

Peace & Justice Commission

ACTION CALENDAR

February 27, 2007

To: Honorable Mayor and  
Members of the City Council

From: Peace & Justice Commission

Submitted by: Manuel Hector, Secretary, Peace & Justice Commission

Subject: Prosecution of Donald Rumsfeld and Other Government Officials In Germany

RECOMMENDATION

Adopt a Resolution endorsing the case of Rumsfeld *et al* by joining the list of “co-plaintiffs”.

FISCAL IMPACTS OF RECOMMENDATION

None. Attachment 2 is a letter from Michael Ratner, President of the Center for Constitutional Rights and Attorney in the German Case filed against Donald Rumsfeld and others for alleged human rights violations, explaining that if the City of Berkeley joins the lawsuit as a “co-plaintiff”, it will not have any monetary liability or any other liability for signing on as a “co-plaintiff”.

CURRENT SITUATION AND ITS EFFECTS

On November 14, 2006, a criminal complaint was filed in Germany against United States Secretary of Defense Donald Rumsfeld, Former Director of Central Intelligence of the United States George Tenet, Former United States Deputy Assistant General John Yoo, Assistant Attorney General for the Office of Legal Counsel in the United States Justice Department of Justice Hay S. Bybee, Lieutenant General Ricardo Sanchez, and other members of the Government and Military of the United States for war crimes and torture perpetrated against Iraqi detainees at Abu Ghraib, Iraq (2003/2004), and in Guantánamo Bay Naval Station.

The criminal complaint is a request for the German Federal Prosecutor to open an investigation and, ultimately, a criminal prosecution that will look into the responsibility of high-ranking United States officials for authorizing war crimes in the context of the so-called “War on Terror.” The complaint is brought on behalf of twelve torture victims – eleven Iraqi citizens who were held at Abu Ghraib prison and one Guantánamo detainee – and is being filed by the Center for Constitutional Rights (CCR), the International Federation for Human Rights (FIDH), the Republican Attorneys’ Association (RAV) and others, all represented by Berlin Attorney Wolfgang Kaleck.

The criminal complaint is related to a 2004 complaint that was dismissed, but the new complaint is filed with much new evidence, new defendants and plaintiffs, a new German Federal Prosecutor and, most important, under new circumstances that include the resignation of Donald Rumsfeld as Secretary of Defense and the passage of the Military Commissions Act of 2006 in the United States, which attempts to grant officials retroactive immunity from prosecution for war crimes.

The criminal complaint is being filed under the Code of Crimes against International Law (CCIL), enacted by Germany in compliance with the Rome Statute creating the International Criminal Court in 2002, which Germany ratified. The CCIL provides for “universal jurisdiction” for war crimes, crimes of genocide, and crimes against humanity. It enables the German Federal Prosecutor to investigate and prosecute crimes constituting a violation of the CCIL, irrespective of the location of the defendant or plaintiff, the place where the crime was carried out, or the nationality of the persons involved.

### BACKGROUND

At the meeting of December 4, 2006, the Peace & Justice Commission discussed the case against Rumsfeld, Tenet and other government officials filed in Germany. After much discussion, the Commission approved the following motion:

**M/S/C** (*Meola, Freedkin*) that the Peace & Justice Commission recommends to the City Council that the City of Berkeley endorse the case of Rumsfeld *et al* by signing on as a “co-plaintiff”.  
**Ayes:** Unanimous; **Absent:** Kashner, Litman, Seaton, Wagley.

The criminal complaint is being filed on behalf of eleven Iraqi citizens who were victims of gruesome crimes at the infamous Abu Ghraib prison. They were severely beaten, deprived of sleep and food, sexually abused, stripped naked and hooded, and exposed to extreme temperatures. Another plaintiff in the case is Mohammed al Qahtani, a Saudi citizen detained at Guantánamo since January 2002. At Guantánamo, Mr. Al Qahtani was subjected to a regime of aggressive interrogation techniques, known as the “First Special Interrogation Plan,” that were authorized by United States Secretary of Defense Donald Rumsfeld, and implemented under the supervision and guidance of Secretary Rumsfeld and the commander of Guantánamo, defendant Major General Geoffrey Miller. These methods included 50 days of severe sleep deprivation and 20-hour interrogations, forced nudity, sexual humiliation, religious humiliation, physical force, prolonged stress positions, and prolonged sensory over-stimulation.

None of these plaintiffs – and the hundreds of other detainees subjected to similar abuses – has seen justice, and none of those who authorized these techniques at the top of the chain of command has been held liable for it, or even seriously and independently investigated.

