

Corporations Not Liable Under Torture Victim Protection Act

The Torture Victim Protection Act (“TVPA”) was passed by the U.S. Congress in 1992 “to carry out obligations of the United States under the United Nations Charter and other international agreements pertaining to the protection of human rights establishing a civil action for recovery of damages from an individual who engages in torture or extrajudicial killing.” Pub.L. No. 102-256, 106 Stat. 73 (1992) (codified 28 U.S.C. § 1350). The Ninth Circuit recently held that the TVPA does not apply to corporations, but only to individuals who commit torture or extrajudicial killing, and therefore, there is no liability under the TVPA against corporations.

The decision by the Ninth Circuit was handed down in *Bowoto v. Chevron Corporation, et al.*, --- F.3d ---, 2010 WL 3516437 (C.A. 9 (Cal.)). The *Bowoto* case arose out of a protest on an oil platform off the coast of Nigeria. Nigerian citizens decided to occupy the oil platform to protest the destruction of the environment and to protest the refusal to provide jobs to the local population. After several days, a subsidiary of Chevron Corporation was alleged to have paid the Nigerian military to remove the protesters from the offshore oil platform. Two of the protesters were killed during a raid by the Nigerian military and other protesters were captured and allegedly tortured after being captured. A lawsuit was filed in California against Chevron Corporation alleging violation of the TVPA.

The Ninth Circuit affirmed the trial court’s dismissal of the TVPA claim on the grounds that the TVPA does not provide for liability against corporations. The Ninth Circuit relied upon the plain language of the TVPA which states, in relevant part:

- “(a) Liability. An individual who, under actual or apparent authority, or color of law, of any foreign nation –
- (1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or
 - 2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.”

28 U.S.C. § 1350, note § 2(a).

There is conflicting authority by at least one other Circuit that has found corporations liable under the TVPA. *See Aldana v. Del Monte Fresh Produce, N.A., Inc.*, 416 F.3d 1242, 1250-52 (11th Cir. 2005). However, the majority of other courts in the United States that have considered the issue have ruled that only individuals, and not corporations, are liable under the TVPA.

The Ninth Circuit also rejected the argument that corporations could be liable under a theory of “aiding and abetting” a violation of the TVPA by directing others to commit torture or extrajudicial killings. The Ninth Circuit held that: “Even assuming the TVPA permits some form of vicarious liability, the text limits such liability to individuals, meaning in this statute, natural persons. The language of the statute thus does not permit corporate liability under any theory.”

For Further Information, Please Contact:
Nicholas P. Connon, Co-Managing Partner; Chair, Middle East Practice Group
Tel: +1.626.638.1757

Middle East Practice Group

Nicholas P. Connon, +1.626.638.1757, nconnon@connonwood.com
Paro Astourian, +1.626.371.0338, pastourian@connonwood.com

David R. Scheidemantle, +1.626.638.1752, dscheidemantle@connonwood.com
Robert A. de By, +1.626.638.1762 / +44.203.328.9010, rdeby@connonwood.com

www.connonwood.com