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# A Summary of Legal Avenues for Victims of Crimes in Syria Under U.S. Law

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Syria Justice and  
Accountability Centre



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# Overview

This document presents a summary of legal avenues for victims of crimes in Syria under U.S. law. Most of the acts and statutes have jurisdictional limits that present roadblocks for Syrian victims seeking accountability. In general, the stronger the connection to the U.S., the more likely it is that a U.S. court will have jurisdiction to consider a claim arising from conduct in Syria. For example, if a victim or perpetrator is a U.S. citizen, a U.S. court is more likely to consider the case. Unlike many jurisdictions in Europe, criminal and civil cases are separate and distinct in the U.S. Addressing both types of cases, this document presents: (1) background information on human rights litigation in the U.S., (2) summary tables of key human rights statutes (laws) that are arranged by civil or criminal actions, and (3) other helpful acts and avenues for redress. Note that the laws summarized in this document are not exhaustive and there may be more obscure federal statutes that could benefit plaintiffs, some of which are addressed in the last section.

## Background Information

In the United States, there are two categories of law. Civil law deals with disputes or injuries to a person or a party, such as a corporation. Compensation is usually awarded to the victim. Criminal law deals with behavior that is offensive to society, which includes individuals. Punishment for criminal offenses vary; it ranges from fines to imprisonment.

There are two main statutes that support civil litigation for human rights violations: the Alien Tort Statute (ATS) and the Torture Victim Protection Act (TVPA). The ATS allows non-U.S. citizen victims of human rights abuses to seek civil remedies in U.S. courts against either citizen or non-citizen defendants. It has generally been used to bring claims against government officials and non-state actors, including multinational corporations, for violations of universally recognized human rights norms, such as the prohibition against genocide, that are committed abroad. The TVPA allows both citizens and non-citizens to bring civil claims for torture and extrajudicial killing committed in foreign countries. Defendants in TVPA cases must be natural persons (*i.e.*, not corporations) and must have acted, or appeared to act, in an official capacity for a foreign nation.

Filing transnational human rights cases (civil cases) in the U.S. under the ATS has become more challenging in recent years. Since *Kiobel v. Royal Dutch Petroleum Co.* in 2013, federal courts have dismissed a variety of “foreign cubed” cases<sup>1</sup> (foreign cubed meaning it was a foreign victim, a foreign defendant, and the act occurred in a foreign location). “Foreign cubed” cases are deemed

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<sup>1</sup> David Nersessian, *International Human Rights Litigation: A Guide for Judges*, FEDERAL JUDICIAL CENTER (2016), [https://www.fjc.gov/sites/default/files/2017/Intl\\_Human\\_Rights\\_Litigation\\_2017.pdf](https://www.fjc.gov/sites/default/files/2017/Intl_Human_Rights_Litigation_2017.pdf) at 26-27.

impossible unless you can show that the plaintiff's claims sufficiently touch and concern the territory of the United States to defeat the presumption against extraterritoriality, which states that if "a statute gives no clear indication of an extraterritorial application, it has none."<sup>2</sup> This limitation has affected the scope of the Alien Tort Statute, an act that serves as a form of civil universal jurisdiction<sup>3</sup> and was enacted specifically to help foreign plaintiffs in the U.S. file claims premised on international law. A recent Supreme Court case also foreclosed using the ATS to sue foreign corporations. The issue of whether U.S. corporations can be sued under the ATS is currently before the Supreme Court. Additionally, while there are more opportunities to file civil actions and obtain civil remedies, the direct economic benefit from human rights cases has been limited and few plaintiffs have received compensation from perpetrators.<sup>4</sup>

However, most scholars and practitioners agree that the benefit of these cases is both symbolic and psychological. Validating the experience of victims is critical to individual and collective healing, particularly when victims have no other avenue for reparation. By allowing human rights violations to be investigated and prosecuted, these cases play an important role in widening the scope of critical legal precedent.<sup>5</sup>

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<sup>2</sup> *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115 (2013).

<sup>3</sup>"What is Universal Jurisdiction?" CTR. FOR JUSTICE AND ACCOUNTABILITY, (last visited July 20, 2020), <https://cja.org/what-we-do/litigation/legal-strategy/universal-jurisdiction/>.

<sup>4</sup>Cortelyou C. Kenney, *Measuring Transnational Human Rights*, 84 *FORDHAM L. R.* 1053, 1057 (2015) [https://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol\\_84/No\\_3/Kenney\\_December.pdf](https://fordhamlawreview.org/wp-content/uploads/assets/pdfs/Vol_84/No_3/Kenney_December.pdf).

<sup>5</sup> *Id.* at 1056.

