09-2778-CV

09-2779-cv; 09-2780-cv; 09-2781-cv; 09-2783-cv; 09-2785-cv; 09-2787-cv;
09-2792-cv; 09-2801-cv; 09-3037-cv

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF OF *AMICI CURIAE* NON-GOVERNMENTAL ORGANIZATIONS COMMITTED TO HUMAN RIGHTS IN SUPPORT OF PLAINTIFFS/APPELLEES AND IN SUPPORT OF DISMISSAL OF THE INTERLOCUTORY APPEAL, AND/OR IN SUPPORT OF AFFIRMANCE OF THE DISTRICT COURT'S OPINION

SAKWE BALINTULO, as personal representative of SABA BALINTULO, DENNIS VINCENT FREDERICK BRUTUS, MARK FRANSCH, as personal representative of ANTON FRANSCH, ELSIE GISHI, LESIBA KEKANA, ARCHINGTON MADONDO, as personal representative of MANDLA MADONDO, MPHO ALFRED MASEMOLA, MICHAEL MBELE, MAMOSADI CATHERINE MLANGENI, REUBEN MPHELA, THULANI NUNU, THANDIWE SHEZI, THOBILE SIKANI, LUNGISILE NTSEBEZA, MANTOA DOROTHY MOLEFI, individually and on behalf of her deceased son, MNCEKELELI HENYN SIMANGENTLOKO, TOZAMILE BOTHA, MPUMELELO CILIBE, WILLIAM DANIEL PETERS, SAMUEL ZOYISILE MALI, MSITHELI WELLINGTON NONYUKELA, JAMES MICHAEL TAMBOER, NOTHINI BETTY DYONASHE, individually and on behalf of her deceased son, NONKULULEKO SYLVIA NGCAKA, individually and on behalf of her deceased son, HANS LANGFORD PHIRI, MIRRIAM MZAMO, individually and on behalf of her deceased son,

Plaintiffs-Appellees,

v.

(Caption continued on inside cover)

DAIMLER AG, et al., DAIMLER AG, FORD MOTOR COMPANY, INTERNATIONAL BUSINESS MACHINES CORPORATION,

Defendants-Appellants,

GENERAL MOTORS CORPORATION, RHEINMETALL AG

Defendants.

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure Rule 26.1, *Amici Curiae* hereby certify that they have no parent corporations and have not issued any shares of stock to any publicly held company.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

FEDERAL **CASES**

INTERNATIONAL CASES

INTERNATIONAL TREATIES AND DOCUMENTS

U.S. CONSTITUTION

RULES AND REGULATIONS

MISCELLANEOUS SOURCES

OTHER REFERENCES

Identity and Interest of *Amici Curiae*

Amici Curiae are international and national non-governmental organizations working to protect and advance human rights around the world. They are part of a global movement committed to seeking justice, enforcing human rights, upholding the rule of law, exposing the truth, obtaining redress for victims, and ensuring accountability for violations of international law, wherever they occur. Many *amici* supported the South African anti-apartheid movement for decades, and are still involved in seeking justice and reparations for victims of Apartheid. All *Amici* have a significant interest in Plaintiffs/Appellees ("Plaintiffs") having the opportunity to seek justice and redress through this litigation.

Amici curiae are Aktion Bundesschluss, the Centre for Applied Legal Studies, the Center for Constitutional Rights, the Centre for Human Rights, the European Center for Constitutional and Human Rights, FfG (Germany), Global Witness, the Institute for Justice and Reconciliation, the International Federation for Human Rights, International Rights Advocates, KASA (Kirchliche Arbeitsstelle Südliches Afrika), KOSA (Coordination Southern Africa), MAKSA (Mainzer Arbeitskreis Südliches Afrika), Medico International, the Redress Trust, Welthaus Bielefeld, and the World Organization for Human Rights USA. Detailed descriptions of *amici curiae* are provided in Appendix A.

In 2005, in the *Khulumani* appeal before this Court, the Center for Constitutional Rights was counsel for *Amici Curiae* public interest organizations, religious groups, and individuals devoted to the enhancement of human rights in the Brief of *Amici Curiae* concerning the Status of apartheid as a Violation of International Law in Support of Plaintiffs, some *Amici* of which are again *Amici* here. *Amici curiae* submit this brief pursuant to this Court's September 10, 2009 order inviting "any amici in the *Khulumani* appeal to submit amici briefs focusing specifically on the allegations in plaintiffs' amended complaints." *Balintulo et al. v. Daimler AG et al.*, No. 09-2778-cv (2d Cir. Sept. 10, 2009) (Order requesting briefing).

Summary of Argument

In the landmark decision *Filártiga v. Peña-Irala*, this Court acknowledged the continuing progress made by the international community toward respecting fundamental human rights, and the critical role the Court was playing in ensuring respect for human rights through its interpretation and application of the Alien Tort Statute (ATS). 630 F.2d 876, 890 (2d Cir. 1980). Since *Filártiga*, this Court has continued its tradition of permitting suits against defendants accused of human rights abuses abroad, including private actors. *Filártiga* and its progeny were affirmed by the Supreme Court in *Sosa v. Alvarez-Machain*, making clear that it is the role of United States federal courts to adjudicate sufficiently accepted and

definite international law violations. 542 U.S. 692, 732 (2004). The ATS is a significant component of the international movement for human rights and accountability.

Plaintiffs' claims against Defendants/Appellants' ("Defendants") arise from apartheid in South Africa, which has been universally condemned by the international community. Plaintiffs' claims that Defendants provided substantial, purposeful assistance to the Apartheid regime to advance international law violations remain against three American corporations and two German corporations. *In re South African Apartheid Litig.,* 617 F. Supp. 2d 228, 296 (S.D.N.Y. 2009); Plaintiffs' Appendix ("PA"), PA-523-536.

Victims of human rights violations have a right under international law to an effective remedy and to reparations. This right is guaranteed in the Universal Declaration of Human Rights, codified in treaties ratified by the United States, and included in regional instruments. Concomitant with that right, sovereign States have a duty to investigate, punish, and redress abuses of fundamental human rights, including those by corporate actors. The ATS is one mechanism through which the United States fulfils its obligations under international law to effectuate a remedy for gross human rights violations.

Victims of human rights abuses also have the right to have their claims adjudicated by an independent and impartial tribunal. Pursuant to the fundamental

constitutional principle of the separation of powers, it is the judiciary's role to interpret the law, mete out justice, and provide redress to victims. Undue deference to the Executive branch and prudential doctrines such as the political question doctrine and international comity cannot be used to deny victims their fundamental rights to justice and a remedy. Speculative concerns regarding effects on international trade cannot trump the court's responsibility to uphold the law, including international law, and to ensure accountability for grave human rights violations. International law and justice require that Plaintiffs have a forum to bring their claims.

