

Monday, September 19, 2011

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Dear Prime Minister, Attorney General and Ministers Kenney, Toews and Baird;

**Re: Request that Dick Cheney be barred from Canada**

Lawyers Against the War (LAW) is writing to inform you of the planned visit to Canada by Richard (Dick) Cheney, former Vice-President of the United States of America to Vancouver British Columbia on September 26<sup>th</sup> as a guest of the Vancouver Club.

LAW is writing to request that Dick Cheney be barred from entering Canada in accordance with the inadmissibility provisions of the Immigration and Refugee Protection Act (IRPA) provisions that bar entry to foreign nationals suspected of torture or other war crimes or crimes against humanity.<sup>1</sup>

**Credible Accusations:** Dick Cheney has been accused by knowledgeable groups and individuals throughout the world of complicity in war crimes, crimes against humanity and other gross human rights abuses.<sup>2</sup> Accusations of war crimes and crimes against humanity carried out by the Bush administration under the supervision and direction of Dick Cheney as Vice-President are well

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<sup>1</sup> Immigration and Refugee Protection Act, S.C. 2001, c. 27, ss. 35 (1)(a)&(b).

<sup>2</sup> 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.

documented. In our [August 25 letter](#) regarding the visit of George W. Bush to Surrey BC, we refer to a selection of the reports of torture. The credible inculpatory evidence supporting the accusations against Mr. Cheney of torture and other war crimes and crimes against humanity 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.”<sup>3</sup>
- [ABC News, Dec. 16, 2008](#): Cheney admits to being aware of and approving the use of waterboarding of Khalid Sheik Mohammed<sup>4</sup> and says 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.”<sup>5</sup>
- “In 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.”<sup>6</sup>
- February 10, 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. <http://www.youtube.com/watch?v=O8DSnVIGnbo>
- In June 2011 Human Rights Watch reported, “As one of the key chairs of NSC 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.”<sup>7</sup>

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<sup>3</sup> 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

<sup>4</sup> 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.”

<sup>5</sup> 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/>

<sup>6</sup> 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.

<sup>7</sup> *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.

**Reliable Evidence:** Evidence that is part of the public record far exceeds the ‘reasonable grounds’ required by the inadmissibility sections of the IRPA. That torture and other criminal treatment was used 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. In our [letter of August 25](#), 2011 we advised you of some recent reports.<sup>8</sup> These reports indicate that Bush and Cheney authorized and directed and failed to prevent torture and other proscribed treatment of prisoners in Guantánamo Bay, Abu Ghraib, Bagram and other U.S. controlled prisons. Canadian citizen Omar Khadr is one of the victims of those criminal acts, prohibited by CAT and by Canadian law<sup>9</sup>. Additional torture memos released by the Obama administration indicate that Bush and Cheney approved the use of sleep deprivation (used on Khadr), water boarding (simulated drowning) and other treatments prohibited by international and Canadian law. Records and documents released to date indicate that that Cheney knowingly planned and carried out the illegal invasion and occupation of Iraq<sup>10</sup> that has resulted in the death, injury and displacement of millions of people.

**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 order<sup>11</sup> 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 *Crimes against Humanity and War Crimes Act* and the *Geneva Conventions Act* 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 other Cruel, Inhuman and Degrading Punishment and Treatment (CAT) and that Khadr’s detention was illegal under international law.

**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 CAT, 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 (torture is both) wherever such crimes occur, no matter what the nationality of the perpetrator(s) or victim(s). The Geneva Conventions<sup>12</sup> and CAT impose a mandatory duty to prosecute people suspected of, in the case of CAT, torture, and in the case of the Geneva Conventions, war crimes, once they enter Canada.

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<sup>8</sup> See, *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](http://brokenlives.info/?page_id=69); *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>;  
*RIGHTS: Call to Try Bush*, By Julio Godoy, IPS/Berlin, February 2. 2009.

<http://ipsnews.net/news.asp?idnews=45636>

<sup>9</sup> Under the *Criminal Code*, the *Geneva Conventions Act* and the *Crimes against Humanity and War Crimes Act* torture is a crime in Canada no matter where and by who and against whom it is alleged to have occurred.

<sup>10</sup> See, Jamie Doward, Gaby Hinsliff and Mark Townsend, *Leaked Memorandum proves Bush and Blair planned illegal Iraq invasion*, The Observer, June 21, 2009.

<sup>11</sup> *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).

<sup>12</sup> 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."

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.<sup>13</sup> Canada has also made war crimes and crimes against humanity--committed anywhere in the world, against and by any person(s)--crimes under Canadian law<sup>14</sup>. Canada's duty to prosecute these crimes is triggered when the victim is a Canadian citizen—e.g. Omar Khadr-- or when the suspected offender enters Canada.

In furtherance of those duties Canada has adopted a policy of zero tolerance for people suspected of complicity in 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."<sup>15</sup> 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."<sup>16</sup>

Reports of visits to Canada by Bush and 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 (or Bush) enters Canada, Canada's legal duty is to ensure that Bush and Cheney are 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 or other gross human rights violations. Indeed, the rule of law<sup>17</sup> forbids such preferential treatment.

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

1. To advise Dick Cheney, former vice-president that he is inadmissible to Canada, at least until the above mentioned accusations have been tested in fair trials before independent courts; 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 is not advised of his inadmissibility or, being advised, 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 prosecuted for torture (and other crimes) in Canada or is extradited to a jurisdiction willing and able to prosecute.

We are ready to provide such additional information as you may require, including evidence Dick Cheney's complicity in war crimes and crimes against humanity and excerpts from the applicable statutes and international instruments.

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<sup>13</sup> *Immigration and Refugee Protection Act* S.C. 2001 c. 27, Division 4 Inadmissibility, s. 35, Human or international rights violations.

<sup>14</sup> *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.

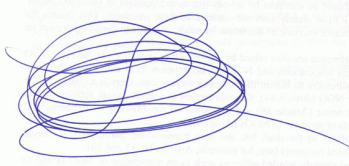
<sup>15</sup> Seventh Annual Report Canada's Program on Crimes Against Humanity and War Crimes, 2003 – 2004, p.3.

<sup>16</sup> Canada's Program on Crimes Against Humanity and War Crimes, Tenth Annual Report, 2006-2007, p. 4.

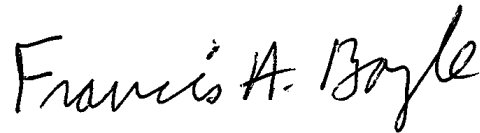
<sup>17</sup> *The Canadian Charter of Rights and Freedoms*, provides, "Whereas Canada is founded upon principles that recognize the supremacy of ...the rule of law."

We request 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,



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**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.

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