



November 21, 2011

Donald B. Verrilli, Jr
Solicitor General
United States Department of Justice
950 Pennsylvania Avenue, NW, Room 5143
Washington, DC 20530

Re: Kiobel v. Royal Dutch Petroleum Co., U.S. Sup.Ct. No 10-1491 and Mohamad
v. Rajoub U.S. Sup.Ct. No 11-88

Dear Solicitor General Verrilli:

Human Rights First urges the United States to file an amicus brief in support of the petitioners in two cases pending before the Supreme Court that address the liability of non-State actors for human rights abuses under the Alien Tort Statute (ATS), *Kiobel v. Royal Dutch Petroleum Co.*, and the Torture Victim Prevention Act (TVPA), *Mohamad v. Rajoub*. For the reasons stated below, we urge you to take the position that the remedies provided in both the ATS and the TVPA are not limited to human rights violations committed by natural persons.

Human Rights First played an important role in securing passage of the Torture Victim Protection Act. Congress enacted the TVPA to supplement, rather than preempt, the ATS. In doing so, Congress explicitly recognized the availability of the Alien Tort Statute. The TVPA provisions were intended to fulfill obligations under the UN Convention Against Torture to provide a remedy for specific violations and to address concurring opinions in *Tel-Oren v. Libyan Arab Republic*. The statute provides "an unambiguous and modern basis" for cases that merited "special attention" - torture and extrajudicial killings. This hard won remedy is now in jeopardy; we urge the United States to intervene in support of Congress' clear intent.

In enacting the TVPA, Congress also explicitly recognized, and did not act to circumscribe, the jurisprudence under the ATS supporting a remedy against non-State actors, in both corporate and quasi-governmental form. Limiting that remedy to violations by natural persons, as *Kiobel* respondents propose, is both unjustified and unnecessary. The norms of international law cognizable under the ATS are well established; the courts have rejected attempts to enlarge the scope of ATS jurisdiction to include more novel claims. Victims of violations of these well-

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established norms need the remedy that the ATS provides. Interpreting the ATS narrowly, to immunize corporations from suit, runs counter to the history of the ATS and the complementary legislative history of the TVPA. Such a position also fails to take into account the emerging global consensus regarding the responsibility of corporations for the human rights impacts of their global operations. We urge the United States to support the Kiobel and Mohamad petitioners' reading of the ATS and the TVPA.

Thank you for your consideration of these views; we would be pleased to provide you with any further information.

Sincerely,

A handwritten signature in black ink that reads "Elisa Massimino". The signature is written in a cursive, flowing style.

Elisa Massimino
President and CEO
Human Rights First