

## USA: Who are the Guantánamo detainees?

### Case Sheet 5

#### Australian detainees: David Hicks and Mamdouh Habib

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*“David Hicks has been treated in a manner which I consider to be abusive, a serious violation of his human rights, and which constitutes a criminal offence in international law” – Stephen Kenny, David Hicks’ civilian lawyer*

**Full Name:** David Hicks

**Nationality:** Australian

**Age:** 29

**Family status:** Single, two children aged 6 and 7 years old.

**Occupation:** Horse Trainer

**Information:** David Hicks, a former horse trainer/cowboy from Adelaide, South Australia, converted to Islam after volunteering to fight for the Kosovo Liberation Army (KLA) in Kosovo. After his return to Australia, according to his father, he decided to go abroad to further his studies on the Islamic faith and learn ancient Arabic. To this end he travelled to Pakistan to study in a Madrassa, an Islamic school.

Following the 11 September 2001 attacks in New York, he telephoned his father from Kandahar, Afghanistan to tell him that he was going to Kabul to defend it from the Northern Alliance for the Taliban. He was captured on the 9 December 2001 near Kunduz in Afghanistan by the Northern Alliance. There were allegations of abuse at the hands of his Afghan captors.

The Northern Alliance handed him over to US authorities, and after being interrogated by US and Australian authorities aboard the *USS Peleliu*, he was transported to Guantánamo Bay naval base, Cuba in January 2002.

In 2002, David Hicks made a report to the International Committee of the Red Cross (ICRC) that he had been abused by US officials at the camp. Though restricted in the details he was allowed to give, Stephen Kenny, his civilian lawyer said that this report referred to “specific incidences that I believe were not just the actions of individual guards, but rather actions that must have been authorised by some reasonably high up people in the chain of command of the US forces”

*“We had a few letters and there have been some messages via Major Mori [David Hicks’ US Army appointed lawyer], but that’s it” – Terry Hicks, David Hicks’ father.*

After his transferal to Guantánamo, he was held in incommunicado detention for long periods, only occasional letters to his family were allowed, and he was not able to speak to his lawyer until 12 December 2003, almost two years after he arrived at Guantánamo Bay. During this time he was transferred from Camp Delta to Camp Echo where, according to his father, “he is completely isolated. The cells are painted white and they don’t see anyone”. 29 June 2004 was only the second time he was allowed to have a conversation with his family via telephone.

David Hicks was one of the first Guantánamo detainees to be charged, and has been assigned a lawyer by the US military. He has been charged with conspiracy to commit war crimes, attempted murder by an underprivileged belligerent and aiding the enemy. A preliminary hearing before a military commission was held on 25 August and his trial has been set for 10 January 2005.

**Full Name:** Mamdouh Habib

**Nationality:** Australian

**Age:** 48

**Family status:** Married with four children

**Occupation:** Businessman – Cleaning company and security company.

**Information:** Mamdouh Habib immigrated to Australia in 1980. He married Lebanese born Maha Habib, and the couple have four children, Ahmed (19), Mustafa (16), Maryam (11) and Hager (4). The family lived in Sydney where Mamdouh set up and ran a contract cleaning firm and a security company.

On the 29 July 2001 he left to go to Pakistan on a three month visa. According to Maha Habib he “went searching for opportunities to set up a business to support the family and a suitable school to teach our children”. He had recently been the victim of a “group beating” and felt he and his family had to leave Australia.

*“I’ve been in too many places – I never know where I am...I’ve been blindfolded for eight months, I never see the sun but I see you and [the] kids every minute”* – Mamdouh Habib, letter to his wife

Mamdouh Habib was arrested in Pakistan on 5 October 2001, while on a bus to Karachi. Arrested alongside Mamdouh were two Germans with whom he had eaten the previous evening. They were released shortly afterward, following diplomatic pressure by the German Government.

In contrast, Mamdouh Habib was detained in Quetta and Islamabad, before being transferred, incommunicado, to Egypt. He later claimed that he met with Australian consular officials who refused to act on his behalf, and that the Australian high commission in Pakistan authorised his transfer to Egypt.

Stephen Hopper, his civilian lawyer, claims that in Egypt he was blindfolded for months on end, that he “was beaten up, electrocuted, injected with unknown drugs, tortured” and that dogs were set upon him. From Egypt, Mamdouh was transported to Afghanistan, and from there to Guantánamo Bay, Cuba, where he has remained, detained without charge and with no access to a lawyer, for over two years.

*“He thinks we’re dead, he thinks we’re dead...God knows what they have done to him”* – Maha Habib

Arriving in Guantánamo Bay, Mamdouh Habib was reportedly too weak to walk after his ordeal in Egypt. The military police at the camp reportedly believed he was faking his condition and placed him in solitary confinement.

Mamdouh described his condition in Guantánamo as ‘torture’ to Australian intelligence officials who visited him. Tarek Dergoul, a UK national detained at Guantánamo and released on 9 March 2004, has told of psychological and physical abuse of Mamdouh Habib by US officials at the prison camp.

Dergoul states that Mamdouh “kept repeating to himself ‘They [US agents] have killed my family’”, and that American officials had shown him pictures of his family and told him they had been killed. “Any letters he [Mamdouh] received” continued Dergoul “he thought were fakes”.