# Summary of Key Human Rights-based Acts: Civil Statutes

*Torture Victim Protection Act of 1991 (28 U.S.C. § 1350 note) (TVPA)*

Civil/Criminal	Civil
<b>Which crimes does it cover?</b>	Torture or extrajudicial killing <sup>6</sup> (including attempts) by individuals acting in an official capacity (government or military). <sup>7</sup>
<b>Nationality requirements</b>	Any nationality can sue under this act (and relatives of the deceased can sue).
<b>Does the defendant have to be in the U.S.?</b>	The court must assert personal jurisdiction over the defendants. Personal jurisdiction is established by (1) serving defendants within the United States, or (2) showing that defendants have sufficient contacts in the United States such that it would be fair to sue them there. Defendants do not need to be in the U.S. after they are served for cases to proceed.
<b>Is there a statute of limitations?</b>	Ten years after the cause of action arose. <sup>8</sup> However, there is court precedent that this can be tolled, <sup>9</sup> including for egregious human rights cases when, for example, the national courts where the offense occurred are foreclosed. <sup>10</sup>

<sup>6</sup> H.R. 2092, 102nd Cong. § 2(a) (1992).

<sup>7</sup> “Torture Victim Protection Act,” CTR. FOR JUSTICE AND ACCOUNTABILITY (last visited July 6, 2020), <https://cja.org/what-we-do/litigation/legal-strategy/torture-victim-protection-act/>.

<sup>8</sup> H.R. 2092, 102nd Cong. (1992).

<sup>9</sup> *The Torture Victim Protection Act in INT’L HUMAN RIGHTS LITIGATION IN U. S. COURTS* 239 (Beth Stephens, et al. ed., 2008) (citing *Cabello v. Fernandez-Larios*, 402 F.3d 1148, 1155-56 (11th Cir. 2005), where the Court found that “the cover-up of the events surrounding Cabello’s death made it nearly impossible for the Cabello survivors to discover the wrongs perpetrated against Cabello. As a result of this deliberate concealment by Chilean authorities, equitable tolling is appropriate in this case.”).

<sup>10</sup> See *Warfaa v. Ali*, 33 F.Supp.3d 653, 664 (D. E.D. Va. 2014).

<b>Case Precedent</b>	In a 2012 case, the Supreme Court held that the act does not impose liability against organizations or foreign states, only individuals. <sup>11</sup> Thus, plaintiffs must name specific individuals under this act, including those that ordered, aided, and abetted or conspired to commit the underlying act.
<b>Additional notes</b>	Defendants cannot be corporations. <sup>12</sup> Often filed with ATS (see below) or other claims. <sup>13</sup>

*Alien Tort Statute (28 U.S.C. § 1350) (ATS)*

<b>Civil/Criminal</b>	Civil
<b>Which crimes does it cover?</b>	Torts committed in violation of international law <sup>14</sup> (torture, genocide, crimes against humanity).
<b>Nationality requirements</b>	Only aliens (non-U.S. citizens and non-U.S. nationals) can file.
<b>Does the defendant have to be in the U.S.</b>	The court must assert personal jurisdiction over the defendants. Personal jurisdiction is established by (1) serving defendants within the United States, or (2) showing that defendants have sufficient contacts in the United States such that it would be fair to sue them there. Defendants do not need to be in the U.S. after they are served for cases to proceed. <sup>15</sup>
<b>Is there a statute of limitations?</b>	The ATS is silent as to the statute of limitations. When this happens, courts borrow the rules set forth in the most analogous statute. Here, the

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<sup>11</sup> Mohammed v. Palestinian Authority, 566 U.S. 449, 452-53 (2012).  
<sup>12</sup> “Torture Victim Protection Act,” CTR. FOR JUSTICE AND ACCOUNTABILITY, *supra* note 15.  
<sup>13</sup> *The Torture Victim Protection Act*, *supra* note 17, at 75.  
<sup>14</sup> “The Alien Tort Statute,” CTR. FOR JUSTICE AND ACCOUNTABILITY (last visited July 6, 2020), <https://cja.org/what-we-do/litigation/legal-strategy/the-alien-tort-statute/>.  
<sup>15</sup> *Id.*

	most analogous statute is the TVPA. <sup>16</sup> ATS claims are also subject to equitable tolling.
<b>Case precedent</b>	<p>Following the 2013 <i>Kiobel</i> decisions, cases cannot be “foreign cubed” (foreign victim, foreign victim and foreign act).</p> <p>“A few courts...have sustained ATS claims as ‘touching and concerning’ the U.S. with ‘sufficient force’ to displace the <i>Kiobel</i> presumption, but only in cases where at least some—if not a substantial portion—of the relevant conduct occurred domestically.... For example, the <i>Lively</i> court concluded that the presumption against extraterritoriality was displaced because (1) not only was the defendant an American citizen residing in Massachusetts, but (2) his alleged tortious conduct also occurred ‘to a substantial degree within the United States, over many years, with only infrequent actual visits to Uganda.’”<sup>17</sup></p>
<b>Additional notes</b>	Defendants cannot be foreign corporations. <sup>18</sup>

