

CENTER FOR JUSTICE AND ACCOUNTABILITY (DOWNLOADED 6.17.21)

THE ALIEN TORT STATUTE

PART I: WHAT IS THE ATS?

An ancient law, an avant-garde tool for human rights.

The Alien Tort Statute (ATS) is a U.S. federal law first adopted in 1789 that gives the federal courts jurisdiction to hear lawsuits filed by non-U.S. citizens for torts committed in violation of international law. When the ATS was drafted in the 18th century, international law dealt primarily with regulating diplomatic relations between States and outlawing crimes such as piracy, however international law in the 21st century has expanded to include the protection of human rights. In the 60 years from the signing of the [Universal Declaration of Human Rights](#) in 1948 to the present decade, universal human rights have moved from being an aspirational concept to a legal reality. This remarkable evolution gave the ATS renewed significance in the late 20th century. Today, the Alien Tort Statute gives survivors of egregious human rights abuses, wherever committed, the right to sue the perpetrators in the United States.

Since 1980, the ATS has been used successfully in cases involving torture, state-sponsored sexual violence, extrajudicial killing, crimes against humanity, war crimes and arbitrary detention. The Torture Victim Protection Act (TVPA), passed in 1991 and signed into law by President George H.W. Bush in 1992, gives similar rights to U.S. citizens and non-citizens alike to bring claims for torture and extrajudicial killing committed in foreign countries.

PART II: THE ATS IN THE MODERN ERA

The Filartiga Precedent

The first case brought under the ATS for human rights abuses was [Filartiga v. Peña-Irala](#). In 1976, the father of a young man who had been tortured and killed in Paraguay while in police custody witnessed one of his son's torturers walking the streets of Manhattan. The father called the INS, who arrested the former Paraguayan officer for overstaying his visitor's visa. The father and sister then brought an ATS case against the officer, and in 1980,

a U.S. federal court in New York upheld their claims, opening the door for future claims under the Alien Tort Statute.

Individual Accountability for Human Rights Violations

Since *Filartiga*, scores of ATS cases have been filed against individual perpetrators found in the United States. These cases are filed here in the U.S. because survivors of human rights abuses often have no way to seek justice in their home countries. For nations emerging from armed conflicts or authoritarian regimes, impunity for human rights violations can be an unfortunate fact of life. In some cases, compromised judicial systems or amnesty laws prevent the prosecution of these crimes. In others, those who committed atrocities still hold power.

Another factor can bar survivors from seeking redress: the perpetrators may have fled the country. It is estimated that 1,000 human rights abusers have found safe haven in the United States. For refugees and survivors trying to rebuild their lives here in the U.S., seeing their abusers living with impunity can be profoundly traumatic. The ATS provides a tool to expose these human rights abusers and deny them safe haven.

Corporate Accountability for Aiding & Abetting

Beginning in the mid-1990s, a new class of ATS suits emerged that aimed to hold multinational corporations accountable for complicity in human rights abuses. Although backlash from certain sectors of the business community unleashed heated criticism of this use of the ATS, attempts to repeal or attenuate the statute have failed. As of 2009, two corporate accountability cases—*Doe v. Unocal* and *Wiwa v. Shell*—have resulted in settlements where reparations to the survivors and their communities have played a important role. To date, however, no contested corporate ATS case has resulted in a jury verdict in favor of the plaintiffs.

U.S. Accountability for Torture

At the same time, a number of ATS cases have been filed against the U.S. government and its officials for the torture and abuse of detainees in the “war on terror”. The majority of these cases have been dismissed on various grounds, although a handful remain on appeal as of 2009.

The *Sosa* Standard: The ATS in the Supreme Court

In the midst of the controversy surrounding the corporate and U.S. accountability suits, the *Filartiga* line of ATS cases was vindicated by the U.S. Supreme Court. In its 2004 ruling in *Sosa v. Alvarez-Machain*, the Court held that the ATS grants federal courts jurisdiction over claims based on specifically defined, universally accepted and obligatory norms of international law. In establishing this standard, the Court effectively gave the green light to the use of the ATS as a means of redress for severe human rights abuses.

