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US: Supreme Court ruling on Shell in the Niger Delta severely limits access to justice in human rights cases

The Supreme Court today dismissed the closely-watched case of *Kiobel v. Royal Dutch Petroleum Co* in a severe blow for victims of human rights abuses in the Niger Delta, and severely limited the reach of the Alien Tort Statute (ATS), a law enacted in 1789.

The Court's decision significantly reduces access to the U.S. courts for all survivors of human rights abuses committed abroad, a radical departure from its own precedent and a decision that Amnesty International believes flies in the face of the trend toward enhancing accountability for serious human rights violations.

The Court's ruling was in relation to the case of *Kiobel v. Royal Dutch Petroleum Co*. The suit was brought by members of the Ogoni community in the Niger Delta in relation to human rights violations committed against them and their families in the mid-1990s by the military government in power in Nigeria at the time.

"Today's court decision dashed the hopes not only of the Ogoni survivors, but of the countless others who might have benefited from a law that enabled people to challenge human rights abuses that had gone unpunished elsewhere," said Michael Bochenek, Amnesty International director of Law and Policy. "The ruling is a startling reversal of years of progress toward ensuring that those who commit or are complicit in the worst abuses are not beyond the reach of the law because of where they operate."

The plaintiffs allege that Shell was complicit in these abuses, which include extrajudicial killings, torture, rape, and crimes against humanity. They had hoped to secure justice by taking a civil action against Shell under the ATS.

The Supreme Court ruled that the ATS does not apply to conduct that occurs in countries outside the USA. ATS is a law that for thirty years has been relied upon by survivors of human rights abuses around the world as a means to obtain a measure of redress.

Bochenek said: "It's especially critical that multinational companies and other actors who are able to operate freely across borders are not shielded from the law's reach. In fact, they often benefit from the protection of laws that apply extraterritorially. But when survivors of abuses try to pursue justice beyond borders, they encounter formidable obstacles. Today's decision closes the courthouse doors for many.

“Until today the ATS stood as a critical defense against human rights abuses – the possibility that a case could be heard in US courts under ATS sent a message that the US would not serve as a safe haven for human rights abusers. Today the Supreme Court has effectively put the law on the side of human rights abusers, adding to survivors’ already difficult pursuit of accountability.”

Background

In 1995, nine activists from the Ogoni community in the Niger Delta (the ‘Ogoni Nine’), including writer and human rights campaigner Ken Saro-Wiwa, were executed by the military government in Nigeria following a politically motivated prosecution and an unfair trial. The activists had protested against the devastating impact of the oil industry in the region, in particular Shell’s operations there.

A number of lawsuits were filed in the USA by lawyers working with some of the relatives of the executed men, and victims of violence in Ogoniland, to try to hold Shell accountable for its involvement in human rights violations in Ogoniland.

The Kiobel case was filed under the Alien Tort Statute (ATS) on behalf of Dr. Barinem Kiobel, one of the Ogoni Nine, and eleven others. In 2010 an appeals court dismissed the case on the grounds that corporations could not be sued for human rights violations under the ATS. The plaintiffs subsequently took their case to the US Supreme Court.

In 2009 Shell settled a similar case, *Wiwa v. Royal Dutch Petroleum Co.*, for \$15.5million (U.S.)The company did not admit any liability.

Amnesty International is a Nobel Peace Prize-winning grassroots activist organization with more than 3 million supporters, activists and volunteers in more than 150 countries campaigning for human rights worldwide. The organization investigates and exposes abuses, educates and mobilizes the public, and works to protect people wherever justice, freedom, truth and dignity are denied.

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