



THE SENATE

Senate Foreign Affairs, Defence and Trade References Committee

Inquiry into the wrongful detention of Australian citizens overseas.



**Submission by Dr Kay Danes, OAM
Member of The Australian Wrongful and Arbitrary Detention Alliance
(AWADA)**

21 August 2024

Foreign Affairs, Defence and Trade Committee
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I welcome this opportunity to provide insights to the Foreign Affairs, Defence and Trade Committee (FADT) Inquiry into the Australian Government's response to the wrongful detention of Australian citizens overseas. Further, to complement the work of The Australian Wrongful and Arbitrary Detention Alliance (AWADA), of which I am a proud member. I submit this with full consent for my submission to be made available to the public and third parties.

I offer my full support to assist in any way possible: to further the development of a task force that will effectively manage cases of Australians who are subjected to wrongful or arbitrary detention overseas, and to consult on the development of a new policy framework overseeing the reintegration of affected persons upon their return to Australia.

After two decades of advocating in this space, it is personally gratifying for me to see this conversation finally progress to a point where the Australian government may now be willing to officially recognise Australians—like myself and Mr Kerry Danes—who were wrongfully and arbitrarily detained overseas. This willingness must extend to establishing a new policy framework that will increase transparency about the needs of survivors and their families. It must also raise public awareness of regimes that engage in wrongful or arbitrary detention, thereby implementing measures for accountability and respect for international law.

This submission contains a case study (The Danes Case) detailing the chronological circumstances of my own wrongful and arbitrary detention experience. I appeal to the Australian government to consider the provided facts and formally recognise, myself and Mr Kerry Danes, among our fellow Australians wrongfully and arbitrarily detained overseas. Additionally, I urge the Government to make appropriate representations to their counterparts to reinstate the eligibility of all Australians wrongfully and arbitrarily detained overseas, under the Australian Visa Waiver Program. Living with the stigma of a wrongful and arbitrary conviction is deeply painful for those of us who hold strong views about injustice.

Dr Kay Danes, OAM
Human Rights Advocate

21 August 2024

About the Author:

Dr. Kay Danes, OAM, and Mr. Kerry Danes, CSM, were wrongfully and arbitrarily detained by the Lao People's Democratic Republic (Lao PDR) in 2000. They were held in an undisclosed political prison for nearly a year. In November 2001, the Danes were released under a Presidential pardon negotiated by the Australian Government and returned to Australia.

Since then, Dr. Danes has had a distinguished career as a human rights advocate. Her key accomplishments include working with the US Center for Public Policy Analysis and taking part in US Congressional forums and Conferences that address critical issues such as wrongful and arbitrary detention, torture, and enforced disappearances.

Dr Danes is the author of *Standing Ground* (2008), *Families Behind Bars* (2011), *Beneath the Pale Blue Burqa* (2015) and *Safety Essentials for Business and Leisure Travel* (2019).

A more detailed biography of Dr Danes and Mr Kerry Danes is enclosed within this submission.

TERMS OF REFERENCE

- a) how Australia can improve its policy framework to deter the practice of arbitrary detention for diplomatic leverage ('hostage diplomacy') and increase transparency and public awareness of the regimes which engage in the practice;
- b) Australia's foreign policy responses to regimes that wrongfully detain Australian citizens;
- c) Australia's current processes for categorising and declaring cases of wrongful detention;
- d) the management of cases of wrongful detention by the Department of Foreign Affairs and Trade;
- e) communications with and support for families of Australians being wrongfully detained overseas;
- f) communications with and support for Australians who have been released from wrongful detention; and
- g) any other related matters.

INTRODUCTION

I refer the Senate Committee to our organisational (AWADA) submission that details our collective response to the Terms of Reference and recommendations. While I may add some emphasis to several of the key points in our submission, I shall endeavour to do so without unnecessary repetition. Instead, my submission aims to focus on an issue often overlooked in discussions about arbitrary detention—one that has led to numerous problematic situations and legal ambiguities, enabling governments to dismiss certain cases as ‘private matters’ and which are relegated to ‘complex consular cases.’ These situations involve Australian citizens who, while working overseas in the private or foreign investment sector, find themselves in dangerous or legally precarious circumstances through no fault of their own. The gravity of their situations are profound, as they often pose immediate threats to an individual’s safety, freedom, and well-being.

The designation of arbitrary detentions to complex consular cases results in individuals lacking any means to seek redress for their arbitrary detention after their physical confinement is resolved. This classification creates a significant barrier to justice, effectively closing off avenues for recourse. As evidenced by the detailed case study presented in this submission (The Danes Case), the ramifications of such arbitrary detentions extend far beyond the initial incident, causing long-lasting and multifaceted detriments to both the directly affected individuals and their family members. Ongoing negative impacts can be financial, emotional, and social in nature, and create an environment where it becomes virtually impossible for the survivors to pursue any form of restitution or compensation for the myriad of losses they have endured, as a direct result of the unjust treatment they experienced. This lack of accountability and absence of remedial options further compounds the injustice, leaving those affected in a state of perpetual disadvantage with little hope for rectification or closure.

