

Hicks Trial a Charade -- Oz Law Council

by Stephen de Tarczyński via reed - IPS *Wednesday, Aug 8 2007, 10:03am*

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MELBOURNE, Aug 8 (IPS) - The Law Council of Australia's third and final report on the trial of former Guantanamo Bay detainee David Hicks slams the Australian Government's acquiescence in the process and faults the overall trial.



Lex Lasry QC

Produced by counsel Lex Lasry, who acted as the Council's independent observer in the Hicks case, the report, released late July, attacks the military commission trial as a "charade." He describes the charge against Hicks -- that of providing material support to terrorism -- as a "recently invented and new war crime and (which) was clearly retrospective in its application to Hicks."

Like his earlier work, the final report heavily criticises the military commission system. Lasry's first report, released in August 2004, concluded "that a fair trial of David Hicks in the military commission is virtually impossible."

In the second report in July 2005, Lasry expounded on this view. He argued that Hicks' situation had deteriorated since the year before due to a delay caused by litigation and what Lasry regarded as a lack of fairness in the process.

David Hicks, originally from Adelaide, was found guilty in March of providing material support to terrorism by a United States military commission set up to try terrorism suspects at Guantanamo Bay. The 32-year-old is currently serving a nine month sentence at Adelaide's Yatala prison, and is due for release on Dec. 29.

Hicks was captured in Afghanistan in 2001 by the Northern Alliance, which then sold him to the U.S.

Despite being sentenced to the maximum seven years -- in addition to the five years he had already spent in custody -- a pre-trial agreement suspended all but nine months of Hicks' sentence.

The Australian government is under fire from Lasry, who says that it "never sufficiently concerned itself with the legitimacy of the charges brought against Hicks by the United States."

Additionally, Lasry's report argues that the government failed to address whether Hicks' alleged conduct might not have even been an offence under U.S. domestic or military law. He says that the government had already decided that Hicks' alleged actions were "reprehensible" and therefore warranted punishment.

A spokesman for Alexander Downer, Australia's foreign minister told IPS in an emailed response that "U.S. authorities have advised (Australia) that the offence of providing material support to terrorism in the Military Commission Act is a codification of a pre-existing offence for trial by military commission."

The spokesman says that Hicks' lawyers had the opportunity, during their defence, to raise the issue of whether the charges were legitimate, but chose not to.

While acknowledging that parts of the plea agreement were relatively standard state demands in return for a reduced sentence, Lasry argues that other aspects look "more like an attempt to protect the credibility and the interests of the U.S. government."

Under the deal, Hicks agreed not to communicate to the media in any way regarding his alleged illegal conduct, capture or detention. The judge struck out an attempt to impose this condition on Hicks' family.

Hicks agreed that his entire period of detention was lawful, that he himself was an alien unlawful combatant and that he would not sue the U.S. or any of its officials regarding his capture, detention, treatment or prosecution.

He also agreed that he had not been illegally treated while in custody in Afghanistan and at Guantanamo Bay.

This was despite an affidavit -- made by Hicks in August, 2004, and released by a U.S. District Court four months later -- that he had been tortured during his detention. In the affidavit, Hicks says that among other abuses, he suffered beatings while handcuffed and blindfolded, had his head rammed into asphalt, and had been threatened with firearms and other weapons during and after interrogations.

In the affidavit, Hicks says that he had previously made allegations of abuse to representatives of the International Red Cross while in Afghanistan and at Guantanamo Bay.

A second affidavit, part of Hicks' unsuccessful attempt to gain British citizenship -- he hoped gaining citizenship would lead to his release as Britain had already secured the release of all its citizens at Guantanamo -- outlined other claims of mistreatment.

In this affidavit, placed before an English court, Hicks claims that he was slapped, kicked and punched, and feared he would be shot if he did not cooperate with his U.S. interrogators.

Lasry condemns the Australian government for not responding to what he describes as "the consistent and widespread criticism of the Military Commissions and Guantanamo Bay generally." He describes the government's support of the process as "shameful".

"Australia's international standing and moral authority has been diminished by its support of a process so obviously at odds with the rule of law," argues Lasry.

But the Government remains adamant that adequate safeguards protecting Hicks were incorporated into the legislation of the Military Commission. "These safeguards included a presumption of innocence, a right to counsel, protection against self-incrimination, a ban on evidence obtained by torture, and right of appeals," says Downer's spokesman.

The spokesman notes that Hicks admitted to training with al-Qaeda in Afghanistan and the Pakistan-based Lashkar-e-Toiba, as well as conducting surveillance on the former U.S. Embassy building in Kabul and "fighting with al-Qaeda forces against the U.S. and its allies in Afghanistan".

The spokesman argues that the Australian Government "continuously pressed for his case to be dealt with fairly and expeditiously." Like other Australians facing criminal charges overseas, the spokesman says that Hicks was entitled to consular services during his detention at the controversial prison.

"Australian officials visited Mr Hicks there (at Guantanamo Bay) and assessed his welfare on 22 occasions," the spokesman told IPS.

In his report, Lasry lambasts the arraignment of Hicks and the entering of his guilt plea as "shambolic". With the pre-trial agreement already in place, Lasry argues that the proceedings "were contrived and being done for media and public consumption. Even Hicks had a speaking role to play which he discharged at the appropriate time."

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'Approved' court drawing of Hicks being railroaded

<http://www.ipsnews.net/news.asp?idnews=38824>

Cleaves Alternative News. <http://cleaves.lingama.net/news/story-642.html>