Argument

I. This Court's Legacy of Protecting Human Rights through the ATS Accords with Fundamental Principles of International Law and U.S. Obligations Thereunder.

> In the modern age, humanitarian and practical considerations have combined to lead the nations of the world to recognize that respect for fundamental human rights is in their individual and collective interest….Our holding today, giving effect to a jurisdictional provision enacted by our First Congress, is a small but important step in the fulfillment of the ageless dream to free all people from brutal violence.

Filártiga v. Peña-Irala, 630 F.2d 876, 890 (2d Cir. 1980).

In the seminal Alien Tort Statute ("ATS") case, *Filártiga v. Peña-Irala,* this Court found that a former Paraguayan chief inspector of police could be held liable

under the ATS for the torture of a Paraguayan citizen in Paraguay. The victim's family discovered that the defendant was in New York City and sought justice here for 17 year-old Joelito Filártiga, who had been tortured to death. In *Filártiga,* this Court established that civil claims for violations of universally accepted international human rights could be brought in U.S. courts, regardless of the nationality of the parties or the place where the violations were committed.[1] Indeed, the Court recognized that certain violations are so egregious and so universally condemned that the deterrence and punishment of these acts is the responsibility of all: "for purposes of civil liability, the torturer has become like the pirate and slave trader before him *hostis humani generis*, an enemy of all mankind." *Filártiga,* 630 F.2d at 890. *Filártiga* and its progeny have contributed immeasurably to efforts by the United States and the international community to recognize and promote adherence to human rights principles, and to hold violators accountable.

Following *Filártiga,* this Court's ATS legacy continued with *Kadić v. Karadžić,* which found that the ATS also governs claims against private actors, including for genocide, war crimes, and crimes against humanity. 70 F.3d 232,

[1]International law permits states to exercise jurisdiction in their own territory over cases which relate to acts that have taken place abroad. *S.S. Lotus (Fr. v. Turk.)*, 1927 P.C.I.J. (ser. A) No. 10, ¶19 (September 7); *see also* John G. Ruggie. *State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties*. U.N. Doc. A/HRC/4/35/Add.1 (Feb. 13, 2007), ¶¶12-17.

245, 244 (2d Cir. 1995). Seeking justice, survivors of the atrocities committed in Bosnia-Herzegovina in the early 1990s sued Radovan Karadžić, the head of the Bosnian Serb forces, when he came to New York City. Karadžić was arrested last year to stand trial for his crimes, after being indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY).

In *Wiwa v. Royal Dutch Petroleum Co*., this Court permitted ATS claims for human rights violations in Nigeria to proceed against corporations incorporated and headquartered in Europe because they were doing business in New York. 226 F.3d 88, 106 (2d Cir. 2000). Looking to the Torture Victim Protection Act of 1991 (TVPA), which codified this Court's holding in *Filártiga* (*see Kadić*, 70 F.3d at 241), the Court found that the TVPA conveys "the message that torture committed under color of law of a foreign nation in violation of international law is 'our business'". *Wiwa,* 226 F.3d at 106. Looking at the TVPA's legislative history, the Court emphasized the Congressional pronouncement that "universal condemnation of human rights abuses 'provides scant comfort' to the numerous victims of gross violations if they are without a forum to remedy the wrong. *Id.* (quoting House Report at 3, 1992 U.S.C.C.A.N. at 85).

In 2004, the Supreme Court affirmed *Filártiga* and its progeny in *Sosa v. Alvarez-Machain*, finding that the ATS provides jurisdiction for violations of international norms "accepted by the civilized world and defined with a specificity

comparable to the features of the 18th-century paradigms we have recognized." 542 U.S. 692, 725 (2004). *Sosa* made clear that it is the duty of United States federal courts to adjudicate international law violations that meet this standard.

The ongoing role of the ATS in providing justice to victims, protecting human rights, and upholding fundamental principles of international law cannot be underestimated. The ATS is regarded both within the United States and abroad as one of the main pillars of human rights enforcement. *See*, *e.g.,* Judgment, *Prosecutor v. Furundžija,* Case No. IT-95-17/1-T)(ICTY Trial Chamber, Dec. 10, 1998) ¶¶147, 155, reprinted in 38 I.L.M. 317 (1999) John Ruggie, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and other Business Enterprises*: *Clarifying the Concepts of "Sphere of influence" and "Complicity,"* Human Rights Council, U.N. Doc. A/HRC/8/16 (May 15, 2008); Case Concerning the Arrest Warrant of 11 April 2000 (*Democratic Republic of Congo v. Belgium*), 2002 I.C.J. 1, at 47-48 (14 Feb. 2002)(Joint Separate Opinion of Higgines, Kooijmans, and Buergenthal, JJ). Actions under the ATS are a significant part of the international framework for accountability. See *Report of the International Commission of Jurists Expert Panel on Corporate Complicity and International Crimes* 54-57, Vol. III, Civil Remedies (Geneva 2008), *available at* http://www.icj.org/IMG/Volume3-CivilRemedies.pdf (last visited Nov. 28, 2009).

ATS cases have built on the legacy of the Nuremberg trials, which are considered to be the starting point for accountability for serious international law violations. At Nuremberg, corporate actors were prosecuted, and convicted, alongside high-ranking officials for the egregious human rights crimes of the Nazi regime, demonstrating that the international community viewed the role of companies in facilitating or supporting the crimes of the Nazi regime as conduct to be condemned and deterred. *See United States v. Flick*, 6 Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10 1202 (1952); *In re Tesch (Zyklon B Case)*, 13 Int'l L. Rep. 250 (Brit. Mil. Ct. 1946); *United States v. Krauch and Twenty-Two Others* (*The I.G. Farben Case*), 10 Law Reports of Trials of War Criminals (London 1949) 1, *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/Law-Reports_Vol-10.pdf (last visited Nov. 28, 2009). *See also* G. Skinner, "Nuremberg's Legacy Continues: The Nuremberg Trials' Influence on Human Rights Litigation in U.S. Courts under the Alien Tort Statute," 71 Albany L. Rev. 321 (2008).

As President Barack Obama remarked at the United Nations Security Council on September 24, 2009: "The world must stand together. And we must demonstrate that international law is not an empty promise, and that treaties will be enforced." That commitment entails both punishing actors who violate international law and providing victims of human rights violations access to a

remedy. As the United States has previously expressed to the international bodies monitoring its compliance with its international law obligations, the ATS is one key way in which it satisfies its obligation to provide victims of egregious human rights violations with a remedy. *See* Committee Against Torture, Consideration of Reports Submitted by States Parties Under Article 19 of the Convention: United States of America (May 6, 2005), U.N. Doc. CAT/C/48/Add.3 (2005) ¶¶79-84, *available at* http://www.state.gov/g/drl/rls/45738.htm (last visited Nov. 28, 2009).