Given the severity and urgency of arbitrary cases, there is a pressing need for swift and decisive government intervention. The Australian government must be prepared to navigate diplomatic channels, provide legal support, and, when necessary, facilitate the safe return of its citizens. This submission aims to underscore the critical nature of these particular interventions and propose potential frameworks for addressing such cases more effectively in the future.

TERMS

The term ‘arbitrary detention’ is the violation of the right to liberty. Detention may be wrongful without being arbitrary and vice-versa.

‘Wrongful’ simply means that the law has not be complied with, whereas ‘arbitrary’ refers to the inappropriate, unjust, unforeseeable or disproportionate nature of detention.

Arbitrary detention exposes a victim to more human rights violations. They are deprived of the means to defend themselves from extrajudicial execution, enforced disappearances, torture and other cruel, inhuman or degrading treatment etc.¹

¹ Amnesty International, (2014), ‘Fair Trial Manual’ 2014 (Second Edition), <https://www.amnesty.org/en/wp-content/uploads/2021/06/pol300022014en.pdf>

The term ‘to prosecute’ or ‘arrest’ as referred to in this submission’s Case study does not imply the full spectrum of criminal proceedings as understood in jurisdictions. This is because the Lao People’s Democratic Republic (Lao PDR) is an authoritarian centralised one-party state, ruled by its only constitutionally authorised party (the Lao People’s Revolutionary Party), and in prosecuting persons or carrying out arrests—these terms do not necessarily conform to domestic law or international laws and treaties.²

KEY RECOMMENDATIONS FROM THIS SUBMISSION

When guiding Australians through the traumas of wrongful and arbitrary detentions in foreign countries, several key issues have been overlooked and should be considered further:

- Define arbitrary detention in simple terms and establish specific criteria to distinguish it from wilful criminal activities overseas,
- Determine how the Australian government assess the arbitrariness of detention in the absence of a designated policy framework for managing, responding to, and deterring arbitrary detention,
- Examine the Australian government’s role in the pre-trial and trial process for wrongfully detained Australians overseas who are presented to a foreign judicial process, and especially one that does not accord them due process,
- Identify the assistance provided by the Australian government and other agencies to protect citizens’ rights and liberties,
- Explore the Australian government’s ability to expedite diplomatic solutions to mitigate further harm to its citizens,
- Engage mental health aftercare, medical etc for Australians who have been released from wrongful detention.
- Establish or fund an existing support network for individuals and families affected by arbitrary detainment so they can access much-needed emotional and practical assistance, helping them to cope with the complexities and stresses of such traumatic experiences.
- Introduce ‘debriefings’ to capture lessons learnt from each individual experience and use that knowledge to update the Smartraveller advice and incorporate into in-house training for future DFAT and other agency graduate programs and workforces.³
- Work more closely with international human rights advocates and organisations to develop research, analysis, monitoring and response to cases of arbitrary detainment, ensuring that these issues remain in the global spotlight.

² US Department of State, ‘2022 Country Reports on Human Rights Practices: Laos’, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/laos/>

³ Ibid, p19. (The Danes participated in military debriefings that resulted in-house training for the Australian Defence Force, but not for other agencies that would have benefited greatly from those insights.)

- Consider incorporating a section on arbitrary detention and response into the Business Continuity Plans held by Australian Overseas Missions and establish a training protocol around that contingency.
- Build a stronger international coalition aimed at eradicating such practices and advocating for the rights of detainees worldwide by establishing a Federal Budget to support initiatives that combat arbitrary detention.
- Adopt a similar policy framework as the United States has done to categorise citizens who have been "wrongly detained" by other countries.⁴
- Establish a Task Force with Special Envoys to help assist Australians wrongfully detained overseas, and support for their families.⁵
- Establish legal avenues for reparations for Australians subjected to arbitrary detention.⁶

⁴ US Department of State, (2024), US Government response to Wrongful Detention. Retrieved <https://www.state.gov/u-s-government-response-to-wrongful-detention/>

⁵ Office of the Special Presidential Envoy for Hostage Affairs, Retrieved <https://www.state.gov/bureaus-offices/secretary-of-state/special-presidential-envoy-for-hostage-affairs/>

⁶ Transitional Justice and Human Rights require that victims have a right to reparation. This refers to measures to redress violations of human rights by providing a range of material and symbolic benefits to victims or their families as well as affected communities. Reparation must be adequate, effective, prompt, and should be proportional to the gravity of the violations and the harm suffered.

Overview: The Challenge of Arbitrary Detention from an Australian Perspective

Arbitrariness is not to be equated with ‘against the law’ but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law.⁷

Arbitrary detainment, by its very nature, is a violation of human rights and a direct affront to personal freedom. Such a situation goes beyond mere inconvenience or discomfort; it constitutes a crisis that demands a fundamentally different response.

