

George W. Bush: Canada Must Bar Entry or Arrest and Ensure Prosecution for Torture

By [Lawyers Against the War \(LAW\)](#)
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Mr. Prime Minister and Ministers Nicholson, Kenney, Toews and Baird:

Re: Visit of George W. Bush on October 20, 2011: Canada must prevent entry or arrest and ensure prosecution for torture.

George W. Bush is reported to be coming to Surrey British Columbia on October 20, 2011 at the invitation of Surrey Mayor Diane Watts. There is overwhelming evidence that George W. Bush as President of the United States of America (US) and Commander in Chief of the US Armed Forces aided, abetted and counseled the torture of non-Americans at US controlled prisons outside the US including but not limited to Guantánamo Bay prison in Cuba, Abu Ghraib prison in Iraq, Bagram prison in Afghanistan and other places. This letter of complaint focuses on torture allegations while acknowledging evidence of other war crimes and crimes against humanity carried out by the Bush administration.

We are writing to report that:

George W. Bush, former President of the United States and Commander in Chief of the Armed Forces, is inadmissible to Canada under the Immigration and Refugee Protection Act (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)[1]; and,

the George W. Bush Administration is known to have 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 CAHWC.

We are writing to request that you act immediately to ensure that:

George W. Bush is barred entry from Canada under the IRPA; or,

On entering Canada, George W. Bush is arrested to ensure that he will not receive safe haven from prosecution for torture either in Canada or by returning to the United States; and,

Canada initiates a prosecution for torture of George W. Bush or extradites him to be prosecuted in a jurisdiction willing and able to prosecute him for torture.

We request that you also ensure that the RCMP War Crimes Section immediately takes the following steps:

begin an investigation of George W. Bush for aiding, abetting and counseling torture between

November 13, 2001 and November 2008 at Guantánamo Bay prison in Cuba, Abu Ghraib prison in Iraq, Bagram prison in Afghanistan and other places; and,

acknowledge that the George W. Bush administration is a “ government that has engaged in torture and other war crimes and crimes against humanity and therefore G.W. Bush, as former President, is also inadmissible under section 35(1)(b) of the IRPA.

Canada has a legal duty to deny safe haven from prosecution to anyone suspected of torture, committed anywhere against any persons. Under the Immigration and Refugee Protection Act (s. 35) anyone suspected of involvement in torture must be denied entry to Canada. Once a suspect enters the country, Canada then has a legal obligation to ensure that suspect is prosecuted, if not in Canada, in a jurisdiction willing and able to do so. Discharge of this duty usually would require the arrest and detention of the suspect to prevent the suspect from escaping to a jurisdiction willing to provide safe haven from prosecution. Given that US Attorney General has declared and demonstrated a refusal to prosecute Bush for torture, if Bush is allowed entry, Canada’s initial duty would be first to prevent him returning to safe haven in the U.S.[2] and then to ensure his prosecution either here or elsewhere.

Canadian courts have recognized that the duty to deny safe haven from prosecution cannot be mitigated in the case of grave and heinous crimes such as torture. Inadmissibility under the IRPA is established when there are “reasonable grounds to believe” the foreign national—in this case George W. Bush—has engaged in torture or other international crimes. The Supreme Court of Canada has ruled that reasonable grounds are, “something more than suspicion but less than...proof on the balance of probabilities.”[3] As torture is considered a grave and heinous crime, “the full application of s. 35 of the IRPA cannot be mitigated.”[4] There is therefore no discretion to provide Bush safe haven from prosecution during a stay, however brief, in Canada.

The law prohibits treating torture as legal—which Canadian authorities would have to do to either allow Bush entry or on entry, to forbear from arresting and ensuring prosecution here or in another jurisdiction.

Canada’s legal duties to prevent and punish torture wherever, by whoever and against whomever committed and to deny suspects safe haven from prosecution arise under a variety of binding instruments including the: Rome Statute of the International Criminal Court (Rome Statute), Convention against torture and other Cruel, inhuman or degrading treatment or punishment (CAT), Geneva Conventions (GCs), Crimes against Humanity and War Crimes Act (CAHWCA) and the Criminal Code of Canada

(Criminal Code). Canada’s jurisdiction to prosecute George W. Bush for torture is triggered if: George W. Bush enters Canada; and/or, a victim of the alleged torture (Omar Khadr) is a

Canadian citizen.

Evidence of Torture

Evidence of G.W. Bush's complicity in torture is overwhelming. As stated by Maj. General Antonio M. Taguba, author of the U.S. Army's 2004 internal report on Abu Ghraib,

"... the Commander-in-Chief [Bush] and those under him authorized a systematic regime of torture.... 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. The only question that remains to be answered is whether those who ordered the use of torture will be held to account." [5]

Many people aware of the evidence and the law have concluded that the available evidence establishes conclusively that George W. Bush and other members of the Bush Administration committed torture (and other war crimes and crimes against humanity) and therefore states now have a duty to condemn, investigate, prosecute and punish those crimes. Following are a sample of conclusions and remarks by a variety of such people. Comprehensive lists of evidence are readily available from a variety of sources and will be provided on request.

