

# The question before the US supreme court in Kiobel v Shell

If corporations have the same rights as people to make political donations, then surely they also have human rights obligations?



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Charles Wiwa, in Chicago, 2012. Wiwa fled Nigeria in 1996 following a crackdown on protests against Shell's oil operations in the Niger Delta. He and others claim Shell was complicit in Nigerian government actions that included fatal shootings, rapes, beatings and arrests in the Ongoni region. Photograph: Charles Rex Arbogast/AP

On 21 January 2010, the [US supreme court](#), in [Citizens United v Federal Election Commission](#), decided, by a vote of five to four, that, since corporations were legal persons, they were entitled to the protection of the first amendment, which guarantees unfettered freedom of speech. In his dissent, Justice Stevens said the decision threatened "to undermine the integrity of elected institutions across the nation". That is exactly what is happening in the current electoral cycle: through [Super PACs](#), billions of dollars are being poured into TV and print advertisements, mostly of the negative kind.

On Tuesday 28 February, the supreme court hears arguments in another case examining the "personhood" of corporations. In [Kiobel v Royal Dutch Petroleum](#), a group of Nigerians claim that they or their relatives have been the victims of torture, summary execution and other crimes against humanity perpetrated by the Nigerian government with the active collaboration of the oil company. The suit was brought under the Alien Tort Statute, a 1789 law that allows aliens to sue in US courts for torts in violation of international law, under which dozens of cases have been brought since it came back to life in a 1980 decision of the court of appeal for the second circuit.

The same court has now ruled that the ATS applies only to individuals, as in the 1980 case, but not to corporations. The supreme court will have to decide whether it agrees with this rule, or with those of four other circuits, none of which have had any difficulty taking on corporate [human rights](#) cases under ATS.

[Kiobel](#) has attracted a great deal of interest in the legal community. Over 20 friend-of-the-court briefs have been filed on the side of the plaintiffs and almost that many on

the other side. In the former camp are many human rights organizations, as well as the US government; in the latter, mostly multinational corporations and trade associations, as well as the governments of the United Kingdom and the Netherlands. The business people are saying there is no precedent for corporations being sued under international law, hence no international principle on which to base ATS claims. Not true, say the victims: IG Farben and other German companies were broken up or dissolved by the allies after the second world war for their use of slave labor and other crimes.

In any case, who can be sued is for each country to decide, but there can be no disagreement on what to sue for – in this case, crimes against humanity. The nay-sayers argue that opening US courts to this kind of suit is bad for business; the plaintiffs cite a judge, in one of the cases from another circuit, making light of the claim that complying with child labor laws puts companies at an unfair competitive advantage with those that ignore them.

Ultimately, whether one likes or dislikes the use of the Alien Tort Statute against corporations comes down to whether one's notion of free trade includes the freedom to commit (or, in many situations, acquiesce in) torture, rape, slave labor and extrajudicial executions as ordinary attributes of doing business. The business briefs say that there are guidelines that recommend compliance with international human rights norms, but that these have not risen to the level of an international legal norm. Precisely: there's the rub.

If the US supreme court agrees with this view, we will have a situation where corporations are "persons" for the purpose of making unlimited contributions to political campaigns, but not for the purpose of being held to account for human rights violations.

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