Plaintiffs' claims arise from the apartheid system in South Africa, which has been universally condemned by the international community. Plaintiffs are victims of apartheid and other egregious human rights violations who allege injuries as a result of Defendants' actions. The District Court rightfully declined to dismiss at the outset Plaintiffs' amended allegations that defendant corporations aided and abetted extrajudicial killing, torture, cruel, inhuman, or degrading treatment, apartheid, and arbitrary denationalization. *In re South African Apartheid Litig.,* 617 F. Supp. 2d 228 (S.D.N.Y. 2009). As Plaintiffs asserted, "victims of apartheid deserve to receive fair compensation for the atrocities committed against them by Defendants for financial gain." Ntsebeza and Digwamaje Consolidated and Amended Complaint, at 5, ¶13 (Oct. 27, 2008).

Plaintiffs' claims remain against three American corporations, General Motors Corporation (GM), Ford Motor Company (Ford), and International

Business Machines Corporation (IBM), and two German corporations, Daimler A.G. and Rheinmetall Group A.G. 617 F. Supp. 2d at 296; *see also* PA-523-536. Plaintiffs allege that these Defendants provided substantial, purposeful assistance to the Apartheid regime by supplying it with products and services to advance torture, extrajudicial killing, cruel, inhuman or degrading treatment, apartheid, and denationalization. Plaintiffs assert that Defendants have requisite contacts to make jurisdiction proper here, and Defendants do not purport to be subject to jurisdiction elsewhere. *See* 617 F. Supp. 2d at 285. The South African Government considers this forum appropriate to hear Plaintiffs' "remaining claims of aiding and abetting in violation of international law." Letter from Jeffrey Thamsanqa Radebe, Minister of Justice and Constitutional Development, South Africa, to Judge Scheindlin, United States District Judge, Southern District of New York (Sept. 1, 2009), Plaintiffs' Appendix, ("PA") PA-538. This Court should continue its legacy of protecting human rights and enforcing international law under the ATS, and allow Plaintiffs' claims to be adjudicated.

II. International Law Provides the Right to an Effective Remedy and Adequate Reparation, as well as the Right to an Independent and Impartial Judiciary.

Victims of human rights violations have a right under international law to an effective remedy and reparations. *See, e.g.,* Universal Declaration of Human Rights ("UDHR"), art. 8, G.A. Res. 217A (III) U.N. GAOR, 3d Sess., 1st Plen.

Mtg., U.N. Doc. A/810 (Dec. 12, 1948)("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.") *See also* Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/Res/60/147 (Dec. 16, 2005), sec. I, ¶¶2(b) & (c) (requiring States to provide "fair, effective and prompt access to justice" and "adequate, effective, prompt and appropriate remedies, including reparation"). Without a remedy, victims' rights would be rendered meaningless. Indeed, as early as 1927, the Permanent Court of International Justice, which preceded the International Court of Justice, found that "reparation is the indispensable complement of a failure to apply a convention." *Chorzów Factory Case (Ger v. Pol)*, 1928 P.C.I.J. (Ser. A) No. 17, at 24.

The United States has ratified several international human rights treaties that include the right to a remedy. The International Covenant on Civil and Political Rights (ICCPR) provides for access to and enforcement of an effective remedy determined by a competent authority. ICCPR, art. 2(3), Dec. 16, 1966, 999 U.N.T.S. 171. States are obligated to provide victims access to "effective remedies to vindicate those rights," and to make reparations. U.N. Human Rights Committee, *Gen. Cmt. 31, The nature of the general legal obligation imposed on*

States Parties to the Covenant, ¶¶15-16, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (May 26, 2004). The Convention on the Elimination of All Forms of Racial Discrimination (CERD) also provides for effective protection and remedy, as well as adequate compensation or satisfaction for a violation of rights. CERD, art. 6, Dec. 21, 1965, 660 U.N.T.S. 195; *see also Yilmaz-Dogan v. the Netherlands* Communication No. 1/1984, U.N. Doc. CERD/C/36/D/1/1984 (1988) (applying Article 6 of CERD, requiring government to provide equitable relief). The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) requires States to provide "an enforceable right to fair and adequate compensation." CAT, art. 14, *adopted* Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85. *See also id.* at arts. 4, 12-13.

Notably, the Rome Statute for the International Criminal Court (ICC) outlines the ICC's responsibilities in ensuring that victims receive reparations, whether in the form of restitution, compensation or rehabilitation. Rome Statute of the Int'l Criminal Court, art. 75, U.N. Doc. A/CONF. 183/9 (July 17, 1998). *See also id*. at art. 79 (calling for the establishment of a Trust Fund "for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such

victims"). The inclusion of these provisions reflects the growing importance that the international community has placed on the right to a remedy.[2]

Regional human rights instruments also provide for effective remedy. Organization of American States, American Convention on Human Rights, art. 25, Nov. 22, 1969**,** 1144 U.N.T.S. 123; Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13, Nov. 4, 1950, 213 U.N.T.S. 222; *see also* art. 41 (the Court will "afford just satisfaction to the injured party" in cases where the domestic law of member states does not provide for full reparation). *See also Velasquez-Rodriguez v. Honduras*, Judgement of July 29, 1988, Inter-Am.Ct. H.R. (ser. C) No. 4, ¶62 (1988)("States Parties have an obligation to provide effective judicial remedies to victims of human rights violations"); *Aksoy v. Turkey*, App. No. 21987/93, Eur. Ct. H.R., ¶98 (1996) ("notion of 'effective remedy' entails, in addition to payment of compensation where appropriate, thorough and effective investigation capable of leading to identification and punishment of those responsible").

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[2] While similar provisions were not included in the Statute for the ICTY adopted five years prior to the ICC, the President of the ICTY recently underscored the importance of compensation for human rights violations, recognizing that the "right to such compensation is firmly rooted in international law." Address of Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia, to the United Nations General Assembly (Oct 8, 2009), at 3, *available at* http://www.icty.org/x/file/press/pr_attachments/pr1335a.pdf (last visited Nov. 28, 2009).

