



April 17, 2013

Court Bars Tort Suits Alleging Overseas Rights Violations

(Kiobel v. Royal Dutch Petroleum)

United States Supreme Court

The U.S. Supreme Court today dismissed a lawsuit filed by human rights activists alleging that a multinational corporation committed human rights violations in Nigeria. The Court held that the Alien Tort Statute, the 1789 federal law under which the activists sued, applies only to activities that occur within the United States.

The decision in *Kiobel v. Royal Dutch Petroleum Co.* was a huge victory for the Washington Legal Foundation (WLF), which for more than a decade has been a leading voice in opposing extraterritorial application of the ATS. The Court agreed with WLF that the 18th century Congress gave no indication that it intended the ATS to apply to events occurring overseas; and that in the absence of such an indication, Congress is presumed to have had no such intent. Commenting on today's decision, WLF Chief Counsel Richard Samp said:

The Court correctly recognized that it is up to Congress, not the courts, to decide how far the American judicial system should go in supervising events that take place in foreign countries. Any such intrusion carries foreign policy consequences, and Congress is much better positioned than are federal judges to evaluate those consequences. Congress authorized "human rights" lawsuits under limited circumstances when it adopted the Torture Victim Protection Act. The TVPA provides human rights activists with the tools they need to combat atrocities without creating undo friction between the U.S. government and its allies.

In affirming dismissal of the Nigerian claims, the Court placed heavy emphasis on the lack of a connection between the United States and either the parties or the events complained of. It noted that the only connection between this suit and the United States is that the defendant (Royal Dutch Petroleum, an oil company based in the Netherlands and the United Kingdom) conducts some business in the United States. The plaintiffs, all Nigerian citizens, complained that Royal Dutch Petroleum aided and abetted human rights abuses by the Nigerian government in Nigeria.

The Court left the door slightly ajar for plaintiffs. It stated that it remains open to ATS plaintiffs to argue that at least some of the conduct "relevant" to the alleged human rights violations occurred in the U.S. But it made clear that "mere corporate presence" in the U.S. is insufficient to meet that standard. Plaintiffs can also be expected to turn to state courts as an alternative means of raising human rights claims.

"The ATS was adopted in 1789 to allow the federal courts to hear cases involving piracy and

assaults on ambassadors,” said WLF’s Samp. “It has been transformed by activist attorneys into a tool for second-guessing American foreign policy and for attacking the overseas conduct of corporations. The Supreme Court was correct to step in and bring a halt to this perversion of the ATS,” Samp said.

Royal Dutch Petroleum operates oil wells in the Ogoni region of Nigeria. Some residents of the Ogoni region have actively opposed the policies of the Nigerian government; they contend that the government has responded to their opposition with a brutal crackdown on the Ogoni people, including torture, executions, and crimes against humanity. They further allege that Royal Dutch Petroleum provided support for the Nigerian government that aided and abetted the crackdown. Instead of filing suit in Nigeria, the plaintiffs filed suit in 2002 against Royal Dutch Petroleum under the ATS in federal court in New York.

In September 2010, the U.S. Court of Appeals for the Second Circuit dismissed the lawsuit on the grounds that corporations are not proper defendants under the ATS. In October 2011, the Supreme Court agreed to review that decision. Following oral argument in March 2012, the Supreme Court called for briefing on an additional issue: whether and under what circumstances the ATS allows courts to recognize a cause of action for “violations of the law of nations” occurring within the territory of a foreign nation.

Much of the legal dispute between the parties centered around the meaning of the U.S. Supreme Court’s 2004 decision in *Sosa v. Alvarez-Machain*, which dismissed the claims of a Mexican doctor who sued under the ATS after he was kidnaped in Mexico at the instigation of U.S. law enforcement authorities and brought to this country to face criminal charges. The plaintiffs’ bar has insisted that *Sosa* actually endorsed a broad reading of the ATS. The Supreme Court agreed with WLF that, to the contrary, *Sosa* made clear that alleged violations of international law only rarely are actionable in federal court.

The Washington Legal Foundation is a public interest law and policy center with supporters in all 50 States. It devotes a substantial portion of its resources to defending free enterprise, individual rights, and a limited and accountable government. WLF filed its brief on behalf of itself and the Allied Educational Foundation.

For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF’s brief is posted on its web site, www.wlf.org.