



# LEGAL REMEDIES

## *FOR CORPORATE HUMAN RIGHTS ABUSE*

by Richard E. Custin

**In the era of globalization and corporate social responsibility, victims of human rights abuses must be heard, including access to American courts. When a corporation violates the law of nations, U.S. federal courts should stand ready to provide a remedy to victims of corporate abuse.**

Absent a remedy, victims cannot find peace or justice. Victims of human rights abuse often lack a remedy in their home countries. Perpetrators of abuse should not be able to hide behind a corporation to escape liability for wrongdoing. Corporate liability for tortious behavior is well-established in American jurisprudence.

A threat to peace and justice exists when victims lack a viable remedy for human rights abuses by corporations. A myriad

of legal roadblocks to justice include limiting jurisdiction only to American citizens, disallowing corporate liability and limiting claims to acts in an official capacity of a foreign nation. Courts have required victims to exhaust all other remedies prior to proceeding in a U.S. court.

One important law protecting victim rights is the Alien Tort Statute (ATS) of 1789, which remained seemingly “undiscovered” until the 1980s. This aged statute, dating back to the presidency of George Washington, provides that federal district courts have jurisdiction to 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.” The ATS permits foreign citizens to bring claims in U.S. federal courts for acts in violation of human rights committed outside of the United States. The Supreme Court has found that the ATS is to be narrowly applied consistent with the intended purpose that existed when it was passed in 1789.

In *Kiobel v. Royal Dutch Petroleum*, Chief Justice Roberts penned the 2011 majority opinion. In this opinion, Roberts ruled against the plaintiffs who alleged that the defendant oil company aided in atrocities committed by the Nigerian military. Relatives of the victims alleged that the defendant oil company was complicit in the torture and killing of the activists who had campaigned against the environmental damage caused by activities in the Niger Delta. Roberts opined that the claims did not establish a sufficient nexus or connection with the United States. The so-called presumption against extraterritorial reach is based in part on a concern that jurisdiction under the ATS may interfere in the conduct of U.S. foreign policy. The Court concluded that there is no indication that the ATS was passed “to make the United States a uniquely hospitable forum for the enforcement of international norms.” Chief Justice Roberts held out the possibility that a claim that concerns the territory of the United States with “sufficient force”

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could be heard in federal court. The Court did not resolve the crucial question as to whether a corporation has liability under the ATS.

The Supreme Court has another opportunity to get this right. In *Jesner v. Arab Bank, PLC*, the Second Circuit Court of Appeals found that the ATS did not apply to corporate defendants. Plaintiffs alleged that Arab Bank “served as Paymaster” for Hamas by paying the families of suicide bombers. It was further alleged that Arab Bank knowingly provided financial services to a terrorist organization. The U.S. Supreme Court granted certiorari in the case. The issue presented before the Supreme Court in *Jesner* is whether the ATS provides jurisdiction over a foreign corporation. While another statute, the Torture Victims Protection Act of 1991 has been held to apply only to individuals, the ATS does not contain this crucial limitation. It should also be noted that Arab Bank was found liable under the Anti-Terrorism Act (ATA), which provides that American citizens may sue in federal court as victims of terrorist attacks.

An Amica Curiae Brief of International Law Scholars in *Jesner* aptly states that corporations must be held accountable for allowing terrorist organizations to conduct “campaigns of violence against innocent civilians.” This brief further establishes that



domestic and international law allow for corporate liability. The U.N. Human Rights Commission has confirmed that states have an affirmative obligation to address human rights abuses.

Congress could amend the ATS to specifically include corporations. We expect that the Supreme Court in *Jesner* will finally answer the question of whether corporations are liable under the ATS. A finding by the Supreme Court that corporations are liable under the ATS will serve to hold financial institutions accountable for failing to detect unethical financial transactions. Eleanor Roosevelt’s wisdom that “we will be the sufferers if we let great wrongs occur without exerting ourselves to correct them” is as applicable today as it was for the “greatest generation” in World War II.



**RICHARD E. CUSTIN**

*is an attorney, mediator and clinical professor of Business Law and Ethics at the University of San Diego School of Business. He also serves as an affiliate professor at the Kroc School of Peace Studies.*