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Shell Asks U.S. Supreme Court to Bar Human-Rights Suit

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[Royal Dutch Shell Plc \(RDSA\)](#) asked the U.S. Supreme Court to rule that the company can't be sued by Nigerians seeking damages for torture and murders committed by their government in the early 1990s.

The high court in [Washington](#) is considering whether companies are exempt from two statutes imposing liability for human-rights violations. Shell, [Europe's](#) biggest oil company, argued today that the Alien Tort Statute, which dates to 1789, can't be used to sue corporations. The Nigerian plaintiffs claim there's nothing in the law that limits liability to individuals.

"We do not urge a rule of corporate impunity here," said Kathleen Sullivan, a lawyer for Shell. "Corporate officers are liable for human-rights violations and for those they direct among their employees. There can also be suits under state law or the domestic laws of nations. But there may not be ATS federal common-law causes of action against corporations."

The case, *Kiobel v. Royal Dutch Petroleum Co.*, was filed in 2002 by 12 Nigerians claiming they were harmed by "widespread and systematic human rights violations" committed by the regime of the former military dictator Sani Abacha, including torture, executions, illegal detentions and indiscriminate killings in the Ogoni region of the [Niger Delta](#).

'No Claim'

[Paul Hoffman](#), who represents the Nigerian plaintiffs, criticized Shell's position, arguing that "even if these corporations had jointly operated torture centers with the military dictatorship in [Nigeria](#) to detain, torture, and kill all opponents of Shell's operations in Ogoni, the victims would have no claim."

In a separate lawsuit argued immediately after the *Kiobel* case, the court considered whether the Torture Victim Protection Act of 1991 exempts organizations, including corporations, from suits over torture. In that case, Asid Mohamad, a U.S. citizen, sued the Palestinian Authority and

the [Palestine Liberation Organization](#) for the torture and death of his father, a West Bank-born U.S. businessman.

The Nigerian plaintiffs, who sought to represent a class of human-rights victims in their country, claimed that two Shell units, Royal Dutch Petroleum Co. and Shell Transport and Trading Co., aided the Nigerian government through a subsidiary in committing human-rights abuses from 1992 to 1995. No individuals were named in the suit.

Federal Dismissal

In 2006, a federal trial court dismissed part of the Nigerians' suit, upholding claims based on aiding in arbitrary arrests, crimes against humanity and torture. The court certified its ruling for an immediate, pretrial appeal.

A panel of the Manhattan-based appeals court ruled 2-1 that corporations can't be sued under the Alien Tort Statute. The two judges in the majority said the statute doesn't give federal courts jurisdiction over the case, an issue that wasn't argued by Shell or cited by the lower court.

"The question is whether courts can expand their jurisdiction without an act of Congress," said Ilya Shapiro, a lawyer for the [Cato Institute](#), which submitted an amicus brief supporting Shell.

Other briefs backing Shell's position were filed by business groups, international corporations including [Coca-Cola Co. \(KO\)](#) and [Archer-Daniels-Midland Co. \(ADM\)](#), and countries such as the Netherlands and the U.K.

'Public-Relations Damage'

Shell, based in [The Hague](#), claims the reasoning behind a 2004 Supreme Court ruling on the Alien Tort Statute bars the Nigerian's claims. Even if corporations can be sued under the law, it doesn't permit suits based on allegations the company aided, rather than committed, the violations of international law alleged by the Nigerian human-rights victims, Shell said in its brief. The company also argues that the law doesn't reach to human-rights violations that take place within a foreign country, rather than in the U.S. or at sea.

Allowing corporations to be sued would discourage investment in third-world countries, the company also said.

"Even a meritless federal suit against a corporation can take years to resolve and cause substantial public-relations damage in the interim," Shell argued in its [Supreme Court](#) brief.

"These costs in turn may lead corporations to reduce their operations in the less-developed countries from which these suits tend to arise, to the detriment of citizens of those countries who benefit from foreign investment."

The Nigerians claim that Shell helped the Nigerian military government in its brutal repression of Ogoni protests.

'Law-Free Zone'

Four federal appeals courts have permitted corporations to be sued under the Alien Tort Statute, the Nigerians argue. They also cited the post-World War II trial of 24 former executives of I.G. Farben, the German chemical firm, on war-crimes charges to support their claim that international law recognizes corporate liability for human-rights violations.

"There is no special law-free zone for corporations," the Nigerians said in their brief.

The U.S. government, environmental and human-rights organizations and groups of law professors, including experts on the Nuremberg war-crimes trials, filed briefs supporting the Nigerians' arguments.

Peter Weiss, a retired lawyer who is a vice president of the New York-based [Center for Constitutional Rights](#), compared the Kiobel case to the Supreme Court's 2010 Citizens United ruling, which gave corporations the same right as individuals to spend money independently in support of political candidates.

'A Paradox'

A ruling for Shell would create "a paradox between the Supreme Court's ruling that corporations can be treated as persons for purposes of making unlimited contributions to political campaigns, but not for the purpose of being sued for committing human-rights violations," Weiss said in a telephone interview.

In the Mohamad case, several justices expressed skepticism about the plaintiff's argument that the Torture Victim Protection Act, which allows victims to sue "an individual" who commits torture or extrajudicial killing in the name of a foreign state, was meant to include organizations, including companies.

"So far, I think I have to say that you are on a weak wicket," Justice Steven Breyer told Jeffrey Fisher, Mohamad's lawyer.

Fisher argued that if the court allows the Kiobel case to go forward and bars his client, it would result in foreign torture victims having more rights in U.S. courts than U.S. citizens.

"It would indeed be absurd to imagine Congress stepping in and passing a statute saying, 'if you're an American citizen, I'm sorry, you're out of luck,'" Fisher told the justices. "But if you happen to be lucky enough to be an alien and never having tried to be a citizen in this country, go ahead and bring the case in our courts."

The cases are *Kiobel v. Royal Dutch Petroleum Co.*, 10-1491, and *Mohamad v. [Palestinian Authority](#)*, 11-88, U.S. Supreme Court (Washington).