

United States Supreme Court to Again Consider the Alien Tort Statute

Today, the United States Supreme Court granted certiorari in the case of *Kiobel v. Royal Dutch Petroleum* to consider the following questions: (1) Whether the issue of corporate civil tort liability under the Alien Tort Statute, 28 U.S.C. § 1350, is a merits question or instead an issue of subject matter jurisdiction; and (2) whether corporations are immune from tort liability for violations of the law of nations such as torture, extrajudicial executions or genocide or may instead be sued in the same manner as any other private party defendant under the ATS for such egregious violations. In addition to *Kiobel*, the Court also granted cert. in *Mahamad v. Rajoub* to consider whether whether the Torture Victim Protection Act of 1991 permits actions against defendants that are not natural persons.

In *Kiobel*, 12 Nigerian nationals claimed human rights violations by oil companies, alleging that the oil companies enlisted the Nigerian government to use its armed forces to suppress resistance to oil exploration in the Niger Delta. In *Mohamad*, the family of a U.S. citizen claimed torture by officers of the Palestinian Authority and the Palestine Liberation Organization. The cases present the question whether the ATS and the TVPA apply to entities other than natural persons—corporations in *Kiobel* and other organizations in *Mohamad*.

What makes the *Kiobel* grant interesting, besides it being only the second time the US Supreme Court will hear an ATS case, is that the Court granted the case without soliciting the views of the United States. Given that cases raised under the ATS implicate in many cases foreign policy concerns of the Executive Branch, the considered views of the Executive would have advanced the Court's consideration of the case, even at the cert. stage. Whether the Solicitor General will file a brief *amius curiae* and request oral argument time will tell one a great deal about how the Obama Administration responds to the tensions created in ATS cases—at best, the ATS seeks to support human rights throughout the world and, at worst, imposes United States legal views on acts or omissions occurring within the sovereign territory of another country.

For international law scholars, the current Supreme Court term just became a great deal more interesting!