

Prosecution of George W. Bush by the International Criminal Court

An Open Letter to Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court

By [David Swanson](#)

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Theme: [Crimes against Humanity](#), [Law and Justice](#)

In-depth Report: [Prosecute Bush/Cheney](#)

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Dear Chief Prosecutor,

Congratulations on your request for an arrest warrant for the president of Sudan. When the rule of law cannot be justly enforced within a nation, it must be enforced internationally. In that regard, I would like to recommend that you seek an arrest warrant for the president of my nation, the United States of America. I have read your letter of February 9, 2006, in which you decline to seek prosecution of George W. Bush, and I believe new evidence compels another review.

With all due respect for the difficulty of your work, the case you have brought against the president of Sudan has followed quite different standards than those applied in your refusal to prosecute the president of the United States. In fact, you have refused to consider prosecution of George W. Bush because the United States is not a member of the International Criminal Court. But Sudan is also not a member of the International Criminal Court. Were you to consider the evidence of international crimes in Iraq as it exists today, and to consider the crimes committed on behalf of the president of the United States by members of the United States military and mercenaries employed by the United States, I believe you would find a case for prosecution that met the standards you applied, and applied well and admirably, to the president of Sudan.

While there is good reason to expect multiple prosecutions of George W. Bush and of his Vice President and top advisors by individual nations, the rule of law would benefit were the International Criminal Court to take the lead. Should it fail to do so, the entire idea of international law will suffer seriously. In the time since your 2006 letter, Judge Baltasar Garzón of Spain, on March 20, 2008, has written these words in El Pais:

“Breaking every international law, and under the pretext of the war against terror, there has taken place since 2003 a devastating attack on the rule of law and against the very essence of the international community. In its path, institutions such as the United Nations were left in tatters, from which it has not yet recovered....We should look more deeply into the possible criminal responsibility of the people who are, or were, responsible for this war and see whether there is sufficient evidence to make them answer for it....There is enough of an argument in 650,000 deaths for this investigation and inquiry to start without more delay.”

You wrote in your 2006 letter that you cannot prosecute the crime of aggressive war but only the commission of war crimes that take place during a war, and that in 2009 it may become possible for you to prosecute the crime of aggression. While we must all strive to make that prosecution possible in 2009, it is not needed in order to prosecute George W. Bush, and his prosecution should not wait. As the Nuremberg Tribunal stated so well, “To initiate a war of aggression...is not only an international crime, it is the supreme international crime, differing only from other war crimes in that it contains within itself the accumulated evil of the whole.” This has proven to be true in Iraq, and in Bush’s global “war on terrorism”, and there is no reason to delay prosecution for each separate element of the accumulated evil.

In order to prosecute crimes against humanity, you write that you need to identify “widespread or systemic attack directed against any civilian population.” The civilian population of Iraq has suffered as a result of the US-led invasion and occupation in numbers and proportion that can only be called widespread and systemic. Iraqi deaths as a result of the invasion and occupation, measured above the high death rate under international sanctions preceding the attack, are estimated at 1.2 million by two independent sources (Just Foreign Policy’s updated figure based on the Johns Hopkins / Lancet report, and the British polling company Opinion Research Business’s estimate as of August 2007). According to the United Nations High Commissioner for Refugees (UNHCR), the number of Iraqis who have fled their homes has reached 4.7 million. If these estimates are accurate, a total of nearly 6 million human beings have been displaced from their homes or killed. Many times that many have certainly been injured, traumatized, impoverished, and deprived of clean water and other basic needs.

