

# A Comparative and Legislative Approach to Human Rights Litigation After *Kiobel*

As the impact of the Supreme Court's *Kiobel* decision continues to take shape before U.S. federal courts, one recent essay, entitled "Reviving Human Rights Litigation After *Kiobel*" (appearing in the near future in the October 2013 *American Journal of International Law*), encourages a comparative and legislative approach to the Alien Tort Statute. As Professors Vivian Grosswald Curran (Pitt Law) and David Sloss (Santa Clara Law) explain:

"This essay proposes a legislative response to *Kiobel* that would preserve some of the benefits of ATS human rights litigation, while minimizing the costs. Although the proposed legislation does not address the corporate liability questions that were at issue when the Supreme Court initially granted certiorari in *Kiobel*, the legislation would allow human rights victims to bring civil claims against perpetrators in some foreign-cubed cases. However, plaintiffs could not file such claims until after a federal prosecutor filed criminal charges against the perpetrator. This approach would allow federal executive officials to block claims that raised serious foreign policy concerns by choosing not to prosecute.

It would also promote a more robust dialogue between federal executive officials and groups representing prospective human rights plaintiffs. The proposed legislation is modeled partly on pending French legislation, as well as existing Belgian and German legislation. Statutes in all three countries share two critical features (assuming the French bill becomes law). First, victims of genocide, war crimes, and crimes against humanity have the right to initiate judicial proceedings against perpetrators who committed crimes extraterritorially, including in foreign-cubed cases. Second, public prosecutors in all three countries can block such judicial proceedings if they determine that a victim-initiated case would impair the state's foreign policy interests or would otherwise be contrary to public policy. The next section gives a brief overview of the foreign legislation. The concluding section explains and defends our proposal."

The full essay will be available soon at the *American Journal of International Law*

website ([here](#)). *[Editor's note: the PDF of the article has been removed, on copyright grounds, at the demand of the Journal.]*