

Human Rights Law at the Crossroads: *Kiobel v. Royal Dutch Petroleum*

On October 1, the Supreme Court opened its term with a case that will form a critical chapter in a story begun by CCR more than 30 years ago. *Kiobel v. Royal Dutch Petroleum* will decide the fate of the Alien Tort Statute (ATS), a little-known law until CCR pioneered its use against human rights violators in the 1979 landmark case *Filártiga v. Peña-Irala*. Since that historic victory, CCR has been one of the leading voices supporting accountability and redress under the ATS, both in and out of the courtroom. In *Kiobel*, the *Filártiga* legacy and the expansive idea of transnational justice for egregious human rights violations are at stake.

The ATS allows non-citizens to sue in U.S. courts for violations of fundamental international law norms, even if they have occurred abroad, as long as the perpetrators have some meaningful connection to the U.S. Enacted in 1789, the ATS went almost completely unnoticed until CCR dusted



In 1979, CCR pioneered the modern use of the Alien Tort Statute (ATS) as a crucial defense against human rights abuses abroad. The future of the ATS is currently at stake in a case before the U.S. Supreme Court, *Kiobel v. Royal Dutch Petroleum*.

it off in *Filártiga*. In probably the most important domestic international human rights law case of the modern era, the Second Circuit Court of Appeals affirmed the viability of the ATS in that case, and awarded the Filártigas

\$10.4 million. *Filártiga* broke new and important ground in civil human rights litigation—in a single case, CCR effectively invented an entire body of human rights law.

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Groundbreaking Progress Toward Accountability for Abu Ghraib Torture

CCR is thrilled to report two victories that demonstrate marked progress toward our goal of holding private military contractors accountable for the torture and abuse of prisoners in Abu Ghraib and other U.S.-run prisons throughout Iraq.

In October, CCR and our clients, 71 victims of torture and abuse at these facilities, reached a landmark settlement in the case *Al-Quraishi v. Nakhla and L-3*. This was the first and (thus far) only positive resolution to a post-9/11 detainee treatment challenge against either the U.S. government or the private military contractors who acted at their bidding.

Readers of our newsletter will recall that *Al-Quraishi* was brought against L-3 Services Inc. (formerly Titan Corporation) as well as former contractor Adel Nakhla in 2008. The complaint sought to hold L-3 and Nakhla accountable for their direction and participation in torture and other illegal conduct at these prisons, including: rape and sexual assault; prolonged hanging from limbs; isolated detention; being urinated on and otherwise humiliated; and being prevented from praying and abiding by other religious practices.

The contractors had claimed that they should receive the

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In for the Long Haul

by Vince Warren

In one week this fall it seemed as though everything changed, and nothing changed, all at once.

Hurricane Sandy slammed into the East Coast and caused unprecedented damage. Beaches and boardwalks were washed away, houses ripped apart, and millions plunged into darkness. The so-called superstorm claimed over 200 lives in the Caribbean and the U.S., and the reality of climate change crashed into our collective consciousness.

A week later the national election offered a decisive repudiation of the extremes of both market and religious fundamentalism that have captured so much of the Republican Party. Barack Obama was decisively re-elected president, carrying every swing state except North Carolina. Not one but three states legalized gay marriage in the first-ever popular votes to support gay rights, while three of Congress's most vocal Islamophobes were defeated in Illinois and Florida. It was a hopeful moment, a triumph of reason and rights over fear-mongering and bigotry.

But even as voting results heralded change, entrenched government policy bespoke of a persistent status quo. For instance, the executive branch's targeted killings program, which CCR is challenging in our lawsuit *Al-Aulaqi v. Panetta*, didn't miss a beat after the election. Indeed, a drone strike was reported to have killed three people in Yemen less than a day after Obama's re-election.

We can also expect more of the same with regards to Guantánamo. Since 2008, when Obama the candidate promised "we will not...detain without trial or charge" and vowed to "respect the time-honored principle of habeas corpus," Obama the president has abandoned these positions and worse, codified that abandonment into law, via the 2012 National Defense Authorization Act.



Vincent Warren. Photo by Lindsay Beyerstein

...laying the ground work for what will be a long battle for a recovery based on human need and not corporate greed.