<sup>16</sup> David Zaslowky, Grant Hanessian & Juliet B. Hatchett, *Alien Tort Statute. District court finds Alien Tort Statute applicable to address violations of customary international law prohibiting medical experimentation on human subjects without their consent, and that corporations could be liable under the ATS*, LEXOLOGY (March 2017) <https://www.lexology.com/library/detail.aspx?g=1c78c1fo-76b9-441a-b708-2e0fa56f19b5>; J. Romesh Weeramantry, *Time limitation under the United States Alien Tort Claims Act*, INT’L COMM. OF THE RED CROSS 635 (2003), [https://www.icrc.org/en/doc/assets/files/other/irrc\\_851\\_weeramantry.pdf](https://www.icrc.org/en/doc/assets/files/other/irrc_851_weeramantry.pdf).

<sup>17</sup> *Mamani v. Berzain*, 21 F.Supp.3d 1353, 1366-67 (D.S.D. Fla., 2014) (citing *Sexual Minorities Uganda v. Lively*, 960 F.Supp.2d 304, 321-23 (D.Mass.2013)). See also *Morrison v. Nat’l Australia Bank, Ltd.*, 561 U.S. 247 (2010).

<sup>18</sup> See *Jesner v. Arab Bank*, 138 S. Ct. 1386 (2018).

*Terrorism Exception to the Foreign Sovereign Immunities Act (FSIA) (28 U.S.C. § 1605A)*

<b>Which crimes does it cover?</b>	<p>“Personal injury or death that was caused by an act of</p> <ul style="list-style-type: none"> <li>• Torture,</li> <li>• extrajudicial killing,</li> <li>• aircraft sabotage, hostage-taking,</li> <li>• or the provision of material support or resources for such an act.”<sup>19</sup></li> </ul>
<b>Nationality requirements</b>	<p>The victims must have been either a U.S. national, worked as a U.S. government employee or contractor, <u>or</u></p> <p>the plaintiffs must be a family member of a U.S. government employee or contractor that was harmed in a Syrian state-sponsored act.<sup>20</sup></p>
<b>Does the defendant have to be in the U.S.?</b>	<p>No. The defendant in an FSIA suit is the country itself and must be designated as a “state-sponsor of terrorism.” Currently, this only includes Syria, Iran, Sudan, and North Korea.<sup>21</sup></p>
<b>Is there a statute of limitations?</b>	<p>Not later than ten years after April 24, 1996 (April 24, 2006) <u>or</u></p> <p>Not later than ten years after the date on which the cause of action arose.<sup>22</sup></p>
<b>Additional notes</b>	<p>The Supreme Court recently granted certiorari to ATS and FSIA cases,<sup>23</sup> including <i>Republic of Hungary v. Simon</i>. Though it does not fall under the terrorism exception, the Supreme Court will</p>

<sup>19</sup> 28 U.S.C. § 1605A(a)

<sup>20</sup> 28 U.S.C. § 1605A(a)(2)(A)(ii).

<sup>21</sup> “State Sponsors of Terrorism,” U.S. DEPARTMENT OF STATE (last visited July 6, 2020), <https://www.state.gov/state-sponsors-of-terrorism/>.

<sup>22</sup> 28 U.S.C. § 1605A(b).

<sup>23</sup> Cassandra Maas, *Supreme Court grants certiorari to Foreign Sovereign Immunities Act, Alien Tort Statute, Impeachment Trial Cases*, JURIST (July 3, 2020), <https://www.jurist.org/news/2020/07/supreme-court-grants-certiorari-to-foreign-sovereign-immunities-act-alien-tort-statute-impeachment-trials-cases/>.



