

Monday, September 30th, 2013

The Right Honourable Stephen Harper

Office of the Prime Minister
80 Wellington Street House of Commons
Ottawa ON K1A 0A2
Fax: 1-613-941-6900
Email: pm@pm.gc.ca

The Honourable Chris Alexander

Minister of Citizenship and Immigration,
100 Westney Road South, Unit E101
Ajax ON L1S 7H3
Fax: 905 426 9564
Chris.Alexander@parl.gc.ca

The Honourable Peter MacKay

Minister of Justice and Attorney General of
Canada
House of Commons
Ottawa ON K1A 0A6
Fax: 613 992 2337
Peter.mackay@parl.gc.ca

The Honourable John Baird

Minister of Foreign Affairs
Lester B. Pearson Building, Tower A
125 Sussex Drive, Ottawa, ON KIA OG2
Fax: 1-613-996-3443
Email: john.baird@parl.gc.ca

Dear Prime Minister, Attorney General, and Ministers Alexander and Baird;

Re: Duty to Bar Dick Cheney from Canada and to Arrest him on Entry

Lawyers Against the War (LAW) is writing to inform you that Richard (Dick) Cheney, former Vice-President of the United States of America, is scheduled to speak at the Toronto Global Forum on October 30-31st 2013 at the Metro Toronto Convention Centre. The event is hosted by the International Economic Forum of the Americas.

We are writing to confirm that Canada has an obligation to bar Cheney from entering Canada or arrest him on entry:

Duty to Bar Cheney from Canada

- Richard (Dick) Cheney, former Vice-President of the United States from 2001 – 2009 is inadmissible to Canada under the *Immigration and Refugee Protection Act* S.C. 2001, c. 27 (IRPA), section 35(1)(a) because of overwhelming evidence that he has ‘committed, outside Canada, torture and other offences referred to in sections 4 to 7 of the *Crimes against Humanity and War Crimes Act* (CAHWC); and,

Because there are reasonable grounds to believe Mr. Cheney has been complicit in torture, his entry to Canada must be denied. The Supreme Court of Canada ruled that “...the reasonable grounds to believe standard requires something more than a mere suspicion, but less that the standard applicable in civil matters on the balance of probabilities.”¹ The Federal Court of Appeal has ruled that when the alleged crimes are grave and heinous, s. 35 of the IRPA cannot be mitigated.²

Duty to Arrest and Prosecute Cheney on entry to Canada

Once Mr. Cheney enters Canada:

- All of the torture alleged against him, is deemed to have taken place in Canada under s. 7(3.7) of the *Criminal Code of Canada*, RSC 1985 c C-46 (CC); and,

¹ Mugesera v Canada, [2005] 2 S.C. R. 100 , para. 114.

² Varela v Canada, 2008 FC 436, para. 44.

- criminal proceedings can be commenced against him in Toronto Ontario or in any other Canadian jurisdiction (CC, s. 7(5)); and,
- Canadian police officers are duty bound to arrest and detain Mr. Cheney for investigation on suspicion of torture and to prevent him from escaping prosecution; and,
- Canada must ensure that Mr. Cheney is either investigated and prosecuted for torture in Canada or extradited to another country willing and able to do so under the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, (Convention Against Torture) Art. 7.

No Residency Requirement

In our [letter of August 25, 2011](#), we advised you of Canada’s legal duty to either bar George W. Bush from Canada or arrest and prosecute him for torture on entry into Canada. Canadian authorities maintained that the duty to arrest and prosecute foreign nationals in Canada who were suspected of torture, applied only to suspects “present (living) in Canada on an ongoing basis”³ or “who currently reside in Canada.”⁴ This was Canada’s rationale for allowing George W. Bush and Dick Cheney to enter and leave Canada as recently as 2011.

There is no such requirement at law, either under the universal jurisdiction provisions of the *Criminal Code* or under the universal jurisdiction provisions of the CAHWC. Such an interpretation is also contrary to the purpose of those laws and contrary to Canada’s obligations under international law, including under the Convention Against Torture.