### **The 2004 Complaint**

In November 2004, the previous German Federal Prosecutor failed to prosecute an earlier complaint against many of these same defendants filed by CCR with the support of FIDH and RAV. The United States pressured Germany to drop the case, saying not doing so would jeopardize United States-German relations, and the complaint was ultimately dismissed in February 2005 on the eve of a visit by Defense Secretary Donald Rumsfeld to Munich, Germany.

In dismissing the case, the Prosecutor stated: “there are no indications that the authorities and courts of the United States of America are refraining, or would refrain, from penal measures as regards the violations described in the complaint.” The passage of the Military Commissions Act of 2006 attempting to immunize officials and others from prosecution and much new evidence shows this is not the case today.

### **The Impact of the Military Commissions Act of 2006**

On October 17, 2006, the Military Commissions Act was signed by President Bush, and it aims to protect United States officials and military personnel by: 1) narrowing the grounds of criminal liability under the War Crimes Act and making those revisions retroactive to November 26, 1997; and 2) retroactively extending a defense for criminal prosecutions related to detentions and interrogations back to September 11, 2001. These immunizing provisions essentially attempt to grant an amnesty for international crimes including war crimes and torture. The retroactivity provision directs that prosecutions of war crimes committed since 1997 will fall under the new narrowed range of standards and interpretations of war crimes, which would protect civilians from being prosecuted for committing acts that would have been considered war crimes under the old definition – thereby explicitly aiming at immunizing American officials and others from prosecution in their country.

### **How the 2006 Complaint Is a Stronger Case**

The grounds for the 2005 dismissal are no longer justified:

The prosecutor’s original decision to dismiss the case was based solely on the assumption that an ongoing investigation was being carried out in the United States regarding the Abu Ghraib scandal. We now have extensive evidence that demonstrates that this investigation was directed only towards the criminal culpability of the lowest ranking military personnel. Indeed, some of the defendants in the German case have been or are being rewarded with higher-level appointments and medals. The investigative and prosecutorial functions in the United States are currently directly controlled by persons involved in the conspiracy to perpetrate war crimes and named in this complaint, which politically prevents serious investigations and criminal prosecutions. Furthermore, the enactment of the Military Commissions Act of 2006 is unquestionably the clearest illustration of unwillingness to prosecute Americans for war crimes.

New evidence:

Extraordinary new materials, documentation and testimonies that have come to light over the past two years – about what the plaintiffs went through (Mr. al Qahtani is a new plaintiff to the case), about the signed memos that led to the justification and practice of torture, and about the defendants’ personal involvement – only strengthen the case.

In addition, former United States Brigadier General Janis Karpinski, a defendant in the earlier complaint as the commanding officer at Abu Ghraib, is now providing testimony and will testify on behalf of the plaintiffs.

New additional defendants:

The new complaint charges the government lawyers alleged to be the legal architects of the Bush Administration’s practice of torture.

Rumsfeld can no longer claim sovereign immunity:

Secretary of Defense Rumsfeld's resignation of November 8, 2006, means that he cannot claim either the functional or personal immunity of sovereign officials from international prosecution for war crimes. Functional immunity – related to acts performed in the exercise of a person's official functions – does not, since the Nuremberg trials in 1945, apply to international crimes such as war crimes. As to personal immunity – covering officials' private acts accomplished while in office – it applies only during the individual's term of office.

Unprecedented support for the case:

When filing a complaint with the German Federal Prosecutor, any group may join the complaint as a "co-plaintiff," which demonstrates the support of these groups and their common request for the opening of an investigation. "Co-plaintiffs" in the present case include:

*Individuals*

1980 Nobel Peace Prize winner Aldolfo Perez Esquirel (Argentina)

2002 Nobel Peace Prize winner Martín Almada (Paraguay)

Theo van Boven, the former United Nations Special Rapporteur on Torture

Sister Dianna Ortiz, (Torture survivor, Executive Director of TASSC)

*International and Regional NGOs (non-governmental organizations)*

FIDH: International Federation for Human Rights

The International Peace Bureau (Nobel Peace Prize winner in 1910)

International Association of Lawyers Against Nuclear Arms (IALANA)

European Democratic Lawyers

European Democratic Jurists

International Association of Democratic Lawyers

*National NGOs (non-governmental organizations)*

Argentina: Comité de Acción Jurídica (CAJ)

Argentina: Liga Argentina por los Derechos del Hombre

Bahrain: Bahrain Human Rights Society (BHRS)

Canada: Lawyers against the War (LAW)

Chile: Asociación Americana de Juristas, Section Chile

Colombia: Colectivo de Abogados José Alvear Restrepo

Democratic Republic of Congo: Association Africaine des Droits de l'Homme (ASADHO)