	<p>assess if “a district court may abstain from exercising jurisdiction under the Foreign Sovereign Immunities Act for reasons of international comity, in a matter in which former Hungarian nationals have sued the nation of Hungary to recover the value of property lost in Hungary during World War II but the plaintiffs made no attempt to exhaust local Hungarian remedies.”<sup>24</sup> This decision could be relevant to Syrians who lost their property during the war.</p>
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*Justice Against Sponsors of Terrorism Act (JASTA) (S.2040)*

<b>Act/Law</b>	Justice Against Sponsors of Terrorism Act (JASTA) (S. 2040)
<b>Civil/Criminal</b>	Civil
<b>Which crimes does it cover?</b>	Amends the FSIA’s terrorism exception to allow for civil claims against a foreign state for: “physical injury to a person or property or death that occurs inside the United States” due to an international terrorism act and a tort committed anywhere by the foreign state’s official, agent, or employee acting within the scope of employment. <sup>25</sup>
<b>Nationality requirements</b>	Only U.S. Nationals can file.
<b>Does the defendant have to be in the U.S.?</b>	No.
<b>Is there a statute of limitations?</b>	Ten years <sup>26</sup>

<sup>24</sup>“Republic of Hungary v. Simon,” SCOTUSBLOG, (last visited July 6, 2020), <https://www.scotusblog.com/case-files/cases/republic-of-hungary-v-simon/>.

<sup>25</sup>Summary, S.2040, Justice Against Sponsors of Terrorism Act, 116th Cong. (2016), <https://www.congress.gov/bill/114th-congress/senate-bill/2040>. Note that JASTA essentially expands the terrorism exception of the FSIA to allow for any state to be sued for a terrorist act, and not just those on the state-sponsored terrorism list, so long as there is a link to the United States.

<sup>26</sup> This is not directly addressed in the text of the Act, but it appears to be 10 years. See Lee Whitesell, *JASTA Not as Bad as It Seems*, THE NEW JURIST (Oct 17, 2016), <https://newjurist.com/jasta-not-as-bad-as-it-seems.html>.

<b>Additional notes</b>	Congress passed JASTA primarily to create a legal remedy for 9/11 victims, but its scope and application goes beyond those attacks and Saudi Arabia. <sup>27</sup> It expanded the Anti-Terrorism Act’s liability claim to include secondary actors (see ATA table for more information).
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*Anti-Terrorism Act of 1992 (ATA) (18 U.S.C. 2331, 2333)*

<b>Civil/Criminal</b>	Civil
<b>Which crimes does it cover?</b>	Acts of “international terrorism” <sup>28</sup> that cause injury to his/her person, property or business. <sup>29</sup>
<b>Nationality requirements</b>	Plaintiffs can be either citizens or non-citizens, but victims must be U.S. nationals (their estate, survivors, heirs can sue in court). <sup>30</sup>
<b>Does the defendant have to be in the U.S.?</b>	No.
<b>Is there a statute of limitations?</b>	10-18 years. <sup>31</sup>
<b>Additional notes</b>	ATA claims are often submitted with other claims like the ATS, the TVPA, and RICO. <sup>32</sup>  In short, it permits claims by “U.S. nationals injured by criminal acts either outside the U.S. or ‘transcend[ing] national boundaries,’ if the acts ‘appear to be intended’ to intimidate

<sup>27</sup> Ingrid Weurth, *Justice Against Sponsors of Terrorism Act: Initial Analysis*, LAWFARE (Sept. 29, 2016), <https://www.lawfareblog.com/justice-against-sponsors-terrorism-act-initial-analysis>.

<sup>28</sup> Defined in 28 U.S.C. § 2331.

<sup>29</sup> 28 U.S.C § 2332(a).

<sup>30</sup> 28 U.S.C. § 2332(a).

<sup>31</sup> The statute of limitation was increased from four to ten years with the 2013 National Defense Authorization Act for Fiscal Year. Americans injured from terrorist attacks between September 11, 2001 and January 1, 2009 benefit from an additional six years following the 2013 NDAA, allowing a victim who was injured in 2001 to have up to 18 years to file. Kevin Walsh and Douglas Walter Mateyaschuk, *Congress expands Anti-Terrorism Act liability exposure*, DLA PIPER (Jan. 22, 2013), [https://www.dlapiper.com/en/us/insights/publications/2013/01/congress-expands-antiterrorism-act-liability-exp\\_\\_/](https://www.dlapiper.com/en/us/insights/publications/2013/01/congress-expands-antiterrorism-act-liability-exp__/).

<sup>32</sup> Nersessian, *supra* note 1 at 67.

	<p>or coerce civilians or a government or under color of legal authority.” It “excludes acts of war and suits against the U.S. or foreign states and their employees acting within their official capacity or under color of legal authority.”<sup>33</sup></p> <p>The ATA initially provided “only against the principals perpetrating acts of international terrorism. It provided no civil action against secondary actors who, while not committing international terrorist acts themselves, facilitated such acts by others.”<sup>34</sup> However, JASTA expanded this liability to include “any person who aids and abets, by knowingly providing substantial assistance [to], or who conspires with the person who committed such an act of international terrorism.”<sup>35</sup></p>
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<sup>33</sup> *Other Grounds for Human Rights Litigation in INT'L HUMAN RIGHTS LITIGATION IN U. S. COURTS* 110 (Beth Stephens, et al. ed., 2008).