In July 2004 the International Committee of the Red Cross concluded that the American military had used interrogation techniques tantamount to torture on prisoners in Guantánamo Bay. [6]

In a February 2006 report, a group of UN experts concluded that sleep deprivation for several consecutive days, enforced isolation, the use of dogs, and exposure to extreme temperatures were all being used at Guantánamo Bay prison by US officials and that these interrogation methods met all five elements of torture (perpetrated by government official, had a clear purpose, committed intentionally, victims in a position of powerlessness and caused severe physical or mental pain or suffering.) [7]

In May 2006, the UN Committee on Torture called on the US to close Guantánamo Bay prison, to eradicate the use of torture by military and civilian personnel and to rescind authority to use any interrogation method that constitutes torture or cruel, inhuman or degrading treatment or punishment. [8]

In June 2007 the Council of Europe Parliamentary Assembly report by Senator Dick Marty concluded that

"the CIA [the US Central Intelligence Agency] committed a whole series of illegal acts in Europe by abducting individuals, detaining them in secret locations and subjecting them to interrogation techniques tantamount to torture. [9]

In December 2008 the US Senate Armed Services Committee 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." [10]

In January 2009 Manfred Nowak, then the UN Special Rapporteur on Torture said,

“The evidence is sitting on the table...There is no avoiding the fact that this was torture... The government of the United States is required to take all necessary steps to bring George W. Bush and Donald Rumsfeld before a court.”[11]

In February 2009, UN Special Rapporteur Martin Scheinin reached the same conclusion,

“...the United States has created a comprehensive system of extraordinary renditions, prolonged and secret detention, and practices that violate the prohibition against torture and other forms of ill-treatment....States must not aid or assist in the commission of acts of torture, or recognize such practices as lawful, ...Under international human rights law, States are under a positive obligation to conduct independent investigations into alleged violations of the right to life, freedom from torture or other inhuman treatment, enforced disappearances or arbitrary detention, to bring to justice those responsible for such acts, and to provide reparations where they have participated in such violations.”[12] (underlining added)

On March 4 2009, then UN General Assembly President Miguel d’Escoto Brockmann, on March 4, 2009 concluded,

“The [Bush Administration] aggressions against Iraq and Afghanistan and their occupations constitute atrocities that must be condemned and repudiated by all who believe in the rule of law in international relations,”

In May 2009 former Vice President Dick Cheney publicly stated that George W. Bush authorized the use of torture,

“ I mean it was a presidential-level decision. And the decision went to the president. He signed off on it.”[13]

In his 2010 memoirs, George W. Bush admitted to authorizing the use of interrogation techniques that constitute torture such as water boarding. [14]

In February 2011 Bush cancelled a trip [15] to Switzerland because he faced the risk of prosecution for torture. Human Rights groups had called on the Swiss government to arrest him and open a criminal investigation if he entered the country citing Switzerland’s legal obligations under CAT. The New York-based Center for Constitutional Rights and the Berlin-based European Center for Constitutional and Human Rights, backed by many others—released and threatened to file a 45-page indictment backed up by a 2,500 page summary of evidence of Bush’s role in authorizing, directing and supervising torture used at U.S. controlled prison including Bagram Afghanistan, Abu Ghraib, Iraq and Guantanamo Bay Cuba. [16]

Reed Brody of Human Rights Watch commented, “I’m surprised he (Bush) would even consider visiting a country that has ratified the torture convention and which takes its responsibilities seriously.”[17]

In June 2011 Human Rights Watch published an extensive report concluding that members of the Bush administration had used torture and should be prosecuted. [18]

Duty to prosecute

The duty to prosecute George W. 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)

Under CAT, Art. 12, Canada has an urgent duty to investigate allegations of torture and of other cruel, inhuman or degrading treatment as part of its duty to prevent such crimes. The CAT Committee has ruled that delay by a state to investigate allegations of torture or inhumane or degrading treatment is itself a violation of CAT. [19] Canada's duty to investigate torture by George W. Bush and other officials of the Bush administration is imperative. It became so in March 2004 when Canada received notice that the US had subjected Omar Khadr to prolonged sleep deprivation and isolation to prepare him for questioning by Canadian officials. The Federal Court confirmed earlier findings of UN experts that this practice was, "...a breach of international human rights law respecting the treatment of detainees under UNCAT and the 1949 Geneva Conventions." [20] The duty to prosecute becomes imperative when George W. Bush enters Canada.