Some of the key legislation and international agreements aimed at combating arbitrary detention, to ensure an individual’s rights are protected, include:

International Covenant on Civil and Political Rights (ICCPR)

Adopted by the United Nations General Assembly in 1966, the ICCPR is a cornerstone in the fight against arbitrary detention. Article 9 of the ICCPR explicitly states that everyone has the right to liberty and security of person. It prohibits arbitrary arrest or detention and mandates that no one shall be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.⁸

Universal Declaration of Human Rights (UDHR)

Although not legally binding, the UDHR serves as a foundational document inspiring many national laws and international treaties. Article 9 of the UDHR states that no one shall be subjected to arbitrary arrest, detention, or exile. This declaration sets a global standard that influences legislation worldwide.⁹

Many countries have incorporated these international principles into their national laws, and while significant progress has been made, legislation affecting arbitrary detention is multi-faceted, involving international treaties, national laws, and judicial oversight, and requires ongoing vigilance and advocacy to ensure that everyone enjoys the fundamental right to liberty and security. The continued development and enforcement of robust legal frameworks are essential in the global fight against arbitrary detention.

One of the significant challenges in deterring the practice of arbitrary detention of foreign nationals overseas is addressing the ambiguity around arbitrariness and the inconsistent application and interpretation applied to cases. The issue is particularly pertinent for Australians traveling or residing abroad, as the current Australian Government policy framework, *the Consular Services Charter*, does not

⁷ United Nations Office of the High Commissioner, ‘About arbitrary detention,’ Website, 1996-2024, <https://www.ohchr.org/en/about-arbitrary-detention> [accessed 12 August 2024]

⁸United Nations Office of the High Commissioner, ‘International Covenant on Civil and Political Rights (ICCPR) 16 December 1966,’ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁹ United Nations Office of the High Commissioner, ‘Universal Declaration of Human Rights (1948),’ <https://www.ohchr.org/en/human-rights/universal-declaration/translations/english>

offer clear and transparent assessment rules for determining whether the detention of an Australian overseas is arbitrary.¹⁰

The concept of arbitrariness in detention is inherently subjective, often leading to significant discrepancies in how cases are evaluated and handled by various authorities. This ambiguity makes it difficult to uniformly address and combat arbitrary detention, leaving many foreign nationals, including Australians, vulnerable to unjust imprisonment. While Australians can expect a high level of consular service to help them navigate the complexities of arrest and detention, the current advice provided by the Consular Services Charter lacks the nuanced information necessary to effectively address situations of arbitrary detention. This gap in the policy framework means that Australians may not have access to the detailed guidance and support they need when facing arbitrary detention overseas.

To truly protect Australians and other foreign nationals from arbitrary detention, it is crucial to develop and implement clear, consistent, and transparent assessment rules. These rules should be part of a comprehensive policy framework that not only aids in the immediate consular support but also actively works to prevent arbitrary detention through diplomatic channels and international cooperation. By addressing these ambiguities and inconsistencies, the Australian Government can better ensure the safety and rights of its citizens abroad, providing them with the confidence and security they deserve while traveling or living overseas. Examples of an ambiguous policy framework; in its present format states that detainees:

‘...do not have a legal right to consular assistance and should not assume assistance will be provided.’¹¹

Further:

‘...If you're arrested or jailed overseas, you have the right to contact the Australian Government. We can't get you out of trouble or out of jail, though we'll do what we can to help...

...We must work within limits set by local authorities, laws and prison system. We're bound by the Consular Service Charter. It outlines how and when we can help Australians overseas. You're subject to the local laws and penalties of any country you visit. This includes laws and penalties that may appear harsh by Australian standards. This can include corporal punishment, life sentences and the death penalty.’¹²

Arbitrary detainment occurs when individuals are held without just cause, often without due process or legal justification. This form of imprisonment can result from political motivations, racial profiling, or other discriminatory practices. When people find themselves in such circumstances, the psychological and emotional toll can be immense. The sudden and unjust loss of liberty creates an environment of fear, uncertainty, and helplessness. The expectation for them to adapt to prison conditions and learn new rules and routines is profoundly insensitive to the perilous situation they face.

¹⁰ Australian Government, (2024), Smartraveller ‘Consular Services Charter’ (23 April 2024), <https://www.smartraveller.gov.au/consular-services/consular-services-charter>.

¹¹ Ibid.

According to the Australian Consular Services Charter, arbitrary detainment constitutes a ‘crises’ that would require a very different response. But upon further reading of the policy framework, the context of ‘crises’ is rather loosely defined as:

‘Incidents in which large numbers of Australians have been killed or injured or face significant threat, for example terrorist attacks, major accidents, pandemics and natural disasters, or incidents where Australians face political unrest and events which cause major disruption and hardship to large numbers of Australians.’¹³

On 24 March 2020, the then Foreign Minister, the Hon. Marise Payne, released a poignant media statement that highlighted a critical and often overlooked issue: the unjust detainment of Australians overseas. Minister Payne expressed deep concerns for the:

‘...health, safety and wellbeing of Australians unjustly detained overseas and those who continue to be held in detention despite a compelling humanitarian case for furlough or the remission of their sentences....’¹⁴

Minister Payne recently affirmed the Australian Government's commitment to advocating strongly for individuals who are unjustly detained or have humanitarian cases for clemency. She emphasised that the government would continue to champion their cause, ensuring they are treated humanely and in accordance with international standards.¹⁵

However, this media statement brings to light a significant gap in the existing policy framework. While there is a clear commitment to advocating for unjustly detained Australians, the policy framework does not specifically address how the Australian Government will identify and assess cases of wrongful detainment.

