Supreme Court again shields corporations that violate human rights abroad

An interview with Paul Hoffman, attorney for child slaves at Ivory Coast cocoa plantations

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Six youth between the ages of 12 and 14 from the impoverished African nation of Mali were taken from their homes and enslaved on Ivory Coast cocoa plantations. For years they were whipped and beaten, forced to work over 12 hours a day, six days a week, fed scraps, sleeping on dirt floors in shacks stuffed with other child slaves.

After years of enslavement, each youth escaped and returned to Mali. After their stories became known, in 2005 international human rights lawyers sued the corporations, Nestlé USA, Inc., and Cargill, Inc., that profited from the forced labor.

The former slaves claimed that the Alien Tort Statute (ATS), a provision of the Judiciary Act of 1789, the first law passed by Congress following the ratification of the Constitution, allowed them as foreign nationals to sue for injuries inflicted "in violation of the law of nations or a treaty of the United States."

While the suit was moving slowly through the federal judiciary, in 2013 the Supreme Court issued a reactionary decision, *Kiobel v. Royal Dutch Petroleum Company*, that severely undercuts the ATS. It created a presumption against the "extraterritorial reach of the statute," that is, the law could not be applied to conduct outside the boundaries of the United States, even if it was by an American corporation, unless it could be proven that the company's American operations were directly involved in the overseas activities.

The former slaves amended their lawsuit to allege more details concerning the corporate activities in the United States to overcome the presumption against extraterritorial application of the ATS. On June 17, however, the Supreme Court issued a complex decision vacating a lower court decision that would have allowed the case to proceed on the theory that "major operational decisions aiding and abetting child slavery" took place on US soil.

A fractured Supreme Court, with a lead opinion by Justice Clarence Thomas that did not garner a majority, ruled that allegations US corporations were buying cocoa knowing it was the product of child slave labor did not "overcome the presumption of extraterritoriality," and therefore could not support claims of the former child slaves for compensation under the ATS.

All three of the remaining moderate-liberal, Democratic-appointed justices sided with the corporations against the former child-slaves, citing various technical grounds.

The WSWS spoke to Paul L. Hoffman, who argued the case in the Supreme Court. Hoffman believes there are grounds for the case to go forward based on additional allegations of direct corporate involvement in the human rights abuses.

"The Courts have held that the Alien Tort Statute can be used to vindicate human rights violations," Hoffman said. While there may be some disagreement over the sources and scope of international human rights law, according to Hoffman there is no question that child slavery is prohibited based on the development of international standards following the Nuremberg tribunals after the allied victory in the Second World War and the adjudication of Nazi crimes against humanity.

Hoffman criticized the Supreme Court for "taking a very narrow view of 'aiding and abetting,'" illustrating his argument with the prosecution of Bruno Tesch and others who sold "Zyklon-B, a substance which has a legitimate use as an insecticide, knowing that it was being used to execute Jews and others in the concentration camps. They actually taught Nazi guards how to use it without exposing themselves, and were found liable for war crimes." Tesch was hanged.

"Three years ago, in *Jesner v. Arab Bank*, the Supreme Court ruled that foreign companies cannot be sued under the ATS. What's left is policing what US corporations do," Hoffman explained. "The US has a responsibility to hold its own corporations accountable when they aid and abet human rights violations outside the United States."

Nestlé USA is a subsidiary of the Swiss parent corporation, which had to be dismissed from the suit after the *Jesner* ruling. Cargill, Inc., a global food corporation founded in Minnesota over 150 years ago, is the largest privately held corporation in the United States, and is a major purchaser of slave-harvested cocoa beans.

Hoffman explained, "What the Supreme Court said in Section II of the opinion, the part that was joined by eight justices, is that allegations about purchasing cocoa beans, knowing about child slave labor, exercising at least general corporate oversight, having training programs and financing on the ground in the Ivory Coast, those allegations are not enough to get around the presumption against extra-territoriality that they created in *Kiobel* and applied to this case.

"They didn't say what in addition to those facts would get us past the presumption against extraterritoriality. They didn't say whether we were entitled to discovery to get that kind of information. All of that is up for grabs now," according to Hoffman.

Hoffman still believes that the decision "leaves open the possibility that more direct allegations of aiding and abetting from the United States might satisfy the test."

When the case goes back to the lower courts, according to Hoffman, "We can allege that these corporations in a sense were out-sourcing child slavery. They know they can't develop cocoa beans in the United States using these practices, so what they've done is set up a cocoa production supply chain through their economic power, creating mechanisms on the ground, all of which is controlled by the domestic decision makers within the corporations."

"We intend to amend our complaint to allege that the corporations essentially created the child slave labor systems. The slave labor system cannot exist without them. They know that, and they created that situation. Whether that will satisfy the Supreme Court justices is anybody's guess. We think there's a fair shot," Hoffman concluded.

The case is already 16 years old. The former child slaves have returned to Mali and are now middle-aged, raising their own families.

The continuation of the suit is important, according to Hoffman, because "The practices still go on. When my co-counsel Terry Collingsworth took a trip to the Ivory Coast three years ago with a couple of my students, they interviewed dozens of child slaves, actually while they were on plantations working in the fields. Some were as young as 10 or 11.

"Some of the conditions have been ameliorated slightly, but there is still widespread forced child labor under very dangerous conditions in many parts of the Ivory Coast, and Ghana for that matter."

The reason for the child labor Hoffman explained in one word, "Cheaper." Without it, companies would pay more for cocoa, and "that would cut down their profits."

When asked about the future of the litigation, Hoffman, exclaimed, "We're still alive, they haven't been able to kill us yet."