Under Article 1 of all Geneva Conventions (GCs), Canada has an obligation to respect and to ensure respect for the Conventions "in all circumstances." Torture and inhuman treatment are grave breaches of the GCs. Having knowledge of grave breaches, Canada is legally required to,

"...search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case." (GC III Art. 130; GC IV Art. 146 ;.)

Canada has enacted the jurisdiction to prosecute torture and other grave breaches of the GCs as defined by the Rome Statute, wherever those crimes occur when the victim is a Canadian citizen (Omar Khadr) and/or the suspect (George W. Bush) is in Canada. The Criminal Code of Canada (CC) s. 269.1 & 7(3.7) establishes jurisdiction to prosecute torture committed outside Canada in these circumstances. [21] The

Crimes against Humanity and War Crimes Act (CAHWCA) and the *Geneva Conventions Act* also make torture a crime and establish Canada's jurisdiction to prosecute foreign nationals when the victim is a Canadian citizen and/or when the suspect enters Canada.

The evidence of torture by the Bush administration and the evidence of Bush's involvement in aiding abetting and counseling torture while President of the United States and the Commander in Chief of the US Armed Forces coupled with the law imposes a mandatory duty on Canada to:

1. Prevent George W. Bush from entering Canada; or,
2. If George W. Bush enters Canada, to prevent him receiving safe haven from torture in

Canada or by returning to the US; and,

3. Ensure that George W. Bush is prosecuted for torture in accordance with law in Canada or extradited to a jurisdiction willing and able to prosecute him for torture.

Respectfully submitted,

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Notes

1. Under sections 4 to 7 of the Crimes Against Humanity and War Crimes Act (S.C. 2000, chap. 24) crimes against humanity include murder, enforced disappearance, deportation, imprisonment, torture and imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, committed against any civilian population or any identifiable group. War crimes include willful killing, torture and inhuman treatment, unlawful confinement and willfully depriving a prisoner of war or other protected person of fair trial rights.

2. U.S. Attorney General Eric Holder has refused to consider torture investigations or prosecution of Bush administration officials.

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

4. Varela v. Canada (Minister of Citizenship and Immigration), [2009] 1 FCR 605 at para. 44.

5. 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

6. Neil A. Lewis, Red Cross Finds Detainee Abuse in Guantánamo, New York Times, 30 Nov. 2004.

7. Situation of detainees at Guantánamo Bay Report of the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Asma Jahangir; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Paul Hunt, E/CN.4/2006/120, 27 February 2006, at paras. 51 and 52.

8. Conclusions and recommendations of the Committee against Torture: UNITED STATES OF AMERICA, Doc. CAT/C/USA/CO/2 25 July 2006, paras 22, 24 and 26.

9. Dick Marty, Council of Europe Parliamentary Assembly, Secret detentions and illegal transfers of detainees involving council of Europe member states: second report, CoE Doc. 11302 rev, 11 June 2007 at pp. 7 para. 9

10. Senate Armed Services Committee Inquiry Into The Treatment Of Detainees In U.S. Custody, Dec. 11, 2008., Executive Summary, p. xii.

http://armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf

11. Scott Horton, UN Rapporteur: Initiate criminal proceedings against Bush and Rumsfeld now, Harpers Magazine, 21 Jan. 2009.

12. Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/10/3,4 February 2009.

13. 10 May 2009 CBS, Face the Nation. <http://www.enduringamerica.com/may-2009/2009/5/9/video-and-transcript-dick-chenev-on-face-the-nation-10-may.html>

14. Decision Points, Crown Publishing Group 2010, p. 169-71.

15. Bush was reported to be coming to Geneva to speak at the Keren Hayesod's annual dinner on Feb. 12, 2011.

16. Preliminary Indictment for Torture: George W. Bush Brought Pursuant to the Convention Against Torture;

<http://ccrjustice.org/files/FINAL%207%20Feb%20BUSH%20INDICTMENT.pdf>

17. Stephanie Nebehay, Bush's Swiss visit off after complaints on torture, Reuters, 5 February 2011.

<http://www.reuters.com/article/2011/02/05/us-bush-torture-idUSTRE7141CU20110205>

18. Getting Away with Torture: The Bush Administration and Mistreatment of Detainees, Human Rights Watch, June 2011

19. See Halimi-Nedzibi v. Australia in which a 15-month delay was adjudged a breach of Article 12 and Blanco Abad v. Spain where a delay of 32 days was held by the CAT Committee to be a breach of CAT Article 12.

20. Khadr v. Canada (Attorney General), 2008 FC 807 (CanLII), June 25, 2008, at para. 88. 59 C.R. (6th) 284 175 C.R.R. (2d) 345.

21. Criminal Code of Canada, ss. 269, 7(3.7); Crimes against Humanity and War Crimes Act, (2000, c.24) ss. 6(1) (3) & 8(a) (iii), Geneva Conventions Act, R.S. 1985 c. G-3.

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