

Release David Hicks and all Guantanamo Bay detainees

The Socialist Equality Party (Australia)
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The Socialist Equality Party unequivocally condemns the Australian government's support for the Bush administration's plan to put six Guantanamo Bay prisoners, including 27-year-old Australian citizen David Hicks, before a military tribunal, and calls for their immediate and unconditional release. The trial of the six, like their prolonged detention, is in flagrant contravention of the Geneva Conventions on prisoners of war and constitutes a fundamental attack on democratic rights.

Prime Minister John Howard, like Bush, has given the green light for the military tribunal in order to bolster the so-called global war on terrorism and justify the US-led invasions of Afghanistan and Iraq. It is all of one piece: the illegal detention and trial of prisoners captured in Afghanistan and elsewhere is being used to legitimise these illegal wars of aggression and prepare for new ones. Hicks, who faces a possible death penalty if found guilty, is being sacrificed by Canberra to cement its alliance with Washington and to further the interests of the Australian ruling elite.

From the outset, the Howard government has refused to even make diplomatic representations to Washington on behalf of Hicks or the other Australian citizen held at Guantanamo, 47-year-old Mamdouh Habib. Canberra has insisted that their treatment has been fair and reasonable, despite the fact that the two have been detained for well over 18 months without charge or access to a lawyer and family members.

The US-backed Northern Alliance militia captured Hicks during fighting in Afghanistan with Taliban forces near Kunduz on December 9, 2001. He was handed over to the US army five days later and then transferred along with hundreds of others to the US naval base at Guantanamo Bay. Like the other detainees, the US military classified Hicks as "an unlawful combatant"—a category that has no status in international law and was invented to strip prisoners of all democratic rights.

There is no independent evidence to verify the exact circumstances under which Hicks was detained or whether he was involved in fighting in Afghanistan. But even if the accusation that he was fighting with the Taliban government is true, Hicks should have been treated as a prisoner of war and accorded full rights under the Geneva Conventions—including living conditions comparable to US forces, a prohibition on interrogation, and repatriation following the end of military conflict.

The Bush administration has openly flouted these elementary requirements. The conditions at Guantanamo Bay are an

international scandal, widely condemned by Amnesty International and other human rights organisations. The prisoners were held initially in wire cages then transferred to tiny isolation cells, where they are confined, except for two short shower and exercise sessions a week. Detainees have been subject to intense interrogation, including the use of psychological stress techniques, which are classified under international law as torture. Only a handful of the more than 600 men in Guantanamo Bay have been released, even though the war in Afghanistan is over.

Now that the White House has authorised the Pentagon to proceed with military tribunals, a death row and an execution chamber are being built at Guantanamo Bay. The planned proceedings are a direct contravention of the Geneva Conventions, which provide for prisoners of war to be tried only in exceptional circumstances and not simply for involvement in fighting. Any POW to face trial must first be evaluated by a "competent tribunal", that is an independent court, and be accorded the same legal rights pertaining in the detaining power—in other words, under US law.

None of these conditions have been met. Like the construct "unlawful combatant," the procedures governing the military tribunals have been drawn up without reference to international law or to legal practices in the US. The Bush administration appoints the prosecutor, defence lawyers and judges. The trials are conducted in secret by a panel of between three and seven military officers, who act as judge and jury. Guilt or innocence is decided on the basis of a two-thirds majority vote.

Defendants have no automatic right to a lawyer of their choice but are provided with a military attorney and, if they can pay for it, a civil defence counsel. Civilian lawyers, however, will be vetted by the US military and can be removed from the proceedings at any time by the presiding judge. They must also waive their right to attorney-client privacy and allow all discussions with the detainees to be recorded by the tribunal.

The rules of evidence are so wide-ranging that the presiding officer can allow any evidence, including anonymous hearsay, which he believes is "convincing to a reasonable person". Prosecution witnesses cannot be cross-examined, there is no appeal to any outside court and President Bush makes the final decision on any sentencing, including execution. Even in the unlikely case that a tribunal acquits a prisoner, the US military can continue to detain them.

According to several media reports, Hicks and the other

prisoners are being blackmailed into pleading guilty to still unspecified charges in return for a sentence of 20 years in jail. The alternative is to face a military show trial with the likelihood of an even longer jail term or the death penalty. This directly violates Article 99 of the Geneva Convention, which states: “No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused.”

