

Thursday, May 15, 2008

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Dear Minister Finley;

Re: Colin Powell: reported visit to Vancouver BC on June 12th 2008

Colin Powell, retired General of the US Army Forces and US Secretary of State from 2001 to 2005, is scheduled to be in Vancouver June 12, 2008 to deliver an address on "Leadership in the 21st Century.

Colin Powell, as a person credibly accused of involvement in war crimes, crimes against humanity and grave human rights abuses including torture, is inadmissible to Canada under the *Immigration and Refugee Protection Act*.

We require you, as Minister responsible for the enforcement of the *Immigration and Refugee Protection Act*, to take all necessary actions to ensure that Mr. Powell is not admitted to Canada.

Section 35 of the *Immigration and Refugee Protection Act*, 2001 provides as follows:

35. (1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the Crimes Against Humanity and War Crimes Act;

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, 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*; (underlining added)

The exception in section 35(2) that allows you to exercise your discretion and allow admission to a foreign national who, 'satisfies the Minister that their presence in Canada would not be detrimental to the national interest.', specifically does not apply to Mr. Powell. This exception does not apply people who have committed acts constituting offences referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* such as torture. (See references to below)

Section 6 of the *Crimes Against Humanity and War Crimes Act* incorporates by reference all international crimes against humanity and war crimes, and, explicitly, all crimes enumerated in Articles 7 and 8(2) of the Rome Statute of the International Criminal Court.

Section 7 of the *Crimes Against Humanity and War Crimes Act* places special responsibility on 'military commanders' and other 'superiors' for crimes committed by their subordinates that they knew of, or were criminally negligent in failing to know of, and with respect to which they did not take necessary and reasonable steps to prevent.

Section 33 of the *Immigration and Refugee Protection Act* specifically provides that

'facts that constitute inadmissibility under sections 34 to 37 include facts arising from omissions and, unless otherwise provided, include facts for which there are reasonable grounds to believe that they have occurred, are occurring or may occur.'

There are reasonable grounds to believe that Colin Powell has, committed, conspired to commit and aided, abetted and/or counseled the commission of, war crimes, crimes against humanity and serious human rights violations such as to absolutely bar his entry into Canada.

Colin Powell, as a member of the Bush administration, is accused of complicity in the most serious crimes known to the global community including: indiscriminant targeting and willful killing of civilians, targeting and destruction of infrastructures necessary to life, illegal capture, detention and treatment of civilians, torture¹, subjecting prisoners to murder, cruel and inhumane treatment, illegal detention and transfer. Many scholars and jurists have called for prosecutions.²

None of these accusations have ever been dismissed. Citizen's tribunals have found Colin Powell and other members of the Bush administration guilty. The US has prevented criminal complaints from proceeding to be determined by foreign courts and has failed to conduct their own investigation of credible accusations made by knowledgeable individuals and organizations.

In Iraq, these crimes continue unabated and have caused over 1 million deaths, the displacement of an estimated 4.9 million people and left 4 million people in serious need of emergency aid without which they will die.³ An additional toll of US war crimes and crimes against humanity in Iraq are 40% of Iraqi people without safe drinking water and an estimated 40 to 70% unemployment. Security is worse than it ever was under Saddam Hussein.

We are well familiar with some of Colin Powell's admitted involvement in the commission of these horrific crimes. *viz*

- On February 5, 2003 Colin Powell, then Secretary of State lied to the UN Security Council in an effort to obtain UN authorization for the US-led invasion of Iraq. Mr. Powell told the UN Security Council that Iraq possessed "mobile production facilities" for the manufacture of chemical and biological weapons, that Iraq was engaged in efforts to obtain nuclear weapons, that there were links between al-Qaida and the Iraq government. Although Colin Powell later

¹ ABC News reported on April 8/08 that Bush's National Security Council Principals Committee which included Colin Powell approved the use of torture during interrogation.

² For example, see the recently published book by British Barrister Philippe Sands, *Torture Team: Rumsfeld's Memo and the Betrayal of American Values*.

³ Dahr Jamal, *U.S. Presidents to be in Denial*, May 8, 2008 and references.
http://dahrjamailiraq.com/hard_news/archives/newscommentary/000796.php

admitted that none of this was true and that the speech is a ‘blot’ on his record, he continued to support the invasion and occupation of Iraq as a member of the Bush administration.

- Colin Powell was a member of the National Security Council Principals Committee that authored the US policy to use torture and other illegal treatment coupled with denying such prisoners the protection of US and international law and a policy to protect interrogators from criminal responsibility. In a January 26, 2002 memo, Colin Powell urged the president to decide on one of two options: either the Geneva Conventions don’t apply to ‘failed states’ such as Afghanistan, or the Geneva Conventions do apply in Afghanistan but don’t apply to people designated by the President as Al Qaida or Taliban. Both options, opined Powell would “provide the same practical flexibility in how we treat detainees, including with respect to interrogation and length of the detention.”⁴

We remind you of your duty as Minister of Citizenship and Immigration to uphold Canadian law and Canada’s international responsibilities to prevent and punish war crimes and crimes against humanity. Canadian policy to deny entry to people such as Mr. Powell is well known, “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.”⁵

We urge you to act quickly to ensure that Colin Powell is not allowed entry into Canada until a competent court has determined these allegations against him. To do otherwise effectively condones the massive violations of human rights and humanitarian law carried out by the US administration during Colin Powell’s tenure as US Secretary of State and with his assistance.

