

# The Abandonment of David Hicks and Mamdouh Habib

By Ana Kailis

One of the most vexing international human rights issues today is the treatment by the US state of so-called 'enemy combatants' in the 'War on Terrorism'. Leaked photos of Abu Ghraib prison in Iraq and dossiers and documents from Guantanamo Bay, Cuba have revealed a litany of human rights abuses including torture, the frequent use of stress positions, dogs and in the case of Guantanamo, forced feeding of detainees.

Gradually, however, cases taken through the US court system are providing a modicum of legal protection for detainees. In particular, the case of Salim Hamdan, Osama bin Laden's driver, currently being heard in front of the US Supreme Court, is proving a powerful test-case on the constitutionality of the military tribunal process which has significant implications for the status of other detainees, including Australian citizen David Hicks. On the international stage, there are growing calls for the closure of Guantanamo including from the United Nations, Amnesty International and UK Prime Minister Tony Blair. So far these efforts have failed to dent US policy but reflect a growing international mood against the US government's de-legalised detention regime.

The case of David Hicks is of ongoing concern to many Australians. Arrested by Northern Alliance militias in Afghanistan in December 2001, he was handed to the US military and has been detained at Guantanamo Bay since January 2002. Hicks is one of approximately 490 men who are incarcerated in the various Guantanamo detention facilities. One of only a handful of detainees to be charged, his case was due to have gone before a military tribunal in November 2005 but has been stalled because of the Hamdan Supreme Court challenge. Despite being charged, the circumstances around Hicks's arrest are contested and the evidence on which the charges are based lack detail. The charges themselves do not exist under international law. With failing health, 30 year old Hicks remains in solitary confinement under 24 hour a day neon lighting. In a 2004 affidavit, he detailed the abuse he had suffered at the hands of interrogators including being beaten while blindfolded and handcuffed, being routinely subjected to sleep deprivation, administered unknown medication and not being allowed out of his cell to exercise in sunlight for nearly a year. If the Hamdan legal team proves the unconstitutionality of the military tribunal process, Hicks and other charged detainees will have greater access to the US courts to challenge their detention.

Australian citizen Mamdouh Habib also spent a significant time at Guantanamo Bay after being arrested in Pakistan in October 2001. Unlike Hicks however, Habib was sent to Egypt, the country of his birth, for six months where he was detained by Egyptian authorities. Credible Egyptian sources and an affidavit submitted to a US District Court in 2005 indicate that Habib was tortured while in Egyptian custody, including by electric shock treatment, beatings and water torture. Once sent to Guantanamo Bay, Habib was subject to further abusive treatment. Three released British detainees claim in a sworn 2004 testimony, 'Habib himself was in catastrophic shape, mental and physical. As a result of his

having been tortured in Egypt where he was taken from Bagram and then brought back, he used to bleed from his nose, mouth and ears when he was asleep. . . He got no medical attention for this.' Habib was released from Guantanamo Bay in 2005 when his affidavit containing allegations of torture was submitted to a US District Court.

Despite vocal advocacy for Hicks and Habib by lawyers, families and concerned members of the community, concrete assistance and support for the two men from the Australian government has been noticeably lacking. In contrast, the British government has managed to secure the release of all of its citizens from Guantanamo Bay and pressure is mounting for the release of all British permanent residents held in US custody. In particular, ongoing Australian government support of the military tribunal process, despite the admissibility of evidence obtained under coercion and torture, has left Hicks to the fate of the US military without the likelihood of a fair trial. This contrasts with many other Western states, which were able to secure the release of their citizens prior to them being charged. His lawyer, Major Michael Mori has indicated that the evidence to be presented in the tribunal against Hicks is based on hearsay, unrecorded evidence and statements. Many bodies internationally and locally, including the Law Council of Australia, have claimed that Hicks will not receive a fair trial under the current military tribunal arrangements. The stance of the Australian government towards Hicks can only be seen as a substantial breach of faith between a government and its citizen at a time of need, reflecting poorly on the current state of citizenship, human rights and civil protection in Australia.

The lack of Australian protection for the two men has left them in legal and civil limbo. This has led Hicks to take the extraordinary step of applying for British citizenship in the hope that the British government may then pressure the US government to release him. Hicks's application for citizenship was approved by the British High Court in 2005 but is now being challenged by the British Government. In Habib's case, while free in Australia, his passport has been withdrawn and Federal Ministers continue to vilify him in public. He is continuing his campaign for government acknowledgment of his treatment, particularly in relation to his 'extraordinary rendition' to Egypt.

The outcome of the Hamdan case is eagerly anticipated by human rights advocates worldwide. If successful, other Guantanamo cases will have the potential to go before the US court system with superior standards of evidence. This may lead to the release of many detainees without charge. Meanwhile lawyers, community activists, a growing number of politicians, journalists and public intellectuals in Australia continue to highlight the injustices facing the Hicks and Habib and the urgency for the Australian government to take a more active and sympathetic stance to their cases.

*Ana Kailis is currently undertaking a PhD in the Monash University Arts Faculty on the Abandonment of David Hicks and Mamdouh Habib. A referenced version of this article is available upon request.*