

The Kuala Lumpur War Crimes Tribunal: Charges against George W Bush and Anthony L Blair

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PRESS RELEASE

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TRIBUNAL TO HEAR WAR CRIMES

KUALA LUMPUR, 18 November 2011 – The Kuala Lumpur War Crimes Tribunal (Tribunal) will be hearing war crimes charges against George W Bush (former U.S. President) and Anthony L Blair (former British Prime Minister) from November 19-22, 2011 in Kuala Lumpur. This is the first time that war crimes charges will be heard against these two former heads of state in compliance with due legal process, wherein complaints from war victims had been received, duly investigated and formal charges instituted by the Kuala Lumpur War Crimes Commission (Commission).

In 2009, war victims had testified before the Commission in 2009, revealing details that were shocking. A few of these are as follows:

- A complainant was detained for over 6 years in Guantanamo Bay on mistaken identity, a fact the United States military had realised days after detaining him. He was subjected to inhuman treatment and endured untold mental suffering.
- The testimony of a woman complainant from Iraq was equally shocking. She was detained and while being transported on a helicopter was used as human shield by being placed near the open doors in the event of resistance fighters shooting at the helicopter.
- Another victim revealed how he was threatened that if he did not confess to being a terrorist his wife would be killed in the next cell. He endured untold humiliation throughout his 3-year detention.

The Commission also noted that none of these victims were charged for any actual offences and all legal representation was denied to them. No due process of international law was complied with.

The experiences of other detainees in Abu Gharib in Baghdad and Bagram in Afghanistan were similar. The systematic methods employed in these illegal detention centres revealed a deeper complicity instead of the 'acts of a few rogue soldiers' as claimed by the United States military.

The Commission was satisfied that a case had been made out for further investigation to be

carried out. The complaints were duly accepted.

In October 2009, after the Commission had received the complaints of the war victims, the Commission, sought an Advisory Opinion from the Tribunal on the following issues:

- a. Does the Tribunal have jurisdiction to hear the cases of war crimes?
- b. Can a head of state or government exempt itself from the any international treaty or convention (such as the Geneva Convention) duly ratified by the state without first abrogating the relevant treaty or convention?

After hearing the submissions, the Tribunal ruled unanimously on both issues.

On the first issue, the Tribunal held that it has jurisdiction to hear cases on war crimes by virtue of Article 7 (1) of the Charter of the Kuala Lumpur War Crimes Commission.

On the second issue, the Tribunal was also unanimous in holding that over the last 50 years international humanitarian law has developed to the point that no head of state or nation can unilaterally renounce it. If there is a treaty, it is binding. Even if a nation is not a signatory to a treaty or claims to revoke it, it is still bound by a customary international law.

The Tribunal held that in relation to crimes against humanitarian law, the status of a head of state does not constitute a defence. Nor is it a defence to submit that one was acting under the orders of a superior; this is the law since the Nuremberg Trials.

The lifting of immunity and the principle of individual criminal responsibility are now embodied in a plethora of international laws and decisions. These include the UN General Assembly Resolution 95(1) of Dec 11, 1946; Article 13 of the Draft Code of Crimes Against the Peace and Security of Mankind (1991); UN Document No. S/25704 (1993); and Article 27 of the Rome Statute.

The Tribunal is inspired by the noble principle that wherever there is a right there must be a remedy. Victims of war crimes in Iraq who have been displaced have no remedy in national or international courts.

In May 2011, The Commission finalised its investigation and filed its report recommending that charges be instituted. The Prosecution division of the Commission filed the following charges:

- The first charge is Crimes Against Peace filed against George W Bush (former President of the U.S.) and Anthony L Blair (former Prime Minister of the United Kingdom) wherein they are charged as follows:

The Accused persons had committed Crimes against Peace, in that the Accused persons planned, prepared and invaded the sovereign state of Iraq on 19 March 2003 in violation of the United Nations Charter and international law.

The second charge is against eight citizens of the United States and they are namely George W Bush, Donald Rumsfeld, Dick Cheney, Alberto Gonzales, David Addington, William Haynes, Jay Bybee and John Yoo. They have been charged with the Crime of Torture and War Crimes:

The Accused persons had committed the Crime of Torture and War Crimes, in that: The Accused persons had wilfully participated in the formulation of executive orders and directives to exclude the applicability of all international conventions and laws, namely the Convention against Torture 1984, Geneva Convention III 1949, Universal Declaration of Human Rights and the United Nations Charter in relation to the war launched by the U.S. and others in Afghanistan (in 2001) and in Iraq (in March 2003);

Additionally, and/or on the basis and in furtherance thereof, the Accused persons authorised, or connived in, the commission of acts of torture and cruel, degrading and inhuman treatment against victims in violation of international law, treaties and conventions including the Convention against Torture 1984 and the Geneva Conventions, including Geneva Convention III 1949.

The trial will be held before the Tribunal, which is constituted of eminent persons with legal qualifications.

The judges of the Tribunal, which is headed by retired Malaysian Federal Court judge Dato' Abdul Kadir Sulaiman, also include other notable names such as Tunku Sofiah Jewa, author of an International Law publication, Prof Salleh Buang, former Federal Counsel in the Attorney-General Chambers, Prof Niloufer Bhagwat, an expert in Constitutional Law, Administrative Law and International Law, Prof Emeritus Datuk Dr Shad Saleem Faruqi, prominent academic and professor of law, Mr Alfred Lambremont Webre, a Yale graduate, who authored several books on politics and Dato' Zakaria Yatim, retired Malaysian Federal Court judge.

The Tribunal will adjudicate and evaluate the evidence presented on facts and law as in any court of law. The judges of the Tribunal must be satisfied that the charge is proven beyond reasonable doubt and deliver a reasoned judgement. The verdict and the names of the persons found guilty will be entered in the Commission's Register of War Criminals and publicised worldwide.

The prosecution for the trial will be lead by Prof Gurdial S Nijar, prominent law professor and author of several law publications and Prof Francis Boyle, leading American professor, practitioner and advocate of international law, and assisted by counsel Mr Avtaran Singh.

The trial will be held in an open court on November 19-22, 2011 at the premises of the Kuala Lumpur Foundation to Criminalise War (KLFCW) at 88, Jalan Perdana, Kuala Lumpur.

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