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'From victims to active citizens'

PRESS RELEASE: US District Court Judge Scheindlin dismisses the Apartheid Litigation on grounds that the recent narrowing of the scope of application of the Alien Tort Statute now prevents claims that involve foreign conduct by foreign subsidiaries of American corporations: 28 August 2014

After twelve years of sustained advocacy towards ending the impunity of transnational companies for aiding and abetting the perpetration of gross human rights violations in South Africa, through their collaboration with and provision of military and other strategic equipment to the security agencies of the apartheid regime, the presiding judge, Shira Scheindlin has ruled that ATS jurisdiction following Kiobel II no longer extends "to claims involving foreign conduct by foreign subsidiaries of American corporations." In the Khulumani case, all the conduct in question relates to conduct by subsidiaries of the American parent companies, Ford Motor Company and IBM.

While the judge expressed her appreciation of the specific and detailed evidence of the role of the subsidiaries of IBM and Ford Motor Company during apartheid, provided by the plaintiffs' lawyers, and her own belief that the case should be allowed to go forward, she explained that she was bound by the decisions of the Second Circuit and the Supreme Court to rule against our motion to amend our complaint to the court. Judge Scheindlin ruled that the bar set by the Supreme Court in Kiobel II, and raised by the Second Circuit in Balintulo, had been found in our case to be too high to overcome. Her ruling held that under the law of the Supreme Court and of the Second Circuit, the claims do not touch and concern the territory of the United States "with sufficient force to displace the presumption against extraterritorial application," and would therefore not survive a motion to dismiss. She concludes that plaintiffs have no valid cause of action against the South African subsidiaries under Kiobel II because all of the subsidiaries' conduct undisputedly occurred abroad.

This particular setback comes at a historic point in a growing global movement seeking to end the impunity of multinational companies for corporate crimes. In June this year, the United Nations Human Rights Council moved for the building and adoption of a binding treaty to prevent human rights violations by transnational corporations. The Khulumani litigation has long pioneered efforts to secure accountability for corporate crimes since the filing of the *Khulumani et al* vs *Barclays et al* lawsuit in November 2002. That case identified 23 multinational corporations that aided and abetted the perpetration of gross human rights violations through the highly profitable business they conducted with the apartheid government, in violation of multiple United Nations resolutions and embargoes.

Attention will now turn to exploring possibilities for holding the subsidiaries of these American and other foreign corporations liable in South African courts towards ending corporate impunity. This struggle continues.

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