



## Australia's Failure to Investigate Torture

### ***Narrowing the Definition of Torture***

Australian Government ministers have made disturbing comments denying that techniques such as sleep deprivation amount to torture.<sup>1</sup> Ministers have argued that such techniques are only prohibited under the *Convention against Torture* if they are used in combination and over a long period of time.<sup>2</sup> At no time have the Ministers acknowledged that these techniques, or other techniques authorised by the Australian Government, constitute cruel, inhuman or degrading treatment.

### ***Narrowing the Definition of 'Jurisdiction'***

The cases of Mamdouh Habib and David Hicks raise concerns about the Australian Government's acceptance that its agents acting abroad are bound by the *Convention*. The Australian Government has refused to thoroughly investigate serious allegations of the torture of Australian citizens, or to accept any responsibility for the advice of the Australian military lawyer who endorsed the interrogation techniques at Abu Ghraib prison as consistent with the *Geneva Conventions*. In these cases, Australia claims it has no jurisdiction.

### ***Mamdouh Habib: Extraordinary Rendition and a Failure to Investigate***

In October 2001, Mamdouh Habib, a dual Australian-Egyptian citizen, was detained in Pakistan, where he alleges that he was tortured and ill-treated. When Mr Habib complained to Australian law enforcement and intelligence officers in Pakistan about this abuse, they decided not to investigate the complaints.

Mr Habib was extraordinarily rendered by US officials to Egypt, where he was tortured for six months.<sup>3</sup> Mr Habib was routinely beaten. He was handcuffed and taken to a small room which was slowly filled with water until it was just under his chin. He was subjected to electric shocks to all parts of his body, including his genitals. He was told that his family had been murdered. He was told that he would be attacked by dogs trained to rape people. Australia has not officially accepted that Mr Habib was held in Egypt.

On the basis of 'confessions' obtained under torture in Egypt, Mr Habib was then rendered to Guantanamo Bay, where he was abused again. When Mr Habib was interviewed by Australian officials at Guantanamo Bay, he complained about his torture and mistreatment. Australia referred the allegations to the United States for investigation. Mr Habib was released without charge from Guantanamo Bay in 2005.

Mr Habib alleges that Australian officials were present when he was rendered from Pakistan and, on at least one occasion, when he was being interrogated by Egyptian security officers.

The Australian Government has failed to:

- 1 investigate or indict any individual for complicity in the torture of Mr Habib;
- 2 refer Mr Habib's serious allegations to the appropriate mechanism for investigating such extraordinary allegations, such as a Royal Commission<sup>4</sup>
- 3 acknowledge that Mr Habib was tortured;
- 4 apologise to Mr Habib or compensate him for his ill-treatment; and
- 5 condemn the practice of extraordinary rendition.

### ***David Hicks: Australia and Guantanamo Bay***

David Hicks was detained shortly after UN troops entered Afghanistan in 2001. Mr Hicks has made allegations of torture and mistreatment while in the custody of the US military in Afghanistan, on board US naval vessels and at Guantanamo Bay.<sup>5</sup> In a sworn affidavit in August 2004, Mr Hicks alleged that he was beaten many times while blindfolded and handcuffed, shackled, deprived of sleep, held in solitary confinement for about nine months, and threatened with firearms and other weapons.<sup>6</sup>

All of these allegations were referred by Australia to the US for investigation. US officials found no wrongdoing and the Australian Government accepted these findings.

In 2007, having been detained at Guantanamo Bay for almost six years, Mr Hicks was released into the custody of Australia after pleading guilty before a US Military Commission to a charge of being a terrorist sympathiser. Before he could be released, Mr Hicks had to sign a document stating that he had never been mistreated by US officials. Mr Hicks is due for release from a South Australian prison in December 2007.

The Australian Government supports the detention of people at Guantanamo Bay, as well as the pre-*Hamden* and current US Military Commission processes at Guantanamo Bay.

