



A lawsuit against a Canadian company for violations of customary international law in Eritrea can go forward, the Supreme Court has ruled.

Eritrea is a country in east Africa. It has a “National Service Program,” where all Eritreans have to do military training and military or other public service when they turn eighteen. But people in this program are forced to work for years and years on projects supported by military or political party officials.

The Bisha mine was built starting in 2008. It is owned by the Bisha Mining Share Company. Workers from the National Service Program were used to help build it. They were forced to work under harsh and dangerous conditions for years. They weren’t allowed to leave. They were beaten and punished in many ways.

Three workers said they arrived at the Bisha mine between 2008 and 2010. They said they were forced to work at least twelve hours a day, six days a week, in temperatures close to 50°C. They escaped Eritrea between 2011 and 2013 and became refugees.

Nevsun is a Canadian company based in British Columbia. It owns the Bisha Mining Share Company. The workers sued Nevsun, saying it was responsible for slavery; forced labour; cruel, unusual, or degrading treatment; and crimes against humanity. They said these were violations of “customary international law.” They said customary international law was part of Canadian law. They said that meant Canadian courts should be able to hold Nevsun responsible for the harm they suffered.

“Customary international law” is part of international law. It is like the common law of the international legal system. Within customary international law, some rules are so important that no one is allowed to ever break them. These are called “peremptory norms.” (“Peremptory,” is pronounced per-REMP-torr-ee. Peremptory norms are rules that can never be avoided). The violations the workers were claiming were violations of peremptory norms.

Nevsun said British Columbia courts didn’t have the power to rule on the workers’ lawsuit. It said it was immune because of something called the “act of state doctrine.” This doctrine says courts in one country aren’t allowed to rule on what another country does. It had never been applied in Canada before. Nevsun also said it couldn’t be sued for violating customary international law.

The lower courts said the workers’ lawsuit could go forward.

The majority of judges at the Supreme Court of Canada said the act of state doctrine wasn’t part of Canadian law.

The majority said that customary international law is part of Canadian law, though. It said customary international law becomes part of Canadian law automatically. This is different than treaty law, which needs Parliament to pass a law to bring it into force. Because customary international law is part of Canadian law, courts could, in the right cases, find Canadian companies responsible for violating it.

The majority noted that violations of peremptory norms are serious violations of rights that are important to everyone, everywhere. They need to be strongly discouraged.

The Court didn’t decide whether Nevsun was responsible for violating the workers’ rights. It said that the workers’ lawsuit could go forward. It said that the trial judge would have to decide whether Nevsun breached customary international law and—if it did—how it should be held responsible.

Breakdown of the decision: *Majority:* Justice Rosalie Silberman **Abella** dismissed the appeal (Chief Justice **Wagner** and Justices **Karakatsanis**, **Gascon**, and **Martin** agreed) | *Dissenting in part:* Justices Russell **Brown** and Malcolm **Rowe** agreed that the act of state doctrine didn’t apply in Canada, but said customary international

law wasn't automatically part of Canadian law | **Dissenting:** Justice Suzanne Côté said Canadian courts shouldn't hear cases where it is alleged that a foreign state acted contrary to international law, and said that international human rights law doesn't apply between individuals and corporations (Justice Moldaver agreed)

More information (case # 37919): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

Lower court rulings: [applications to dismiss, etc.](#) (Supreme Court of British Columbia) | [appeal](#) (Court of Appeal for British Columbia)