The incorporation of the right to a remedy in Special Representative to the United Nations Secretary General (SRSG) John Ruggie's report *Protect, Respect and Remedy: a Framework for Business and Human Rights* is illustrative of the importance of this right in protecting human rights in the business context and engendering corporate responsibility through providing effective redress for violations. John Ruggie, *Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises*: *Protect, Respect and Remedy: a Framework for Business and Human Rights*, Human Rights Council, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008). As Ruggie notes, "State regulation proscribing certain corporate conduct will have little impact without accompanying mechanisms to investigate, punish, and redress abuses." *Id.* at 22, ¶82. Ruggie outlines a three-pillared framework for human rights, including states' duty to protect, corporate responsibility to respect, and victims' right to redress upon violation. *See* John Ruggie, Remarks Prepared for ICJ Access to Justice Workshop, Johannesburg, South Africa (Oct. 29, 2009), *available at* http://www.reports-and-materials.org/Ruggie-remarks-ICJ-Access-to-Justice-workshop-Johannesburg-29-30-Oct-2009.pdf (last visited Nov. 28, 2009), at 5 ("Access to effective remedy is the framework's third pillar. Without it, the rights of victims would be rendered weak or even meaningless. As part of the duty to protect, states are expected to take appropriate steps to prevent corporate-related

human rights abuse, and to investigate, punish and provide redress when it occurs, through judicial and non-judicial mechanisms.").

International law also provides the right to an independent and impartial judiciary. *See, e.g.,* UDHR, art. 10; *see also* ICCPR, art. 14 ("In the determination of…[one's] rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."). The United Nations Basic Principles on the Independence of the Judiciary (Basic Principles) arose out of these general provisions to promote independence and impartiality in States' judiciaries, with a focus on judges. Basic Principles, G.A. Res. 40/32, U.N. Doc. A/Res/40/32 (Nov. 29, 1985), G.A. Res. 40/146, U.N. Doc. A/Res/40/146 (Dec. 13, 1985). The first principle provides that national law should ensure the separation of powers of government in order to promote and sustain an independent and impartial judiciary. Basic Principles, ¶1.

As the U.N. Special Rapporteur on the independence of judges and lawyers has affirmed, "[it] is the principle of the separation of powers, together with the rule of law, that opens the way to an administration of justice that provides guarantees of independence, impartiality and transparency." *See* Leandro Despouy, *Report of the Special Rapporteur on the independence of judges and lawyers*, at ¶18, Human Rights Council, U.N. Doc. A/HRC/11/41 (Mar. 24, 2009). Accordingly, as recognized throughout this country's history, the functions and

competencies of the judiciary and the executive must be visibly "distinguishable," *id.*, with the power to interpret and apply the law clearly vested in the courts. *See, e.g., Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803). Under international law, Plaintiffs have a right to an effective remedy and adequate reparation, and a right to an independent and impartial judiciary to enforce those rights.

III. The Political Question Doctrine Does Not Preclude Adjudication of Plaintiffs' Claims.

The District Court properly refused to dismiss Plaintiffs' claims under the political question doctrine, which is "essentially a function of the separation of powers." *Baker v. Carr,* 369 U.S. 186, 217 (1962). The doctrine ensures that courts adjudicate issues which are by their nature legal, *i.e.,* issues the judiciary is competent to decide. It is not the court's role to decide questions that are political, *i.e.,* issues committed by the United States Constitution to the political branches - the Executive and the Legislature. *See id.* (doctrine is "one of 'political questions,' not one of 'political cases'").

None of the factors *Baker v. Carr* set forth for a court to consider in identifying a non-justiciable political question is present here. The first of the six factors is whether there is a "textually demonstrable constitutional commitment of the issue to a coordinate political department". *Id.* *Amici* focus on this first factor, as it is the "dominant consideration in any political question inquiry." *Lamont v.*

Woods, 948 F.2d 825, 831 (2d Cir. 1991)(finding challenge to foreign aid program did not usurp political branches' foreign policy); *cf., Vieth v. Jubelirer*, 541 U.S. 267, 278 (2004)("These tests are probably listed in descending order of both importance and certainty.") Noting that this first *Baker* factor is of "particular importance," *Klinghoffer v. S.N.C. Achille Lauro* found that tort issues are "constitutionally committed" to the judiciary. 937 F.2d 44, 49 (2d Cir. 1991); *see also Kadić,* 70 F.3d at 249 (ATS suits committed to the judiciary). The judiciary cannot shirk its constitutional responsibility "to interpret statutes" merely because a "decision may have significant political overtones." *Japan Whaling Ass'n. v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986). "In recent years, the Supreme Court has only applied the political question doctrine to cases implicating the first two *Baker* criteria." *In re Methyl Tertiary Butyl Ether* ("*MTBE*") *Prods. Liab. Litig.,* 438 F. Supp. 2d 291, 297 (S.D.N.Y. 2006); *see, e.g., Powell v. McCormack*, 395 U.S. 486 (1969); *U.S. v. Munoz-Flores*, 495 U.S. 385 (1990); *Nixon v. U.S.*, 506 U.S. 224 (1993); *Goldwater v. Carter*, 444 U.S. 996 (1979).

The Supreme Court has also only applied the political question doctrine in three areas of foreign policy. Erwin Chemerinsky, *Federal Jurisdiction* §2.6.4, at 162-163 (5th ed. 2007). Each area relates to questions committed to the political branches in the text of the United States Constitution, such as when war begins or

ends,[3] the ratification and rescission of treaties,[4] or the recognition of foreign governments and related questions about diplomatic immunity.[5] *Id.* Lower federal courts have also applied the political question doctrine to challenges to the president's war powers. Chemerinsky, *Federal Jurisdiction* §2.6.4, at 163.

Defendants misplace reliance on cases falling within this last category – cases that were dismissed as non-justiciable because the U.S. Executive had entered into agreements with other countries to resolve World War II claims arising out of enemy actions. In *Whiteman v. Dorotheum GMBH & Co.,* 431 F.3d 57, 59-60 (2d Cir. 2005), this Court found that litigation would "substantially" undermine foreign policy because the U.S. had entered into executive agreements to resolve plaintiffs' claims and had established an alternative international forum

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[3] U.S. CONST. art. I, §8 (vesting power to declare war in Congress).

[4] The power to make treaties is vested with the Executive, and the power to ratify them is vested with the Senate. U.S. CONST. art. II, §2. The courts are vested with the power to interpret treaties. U.S. CONST. art. III, §2.