### ***Australian Knowledge of Torture in Iraq and Afghanistan***

Australian officials were aware of abuse in Iraqi prisons run by the Coalition Provisional Authority (CPA) well before the media published graphic photographs of abuse at Abu Ghraib in April 2004. At least one Australian official reported allegations of abuse to Australia as early as June 2003.<sup>7</sup> Australia did not raise these allegations with its coalition partners. There has been no thorough public inquiry into why these reports were ignored.

Another Australian military lawyer was responsible for drafting the CPA's official denial of abuse at Abu Ghraib, which was sent to the International Committee of the Red Cross (ICRC) in December 2003. The 2004 report of US Major General George Fay notes that the document sent to the ICRC 'tends to gloss over, close to the point of denying the inhumane treatment, humiliation, and abuse'.

There has been no public inquiry into what Australian officials knew about abuse in prisons in Iraq and Afghanistan. In May 2007, the Australian Defence Minister said it is unhelpful to keep raising these allegations of Australian knowledge of the abuse at Abu Ghraib because it is 'ancient history'.<sup>8</sup>

### **TABLE OF CROSS-REFERENCES**

<b>Issue</b>	<b>Relevant Articles of <i>Convention Against Torture</i></b>	<b>References to Issue in NGO Submissions</b>
Definition of Torture	1	NSWCCL Shadow Report (27 July 2007) Part 2.1
Jurisdiction	2	NSWCCL Shadow Report (27 July 2007) Part 3.2
Mamdouh Habib and Extraordinary Rendition	11, 12, 14	NSWCCL Shadow Report (27 July 2007) Parts 6.2.1, 6.3 & 7.1 NACLC/HRLRC Submission of 6 July 2007, Part 7
David Hicks and Guantanamo Bay	11, 12, 14	NACLC/HRLRC Submission of 6 July 2007, Part 7 NSWCCL Shadow Report (27 July 2007) Parts 6.2.2, 6.3 & 7.1
Australian knowledge of torture in Iraq	11, 12	NSWCCL Shadow Report (27 July 2007) Part 6.4

## Endnotes

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- <sup>1</sup> ABC-TV, '[Quick Trial for Hicks Essential: Ruddock](#)', *Insiders* (1 October 2006); Richard Sproull, 'Sleep Deprivation is Not Torture: Ruddock', *The Australian* (Sydney), 2 October 2006, 2.
- <sup>2</sup> Michelle Grattan, 'PM Rises to Sleep Debate', *The Age* (Melbourne), 6 October 2006, 6. See also Evidence to Senate Legal and Constitutional Committee, Parliament of Australia, Canberra, 31 October 2006, 68-69 (Senator Ellison).
- <sup>3</sup> Phil Mercer, 'Fresh Guantanamo Torture Claims', *BBC News* (United Kingdom), 13 February 2005. See also: [NSWCCL Shadow Report](#), [213]-[231].
- <sup>4</sup> See Australia's Second Report to CAT (1999) UN Doc CAT/C/25/Add.11, [13].
- <sup>5</sup> In 2002, Mr Hicks submitted a report to the International Committee of the Red Cross outlining abuses by United States officials that he suffered in Guantanamo. Information accessed on Amnesty International website at <http://news.amnesty.org/pages/torture-case-eng> at 6 February 2007.
- <sup>6</sup> [Affidavit of David Hicks](#) dated 5 August 2004. See also: Tom Allard, '[Hicks: My Life of Terror and Torture](#)', *Sydney Morning Herald* (Sydney) 2 March 2007.
- <sup>7</sup> Nick Grimm, '["Incompetent Leadership" Drives Military Lawyer to Politics](#)', *7:30 Report* (ABC-TV), 22 May 2007. See also: [NSWCCL Shadow Report](#), [241].
- <sup>8</sup> ABC News, '[Govt Ignored Abu Ghraib Warnings: Kelly](#)', *ABC News Online* (22 May 2007).