

US military lawyer denounces Guantanamo Bay trials

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Major Michael Mori, the US military lawyer appointed to defend Australian citizen David Hicks, the first of six Guantanamo Bay prisoners scheduled to face a US military court, has bluntly denounced the planned tribunals. In his first public statement on the hearings, Mori told a Washington press conference on January 21 that the military commissions were “created by those only with a vested interest in conviction” and would “not provide a full and fair trial”.

“The commission process,” he said, “just creates an unfair system that threatens to convict the innocent and provides the guilty justifiable complaints as to their convictions.” Notwithstanding the limited character of his criticisms, Mori’s comments constitute a damning indictment of the impending hearings.

Twenty-eight-year-old Hicks, who was captured by the Northern Alliance in Afghanistan in December 2001, has been imprisoned in Guantanamo Bay, Cuba, for almost two years without access to a lawyer or family members. Mamdouh Habib, a 48-year-old Australian citizen, is also being held in the US concentration camp. Like the more than 660 prisoners in Guantanamo Bay they have been regularly interrogated by American military and intelligence officers.

Hicks was only given the right to a lawyer and allowed to speak by phone to his parents two months ago, after the US announced he would be brought before a military tribunal. Washington has yet to formally lay charges against Hicks and is currently trying to secure an admission of guilt from the Australian before any military hearing.

The tribunals violate the most basic tenets of international law, the US constitution and established procedures of the American military justice system. A seven-member panel of military officers appointed by the Bush administration runs the trials and determines the innocence or guilt of prisoners on the basis of a majority vote.

The military can monitor private conversations between defence counsel and their clients. Hearsay and information gathered in interrogation and without the presence of a defence lawyer can be used as evidence. The Pentagon can

also deny civilian defence lawyers access to any evidence and stop them attending any closed court proceedings on vague security grounds.

The accused have no right of appeal to a civilian court with the final decision on their fate determined by the US president through his appointees. Even if prisoners are found not guilty, the US government is not obliged to release and repatriate them.

Mori said the most “striking injustice” was that military tribunal commissioners had no authority to rule on defence motions which could dismiss any charges or invalidate any part of the commission process. These decisions were made by the appointing authority—the legal advisers to US Secretary of Defence Donald Rumsfeld and Paul Wolfowitz—that laid the charges and approved the prosecutions in the first place.

The military lawyer also raised a number of key questions about his ability to prepare a legal defence for Hicks: “Are we going to be given the time to prepare? Don’t forget, the government’s had this for two years. Who knows how many investigative agencies have been working on this ... but what assets will the defence get? What resources? What experts will be allowed? How freely are we going to be able to move and obtain evidence?”

While critical of the planned tribunals, Major Mori insists that Hicks be brought before a court martial, arguing that it would afford the accused greater legal rights, including to make civil court appeals. Hicks, however, has to date not been charged with any crime nor has he been classified as a prisoner of war. He is being held illegally and should be immediately released.

Mori’s criticisms reflect concern amongst sections of the US military that the Bush administration’s treatment of war prisoners will have serious repercussions for captured American military personnel who could be subjected to same treatment. They also express broader domestic and international unease about the Bush administration’s tearing up of long-established legal principles.

The trials, Mori said, would have an “international

impact” and warned that other nations might use similar legal methods against American citizens in the future. “The reality is, we wouldn’t tolerate these rules if they were applied to US citizens.”

Asked about Hicks’s health, Mori said: “Physically, he’s as fair as can be expected when you’re in the conditions he’s being held. Mentally, he probably degenerated to the point where his main concerns are the basic human instincts. He desires what he needs—food, shelter. Remember two years, without touch, without outside world communication, it kind of creates a disorientation.”

These comments are somewhat understated because under tribunal rules Mori is not allowed to provide any detailed information on prisoners’ health or jail conditions. They are, however, a disturbing reminder of the conditions inside the American military prison and make clear that the young Australian has been seriously affected by his illegal imprisonment and the stress of regular interrogations. They confirm warnings from various international human rights organisations that Guantanamo Bay is a hellhole where prisoners are psychologically tortured and have no rights whatsoever.

Speaking later to a Sydney radio station, Mori criticised the Howard government and said it should not have signed any agreement with the US on how Hicks and Habib would be treated before meeting with defence lawyers.

“I have not seen the official agreement between the US and Australia and I wasn’t privy to any of the discussions,” he added. “It would have been helpful for the Australian government to have heard from the defence counsel that would have been representing David Hicks or had served in that role prior to agreeing to anything.” Mori has officially requested copies of the agreement but has only been given news releases.

Australian Attorney General Phillip Ruddock dismissed the military lawyer’s comments claiming they were not unusual and constituted no more than “a vigorous defence” of Hicks.

Mori’s statements, however, are simply not “defence arguments” in a current hearing but an indictment of the military tribunal system per se. Moreover, his remarks highlight the criminal nature of the Australian government’s refusal to defend the basic rights of Hicks and Habib and demand their immediate release from Guantanamo Bay.

From the outset the Howard government has used Hicks and Habib’s detention to cement its political and military ties with the White House and its so-called “war on terror” and has brushed aside criticism, claiming that the men were being treated “fairly” and endorsing every violation of the prisoners’ basic democratic rights.

In breach of their basic responsibility to defend the rights

of Australian citizens, the Howard government conducted secret negotiations with the White House, culminating in an official agreement with the Bush administration supporting the treatment of Hicks and Habib and the impending military trials. Canberra is currently blocking a Freedom of Information request for the release of all correspondence with the White House on the issue and refused to provide Hicks’s defence team with transcripts of interrogations conducted by Australian Federal Police and intelligence officers.

The Howard government has publicly admitted that Hicks and Habib have not broken any Australian laws and could not be prosecuted in any Australian court. But instead of utilising this undisputed fact to demand their immediate release, the government has used it to justify their support for the illegal US detention of the men. Moreover, Prime Minister Howard and other government ministers have regularly used the mass media to publicly brand Hicks and Habib as terrorists or members of Al Qaeda. No evidence has ever been released supporting these allegations.

The detention of Hicks and Habib and more than 660 prisoners in Guantanamo Bay is a violation of international law and constitutes a war crime under the Geneva Conventions. This cannot be reversed through demands for a “fairer” military court procedure but only through the development of a broad-based political movement to demand their immediate and unconditional release and repatriation, along with the rest of the Guantanamo Bay prisoners.



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