Dergoul, who for three months occupied the cell adjacent to Mamdouh, also told of physical abuse. He says he “saw five people go into his prison cell, spray Mr Habib with mace, use their hands and fists to kick and punch him and then drag him out, from the chains that were around his feet...out of the cell and down the corridor”. Reports suggest that Mamdouh’s mental and physical health is deteriorating rapidly.

Maha Habib travelled to the UK to meet the freed *al-Qa’ida* suspects; “when I was listening to the detainees speak, the things that I heard, I felt I couldn’t take any more” she said.

John Howard, the Australian Prime Minister, in response to the allegations of abuse of Mamdouh

said “Well, they are coming from a Taliban supporter”. Stephen Hopper has stated that this assertion from the Prime Minister lacks any substance as Dergoul was released by the US military after being cleared of any wrongdoing including association with *al-Qa’da* or the Taliban.

## **Background**

David Hicks and Mamdouh Habib are the only two Australian nationals detained at Guantánamo Bay.

AI is particularly concerned over the nature of the arrest, detention, transferral and allegations of torture of Mamdouh Habib. AI is also concerned with the allegations of abuse and mistreatment of David Hicks.

On 25 November 2003 both the US and Australian governments issued news releases announcing that they had reached agreement that any trials by military commission of Australian detainees would be fair. The Australian Minister for Foreign Affairs and Attorney General said that their government had “reached an understanding with the US concerning procedures which would apply to possible military commission trials of the two Australian nationals...”. This included an agreement not to seek the death penalty against them.

The military commissions do not meet internationally recognized standards for fair trial. Beset by fundamental flaws, any trial before these military commissions would be a travesty of justice. In making such an agreement with the US authorities, AI believes that the Australian government has betrayed their two nationals held at Guantánamo Bay. They should be using their influence with their US counterparts to ensure compliance with, not make compromises on, international fair trial and detention standards.

AI renews its call on the Australian government to ensure that David Hicks and Mamdouh Habib receive a full and fair trial or be released. AI also calls on the Australian government to support AI’s call for an independent inquiry to be set up to investigate the treatment of prisoners held by the US as part of the “war on terror”.

## **Guantánamo Bay – A Human Rights Scandal**

Hundreds of people of around 40 different nationalities remain held without charge or trial at the US Naval Base in Guantánamo Bay in Cuba, without access to any court, legal counsel or family visits. Denied their rights under international law and held in conditions which may amount to cruel, inhuman or degrading treatment, the detainees face severe psychological distress. There have been numerous suicide attempts.

Many of those held were captured during the international conflict in Afghanistan, from where transfers to the Naval Base began in January 2002 under harsh conditions of transportation. Others were arrested elsewhere and handed over to the US authorities. Sporadic transfers to, and releases from, the base continue, but the precise numbers, identities and nationalities of those held has never been made public.

None of the detainees have been granted prisoner of war status or brought before a “competent tribunal” to determine his status, as required by Article 5 of the Third Geneva Convention.

The majority are held in maximum security blocks in small cells, sometimes for up to 24 hours a day and with very little out-of-cell exercise time. Many have been subjected to repeated interrogations sometimes for hours at a time and without the presence of a lawyer, raising fears that statements may be extracted under coercion. The ICRC is the only international organization allowed access to the detainees.

With no opportunity to challenge the lawfulness of their detention and the prospect of indefinite detention without trial in such conditions, the potential psychological impact upon those held is a major concern. The ICRC delegation has stated that it has observed a “worrying

deterioration” in the mental health of a large number of the detainees, and that their psychological condition has become a “major problem”.

In November 2001, President Bush signed a Military Order establishing trials by military commission which have the power to hand down death sentences and against whose decisions there will be no right of appeal to any court. In addition to the lack of right to appeal, the commissions will lack independence and will restrict the right of defendants to choose their own counsel and to an effective defence. The commissions will also accept a lower standard of evidence than in ordinary courts. This could include evidence extracted under torture or coercion.

On the 28 June 2004 the United States Supreme Court ruled that US courts have jurisdiction to consider challenges to the lawfulness of detentions at Guantánamo bay. In response the Bush administration announced the formation of the Combatant Status Review Tribunal scheme under which Guantánamo detainees will be able to challenge their so-called "enemy combatant" status. They will not be provided with a lawyer. Instead of doing all it can to facilitate the full judicial review of the lawfulness of the detentions at Guantánamo bay, the government appears to be trying to narrow the scope of this review and at the same time proceed with its plans to hold trials by military commission that flout basic standards.

**AMNESTY INTERNATIONAL DEMANDS THAT**

- **The US government end the legal limbo of all detainees**
- **All those held are charged and given fair trials or released**
- **The military order allowing for trial by military commission be revoked**
- **All those detained are granted full access to lawyers and families**
- **All are treated humanely and granted access to their rights including being fully informed of their right to a lawyer and to challenge their detention in US courts**
- **Their families are kept informed of their legal status and well-being**
- **There be an immediate improvement in conditions of detention for those held at Camp Echo**
- **An independent Commission of Inquiry be set up by congress into “war on terror” detentions**

**IF YOU WISH TO TAKE FURTHER ACTION ON BEHALF OF THE GUANTANAMO DETAINEES, PLEASE CONTACT THE AMNESTY INTERNATIONAL OFFICE IN YOUR COUNTRY. VISIT THE FOLLOWING WEB ADDRESS TO FIND OUT HOW:**

**<http://web.amnesty.org/contacts/engindex>**