

Military trial of David Hicks and other Guantánamo prisoners deferred

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A US federal court judge this month placed an indefinite stay on the scheduled November 18 military trial of Australian citizen David Hicks who, with backing from the Australian government, has been incarcerated in Guantánamo Bay since January 2002.

The ruling follows the recent US Supreme Court decision to review the case of Salim Ahmed Hamdan, a Yemini prisoner also facing terror charges in Guantánamo. The court will determine whether the kangaroo-court style trials to be held in the military prison violate the American constitution.

The Bush administration, however, is determined to prosecute Hicks. Pentagon spokesman Lawrence DiRita made clear two weeks ago that a key factor in its determination to proceed was the political support it has received from the Howard government in Canberra.

“The Australian government has expressed its desire that Hicks be taken before a military commission,” DiRita said, “so we are proceeding on that basis.”

DiRita’s statement further underlines the criminal role played by the Howard government. It has demonstrated it will do anything, including the violation of the rights of one of its own citizens, to maintain its close alliance with the Bush administration and the so-called “war on terror”.

Thirty-year-old Hicks has been held in Guantánamo for almost four years. He was arrested in Afghanistan by Northern Alliance militia in late December 2001 and handed over to US forces in exchange for a \$15,000 bounty payment.

Falsely denounced by the Howard government as a member of Al Qaeda and a terrorist, Hicks was charged by the Pentagon in June 2004 with aiding the enemy, attempted murder and conspiracy to commit war crimes.

Despite physical and psychological abuse during this time, Hicks has maintained his innocence. As with others due to be dragged before the military courts, the charges against him are based on hearsay and evidence obtained under torture. Much of the prosecution evidence will consist of written statements from other Guantánamo prisoners who cannot be cross-examined.

Under trial rules, which have been universally denounced by American and international human rights organisations, as well as civilian and domestic legal bodies, the innocence or guilt of the accused is to be determined by a majority decision of three

military commissioners. The commissioners have the power to prevent defence attorneys from viewing any evidence or to exclude the accused from the hearings at any time. There is no civil appeal process and the accused, even if found not guilty, can still be imprisoned indefinitely if identified as a security threat by the Pentagon.

From the outset, Canberra has been deeply implicated in the illegal detention of Hicks. This was further confirmed in a recent episode of “Four Corners”, a high-profile Australian Broadcasting Corporation (ABC) television news program.

“Four Corners” interviewed senior US military and civil rights attorneys, Hicks’s lawyers and two released British Guantánamo detainees—Moazzam Begg and Martin Mubanga. It also cited transcripts from an official Australian Federal Police (AFP) interrogation with Hicks in May 2003.

According to the AFP interview, Hicks admitted to attending a Taliban training camp in Afghanistan but was in Pakistan prior to September 11. He planned to return to Australia after travelling to Afghanistan to retrieve bags containing his birth certificate, money and other items that he had left in Kabul.

Soon after Hicks entered Afghanistan the border was closed. Unable to leave, he was ordered by the Taliban to help defend the country from the US-led invasion. Not involved in any fighting against either Northern Alliance or US forces, Hicks was captured two weeks after the fall of Mazar-e-Sharif at a taxi station trying to leave the country.

Contrary to Howard government claims that the young Australian is a terrorist, Hicks told AFP officers that he opposed the September 11, 2001 attacks on the US. “It’s not Islam, is it,” he said. “It’s like the opposite of what I was ... [and] wanted to do. [Islam is] meant to help the people, stop oppression and they did the opposite.”

“Four Corners” revealed that soon after Hicks was taken into custody by the US military he was transferred to the US navy warship USS Peleliu for interrogation. He was blindfolded and then illegally “rendered” to a secret location, possibly to Afghanistan or Pakistan, and tortured. This included at least two 10-hour beatings. Hicks was also injected with unknown drugs and subjected to a series of sexual and psychological humiliations.

He was then sent back to the US navy warship and later flown

to Guantánamo, where he has remained for almost four years.