In examining attacks on civilian populations, some specific incidents can be highlighted, not all of them occurring between March and May 2003, the period of time you referred to in your 2006 letter, and not all of them involving soldiers of the United Kingdom. It is necessary to examine the entire length of the US-led occupation, and to examine the crimes of US troops and mercenaries. Since May of 2005 I have collected evidence of these crimes on a website at <http://afterdowningstreet.org>[2] [A thoroughly documented October 2006 report posted there and prepared by Consumers for Peace \(www.consumersforpeace.org \[3\]\) with the advice of Karen Parker, President of the Association of Humanitarian Lawyers \(www.humanlaw.org \[4\]\) and Chief Delegate to the United Nations for the International Educational Development/Humanitarian Law Project \(IED/AHL\), will provide you with much useful evidence of crimes during the sieges of Fallujah, Samara, Tal Afar, and other cities, as well as systemic violations of the basic duties of an occupying power, and widespread illegal use of a variety of weapons. See: http://afterdowningstreet.org/warcrimesreport \[5\]](http://afterdowningstreet.org)

The above report, as many others, also makes the case that the killing of civilians in

thousands of isolated incidents has been standard operating procedure for occupying forces in Iraq:

“One reason for the huge numbers of civilian casualties under the U.S. occupation is that U.S. soldiers have often behaved as if they have been told to shoot anything that moves. As noted in the Christian Science Monitor: ‘The rules of engagement instruct U.S. soldiers to bring withering force to bear on positions they’re attacked from, even when an insurgent ducks into a private house for cover’. However, many NGOs have attested that private homes and persons who are clearly civilians are attacked without any possible excuse that a particular attack was directed at insurgents....

“‘One sergeant in northern Iraq puts it this way: “If someone runs into a house, we’re going to light it up. If civilians get killed in there, that’s a tragedy, but we’re going to keep doing it and people are going to get the message that they should do whatever they can to keep these people out of their neighborhoods.”’- Dan Murphy, Christian Science Monitor....

“An attack on the small town of Baiji illustrates situations that have been repeated numerous times and on both larger and smaller scales. The following excerpts are taken from an article by Michael Schwartz, using reports from the New York Times and the Washington Post:

‘In early January 2006, ...a relatively small incident (not even worthy of front page coverage)...illustrated perfectly the capacity of the American military to kill uncounted thousands of Iraqi civilians each year.’

“Schwartz cited the Times account of what happened at Baiji, 150 miles north of Baghdad, on January 3. The account relied on U.S. officials who had stated:

“‘A pilotless reconnaissance aircraft detected three men planting a roadside bomb about 9 p.m. The men “dug a hole following the common pattern of roadside bomb emplacement,” the military said in a statement. “The individuals were assessed as posing a threat to Iraqi civilians and coalition forces, and the location of the three men was relayed to close air support pilots.”

“‘The men were tracked from the road site to a building nearby, which was then bombed with “precision guided munitions,” the military said. The statement did not say whether a roadside bomb was later found at the site. An additional military statement said Navy F-14’s had “strafed the target with 100 cannon rounds” and dropped one bomb.”

“‘Schwartz continues his narrative: The target was a “building nearby,” identified by a drone aircraft as an enemy hiding place. According to eyewitness reports given to the Washington Post, the attack effectively demolished the building, and damaged six surrounding buildings. While in a perfect world, the surrounding buildings would have been unharmed, the reported amount of human damage in them (two people injured) suggests that, in this case at least, the claims of “precision” were at least fairly accurate.

“‘The problem arises with what happened inside the targeted building, a house inhabited by a large Iraqi family. Piecing together the testimony of local residents, the Times reporter concluded that fourteen members of the family were in the house at the time of the attack and nine were killed.

“Because in this case — unlike in so many others in which American air power utilizes “precisely guided munitions” — there was on-the-spot reporting for an American newspaper, the U.S. military command was required to explain these casualties. Without conceding that the deaths actually occurred, Lt. Col. Barry Johnson, director of the Coalition Press Information Center in Baghdad, commented: “We continue to see terrorists and insurgents using civilians in an attempt to shield themselves.”

