

# Human Rights Watch

## Torture, Former Combatants, Political Prisoners, Terror Suspects, & Terrorists

<https://www.hrw.org/news/2011/08/15/australia-dont-seize-david-hicks-assets>

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Illegitimate Military Commission Conviction Not Proof of Crime

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(Washington, DC) The Australian prosecutors office should drop the asset-seizing case against former Guantanamo detainee David Hicks for money he earned from a book he wrote about his six years in US custody at Guantanamo Bay, Human Rights Watch said today.

Australian David Hicks was captured in Afghanistan in 2001 and transferred to Guantanamo Bay in January 2002. He was charged in a military commission under a system created by then-President George W. Bush that was later deemed to be unlawful by the US Supreme Court.

Following the enactment of the Military Commissions Act of 2006, Hicks was charged with providing material support for terrorism and faced a possible life sentence. In exchange for a guilty plea, he was offered a sentence of seven years, only nine months of which he would have to actually serve. Hicks pleaded guilty in April 2007.

A conviction in an unfair and illegitimate system should not be considered proof of a crime, said Andrea Prasow, senior counterterrorism counsel at Human Rights Watch. David Hicks alleges years of mistreatment and abuse by US forces and the failure of the Australian government to protect him. He should not be punished for telling that story.

Hicks account of his six years in US custody was published in *Guantanamo, My Journey*, in late 2010. Proceeds from that publication are the subject of the prosecutors seizure and forfeiture action under the Commonwealth Proceeds of Crime Act. The prosecutor is relying on Hicks guilty plea, as well as the statement of facts signed by him in connection with the plea, as evidence that he committed an offense under the law of another country.

After his plea, Hicks was returned to his native Australia where he served out the remaining seven months of his sentence in Yatala prison. He was released in December 2007. Included in his plea agreement was a one-year gag rule prohibiting him from discussing his treatment or capture and from profiting from the sale of his story. Following the election of US President Barack Obama, Congress again substantially revised the 2006 Military Commissions Act under which Hicks was prosecuted.

Throughout his detention, Hicks told his lawyers he had been mistreated by US forces in both Afghanistan and Guantanamo by being beaten, made to endure prolonged sleep deprivation, and being forced to take unidentified medication. Former military commissions chief prosecutor Morris Davis testified in other court proceedings that Hicks plea agreement was negotiated without his knowledge, suggesting political forces were involved in the agreement.

On August 3, 2011, the New South Wales Supreme Court issued a restraining order on the use of assets derived from the sale of Hicks book. The case was adjourned until August 16 to allow the prosecutor to obtain additional evidence, at which time they are expected to ask for seizure of the assets obtained from the publication of the book.

Although Hicks has alleged years of unlawful and abusive detention, neither the US nor Australia has ever offered him compensation or an apology, Prasow said. The prosecutors action would just compound that abuse.

A Roadmap to Justice for CIA Torture



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