

Monday, February 23, 2009

The Right Honourable Stephen Harper
Office of the Prime Minister
80 Wellington Street
Ottawa ON K1A 0A2

The Honourable Rob Nicholson
Minister of Justice, House of Commons

The Honourable Peter Van Loan
Minister of Public Safety,
House of Commons

The Honourable Jason Kenney
Minister of Immigration, House of Commons

The Honourable Lawrence Cannon
Minister of Foreign Affairs, House of Commons

Dear Prime Minister and Ministers Nicholson, Van Loan, Kenney and Cannon;

**Legal duties triggered by news of visit:
Bar George W. Bush from entering Canada or prosecute him for torture.**

George W. Bush, former President of the United States of America (U.S.) and Commander in Chief of the Armed Force, is reported to be coming to Calgary Alberta on March 17, 2009.¹

George W. Bush is a person credibly accused of torture and other gross human rights violations, crimes against humanity and war crimes. This fact triggers two branches of Canadian law: first, the Minister of Immigration is legally bound to prevent Bush's entry into Canada at any time and for any reason; second, if Bush enters Canada, the Attorney General of Canada must prosecute him for torture or provide consent to private prosecution.

With this document, LAW formally requests that the government of Canada immediately take all necessary steps, as required by law, to:

1. ensure that G.W. Bush is denied entry to Canada, in accordance with the *Immigration and Refugee Protection Act* (IRPA); and,

¹ Department of Justice, Canada War Crimes Program website, http://www.justice.gc.ca/eng/news-nouv/nr-cp/2007/doc_32020.html, accessed on February 20, 2009.

2. designate the George W. Bush administration, between October 2001 and November 2008 as a “government that...has engaged in systematic or gross human rights violations, or a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*, pursuant to s. 35(1)(b) of the IRPA.

Alternately, LAW hereby formally requests that the Attorney General of Canada give written consent to LAW to commence a prosecution of George W. Bush for torture.

We remind you of your government’s oft repeated statement, “The most effective measure to ensure that Canada is not a safe haven for suspected perpetrators of war crimes, crimes against humanity and genocide is their early detection and subsequent prevention of entry into Canada.”²

Inadmissibility to Canada: *Immigration and Refugee Protection Act (IRPA)*

The IRPA, section 35(1) (a) & (b), creates two categories of foreign nationals inadmissible to Canada because of human rights violations: individuals and senior members of a government who have engaged, anywhere, in *Crimes against Humanity and War Crimes Act* (CAHWCA) offences. While CAHWCA includes all international crimes against humanity and war crimes, the accusations of torture against Bush and the Bush administration are alone sufficient, to absolutely bar his entry both as an individual and as the (former) U.S. President and Commander in Chief of the Armed Forces. It should be noted that the CAHWCA, (s. 7), places special responsibility on ‘military commanders’ and other ‘superiors’ for crimes committed by their subordinates that they knew of, or were criminally negligent in failing to know of, and with respect to which they did not take necessary and reasonable steps to prevent. (CAHWCA list of crimes below)

Inadmissibility to Canada is established when there are “reasonable grounds to believe” the foreign national has engaged in torture or other international crimes. There is no requirement for personal involvement. Neither is there any requirement for proof of the accusations. Evidence of Bush’s involvement in authorizing a systemic regime of torture far exceeds the ‘reasonable grounds’ test and triggers a legal duty to bar his entry to Canada.

Experts’ Opinion: Torture by Bush and the Bush Administration

In June 2008, Maj. General Antonio M. Taguba (USA-Ret.), author of the U.S. Army’s 2004 internal report on Abu Ghraib,³ stated,

“... the Commander-in-Chief [Bush] and those under him authorized a systematic regime of torture.... After years of disclosures by government investigations, media

² *Canada's Program on Crimes Against Humanity and War Crimes: Tenth Annual Report, 2006-2007*
<http://www.cbsa-asfc.gc.ca/security-securite/wc-cg/wc-cg2007-eng.html>

³ *Investigation of the 800th Military Police Brigade*, February 2004.

accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current [Bush] administration has committed war crimes. "⁴

In December 2008 the bipartisan U.S. Senate Armed Services Committee⁵ published a report, based on an 18-month investigation, 38,000 pages of documents and the testimony of 70 people, that concluded,

“senior officials [Bush and others] in the United States government solicited information on how to use aggressive techniques, redefined the law to create the appearance of their legality, and authorized their use against detainees.”

