In the face of mounting opposition, Australian government backs new Guantánamo courts

Richard Phillips
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Last week the Pentagon presented a 238-page manual for its new Guantánamo Bay military trials to the US Congress for approval. Drawn up after the US Supreme Court ruled last year that the previous commissions violated the Geneva Conventions and the American constitution, the manual cynically claims to establish "judicial guarantees which are recognised by all civilised people".

The new guidelines, however, are little different—and in some cases, worse—than the previous kangaroo court hearing procedures. In a clear attempt to secure the guilty verdicts demanded by the Bush administration, the military commissions reverse long-standing legal procedures. Hearsay and statements obtained by coercion are allowed and prisoners denied habeas corpus rights to challenge the legality of their detention in a civilian court.

While defence lawyers can challenge hearsay or coerced evidence from a third party, their objections can be overruled if the military commissioners, who are appointed by the Pentagon, deem the evidence "credible".

The new rules formally exclude evidence obtained by torture, but many interrogation methods previously defined as torture are now deemed "coercive" and therefore allowed. They include water boarding, sleep deprivation and other psychological torture. Water boarding is a notorious technique dating back to the Inquisition, in which prisoners are bound, blindfolded and have water poured over their faces to simulate drowning. This induces a severe gag reflex, with victims believing that they are about to die.

US Marine Corps Major Michael Mori, defence lawyer for Australian citizen David Hicks, who has been in Guantánamo for over five years—much of it in solitary confinement—denounced the new rules, declaring: "We have the same broken down house with a fresh coat of paint."

Mori said the guidelines continued to violate the fundamental rights of Guantánamo prisoners and placed intolerable burdens on defence lawyers. He pointed out that the same body that was prosecuting the Guantánamo detainees was writing the rules governing the trial.

"Under the old commission system a military defence lawyer was allowed to see all the classified evidence. Even if David Hicks couldn't, I could," he said. "Now they want to say that I may not see classified evidence. They may only provide a summary and I may never get to see or check the classified evidence."

Mori predicted that even if Hicks were charged under the new military commissions, opposition in the Congress, along with legal appeals and challenges, could see the 31-year-old father of two remain in Guantánamo for at least another five years, irrespective of the outcome of any trial.

Confronted with mass calls for Hicks's release, senior Australian government ministers, including Prime Minister John Howard, have, during the past few weeks, attempted to feign concern over the lengthy imprisonment of Hicks without trial. The shift is motivated entirely by electoral concerns in the runup to this year's federal election.

Despite the crocodile tears for Hicks, however, senior ministers were quick to back Washington's revamped Guantánamo military commissions.

In line with Canberra's unwavering support for the US-led "war on terror," Attorney-General Phillip Ruddock proclaimed the new procedures an important step that included fundamental legal safeguards and would guarantee a fair trial.

Asked to comment on the use of hearsay and coerced testimony, Ruddock simply parrotted comments made by the US Defence Department's deputy general counsel Daniel Dell'Orto in Washington.

The new rules, the attorney-general said, reflect "the unique conditions under which evidence is obtained on the battlefield". In other words, basic legal rights and principles governing the treatment of war prisoners and codified in the Geneva Conventions have simply been repudiated.

Such is Ruddock's disdain for basic democratic rights that he admitted last week that he had not read any of the US allegations against Hicks since his capture in Afghanistan in late 2001. Last October, Ruddock told the local media that he did not regard sleep deprivation, which has been widely employed in Guantánamo and other US-run military prisons, as torture, but merely "coercive".

Foreign minister Alexander Downer was equally arrogant and sadistic, praising the guidelines and calling for Hicks to be quickly charged and brought before Guantánamo's kangaroo courts. "I think the challenge now is for the Americans to get on with the charging of David Hicks as quickly as possible," he told a press conference in New York.

A day earlier, Downer declared that there was no evidence Hicks was suffering from psychological distress over his five-year detention and extended periods of solitary confinement without trial.

This is despite the fact that Hicks has stopped replying to letters from his family and refused to accept a Christmas phone call from his parents in December. Paul Mullens, an Australian psychiatrist

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who assessed Hicks in 2005 but was blocked by the US military from revisiting last year, believes he is suffering from serious depression and could be suicidal.