<sup>34</sup> *Linde v. Arab Bank, PLC*, 882 F.3d 314, 320 (2d Cir., 2018).

<sup>35</sup> *Id.*

# Summary of Key Human Rights-Based Acts: Criminal Statutes<sup>36</sup>

*War Crimes Act (18 U.S.C. § 2441)*

<b>Civil/Criminal?</b>	<b>Criminal</b>
<b>Which crimes does it cover?</b>	“War crimes” including: <sup>37</sup> <ul style="list-style-type: none"> <li>• Torture</li> <li>• Cruel or inhuman treatment</li> <li>• Biological experiments</li> <li>• Murder</li> <li>• Mutilation or maiming</li> <li>• Intentionally causing serious bodily injury</li> <li>• Rape; sexual assault or abuse</li> <li>• Taking hostages</li> </ul>
<b>Nationality requirements</b>	Victim <u>or</u> perpetrator(s) must be a U.S. national <sup>38</sup> or member of the U.S. armed forces. <sup>39</sup> From the act’s text, it appears that the victim or perpetrator must have that U.S. connection at the time the war crime was committed. <sup>40</sup>

<sup>36</sup> Investigations and prosecutions are initiated by the government, not by victims. However, if you have information about war crimes committed in Syria, and the perpetrator is present in the U.S., you can contact the Department of Justice, Human Rights and Special Prosecutions Section (HRSP). HRSP works closely with the Federal Bureau of Investigation’s International Human Rights Unit which has a tip line. The Department of Homeland Security’s Human Rights Violators & War Crimes Unit (HRVWCU) also works closely with the FBI and Department of Justice and has a tip line. See “Human Rights Violators & War Crimes Unit,” U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/human-rights-violators-war-crimes-unit>.

<sup>37</sup> See 18 U.S.C. § 2441. The statute notes that “[w]hoever, whether inside or outside the United States, commits a war crime [...] shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.” The statute applies when “the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).”

<b>Does the defendant have to be in the U.S.?</b>	No.
<b>Is there a statute of limitations?</b>	No. <sup>41</sup>
<b>Additional notes</b>	The U.S. has never filed charges under the War Crimes Act. <sup>42</sup> Beth Van Schaack suggests that the murders of U.S. citizens in Syria offers an opportunity to activate this statute. <sup>43</sup> Much of the current case law that refers to the War Crimes Act mentions it to establish the definition of war crimes and not the customary international law against it. <sup>44</sup>

*Child Soldiers Accountability Act of 2008 (18 U.S.C. § 2442)*

<b>Civil/criminal</b>	Criminal
<b>Which crimes does it cover?</b>	Punishes any individual who “knowingly recruits, enlists or conscripts someone under 15 in an armed force/group or uses a person under 15 to participate in hostility.” <sup>45</sup>
<b>Nationality requirements</b>	There is jurisdiction if the alleged offender is (1) a U.S. National, (1) a stateless person whose habitual residence is in the U.S. or (3)

<sup>38</sup> Federal law defines a U.S. national as “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” *Parties in INT’L HUMAN RIGHTS LITIGATION IN U. S. COURTS* 239 (Beth Stephens, et al. ed., 2008).

<sup>39</sup> 18 U.S.C. § 2441(b); Beth Van Schaack, *United States War Crimes Statute & Sri Lanka*, JUST SECURITY (May 20, 2014), <https://www.justsecurity.org/10607/united-states-war-crimes-statute-sri-lanka/>.

<sup>40</sup> See 18 U.S.C. § 2441(b), which states “The circumstances referred to in subsection (a) are that the person *committing such war crime* or the *victim of such war crime* is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act)” (emphasis added).

<sup>41</sup> Van Schaack, *United States War Crimes Statute & Sri Lanka*, *supra* note 8.

<sup>42</sup> Beth Van Schaack, *National Courts Step Up: Syrian Cases Proceeding in Domestic Courts* (February 2, 2019) at 34. Available at SSRN: <https://ssrn.com/abstract=3327676> or <http://dx.doi.org/10.2139/ssrn.3327676>; See also *The War Crimes Act: Current Issues*, EVERYCRSREPORT (last visited July 6, 2020), <https://www.everycrsreport.com/reports/RL33662.html#ifn10> (stating “The United States has apparently never prosecuted a person under the War Crimes Act.10 Perhaps as a result, there is some question concerning the act's scope.”).

<sup>43</sup> Van Schaack, *National Courts Step Up*, *supra* note 11, at 35.