CCR's work in fighting for the rights of Guantánamo detainees continues as unrelentingly as the violations of those rights. Our attorneys were in Guantánamo in the weeks before and after the election and we continue litigation and advocacy efforts both for individual detainees and for policy changes. We will not stop until GTMO is closed and every prisoner is afforded his rights under international and domestic law.

A second look at Hurricane Sandy also reveals an all too familiar story: the government's response to a natural disaster exacerbating social inequality. Even before the waves hit, the Bloomberg administration had ordered the shut off of heat and water in public housing, and when asked whether there was an evacuation plan for the 12,000 men, women, and children on Riker's Island, all the mayor had to say was "jails are secure...don't worry about anyone getting out."

After the storm, while power was quickly restored to lower Manhattan and Wall Street, residents in public housing languished for weeks without electricity, water or heat. Those too old or too ill to climb dozens of flights of stairs were literally trapped in their apartments.

The lessons of Hurricane Katrina—most particularly the unnatural disaster caused by corporate and government elites exploiting the recovery process to privatize and deregulate anything they could—are a warning. This is not a new fight, only a more urgent chapter in the ongoing fight for social and economic justice.

In the days after the hurricane, CCR staff continued work on their cases without an office or working phones or email—even winning an argument in one of our Iraq torture cases by hopping on the last flight to Washington, D.C., before the airport was shut down (see cover). They also volunteered in the relief work, and when the office re-opened CCR offered time to all staff who wanted to continue relief work. But that's who we are. We've been talking to community partners, allies, human rights groups and others, laying the groundwork for what will be a long battle for a recovery based on human need and not corporate greed.

As 2012 winds to a close, we are incredibly grateful for the thousands of supporters and donors who are with CCR for the long haul. Without you, the status quo remains. With you, another world is possible.



Check out CCR's blueprint for post-election work at: ccrjustice.org/lets-get-to-work

This holiday season **first time gifts to CCR will be matched, dollar for dollar**, up to \$50,000. As a first time donor, your gift will have twice the impact in advancing the fight for social justice in 2013!

If you already support CCR, ask your friends to join the fight!

www.ccrjustice.org/donatetoday

This legacy now hangs in the balance. In *Kiobel*, Royal Dutch Petroleum is accused of participating in the arrest on false charges, torture, and execution of 12 members of the Ogoni tribe in Nigeria who had protested the oil giant's degradation of their land. The Supreme Court will consider two questions: whether corporations are exempt from suit under the ATS and whether the ATS permits suits for atrocities that have been committed abroad, regardless of whether the defendant is a corporation. On the first question, corporations could enjoy impunity for conduct that would be punishable if committed by individuals. On the second, abuses committed abroad by government officials and non-state actors alike could become unreachable by U.S. courts. In short, *Kiobel* could gut the ATS.

With so much on the line, CCR mounted legal and public awareness campaigns to protect this critical human rights tool. We organized 12 human

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rights organizations to file joint amicus briefs with the Court. We planned a panel discussion (live streamed on the web) at Georgetown University featuring a broad range of ATS plaintiffs and attorneys (including counsel in *Kiobel*), as well as CCR Vice President Peter Weiss, who litigated *Filártiga* in 1979. We held a press teleconference with members of the panel attended by 20 news outlets and published six opinion pieces, including in *The New York Times*, CNN.com, and the *National Law Journal*. CCR attorneys attended the October 1 Supreme Court argument. Additionally, CCR is part of a community of organizations and advocates that has grown up around

ATS litigation over the past 30 years and has already begun conversations about legislative remedies in the event that the Court limits the reach of the ATS.

Since *Filártiga*, ATS plaintiffs have gotten accountability for a variety of human rights abuses committed around the world, from forced labor in Myanmar (then Burma) to arbitrary arrest and detention in Liberia, from torture in Bangladesh to extra-judicial killing in Chile. The effect of that first bold, creative use of the ATS in 1979 cannot be overstated. Nor can the importance of defending its legacy. We can't predict what the Supreme Court will do with the ATS this term. But we can promise that, whatever happens, CCR will continue to pioneer creative strategies in human rights law.