Ecuador: Fundación Regional de Asesoría en Derechos Humanos (INREDH)

Egypt: Egyptian Organization for Human Rights (EOHR)

El Salvador: Comisión de Derechos Humanos de El Salvador (CDHES)

France: Ligue Française des Droits de l'Homme (LDH)

France: Association pour la Défense du droit international humanitaire (ADIF)

France: Droit- Solidarité

Germany: The Republican Attorneys' Association (RAV)

Germany: Medizinische Flüchtlingshilfe

Guatemala: Comisión de Derechos Humanos de Guatemala (CDHG)

Italy: Menschenrechtsorganisation Unione Forense per la Tutela Del Diritti Del Uomo

Jordan: Amman Center for Human Rights Studies (ACHR)

Italy: Giuristi Democratici

Mexico: Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH)

Mexico: Liga Mexicana por la Defensa de los Derechos Humanos (LIMEDDH)

Nicaragua: Centro Nicaraguense de Derechos Humanos (CENIDH)

Palestine: Palestinian Center for Human Rights Panama: Centro de Capacitación Social (CCS)

Peru: Asociación Pro Derechos Humanos (APRODEH)

Peru: Asesoría Laboral del Perú

Tchad: Association Tchadienne pour la Promotion et la Défense des Droits de l'Homme (ATPDH)

Senegal: Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO)

Spain: Asociación Catalana per al defensa de drets humans (ACDDH)

Spain: Asociación Libre de Abogados (ALA)

Tunisia: Ligue Tunisienne des droits de l'Homme (LTDH)

USA: The Center for Constitutional Rights (CCR)

USA: National Lawyers' Guild (NLG)

USA: Torture Abolition and Survivors Support Coalition International (TASSC)

USA: Veterans for Peace

#### CITY MANAGER

See companion report.

#### CONTACT PERSON

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#### Attachments

1. Resolution
2. Letter from Michael Ratner, President of the Center for Constitutional Rights and Attorney in the German Case

RESOLUTION NO.        -N.S.

SUPPORTING PROSECUTION OF FORMER SECRETARY OF DEFENSE DONALD RUMSFELD AND OTHER GOVERNMENT OFFICIALS

WHEREAS, the Peace and Justice Commission advises the City Council on all matters relating to the City of Berkeley’s role in issues of peace and social justice (Berkeley Municipal Code [BMC] Chapter 369.070); and

WHEREAS, the Center for Constitutional Rights, along with numerous individuals, international and regional non-governmental organizations (NGOs), and United States and other national NGOs as co-plaintiffs, has filed a criminal complaint in Germany under Germany’s universal jurisdiction law charging former Secretary of Defense Donald Rumsfeld, Attorney General Albert Gonzalez, “and other high-ranking officials in the Bush Administration with war crimes”; and

WHEREAS, the United States planned and knowingly engaged in torture and war crimes in Iraq and Guantanamo Bay in recent years, and those policies have been authorized and executed by the defendants named in the aforementioned complaint; and

WHEREAS, the Bush administration succeeded in getting Congress to pass the Military Commissions Act, which attempts to retroactively protect American officials from being prosecuted for war crimes in American courts, and “the United States has refused to join the International Criminal Court and has banned Iraq from prosecuting United States officials in that country”; and

WHEREAS, at its meeting of December 4, 2006, the Peace & Justice Commission approved a motion recommending that the City of Berkeley endorse the case of Rumsfeld *et al* by signing on as a “co-plaintiff”.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley endorses the case of Rumsfeld *et al* by joining the list of “co-plaintiffs”.

# centerforconstitutionalrights


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## Attachment 2

To: The City of Berkeley  
Fr: Michael Ratner, President of the Center for Constitutional Rights and Attorney in  
German Case filed Against Donald Rumsfeld and others for alleged human rights  
violations  
Re: Liability of Co-complainants  
Date: January 3, 2007

I am the President of the Center for Constitutional Rights and an attorney. Along with Wolfgang Kaleck, a German attorney, we have filed a criminal complaint in the courts of Germany asking for an investigation of former Secretary of Defense Donald Rumsfeld and others for alleged human rights violations. A number of human rights organizations, prominent individuals and victims have joined us in this effort as co-complainants.

If the City of Berkeley joins the lawsuit as a co-complainant it will have no fiscal responsibility. It will have no monetary liability or any other liability for signing on as a co-complainant. Nor will it have any responsibility for the legal preparation of the case. In essence being a co-complainant is a way of lending moral and political support to the effort to hold Donald Rumsfeld and others accountable for human rights violations. There is absolutely no liability of any kind for signing on as a co-complainant.

  
Michael Ratner  
President  
Center for Constitutional Rights

