

PUBLICATION

The U.S. Supreme Court Rejects Extraterritorial Lawsuit Against Shell Oil

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The United States Supreme Court, in *Kiobel v. Royal Dutch Petroleum*, recently restricted the scope of the Alien Tort Statute, 28 U.S.C. § 1350 (“ATS”), a 224-year-old law often used to invoke jurisdiction in suing corporations over human rights violations committed overseas. In doing so, the Court affirmed a ruling from the United States District Court for the Southern District of New York that the ATS does not give American courts jurisdiction to hear lawsuits involving foreign acts that allegedly violate international law.

Human rights activists filed the lawsuit against Royal Dutch Petroleum, the parent of Shell Oil, alleging the company was complicit in the murder and torture of Nigerians opposed to exploration of the Niger Delta and thereby in violation of the law of nations. Jurisdiction was based on the ATS, which provides that federal courts can hear “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.”

Chief Justice John Roberts, Jr., writing for the majority, framed the issue as follows: “[w]hether 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 sovereign other than the United States*.” (emphasis added). The majority held that the ATS “covers actions by aliens for violations of the law of nations, but that does not imply extraterritorial reach – such violations affecting aliens can occur either within or outside the United States.”

“On these facts, all the relevant conduct took place outside the United States,” Justice Roberts observed, “[a]nd even where the claims touch and concern the territory of the United States, they must do so with sufficient force to displace the presumption against extraterritorial application.” In this regard, the majority opinion noted: “Corporations are often present in many countries, and it would reach too far to say that mere corporate presence suffices. If Congress were to determine otherwise, a statute more specific than the ATS would be required.”