Hicks provided Australian intelligence personnel with detailed information about this and other forms of abuse when they interviewed him in May 2003. He repeated his allegations in a sworn affidavit given to his lawyers on August 5, 2004 but this was withheld by the US military until last December.

Testimony from British detainees, after they were released earlier this year, confirmed Hicks's allegations. Hicks's lawyers told "Four Corners" that they had witnesses to corroborate the abuse and that US authorities had photographic evidence.

The Howard government—the only one in the world not to demand the release of its citizens from Guantánamo—continues to insist that Hicks has been "treated well" by the US military. It not only denies the growing body of evidence that prisoners have been physically and psychologically abused, but has publicly declared that it is "fully satisfied" with the bogus internal US military investigations into conditions at Guantánamo.

Howard told the media in July that there was "no evidence" to support the allegations of abuse by Hicks and fellow Australian detainee Mamdouh Habib. Moreover, when Hicks's affidavit was released late last year, Prime Minister Howard and Foreign Minister Alexander Downer claimed to have had no prior knowledge of his allegations.

Even after "Four Corners" damning evidence, senior government officials continued to lie. Downer, for example, said he was "very surprised" by Hicks's allegations, insisting that the prisoner had never complained to any Australian officials about his treatment.

Downer's protestations, however, are yet another transparent attempt to cover-up the fact that the Howard government is a joint partner in the illegal detention of Hicks, whose treatment constitutes a war crime under the Geneva Conventions. Even as it denounced Hicks as a dangerous terrorist, the Howard government was obliged to admit that he had not committed any crime under Australian law.

Moreover, as Downer knows full well, in June last year an Australian Foreign Affairs official admitted to a Senate committee hearing that Hicks made a "brief remark to the effect that he had been beaten in late 2001," when interrogated by ASIO and AFP officers in Guantánamo in 2003.

Notwithstanding the unlikely suggestion that Hicks made only a "brief remark" about his treatment, this admission demonstrates that the Howard government and Downer's own department had information about the abuse of Hicks. It also indicates that as soon as Hicks had the opportunity to lodge a protest with Australian officials he did so.

Josh Dratel, Hicks's civilian lawyer, told "Four Corners" that the planned trials were a "farce" and "designed to try to justify and substantiate these military commissions." The allegations against Hicks, he continued, were not based on "any formal or fair adjudication of anybody's situation, instead they would

rely on statements extracted under torture and other forms of coercion."

A US military attorney, Lieutenant commander Charles Swift, explained to "Four Corners": "When you don't have law, what you've got is revenge."

Moazzam Begg told the ABC program that he had spoken with the young Australian on numerous occasions in Guantánamo. He bluntly rejected allegations that Hicks was a member of Al Qaeda saying he was a luckless adventurer who became involved with the Taliban.

"He does not speak Arabic of any meaningful understanding. How would he possibly be a high-ranking member of Al Qaeda?" he said.

Begg told *Four Corners* that he and Hicks often pondered on why the Australian—out of the hundreds in Guantánamo—was one of the first to be charged and sent to trial.

"The only reason why David Hicks is there—and I think this needs to be absolutely clear—is because the Australian government has agreed to the process that he's part of," Begg said. "He didn't strike me as somebody who is bitter, but he's very upset about the stance of his government in relation to how he is treated."

Begg emphasised that Hicks had been "singled out" for military trial "because he's the token white man." Hicks' civilian attorney Josh Dratel echoed these comments.

Dratel told the ABC that the Australian was on trial because he was "a Caucasian, a westerner and spoke English". This was a desperate attempt, he continued, to make "the process look even-handed in a cultural and ethnic sense" and "not about the Middle East ... or people of colour".

While "even-handedness" may have been a consideration, the overriding factor in choosing Hicks was the fact that the Australian government had given the green light for the trial to go ahead.

It has done so against widespread opposition. Mounting international and domestic criticism, within the US and Australia, demonstrates that millions of ordinary people correctly regard Guantánamo as a physical and psychological hellhole and the impending military trials a legal travesty.



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