[5] U.S. CONST. art. II, §3 (vesting the power to receive ambassadors and other public ministers with the Executive). Defendants' argument that the views of the former TRC Commissioners should not be accorded deference misplaces reliance on cases relating to this power of the U.S. Executive to recognize foreign governments. *See* Reply of Defendants Ford and IBM, pp. 15-16, citing *Williams v. Suffolk Ins. Co.*, 38 U.S. (13 Pet.) 415, 420 (1839)(deference to Executive's view that "the Falkland islands do not constitute any part of the dominions within the sovereignty of the government of Buenos Ayres"); *Rein v. Socialist People's Libyan Arab Jamahiriya,* 162 F.3d 748 (2d Cir. 1998) ("recognizing foreign states and governments is a function of the executive branch"). Regardless, the South African Government and the former TRC Commissioners agree that the litigation should be allowed to proceed.

to consider them. *Whiteman* found that the Executive had a long-standing foreign policy to resolve World War II claims through executive agreements rather than litigation, and plaintiffs' claims were the sole barrier to implementing the executive agreement.[6] 431 F.3d at 59, 72-73; *see also Freund v. Republic of France,* 592 F. Supp. 2d 540, 547 (S.D.N.Y. 2008) (dismissing on similar grounds); *In re Nazi Era Cases Against German Defendants Litig.*, 334 F. Supp. 2d 690, 692 (D.N.J. 2004) (same). *See also Hwang Geum Joo v. Japan,* 413 F.3d 45, 48-52 (D.C. Cir. 2005) (holding that World War II claims against Japan were non-justiciable because since that time U.S. foreign policy has been to resolve war-related claims through political means rather than litigation).[7] The political branches have not entered into any such agreements to resolve Plaintiffs' claims in an alternative forum.

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[6] Courts "are more likely to defer to an Executive interpretation previously made in diplomatic negotiation with other countries, on the ground that the United States should speak with one voice, than to one adopted by the Executive in relation to a case before the courts, especially where individual rights or interests are involved." Restatement (Third) of Foreign Relations Law § 326, Reporters' Notes 2 (1987).

[7] *Joo* cites *Alperin v. Vatican Bank*, which explained that the Constitution vests the President with Commander in Chief power and the incidental power to discipline enemies of the United States who violate the laws of war, so Plaintiffs' war crimes claims would have required the court to impermissibly intrude on the Executive's constitutionally committed decision not to prosecute war crimes committed by an enemy of the United States during World War II. 410 F.3d 532, 559-60 (9th Cir. 2005)(citing *Ex parte Quirin*, 317 U.S. 1, 28-29 (1942)).

In *Filártiga*, the United States submitted to this Court that:

> [Where] there is a consensus in the international community that the right is protected and that there is a widely shared understanding of the scope of this protection…, there is little danger that judicial enforcement will impair our foreign policy efforts. To the contrary, a refusal to recognize a private cause of action in these circumstances might seriously damage the credibility of our nation's commitment to the protection of human rights.

Memorandum for the United States Submitted to the Court of Appeals for the Second Circuit in *Filártiga v. Peña-Irala*, 19 I.L.M. 585, 604 (1980). Plaintiffs' claims for universally condemned violations of international law are legal, not political, and the proper role of the judiciary is to interpret the law and adjudicate Plaintiffs' claims. The United States' commitment to human rights and the rule of law must be upheld.

IV. International Comity Does Not Preclude Adjudication of Plaintiffs' Claims.

International comity should not be applied here because Defendants have not shown or even argued that there is a true conflict between domestic and foreign law, or that compliance with both laws is impossible. *See Hartford Fire Insurance Co. v. California*, 509 U.S. 764, 798-799 (1993). No case cited by Defendants refutes the applicability of this well-established precedent here. *See* IBM/Ford Reply at 14-16; *In re Maxwell Communication Corp. plc by Homan* 93 F.3d 1036, 1050 (2d Cir. 1996) (applying international comity doctrine after finding true

conflict between U.S. and foreign law); *Bigio v. Coca-Cola Co.*, 239 F.3d 440, 453-55 (2d. Cir. 2000) (remanding to lower court to decide international comity issue); *see also Bigio v. Coca-Cola Co.*, 448 F.3d 176, 179 (2d Cir. 2006) (reversing international comity dismissal, finding that courts are regularly called upon to interpret foreign law without thereby offending principles of international comity); *Jota v. Texaco* 157 F.3d 153, 160 (2d Cir. 1998) (reversing international comity dismissal for failure to condition it on defendant's consent to jurisdiction in Ecuador); *see also Aguinda v. Texaco, Inc*. 303 F.3d 470, 475 (2d Cir. 2002) (in subsequent proceedings of *Jota,* dismissing on *forum non conveniens* grounds); *Sterling Drug, Inc. v. Bayer AG* 14 F.3d 733, 746-47 (2d Cir. 1994) (finding the *Hartford* approach "not automatically transferable to the trademark context" where the parties both held "rights in the same mark under the respective laws of their countries", so that the right of each to use the mark was protected by its own country's law); *Ungaro-Benages v. Dresdner Bank AG*, 379 F.3d 1227 (11th Cir. 2004) (relying not on *Hartford,* but on an international agreement between the U.S. and Germany establishing alternative forum for the resolution of claims, which this Court in *Whiteman* found is properly analyzed under the political question doctrine (*see Whiteman, supra,* 431 F.3d at 72, n.16)). *See also* Daimler Reply at 5; *Sarei v. Rio Tinto PLC*, 550 F.3d 822, 831 (9th Cir. 2008) (remanding for determination of whether to impose a prudential exhaustion requirement, one important

consideration being the nexus to the U.S., in accordance with the principle of international comity).

Significantly, as the District Court noted, adjudicating ATS claims which apply universal norms "that forbid conduct regardless of territorial demarcations or sovereign prerogatives" do "not generate conflicting legal obligations". *In re South African Apartheid Litig.,* 617 F. Supp. 2d at 247. *See also id.* at 256 (the "United States does not establish such rules [under the ATS] alone"). Plaintiffs seek to vindicate the protections and rights bestowed upon them in the jurisdiction that the Supreme Court has found is open to them through the ATS. *See Sosa v. Alvarez-Machain,* 542 U.S. 692 (2004); *Rasul v. Bush*, 542 U.S. 466, 484-485 (2004). Accordingly, Plaintiffs' ATS claims are not precluded by the doctrine of international comity.

V. The Weight Due a Submission Does Not Turn on Whether the Source is Governmental or Private.

The Court has requested briefing on what significance, or relative weight, should be attributed to submissions by private parties, as opposed to governments. *Balintulo*, No. 09-2778-cv (2d Cir. Sept. 10, 2009) (Order requesting briefing). *Amicus curiae* submissions to the court commonly assist the court "by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs." *Voices for Choices v. Illinois Bell Telephone Co*., 339 F.3d 542,

545 (7th Cir. 2003); *see also United States v. El-Gabrowny*, 844 F. Supp. 955, 957, n.1 (S.D.N.Y. 1994) (*amicus curiae* submissions can aid "the court and offer insights not available from the parties"). Insights from those with specific expertise or experience on the issue on which they opine are generally attributed particular weight. *See, e.g., Boumediene v. Bush*, 128 S.Ct. 2229, 2248 (2008) (noting opinion by "*amici* whose expertise in legal history the Court has relied upon in the past.") Similarly, to the extent an *amicus* submission provides factual information, it "must, like other evidence, be weighed and tested by legal rule." *The Claveresk*, 264 F. 276, 279 (2d Cir. 1920). *See e.g., Doe v. Bolton*, 410 U.S. 179, 195 (1973) (court deemed factual data presented by various *amici* more persuasive than data from the State); *see also Turtle Island Restoration Networks v. Evans,* 299 F.3d 1373, 1376 (Fed. Cir. 2002) (citing economic projections regarding market competition made by expert *amici*). The weight due a submission therefore does not relate to whether the source is governmental or private, but what expertise the source has on the issue it opines, and the relevance of that issue to the legal issues before the court.

