

Thursday, October 17, 2013

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Gilles Michaud, Commanding Officer,
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Dear Mr. Terry Beitner and Commanding Officer Gilles Michaud:

Request for arrest, investigation and prosecution of torture suspect Richard Cheney

Richard Cheney, former Vice President of the United States of America, is scheduled to speak in Toronto, Ontario at the 31 October 2013 luncheon of the Toronto Global Forum, hosted by the International Economic Forum of the Americas.

By letter dated 30 September 2013, Lawyers Against the War (LAW) advised the Prime Minister and the Ministers of Justice, Immigration and Foreign Affairs of the legal duties triggered by the planned entry into Canada of this notorious torture suspect. Canada is legally obliged to either bar Richard Cheney, as a person credibly suspected of torture and other grave crimes, from entering Canada, or ensure that Mr. Cheney is arrested on entry and either prosecuted in Canada or extradited to a jurisdiction capable and willing to prosecute.

Request for Investigation of torture allegations

The letter is a request for an investigation. We request you to ensure that the Canada War Crimes Program and/or the Special and International Investigation Unit or other such divisions of the RCMP and/or Ministry of Justice responsible for the investigation of allegations of torture, systematic or gross human rights violations, crimes against humanity or war crimes, to immediately take the following steps:

- Begin an investigation of Richard Cheney for aiding, abetting, counseling and encouraging the use of torture by U.S. officials between 13 November 2001 and December 2008 at Guantánamo Bay prison in Cuba, Abu Ghraib prison in Iraq, Bagram prison in Afghanistan and at other locations outside the U.S.;
- Advise the Prime Minister, Attorney General of Canada and Ministers of Immigration and Public Safety that the George W. Bush administration "...engaged in torture and other war crimes and crimes against humanity," and therefore that Richard Cheney is also inadmissible under section 35(1) (b) of the IRPA;
- Ensure that Richard Cheney will be arrested immediately upon entry to Canada in order to secure this person and prevent him receiving safe haven from prosecution; and,
- Initiate a prosecution of Richard Cheney for torture under the Criminal Code of Canada.

LAW has advised the Prime Minister and the Ministers of Justice, Immigration and Foreign Affairs that, as a person credibly accused of torture and other offences under sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act* (CAHWC), Richard Cheney is inadmissible to Canada under the following provisions of the *Immigration and Refugee Protection Act* (IRPA):

1. 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]”;
2. Section 34(1) (b) for, “engaging in or instigating the subversion by force of [Iraq and Afghanistan] any government.”; and,
3. Section 35 (1) (b) because he was a senior official of a government (the Bush administration) that 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].”

Canadian Law

Once Richard Cheney enters Canada:

- All of the torture alleged against and admitted by Richard Cheney, is deemed to have taken place in Canada, pursuant to s. 7(3.7) of the Criminal Code of Canada (CC);
- Criminal proceedings can be commenced against him in Toronto, Ontario (CC, section 7(5));
- Canada must ensure that he is either investigated and prosecuted for the indictable offence of torture in Canada or extradited to another country willing and able to do so (Convention against Torture, Article 7);
- Police officers are duty-bound to arrest and detain Richard Cheney for investigation on suspicion of torture as part of Canada’s mandatory legal obligation to prevent and punish torture globally;
- Police officers are duty bound to arrest Richard Cheney to ensure the proper conduct of his investigation and prosecution for torture in Canada or his extradition to a country willing and able to prosecute; and,
- The arrest of Richard Cheney can be carried out without warrant in advance of the commencement of criminal proceedings in Canada.

In the past, RCMP and Department of Justice officials in charge of the War Crimes Program have declined to arrest or investigate other members of the Bush administration suspected of torture, in reliance on a policy to apply the law only to suspects “present (living) in Canada on an ongoing basis”¹ or “who currently reside in Canada.”² This interpretation is contrary to the letter and spirit of the universal jurisdiction provisions of the CC and CAHWC and has been specifically rejected. In June 2012 the United Nations Committee against Torture rejected this policy and determined that Canada’s duty under the Convention against Torture was to ensure the “exercise of the universal jurisdiction over persons responsible for acts of torture, including foreign perpetrators who are temporarily present in Canada” (emphasis added).³

The RCMP has a common law and a statutory duty to investigate and prevent torture and other CAHWC crimes.⁴ In addition, the RCMP must carry out the mandate of the War Crimes Program

¹ Inspector Ron Charlebois, Officer in Charge, RCMP War Crimes Section, letter to LAW, March 19, 2009.