United Nations Committee Against Torture (CAT)

The Convention Against Torture, which Canada has signed, ratified, and passed into domestic law, establishes the Committee Against Torture (CAT), and in accordance with its mandate Canada is subject to periodic review of its implementation of Convention obligations. In May 2012, CAT rejected Canada’s residency analysis and determined that Canada’s duty under the Convention against Torture was to ensure the “exercise of the universal jurisdiction over persons responsible for acts of torture, including foreign perpetrators who are temporarily present in Canada”.⁵ (underlining added)

Two reports before CAT submitted that Canada had violated duties under the Convention by failing to arrest and prosecute George W. Bush when he entered Canada (as a foreign national suspected of committing torture outside Canada).⁶ In our report to the CAT, LAW submitted that Canada was legally obliged to,

“...arrest the alleged torturer [Bush] and to carry out proper criminal investigations, as provided for in Article 6, and to submit the case to its competent authorities for the purpose of prosecution, as stipulated in Article 7(1)” once the jurisdictional requirements of the Article 5 of the *Convention against Torture*...”

CAT agreed and also recommended that Canada “raise awareness of Convention against Torture requirements amongst judges and members of the public” and “ensure that extraterritorial jurisdiction can be directly applied before domestic courts.”

These recommendations were in response to submissions that police, lawyers, judges and elected officials were either unaware or misunderstood Convention duties and submissions that the Executive had

³ Inspector Ron Charlebois, Officer in Charge, RCMP War Crimes Section, letter to LAW, March 19, 2009.

⁴ Inspector Philippe Thibodeau, Officer in Charge, RCMP War Crimes Section, email to LAW, October 14, 2011.

⁵ Concluding Observations of the Committee against Torture/Canada, CAT/C/CAN/CO/6, 25 June 2012, para. 14

⁶ Canada’s Failure to Bar or Prosecute George W. Bush for Torture, Lawyers against the War, May 2012; The Case of George W. Bush and Canada’s Failure to Fulfill its Obligations under the Convention against Torture, Canadian Centre for International Justice and the Center for Constitutional Rights, May 2012. Reports are available <http://www2.ohchr.org/english/bodies/cat/cats48.htm>

arbitrarily blocked attempts by LAW and the Canadian Centre for International Justice to bring initiate prosecutions for torture against George W. Bush. In our submission the findings of the CAT are authoritative and binding, and Canada cannot claim to be unaware of its Convention obligations nor claim to rely on an alleged requirement of residency that has been clearly rejected.

Evidence of Torture by the Bush Administration

Dick Cheney has been accused by knowledgeable parties of complicity in torture and other gross human rights abuses.⁷ The widespread use of torture and other criminal treatment by U.S. officials on non-Americans imprisoned in Guantánamo Bay, Abu Ghraib, Bagram and other offshore U.S. prisons is no longer open to question. The credible evidence supporting the torture accusations against Mr. Cheney is overwhelming. We are not aware of any credible exculpatory evidence refuting any of these accusations. Mr. Cheney's admissions to authorizing, approving, and failing to prevent and stop torture are also part of the public record.

- “In October 2006, Cheney defended the use of waterboarding as a "no-brainer," agreeing with a radio host's assertion that “a dunk in water” may yield valuable intelligence from terrorism suspects.”⁸
- [ABC News, Dec. 16, 2008](http://www.youtube.com/watch?v=TOaxTzC5Wug&feature=related): Cheney admits to being aware of and approving the use of waterboarding of Khalid Sheik Mohammed⁹ and says he would do it again. <http://www.youtube.com/watch?v=TOaxTzC5Wug&feature=related>
- December 2008: Cheney, speaking about his role in the approval process for interrogations by the CIA, told the Washington Times, “I signed off on it; others did, as well, too. I wasn't the ultimate authority, obviously. As the Vice President, I don't run anything. But I was in the loop. I thought that it was absolutely the right thing to do.”¹⁰
- December 2008: During an interview by Jonathan Karl aired on ABC, Cheney, was asked if he authorized the tactics used on Khalid Sheikh Mohammed and replied, “I was aware of the program, certainly, and involved in helping get the process cleared, as the agency in effect came in and wanted to know what they could and couldn't do. And they talked to me, as well as others, to explain what they wanted to do. And I supported it.”¹¹
- August 2009, Cheney stated: “I knew about the waterboarding. Not specifically in any one particular case, but as a general policy that we had approved.”¹²
- February 2010: ABC/TV Mr. Cheney said, “I was a big supporter of waterboarding. I was a big supporter of enhanced interrogation techniques.” He also admitted to opposing actions to do away with waterboarding.¹³