In *Sosa v. Alvarez-Machain,* in referring to these cases prior to the amended complaints, the Supreme Court noted the objections of the South African Government, and the concurrence of the United States, and opined only that there is a strong argument that serious weight be given the Executive's view of the

case's impact on foreign policy, notably omitting any suggestion that weight be due a foreign government's view. 542 U.S. 692, 733, n.21 (2004). A foreign government's policy interests are irrelevant to the separation of powers concerns underlying the political question doctrine, and a foreign executive's desire to have a case dismissed is due no weight. "Federal judges cannot dismiss a case because a foreign government finds it irksome, nor can they tailor their rulings to accommodate a non-party." *Patrickson v. Dole Food Co.*, 251 F.3d 795 (9th Cir. 2001), *cert. dismissed in part, aff'd in part on other grounds,* 538 U.S. 468 (2003). "[T]he relevant question is not whether the foreign government is pleased or displeased by the litigation, but how the case affects the interests of the United States." *Id.* at 804. "If courts were to take the interests of the foreign government into account, they would be conducting foreign policy by deciding whether it serves our national interests to continue with the litigation…." *Id.*

And "although the views of foreign nations are an important consideration under the doctrine of 'international comity,' [this Court has] not held them to be dispositive." *Khulumani v. Barclay Nat. Bank Ltd.* 504 F.3d 254, 263 (2d Cir. 2007)(citing *Jota v. Texaco Inc.,* 157 F.3d 153, 159-61 (2d Cir. 1998)). In *Jota v. Texaco Inc.,* this Court stated in dicta that "inherent in the concept of comity is the desirability of having the courts of one nation accord deference to the official position of a foreign state, *at least* when that position is expressed on matters

concerning actions of the foreign state taken within or with respect to its own territory." 157 F.3d at 160 (emphasis added). The position expressed by Germany does not concern its own actions within its own territory.

Moreover, at this stage in the inquiry, the only issue relevant to a comity analysis would be whether there is a conflict of laws. Although in interpreting foreign law, a foreign state's views "merit – though they do not command, some degree of deference," no foreign law is at issue here.[8] *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 313 F.3d 70, 92 (2d Cir. 2002). Neither Defendant Daimler nor Germany argues that German law required Daimler to act as it did; therefore there is no comity issue. In *Hartford Fire Ins. Co. v. Cal.*, 509 U.S. 764, 798-99 (1993), the Supreme Court found no conflict of law and therefore refused to dismiss on international comity grounds even where the British Government submitted an *amicus curiae* brief agreeing with defendants that applying U.S. law to their conduct would conflict significantly with British law, and stating that the alleged conduct "'was perfectly consistent with British law and policy'". *Id.* at 799. *Hartford* found there was no conflict because defendants could have complied with both laws.

[8] Moreover, in determining foreign law, which is a question of law, the "court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence." Federal Rule of Civil Procedure 44.1.

Here, the South African Government has made clear that it views the United States district court as "an appropriate forum to hear the remaining claims of aiding and abetting in violation of international law." PA-538. The South African Government's position accords with international law and its application, as well as the right of victims to a remedy. Likewise, the former TRC commissioners and committee members have provided their opinion "formed of years of intimate experience in shaping and carrying out the mission of the TRC" that this litigation is "entirely consistent" with the policies and goals embodied in the TRC, and with its findings. Brief of *Amici Curiae* Commissioners and Committee Members of South Africa's Truth and Reconciliation Commission in Support of Appellants, *Khulumani,* 504 F.3d 254, at 1-2 (August 30, 2005). Here, the position of the former TRC commissioners and committee members regarding this litigation is not inconsistent with that of the South African Government. Regardless, the views expressed by the TRC commissioners are due considerable weight given the utmost expertise and knowledge they bring to the issues on which they opine.[9]

The German Government has expressed its concerns that Plaintiffs' complaints do not consider "German sovereignty or respect the primary

[9] Moreover, in considering the TRC commissioners' *Amicus* brief, the District Court also looked behind the submission to the TRC Act and the Final Report of the Truth and Reconciliation Commission, rather than relying just on the expert opinion of the former commissioners. *In re South African Apartheid Litig.,* 617 F. Supp. 2d at 285-286.

jurisdiction of German courts". Letter from Klaus Botzet, Legal Adviser and Consul General, German Embassy in Washington D.C., to the U.S. Court of Appeals for the Second Circuit ("German Letter"), at 1 (Oct. 8, 2009). Defendants do not argue that they are subject to jurisdiction elsewhere. *See* 617 F. Supp. 2d at 285. Nor did Defendants move to dismiss these cases on exhaustion or *forum non conveniens* grounds. *See* 617 F. Supp. 2d at 281, n. 320 (exhaustion); Memorandum of Law in Support of Defendants' Joint Motion to Dismiss, *excerpted in* PA-504-509 (*forum non conveniens*). If these doctrines were at issue, they would be for the Court to decide, not Germany. Plaintiffs are entitled under international law to a forum to access justice and a remedy.

The German Government also expressed its concern that human rights cases could be "misused" in a way to harm international trade. German Letter at 2. Potential misuse of a law is not and cannot be a reason to refuse to uphold the law. A government's legal obligations, and the court's duty to uphold the law, trump speculative concerns regarding international trade and foreign investment interests. Germany's position is contrary to its own international law obligations and commitment to uphold human rights, and run contrary to international cooperation and accountability for grave human rights violations. Its speculative concerns have no place in federal prudential doctrines, and deference to them would undermine

the constitutional role of the judiciary and turn domestic and international law on its head.