² Inspector Philippe Thibodeau, Officer in Charge, RCMP War Crimes Section, email to LAW, October 14, 2011.

³ Concluding Observations of the Committee against Torture/Canada, CAT/C/CAN/CO/6, 25 June 2012, para. 14.

⁴ *RCMP Act*, R.S. 1985, c. R-10, s. 18 and *Royal Canadian Mounted Police Regulations*, 1988, SOR/88-361, s. 17. See also “[common law] recognizes the existence of a broad conventional or customary duty in

to "...ensure that the Government of Canada has properly addressed all allegations of war crimes..." To do this, the RCMP must engage in, "...with the support of DOJ, investigating allegations involving reprehensible acts that could lead to a possible criminal prosecution."⁵ The War Crimes Program was established specifically to meet the challenge of investigating crimes committed outside Canadian territory by foreign nationals. We are aware that because of the nature of CAHWC crimes, suspected perpetrators will often be high-ranking civilian and military officials and will include former heads of state. It goes without saying that the RCMP is duty-bound to apply the law equally to all suspects.

Canada's international legal duties specifically prohibit treating the torture of which Richard Cheney stands accused as legal. Allowing Cheney into Canada and shielding him from arrest and prosecution would be tantamount to treating torture as legal and giving safe harbour in Canada to suspected war criminals contrary to Canadian and international law."

Torture Allegations

Richard Cheney has been credibly accused by knowledgeable people of being a key participant in the authorization and implementation of the widespread and systematic use of torture by U.S. officials. Evidence that U.S. officials used torture and other treatment prohibited by the Convention against Torture to interrogate and punish non-American captives in U.S.-controlled prisons in Guantánamo Bay, Abu Ghraib and other locations outside the U.S., has been part of the public record at least since 2004. Also part of the public record is evidence that torture of prisoners by U.S. officials killed some and injured many.

As Vice President of the United States of America from 2001-2009 and a senior member of the George W. Bush administration (Bush administration), Cheney knew of the plan to use torture, knew that torture was being used and failed to prevent the use or continued use of torture. Shortly after being appointed in 2001 as Richard Cheney's legal counsel, David Addington began work on the memoranda (Torture Memos) that purported to authorize the use of torture and other cruel, inhuman and degrading treatment or punishment on non-Americans captured by the U.S. and arbitrarily designated as people upon whom such techniques could be used. The 7 February 2002 Bush memorandum, key to creating the extra-legal system that allowed the use of torture without accountability for U.S. perpetrators and remedies for the victims, was specifically copied to Richard Cheney as a principal member of the planning team.

The interrogation techniques and other treatment of prisoners approved by Cheney and other members of the Bush administration include the use of a wet towel and dripping water to induce the perception of drowning (waterboarding), prolonged stress positions, sleep deprivation and sensory deprivation, hooding, enforced nakedness and hypothermia. The European Court of Human Rights has determined that shackling, hooding, sensory deprivation, beating, forcible undressing and non-medical insertion of a suppository, used by the CIA, are torture and that

the established constabulary as an arm of the State to protect the life, limb and property of the subject." *Shacht v. R.* [1973] 1 O.R. 221 at pp. 231-32.

⁵ Overview of Operations, Mandates and Structure, Canada's Crimes Against Humanity and War Crimes Program: <http://cbsa-asfc.gc.ca/security-securite/wc-cg/>.

keeping a prisoner incommunicado and denying access to any judicial framework for 23 days was inhuman and degrading treatment contrary to Article 3 of the Convention against Torture.⁶

Torture Evidence

Overwhelming evidence of the involvement of Richard Cheney and other members of the Bush administration in torture and other CAHWC crimes is widely available. The allegations coupled with the supporting evidence have triggered the legal duty—if Richard Cheney enters Canada—to ensure that Richard Cheney is arrested and either prosecuted for torture in Canada or extradited to a jurisdiction willing and able to prosecute.

Early reports of torture authorized by the Bush administration and used by U.S. officials at Abu Ghraib and Guantanamo Bay prisons include reports of the International Committee of the Red Cross⁷, the U.S. Armed Forces,⁸ scholars and jurists including Professor Jordan Paust⁹ and Judge Evan Wallach,¹⁰ the reports of human rights organizations including Human Rights Watch¹¹ and the Center for Constitutional Rights,¹² and in many other reports available in print, on television, on radio and on the Internet.