In February 2009, United Nations Special Rapporteur on Torture, Manfred Nowak concluded there is now proof of torture authorized by Bush and others.

"We possess all the evidence which proves that the torture methods used in interrogation by the U.S. government were explicitly ordered by former U.S. defence minister Donald Rumsfeld... Obviously, these orders were given with the highest U.S. authorities' knowledge."⁶

Professor Nowak further stated that evidence of torture has triggered the legal duty of the U.S. government “to take all necessary steps to bring George W. Bush and Donald Rumsfeld before a court.” Once Bush crosses the border, Canada will have the legal duty to prosecute G.W. Bush for torture.

In these circumstances, Canada must bar George W. Bush from entering Canada.

Duty to Prosecute

The necessity to prosecute Bush for torture (and other war crimes and crimes against humanity) once he is in Canada, arises from many sources including: *Crimes against Humanity and War Crimes Act (CAHWCA)*, *Criminal Code of Canada*, *Rome Statute of the International Criminal Court (Rome Statute)* and *Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT)*. The Rome Statute, obliges Canada generally to, “...exercise its criminal jurisdiction over those responsible for international crimes.” CAT, specifically requires Canada to either prosecute or extradite for prosecution any person within Canadian territory, alleged to have committed torture. (Art. 7)

⁴ Maj. General Antonio M. Taguba (USA-Ret.), Preface to *Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impacts*, A Report by Physicians for Human Rights, June 2008. http://brokenlives.info/?page_id=69

⁵ *Senate Armed Services Committee Inquiry Into The Treatment Of Detainees In U.S. Custody*, Dec. 11, 2008. <http://levin.senate.gov/newsroom/supporting/2008/Detainees.121108.pdf>

⁶ *RIGHTS: Call to Try Bush*, By Julio Godoy, IPS/Berlin, February 2. 2009. <http://ipsnews.net/news.asp?idnews=45636>

No Immunity for Prosecution for Torture

In November 2004 when Bush entered Canada, LAW filed a 7-count information alleging that, as President of the U.S. and Commander in Chief of the Armed Forces, Bush had aided, abetted and counseled torture at Abu Ghraib and Guantánamo Bay. A judge of the Provincial (Criminal Division) Court of BC dismissed the proceedings on the basis that as a head of state, Bush had, “immunity from prosecution under the criminal laws of Canada.” The Attorney General of Canada then blocked appeals and an adjudication on the merits, by refusing to consent to the proceedings, presumably on the same basis. No such immunity from prosecution for torture applies to Bush any longer.

We look forward to receiving a timely response to our formal requests for action by the Prime Minister, Minister of Immigration, Attorney General of Canada, Minister of Public Safety and by the Canadian Border Services Agency: actions required by Canadian and by international law.

Sincerely,

Gail Davidson, Lawyers against the War

N.B. Hard copy to follow by mail

Encl.

Relevant Provisions Of The *Crimes Against Humanity And War Crimes Act*.
Information filed Nov. 30/04 against George W. Bush in the Provincial Court of BC

This letter has been copied to:

Leader Jack Layton-NDP
634-C Centre Block, House of Commons
Ottawa, ON K1A 0A6

Joe Comartin, Justice Critic
House of Commons
Ottawa, ON, K1A 0A6

Paul Dewar
Foreign Affairs Critic
House of Commons
Ottawa, ON K1A 0A6

Don Davies
Opposition Critic on Immigration
And Public Safety

House of Commons
Ottawa, ON K1A 0A6

Liberal Leader Michael Ignatieff
House of Commons
Ottawa, ON K1A 0A6

Bob Rae
Foreign Affairs Critic
House of Commons
Ottawa, ON K1A 0A6

Dominic Leblanc
Justic Critic
Maurizio Bevilacqua
Immigration Critic

Leader of the Bloc Quebecois

Gilles Duceppe
Bureau 533-S, édifice du Centre
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Justice Et Procureur Général
Responsable Région De Montréal
Bureau 218, édifice de la Justice
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Thierry St-Cyr
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Paul Crete
Affaires Étrangères
Bureau 420, édifice de la Confédération
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Ottawa, ON K1A 0A6

Lawyers Against the War (LAW) is a Canada-based committee that opposes war and advocates for adherence to international humanitarian law and against impunity for violators.