“Notice that Lt. Col. Johnson (while not admitting that civilians had actually died) did assert U.S. policy: If suspected guerrillas use any building as a refuge, a full-scale attack on that structure is justified, even if the insurgents attempt to use civilians to “shield themselves.” These are, in other words, essential U.S. rules of engagement. The attack should be “precise” only in the sense that planes and/or helicopter gunships should seek as best they can to avoid demolishing surrounding structures.”

A thoroughly documented Article of Impeachment introduced in the United States House of Representatives in June 2008 charges, in part:

“In the course of invading and occupying Iraq, the President, as Commander in Chief, has taken responsibility for the targeting of civilians, journalists, hospitals, and ambulances, use of antipersonnel weapons including cluster bombs in densely settled urban areas, the use of white phosphorous as a weapon, depleted uranium weapons, and the use of a new version of napalm found in Mark 77 firebombs. Under the direction of President George Bush the United States has engaged in collective punishment of Iraqi civilian populations, including but not limited to blocking roads, cutting electricity and water, destroying fuel stations, planting bombs in farm fields, demolishing houses, and plowing over orchards.

“Under the principle of ‘command responsibility’, i.e., that a de jure command can be civilian as well as military, and can apply to the policy command of heads of state, said command brings President George Bush within the reach of international criminal law under the Additional Protocol I of June 8, 1977 to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, Article 86 (2). The United States is a state signatory to Additional Protocol I, on December 12, 1977.

“Furthermore, Article 85 (3) of said Protocol I defines as a grave breach making a civilian population or individual civilians the object of attacks. This offense, together with the principle of command responsibility, places President George Bush’s conduct under the reach of the same law and principles described as the basis for war crimes prosecution at Nuremberg, under Article 6 of the Charter of the Nuremberg Tribunals: including crimes against peace, violations of the laws and customs of war and crimes against humanity, similarly codified in the Rome Statute of the International Criminal Court, Articles 5 through 8.”

See: <http://afterdowningstreet.org/busharticleVIII> [6]

Your 2006 letter explained that in your investigation of willful killing and inhumane treatment in Iraq you were able to find fewer than 20 victims. It would appear you were limiting your investigation to victims of British troops, if not limiting it in other ways as well. More than 20 victims of U.S. murder, torture, and inhumane treatment can be found in photographic evidence from Abu Ghraib prison alone.

According to the just released book “The Dark Side: The Inside Story of How the War on

Terror Turned Into a War on American Ideals,” by Jane Mayer, a report by the International Committee of the Red Cross documents and describes what it concludes is unequivocally torture in widespread use by the United States in Iraq and elsewhere. Mayer reports that this Red Cross report has long been known to President Bush. Bush, of course, signed an order in February 2002 brushing aside the Geneva Conventions and authorizing the use of torture. The evidence of torture by US mercenaries and troops is extensive and includes the testimony of numerous victims and witnesses, photographs, and video.

Here are a few sources of information made public since your 2006 letter:

ACLU Announces Publication of Administration of Torture, a Groundbreaking Account of Prisoner Abuse in U.S. Custody Abroad

<http://aclu.org/about/staff/administrationoftorture.html> [7]

FBI Details Possible Detainee Abuse

<http://afterdowningstreet.org/node/16890> [8]

Cheney’s Leading Role in Torture

<http://blog.washingtonpost.com/cheney> [9]

Uninvestigated Crimes: CIA Torture Flights Out of North Carolina

<http://afterdowningstreet.org/node/17997> [10]

Abu Ghraib: “Man In the Hood” provides testimony at War Crimes Conference

<http://afterdowningstreet.org/node/18337> [11]

New Light Shed on CIA’s “Black Site” Prisons

<http://afterdowningstreet.org/node/19084> [12]

Aspects of Padilla’s Treatment Confirmed

<http://afterdowningstreet.org/node/19085> [13]

What Happened to the Padilla Interrogation Videos?