This lack of clarity raises questions about how these individuals can benefit from the support provided to other categories of detainees, whose status may be more transparent. Furthermore, the absence of a specific policy to address wrongful detainment leaves a critical void. It is essential for the government to establish clear guidelines and criteria to assess the status of Australians detained overseas. This will ensure that those who are unjustly detained receive the necessary support and advocacy to secure their release. Moreover, a transparent and well-defined policy framework would provide a sense of assurance to the families of those detained, affirming that their loved ones are not forgotten and that their cases are being handled with the utmost seriousness and urgency.

While Minister Payne's statement was a step in the right direction, it should have served as a call to action. The Australian Government should have moved to develop a comprehensive policy to address the wrongful detainment of Australians overseas. Such a policy would not only uphold the country's commitment to human rights but also ensure that every Australian, regardless of where they are in the world, receives the support they deserve.

¹³ Ibid.

¹⁴ Australian Government, (2020), ‘Australians unjustly detained overseas.’ Media Statement. Minister for Foreign Affairs Senator the Hon Marise Payne. Retrieved https://www.foreignminister.gov.au/minister/marise-payne/media-release/australians-unjustly-detained-overseas?_gl=1*y0hz5j*_ga*MTE0MTE1NjAwMC4xNzIzMjY0MDY0*_ga_8Z18QMQG8V*MTcyMzQ2MjYzNS4zLjAuMTcyMzQ2MjYzNS42MC4wLjA.

¹⁵ Ibid.

In contrast, the United States Government policy framework, known as *the Levinson Act*, deals with this issue for US Citizens.¹⁶ In making assessments, the Department of State looks at the totality of the circumstances and considers factors including, but not limited to, the fairness of the judicial process, the veracity of the charges, and motivation or other circumstances surrounding or related to the arrest or the detention.¹⁷

The Levinson Act establishes a baseline criterion to determine whether there is, or is not, credible information that a US Citizen is unlawfully or wrongfully detained. For example:

- 1) Credible information obtained by officials indicates innocence of the detained individual,
- 2) Evidence that the individual is detained solely or substantially because they are a US Citizen,
- 3) the individual is being detained solely or substantially to influence the US Government policy or to secure economic or political concessions from the US Government,
- 4) the detention appears to be because the individual sought to obtain, exercise, defend, or promote freedom of the press, freedom of religion, or the right to peacefully assemble,
- 5) the individual is being detained in violation of the laws of the detaining country,
- 6) independent nongovernmental organisations or journalists have raised legitimate questions about the innocence of the detained individual,
- 7) the US mission in the country where the individual is being detained has received credible reports that the detention is a pretext for an illegitimate purpose,
- 8) the individual is detained in a country where the relevant US Government agency has determined in its annual human rights reports that the judicial system is not independent or impartial, is susceptible to corruption, or is incapable of rendering just verdicts,
- 9) the individual is being detained in inhumane conditions,
- 10) due process of law has been sufficiently impaired so as to render the detention arbitrary; and
- 11) US Government diplomatic engagement is likely necessary to secure the release of the detained individual.¹⁸

¹⁶ S.712 - Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act. (2019-2020)
<https://www.congress.gov/bill/116th-congress/senate-bill/712/text>

¹⁷ Office of the Special Presidential Envoy for Hostage Affairs, Retrieved <https://www.state.gov/bureaus-offices/secretary-of-state/special-presidential-envoy-for-hostage-affairs/>

¹⁸ S.712 - Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act. (2019-2020)
<https://www.congress.gov/bill/116th-congress/senate-bill/712/text>

Australia would benefit from adopting a similar approach. To that end, the Australian Government could work closely with international human rights organisations and other stakeholders to monitor and report on cases of arbitrary detention, ensuring that these issues remain in the global spotlight. This would solidify Australia's commitment to building a stronger international coalition aimed at eradicating arbitrary detention and advocating for the rights of detainees worldwide.

The time for action is now, and the Australian Government must rise to the occasion.

Other considerations:

- introduce the 'D-designation' status that the US State Department has for countries that engage in wrongful detention,
- create bilateral aid conditions/restrictions for those countries that engage in the practice of arbitrary detention,
- create an expectation that countries must become signatories to international human rights standards and legal principles and agree to be subjected to scrutiny and accountability measures to ensure these standards are maintained.

Getting the right help for individuals and families

Many Australian individuals and their families struggle to understand the complexities of arbitrary detention and how to get appropriate support for their unique situations. This is because there are few published case studies to draw insights from. Communicating their needs to others, especially to a government, can be an overwhelming endeavour, especially when the need is urgent. Many individuals and families in these situations face precarious situations. Their circumstances may become perilous without notice. They may require specialist assistance from a range of professionals, including human rights advocates, special envoys, international affairs experts, advisors, and legal counsel. But how do they know what support they need for their specific circumstances? Engaging these services and service providers often incur direct or indirect costs and while many professionals offer pro bono assistance in complex cases, this is not always feasible, especially given the extensive engagement required. This circumstance can impose considerable emotional and financial strain on individuals and their families, and on service providers.