<sup>44</sup> See, e.g., *Suhail Najim Abdullah Al Shimari v. CACI Premier Technology, Inc.* 300 F.Supp.3d 758, 782 (Va. Dist. Ct. 2018); *In re XE Services Alien Tort Litigation* 665 F.Supp.2d 569, 583 (Va. Dist. Ct. 2009); *Mujica v. Occidental Petroleum Corp.*, 381 F.Supp.2d 1164, 1181 (Ca. Dist. Ct. 2005).

<sup>45</sup> 18 U.S.C. § 2442 (a).

	is present in the U.S., irrespective of their nationality. <sup>46</sup> Lastly, there is also jurisdiction if the offense occurs in whole or in part within the U.S. <sup>47</sup>
<b>Does the defendant/act have to be in the U.S.?</b>	Defendant must be present. See above.
<b>Is there a statute of limitations?</b>	N/A
<b>Additional notes</b>	<p>This affects individuals who may be seeking asylum in the United States. There is little case law around this act; much of the case law around child soldiers includes a review of asylum applications, where the applicant was a child soldier.<sup>48</sup></p> <p>The Child Soldier Prevention Act of 2017 aimed to amend the 2008 act to prohibit assistance to governments whose police or other security forces recruit or use child forces.<sup>49</sup> However, this amendment was not passed into law.</p>

<sup>46</sup>18 U.S.C. § 2442 (c)(1-3).

<sup>47</sup> 18 U.S.C. § 2442 (c)(4).

<sup>48</sup> See e.g., Lukwago v. Ashcroft, 329 F.3d 157, 178, 182 (acknowledging the applicant is a former child soldier and remanding to determine whether he “entitled to a grant of asylum for a well-founded fear of persecution...on account of his membership in the “particular social group” of former child soldiers.”); Sackie v. Ashcroft, 270 F.Supp.2d 596, 601 (D.C. PA, 2003) (finding plaintiff was entitled to relief under the Convention Against Torture due to his experiences as a child soldier).

<sup>49</sup> H.R. 1191, 115th Cong. (2017).

*Torture Statute (18 U.S.C. § 2340)*

<b>Civil/Criminal</b>	<b>Criminal</b>
<b>Which crimes does it cover?</b>	Torture, or attempted torture, outside of the United States and committed by public officials under the color of law against persons within the public official's custody or control. <sup>50</sup>
<b>Nationality requirements</b>	The alleged offender is a national of the United States, or the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. <sup>51</sup>
<b>Does the defendant/act have to be in the US?</b>	If the defendant is a non-national of the United States, then the defendant must be present in the United States.
<b>Is there a statute of limitations?</b>	No.
<b>Additional notes</b>	The definition of “torture” for purposes of this provision is statutorily different than the colloquial uses of the term. <sup>52</sup> Here, “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control. <sup>53</sup> The Torture Statute is one of the few federal human rights statutes that is readily used.

<sup>50</sup> 18 U.S.C. § 2340 (A).

<sup>51</sup> *Id.*

<sup>52</sup> See *Cadet v. Bulger*, 377 F.3d 1173, 1194 (11th Cir. 2004) (stating that “in other contexts and under other definitions [the conditions] might be described as torturous. The fact remains, however, that the only relevant definition of ‘torture’ is the definition contained in [the] CAT [...]”). See also H.R. Conf. Rep. No. 103-482, at 229 (1994) (it should be noted that Congress enacted §§ 2340-2340A to carry out the United States’ obligations under the CAT).

<sup>53</sup> 18 U.S.C. § 2340.

# Summary of Key Human Rights-based Acts: Both Civil and Criminal

*Foreign Corrupt Practices Act of 1977 (15 U.S.C. §78dd-1)*

<b>Civil/Criminal</b>	Civil and Criminal <sup>54</sup>
<b>Which crimes does it cover?</b>	It is unlawful to make: a payment to a foreign official with corrupt motive intended to influence <u>or</u> to gain an unfair advantage <sup>55</sup>
<b>Nationality requirements</b>	The FCPA applies to those with (1) formal ties to the US and (2) who take action in furtherance of a violation while in the US. <sup>56</sup>
<b>Does the defendant have to be in the U.S.?</b>	N/A (but the FCPA applies to prohibited conduct anywhere in the world). <sup>57</sup>
<b>Is there a statute of limitations?</b>	Not specified, though there is a period of five years applied to the criminal violations of the act. There are also ways to extend this period. <sup>58</sup>
<b>Additional notes</b>	FCPA applies to foreign parties as well, so the Syrian national coalition could qualify as a foreign political party under 22 U.S.C.A. § 611. <sup>59</sup> There is no private right of action under the FCPA, so the U.S. government would need to file a claim. <sup>60</sup>

<sup>54</sup> *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, U.S. DEPT. OF JUSTICE AND THE U.S. SECURITIES AND EXCHANGES COMM’N, 68 <https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf>.