Contacts:

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RELEVANT SECTIONS OF THE *IMMIGRATION AND REFUGEE PROTECTION ACT*

Inadmissibility

Rules of interpretation

33. The facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.

Security

34. (1) A permanent resident or a foreign national is inadmissible on security grounds for

(a) engaging in an act of espionage or an act of subversion against a democratic government, institution or process as they are understood in Canada;

(b) engaging in or instigating the subversion by force of any government;

(c) engaging in terrorism;

(d) being a danger to the security of Canada;

(e) engaging in acts of violence that would or might endanger the lives or safety of persons in Canada;
or

(f) being a member of an organization that there are reasonable grounds to believe engages, has engaged or will engage in acts referred to in paragraph (a), (b) or (c).

Exception

(2) The matters referred to in subsection (1) do not constitute inadmissibility in respect of a permanent resident or a foreign national who satisfies the Minister that their presence in Canada would not be detrimental to the national interest.

Human or international rights violations

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the *Crimes Against Humanity and War Crimes Act*; or

RELEVANT SECTIONS OF THE *CRIMES AGAINST HUMANITY AND WAR CRIMES ACT*.

OFFENCES OUTSIDE CANADA

6. (1) Every person who, either before or after the coming into force of this section, commits outside Canada

...

- (b) a crime against humanity, or
- (c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

Punishment

(2) Every person who commits an offence under subsection (1) or (1.1)

- (a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- (b) is liable to imprisonment for life, in any other case.

Definitions

(3) The definitions in this subsection apply in this section.

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

...

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.

ARTICLE 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) murder;

...

(e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) torture;

(g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

...

(i) enforced disappearance of persons;

(k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

...

(e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

...

(i) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

PARAGRAPH 2 OF ARTICLE 8

War crimes

2. For the purpose of this Statute, "war crimes" means:

(a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) wilful killing;

(ii) torture or inhuman treatment, including biological experiments;

(iii) wilfully causing great suffering, or serious injury to body or health;

(iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

...

(vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

(vii) unlawful deportation or transfer or unlawful confinement;

(b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

...

(iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

...

(vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

...

(ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

...

(xi) killing or wounding treacherously individuals belonging to the hostile nation or army;

...

(xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

...

(xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...

(xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

[As a result of Security Council Resolution 1546 of 8 June 2004, it is arguable that the conflict ceased as of that day to be 'of an international character'. In that case, crimes committed from that day forward would fall under the following provisions:]

(c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against

persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

- (i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...

(e) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;

(ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

...

(iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

...

(vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

...

(ix) killing or wounding treacherously a combatant adversary;

...

(f) paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.



INFORMATION / DÉNONCIATION

PROVINCE OF BRITISH COLUMBIA
PROVINCE DE LA COLOMBIE-BRITANNIQUE

COURT FILE NUMBER NUMÉRO DE DOSSIER DE LA COUR
128960-1
COURT FILE NUMBER NUMÉRO DE DOSSIER DE LA COUR
POLICE FILE NUMBER NUMÉRO DE PROCÈS-VERBAL

This is the information of/Les présentes constituent la dénonciation de

(the "informant"/le "dénonciateur")
of/de GAIL Y. DAVIDSON of VANCOUVER, a lawyer

The informant says that he has reasonable and probable grounds to believe and does believe that/Le dénonciateur déclare qu'il a des motifs raisonnables et probables de croire et croit effectivement que

ABU GHRAIB

1) Counselling [section 22(1)]

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30 2004 did counsel Donald Rumsfeld, Alberto R. Gonzales, Ricardo S. Sanchez, Geoffrey Miller, Janis Karpinski, Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lyndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl and persons unknown to be parties to the infliction of torture by officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials on persons detained at the Abu Ghraib prison in Iraq, and those persons afterwards were parties to the infliction of torture on those detained persons, contrary to sections 269.1 and 22(1) of the Criminal Code of Canada.