In my situation, I found that there were only a limited number of people (outside of government) who could truly understand what we were going through—the trauma of arbitrary detention overseas, followed by intense media and public interest. Those people were other Australians who had experienced similar. But connecting with them at a time when I was most vulnerable was extremely challenging, particularly when you are prevented from communicating with anyone in the outside world. My family, however, received an offer of assistance from a recognisable stranger, who was imprisoned in Yugoslavia on spying allegations: Care Australia worker Steve Pratt [jailed in Yugoslavia] initiated contact with my family because he saw them going through trauma, and offered his assistance.

It is my personal view that the Australian Government should explore measures to support individuals and their families through duress resulting from arbitrary detention, as it truly is a devastating situation to face without diplomatic intervention.

As already stated in our organisational (AWADA) submission, establishing a task force for managing cases of arbitrary detention is a prudent and responsible step forward for Government. Such a task force could be instrumental in coordinating efforts across different government departments, ensuring a more streamlined and efficient approach to handling these complex situations, and working towards preventing future instances of arbitrary detention.

Communicating with individuals and families of Australians wrongfully detained overseas

As stated in our organisational (AWADA) submission, there is no legal definition of ‘Australians wrongfully detained’ in the current policy framework. This lack of definition forces individuals and families to make their cases compelling to attract the level of government intervention needed to resolve their situations. Many Australians typically resort to seeking media coverage in their desperate attempts to be heard. This strategy may or may not work to their advantage.

Overall, my impression of the level of communication between individuals and families and the Australian Government is that the Department of Foreign Affairs and Trade (DFAT) does approach these complex situations with care and diplomatic diligence. My experience working with the department’s staff is largely positive. Many work to navigate the intricate legal and diplomatic challenges that often arise, prioritising—as best they can—the safety and well-being of Australian citizens while respecting international laws and protocols.

I once worked as a Special Projects Officer to the Australian Embassy in the Middle East, one of my tasks was to assist in the compilation and testing of the Embassy’s business continuity and contingency plans for effective risk response in complex emergencies (e.g., the evacuation of Australians in Saudi Arabia, Bahrain, Jordan, Oman, Yemen, and Kuwait). This experience gave me valuable insights into how departmental agencies manage the complexities of overseas emergencies, as did my experiences with DFAT and other agencies in other parts of the world, including during the Afghanistan humanitarian crisis. There is definitely room for improvement.

In our particular case of arbitrary detention in Lao PDR, I felt that once consular access was established, we were able to articulate our situation gradually. The DFAT staff in Laos went above and beyond communicating to the Australian Government that ours was not merely a ‘private matter’ or ‘complex consular case,’ despite this being the language used by the Australian Government to the media. Indeed, our arbitrary detention made national and international headlines. However, the media had little information to work with other than the commentary from our government and the Lao PDR government—the latter serving a particular agenda to portray us as criminals. As a result, we were subjected to highly inaccurate labelling that further damaged our reputations and harmed our mental health. Such personal injuries could have been mitigated to some degree had our Government had standardised processes in place for determining and managing our case.

That was then. This is now, and some twenty years later arbitrary detentions are sometimes difficult to identify and categorise—due to state actors’ continuing to use their judicial systems to apply a veneer of legitimacy to wrongful arrests. It makes no sense to rely on the ad hoc judgments of DFAT’s consular team, in determining the categorisation of detainment. Nevertheless, we were fortunate that the Australian Ambassador, Jonathon Thwaites, and his consular team were able to make a compelling argument to our Government that we were, in fact, hostages.

As a result, our family received weekly updates from DFAT, including:

- Letters addressed to our family were frequently sent by the Australian Government,
- Follow up phone calls from Canberra reminded our family of the Government's commitment to achieving justice for us.
- The then Minister of Foreign Affairs and Trade, Alexander Downer, visited my parent's home to reassure them that he and the Australian Government were working tirelessly to secure our release.
- The then Australian Governor-General, Sir William Deane, and the then Australian Prime Minister John Howard made repeated representations to their counterparts in the Lao PDR government, seeking reassurances in relation to our safety, and to request a timely resolution of our matters.
- Special Envoys (John McCarthy and Mr Ian Kemish) led the diplomatic engagement in Laos.
- Australian Defence Force chiefs, along with prominent individuals and groups from the defence community, frequently expressed their support for us to the Australian Government and Embassy.
- The communication that flowed through DFAT was immense and resulted in the Foreign Affairs Minister re-engaging senior diplomats from their retirement to cope with the volume of administration that our case had generated.

Communications with individuals and support for Australians who have been released from wrongful or arbitrary detention

Our organisational (AWADA) submission explores this topic in depth, so I will limit my comments to some brief anecdotes.

Our release from arbitrary detention was achieved through high-level diplomatic efforts. While there was minimal military debriefing after our release, over time, significant action eventually raised awareness about arbitrary detention and support Australians and others unjustly held overseas, largely through my advocacy with the United States Center for Public Policy Analysis. I presented key human rights issues to US Congressional forums, focusing on arbitrary detention and torture. I had the honour of collaborating with a range of prominent organisations and Congressional representatives, including Dana Rohrabacher (R-CA), Patrick Kennedy (D-RI), George Radanovich (R-CA), Mark Green (R-WI), Adam Smith (D-WA), and Congressman Frank Wolf (R-VA). Over a ten year period, we successfully advocated for the release of 58 political prisoners in Laos. Beyond this, we positively influenced US and international policy regarding the treatment of prisoners abroad.