For more on *Kiobel* and the Alien Tort Statute visit: www.ccrjustice.org/kiobel

ABU GHRAIB (continued from cover)

same immunities as the U.S. military and therefore their wartime activity was beyond the review of the courts. But in May of this year, the U.S. Court of Appeals for the Fourth Circuit denied those claims in both this case and our related case, *Al Shimari v. CACI, et al.* In dismissing the appeals of the defendants in these cases, the court sent both back to their respective district courts to proceed to discovery. Additionally, this decision suggested that the court was as yet unwilling to grant such broad immunity to these corporate defendants.

In *Al Shimari*, on November 1, the trial court reinstated our Alien Tort Statute (ATS) claims of war crimes, torture and cruel and inhuman treatment—an enormous victory. These ATS claims had previously been denied, with the court asserting that “tort claims against government contractor interrogators are too modern and too novel” to satisfy



the requirements for jurisdiction. *Al Shimari* will now proceed to trial on multiple issues, including those ATS claims, and is so far the *only* case to go to trial on the question of whether or not individuals held in U.S. custody were, in fact, tortured. Our ultimate goal is to hold these corporate actors accountable for the torture they perpetrated, and ensure they do not continue to enjoy impunity without respect for human rights.

The settlement in *Al-Quraishi* and the reinstatement of the ATS claims in *Al Shimari* are critical reminders of the power and utility of the ATS to uphold and defend international human rights against corporate actors. This vindication of the ATS comes at a time when the viability and scope of the ATS is being reviewed by the United States in *Kiobel v. Royal Dutch Shell* (see cover). Without the ATS, these 71 victims may have never gotten any measure of justice.

"Why can't you just be reasonable?"

Update on Bradley Manning and Julian Assange

During oral arguments this October in CCR's case against the U.S. government demanding public and press access to basic court documents in Bradley Manning's court-martial proceedings, the judge asked the government a simple question: "Why can't you just give it to them? Instead of making this a constitutional case, why can't you just be reasonable?"

Indeed. Readers of our newsletter will recall that CCR has been working to lift the veil of secrecy behind which the Bradley Manning case is being conducted. Manning is accused of releasing hundreds of thousands of "sensitive" pages of documents to WikiLeaks. He has been held for over two years in brutal pre-trial conditions while court orders, transcripts and other vital information in

the case have not been made public. Our co-petitioners in the case, *CCR v. United States*, include Glenn Greenwald, The Nation, Democracy Now!, and WikiLeaks. This case is about the public scrutiny that is essential to government accountability. People have a right to know what their government is doing, and media access is critical for the realization of that right. In this historic case, the most critical whistleblower act since the Pentagon Papers, defending this principle is more important than ever. As of press time, CCR and the government had both provided supplemental and additional briefing, and we await news as to whether the court will make a ruling, or will demand another return to court.

Also counsel to WikiLeaks and its

publisher Julian Assange, CCR applauded Ecuador for granting diplomatic asylum to Assange at its embassy in London in August—offering protection to him from the prosecution (or persecution) he faces in the event of extradition to the U.S. WikiLeaks is a website and journalistic endeavor dedicated to exposing government secrecy. It is the very embodiment of what the First Amendment was meant to protect and the U.S. government's determination to go after Assange is a threat to one of our most important democratic values.

In October, along with our co-counsel, Baltasar Garzón, a prominent Spanish jurist, we sent a letter to Attorney General Holder seeking information about the status of any criminal

Guantánamo: Victories and Challenges

In 2008, candidate Obama promised to close Guantánamo. Four years and one reelection later, Guantánamo remains open and 166 men languish there, 86 of whom are cleared for release. While people around the world applaud Obama's reelection, CCR continues our struggle to close the prison.

In October, CCR and our allies celebrated two victories. First, the D.C. District Court struck down a punitive set of rules limiting lawyers' access to their detained clients. Second, the U.S. Department of Justice publicly disclosed the names of 55 of the 86 men who have been unanimously approved for release by all responsible U.S. national security agencies.