<sup>55</sup> See 15 U.S.C. § 78dd-1(a).

<sup>56</sup> *The Foreign Corrupt Practices Act: An Overview*, JONES DAY (Jan. 2010), <https://www.jonesday.com/en/insights/2010/01/the-foreign-corrupt-practices-act-an-overview>.

<sup>57</sup> *Spotlight on Foreign Corrupt Practices Act*, U.S. SECURITIES AND EXCHANGE COMM’N (last visited July 6, 2020), <https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml>.

<sup>58</sup> *A Resource Guide to the U.S. Foreign Corrupt Practices Act*, *supra* note 51, at 34.

<sup>59</sup> *FCPA Applied to Syria*, AMERICAN U. NT’L SECURITY L. BRIEF, (Oct. 14, 2014), <https://nationalsecuritylawbrief.com/2014/10/14/fcpa-applied-to-syria>.

<sup>60</sup> See *Republic of Iraq v. ABB AG*, 920 F.Supp.2d 517, 551 (D.S.D. N.Y. 2013).



*Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. Chapter 96)*

<b>Civil/Criminal</b>	Civil and Criminal
<b>Which crimes does it cover?</b>	RICO was enacted to counter organized criminal enterprises. Civil recovery is limited to damage from injury to business interests/property (but this can include human rights abuses). <sup>61</sup>
<b>Nationality requirements</b>	Appears that non-U.S. nationals can file a claim. <sup>62</sup>
<b>Does the defendant/act have to be within in the U.S.?</b>	The law does not say anything about extraterritorial reach. Courts decide on a case-by-case basis if Congress intended the law to apply to a situation with significant foreign aspects. <sup>63</sup> However, the Supreme Court has only focused on civil charges under RICO, and has expressed its concern for “international friction” when foreign injuries are heard in U.S. courts. <sup>64</sup> The Southern District of New York also found that RICO does not apply to conduct outside of the U.S. <sup>65</sup>
<b>Is there a statute of limitations?</b>	Four years. <sup>66</sup>
<b>Additional notes</b>	RICO claims have been included with other human rights claims, including the Trafficking Victims Protection Reauthorization Act. <sup>67</sup>

<sup>61</sup> Nersessian, *supra* note 1 at 70. “[T]he Nigerian plaintiffs in *Wiwa v. Royal Dutch Petroleum Co.* were allowed to proceed on RICO claims on the grounds that summary executions, crimes against humanity, torture, and other serious human rights violations also caused property damage and business harm. One *Wiwa* plaintiff alleged that he “was forced to flee Nigeria and leave his medical practice because he feared arbitrary arrest, torture and death as a consequence of defendants’ racketeering activities.” Another claimed a loss of crops and future farming income as a result of being beaten and shot by the defendants, which caused physical injuries that prevented her from operating her farm.” *Id.*

<sup>62</sup> See above footnote.

<sup>63</sup> *Other Grounds for Human Rights Litigation*, *supra* note 42, at 113.

<sup>64</sup> Nersessian, *supra* note 1, at 71 (citing *RJR Nabisco v. European Community*, 136 S. Ct. 2090, 2103 (2016)).

<sup>65</sup> *Republic of Iraq v. ABB AG*, 920 F.Supp.2d 517, 543 (D.S.D. N.Y. 2013).

<sup>66</sup> Nersessian, *supra* note 1, at 70.

<sup>67</sup> Nersessian, *supra* note 1, at 73.

	“Racketeering activity” includes acts such as murder, kidnapping, gambling, arson, robbery, bribery, or extortion. <sup>68</sup>
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*Trafficking Victim Protection Reauthorization Act (18 U.S.C. Chapter 77 / § 1595)*

<b>Civil/Criminal</b>	Civil and Criminal
<b>Which crimes does it cover?</b>	“Prohibits involuntary servitude, forced labor, and trafficking individuals to facilitate these crimes or sexual offenses against the person.” <sup>69</sup>
<b>Nationality requirements</b>	Any nationality. <sup>70</sup>
<b>Does the defendant/act have to be in the U.S.?</b>	<p>“A federal court may take jurisdiction over any domestic violation of the TVPRA and over conduct occurring abroad if the alleged offender is a U.S. national or resident or otherwise is found in the United States.”<sup>71</sup></p> <p>The U.S. courts have extraterritorial jurisdiction over offenses if: (1) an alleged perpetrator is an alien lawfully admitted for permanent residence; or (2) an alleged offender is present in the U.S., irrespective of the nationality of the alleged offender.<sup>72</sup></p>
<b>Is there a statute of limitations?</b>	<p>“Ten years after the cause of action arose <u>or</u></p> <p>Ten years after the victim reaches 18 years of age, if the victim was a minor at the time of the alleged offense.”<sup>73</sup></p>
<b>Additional notes</b>	TVPRA claims have also been included with RICO and ATS claims. <sup>74</sup>

<sup>68</sup> See 18 U.S.C. § 1961(1) for complete definition.