'The Danes Case' has garnered significant attention over the years, becoming the subject of several studies, US Congressional forums, documentaries, television features, books, and academic conferences. It also inspired me to co-author a book with a fellow military Counterintelligence and Defence Force

specialist, David Birkett, that deals with kidnapping, risk mitigation and contingency planning.¹⁹ This book and others I have written on the topic incorporate my lived experiences to provide valuable lessons on hostage survival.

These experiences led to the Australian Defence Intelligence Training Centre engaging me as a consultant for their Conduct After Capture Training (formerly known as Resistance to Interrogation Training). From this engagement a crucial training program was developed: 'Hostage—Survive with Dignity.' The aim of this training was to prepare Australian Defence Force personnel deploying overseas (in armed conflict environments)—to endure the challenges of captivity and exploitation while maintaining their dignity.

As I embarked on what was a challenging journey to heal from the profound trauma of torture, I experienced an overwhelming sense of isolation, struggling to find individuals who could truly comprehend the depths of my ordeal. The unique nature of my experience created a barrier, making it difficult to connect with others who I felt had not endured similar circumstances. I vividly remember my initial psychological assessment, which took place after receiving a Post-Traumatic Stress Disorder (PTSD) diagnosis from the Australian Embassy doctor in Laos. At that time, my understanding of therapeutic support was limited, and I approached the session with scepticism.

In my naivety, I posed a question to the psychologist that reflected my doubts: 'How can you possibly help me if you've never personally experienced the horrors of torture and arbitrary detention?'

This query stemmed from my belief that only those who had walked in my shoes could truly grasp the complexity of my emotions and the extent of my trauma. However, as I progressed through my healing journey, my perspective underwent a significant transformation. I came to realise that empathy, professional expertise, and a genuine desire to understand can bridge the gap between personal experience and effective support. This revelation opened my eyes to the fact that firsthand experience, while valuable, is not the sole prerequisite for comprehension and meaningful assistance. I learned that skilled professionals could offer invaluable insights and coping strategies, even without having directly experienced the same traumatic events. So too can a government that is willing to recognise the profound impact on survivors of arbitrary detention.

Unfortunately, the Australian diplomatic solution that resulted in our release from the Lao PDR failed to prevent ongoing detriments to our lives. The Australian Government had given us reassurance that the legal issues we faced in Laos, including our conviction, would not have any negative implications for us. This assurance did not consider that having been convicted of a 'Crime Involving Moral Turpitude' (under Immigration Law), rendered us permanently ineligible to enter the United States or any other Country under the Visa Waiver Program (VWP).²⁰

Further, that a pardon issued by a foreign government is not recognised as relief.

¹⁹ Cambridge Scholars Publishing, (2021), Safety Essentials for Business and Leisure Travel: Air, Land, Sea and during Pandemics! ISBN: 1-5275-6792-3, <https://www.cambridgescholars.com/product/978-1-5275-6792-4>

²⁰ Moral Turpitude refers to an arrest or conviction of a crime that resulted in serious damage to property, or serious harm to another person or government authority. <https://legaldictionary.net/moral-turpitude/#ftoc-heading-6>

In 2024, I was forced to submit a DS-160 form for a United States non-immigrant (tourist) visa after I lodged an Electronic System for Travel Authorisation (ESTA) and failed to qualify for the Visa Waiver Program.²¹ Then, after attending an interview at the US Consulate in Sydney, my application to enter the United States as a tourist was again denied. This, despite having two US visas issued previously in 2002 and 2009.

I made a complaint to the Australian Department of Foreign Affairs and Trade and to several high-profile dignitaries who graciously made representations on my behalf to the US Consulate. They included some of those listed below:

- Former Australian Prime Minister Kevin Rudd,
- Former Deputy Prime Minister Barnaby Joyce,
- Australian Department of Foreign Affairs and Trade Minister Penny Wong,
- Senator Simon Birmingham, Leader of the Opposition (Liberal National Party),
- Australian Federal Member of Parliament Henry Pike, (Liberal National Party)
- Former US Ambassador Douglas Hartwick,
- Former Australian Consular Officer Robin Hamilton, (DFAT)
- Tricia Martino—Director, Consular Operations Branch, (DFAT).

The following is the text from Former Australian Consular Officer Robin Hamilton, (DFAT) submitted to the US Consulate:

To whom it may concern,

I am writing to support a US visa application for Ms Kay Danes.

I was previously an Australian consular official (First Secretary and Consul) employed by the Commonwealth Government, Department of Foreign Affairs in Laos in 2000 when Ms Danes and her husband were taken into custody.

I visited them regularly, and was engaged in the diplomatic process that resulted in their being released from detention. I always believed, by my analysis by the facts, that they were both innocent of the charges against them, which were fabricated to suit a narrative that benefited certain Lao Government individuals.

They subsequently received a Presidential pardon negotiated by the Australian Government and events have proven that the history of the matter was very complex. Ms Danes has continued to distinguish herself in the field of human rights and social justice and I admire her greatly.