We look forward to receiving confirmation that you have acted on our request.

Sincerely,

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⁴ Colin Powell, *Draft Decision Memorandum for the President on the Applicability of the Geneva Convention to the Conflict in Afghanistan*, January 26, 2002.

⁵ Canada’s War Crimes Program 7th Annual Report (2003-2004)

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RELEVANT PROVISIONS OF THE CRIMES AGAINST HUMANITY AND WAR CRIMES ACT.

OFFENCES OUTSIDE CANADA

6. (1) Every person who, either before or after the coming into force of this section, commits outside Canada

...

- (b) a crime against humanity, or
- (c) a war crime,

is guilty of an indictable offence and may be prosecuted for that offence in accordance with section 8.

(1.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) is guilty of an indictable offence.

Punishment

(2) Every person who commits an offence under subsection (1) or (1.1)

- (a) shall be sentenced to imprisonment for life, if an intentional killing forms the basis of the offence; and
- (b) is liable to imprisonment for life, in any other case.

Definitions

(3) The definitions in this subsection apply in this section.

"crime against humanity" means murder, extermination, enslavement, deportation, imprisonment, torture, sexual violence, persecution or any other inhumane act or omission that is committed against any civilian population or any identifiable group and that, at the time and in the place of its commission, constitutes a crime against humanity according to customary international law or conventional international law or by virtue of its being criminal according to the general principles of law recognized by the community of nations, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

...

"war crime" means an act or omission committed during an armed conflict that, at the time and in the place of its commission, constitutes a war crime according to customary international law or conventional international law applicable to armed conflicts, whether or not it constitutes a contravention of the law in force at the time and in the place of its commission.

(4) For greater certainty, crimes described in articles 6 and 7 and paragraph 2 of article 8 of the Rome Statute are, as of July 17, 1998, crimes according to customary international law, and may be crimes according to customary international law before that date. This does not limit or prejudice in any way the application of existing or developing rules of international law.

ARTICLE 7

Crimes against humanity

1. For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) murder;

...

- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

- (f) torture;

- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

...

- (i) enforced disappearance of persons;
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

(a) "attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;

...

(e) "torture" means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;

...

(i) "enforced disappearance of persons" means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

PARAGRAPH 2 OF ARTICLE 8

War crimes

2. For the purpose of this Statute, "war crimes" means:

(a) grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (i) wilful killing;
- (ii) torture or inhuman treatment, including biological experiments;
- (iii) wilfully causing great suffering, or serious injury to body or health;
- (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;

...

- (vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) unlawful deportation or transfer or unlawful confinement;

(b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

- (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;

...

(iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;

...

(vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;

...

(ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

...

(xi) killing or wounding treacherously individuals belonging to the hostile nation or army;

...
(xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;

...
(xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...
(xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions;

[As a result of Security Council Resolution 1546 of 8 June 2004, it is arguable that the conflict ceased as of that day to be 'of an international character'. In that case, crimes committed from that day forward would fall under the following provisions:]

(c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other cause:

(i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
(ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;

...
(e) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

(i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
(ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;

...
(iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;

...
(vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2(f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;

...
(ix) killing or wounding treacherously a combatant adversary;

...
(f) paragraph 2(e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups.

[President Bush's 'command responsibility derives from the following provisions of Section 6 of the Crimes Against Humanity and War Crimes Act:]

Breach of responsibility by military commander

7. (1) A military commander commits an indictable offence if

(a) the military commander, outside Canada,

(i) fails to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 4, or

- (ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective command and control or effective authority and control, and as a result the person commits an offence under section 6;
- (b) the military commander knows, or is criminally negligent in failing to know, that the person is about to commit or is committing such an offence; and
- (c) the military commander subsequently
 - (i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or
 - (ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

Breach of responsibility by a superior

- (2) A superior commits an indictable offence if
 - (a) the superior, outside Canada,
 - (i) fails to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 4, or
 - (ii) fails, before or after the coming into force of this section, to exercise control properly over a person under their effective authority and control, and as a result the person commits an offence under section 6;
 - (b) the superior knows that the person is about to commit or is committing such an offence, or consciously disregards information that clearly indicates that such an offence is about to be committed or is being committed by the person;
 - (c) the offence relates to activities for which the superior has effective authority and control; and
 - (d) the superior subsequently
 - (i) fails to take, as soon as practicable, all necessary and reasonable measures within their power to prevent or repress the commission of the offence, or the further commission of offences under section 4 or 6, or
 - (ii) fails to take, as soon as practicable, all necessary and reasonable measures within their power to submit the matter to the competent authorities for investigation and prosecution.

Conspiracy, attempt, etc.

- (2.1) Every person who conspires or attempts to commit, is an accessory after the fact in relation to, or counsels in relation to, an offence referred to in subsection (1) or (2) is guilty of an indictable offence.

Jurisdiction

...

Punishment

- (4) Every person who commits an offence under subsection (1), (2) or (2.1) is liable to imprisonment for life.

Definitions

- (6) The definitions in this subsection apply in this section.

"military commander" includes a person effectively acting as a military commander and a person who commands police with a degree of authority and control comparable to a military commander.

"superior" means a person in authority, other than a military commander.