

Senior lawyers accuse Australian government of war crimes over Guantánamo

Richard Phillips
27 February 2007

Melbourne barrister Robert Richter and six leading Australian legal experts and former judges have publicly accused the Howard government of war crimes. They have called for the prosecution of the prime minister and other leading ministers over their collaboration with the Bush administration in the more than five-year illegal detention of David Hicks in Guantánamo Bay.

The calls came as a hearing by Hicks's defence lawyers resumed yesterday in Australia's Federal Court arguing that the Howard government had failed its constitutional duty to protect the 31-year-old Australian citizen.

Hicks was captured in Afghanistan by Northern Alliance forces in December 2001, sold to the US military, and then transported to Guantánamo in early January 2002. The father of two was one of the first war prisoners incarcerated in the notorious US-run prison, which was established to circumvent the Geneva Conventions and other long-standing legal principles and to allow the US military to use various forms of physical and psychological torture, run kangaroo courts and hold prisoners indefinitely.

The Pentagon is currently preparing two charges against Hicks—attempted murder and aiding terrorists—for a forthcoming US military court. The charges will rely on hearsay evidence and information extracted under coercion. Hicks, who has been kept in solitary confinement and tortured, was denied any access to a lawyer or his family for the first two years of his incarceration.

Robert Richter attacked the government in an op-ed comment, entitled “Hypocrites breaking our law at every turn,” published on February 18 in the Melbourne-based *Sunday Age*.

Directly accusing Attorney-General Philip Ruddock of being a liar, who had “publicly prostituted his duties to the law—and to those he owes a duty of protection,” Richter challenged the attorney-general to sue him for

defamation over the article and “take the risk of the facts emerging in any litigation”.

Richter described Ruddock, Prime Minister John Howard and Foreign Minister Alexander Downer's comments on Hicks as “damp-squib lies and deceptions” and said their calls for Hicks's immediate prosecution in military commission trials were “a desperate cover-up of their government's fundamental dereliction of duty”.

In a clear reference to the violation of the Australian criminal code and international law by the three government ministers, Richter said they had “made themselves complicit in procuring an illegal process to occur as soon as possible” and had “deliberately compound[ed] the illegal actions of the American Administration”.

“Instead of confessing to a wrong and doing the decent thing by trying to set it right, they are pushing ahead with ‘churching the whore’ after the abortion. They urge the Americans to create a facade of legality for what is seen by all honest jurists as a gross violation of national and international law.”

Richter pointed out that the proposed charges against Hicks of attempted murder and aiding terrorists would be “struck out” in an Australian court “as an abuse of process” and directly denounced Ruddock as the “aider and abettor of the disregard of national and international law and justice”.

While the *Sunday Age* editors reported a “deluge of mail” praising Richter, they only published four letters. One writer angrily commented: “We do not want or need hypocrites like Howard, Ruddock and Downer seeking high offices and running our country any longer. These selfish politicians who have flouted international laws should be charged for war crimes and if these charges seem unlikely then they should simply be sent to Guantánamo Bay where I'm sure they would be well looked after.”

Another correspondent drew a direct connection between the treatment of Hicks, the government's racist campaign against Muslims and the ongoing attacks on democratic rights. A third declared: "Very seldom can I say I am proud to be a lawyer, but Robert Richter QC's, robust and gutsy article in the *Sunday Age* was simply brilliant and stirring. ...

"Arguably, this shameful triumvirate [Howard, Ruddock and Downer] are aiding and abetting serious criminal offences against a man who has not been charged and who will not be tried in a traditional, common-law court. Maybe Howard, Ruddock and Downer should be arrested and imprisoned in Woomera [an Australian detention centre for refugees, located in the desert—RP] for a few years for their complicity with George Bush for offences including assault, false imprisonment and abuse of process".

Richter's article follows a legal opinion drafted last November by six jurists—three former judges, Alistair Nicolson, Peter Vickery and Gavan Griffith, and three leading international human rights law professors, Andrew Brynes, Hilary Charlesworth and Tim McCormack.

Nicolson is a former head of the Family Court and current judge advocate general of the Australian Defence Force; Griffith was Australia's solicitor general from 1984 to 1997 and Vickery is a special rapporteur to the International Commission of Jurists.

While the legal opinion, which specifically detailed the Australian government's war crime violations (click here to read the document) received little media publicity at the time, Richter's comments have brought the issue of war crimes into the broader public arena.

Yesterday, Nicolson was interviewed in the *Age* and on ABC radio. He explained that the government's backing for Hicks's five-year detention without trial and its support for the blatantly illegal US military commission tribunals were clear offences against International Criminal Court statutes and violated Australian law.

The revamped military commission tribunals were modified by new US legislation passed late last year with Democratic Party support. Nicholson said they contravened the Geneva Conventions because they deny habeas corpus rights—the right of prisoners to challenge their detention in a civil court—and other long-standing basic legal rights. They allow, for example, the use of hearsay and evidence extracted by coercion, as well as draconian restrictions on defence lawyers.

Nicolson pointed out that the Howard government's

calls for Hicks's speedy trial before US military commissions violated divisions 11 and 268 of Australia's Criminal Code. "If you arrange kangaroo courts to try people who are your enemies then you are breaking with basic legal principles, and that is what is happening here," he said.

Under Australian law, war crimes charges can only proceed if backed by the attorney-general. While Nicolson admitted that it was unlikely Ruddock, Howard and Downer, members of the current Liberal-National coalition government, would be prosecuted by any future Labor government, he added: "These are ministers of the crown and have a duty to uphold the law. Instead of upholding the law, they are flouting it. This is a very serious matter whether they are charged or not." Nicolson pointed out, however, that legal action could be taken against the Howard government from another country.

While mass opposition to the illegal detention of Hicks has been steadily growing over the past 12 months, the open indictment of leading Howard government ministers as war criminals by senior Australian legal figures is a further indication of the depth of public sentiment.

The demand for the laying of war crimes charges against Howard, Ruddock and Downer should be taken up by ordinary working people throughout the country. The government's ongoing treatment of David Hicks, and its defence of the illegal US military commissions, constitute a threat to the democratic and legal rights of every Australian citizen. They demonstrate the real face of the so-called "war on terror" and are a warning of the equally repressive measures being prepared at home against government opponents.



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