

CANADA: HOLD GEORGE W. BUSH ACCOUNTABLE FOR TORTURE

The Case Against George Bush

George W. Bush, in his capacity as former president of the United States, bears individual and command responsibility for acts of torture against detainees held in U.S. custody, in that he ordered, authorized, condoned, planned or otherwise aided and abetted such acts, or failed to prevent or punish subordinates for the commission of such acts.

Despite admitting that he authorized torture, Bush has not been investigated or held accountable for his actions in the United States -- or by any judicial body elsewhere. Bush has enjoyed global impunity for his role in the torture of detainees held in Guantánamo, Abu Ghraib, Bagram, and secret “black sites,” and through “extraordinary rendition.”

As a former head of state, facing allegations of torture, Bush would not enjoy any immunity from prosecution in Canada, a State Party to the Convention Against Torture (CAT) since 1987.

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 [Bush] administration has committed war crimes. The only question is whether those who ordered the use of torture will be held to account.

- Maj. General Antonio M. Taguba

About the Indictment

The Indictment provides a strong factual and legal basis to hold Bush accountable under the Canadian Criminal Code and CAT for having authorized torture. In addition, the Indictment compiles more than 4,000 pages of publicly available supporting material which

provides sufficient evidence of Bush’s liability for the U.S. torture program.

As set forth in detail in the indictment, and supported by documentary evidence in the form of official memoranda issued by Bush or subordinates in his chain of command, U.S. government reports (including the Central Intelligence Agency Inspector General Report), and reports by the International Committee of the Red Cross and the United Nations, there are reasonable grounds to believe that Bush has committed acts of torture, including:

- Bush authorized the U.S. Central Intelligence Agency to capture suspected terrorists, and detain them in secret detention sites, where they would be subjected to so-called “enhanced interrogation techniques”
- Bush authorized “enhanced interrogation techniques,” such as waterboarding, stress positions, sleep deprivation, and manipulation of food and temperature which have been found to amount to torture
- Bush authorized the detention of suspected terrorists at Guantánamo Bay, without access to counsel or courts, and subjected to treatment and interrogation techniques that have been found to amount to torture
- Bush authorized the transfer of detainees to third countries for interrogation, a practice known as “extraordinary rendition”

Notably, the indictment is also supported by statements made by George W. Bush, himself, acknowledging his role in the creation of the CIA secret detention program and the approval of interrogation techniques that have been found to constitute torture. Indeed, Bush recounted in his memoir that when he was asked in 2002 if it was permissible to waterboard a detainee, “held in secret CIA custody outside the United States, he answered “damn right.”

Universal Jurisdiction

Because the United States is not a member of the International Criminal Court, and because the U.S. has failed to prosecute anyone up the chain of command for the abuses that occurred, the strongest options for justice are countries with laws that allow for the prosecution of serious international crimes like torture regardless of where they occurred or the nationality of the perpetrators or victims.

The principle of universal jurisdiction allows the national authorities of any state to investigate and prosecute people for serious international crimes even if they were committed in another country. For example, the Spanish government could prosecute a Chilean official for crimes committed in Chile, as was done in the case of *Pinochet*. Or the Canadian government could prosecute U.S. officials for crimes committed in Guantánamo, Iraq and Afghanistan.

Universal jurisdiction is based on the notion that some crimes – such as genocide, crimes against humanity, war crimes, and torture – are of such exceptional gravity that they affect the fundamental interests of the international community as a whole. Accordingly, there is no condition that the suspect or victim be a citizen of the state exercising universal jurisdiction or that the crime directly harmed the state’s own national interests. The only condition for exercising universal jurisdiction is therefore not – as in traditional doctrines of jurisdiction – nationality, location or national interests, but rather the nature of the crime. Recent years have seen a rising number of universal jurisdiction cases filed before national courts in Europe, North America, Latin America, and Africa—this increase in cases can be attributed to a rising interest of the international community to hold accountable those responsible for the worst crimes: genocide, crimes against humanity, war crimes, and torture.

CAT provides for universal jurisdiction and requires signatories to investigate and prosecute torturers present on their territory, so as to avoid “safe havens” for torturers. Canada is obligated to ensure it does not become such a safe haven.

Jurisdiction under Canadian Law

Canada has ratified CAT and incorporated its provisions into the Canadian Criminal Code. Section 269.1 of the Code makes torture a criminal offense and gives Canadian courts jurisdiction over torture committed abroad when the alleged torturer is later present in Canada. Canada has also implemented universal jurisdiction for crimes against humanity, war crimes and genocide. Through the *Crimes Against Humanity and War Crimes Act*, Canada has prosecuted two cases involving the genocide in Rwanda.

Accountability for Torture

Bush is scheduled to speak in Surrey, B.C. on October 20, 2011. CCR and CCIJ have urged the Attorney General of Canada and the War Crimes Office of Canada to act in accordance with Canada’s obligations under domestic and international law by detaining George W. Bush while he is present in Canada, and opening a preliminary investigation into the allegations brought against him, and ultimately prosecuting him for torture.

What You Can Do

Write to the Honourable Robert Douglas Nicholson, Minister of Justice and Attorney General of Canada, at Nichor@parl.gc.ca, and urge him to refer the case of torture against George W. Bush to the War Crimes Office of Canada for investigation and prosecution.

About CCR and CCIJ

The Center for Constitutional Rights is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. CCR, working with its international partners, has filed cases in France, Germany, and Spain against former high-ranking U.S. officials to hold them accountable for their individual roles in directing, implementing, or planning the U.S. torture program. *For more on CCR’s efforts to indict Bush for torture:* <http://ccrjustice.org/ourcases/current.cases/bush-torture-indictment>

The Canadian Centre for International Justice works with survivors of genocide, torture and other atrocities to seek redress and bring perpetrators to justice. The CCIJ seeks to ensure that individuals present in Canada who are accused of responsibility for serious human rights violations are held accountable and their victims recognized, supported and compensated.