CCR clients Mohammed Al-Hamiri and Khalid Abd Elgabar Mohammed Othman are on that list. Shortly thereafter, the Court of Appeals for



CCR in coalition with human rights groups marches to the Capitol in 2012 to protest the continued detention of men at Guantánamo Bay. Photo by Sarah K. Hogarth.

the D.C. Circuit unsealed the record in the habeas case of another CCR client, Djamel Ameziene, revealing publically that he, too, has been approved for transfer. These disclosures greatly enhance our ability to advocate

publicly for these men to be immediately released, and for the release of all Guantánamo prisoners whom the U.S. government does not intend to prosecute. Further, we continue to call for disclosure of the identities of 30

investigations of Julian Assange or WikiLeaks by the Department of Justice and demanding information about whether a grand jury impaneled in the Eastern District of Virginia is considering charges against Assange or other WikiLeaks officials under the Espionage Act of 1917—a statute notorious for prosecutions of political dissenters and anti-war activists during World War I. The letter also asks if the government is considering detaining Assange under the National Defense Authorization Act provisions, which purportedly authorize indefinite military detention of individuals accused of providing “substantial support” to suspected terrorist organizations. We await their response.

The journalistic function and value of WikiLeaks cannot be disputed.



Bradley Manning is the U.S. Army soldier arrested in May 2010 in Iraq on suspicion of having passed classified material to the whistleblower website WikiLeaks. CCR is challenging the secrecy surrounding his trial. Photo courtesy of www.bradleymanning.org.

The site has published 251,287 leaked U.S. diplomatic cables and military documents that reveal the hypocrisy and human rights violations that are frequently a part of U.S. foreign policy. These publications illuminated state-sponsored human rights abuses in Iraq and Afghanistan, revealed

critical information about the profiles and experiences of hundreds of Guantánamo detainees, exposed a secret war in Yemen, and revealed the Obama administration’s interference with independent efforts in Spain to prosecute Bush officials for torture and other war crimes.

Yemeni prisoners who are also approved for transfer, but whose identities the U.S. government has inexplicably chosen to keep concealed.

As fewer avenues for judicial relief present themselves, CCR has intensified its direct negotiations and outreach to foreign governments to accept released Guantánamo prisoners.

Finally, in September, CCR celebrated the release to Canada of Omar Khadr. Khadr was just 15 when he was captured and rendered to Guantánamo, in stark violation of established international human rights law and norms. Following his release, CCR called on Canada to release Khadr immediately and provide him with appropriate rehabilitative assistance to help him transition to a normal life. We also called on Canada to accept other men from Guantánamo, including Ameziane, who was a legal resident of Canada from 1995 to 2000 and still has family living in Quebec.

In much more tragic news, in September, CCR, like so many others, mourned the untimely death of Adnan Latif. Latif was the ninth prisoner to die at Guantánamo. He endured more than 10 years of indefinite detention, despite being cleared for release by the Bush and Obama administrations on *three* separate occasions. His tragic death exposes the brutality of the government’s current Guantánamo policy and underscores the critical importance of CCR’s resettlement efforts.

CCR continues to be a leading voice for the rights of Guantánamo detainees. In August, we published an op-ed in *The Washington Post* criticizing those punitive and restrictive rules regarding counsel access to prisoners that were subsequently struck down by the District Court. In September, we placed an op-ed in *The New York Times* on the death of Adnan Latif. Finally, CCR was interviewed by both the *NYT* and *CBS Evening News* on the release of Omar Khadr to Canada.

As always, the Guantánamo news is a mix of victories and continued challenges. However, regardless of the frustrations we feel, CCR continues our work towards justice and the eventual closure of the prison. The lives of those 166 men, and the rule of law and human rights, depend upon our not giving up this struggle.

Save the Date! Close GTMO!

January 11, 2013, marks the shameful 11th anniversary of the detention camp at Guantánamo Bay, where most of the 166 men deprived of their freedom remain imprisoned without any charge or a fair trial.

CCR remains as committed as ever to closing Guantánamo. Please join CCR and others in Washington, D.C., on January 11, and see our website for updates on other ways in which you can be involved in CCR’s efforts to #closegitmo.

