

Release Hicks, Habib and all Guantanamo Bay detainees!

Australian government aids and abets US torture

Socialist Equality Party (Australia)
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After more than two and a half years of detention, during which he has been tortured and deprived of every basic legal and democratic right, Australian citizen David Hicks was finally charged by the US military last week. The weak and self-contradictory nature of the charges only underscores the illegal character of his detention and that of the hundreds of other inmates held at Guantanamo Bay, Cuba following the American-led invasion of Afghanistan in October 2001.

It also exposes the complicity of the Howard government in supporting the Bush administration's incarceration of Hicks and another Australian, Mamdouh Habib, in violation of the Geneva Conventions on the capture of prisoners during armed conflicts. As soon as the detention of the two men became known publicly in early 2002, the Howard government openly backed Washington's flouting of international law on the grounds that the pair were among the most dangerous men in the world—the “worst of the worst” terrorists.

The three charges laid against Hicks—Habib has still not been charged—show these claims to be yet another set of fabrications advanced to help justify Howard's unconditional support for US military aggression in Afghanistan and Iraq. Hicks has been accused of “conspiracy to commit war crimes,” “attempted murder by an unprivileged belligerent” and “aiding the enemy”. None of the charges allege that he actually killed or injured anyone. As Hicks's US military lawyer Major Michael Mori asked: “Where are the worst of the worst?”

“Conspiracy” is a notorious catch-all charge, which prosecuting authorities dredge up whenever they have no evidence of any substantive crime. At least two of the allegations under this charge are demonstrably false. Hicks is supposed to have conducted surveillance of the US and British embassies in Kabul, yet the embassies were closed for a number of years under the Taliban government. According to the charge sheet, he accepted a request from Osama bin Laden and began translating Al Qaeda documents from Arabic to English, when his knowledge of Arabic was minimal.

The other two charges, apart from lacking any detail, depend entirely on Washington's illegal classification of Hicks as an “unlawful combatant” rather than as a member of an armed group defending a de facto government—the Taliban—against an invading force. Fighting in an armed conflict does not constitute murder, or aiding an “enemy”.

Aware of a growing public sense that a terrible injustice has been committed against Hicks and Habib, Howard last month urged Bush to bring them before military tribunals as soon as possible. The rigged show trials—for which no dates have yet been set—will almost certainly rely on alleged confessions and statements from other detainees—all obtained under duress. None of this material would be admissible in an American or Australian court of law.

A month of lies by the Howard government that it had no evidence of

the US military's torture and abuse of Hicks and Habib, fell apart on June 3, when Foreign Affairs officials admitted that both detainees had lodged official complaints about their maltreatment last year. Under questioning before a Senate committee, the officials conceded that Hicks told Australian Security Intelligence Organisation (ASIO) officers in May last year that he had been beaten in December 2001 when he was taken into custody by Northern Alliance and US forces in Afghanistan. Habib complained to Australian consular officials last November that his detention was “torture”.

Prime Minister John Howard, Foreign Minister Alexander Downer and Attorney-General Philip Ruddock had repeatedly denied detailed allegations by former Guantanamo Bay inmates, and their lawyers, that Hicks and Habib had been subjected to beatings, electrocution, blindfolding, naked humiliations, solitary confinement and mental cruelty.

The collapse of the government's cover-up confirms the mounting evidence that it has long known of, and aided and abetted, methods of interrogation, humiliation and reprisal similar to those exposed at Baghdad's now notorious Abu Ghraib prison. The abuses flowed inevitably from the Bush administration's proclamation, in January 2002, that the Geneva Conventions—adopted after World War II to protect wartime detainees from the types of depredations inflicted by the Nazis—would not apply to Guantanamo Bay. US Defence Secretary Donald Rumsfeld declared: “Unlawful combatants do not have any rights under the Geneva Convention.”

Canberra gave the green light for whatever brutality Washington saw fit to authorise. Leading ministers described Hicks as a “terrorist” who was “prepared to kill innocent people”. Foreign Minister Alexander Downer declared: “We are an ally of the United States and we agree with them. They're perfectly entitled to take very tough action.” In truth, the evidence against Hicks and Habib was so shaky that the two men could not be charged with any offence under Australian law, let alone found guilty and imprisoned. That is why the Howard government refused a request from Washington to take custody of the pair and place them on trial in Australia.

