

## **THE ALIEN TORT CLAIMS ACT AND THE TORTURE VICTIM PROTECTION ACT: IMPORTANT TOOLS IN THE FIGHT AGAINST IMPUNITY**

Over the past quarter century, the Lawyers Committee for Human Rights has promoted a diverse set of policies and approaches with a common goal: helping bring justice and relief to victims of human rights violations in the United States and abroad. The Lawyers Committee has worked to develop and strengthen systems of justice, at both the national and international levels, to give practical meaning to fundamental human rights by offering recourse for those who have suffered human rights abuse.

Models of accountability may take different forms and involve different approaches for holding the perpetrators of human rights abuses responsible for their actions. While holding perpetrators of serious human rights abuses criminally liable -- in national or international courts -- is ordinarily preferable, in many instances this form of accountability is simply not available. Particularly in such situations, the availability of civil actions against human rights abusers can provide an important measure of justice for victims. In recognition of this, the Lawyers Committee has endorsed and supported litigation in U.S. courts under the Alien Tort Claims Act (ATCA) and the Torture Victim Protection Act (TVPA) as one way to promote greater accountability.

### **The ATCA and TVPA play an important role in U.S. efforts to promote compliance with internationally-recognized human rights.**

- The ATCA permits foreign nationals to seek relief in Federal court for actions that violate the “law of nations” or a U.S. treaty. U.S. courts have interpreted violations of the “law of nations” under the ATCA to include crimes against humanity, war crimes, genocide, torture, rape, and summary execution.
- The TVPA allows U.S. or foreign nationals to bring an action against a person who, acting under “actual or apparent authority or color of law, of any foreign nation,” subjects an individual to torture or extrajudicial killing.
- The Lawyers Committee’s advocacy on behalf of the ATCA, dating back to the seminal *Filartiga* decision of the Second Circuit Court of Appeals in 1980, is based on our strong belief that, in appropriate circumstances, victims of gross human rights abuses – those that violate the “law of nations” – should be entitled to seek civil damages in U.S. courts for such abuses.
- Too often, it has been nearly impossible to enforce human rights protections and hold violators accountable. Beginning with *Filartiga*, the ATCA has been used effectively on behalf of victims of gross human rights abuses perpetrated by well-known political and military figures – such as Ferdinand Marcos, Radovan Karadzic, and two Salvadoran generals – as well as by lesser-known government officials in different parts of the world. A significant majority of the courts presented with ATCA claims,

including the Second, Ninth, and Eleventh Circuits, have followed the reasoning of *Filartiga* in upholding use of the law by, or on behalf of, the victims of such abuses.

- The ATCA thus has provided a means of holding officials accountable for their gross violations of human rights – while also offering the potential to deter future abuses, and to keep the United States from becoming a safe harbor for those responsible for such abuses.
- The Lawyers Committee played a leading role in the 102<sup>nd</sup> Congress’ passage of the Torture Victim Protection Act, signed into law by President George H.W. Bush in March 1992, as a complement to the ATCA.
- The TVPA clarifies the intent of Congress to permit actions in U.S. courts against those responsible for acts of torture or extrajudicial killing committed outside the United States – reinforcing the ATCA and putting a modern Congressional stamp on a judicial remedy for some of the most brutal forms of human rights violations.
- The core objective of the TVPA, as set out by Congress, is to carry out the international obligations of the United States to promote and protect human rights – consistent with the objectives set out in the Foreign Assistance Act of 1961, as amended.

**The ATCA and TVPA afford the possibility of relief to victims of the most serious types of human rights abuses, including crimes against humanity, torture, and extrajudicial killing.**

- These include individuals repeatedly tortured for their involvement in providing health care or religious counseling to the poor; for spreading literacy in rural areas; sometimes simply for failing to follow the latest edicts of security forces or other persons of authority.
- These and other victims of gross human rights abuses have been motivated to seek relief under the ATCA and TVPA not by a desire for financial gain, or to “settle scores,” but by an interest in seeking some form of justice, however imperfect; in raising awareness of the conditions they faced; and in sending a message to others who commit atrocities that they will not be able to live in the United States with impunity.

**U.S. courts have proven themselves very capable of separating legitimate claims from those that do not warrant relief, and the Lawyers Committee believes that cases brought under the ATCA and TVPA deserve to be considered by the courts on the merits.**

- The Lawyers Committee has assisted in, and been supportive of, several cases brought under the ATCA and TVPA. Each case deserves to be considered by the relevant court on its own merits – on whether those seeking relief are able to meet the requirements of the statutes.
- Federal judges have shown repeatedly that they are able to analyze claims under these statutes and determine whether a particular case meets the strict requirements needed to proceed, or instead should be dismissed at an early stage. Plaintiffs in these cases bear a high burden of proof, and courts have not taken lightly the need to determine responsibility for the most serious forms of human rights violations.
- While the Lawyers Committee has not participated in litigation against corporations under the ATCA, we believe that such cases deserve to be considered by the courts according to the same ground rules and same legal criteria as those against government officials – though, as noted below, it is likely to be even harder to find corporations liable under the statute.
- While no case brought under the ATCA against a corporation has even reached a trial on the merits, let alone a finding of liability, it is clear that such a case will require an especially high threshold of proof – showing that a company was acting in concert with government officials who engaged in killings, torture, or other gross human rights violations.
- Those seeking relief must show the company knew of the human rights violations and aided them in some way. Being present in a zone of human rights abuses is simply not sufficient to meet the high threshold. Nor is this about “guilt by association” – as some have claimed; merely doing business with a repressive government will not subject a company to liability for human rights abuses under these statutes.
- The Lawyers Committee supports this high legal threshold in ATCA and TVPA cases. We have no interest in burdening the courts with weak claims or in undermining the central objective of the two statutes: to permit relief in a narrow range of circumstances for victims of the most serious human rights violations.
- At the same time, we reject the claims of those who contend – without any compelling evidence – that courts and corporate defendants are facing a proliferation of ATCA lawsuits, when in fact there have been only a small number of such cases filed to date, with most still at only a preliminary stage.

**In light of the above, the Lawyers Committee will strongly oppose any efforts to press Congress to weaken the ATCA, as well as broad attacks on the two statutes by defendants facing specific allegations of abuses.**

- In this context, the Lawyers Committee will continue to oppose those who have sought to mount broad attacks on the ATCA and TVPA as part of their defense against specific allegations of human rights abuses.
- Similarly, we will fight efforts to shift the focus of these legal claims from the courts, where they belong, to the political branches of government. This includes any campaign by business groups to press Congress amend or repeal the ATCA, as well as efforts to try to give the Executive Branch “veto power” over the adjudication of particular legal claims.
- The goal of these efforts is a simple one: to create a broad zone of immunity – of non-accountability – for human rights violations. The Lawyers Committee urges that such efforts be rejected. These cases should be considered by the courts based on the merits of the claims alleged. We are confident that, as has been true for more than two decades, U.S. courts will remain well-equipped to look at the evidence, weigh the competing claims, and decide whether or not to let the case proceed.
- That is the approach needed to promote greater accountability, fulfill the stated objective of the United States to support the protection of internationally-recognized human rights, and advance systems of justice and the rule of law at home and abroad.