Spotlight on CCR Client: The Vulcan Society

In October 2012, after a decade-long battle, U.S. District Judge Nicholas Garaufis approved a new firefighter entrance exam, paving the way for the New York City Fire Department (FDNY) to hire for the first time since 2007. Judge Garaufis found that the new exam, which was the result of CCR's successful litigation against the FDNY, does not unfairly discriminate. A record number of women and people of color signed up for and passed the test in the spring. We spoke with John Coombs, President of the Vulcan Society, and Captain Paul Washington, former President, about what their hopes are for this case and what it's been like to work with CCR.

CCR: Why is this case so important?

Paul: The fire department has been virtually all White for 148 years now. We want to see Black men and women get their fair share in this great career. It's important that the fire department reflects the City of New York. And it's important that the Black community see that it can effect change by fighting. We created this change. The only way we win is when we fight. It's also important to note that everything the fire department did is because of the Vulcans, the Black community, Black politicians, and White allies.

John: We are hopeful that the City of New York will see this as a victory and not a defeat. This is a tradition that needs to be changed. It's in the city's best interest to include, not exclude, when it comes to employment. The City of Chicago made adjustments to their employment practices and now they have a more productive fire department and a stronger city because of it.

CCR: What will success in this case look like?

Paul: We want to see a high percentage of women and people of color hired, and we want to see incoming classes that are majority people of color so that the fire department finally reflects NYC.

John: Success will be measured by a more diversified fire depart-



Former Vulcan Society President, Paul Washington speaks about working with CCR to challenge the FDNY's discriminatory hiring practices. Photo by Yanick Salazar.

ment. Over 90 percent of the fire department is White and of the 9,000 employees, only 50 percent live in NYC. That means at least 4,500 people who don't live in New York work for the FDNY and that's a financial tragedy for NYC. We want to see more Black, Hispanic, and Asian men and women in the near future.

CCR: What was it like working with CCR on this case?

Paul: It was great working with CCR. They were the ones who took up this case in 1999. The Vulcan Society knew nothing about how to proceed legally and CCR advised us how to go about it and has been with us ever since. It was only CCR that took us up in this battle. We went to several law firms and were turned away from them all. CCR was the only one willing to take up this case.

John: CCR was the right partner because they saw the Vulcans' vision. CCR has a reputation for seeing the vision of its partners and they were the first to come on board. Others came later who wished they'd been involved, but CCR was there from the start.

Update from an Ella: Peter L. Markowitz



Peter L. Markowitz was an undergraduate Ella Baker Fellow in 1992. "Growing up in New York, CCR's reputation as a place where radical lawyering

was improving the lives of working people and marginalized communities, loomed large," Peter recalls. Peter cites working on a post-conviction motion for a former Black Panther with William Kunstler during his summer

at CCR, while the Center was litigating the flag burning case before the Supreme Court, with doing for him what the Ella Baker program has done for so many others over the years: "The experience cemented my commitment to becoming, in the words of Arthur Kinoy, a 'people's lawyer.'"

Peter currently directs the Kathryn O. Greenberg Immigration Justice Clinic at Cardozo School of Law. The clinic represents noncitizens facing deportation because of contact with the criminal justice system as well

as immigrant community-based and advocacy organizations on systemic reform projects. Currently, the clinic is partnering with CCR to represent the National Day Labor Organizing Network in a lawsuit against the Department of Homeland Security (DHS). This effort has brought national attention to the duplicity underlying DHS's deeply flawed next generation immigration enforcement program, Secure Communities. Says Peter, "This collaboration reminded me yet again what a standard-bearer CCR is in the world of progressive litigation."

CCR in Brief....

In September, CCR and the Communities United for Police Reform campaign, **1,000 strong**, rallied outside the NY City Council demanding an end to the discriminatory and abusive practices of the NYPD and testified at the city's **first-ever** hearing on the Community Safety Act, aimed at curbing police abuses.

September 13 marked **one year** since CCR and the Survivors Network of those Abused by Priests (SNAP) filed a petition with the International Criminal Court seeking to hold Vatican officials accountable for enabling and concealing the rape and sexual assault of children by priests. Since then, more than **600 people in 65 countries** have contacted SNAP.

In September, the first three **Bertha Fellows**, part of our new Bertha Social Justice Institute, started at CCR. These recent law school grads will spend **two years** cutting their teeth on radical people's lawyering while providing critical support for our legal work.