Since the publication of the incriminating Abu Ghraib photographs, leaked White House and Pentagon documents have removed any doubt that, on orders given at the highest levels of the Bush administration, the Cuban facility became a testing ground for the practices later implemented in Baghdad. According to documents made public by the *Wall Street Journal* and the *Washington Post*, during 2002 Pentagon and Justice Department lawyers prepared memos for Defence Secretary Donald Rumsfeld arguing that President Bush, as “commander in chief” was not bound by international treaties or US laws banning torture.

One of their arguments was that the Cuban naval base was within US domestic jurisdiction and therefore not covered by the UN Convention

Against Torture. This directly contradicts the Bush administration's public insistence, maintained before the US Supreme Court this year, that Guantanamo is beyond the reach of the US courts.

Rumsfeld specifically authorised 24 interrogation techniques for Guantanamo that included putting prisoners in "stress positions" for four hours, hooding them and subjecting them to 20-hour interrogations, "fear of dogs" and "mild, non-injurious physical contact." In April 2003, just after the invasion of Iraq, Rumsfeld approved a new list, which included the use of at least six techniques—including the use of dogs—also contained in an October 2003 Abu Ghraib memorandum.

Similar methods were clearly used in both locations, giving the lie to the Bush administration's claims that detainees in Iraq were covered by the Geneva Conventions, whereas those at Guantanamo were not. On Rumsfeld's orders, Major General Geoffrey Miller, then in charge of the Cuban concentration camp, was flown to Iraq in October 2003 to draw up what became a 72-point interrogation matrix. According to documents cited by Human Rights Watch, Miller boasted of "Gitmo-ising" Abu Ghraib—in other words, creating Guantanamo-Bay-style conditions there.

Given that senior Australian military lawyers were integrally involved in drafting the interrogation protocols for Abu Ghraib and in responding to prisoners' complaints of abuse relayed by the international Red Cross, it beggars belief that the Howard government was not well aware of the practices occurring in both Cuba and Iraq.

The first-hand evidence that Hicks and Habib have been tortured is overwhelming. On May 13, Shafiq Rasul and Asif Iqbal, two British former prisoners issued an open letter to President Bush detailing the abuses at Guantanamo Bay and demanding the release of all the photographs and video footage taken during interrogation sessions. They listed a litany of barbaric techniques, including savage beatings; "short shackling" with chains forcing detainees to squat for hours; use of dogs to terrify prisoners; naked displays in front of women; strobe lights; loud music; and freezing conditions.

On May 16, another British victim, Tarek Dergoul, interviewed by the *Observer*, confirmed these allegations and said the methods used at Guantanamo Bay, such as sexual humiliation, mirrored those exposed in Abu Ghraib. Several days later, Dergoul told Channel Seven television he had seen Habib being kicked and punched, and dragged by chains along the ground, while screaming in agony. Dergoul said the beatings were captured on video.

In an interview published by the *Australian* on May 21, Dergoul said Habib had also been given electric shocks, tortured and continually blindfolded by Egyptian authorities for three months after being detained in Pakistan in late 2001. Once transferred to Guantanamo Bay, Habib had been beaten by anti-riot soldiers and sprayed with mace. He had been shown photographs of his wife, Maha and their children, with his jailers claiming they had been killed.

Habib's lawyer, Stephen Hopper, wrote to Howard on May 28 giving details of the abuses committed against his client. Based on information provided by Dergoul and another released British detainee, the allegations included that while held in Egypt, Habib suffered "regular physical assaults". Hopper's letter also alleged that Habib's US interrogators had superimposed pictures of his children's heads on the bodies of animals and put them on the walls of his interrogation room.

As a result of his torture, Habib has refused to answer letters sent from his family since March 2003, causing them immense stress and giving rise to fears for his mental health. He reportedly believes they are dead.

On May 20, Hicks's cellmate in an Afghanistan jail, Shah Mohammed, told the *Australian* that Hicks had been bashed by US soldiers in at least three sessions that lasted for several hours. Before the beatings began, Hicks's hands and feet had been tied up.