As to the United States Government, its views on legal issues such as statutory construction "merit no special deference," although they are of "considerable interest" to the Court. *Republic of Aus. v. Altmann*, 541 U.S. 677, 702 (2004). "[S]hould the State Department choose to express its opinion on the implications of exercising jurisdiction over *particular* [defendants] in connection with *their* alleged conduct, that opinion might well be entitled to deference as the considered judgment of the Executive on a particular question of foreign policy." *Id.* at 702. But even when the State Department expresses its views on foreign policy, they are not controlling, as it is the Court's responsibility to determine whether dismissal is warranted, including under the political question doctrine or international comity. *See City of New York v. Permanent Mission of India to the UN*, 446 F.3d 365 at 377, n.17 (2d Cir. 2006) ("the executive branch's views on matters implicating relations with foreign states are entitled to consideration"); *see also Sosa,* 542 U.S. at 733, n.21 (there is a "strong argument" U.S. Executive's view of a case's impact on foreign policy should be given "serious weight"); *see also Kadić v. Karadžić,* 70 F.3d 232, 250 (2d Cir. 1995) ("even an assertion of the political question doctrine by the Executive Branch, entitled to respectful consideration, would not necessarily preclude adjudication"); *cf.*, *First Nat'l City*

Bank v. Banco Nacional de Cuba, 406 U.S. 759, 773 (1972) (Douglas, J., concurring)(unquestioning deference to executive branch concerns about the foreign policy implications of litigation would render the court "a mere errand boy for the Executive Branch which may choose to pick some people's chestnuts from the fire, but not others").

General arguments regarding foreign policy implications of causes of action cannot be the subject of the political question doctrine, which requires a "discriminating inquiry into the precise facts and posture of the particular case". *Baker,* 369 U.S. at 217; *see also Permanent Mission of India,* 446 F.3d at 377, n.17 (finding that none of the potential foreign policy concerns in the United States' statement "presented in a largely vague and speculative manner, potentially severe enough or raised with the level of specificity required to justify presently a dismissal on foreign policy grounds").[10] International law and justice require that Plaintiffs have a forum to bring their claims.

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[10] Notably, the Supreme Court in *Permanent Mission* decided to allow the case to proceed without the majority even acknowledging the United States Amicus brief that had asserted that permitting the type of suit at issue "would adversely affect the Nation's foreign relations". Brief for the United States as Amicus Curiae Supporting Petitioners, *Permanent Mission of India v. City of New York*, 127 S. Ct. 2352 (2007)(No. 06-134), 2007 U.S. S. Ct. Briefs LEXIS 217, at **2. In *Sosa,* 542 U.S. 692, the Court rejected the Executive's argument that permitting any ATS human rights claim was "incompatible" with the political branches' foreign affairs authority. Brief of the United States Supporting Petitioner at 40-46, *available at* www.usdoj.gov/osg/briefs/2003/3mer/2mer/2003-0339.mer.aa.pdf (last visited Nov. 28, 2009).

Conclusion

For the foregoing reasons, *Amici Curiae* respectfully support Plaintiffs' Motion to Dismiss the Interlocutory Appeal, and/or support affirmance of the District Court's opinion.

Date: New York, New York
November 30, 2009

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH F.R.A.P. 32(a)(7)

I, Maria C. LaHood, hereby certify that the foregoing *amicus curiae* brief complies with the requirements of F.R.A.P. 32(a)(7) because according to the word count of the word processing system used to prepare it, it contains 6,983 words (including footnotes), which is no more than half of the 14,000 words authorized by these rules for a party's principal brief.

Maria C. LaHood

APPENDIX A

DESCRIPTIONS OF *AMICI CURIAE*

Aktion Bundesschluss is a network of church related groups in Germany and communities in South Africa who were threatened with forced removal or were forcefully removed because of Apartheid politics. Aktion Bundesschluss campaigned against these actions and also raised awareness in Germany about South African Apartheid. Aktion Bundesschluss dates back to the Sixth Assembly of the World Council of Churches (WCC) in 1983 at Vancouver, when that body called for people to form covenants based on the process of justice, peace and integrity. Aktion Bundesschluss continues to strive for justice, peace and reconciliation in South Africa and Germany and lobbies for sustainable development and land reform for people who have been deprived of their livelihood and are still struggling today for justice and reconciliation.

The **Centre for Applied Legal Studies** is an independent organisation committed to promoting democracy, justice, equality and peace in South Africa and addressing and undoing South Africa's legacy of oppression and discrimination through the realization of human rights for all South Africans under a just constitutional and legal order. The Centre for Applied and Legal Studies does this by undertaking rigorous research, writing, analysis and briefings; by teaching and providing public education and training; through the collection and dissemination of information and publications; and through legal advice and litigation, participation in policy formulation, law reform, dispute resolution and institutional development and coordination.

The **Center for Constitutional Rights ("CCR")** is a non-profit legal and educational organization dedicated to advancing and protecting the rights guaranteed by the United States Constitution and the Universal Declaration of Human Rights. Since its founding in 1966 out of the civil rights movement, CCR has litigated several international human rights cases under the Alien Tort Statute (ATS) before this Court, including *Filártiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980), *Doe v. Karadzic*, 70 F. 3d 232 (2d Cir. 1995), and *Wiwa v. Royal Dutch Petroleum,* 226 F.3d 88 (2d Cir. 2000), as well as numerous other ATS cases before other courts.

The **Centre for Human Rights** was established in the Faculty of Law, University of Pretoria, in 1986, aimed against the apartheid system of the time. Members of the Centre participated in meetings with the liberation movements outside the

borders of South Africa, organised conferences and participated in efforts to promote human rights in South Africa, and, when the transition came, served as technical advisors to both the interim and final constitution writing process. The focus of the Centre has now broadened, and the Centre has over the years positioned itself in an unmatched network of practising and academic lawyers, international and national civil servants and human rights practitioners across the entire continent, with a specific focus on human rights law in Africa, and international development law in general.

The **European Center for Constitutional and Human Rights** ("ECCHR") is an independent, non-profit legal and educational organization dedicated to protecting civil and human rights throughout Europe. ECCHR engages in innovative strategic litigation, using European, international, and national law to enforce human rights and hold accountable state and non-state actors responsible for egregious abuses. In order to ensure the legal accountability of transnational corporations, ECCHR initiates legal proceedings on behalf of victims and supports cases in other parts of the world.

FfG (Germany), Women for Justice in Southern Africa, is a women's network involved in solidarity work in Southern Africa. It originated with the boycott of citrus fruits imported from Apartheid-South Africa in the early nineteen-eighties. Since the first democratic elections in 1994, FfG has continued its commitment in partnership with women's groups in the region for a just and equitable transition process in South Africa and neighbouring countries.

Global Witness is a UK based NGO that exposes the corrupt exploitation of natural resources and international trade systems. We obtain evidence which we use to drive campaigns that end impunity, resource-linked conflict, and human rights and environmental abuses. Global Witness was nominated for the 2003 Nobel Peace Prize for its work on conflict diamonds. We work predominantly in conflict-affected countries, emerging markets and in countries with totalitarian regimes and low levels of transparency. The Ending impunity campaign aims to create a transparent and fair system of justice where transgressors are held accountable for breaking international and national laws committed in abroad.