Yours sincerely,
Robin Hamilton-Coates

In April 2024, I was granted a 5-year US Visa /Class R BI/B2 and successfully travelled to the United States. Despite this, the issue remains that I no longer enjoy the rights and liberties I once did, prior to being subjected to arbitrary detention in the Lao PDR.

²¹ <https://esta.cbp.dhs.gov/esta>

As stated in my opening remarks, living with the stigma of a wrongful conviction is deeply painful for those of us who hold strong views about injustice.

The Australian government must seriously consider the impact these decisions have on Australians who are wrongfully detained overseas, and make appropriate representations to reinstate their eligibility under the Australian Visa Waiver Program, Mr Kerry Danes and myself, included.

Victims of International Crime (wrongful or arbitrary detention) by a State or Rogue Government Employees

Australian citizens who have been victims of crime have access to various legislative rights within Australia. For example, in the state of Queensland, *the Victims of Crime Assistance Act 2009* provides a mechanism for implementing processes for victims of violent acts to make complaints to the government and seek recovery. It offers financial assistance, recognises the injuries suffered, and supplements government services available to victims of violence.²²

Australians who have been victims of wrongful detention overseas do not currently have any legal avenues for redress or restitution within Australia.

When an Australian is arbitrarily detained overseas, their initial reaction upon release is to hold the detaining State accountable. While international law guarantees the right not to be subjected to arbitrary detention, States must comply with their human rights obligations and sadly, many do not. In those cases, individuals subjected to arbitrary detention often lack the capacity to hold States accountable for the harm caused. This lack of direct recourse against State entities leaves individuals and their families in a precarious position, unable to effectively seek justice or compensation for rights violations. The power imbalance between individuals and States creates a barrier to accountability, making it difficult for those wrongfully detained to pursue legal remedies or obtain fair treatment within the justice system.

In my opinion, the Australian Government should consider the impact of this lack of recourse against injustices. They should help individuals, and their families seek appropriate remedies through a reparation process that addresses these issues. One consideration might be to introduce new legislation to support a National Redress Scheme for Australians wrongfully and arbitrarily detained overseas. This scheme could seek to recover compensation either directly from the detaining State, or through State-to-State bilateral relations and trade agreements.²³

Establishing a well-defined policy framework that includes a mechanism for accountability would not only enhance the Australian government's ability to advocate for its citizens effectively but also work towards eradicating the unlawful practice of arbitrary detention worldwide.

²² Queensland Government, '*Victims of Crime Assistance Act 2009*,' The State of Queensland (Office of the Queensland Parliamentary Counsel) 2014-2024 (Ver. 2.7.20 Rev. 7491)

<https://www.legislation.qld.gov.au/view/html/inforce/current/act-2009-035#sec.3>

²³ Refer to AWADA Submission 30 December 2022.

Understanding Arbitrary Detention

Case Study -- The Danes Case

Dated 23 December 2000 – 06 November 2001



Photo: Phonthong Prison Laos (2000)

Background

Lao People's Democratic Republic (Lao PDR) is covered by the Office of High Commissioner of Human Rights' (OHCHR) Regional Office for South-East Asia. Established in 2002, the office acts as an expert resource and plays a catalytic and convening role, helping to bring human rights standards and mechanisms into discussions on political, social, economic and developmental issues amongst governmental and non-governmental actors.

The Lao PDR is governed by a single-party communist government that is a signatory to several human rights instruments, including the Universal Declaration of Human Rights 1948 (UDHR). The Declaration is broadly accepted to have inspired the development of international human rights law and the first step in the formulation of the International Bill of Human Rights, which was completed in 1966 and came into force in 1976.

Although not legally binding, the contents of the UDHR are incorporated into subsequent international treaties, regional human rights instruments, and national constitutions and legal codes, including that of the Lao PDR.

The Lao PDR government is a signatory to the International Covenant on Civil and Political Rights (ICCPR). Upon signing (07 December 2000), the Lao PDR government made an agreement in principle to protect the civil and political rights of all persons in Laos, including, but not limited to ensuring:

- Freedom from discrimination,
- Freedom from torture,
- Right to liberty and security of person,
- Right to be treated with humanity in detention,
- Freedom of non-citizens from arbitrary expulsion,
- Right to fair trial,
- Right to recognition before the law, and
- Right to equality before the law.²⁴

The US Department of State Country Report on Human Rights Practices 2000 – Laos, is one of many reports that question the Lao PDR’s human rights record. It raises concerns about arbitrary detention, torture, judicial corruption, and numerous reports of massive human rights violations by government authorities, as reported by groups outside the country.²⁵

The Danes Case exemplifies some of the more serious challenges faced by expatriates navigating the intricate legal and social landscapes of their host countries. Understanding these nuances is crucial for anyone considering similar roles in unfamiliar legal environments.

The Danes Case (23 Dec 2000 – 06 Nov 2001)

In 1999, Kerry Danes, while still a serving member of the Australian Defence Force, received permission from the Chief of the Australian Defence Force to take on a civilian role in Laos during his military Long Service Leave. Kerry was appointed as the Managing Director of Lao Securicor, a subsidiary security company of Jardine Securicor, a UK-based Security Company, in partnership with the Laos Ministry of Interior. Lao Securicor was responsible for protecting the lives and properties of 75 major foreign investors in Laos, including United Nations Programs, Foreign Embassies, International Airports, Hotels, Banks, and various private sector organizations.