⁷ Michael Hass identified a total of 269 war crimes and crimes against humanity committed in by Bush, Cheney and other s in Iraq including: crimes of aggression, crimes committed in the conduct of war, crimes committed in the treatment of prisoners, crimes committed in the occupation, in *George W. Bush, War Criminal?: The Bush Administration's Liability for 269 War Crimes*, Greenwood Publishing Group, 2009, ISNG 978-0-313-36499-0.

⁸ See *Getting Away with Torture*, Human Rights Watch, June 2011 at page 75, citing Dan Eggen, “Cheney's Remarks Fuel Torture Debate,” Washington Post, October 27, 2006 cited in footnote 281

⁹ The US admits to waterboarding Khalid Sheik Mohammad 183 times. As a consequence of US torture and treatment, he is not competent to instruct counsel and has been described as ‘brain dead.’

¹⁰ Dick Cheney, Interview by Jon Ward and John Solomon, Washington Times, Cited in footnote 279, at page 74 of *Getting Away with Torture*. <http://www.washingtontimes.com/weblogs/potusnotes/2008/Dec/22/cheney-interview-transcript/>

¹¹ ABC News Interview 16 December 2008, accessible at <http://abcnews.go.com/Politics/story?id=6464697&page=1>

¹² See *Getting Away with Torture* at p. 75 citing Richard Cheney, former vice president, interview by Chris Wallace, FOX News Sunday, FOX, August 30, 2009, Transcript <http://www.foxnews.com/politics/2009/08/30/raw-data-transcript-cheney-fox-news-sunday/> (accessed June 15/11), in footnote 282.

- In June 2011 Human Rights Watch reported, “As one of the key chairs of [National Security Council] meetings, Cheney authorized the CIA detention program. In a July 2003 meeting of NSC Principals, Cheney and other principals “reaffirmed that the CIA program was lawful and reflected administration policy.” This included waterboarding.”¹⁴

Investigators have confirmed the evidence of torture by the George W. Bush administration is conclusive.

Maj. General Antonio M. Taguba (USA-Ret.), author of the U.S. Army’s 2004 internal report on Abu Ghraib, (*Investigation of the 800th Military Police Brigade*, February 2004) stated, “After years of disclosures by government investigations, media accounts, and reports from human rights organizations, there is no longer any doubt as to whether the current [Bush] administration has committed war crimes.”¹⁵

The U.S. Senate Armed Services Committee, on the basis of an 18-month investigation, the review of 38,000 pages of documents and the testimony of 70 people, concluded that, “senior officials 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.”¹⁶

Court Decisions: Courts in Canada and the U.S. have confirmed the involvement of the Bush administration in war crimes. The U.S. Supreme Court in *Rasul v. Bush* 542 U.S. 455 (2004) ruled that Bush’s 13 November 2001 order¹⁷ depriving Guantánamo Bay prisoners of habeas corpus was unlawful under both U.S. and international law. Again in 2006 the U.S. Supreme Court in *Hamdan v Rumsfeld*, 126 S.Ct. 2749 (2006) ruled that the Guantánamo Bay regime created by that same 13 November 2001 order, violated the Geneva Convention fair trial rights. Under the Geneva Conventions and the Canadian *Geneva Conventions Act* as well as the CAHWC depriving a prisoner of a fair trial is a war crime.

The Supreme Court of Canada in *Canada (Justice) v. Khadr*, 2008 SCC 28, confirmed that the Bush administration’s treatment of prisoners in Guantánamo Bay violated the Geneva Conventions, Canada’s domestic law and Canada’s international law obligations. The Federal Court of Canada in *Khadr v. the Prime Minister et al*, 2009 FC 405, ruled that the U.S. treatment, of Omar Khadr in Guantánamo Bay and the use of sleep deprivation (moving Khadr every three hours for a period of three weeks to ‘soften’ him up for interrogation by Canadian officials) violated the Convention against Torture and that Khadr’s detention was illegal under international law.