<http://afterdowningstreet.org/node/19632> [14]

‘We Were Torturing People For No Reason’ — A Soldier’s Tale

<http://afterdowningstreet.org/node/20720> [15]

‘Outsourced Guantanamo’ – FBI & CIA Interrogating Detainees in Secret Ethiopian Jails, U.S. Citizen Among Those Held

<http://afterdowningstreet.org/node/20977> [16]

CIA Tortured Me in Iraq, Claims Freed Iranian Diplomat

<http://afterdowningstreet.org/node/20992> [17]

Photos of ‘Tortured’ Iraqi’s Corpse Released

<http://afterdowningstreet.org/node/21391> [18]

Former Guantanamo Inmate Describes Interrogations

<http://afterdowningstreet.org/node/23719> [19]

Rumsfeld, Perjury, and Shoving Things Up Rectums

<http://afterdowningstreet.org/node/23721> [20]

Guantánamo Man's Family Release 'Torture' Dossier

<http://afterdowningstreet.org/node/25717> [21]

CIA Detention Program Remains Active: U.S. Official

<http://afterdowningstreet.org/node/27486> [22]

Torture Victim Tells His Story to Congress

<http://afterdowningstreet.org/node/27876> [23]

Guantanamo Military Lawyer Breaks Ranks to Condemn "Unconscionable" Detention

<http://afterdowningstreet.org/node/28147> [24]

Dozens of 'Ghost Prisoners' Not Publicly Accounted For

<http://afterdowningstreet.org/node/28211> [25]

Torture Orders Came from Bush

<http://afterdowningstreet.org/node/28347> [26]

Flight Logs Reveal Secret Rendition

<http://afterdowningstreet.org/node/28955> [27]

Jordan's Spy Agency: Holding Cell for the CIA

<http://afterdowningstreet.org/node/29065> [28]

Former Chief Prosecutor for the Office of Military Commissions Resigned his Post

<http://afterdowningstreet.org/node/29300> [29]

Kiriakou: White House Approved Abuzabaydah's WaterBoarding

<http://afterdowningstreet.org/node/29335> [30]

In fact, the evidence of crimes against humanity authorized and ordered by my president is overwhelming. Please allow me to recommend for your review just a few sources of information that have become public since your 2006 letter was written:

2007 May 4 United States Army Surgeon General's Report on Declining Morale and War Crimes

<http://armymedicine.army.mil/news/mhat/mhat.html> [31]

US Attack on Iraqi Peace Parliamentarian

<http://afterdowningstreet.org/node/16887> [32]

US Electromagnetic Weapons and Human Rights

<http://afterdowningstreet.org/node/17011> [33]

'Shocking' video: Shi'a Iraqi soldiers beat Sunnis as US trainers watch

<http://afterdowningstreet.org/node/17779> [34]

Death Squads, American Style

<http://afterdowningstreet.org/node/17862> [35]

Fifth Marine Pleads Guilty in Murder of Innocent Man

<http://afterdowningstreet.org/node/18557> [36]

Jailed Two Years, Iraqi Tells of Abuse by Americans

<http://afterdowningstreet.org/node/18690> [37]

Coerced Labor Building Baghdad Embassy?

<http://afterdowningstreet.org/node/23182> [38]

Marine Told to Destroy Haditha Photos

<http://afterdowningstreet.org/node/23473> [39]

The Other War: Iraq Veterans Speak Out on Shocking Accounts of Attacks on Iraqi Civilians

<http://afterdowningstreet.org/node/24605> [40]

Marine Says Beatings Urged in Iraq

<http://afterdowningstreet.org/node/24762> [41]

Video: Marine on Hamdania Shooting

<http://afterdowningstreet.org/node/25661> [42]

U.S. Soldier Convicted of Beating Iraqi Detainee With Baseball Bat

<http://afterdowningstreet.org/node/25824> [43]

Marine Tells of Order to Execute Haditha Women and Children

<http://afterdowningstreet.org/node/26350> [44]

Documents Show Troops Disregarding Rules

<http://afterdowningstreet.org/node/26439> [45]