2) Counselling [section 22(2)]

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did counsel Donald Rumsfeld, Alberto R. Gonzales, Ricardo S. Sanchez, Geoffrey Miller, Janis Karpinski, Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lyndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl and persons unknown to be parties to grave breaches of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 and to war crimes contrary to the Crimes Against Humanity and War Crimes Act, sections 6 and 7, namely to deny prisoner of war status to those entitled to it, which persons, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, in consequence of the counselling, inflicted torture on persons detained at the Abu Ghraib prison in Iraq, and the said George Walker Bush knew or ought to have known that such torture was likely to be inflicted in consequence of the counselling, contrary to sections 269.1 and 22(2) of the Criminal Code of Canada.

3) Aiding

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did and omitted to do acts for the purpose of aiding the infliction of torture by Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lyndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl, and persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, on persons detained at the Abu Ghraib prison in Iraq, contrary to sections 269.1 and 24(1)(b) of the Criminal Code of Canada.



INFORMATION / DÉNONCIATION

COURT FILE NUMBER NUMÉRO DE DOSSIER DE LA COUR 128960-1
COURT FILE NUMBER NUMÉRO DE DOSSIER DE LA COUR
POLICE FILE NUMBER NUMÉRO DE PROCES-VERBAL

4) Abetting

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did abet the infliction of torture by Jeremy C. Sivits, Aumin Cruz, Ivan Frederick, Charles Graner, Lynndie England, Sabrina Harmon, Javal Davis, Megan Ambuhl and persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials on persons detained at the Abu Ghraib prison in Iraq, contrary to sections 269.1 and 21(1)(c) of the Criminal Code of Canada.

GUANTÁNAMO

5) *rebut*

1) Counselling [section 22(1)]

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30 2004 did counsel Donald Rumsfeld, Alberto R. Gonzales, Geoffrey Miller, Bryce Gyurisko and persons unknown to be parties to the infliction of torture by officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, and those persons counseled were afterwards parties to the infliction of torture on those detained persons, contrary to sections 269.1 and 22(1) of the Criminal Code of Canada.

6) *rebut*

2) Counselling [section 22(2)]

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004, did counsel Donald Rumsfeld, Bryce Gyurisko, Geoffrey Miller and persons unknown to be parties to grave breaches of the Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949 and to war crimes contrary to the Crimes Against Humanity and War Crimes Act, sections 6 and 7, namely to deny prisoner of war status to those entitled to it, and those persons so counselled, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, in consequence of the counselling, inflicted torture on on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, and the said George Walker Bush knew or ought to have known that such torture was likely to be inflicted in consequence of the counselling, contrary to sections 269.1 and 22(2) of the Criminal Code of Canada.

7) *rebut*

3) Abetting

George Walker Bush, as President of the United States and Commander in Chief of the Armed Forces, between February 7, 2002 and November 30, 2004 did abet the infliction of torture by persons unknown, officials of the US Armed Forces or persons acting with the consent or acquiescence of such officials, on Ibrahim Ahmed Mahmoud Al Qasi, Shafiq Rasul, Asif Iqbal, Rhuel Ahmed, Jamal Al-Harith and other persons detained at the U.S. Naval Base Guantánamo Bay, Cuba, contrary to sections 269.1 and 21(1)(c) of the Criminal Code of Canada.

SWORN / AFFIRMED BEFORE ME / ASSERMENTE DEVANT MOI

ON / LE NOVEMBER 30, 2004

AT / À VANCOUVER
British Columbia / Colombie-Britannique

[Signature]
(Signature of Informant / Signature du dénonciateur)
PROCESS / ACTE DE PROCÉDURE CONFIRMED / CONFIRMÉ