<sup>69</sup> Nersessian, *supra* note 1, at 63.

<sup>70</sup> Parties, *supra* note 7, at 231.

<sup>71</sup> Nersessian, *supra* note 1, at 73.

<sup>72</sup> 18 U.S.C. § 1596(a).

<sup>73</sup> 18 U.S.C. § 1595(c).

<sup>74</sup> Nersessian, *supra* note 1, at 64.

## Other Potential Avenues

In addition to the aforementioned acts in the tables, there are other statutes or acts that could be utilized. Firstly, the *Foreign Legal Assistance Act* (28 U.S.C. §1782) allows “interested parties” to place requests to the U.S. to obtain evidence, documents, and testimony from U.S. persons or companies for proceedings that occur outside of the U.S.<sup>75</sup> For instance, this act allowed victims of Chevron’s gas flaring in Nigeria to obtain evidence of Chevron’s U.S. operation for use in a case in Nigeria (the case eventually settled).<sup>76</sup> As many universal jurisdiction cases are occurring in Europe, this federal statute could be useful for plaintiffs in Europe who may need specific information from a U.S. entity or person.

Criminal immigration charges can also be brought under the *Immigration and Nationality Act* (INA) against individuals who lied on their citizenship applications, including with regard to whether they tortured, killed, or committed certain other crimes.<sup>77</sup> Sanctions for fraud or misrepresentation vary and can include permanent inadmissibility to the United States. Similarly, the INA stipulates that individuals who unlawfully acquired their U.S. citizenship through naturalization can have their citizenship revoked through civil or criminal denaturalization based on a judicial order.<sup>78</sup>

Another avenue is through the *Global Magnitsky Act* which allows the President to block or revoke visas for people who engaged in extrajudicial killings, torture, or other gross violations of human rights against people who wanted to expose “illegal activity carried out by government officials” or “obtain, exercise, defend, or promote internationally recognized human rights and freedoms...” The Act also applies to “government officials or senior associates of such officials who are engaged in or responsible for acts of significant corruption.” The President can block all U.S.-based property and interests in property of foreign persons.

As a form of last resort, plaintiffs can also use domestic law torts and state laws.<sup>79</sup> For example, a plaintiff could file an assault and battery or intentional infliction of emotional harm state claim for a torture claim.<sup>80</sup> But there are hurdles to filing a state law claim, as plaintiffs must meet state

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<sup>75</sup> “Foreign Legal Assistance,” EARTHRIGHTS INT’L (last visited July 20, 2020), <https://earthrights.org/how-we-work/litigation-and-legal-advocacy/legal-strategies/foreign-legal-assistance/>.

<sup>76</sup> Kenney, *supra* note 4, at 1114-15.

<sup>77</sup> *See e.g.* § 212(a)(3)(E)(iii) of the Immigration and Nationality Act (stating that any alien who has engaged in genocide is inadmissible to the United States).

<sup>78</sup> 8 U.S.C. § 1451(a); 18 U.S.C. § 1425.

<sup>79</sup> *Other Grounds for Human Rights Litigation*, *supra* note 42, at 120-121.

<sup>80</sup> *Id.* at 121.

standing requirements<sup>81</sup> (this differs by each state, but generally entails that plaintiffs have faced a harm/injury and this harm is redressable).<sup>82</sup>

Lastly, class action lawsuits are an available option in the United States. If a large number of victims are present, a class action can bring greater public attention to the case and create a more robust historical record of abuses.<sup>83</sup> But, this method can seem impersonal to class members.<sup>84</sup> Additionally, considering the jurisdictional limits that the U.S has, it may difficult to get a large number of Syrian victims in a class action suit.

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<sup>81</sup> *Id.*

<sup>82</sup> "Standing," Legal Information Institute (last visited July 20, 2020), <https://www.law.cornell.edu/wex/standing>.

<sup>83</sup> *The Plaintiff: Who can sue? in* INT'L HUMAN RIGHTS LITIGATION IN U. S. COURTS 239 (Beth Stephens, et al. ed., 2008).

<sup>84</sup> *Id.* at 239-40.