U.S. Aims To Lure Insurgents With 'Bait'

<http://afterdowningstreet.org/node/27114> [46]

Soldier: Sergeant From N.C. Ordered Me to Shoot Unarmed Iraqi Man

<http://afterdowningstreet.org/node/27233> [47]

US Violating Chemical Weapons Convention in Iraq

<http://afterdowningstreet.org/node/28563> [48]

I would, in particular, recommend for your review the first-person testimony of U.S. soldiers and Marines returned from Iraq:

<http://ivaw.org/wintersoldier> [49]

In your 2006 letter you suggest that the crimes, if they are to be prosecuted, must have been "committed as part of a plan or policy or as part of a large-scale commission of such crimes." I believe this can be well established for the war crimes authorized and ordered by the president of the United States in Iraq and elsewhere. Not only has it been U.S. policy to attack and to punish civilians, to arbitrarily detain, and to torture, but President George W. Bush has gone to great lengths to ensure that those obeying his illegal orders not be subject

to prosecution. The question of whether U.S. mercenaries or soldiers will be subject to Iraqi law is a major sticking point in ongoing negotiations between Bush and Prime Minister Nouri al Maliki.

According to a thoroughly documented Article of Impeachment introduced against President Bush in the United States House of Representatives in June 2008, Bush has

“established policies granting United States government contractors and their employees in Iraq immunity from Iraqi law, U.S. law, and international law.

“Lewis Paul Bremer III, then-Director of Reconstruction and Humanitarian Assistance for post-war Iraq, on June 27, 2004, issued Coalition Provisional Authority Order Number 17, which granted members of the U.S. military, U.S. mercenaries, and other U.S. contractor employees immunity from Iraqi law.

“The Bush Administration has chosen not to apply the Uniform Code of Military Justice or United States law to mercenaries and other contractors employed by the United States government in Iraq.

“Operating free of Iraqi or U.S. law, mercenaries have killed many Iraqi civilians in a manner that observers have described as aggression and not as self-defense. Many U.S. contractors have also alleged that they have been the victims of aggression (in several cases of rape) by their fellow contract employees in Iraq. These charges have not been brought to trial, and in several cases the contracting companies and the U.S. State Department have worked together in attempting to cover them up.

“Under the Fourth Geneva Convention, to which the United States is party, and which under Article VI of the U.S. Constitution is therefore the supreme law of the United States, it is the responsibility of an occupying force to ensure the protection and human rights of the civilian population. The efforts of President Bush and his subordinates to attempt to establish a lawless zone in Iraq are in violation of the law.”

See: <http://afterdowningstreet.org/busharticleXV> [50]

For documentation of crimes by U.S. mercenaries, please review these reports:

2007 Oct 11 UN Report on Blackwater and Other Mercenaries Killing Indiscriminately
<http://uniraq.org/FileLib/misc/HR%20Report%20Apr%20Jun%202007%20EN.pdf> [51]

Blackwater Security Shot Iraqi Man
<http://afterdowningstreet.org/node/18363> [52]

CIA Mercenary Gets 8 Years for Beating a Prisoner to Death
<http://afterdowningstreet.org/node/18556> [53]

Blackwater Guards Killed 16 as U.S. Touted Progress
<http://afterdowningstreet.org/node/27244> [54]

FBI Admits Blackwater Mercenaries Murdered at Least 14 People
<http://afterdowningstreet.org/node/28704> [55]

The crimes of George W. Bush are not limited to Iraq. For an excellent summary and extensive documentation of charges that he has authorized illegal detention, torture, and rendition to nations that torture, please see these three Articles of Impeachment:

<http://afterdowningstreet.org/busharticleXVII> [56]

<http://afterdowningstreet.org/busharticleXVIII> [57]

<http://afterdowningstreet.org/busharticleXIX> [58]

Thank you for your careful and impartial consideration and courage.

Sincerely,

David Swanson

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