

**NATIONAL CONFERENCE OF BLACK LAWYERS
SUPPLEMENTAL MEMORANDUM**

To: Jurists of the International Tribunal on Hurricanes Katrina and Rita

From: Mark P. Fancher, Esq., Chair, NCBL International Affairs Section

Date: August 27, 2007

Re: Crimes Against Humanity

Subsequent to submission of the National Conference of Black Lawyers (NCBL) memorandum titled, “The Crimes of Hurricane Katrina and the Need for International Criminal Court Jurisdiction over the United States of America” more focused questions have been posed in different quarters about the propriety of charges that crimes against humanity were committed during the aftermath of Hurricane Katrina.

There is a specific concern about whether an “attack” as defined by Art. 7(2) of the Rome Statute occurred, and was part of “a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” [Art. 7(1)] “Attack directed against any civilian population” is defined as “a course of conduct involving the multiple commission of acts referred to in paragraph 1¹ against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

¹ “Murder; extermination; enslavement; deportation or forcible transfer of population, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender ** or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

Questions are raised about whether there is evidence of a “State or organizational policy to commit such attack.”

Although NCBL’s primary memorandum references a number of the facts that tend to suggest that there were in fact State policies to effect various potentially criminal operations carried out by police and military personnel, those facts are not presented in that memorandum as a direct response to the question presented here. NCBL therefore takes this opportunity to offer the following list of facts that suggest that there were very likely State policies that led to the commission of what may have been crimes against humanity:

1. Accounts provided by survivors are of police and National Guard troops who, with respect to racially discriminatory evacuation operations acted: openly and notoriously; in concert; and according to an apparent plan and schedule. Police and military personnel by definition do not act without orders, and there is no known evidence that entire battalions of these officers and troops were renegades acting independently. To the contrary, all evidence suggest that there was in fact a policy handed down from above that was carried out with great efficiency by troops on the ground.
2. For reasons stated in point 1, the survivors’ accounts evidence a policy or plan for police and National Guard troops to employ armed force and threats of armed force to contain survivors within emergency shelters wherein conditions were life threatening.

3. The Bush Administration had a well-publicized policy of maintaining life-threatening conditions in the emergency areas by preventing the delivery of material aid, medicine and health care by non-governmental personnel and foreign governments offering assistance, and at the same time failing to provide adequate federal assistance.
4. Sheriff's Department personnel were witnesses to alleged directives given pursuant to alleged policies that placed in jeopardy the lives of department personnel and prisoners, and in some cases caused death.
5. At least one witness alleges that the chief of police was an eyewitness to torture inflicted by subordinate officers.
6. At least one witness alleges that a superior National Guard officer actually committed a murder in cooperation with subordinates.

These and similar facts are significant because a "policy" for the commission of crimes against humanity is not always reduced to writing and preserved in a manner that facilitates subsequent accusations or prosecution. The apparent consistent, uniform patterns of conduct committed by state personnel who were charged with acting only to carry out orders is highly significant in determining whether there was a State policy or organizational plan to commit crimes against humanity.

It may not be possible to know the full extent of any policies that were developed without a formal criminal investigation and prosecution. This all serves to underline the importance of making the United States subject to the jurisdiction of the International Criminal Court.