In October, CCR Guantánamo Legal Worker and Yemeni-American activist Ibrahim Qatabi served as an advisor to **Nobel Laureate Tawakkol Karman** for a crucial set of meetings on the **U.N.'s Post-2015 Development Agenda**. This work will be part of a report to the Secretary-General in the first half of 2013.

CCR Executive Director **Vince Warren** was honored by his alma mater, Rutgers University School of Law, with the **Fannie Bear Besser Award for Public Service**.

On November 7, in response to the lawsuit brought by CCR, Board Member David Cole, and Chicago co-counsel, the Department of Treasury **unilaterally removed** Muhammad Salah from the Special Designated Terror List, rather than defend its unconstitutional practice in court. After **17 years** of onerous restrictions on his ability to undertake basic life activities, Mr. Salah and his family are freed from the burdens placed upon him by the U.S. government.



Honduran protestor holds picture of President Manuel Zelaya, who was ousted by a military coup in 2009. Photo © Rodrigo Abd/AP/Corbis

Challenging Human Rights Abuses in Post-Coup Honduras

CCR continues to respond to the ongoing human rights crisis in Honduras. Earlier this month, we submitted an Article 15 communication to the International Criminal Court (ICC) regarding ongoing crimes against humanity, including political persecution, murders, enforced disappearances, and forcible transfers in Honduras. CCR is urging the ICC to take up the case of Honduras and end the cycle of impunity that has led to countless deaths among opposition lawyers, journalists, human rights defenders, land rights advocates, and the LGBTI community.

In October, the Honduran True Commission released a report documenting the gross human rights abuses following the 2009 coup d'état ousting democratically elected President Manuel Zelaya. The report calls on President Porfirio Lobo to fire officials responsible for the coup, pay reparations to victims, allow those who fled for fear of persecution to return, and put an end to the continuing violence. CCR has supported the True Commission's work through research, FOIA requests and

litigation, and by sending human rights observers to accompany field investigations.

As readers will recall, CCR filed a lawsuit in June 2011 against Roberto Micheletti Baín, former de facto president of the Honduran National Congress who assumed the role immediately following the coup. The case is on behalf of the parents of a 19-year-old who was shot and killed by Honduran military forces during a peaceful demonstration against the coup.

CCR is also involved in advocacy challenging U.S. policy in Honduras. We have been writing bimonthly memos to the State Department and members of Congress regarding reports of assassinations, kidnappings, detentions, mass evictions, and other violations, many of which have been perpetuated by Honduran police and military. The reports demonstrate the pattern of widespread violence that characterizes post-coup Honduras and have been used to call for an end to U.S. funding of Honduran police and military.

Breaking News:

**Human Rights Law
at the Crossroads**

**Accountability for
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Details Inside

Israel H. Lindenbaum

In Memoriam



This summer, CCR lost a dear friend and ally. Israel H. Lindenbaum (“Lindy”) had a passion for music, travel, literature, politics, and human rights. A CCR supporter for over a decade, Lindy is remembered for his deep commitment to social justice, particularly workers’ rights, the mentally ill, and both adolescents and adults struggling with addiction. Lindenbaum, a pharmacist, owned Lindemann’s Pharmacy in Manhattan’s Lower East Side.

Following retirement, he worked as a volunteer group leader and member of the Board of Directors at Aurora Concept in Queens, NY, which is a treatment center for addicts. His passion for workers’ rights drove him to become active in the formation of the 1199 Health and Hospital Workers’ Union of New York. Lindenbaum also served on the Board of the FLB Foundation, a nonprofit organization that funds services for the mentally ill, as well as the Board of the National Association of the Mentally Ill/PATH of Queens. Lindy had a generous spirit and a deep devotion to human rights. He will be greatly missed.



Join CCR Board Vice President, Alex Rosenberg, on a trip to Cuba from February 17-24, 2013, to explore the politics, culture and art of this vibrant country!

For every reservation that is made, Alex will ensure that \$500 of the cost of the trip is donated to CCR to support its international human rights work. That portion of the reservation is tax deductible.

For more information about the trip and to sign up, please contact info@afllfc.org