

US court overturns “terrorism” charge against Australian Guantanamo prisoner

Richard Phillips
20 February 2015

After protracted legal action by former Guantanamo prisoner David Hicks, a US Military Commission Review has unanimously upheld the 39-year-old Australian citizen’s appeal against his bogus “providing material support for terrorism” conviction. The decision is yet another demonstration that the US-led “war on terror” and its associated crimes are built on lies.

The court declared yesterday that “the findings of guilty are set aside and dismissed, and appellant’s sentence is vacated.” A Pentagon spokesman told the media that the US would not appeal the decision. The ruling follows the recent quashing of the same conviction against a Sudanese citizen Noor Uthman Muhammed who was released from Guantanamo in 2014.

Of the almost 800 people who have been imprisoned at the Guantanamo hellhole since 2002, only six have been convicted by the military commissions. Three of those verdicts, including Hicks’s, were overturned after the prisoners’ release with the other three currently being appealed.

Hicks’s “terrorism” conviction violated due process and was invented after the Australian citizen had already been imprisoned. It was imposed as part of a US military commission plea deal for his release in 2007.

Commenting on yesterday’s court ruling, Hicks told a press conference that he “had been waiting for this decision for years,” and it was “a relief because it’s over.” He was not interested in an apology from the government, he added, because “it wouldn’t change anything and would, in any case, be insincere.”

Hicks, however, declared that the federal government should pay for ongoing medical expenses caused by his incarceration. “It’s due to the torture, of being kept in metal rooms in freezing conditions for years, it’s not being able to move, it’s not being able to exercise: the body deteriorates over five and a half years, even without the added torture, such as stress positions, and being

beaten,” he said.

Hicks was repeatedly asked to respond to media and government claims that the quashing of the terrorism charge was on “a legal technicality.” His lawyer Stephen Kenny said that the charges against Hicks were based on a lie and reaffirmed that his client “had never breached any Australian, international or US laws.”

Badgered by the journalists, Hicks declared: “I think they [all those accusing him of terrorism] are supporters of torture.” His brief but blunt response was spot-on. All of those who yesterday defended Hicks’s incarceration, despite the fact that the US court decision had overturned the conviction, were directly or indirectly involved in his persecution, torture and 2007 show trial.

The chief culprit, former Prime Minister John Howard, declared that, “The US verdict is about the legal process in that country” and that Hicks was “not owed an apology by any Australian government.” In fact, the Howard government gave the green light for the indefinite incarceration of Hicks, covered up his torture and refused to render him any assistance.

Current Prime Minister Tony Abbott, one of Howard’s ministers, said that Canberra “did what was needed” because Hicks had been “up to no good.” “I’m not in the business of apologising for the actions that Australian governments take to protect our country. Not now, not ever.” My government, Abbott declared, would be “absolutely relentless in the fight against terrorism.”

In other words, the Abbott government not only defends the previous violations of the Geneva Conventions, due process and the presumption of innocence, but is preparing even greater attacks on basic legal rights under the banner of the phony “war on terror.”

Hicks was captured by Northern Alliance forces in Afghanistan in late 2001, sold to the US military and sent to Guantanamo where he was incarcerated for five and a half years. He was subjected to beatings, sleep deprivation

and other forms of torture, including extended periods of solitary confinement. He was also denied access to a lawyer and family contact for almost two years.

From the outset the Howard government used the bogus terrorist allegations against Hicks to justify its backing for the Bush administration's "war on terror" and invasions of Afghanistan and Iraq. Howard, Attorney General Phillip Ruddock and Foreign Affairs Minister Alexander Downer constantly defamed Hicks as "a terrorist," declaring that his on-going detention was justified.

Senior government ministers rejected detailed evidence from lawyers and international human rights bodies that the Australian citizen was tortured and insisted that Hicks was "healthy" and being treated well. Ruddock even claimed that sleep-deprivation, which was used on Hicks, was not torture.

In early 2007 Hicks was told that unless he accepted a plea bargain arrangement he would remain incarcerated in Guantanamo for years. He was one of the first to face the Guantanamo military commissions. Commenting yesterday on the plea deal, Hicks's former military lawyer, Dan Mori, said: "Did I feel dirty participating in that little show trial? Absolutely."

The deal, in fact, was a political "fix", concocted by the Howard government with the Bush administration to protect Canberra from mounting domestic opposition to Hicks's treatment. In return for pleading guilty, Hicks was given a seven-year suspended sentence, a seven-month prison term in an Australian high security prison, a one-year media gag and other anti-democratic restrictions. Australia was the only country outside the US that formally recognised the military commissions.

The Labor Party was just as culpable as the Howard government for Hicks's ordeal. Its response yesterday was utterly hypocritical. Labor opposition leader Bill Shorten initially declared that "there has been an injustice done." But his parliamentary secretary Jim Chalmers, like Howard, later told Sky News: "These are decisions of the US courts fundamentally and it's probably not appropriate for Australians to apologise for a decision taken by a US court."

During Hicks's detention, Labor leaders, state and federal, provided unwavering bi-partisan support to the Howard government and only began voicing mild criticism in 2006 after public opposition emerged calling for his repatriation.

Elected to power in late 2007, the Rudd Labor government kept Hicks incarcerated in a South Australian high-security prison and on his release enforced the one-

year media ban and a draconian control order. Hicks was required to report to police three times a week for six months and could not leave his home between midnight and dawn or use mobile phones or the internet unless authorised by the Australian Federal Police.

In 2011, when Hicks published a detailed account of his treatment (see: "*Guantanamo: My Journey*—David Hicks exposes torture and government criminality"), the Labor government began prosecuting him under "proceeds of crime" laws. Labor only abandoned the case after it became clear that Hicks's lawyers could subpoena government officials.

While Hicks has now been found innocent, those guilty of illegally incarcerating him and hundreds of others, remain scot-free. No one in the Bush or Obama administrations or the US military has been held accountable for torture and other crimes committed as part of the "war on terror."

Nor has any action been taken against members of the Howard government in Australia who aided and abetted Hicks's detention, or the Rudd, Gillard and Abbott administrations that used the "war on terror" to justify their involvement in Washington's criminal wars and their attacks on basic legal and democratic rights at home.

The author also recommends:

The issues of principle in the case of David Hicks
[14 April 2007]

CIA torture and the "war on terror"
[11 September 2014]

CIA torture and the crimes of the state
[10 December 2014]



To contact the WSWWS and the
Socialist Equality Party visit:

wsws.org/contact