In December 2012 The European Court of Human Rights unanimously ruled that the beating, shackling, hooding, forced undressing and sensory deprivation of a German citizen by the CIA amounted to torture.¹⁸

¹³ ABC News, thisWEEK Exclusive, 10 February 2010, accessible at <http://www.youtube.com/watch?v=O8DSnVIGnbo>

¹⁴ *Getting Away with Torture*, Human Rights Watch, June 2011 at p. 75, citing Senate Select Committee on Intelligence (SSCI), “Declassified Narrative Describing the Department of Justice Office of Legal Counsel’s Opinions on the CIA’s Detention and Interrogation Program,” document released April 22, 2009, <http://intelligence.senate.gov/pdfs/olcopinion.pdf> (accessed June 24, 2011), p. 7 in footnote 280.

¹⁵ 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

¹⁶ *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>

¹⁷ *Detention, Treatment and Trial of Certain Non-Citizens in the War Against Terrorism*. Executive Order dated November 13, 2001, 66 Fed. Reg. 57833 (Nov. 16, 2001).

¹⁸ *El-Masri v. The Former Yugoslav Republic of Macedonia* (Application no. 39630/09), European Court of Human Rights, 13 December 2012. [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621#{%22itemid%22:\[%22001-115621%22\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621#{%22itemid%22:[%22001-115621%22]})

Canadian law: As observed by UN High Commissioner of Human Rights Navi Pillay all states are responsible for enforcing international humanitarian law by ensuring that violators are prosecuted and held accountable. Canada, as a signatory to Convention Against Torture, the Geneva Conventions and the *Rome Statute for an International Criminal Court*, has a legal duty to take effective measures to prevent and punish war crimes and crimes against humanity wherever such crimes occur, no matter what the nationality of the perpetrator(s) or victim(s). Under Canadian law torture is a crime and can also be a war crime and a crime against humanity. The Geneva Conventions¹⁹ and the Convention Against Torture impose a mandatory duty to prosecute people suspected of, in the case of the Convention Against Torture, torture, and in the case of the Geneva Conventions, war crimes, once they enter Canada.

In order to fulfill these duties Canada has passed laws to prevent people suspected of war crimes and crimes against humanity from entering Canada for any purpose.²⁰ Canada has also made war crimes and crimes against humanity--committed anywhere in the world, against and by any person(s)--crimes under Canadian law²¹. Canada's duty to prosecute these crimes is triggered when the suspected perpetrator enters Canada. The duty to prosecute a foreign national for alleged torture committed outside Canada is also triggered when the victim is a Canadian citizen.

In furtherance of those duties Canada has adopted a policy of zero tolerance for people suspected of complicity in torture and other war crimes and crimes against humanity. "The policy of the Government of Canada is unequivocal. **Canada will not be a safe haven for persons involved in war crimes, crimes against humanity or other reprehensible acts.**"²² [emphasis added] The practice of first denying entry is also well known. "**The most effective way to deny safe haven to people involved or complicit in war crimes and crimes against humanity is to prevent them from coming to Canada.**"²³ [emphasis added]

Reports of a visit to Canada by Cheney coupled with evidence of their involvement in war crimes and crimes against humanity trigger these legal duties. Unless the Attorney General of Canada plans to initiate prosecutions once Cheney when he enters Canada, Canada's legal duty is to ensure that Cheney is not allowed to enter Canada.

The duty to direct, supervise and carry out all the steps necessary to ensure this result rests with the Prime Minister, the Attorney General of Canada and with the Ministers of Immigration and Public Safety. The Minister of Foreign Affairs is included as a recipient of this letter in the event that he elects, as a courtesy, to advise Dick Cheney of his inadmissibility as was done in the case of British MP George Galloway. The law does not allow an option of suspending the law to allow immunity to former heads of states or political colleagues who stand credibly accused of war crimes, crimes against humanity of other gross human rights violations. Indeed, the rule of law²⁴ forbids such preferential treatment.

Conclusion: LAW demands that the government of Canada immediately take all necessary steps:

¹⁹ Article 129 of the Third Geneva Convention on Prisoners of War and article 146 of the Fourth Geneva Convention protecting Civilians in wartime (ratified by Canada) provide,

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such graves breaches, and shall bring such persons, regardless of their nationality, before its own courts."

