

Civil rights groups file war crimes complaint in Germany against top US officials

Role of Rumsfeld et al in international program of torture & illegal detention

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On November 14, lawyers submitted to a German prosecutor a complaint of war crimes against outgoing US Defense Secretary Donald Rumsfeld, former White House Counsel and current Attorney General Alberto Gonzales, former CIA director George Tenet and 11 other current and former Bush administration officials and military officers. The charges relate primarily to the role of these figures in devising and implementing an international program of torture and illegal detention.

The complaint was prepared by the US-based Center for Constitutional Rights (CCR) along with several other civil rights organizations on behalf of 12 victims of US policy, including 11 Iraqis who had been detained and allegedly tortured at Abu Ghraib and one Saudi prisoner currently held at Guantánamo Bay. The complaint was submitted by Berlin attorney Wolfgang Kaleck.

The legal documents drawn up by Kaleck and the civil rights groups provide a systematic portrait of a very deliberate policy of torture, from the CIA programs initiated under Bush's order following September 11, through the legal memos drafted by administration lawyers to justify torture, and including the brutal treatment meted out to thousands of prisoners in Guantánamo Bay, Abu Ghraib and elsewhere.

Regardless of what happens with this particular complaint, it is valuable in highlighting the basic fact that the United States government has been, and continues to be, run by war criminals. Though they are not cited in the complaint, any objective list of those guilty of war crimes must also include the chief architects of US policy, President Bush and Vice President Dick Cheney.

A background brief prepared by the CCR notes that the American government "has treated hundreds if not thousands of detainees in a coercive manner, in accordance with 'harsh interrogation techniques' ordered by Secretary Rumsfeld himself that legally constitute torture and/or cruel, inhuman and degrading treatment, in blatant violation of the provisions of the 1949 Geneva Conventions, the 1984 Convention Against Torture and the 1977 International Covenant on Civil and Political Rights—to all of which the United States is a party. Under international humanitarian treaty and customary law, and as re-stated in German law, these acts of torture and cruel, inhuman or degrading treatment constitute war crimes."

The complaint is being brought in Germany because German law allows war crimes cases to be heard in German courts regardless of where the alleged crimes were committed. The

United States has refused to recognize the International Criminal Court, and recent legislation passed in the US, the Military Commissions Act of 2006, changes domestic law to immunize American officials from domestic prosecution for war crimes.

In order for the case to proceed, the German Federal Prosecutor must decide to open an investigation, which could then lead to a criminal prosecution. This is unlikely to happen, as the prosecutor is a government appointee of the German government, which has no interest in seeing the case brought forward. Germany dismissed a previous case brought by the same organizations in November 2004 on the spurious grounds that investigations were underway in the US.

The current complaint contains new evidence, new testimony (including from Janis Karpinski, the former head of Military Police at Abu Ghraib), accusations against additional administration figures, and new plaintiffs.

Michael Ratner, president of the CCR, in an interview on November 14 with *Democracy Now!*, noted that the rationale cited for dismissing the last complaint has been completely invalidated by recent developments, since there have been no serious investigations in the US. "Nothing has been done to go after Donald Rumsfeld ... or any of the other people we've named," he said. Ratner also noted that the Military Commissions Act, signed into law in October, renders absurd any suggestion that the US is investigating the responsibility of top officials. "Germany can no longer say [that] the US is seriously investigating, because the US has essentially immunized these defendants," he said.

Ratner also pointed to the recent resignation of Rumsfeld as an added opportunity to bring charges against him.

The complaint against Rumsfeld is based his position as head of the military and therefore his responsibility for military policy. Specifically, in late 2002, Rumsfeld signed off on a list of interrogation techniques to be used against prisoners at Guantánamo Bay that included forced nudity, stress positions, religious humiliation, prolonged isolation, sensory deprivation, use of dogs to scare prisoners, and 'mild' physical contact.

According to the CCR, the Saudi detainee at Guantánamo Bay, Mohammed al-Qahtani, was a victim of this policy, having been extensively tortured while a prisoner under military control.

Another individual listed in the complaint is Major General Geoffrey Miller, who oversaw the prison at Guantánamo Bay before traveling to Iraq (under the direction of Rumsfeld and Undersecretary of Defense for Intelligence Stephen Cambone, also named as a defendant) to "gitmoize" Iraq.

