), 550 F.3d 822 (9th Cir. 2008).

*Presbyterian Church of Sudan v. Talisman Energy, Inc.* (2009), 582 F.3d 244 (2nd Cir. 2009).

*Kiobel v. Royal Dutch Petroleum* (2013), 133 S. Ct. 1659 (2013), 2013 U.S. LEXIS 3159 (U.S. 2013).

*Al Shimari v. CACI International* (2014), 758 F.3d 516 (4th Cir. 2014).

*Daimler AG v. Bauman* (2014), 134 S. Ct. 746 (2014).

*Doe v. Exxon Mobil Corp.* (2014), 69 F.Supp.3d 75 (D.D.C. Sept. 23, 2014).

*Doe v. Nestlé USA, Inc.* (2014), 766 F.3d 1013 (9th Cir. 2014).

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## LEGISLATION CITED

### **Canada:**

Justice for Victims of Terrorism Act (2012), S.C. 2012, c. 1, s. 2.

### **United States:**

Alien Tort Claims Act (1789), 28 U.S.C § 1350.

U.S. Foreign Sovereign Immunities Act (1976), 28 U.S.C. § 1605.