Downer claimed: "I know of somebody who saw Hicks just in the last handful of days—within the last week—and there's no evidence he's in some sort of mental turmoil. He is in good health." He added that Hicks's mental state would not be an issue in any forthcoming trial.

Rebuffing repeated questions from the media over the next 24 hours, Downer refused to identify his source. It was later revealed that the information came from Scott Weinhold, a public affairs officer from the US embassy in Australia who recently visited Guantánamo. Weinhold has no medical qualifications and saw Hicks for approximately three minutes. He had no conversation with Hicks, who refused to speak to anyone present.

Ruddock's and Downer's claims are yet another example of the Howard government's political methods and its criminal disdain for centuries-old legal rights.

In late 2001, when Hicks was initially detained by the US military, the Howard government gave the Bush administration a blank cheque to do whatever it liked with the young Australian. Downer declared: "We are an ally of the United State and we agree with them [on their treatment of Hicks]. They're perfectly entitled to take tough action."

Such comments were aimed at demonstrating Canberra's loyalty to the Bush administration's "war on terror" and securing Washington's backing for Australia's neo-colonial operations in the Asia-Pacific region.

In contrast to late 2001, Canberra is now confronted with masses of ordinary Australians who correctly regard the illegal detention of Hicks as an assault on their own democratic rights, and who believe that Canberra cannot be trusted.

Newspapers are being flooded with letters from readers bitterly denouncing the Howard government. Many writers have called for the resignation of Ruddock and Downer; others have drawn direct connections with the pattern of lies over weapons of mass destruction in Iraq, the government's false claims that refugees had thrown their children overboard in attempts to reach Australia, and numerous other issues. The depth of support for Hicks that has emerged over the past year has surprised both the media and the government.

According to a recent Newspoll survey, 71 percent of those surveyed want Hicks repatriated to Australia immediately, irrespective of the allegations made by the White House and the Howard government.

The survey revealed that support for Hicks's release came from 78 percent of Labor voters, 74 percent of Democrats, almost 100 percent of Greens and 67 percent of Liberals. Voters for the smaller right-wing organisations, on which Howard has depended for political support, also want Hicks returned—100 percent of One Nation voters and 80 percent of Family First voters.

Members of Howard's ruling Liberal-National Party coalition, concerned that they could lose their seats in the upcoming elections, have responded by starting to publicly raise the issue. Former Liberal prime ministers, attorneys-general and state premiers, including former Victorian premier Jeff Kennett, have denounced the government and called for Hicks's repatriation.

Law Council of Australia president Tim Bugg recently told the *Sydney Morning Herald* that the Howard government was so deeply isolated over the issue that he could not name a single legal authority in Australia supporting Canberra's position on Hicks. Bugg told the newspaper he was regularly being contacted by senior figures in Australia's legal establishment venting their anger over Howard's refusal to demand Hicks's repatriation.

Earlier this week, the Melbourne-based *Age* newspaper published a short letter from Brian Birrell, a criminal defence lawyer from the rural Victorian town of Shepparton. Birrell declared that the Hicks affair was "a disgrace to a generation of lawyers of this nation" and called for national strike action.

"It is time for the 50,000 members of the profession—from High Court judges to articled clerks—to have the courage to withdraw their services for a day to make it clear to John Howard and Philip Ruddock that we are ashamed of them. Both of them obtained law degrees predicated on the belief in the presumption of innocence. They are a blight on the profession," Birrell wrote.

"Hicks has been 'stopped' for more than 1,800 days. Surely it is within the pro bono spirit of the legal profession of his country to stop for a day. I call upon the Law Council of Australia, which claims access to justice as one of its roles, to lead us to a no-court day, not only for Hicks but for the principle which is fundamental to this nation."

The next day the newspaper published another letter endorsing Birrell's comments. It urged Australian law institutes and bar councils to "seriously examin[e] the possibilities under Australian and international law, for the prosecution of John Howard, Philip Ruddock and Alexander Downer for war crimes, human rights abuses and possibly criminal offences related to their complicity in actions amounting to abduction, false imprisonment and infliction of grievous bodily harm."

Whether these calls are taken up or not, they provide yet another indication of the depth of hostility confronting the Howard government over its appalling treatment of David Hicks.

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