

In Kiobel v. Royal Dutch Petroleum Co., the Second Circuit held on September 17, 2010

that in ATS suits alleging violations of customary international law, the scope of liability—who is liable for what—is determined by customary international law itself. Because customary international law consists of only those norms that are specific, universal, and obligatory in the relations of States *inter se*, and because no corporation has ever been subject to *any* form of liability (whether civil or criminal) under the customary international law of human rights, we hold that corporate liability is not a discernable—much less universally recognized—norm of customary international law that we may apply pursuant to the ATS.

In Kiobel, Nigerian residents sued Royal Dutch Petroleum alleging that the company assisted the Nigerian government by providing transportation, shelter and food resources to the Nigerian government as it attempted to put down the Ongoni peoples resistance movement.

So you may ask -- how does the Alien Tort Statute give Nigerian residents an ability to sue in U.S. courts?

The U.S. government enacted the Alien Tort Statute in the last decade of the 18th Century. Its arguable purpose then was to protect the rights of aliens who were living in the U.S. (such as European diplomats) to be able to sue in U.S. Courts for wrongs done to them under international law. The international law at this point in history was far less developed than it is today (although arguably just as unenforceable) and applied mainly to remedy acts of piracy. The modern idea is that it is available to remedy those who have been tortured or - even more heinous - actually killed by their own governments.

The viability of the Alien Tort Statute in today's political climate is very tenuous. U.S. federal courts have regularly been holding that foreign individuals have no rights to sue the U.S. government for alleged detention Mohammed v. Jeppesen Dataplan. The Kiobel holding may increase the likelihood that this protection will now cover corporations that allegedly assisted the U.S. government in detaining, relocating and torturing the detainees.

If a corporation voluntarily accepts a profitable government contract, should it remain immune from suit for violations of customary international law committed during the execution of that contract?

Because corporations are given status as individuals in other aspects of the law, i.e. free speech and the right to advertise as much as it wants for political candidates, why then should they be viewed purely in the business context in the context of liability under the Alien Tort Statute?