

Demands grow for release of Australian Guantánamo prisoner, David Hicks

Richard Phillips
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Popular opposition continues to mount against the Australian government over its refusal to demand the immediate release of David Hicks from Guantánamo Bay. Hicks was captured in Afghanistan by the Northern Alliance in late December 2001 and then sold to the US military. He has been incarcerated in Guantánamo Bay for more than five years.

Two weeks ago, hundreds demonstrated outside the federal parliament and a national television and radio advertising campaign was launched demanding Hicks's immediate repatriation.

The growing movement is being animated not only by the almost daily revelations about the sadistic treatment of Guantánamo prisoners, but by deep-seated hostility to the wars in Iraq and Afghanistan and concerns about the escalating assault on democratic rights at home. Tens of thousands of ordinary Australians now recognise that the soul-destroying incarceration of Hicks is the real face of the so-called "war on terror" and that long-held and hard-won legal principles are under serious threat.

In face of this sentiment, which threatens to unseat the Liberal-National coalition government in federal elections later this year, Prime Minister Howard and other senior government officials have attempted to feign concern about the length of Hicks's imprisonment. The cynical play-acting has descended to new lows during the past two weeks.

Last November Attorney-General Phillip Ruddock told the local media that he expected terrorism charges to be laid against Hicks before the end of December. When none had been announced by late January, Howard sent a letter to the White House requesting a mid-February deadline.

Howard's letter, of course, had nothing to do with defending Hicks's rights, but was in response to the resumption in mid-February of the adjourned federal court action by Hicks's lawyers over the government's refusal to demand the Australian citizen's release.

A week later, when US military prosecutors announced that they were planning to charge Hicks with attempted murder and "providing material aid to terrorists". Howard immediately declared that Washington was adhering to his "deadline". Hicks, he said, would be quickly arraigned before a military commission.

These claims, which were primarily directed towards government MPs who were becoming nervous about the approaching federal elections, were rapidly exposed as false.

The so-called charges would not be official until approved by the convening military commissioner, which could take weeks and, according to high-level US officials, even if the charges were approved, Hicks would be unlikely to face trial until next year.

The allegations against Hicks, like the charges against him which

lapsed following last year's US Supreme Court rulings, are a legal travesty and would be thrown out in any civil court hearing. War combatants cannot be prosecuted for murder under the Geneva Conventions and "providing material aid to terrorists" is a retrospective charge, based on legislation introduced last year.

Likewise, the military commissions, as countless human rights organisations and legal experts have pointed out, are kangaroo courts designed to secure guilty verdicts and little different from those ruled illegal last year. In fact, the revamped commissions still allow hearsay evidence and evidence extracted using coercive methods, as well as allowing those on trial to be excluded from the proceedings at any time.

Defence lawyers for Yemini citizen Salim Hamdan (31) and Canadian Omar Khadr (19)—the two Guantánamo prisoners to be charged with Hicks—have pointed out that the new commissions are illegal and deeply anti-democratic.

Navy Lieutenant Commander Charles Swift, who represents Hamdan, told Associated Press that he has not yet been able to interview any of the 70 government agents who made statements that will be used against his client. And under commission rules, it is unlikely he will be allowed to cross-examine them in any commission hearing.

Likewise, defence lawyer Marine Lieutenant Colonel Colby Vokey said he was not able to meet with his client, Omar Khadr, during his last visit to Guantánamo because the deeply-traumatised prisoner refused to leave his cell. Khadr, who is one of the youngest prisoners in Guantánamo, was incarcerated in October 2002, when he was only 15 years old, and has spent almost a quarter of his life in the American-run hellhole.

Howard, Attorney-General Ruddock and other senior ministers, however, maintain that the commissions will provide a fair trial. These claims are combined with increasingly desperate manoeuvres and self-contradictory lies about the government's involvement in Hicks's ongoing incarceration.

For the past five years Canberra has insisted that Hicks could not be freed because Washington wants Guantánamo prisoners punished. This assertion is exposed by the US release of more than 300 detainees from Guantánamo, including senior Taliban officials, over the past three years.

Canberra has also insisted that Hicks could not be repatriated because he was charged with terrorism in 2004 and that those who were freed—Australian citizen Mamdouh Habib and British prisoners—were not charged or designated as eligible for trial.

These claims are also false. In fact, the British detainees and Habib had been named for trial. Moreover, US authorities decided to release

Habib in early 2005 because they feared his trial would expose the Bush administration's illegal kidnapping or rendition program.