The Australian government has unconditionally supported the trial of Hicks before such a kangaroo court. Howard gave his blessing to the arrangements, declaring that, “all of the things that are basic to the judicial system as we understand it, will be applied.”

At the same time, however, Howard, supported uncritically by sections of the media, has been intent on painting Hicks as guilty before he has even been charged, let alone tried. Just days after declaring the tribunal would be “fair,” Howard told the press, without providing any evidence, that Hicks had admitted under questioning to having “trained with Al Qaeda”. If the trial was being held in Australia, Howard could be charged with contempt of court for prejudicing the case.

The Australian government is well aware of the shaky case against Hicks, and, according to a *New York Times* article on May 4, is directly responsible for his continued detention in Guantanamo Bay. Citing Australian officials, the newspaper reported that the US had asked Canberra to take custody of Hicks and to put him on trial in Australia. The Howard government refused because it could not guarantee that Hicks could be charged under Australian law, let alone found guilty and imprisoned.

The Howard government’s contempt for basic democratic rights is underscored by the fact that its actions are in open breach of Australian law. As a signatory to the Geneva Conventions, Australia has incorporated their requirements in the Criminal Code. Under the Code, it is illegal to deny anyone a “fair and regular trial” under the precise terms set out in the Third and Fourth Geneva Conventions. It is an offence “if the perpetrator knows of, or is reckless” with regard to these violations. These offences are defined in the Code as “war crimes,” punishable by prison terms of 10 to 17 years.

Some concerns have been raised in ruling circles about the Howard government’s failure to defend Hicks’ basic rights. The *Sydney Morning Herald* editorialised on July 8: “By doing so little to return this Australian to Australia to be dealt with according to Australian law, the government risks devaluing Australian citizenship now and for the future.”

The criticism reflects a certain nervousness at the extent to which the Howard government, like the Bush administration, is tearing up longstanding legal norms and practices with reckless indifference for the potential consequences. It has long been accepted that governments must provide basic assistance to all citizens who are caught up in difficulties overseas. By refusing to render any aid to Hicks, the Howard government has effectively abandoned that responsibility.

Former Liberal Prime Minister Malcolm Fraser and the opposition parties have voiced similar criticisms. Their concern is that the Howard government’s abandonment of Hicks is

symptomatic of its unconditional determination to back the Bush administration, which they believe could have significant and adverse consequences for Australian business and strategic interests in the Asian region. They are also anxious about growing popular animosity to the government’s repudiation of democratic rights.

Notwithstanding their concerns, the objections of the Labor Party, the Greens and Democrats have, however, been extraordinarily muted. This is because they have all lined up with the global “war on terrorism” and the consequent abrogation of basic democratic rights. Just last month, Labor, with the tacit approval of the Greens and Democrats, joined hands with the Howard government to pass unprecedented laws giving ASIO, the country’s principal intelligence organisation, the power to detain and interrogate anyone without trial, including teenagers as young as 16, merely on suspicion of having information about possible terrorist activity.

Underlying the Howard government’s stance is a definite political strategy. By choosing Hicks as one of the first to be brought to trial, the Bush administration is signalling its confidence in the Australian government’s ongoing support, and its expectation that there will be no challenge from that quarter to its illegal procedures. Howard is determined to oblige, thus telegraphing, yet again, his loyalty to the “war on terrorism” and the Bush doctrine of pre-emptive strikes. In return, he expects full support from the White House for Australia’s renewed neo-colonial ambitions in the Pacific: in particular, the Australian-led military intervention into the small Pacific Island state of the Solomon Islands which will be launched within the next weeks on the pretext that this “failed state” could also become a breeding ground for terrorism.

At the same time, Howard is utilising the war on terrorism to divert attention from the deepening social crisis within Australia and to legitimise his government’s assault on basic democratic rights. The prime minister’s complicity in the abuse of Hicks’ fundamental rights is a warning of the type of treatment future political opponents of the government can expect within Australia.

All those workers, students, intellectuals and others who value democratic rights must forcefully oppose the Howard government’s support for the show trials being prepared at Guantanamo Bay and demand the immediate and unconditional release of Hicks, Habib and the other detainees. Such a demand raises the necessity for a broad-based political campaign in defence of all basic democratic rights and for the scrapping of the new ASIO Act and other anti-democratic legislation.



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