According to the published testimony of Janis Karpinski, included as part of the complaint, the abuse at Abu Ghraib, graphically revealed to the world in a series of infamous photographs leaked in April 2004, began after a visit to Iraq by Miller in the fall of 2004. According to Karpinski, Miller told intelligence officers in Iraq, "Look, you have to treat [the prisoners] like dogs. If they ever feel like anything more than dogs, you have effectively lost control of the interrogation." Miller made clear that the military police, which operated under Karpinski's control, were to "set the conditions" for proper interrogation.

Shortly after Miller's visit, in September 2003, General Ricardo Sanchez, then commander of

US forces in Iraq and another defendant named in the complaint, authorized a series of more aggressive interrogation techniques.

Karpinski also testifies that on several occasions the military police were ordered by Sanchez, General Barbara Fast, the head of military intelligence in Iraq, and Colonel Marc Warren, Sanchez's legal advisor, to "hold prisoners without putting their names, information or prisoner number in the database." That is, she was instructed to keep "ghost detainees," a clear violation of the Geneva Conventions. According to Karpinski, these were instructions "originating at the Pentagon, from Secretary Rumsfeld." Both Warren and Fast are also named in the complaint.

The 2006 complaint, unlike that filed in 2004, accuses several additional lawyers in the Bush administration who helped draft memoranda that created a pseudo-legal justification for a policy of torture. These lawyers include Gonzales; John Yoo, former deputy assistant attorney general and a prominent advocate of unrestrained presidential power; Jay Bybee, former assistant attorney general and now a federal judge; William Haynes II, general counsel for the Department of Defense; and David Addington, former chief counsel to Vice President Cheney, now Cheney's chief of staff.

By including these figures, the groups are indicating that they consider as war criminals not only those who directly ordered or were responsible for torture, but also those who manufactured the rationale upon which this torture has been based. Yoo and Bybee in particular were responsible for the drafting of the infamous memo that sought to narrowly define torture and argue that the President has the constitutional authority to order torture because of his position as Commander-in-Chief.

Finally, the complaint includes former CIA director George Tenet. Earlier this year, President Bush acknowledged the existence of secret CIA detention centers, at which it has been widely reported that prisoners have been tortured. The CIA has also overseen an illegal "extraordinary rendition" program, through which prisoners have been transported to countries that are known for using torture.

The CIA acknowledged earlier this week that President Bush signed a directive shortly after September 11, 2001, which authorized the creation of its detention facilities. The document has not been publicly released, but according to the ACLU, it also includes a list of interrogation methods that could be used against prisoners. It is likely that this directive, along with an accompanying Justice Department legal memorandum, sanctions the use of torture techniques such as waterboarding.

All of the crimes involving the torture and detention of prisoners stem from the policy of unconstrained militarism initiated by the American ruling elite on the pretext of the "war on terror." As the WSWS noted shortly after the invasion of Iraq, the fundamental crime was the decision to launch an unprovoked war of aggression, violating the basic principle of international law set out in the Nuremberg trials of Nazi war criminals.

The policy of torture was put in place in order to terrorize and intimidate any resistance to the imperialist policy of the United States.

The ability of the top architects of the criminal policy of the American government to thus far escape any accountability lies in the fact that there exists no fundamental opposition to this policy within any section of the political elite. Those who must be tried for these crimes

include not only those specifically named in the complaint filed in Germany, but all those in the political and media establishment, and in both parties, who have facilitated this policy through a campaign of lies and intimidation.

The Democratic Party, which won control of both house of Congress in the November elections on the basis of overwhelming antiwar sentiment among the American people, quickly announced that the question of the impeachment of Bush was off the table. This was a deliberate signal that the Democrats are not interested in challenging the legitimacy—and the legality—of the Iraq war.

As demonstrated by the passage of the Military Commissions Act last month, the criminal policy outlined in the complaint not only continues, it is intensifying. The Military Commissions Act sanctions indefinite detention, drumhead tribunals, torture and the denial of basic *habeas corpus* rights to all those caught up in the “war on terror.” It passed with the complicity of both political parties and its far-reaching significance has been systematically covered-up by the mass media.

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