But such is the mountain of lies from Canberra that government officials are losing track. On Monday, February 5, the government's threadbare claims were suddenly cast aside when Howard told a meeting of government MPs that all he had to do was ask for Hicks's release and the Australian would be repatriated.

This admission was repeated the next day by Attorney-General Ruddock and then Robert McCallum, the US ambassador to Australia.

McCallum told Brisbane's *Courier Mail* that Australia had a "special relationship" with the US and that US President Bush would seriously consider any request for Hicks's release.

Howard and Ruddock made clear, however, that they would not ask for Hicks's release because he had not committed any crime under Australian law and therefore would have to be released. In other words, Hicks is innocent and, in the Kafkaesque world of the Howard government, must be further punished by the Americans because Canberra cannot legally punish him!

When local journalists asked Attorney-General Ruddock why he opposed retrospectivity in Australia yet supported Hicks being charged under retrospective laws in the US, he falsely claimed that the American charges were "not retrospective".

Ruddock's comments confirm what millions of people in Australia and around the world already know—that Hicks's more than five-year imprisonment and physical and psychological abuse is the direct responsibility of Howard and other senior government ministers. They have conspired with Washington to violate the Geneva Conventions and international law and their actions constitute war crimes.

Ruddock and Foreign Minister Alexander Downer also continue to insist that Hicks is in "good health"—assertions that are strenuously denied by Hicks, his family and his defence lawyers—and that there is no evidence that he or anyone else has ever been tortured or brutalised in Guantánamo. Downer arrogantly declared last week that he "hadn't heard that they've [the US] breached the Geneva Conventions" over the treatment of Guantánamo prisoners!

Ruddock even repeated his claims that sleep deprivation of prisoners in Guantánamo was "not torture". "[M]y wife always cites the example of young parents," he told ABC radio. "You know, you don't say it's coercive or torture. You simply say ... we were kept awake and it's a bit unreasonable".

Asked to comment on reports that Hicks was deeply disoriented, Ruddock sadistically declared: "People respond to detention in different ways ... Some people don't handle it well."

Notwithstanding these cruel and desperate claims, the brutal reality of everyday life in Guantánamo was further exposed when Hicks's defence lawyers—Major Michael Mori and David McLeod—visited the Australian prisoner in early February.

When McLeod compared Guantánamo to a "Nazi concentration camp" and revealed that Hicks was chained to the floor during the meetings, an official attached to the Australian embassy in Washington suddenly arrived at the prison. He was given a tour of Camp Six and Hicks's cell and then demanded an interview with the Australian.

Hicks, who has refused to meet with any Australian official in the past six months, immediately rejected the official's requests. He then wrote a courageous and defiant letter outlining his reasons.

It read in part: "In the past I have been punished for speaking to you. I am not well, I am not OK and yet you have not done anything for me and the Australian government keeps saying I'm fine and in an

acceptable situation.

"To speak with you and tell you the truth and the reality of my situation would only risk further punishments. You are not here for me but on behalf of the Australian Government who are leaving me here. If you want to do something for me then get me out of here."

The next day Hicks's lawyers revealed that Guantánamo prisoners had been taunted with photos and a poster depicting the execution of Saddam Hussein. The poster had a caption stating that Hussein had to be executed because he had lied. US military authorities claimed that the material was for the "intellectual stimulation" of prisoners.

On return to Australia, David McLeod held a press conference denouncing Guantánamo as a "lawless prison run by the CIA and US interrogators" who used subjugation and degradation torture techniques. He angrily denounced the decision by US authorities to wait until defence lawyers had left Guantánamo before informing his client that he was going to be charged. This, McLeod said, was "an act of bastardry" which would have a "devastating" impact on the 31-year-old father of two, who was in "a spiral of despair".

The Australian defence lawyer also revealed that US military authorities attempted to intimidate him for speaking out about prison conditions. "I was subjected to a rather aggressive interrogation by one of the officials there for talking to the media in the way that I have," he said. "This is the standard approach. This is what happens when a lawless place like Guantánamo Bay is subject to scrutiny."

McLeod's comments about the prison were chillingly confirmed a few days later by Guantánamo chief, Rear Admiral Harry Harris. Trampling on any presumption of innocence and other basic legal rights, he told ABC radio's "PM", that Hicks was a "dangerous terrorist" and had to be kept in his cell 22 hours a day for security reasons.

There were "no innocent detainees" in Guantánamo, Harris continued, only "enemy combatants" whom the US had the right to incarcerate indefinitely.



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