Stephen Kenny, Hicks's Australian lawyer, said his client had been subjected to "orchestrated abuse" at Guantanamo Bay, and had

complained to the Red Cross in 2002. Hicks had told him of a number of instances of maltreatment, Kenny said, but he could not reveal any details because of a US military gag order, imposed as a condition of being granted permission to visit Hicks.

Howard initially denounced the detainees who had been released in Britain as "Taliban supporters" whose testimony should be disregarded, even though they had been freed on the basis that no charges could be laid against them. He sought to discredit Hicks and Habib and their lawyers, by falsely accusing them of saying nothing before the Abu Ghraib abuses were exposed in April. In fact, both prisoners had complained, but their protests were officially smothered until the Baghdad prison photographs were leaked to the media.

Howard and Downer then charged the lawyers with "smearing" the US military without supplying any evidence. This charge was truly Kafkaesque. How could the lawyers produce further evidence, when the government has suppressed it for months? Last year, Downer issued a "conclusive certificate" to stop a Freedom of Information (FOI) request for 108 pages of internal documents on Hicks's case. The government continues to cover up all the official records: Hicks's reports to the Red Cross, ASIO's interrogation of Hicks, and Habib's complaint to consular officials. It is still enforcing the US gag order imposed on Kenny.

To this day, no Australian official has visited the cells in which Hicks and Habib have been held. When Australia's New York consul-general, Derek Tucker, finally spoke to them in mid-May, Howard claimed that the diplomat was satisfied that the pair had not been treated unacceptably. But the media was barred from interviewing Tucker. The most obvious question is: If the two Australians have been well treated, what does the Howard government have to hide?

After the June 3 revelations, Howard and his cabinet resorted to their standard *modus operandi*—utilised repeatedly since their re-election in 2001 to cover-up their complicity in one scandal after another—the children overboard lies, the SIEV-X refugee drownings, the campaign of slander against Justice Michael Kirby, the lies about Iraqi WMD, etc., etc. They claimed that, inexplicably, they knew nothing of the incriminating information held by high-ranking government, intelligence and military officials about torture.

At the same time, Howard rejected calls by the lawyers for an independent inquiry into their clients' treatment. Instead, he asked Bush to give an assurance that the US military—which administered the sadistic interrogation techniques on Bush's orders—would investigate the allegations. Only recently, the Pentagon sent a letter to Canberra insisting that Guantanamo detainees were treated humanely and the US "does not permit, tolerate or condone any abuse or torture by its personnel under any circumstances".

True to form, the Labor Party welcomed the laying of charges against Hicks, after refusing to defend the detainees from the outset. It also aligned itself with the Greens and Democrats in calling for Hicks and Habib to be repatriated to Australia to stand trial for yet-to-be-specified charges, supposedly based on international law. Because Hicks and Habib have committed no offences under Australian law, this would amount to retrospective prosecution, setting a dangerous precedent for future use.

Not one of the parliamentary parties has raised any suggestion of indicting Howard, Downer and Ruddock for war crimes under the Geneva Conventions. This is despite the fact that the Australian Criminal Code also imposes jail terms of up to 17 years for denying, or assisting to deny, prisoners a "fair and regular trial" as required by the Conventions.

The methods being used against Hicks and Habib in Cuba are not far removed from what is now possible within Australia under the ASIO Terrorism Act, pushed through parliament last year with Labor's support and the tacit approval of the Greens and Democrats. For the first time in Australian history, the police and intelligence agencies have the power to detain, strip-search and interrogate anyone without charge and hold them

incommunicado for a week, and potentially for longer. Detainees do not have to be suspected of any terrorist offence, simply of possessing information relevant to terrorism.

The Howard government's backing for the treatment of Hicks and Habib is not an aberration. It is based on definite strategic and political calculations. It flows directly from Canberra's unconditional support for the criminal, neo-colonial agenda of the Bush administration and from the government's own commitment to increasingly repressive police-state measures at home.

All those concerned by the assault on basic democratic rights must oppose the show trials being prepared at Guantanamo Bay, insist on the immediate and unconditional release of all detainees and demand that Howard and his colleagues be placed on trial for war crimes, alongside their counterparts in Washington.



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