²⁰ *Immigration and Refugee Protection Act* S.C. 2001 c. 27, Division 4 Inadmissibility, s. 35, Human or international rights violations.

²¹ *The Crimes against Humanity and War Crimes Act* S.C. 2000 c. 24, *Criminal Code* R.S.C. 1985 c. C-46, *Geneva Conventions Act*, R.S.C. 1985 c. G-3.

²² Seventh Annual Report Canada's Program on Crimes Against Humanity and War Crimes, 2003 – 2004, p.3.

²³ Canada's Program on Crimes Against Humanity and War Crimes, Tenth Annual Report, 2006-2007, p. 4.

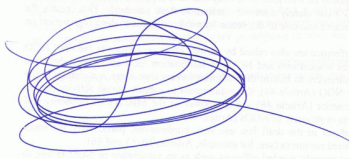
²⁴ *The Canadian Charter of Rights and Freedoms*, provides, "Whereas Canada is founded upon principles that recognize the supremacy of ...the rule of law..."

1. To declare that Dick Cheney is inadmissible to Canada as a person suspected of torture and war crimes; and,
2. To take all steps necessary to ensure that Dick Cheney is denied entry to Canada as required by both Canadian law and Canada's international law obligations; and,
3. If Dick Cheney presents himself for entry, to treat this letter and the sources referred to, as a report under s. 44. (1) of the IRPA and to refer the matter to the Immigration Division for an admissibility hearing; and,
4. To take the steps necessary to have the George W. Bush administration, between October 2001 and November 2008 designated 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.
5. To take all steps necessary to ensure that, upon entry to Canada, Dick Cheney is arrested and either prosecuted for torture (and other crimes) in Canada or is extradited to a jurisdiction willing and able to prosecute.

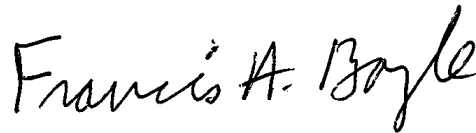
LAW is ready to provide such additional information as you may require, including evidence Dick Cheney's complicity in torture and other gross human rights abuses and excerpts from the applicable statutes and international instruments.

LAW requests an immediate reply and prompt action by the Prime Minister, Minister of Immigration, Attorney General of Canada, Minister of Public Safety and by the Canadian Border Services Agency to comply with Canadian law and Canada's international law obligations and to bar entry to Canada by Dick Cheney on the grounds of his suspected involvement, while vice-president, in authorizing, directing, supervising and failing to prevent torture and other war crimes and crimes against humanity.

Respectfully submitted,



Gail Davidson
Lawyers against the War



Francis A. Boyle
Professor, University of Illinois College of Law USA



Gavin Magrath
Magrath O'Connor

Copied to:

Members of Parliament to the special attention of:

- Tom Mulcair, Leader
- Libby Davies, Deputy Leader
- Nathan Cullen, House Leader
- Lysanne Blanchette-Lamothe, NDP Immigration critic
- Françoise Boivin, NDP Justice critic
- Don Davies, Former NDP Immigration critic
- Paul Dewar, NDP Foreign Affairs critic
- Randell Garrison, NDP Public Safety critic
- Wayne Marston, NDP Consular Affairs critic

Justin Trudeau, Liberal Party leader
Ralph Goodale, Liberal Party Deputy Leader
Sean Casey, Liberal Party Justice critic
Irwin Cotler, Liberal Party Rights and Freedoms, International Justice Critic
Wayne Easter, Liberal Party Public Safety critic
Marc Garneau, Liberal Party Foreign Affairs critic
John McCallum, Liberal Party Immigration critic
Elizabeth May, Green Party of Canada, Leader

Lawyers Against the War (LAW) is a Canada-based committee of jurists and others who oppose war and advocate for adherence to international humanitarian law and against impunity for violators.

Contacts:

Gail Davidson, Tel: 604 738 0338; Fax: 604 736 1175; Email: law@portal.ca
Francis A. Boyle, Tel: 217-333-7954; Fax: 217-244-1478; Email: fboyle@law.uiuc.edu
Gavin Magrath, Tel: 416-931-0463; Fax: 1-866-389-0743; Email: gavin@magrathoconnor.com