More recent reports include those of Physicians for Human Rights,¹³ the United Nations Committee against Torture,¹⁴ the Council of Europe Parliamentary Assembly,¹⁵ and the U.S. Senate Armed Services Committee.¹⁶ The latter report concluded, “senior officials in the United States government solicited information on how to use aggressive techniques,

⁶ *El-Masri v. The Former Yugoslav Republic of Macedonia* (Application no. 39630/09), European Court of Human Rights, 13 December 2012, paras 204-05.

[http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621#{\"itemid\":\[\"001-115621\"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-115621#{\).

⁷ Report of the International Committee of the Red Cross (ICRC) on the Treatment by the Coalition Forces of POWs during Arrest, Internment, and Interrogation, Feb. 2004.

⁸ Taguba, Maj. Gen. Antonio M., *Article 15-6 Investigation of the 800th Military Police Brigade* (available online at: <http://www.globalsecurity.org/intell/library/reports/2004/800-mp-bde.htm>) [investigation ordered by Lt. Gen. Ricardo Sanchez, commander of Joint Task Force 7, the senior U.S. military official in Iraq].

⁹ Professor Jordan Paust, “The Common Plan to Violate the Geneva Conventions,” *Jurist*, 25 May 2004

¹⁰ Evan J. Wallach, *The Logical Nexus Between The Decision To Deny Application of The Third Geneva Convention To The Taliban and al Qaeda, and the Mistreatment of Prisoners in Abu Ghraib*, 29 Sep. 2004.

¹¹ Human Rights Watch, *Guantánamo: Detainee Accounts*, Fall 2004: pp. 24 [compilation by Human Rights Watch of accounts by thirty-three former detainees at Guantánamo of their experiences there].

¹² Center for Economic and Social Rights, *Beyond Torture: U.S. Violations of Occupation Law in Iraq*, 10 June 2004: 28 pp. (available online at:

<http://www.cesr.org/downloads/Beyond%20Torture%20US%20Violations%20of%20Occupation%20Law%20in%20Iraq.pdf>).

¹³ *Broken Laws, Broken Lives: Medical Evidence of Torture by U.S. Personnel and its Impacts*, A Report by Physicians for Human Rights, June 2008 (available online at: http://brokenlives.info/?page_id=69).

¹⁴ Conclusions and recommendations of the Committee against Torture: UNITED STATES OF AMERICA, CAT/C/USA/CO/2, 25 July 2006, paras 22, 24 and 26.

¹⁵ 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.

¹⁶ *Senate Armed Services Committee Inquiry Into The Treatment Of Detainees In U.S. Custody*, Dec. 11, 2008. Executive Summary, p. xii

(available online at: http://armed-services.senate.gov/Publications/Detainee%20Report%20Final_April%2022%202009.pdf).

redefined the law to create the appearance of their legality, and authorized their use against detainees.”

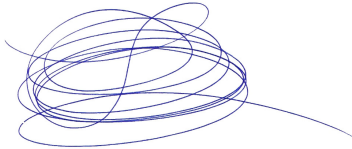
While Richard Cheney has attempted to justify the use of waterboarding and other prohibited treatment—saying the impugned interrogation techniques were not torture “worked,” and was approved by government lawyers—he has not denied that he approved and promoted their use. Speaking about tactics used against Khalid Sheikh Mohammed, which included waterboarding on a reported 183 occasions, Cheney admitted to “helping get the process cleared, as the agency in effect came in and wanted to know what they could and couldn't do. And they talked to me, as well as others, to explain what they wanted to do. And I supported it” (16 December 2008, ABC News). He has also admitted to the use of waterboarding “as a general policy that we had approved” (30 August 2009, FOX News).

Many have concluded that the responsibility of Richard Cheney and other members of the Bush administration for torture and other criminal atrocities has already been conclusively established. Canada’s duty to condemn, investigate, prosecute and punish torture and to take effective action to combat impunity for the atrocities committed by Richard Cheney as a member of the Bush administration is unavoidable.

LAW, along with other organizations, is prepared to assist law enforcement with identifying evidence of Richard Cheney’s complicity in torture, as well as with legal analyses of the applicable Canadian and international law. Among the respected organizations that may provide legal analyses and references to evidence are the Brussels Tribunal, European Centre for Constitutional and Human Rights, International Association of Democratic Lawyers, International Initiative to Prosecute US Genocide in Iraq, National Lawyers Guild and Rights International Spain.

We thank you in advance for a prompt reply to the important requests made in this letter.

Respectfully,



Gail Davidson, Lawyers Against the War

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