PART III: THE GOALS OF OUR ATS WORK

The human rights cases that CJA brings in U.S. courts are civil lawsuits that result in an award of money damages for the plaintiff. They are not criminal prosecutions and they will not result in jail time for the defendant. However, our clients have made clear that these cases are important for reasons other than money.

Ending Impunity

Many survivors want to seek justice and to help put an end to the culture of impunity that exists in their home country.

Letting Survivors Speak

These cases give our clients the chance to tell their stories and the stories of those who did not survive. Speaking truth to power—especially in a court of law—can be tremendously empowering.

Exposing Human Rights Abusers

These cases can serve as a measure of punishment. Litigation exposes a perpetrator's actions in a court of law and enters the evidence of past abuses into the public record. In this way, impact human rights litigation can play an important 'naming and shaming' function. Moreover, some ATS cases have directly led to perpetrators facing deportation. Even after deportation, the evidence produced in a trial can follow the perpetrator to his home country, where CJA works with local authorities to support criminal accountability proceedings.

Deterring Future Abuses & Denying Safe Haven

These cases can send a powerful message to government officials and military officers that no one is above the law. They will know that the U.S. will not give safe haven to human rights abusers.

Building Human Rights Law and Jurisprudence

Finally, it is important to note that human rights law – if it is to be effective – must be implemented on a national level, through domestic courts. Although the establishment of the International Criminal Court marks a vital step in the progress of international justice, national courts must play a central role in protecting human rights. ATS litigation has proven to be an effective way of developing a human rights framework in the U.S. legal system.

PART IV: THE ELEMENTS OF AN ATS CASE

The Defendant: A Perpetrator Present in the United States

To bring a lawsuit against an individual, that person must be directly or indirectly responsible for the human rights violations and he or she must be personally served with the lawsuit while in the United States. In other words, the perpetrator must live in or visit the United States.

An Official or Person Acting Under Color of Law

In order to sue for most violations, the abuses must have been committed by a government official or a member of the security forces (the military, police, etc.), or by a person acting on behalf of, or together with, such authorities.

Corporations

Suits can be brought against corporations for involvement in human rights violations abroad, so long as the corporation had sufficient contacts with the U.S., acted together with a government entity or official and had sufficient control over the violations.

Heads of State and Diplomats

Within the United States, current heads of state (presidents, kings, prime ministers), foreign ministers or officials with diplomatic immunity cannot be held liable in a human rights lawsuit. However, once they leave office, heads of state and other officials are subject to civil lawsuits even for human rights abuses that they committed while in office.

U.S. Government Officials

ATS cases filed against U.S. government officials can face daunting legal challenges. Although ATS suits have been filed against U.S. officials for human rights violations, including torture and detainee abuse under the “war on terror”, Courts generally have rejected such suits on a number of legal grounds. Several suits have been dismissed under the political question doctrine and on grounds of sovereign immunity. In other cases, the U.S. government has invoked the state-secrets privilege. Under this legal doctrine, the government has traditionally been able to bar courts from hearing specific evidence that may threaten national security if made public. However, under the Bush administration, a broad interpretation of this privilege was invoked to summarily dismiss entire cases.

Through amicus briefs addressing these and other legal issues, CJA has been deeply engaged in this evolving area of the law. As these cases proceed, CJA will continue to work to ensure that the U.S. upholds the same standards of human rights accountability for its own officials as it does for officials of foreign governments.

The Violations: Torture, Extrajudicial Killing and Other Abuses

The ATS and TVPA permit suits to be brought only for the most serious forms of human rights violations. As explained above, the violations generally must have been committed by a government or military official or a person acting in an official capacity. Interestingly, this is one of the rare legal spheres where non-U.S. citizens have more rights than do U.S. citizens. Under the current law, U.S. citizens may only bring suit for two violations under the TVPA: torture and extrajudicial killing. Non-U.S. citizens have the option of bringing suit under the ATS for a wider range of violations:

- **Torture**
- **Extrajudicial Killing**
- **Forced Disappearance**
- **Crimes Against Humanity**
- **Cruel, Inhuman or Degrading Treatment**
- **Prolonged Arbitrary Detention**
- **Genocide**
- **War Crimes**
- **Slavery**
- **State-Sponsored Sexual Violence & Rape**