The **Institute for Justice and Reconciliation** was established in May 2000 in the wake of the South African Truth and Reconciliation Commission (TRC) as a Section 21 company. Since, the organisation has established itself as a leading authority on issues of transitional justice and reconciliation, and maintains a high profile and good reputation both in South African and elsewhere on the African

continent. The Institute contributes to the building of fair, democratic and inclusive societies in Africa during times of political transition. Its interventions, in the main, seek to cultivate the attitudinal and structural potential for reconciliation and the reconstruction of societies after conflict. This it does through a range of carefully constructed and selected interventions. Interventions include research on reconciliation, democratic transition and conflict transformation, capacity-building at community level, development of education resources, tools and interventions, and the exploration of options for institutional transformation and public debate. In all this, there is a specific focus on victims and victim rights, reparations, accountability and reconciliation. From the onset, the Institute premised its work on the realisation that there are two inseparable and equally important challenges facing South Africa, namely justice and reconciliation. Justice without reconciliation is as likely to fail as reconciliation without justice.

The **International Federation for Human Rights ("FIDH")** is an international non-governmental organisation seeking to promote and protect human rights worldwide. It was created in 1922 and now gathers together 155 national human rights organisations in over 100 countries. FIDH was the first international NGO with the general mandate to defend all human rights enshrined in the Universal Declaration of Human Rights. FIDH is registered under the French Law on Associations of 1901 as a non-profit organisation. FIDH and its member organisations are independent from governments, non-partisan and non-confessional. All of FIDH's actions are based on law. FIDH seeks to strengthen legal instruments for the protection of human rights and to achieve their full implementation at the local level.

International Rights Advocates is a non-governmental organization that seeks to enforce international human rights norms through litigation and public campaigns. International Rights Advocates has a particular interest in human rights litigation using the Alien Tort Statute (ATS) and the Torture Victim Protection Act (TVPA), and has been lead counsel in 15 cases using these laws. International Rights Advocates also works with human rights lawyers in developing countries to coordinate efforts requiring multinational companies to observe international law in their offshore operations.

KASA (Kirchliche Arbeitsstelle Südliches Afrika) is the Ecumenical Service for Advocacy Work on Southern Africa, in Heidelberg, Germany, and is supported by eighteen church organizations and groupings, including the four main aid agencies of German Catholic and Protestant churches involved in South Africa. KASA is a department of the non-governmental organization Werkstatt Ökonomie (WÖK),

which since its foundation in 1983 has been one of the key research centres involved in the church-based Anti-Apartheid Movement in Germany with special focus on corporate involvement. KASA is working on socio-economic justice for Southern Africa in close cooperation with church based partner organisations from the South in advocating and lobbying government and corporates linked to Germany.

KOSA (Koordination Südliches Afrika, Coordination Southern Africa) is a German non-governmental, non-profit organization, which succeeded the former German Anti-Apartheid Movement (1974-2001). KOSA cooperates with peoples and social movements in Southern Africa for a peaceful and sustainable development of the Southern African Region. Members of KOSA consist of developmental organisations, networks of groups supporting a particular country in the Southern African Region, international solidarity groups and more than 200 individual members. Beginning in 1974, AAB/KOSA organised campaigns, seminars, conferences and public events, published reports, information leaflets and other material for the public in order to fight against apartheid in South Africa.

MAKSA (Mainzer Arbeitskreis Südliches Afrika) is a church based organisation in Germany which played a major role in the foundation of the German Anti-Apartheid Movement in 1974 and in its further development. Most of its members are pastors and theologians who worked for many years in South Africa and Namibia. MAKSA provides a platform for their continued involvement in creating a just and democratic transition process in South Africa and the region. From its beginning in 1972, MAKSA promoted the Programme to Combat Racism of the World Council of Churches and its Special Fund in support of the liberation movements in Southern Africa. MAKSA presently works within the German churches to promote an open accounting for the apartheid past and for justice and reparations for the victims of apartheid in South Africa and the region. The declaration of apartheid as a "crime against humanity" by the international community was paralleled by the declaration of apartheid as "a heresy," and as constituting a "status confessionis" by major church bodies.

Medico International is a major German NGO founded in 1968 that supports grass roots processes and campaigns on psycho-social justice, health and healing in Europe, Africa and Asia. Because of its involvement in the International Campaign against landmines, Medico International was one of the recipients of the Nobel Peace Prize in 1997. Medico International is one of the coordinating NGOs of the German Campaign on Apartheid Debt and Reparations and among the first funders and supporters of Khulumani Support Groups in South Africa. Since its founding

in 1997, Medico International supported the South African coalition against apartheid debt and worked for reparations of victims and survivors of apartheid in the context of the South African Commission of Truth and Reconciliation.

The Redress Trust ("REDRESS") is an international human rights non-governmental organization based in London with a mandate to assist torture survivors to prevent their further torture and to seek justice and other forms of reparation. It has accumulated a wide expertise on the rights of victims of torture to gain both access to the courts and redress for their suffering and has advocated on behalf of victims from all regions of the world. Over the past 16 years, REDRESS has regularly taken up cases on behalf of individual torture survivors at the national and international level and provides assistance to representatives of torture survivors. REDRESS has extensive experience in interventions before national and international courts and tribunals, including the United Nations' Committee against Torture and Human Rights Committee, the European Court of Human Rights, the Inter-American Commission of Human Rights, the International Criminal Court, the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia.

Welthaus Bielefeld is a German NGO founded in 1979 as a development NGO in order to raise public awareness about development issues in Germany and Europe and to foster relationships between North and South. Since 1980 Welthaus supported liberation movements in Southern Africa and was part of the German Anti-Apartheid-Movement. Today Welthaus supports grass roots organisations and communities in Africa and Latin America, educates students, pupils and other multipliers on development issues in Germany, participates in and initiates campaigns.

The **World Organization for Human Rights USA ("Human Rights USA")** is a non-profit human rights organization based in Washington, D.C. that employs legal strategies to obtain justice for those whose human rights have been violated and to hold the violators accountable. Human Rights USA is and has been counsel in several lawsuits addressing claims under the Alien Tort Statute ("ATS") and Torture Victim Protection Act ("TVPA"). These cases include claims against corporations involved in human rights abuses, such as Yahoo!, Inc. for handing over identifying information of internet users to Chinese authorities, resulting in the individuals' arbitrary arrest, long-term detention, abuse, and torture. Human Rights USA's core mission is to ensure that U.S. law upholds internationally-recognized human rights standards.