



The Note

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Can Corps Accused of Abetting Torture Abroad Be Sued in U.S. Courts?

On Tuesday the Supreme Court will hear a challenge brought by 12 Nigerian plaintiffs who say a Shell oil subsidiary aided and abetted acts of murder, rape and systematic torture by the Nigerian government in the early 1990s.

At issue is whether corporations can be sued in U.S. courts for violations of human rights committed abroad.

Human rights groups hope the high court will reverse a 2010 lower court decision that held that corporations — unlike individuals — cannot be sued under the Alien Tort Statute, a federal law that allows foreigners to bring lawsuits in U.S. federal court for violations of international human rights law.

Lawyers for the plaintiffs, who were associated with the Movement for the Survival of the Ogoni People, allege in court papers that the Nigerian military, assisted by Shell's operations in the region, "engaged in a widespread and systematic campaign of torture, extrajudicial executions, prolonged arbitrary detention, and indiscriminate killings constituting crimes against humanity to violently suppress the movement."

In court papers, lawyer Kathleen M. Sullivan, representing Royal Dutch Petroleum Co., a holding company for Shell, says the lower court was right to find that international law does not recognize corporate responsibility for the alleged offenses.

Sullivan says the Nigerian plaintiffs "fail to demonstrate that international law, with the requisite specificity and universal acceptance, imposes responsibility on corporations for the offenses alleged here."

Ralph G. Steinhardt, a law professor at George Washington Law School, says the lower court got it wrong.

“The lower court in this case was alone among federal courts of appeals in concluding that corporations never — under any circumstance — have obligations under international law,” says Steinhardt who filed a brief representing international law scholars on behalf of the Nigerian plaintiffs. “Four other courts of appeals have explicitly reached an opposite conclusion.”

The United States government has filed a brief in support of the plaintiffs.

“The United States has taken the position that whatever complexities may arise in future cases, the absolute rule adopted by the court of appeals in this case is wrong,” says Steinhardt.

The Alien Tort Statute was part of the first piece of legislation adopted by the U.S. Congress in 1789 largely for the purpose of making sure that foreigners injured by violations of international law could use U.S. courts to get compensation.

Only in the 1980's was the Alien Tort Statute used to enforce human rights law.

Peter Weiss, vice president of the non-profit group Center for Constitutional Rights, was the first to use the Alien Tort Statute to go after individuals who had committed human rights crimes abroad. Later the statute was applied to corporations with ties to the United States.

“The interesting thing is that until the Second Circuit decision came down, the question of whether a corporation can be sued under the Alien Tort Statute was never raised. Not by defendants, and not by judges,” says Weiss. “Then all of a sudden the Second Circuit said it is not part of customary international law to be able to sue corporations for human rights violations.”

Weiss says that if the Supreme Court rules against liability for corporations, it will still leave open the possibility of suing individuals in those corporations who may have been guilty of committing crimes, but that is a much harder case to prove.

John B. Bellinger III, who served as the legal adviser to the Department of State during the Bush administration, argues that the Supreme Court should curb the Alien Tort Statute.

“More than 120 lawsuits have been filed in federal courts against 59 corporations for alleged wrongful acts in 60 countries,” Bellinger writes in a recent opinion piece for the [Washington Post](#).

He says that few of the lawsuits against entities such as ExxonMobil and Coca-Cola have resulted in judgments, “but most cases have dragged on for years, and some companies have settled rather than submit to protracted and reputation-damaging litigation.”

On the diplomatic front he said the Obama administration should be concerned about reciprocity. The administration “would certainly object if foreign governments were to encourage lawsuits in their courts against U.S. companies for perceived violations of international law, such as against the manufacturers of drone aircraft.”