

With Canberra's loyal support

US to resume Guantánamo trial of David Hicks

Richard Phillips
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With full support from the Australian government, the Bush administration announced last week that it plans to recommence its military commission trial of 30-year-old Australian citizen David Hicks, who has been incarcerated in Guantánamo Bay for almost four years. The initial hearings are expected to begin on November 18 and the trial itself sometime early next year.

Hicks, who was captured by Northern Alliance forces in Afghanistan in late 2001 and handed over to the American military in exchange for a \$1,000 bounty, is one of only four prisoners in the notorious military jail charged with terrorism related offenses.

He will be tried for conspiracy to commit war crimes, attempted murder and aiding the enemy and could face a life jail sentence. Hicks has pleaded not guilty. None of these vague charges, which were concocted after years of constant abuse, including physical and psychological torture and prolonged solitary confinement (see “David Hicks details abuse in Guantánamo Bay”), allege that he actually killed or injured anyone.

The Hicks trial and projected military hearings for three other prisoners facing charges—Salim Ahmed Hamdan and Hamza al Bahlul from Yemen and Ibrahim al-Qosi from Sudan—were halted in November last year after a US federal court ruled that the tribunals were unconstitutional.

While a federal appeals court reversed this directive in July and ruled that the hearings were legal, the decision is now being appealed in the Supreme Court. American lawyers for Hicks are also attempting to challenge the legality of his military trial in a US district court. If any one of these appeals is successful it

could halt the military trials.

The military tribunals, which have been likened to Star Chamber hearings, constitute clear violations of the Geneva Conventions and centuries of legal precedent (see “Military commissions’ prosecutors charge: trials rigged against Guantánamo detainees”). Under trial rules, hearsay and evidence obtained under torture is allowed. Much of the prosecution evidence is expected to be in the form of written interviews from Guantánamo prisoners, who therefore cannot be cross-examined.

In violation of rules for previous US military trials, defence lawyers can be prevented from viewing evidence against their clients if the hearing commissioner so rules. Likewise, the accused can be excluded from hearings. There is no jury and verdicts are determined by a majority decision of the three commissioners appointed to conduct the trial. There is no civil appeal process and even if found not guilty, the accused can still be held indefinitely if deemed a security threat by the Pentagon.

In the face of growing international and domestic opposition, the Bush administration needs the tribunals to proceed to provide a façade of legitimacy to its illegal detention of hundreds of detainees at Guantánamo Bay. Hicks has been chosen as the first case, not because of his alleged crimes, but because Washington knows it can rely completely on the Howard government.

The trial provides Howard with another means of demonstrating his government's unwavering loyalty to the Bush administration while justifying its participation in the bogus “war on terror” and its ongoing attacks on democratic rights at home.

One unnamed Pentagon official told the media: “The Australians have indicated their desire to see the Hicks case move forward as expeditiously as possible”. This was confirmed by Foreign Minister Alexander Downer who told the Australian media that he had met with US Defence Secretary Donald Rumsfeld two weeks ago and “reminded him” that Canberra wanted the Hicks trial to begin as “quickly as possible”.

Over the past three and a half years, the Howard government has made absolutely clear that, short of execution, the Pentagon can do what it likes with Hicks. Senior government ministers have attempted to suppress statements Hicks made to Australian officials that he was physically and psychologically abused by US military officers. Well before his trial even begins, they have repeatedly and falsely declared him to be a “terrorist” who was “prepared to kill innocent people”.

The Howard government has brushed aside criticism of his illegal treatment from human rights organisations, including Amnesty International, former Australian high court judges, local peak law bodies and most recently Australia’s senior military defence lawyer, Captain Paul Willee, QC, to claim that the military hearings would provide a “fair trial”.

Last week, another senior Australian commander, Army brigadier Gerard Fogarty, director of military workforce planning, published an article in the US Army quarterly magazine *Parameters* calling for the commissions to be scrapped. “Outcomes [at these trials] will not be viewed as legitimate in the eyes of the world,” Fogarty declared, warning that critics of hearings are able to “present a strong argument that the US is, in fact, breaking the law.”

David McLeod, Hicks’s Australian lawyer, told the media last week that the Howard government was doing everything to ensure that the military trial went ahead. “The authorities had acted with indecent haste brought about by pressure from the Australian government to expedite the trial and deny Hicks true access to justice and the guarantees of a fair trial,” he told the local media.

Major Michael Mori, Hicks’s American military lawyer, was even blunter, declaring that the Australian citizen was being used as a “guinea pig” in an “unfair and rigged show trial.” “The military commission system,” he continued, “will not provide a full and fair trial, whether it starts today, in a month or in three

months. The rules are constantly changing. The system is controlled by those who have already condemned Mr Hicks.”

By contrast, European governments, including leading Bush administration allies, such as the Blair regime in Britain, have opposed the military trials and secured the release of their citizens from Guantánamo.

Hicks’s attorneys, who have only limited resources at their disposal, revealed this week that their client had recently applied for a British passport to which he is legally entitled because his mother was born in the United Kingdom.

Hicks and his lawyers hope that as a UK passport holder he may be able to secure release because the British government opposed the military trials and forced the Bush administration to free nine of its citizens from Guantánamo last year. Whether the Blair government will allow his application to proceed is doubtful.

While Howard and Attorney-General Phillip Ruddock refused to comment on the passport application, Foreign Minister Downer responded by baldly declaring that Hicks was attempting to “circumvent justice”.

The only reason Hicks is applying for a British passport is because the Howard government has refused to defend him and actively collaborated with the Bush administration in the violation of his most basic legal and democratic rights. This, like its participation in the US-led occupations of Iraq and Afghanistan, is a war crime under the Geneva Conventions.



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