

Australian government lawyers demand Guantánamo compensation case be stopped to protect US alliance

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The Rudd government has intensified its efforts to block legal action by Mamdouh Habib, a former Guantánamo prisoner. The 53-year-old Australian citizen and father of four, is suing the government for unspecified damages over its role in his torture and illegal detention in Pakistan, Egypt, Afghanistan and then Guantánamo Bay between 2001 and 2005. The long-running case came before a full bench of the Federal Court on September 14. The court is expected to rule on the issue later this year.

The Labor government's moves to stop the case run parallel with the Obama administration efforts in the US to prevent a full exposure of the torture and other illegal actions committed by the Bush administration and American officials as part of the so-called "war on terror". Like its US counterpart, the Australian government is determined to protect those responsible for these crimes.

Habib was seized by Pakistani police in early October 2001 in the aftermath of the September 11 terrorist attack on the US. He was subjected to "extraordinary rendition"—i.e., subcontracting torture abroad, in this case to Egypt, where Habib was physically abused, told that his family had been killed, and forced to confess to bogus allegations.

In late April 2002, Habib was moved to Afghanistan and in May 2002 to Guantánamo Bay where he spent the next three years enduring ongoing psychological and physical abuse. He was released without charge and repatriated to Australia in January 2005 but had his passport revoked and is under constant surveillance by Australian police and intelligence officers.

The former Liberal-National coalition government of Prime Minister John Howard falsely claimed to know nothing about Habib's rendition to Egypt. Once in the US, Howard, Attorney General Phillip Ruddock and Foreign Affairs Minister Alexander Downer insisted that Habib was a "hardened terrorist" and that he had not been tortured but was in "good

health" and being "treated fairly".

Former Australian Security and Intelligence Organisation (ASIO) chief Denis Richardson, later appointed Australian ambassador to Washington, and Australian Federal Police (AFP) head Mick Keelty told the media that Habib's assertion that he had been rendered to Egypt and tortured "lacked credibility".

However, Habib's lawyers have detailed evidence alleging that AFP, ASIO and Department of Foreign Affairs and Trade officers aided and abetted the illegal treatment of the Australian citizen. Habib has named several officials present while he was brutalised with electric prods, beaten unconscious and on one occasion threatened by a US marine with rape by a dog. (Full details of Habib's treatment are outlined in his book *My Story: the tale of a terrorist who wasn't*, published in 2008.)

Habib has also accused Australian intelligence officers of providing Egyptian authorities with a SIM card, a laptop computer, address books, audio tapes of telephone conversations and other material seized during a raid on Habib's Australian home just before his arrest in Pakistan.

The long-running compensation case began in December 2005 under the Howard government. Like its predecessor, the current Rudd government has used a range of legal manoeuvres, delaying tactics and blatantly anti-democratic arguments in its attempt to quash the case.

During the last Federal Court hearing on the case in March, government lawyers argued that Habib's compensation case should be dismissed because it had "no chance of success". They also claimed that under the so-called "act of state" doctrine the court could not examine "the rights and wrongs of the acts of a foreign state".

On September 14, the Commonwealth Solicitor General Stephen Gageler told the Federal Court that it was not within

the court's jurisdiction to pass judgement on the actions of "foreign government agents in foreign lands" and that compensation for Habib could "vex the peace" between Australia, and the US, Pakistan and Egypt. Translated into plain English, this means those involved in rendition, torture and other crimes are to be protected, and victims like Mamdouh Habib denied compensation, in order to maintain good diplomatic relations with Australia's international allies.

Government lawyers continue to insist that Habib was suspected of being an "enemy combatant"—a term invented by the Bush administration—and therefore had no protection under the Geneva Conventions. They also use "national security" as the pretext to exclude Habib and his legal team, which includes lawyers Peter Erman, Robert Beech-Jones SC, Ian Barker QC, and Clive Evatt, from court proceedings and to block the release of key documents. Most of the documents given to Habib's legal team thus far have been heavily censored.

Lawyer Peter Erman told the *World Socialist Web Site* that if the Federal Court accepted the government's arguments it would "reduce the Geneva Conventions and the UN's Conventions Against Torture to an almost farcical situation. There is hardly any circumstance that could be contemplated where Australians were in breach of these conventions overseas that wouldn't implicate, or potentially embarrass, a foreign government."

"Habib is an Australian citizen suing in an Australian court for breaches of Australian law by Australian officials. If an Australian court cannot determine his case what chance does he have? He can't go overseas and sue Pakistan, Egypt or the US and bring a claim against Australian officials there."

Habib is still attempting to regain his Australian passport, which was cancelled by the Howard government in 2005. Early this month, he secured the right to make a High Court appeal against an Administrative Appeals Tribunal (AAT) decision rejecting his previous attempt to secure a passport. Habib's lawyers, however, are prevented from reading the original AAT judgment and therefore refuting its allegations. They were also excluded from the court hearing when ASIO officers gave evidence.

Labor ministers have dissembled over the issue in parliament. On May 14, Labor Senator Penny Wong was asked whether ASIO had representatives in Egypt during Habib's imprisonment or if the intelligence authority had any contact with the CIA and Egyptian authorities over the Australian citizen. While there is clear evidence about the collaboration of Australian officials with the CIA, together with Pakistani and Egyptian intelligence operatives in the rendition, Wong refused to answer on "operational grounds". Wong gave the same

response when asked if Habib was still under surveillance.

In fact, since his release from Guantánamo in early 2005, Habib has been a regular target of police harassment. Former Labor New South Wales Labor premier Bob Carr assured the Howard government, following Habib's repatriation, that he would be monitored by state police. Habib's home has been burgled on several occasions, but no one has been arrested. In 2007 Habib and his son were falsely detained by police after they witnessed a gangland shooting and notified police about the crime.

Habib has also been targeted by the corporate media, particularly from the Murdoch tabloid press and radio shock-jocks. He is currently appealing a defamation case against the Sydney tabloid, the *Daily Telegraph*.

In the original ruling Justice Peter McClellan found in favour of the Murdoch press, declaring Habib had made unsustainable claims about mistreatment in Pakistan and Egypt. The High Court appeal is based on the fact that McClellan took the unprecedented step of admitting into evidence statements made by Habib under conditions of torture in Guantánamo, Pakistan and Egypt. A decision on that case is expected in the next two months.

In May this year Attorney-General Robert McClelland announced that the Labor government was formally endorsing the United Nation's Conventions Against Torture and integrating its principles into Australian law.

"The prohibition of torture is one of those core, universal human rights which forms part of the common conscience of humanity," he declared. Rules prohibiting torture were international norms, he said, and "should not be set aside in any circumstances." But this is precisely what Rudd government lawyers are fighting against to have Habib's case dismissed in the Federal Court.

The government is arguing that Habib cannot be allowed to mount a legal case for compensation over his illegal treatment because it will expose those responsible for torture and rendition and undermine Australia's diplomatic relations with the US. In blocking action against the perpetrators of past war crimes, the Labor government is protecting those involved in current violations of basic democratic rights in Afghanistan and elsewhere.



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