

**WASHINGTON, KOMPAS.com** — Corporations and human rights groups are squaring off in a Supreme Court fight over whether foreign victims of war crimes, killings and other atrocities can haul multinational companies into American courts and try to prove they were complicit in the abuses and should pay damages.

The rights groups say a 223-year-old law gives foreigners such as Nigerian-born Charles Wiwa the right to try to hold businesses accountable for the roles they play in atrocities. Energy and mining companies have been among the most frequent targets of these lawsuits in recent years following efforts by the military in Indonesia, Nigeria and elsewhere to clamp down on protests against oil and gas exploration and development.

The justices will hear arguments Tuesday over the reach of the Alien Tort Statute and a 20-year-old law that allows victims of torture to pursue civil lawsuits against the responsible individuals.

The Alien Tort Statute lay unused for most of American history until rights lawyers dusted it off beginning in the late 1970s. Lawsuits have been brought against individuals who allegedly took part in abuses and, more recently, against companies that do business in places where abuses occur and in the United States.

“The corporations have a lot of money and are very attractive targets,” said Northwestern University law professor Eugene Kontorovich, an expert in international law. “The idea is that they were in bed with the countries.”

But the federal appeals court in New York stopped a class-action suit against oil giant Royal Dutch Shell, saying the Alien Tort Statute does not allow suits against corporations. Business interests argue that the legal tactic also will discourage investment in developing countries and they point out that they uniformly condemn human rights violations.

Wiwa, 44, fled Nigeria in 1996 following a crackdown on protests against Shell's oil operations in the Niger Delta. Wiwa and other natives of the oil-rich Ogoni region claim Shell was eager to stop protests in the area and was complicit in Nigerian government actions that included fatal shootings, rapes, beatings, arrests and property destruction.

He said an American court is the only place the Ogonis can seek accountability. “Nigeria gets so much money from oil. There is no way the company will be held liable for anything in courts in Nigeria,” Wiwa said. He now lives in Chicago, having been allowed into the United States as a political refugee.

In the most notorious incident of the crackdown, Nigeria's military dictatorship hanged author Ken Saro-Wiwa and eight other activists, sparking international outrage.

In 2009, Shell paid \$15.5 million to settle a separate lawsuit filed in New York under the Alien Tort Statute and alleging that the oil giant was complicit in the executions of Saro-Wiwa and the

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others. The company did not admit it did anything wrong. Shell's Nigerian subsidiary ended its operations in the Ogoni region in 1993, although a pipeline still passes through the area.

Other cases pending in U.S. courts seek to hold accountable Chiquita Brands International for its relationship with paramilitary groups in Colombia; Exxon and Chevron for abuses in Indonesia and Nigeria, respectively; Britain-based mining concern Rio Tinto for allegedly aiding the Papua New Guinea government in a civil war; and several companies for their role in the old racial apartheid system in South Africa.

Those companies, other than Chiquita, are among 15 multinational businesses that are supporting Shell in the Supreme Court. In 2004, the high court warily endorsed some use of the Alien Tort Statute, saying the door "is still ajar subject to vigilant door keeping."

Another lurking issue has the potential to wipe out almost all lawsuits under the 1789 law. Rio Tinto has an appeal pending with the court that argues that the law never was intended to apply to conduct by a foreign government against its own citizens within its own borders. It is not clear whether the court will deal with that issue in the Nigeria case.

The federal government has warned about serious foreign policy concerns over the broad application of the Alien Tort Statute. Then-South African President Thabo Mbeki said a lower court ruling in the United States in the lawsuit concerning apartheid smacked of "judicial imperialism." In this case, however, the Obama administration is on the side of the Ogonis.

In a second case being argued Tuesday, the justices will consider whether the Torture Victims Protection Act of 1992 can only be invoked against individuals, not organizations or corporations.

The sons and widow of Azzam Rahim have filed a civil lawsuit against the Palestinian Authority and the Palestine Liberation Organization. The Palestinian-born Rahim was a naturalized U.S. citizen who was beaten and died in the custody of Palestinian intelligence officers in Jericho in 1995. Three officers were jailed for their role in the case, according to a State Department report.

But when Rahim's relatives sought money damages for his death, the federal appeals court in Washington said they could not use the 1992 law to go after the Palestinian organizations. The law may be applied only to "natural persons," the appeals court said.

Some supporters of the lawsuits have drawn a link to the Supreme Court's 2010 ruling in the Citizens United case, which said corporations have the same rights as people to speak and spend freely to influence elections.

But if the court sides with businesses in these cases, it would be saying "corporations are not persons for the purpose of enforcing human rights violations. It's really a weird paradox," said Peter Weiss, vice president of the Center for Constitutional Rights and the first lawyer to win an appeals court ruling backing the use of the Alien Tort Statute to sue over

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