Kay Danes accompanied her husband to Laos with their three children. After volunteering in an administrative capacity for several months, Kay was offered an employment contract by Jardine Securicor to manage Lao Securicor’s existing client contracts and attract new business. As her role expanded, Kay was engaged as a consultant by Jardine Securicor, traveling to neighbouring countries to facilitate services for Securicor’s clients outside of Laos. Eventually, she established an independent consulting service to continue this role full-time.

On December 23, 2000, Lao Secret Police from the Lao Ministry of Interior arbitrarily detained Kerry Danes. They took him from his place of work to a secret prison (Phonthong Prison) outside the Lao Capital—Vientiane. There they used coercive tactics (torture) to force him, unsuccessfully, to make false statements against his clients whose assets had been subjected to a Lao Government nationalisation order.

²⁴ More details pertaining to the ICCPR can be found at this link: <https://www.ohchr.org/en/treaty-bodies/ccpr/background-international-covenant-civil-and-political-rights-and-optional-protocols>

²⁵ US State Department Country Report on Human Rights Practices 2000 – Laos. Retrieved from the UNHCR website: <https://www.refworld.org/reference/annualreport/usdos/2001/en/25849>

When Kerry Danes refused to make false statements, the Lao Secret Police turned their focus to his wife, Kay Danes. Hours after his abduction, Kay Danes was arbitrarily detained with two of her children at the Lao border (Nathan 7 and Sahra 10).²⁶

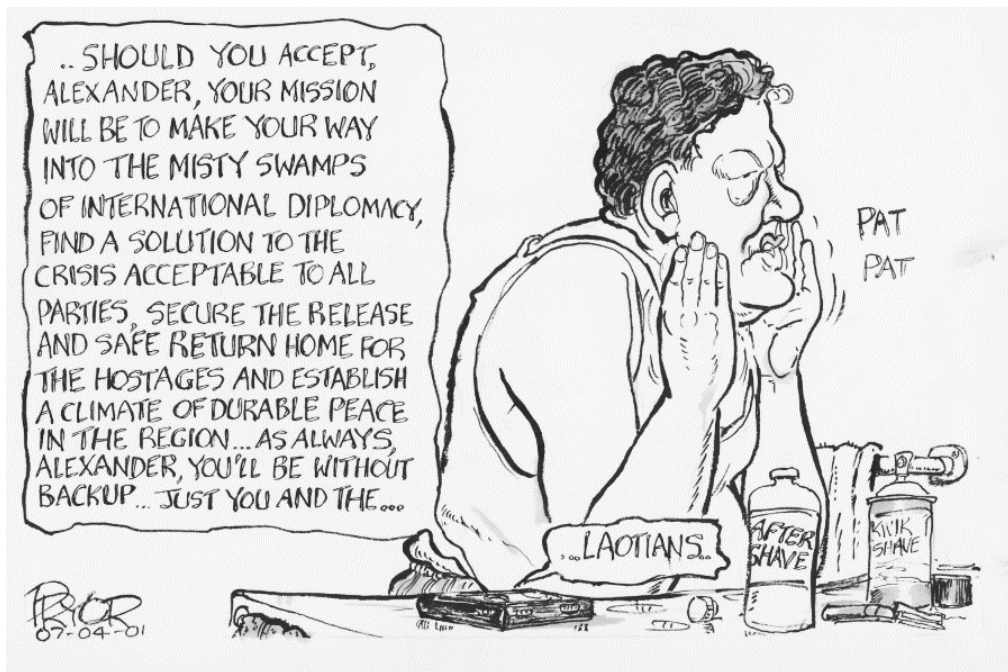
Upon learning that Kerry Danes had been arbitrarily detained, Kay Danes notified the Australian Embassy in Laos by (mobile) phone. The Australian Consular Official attempted to provide immediate support to Kerry Danes, but he could not be located despite his security staff putting him at the Immigration Headquarters in Vientiane.

The Australian Consular Official then turned their attention to evacuating Kay Danes and the couple's two children to the safety of Thailand. When that attempt failed, Kay Danes was arbitrarily detained by Lao Secret police and transferred to the Immigration Headquarters in Vientiane. There, Kay Danes remained for two days before being transferred secretly to Phonthong Prison.²⁷

The Australian Embassy in the Lao PDR arranged for the Danes' children to be returned to Australia to keep them safe.

The Australian Embassy in the Lao PDR received credible reports that the detention of the Danes was a pretext for an illegitimate purpose. This prompted the Australian Government to intervene in the Danes case.

NB: the language adopted by Australian media (below) that referred to the Australian Foreign Affairs Minister, Alexander Downer's efforts to secure the release of the Danes, identified as 'Hostages'.²⁸



²⁶ The Danes' eldest daughter had returned to Australia a year earlier to attend senior high school.

²⁷ *Article 36 House Arrest—the Lao Law on Criminal Procedure (1990)* states that house arrest may not be imposed on offenders who are women in charge of small children who are less than eight years old at the time the offence is committed.

²⁸ Geoff Pryor, Foreign Minister Alexander Downer preparing to negotiate a settlement with Laotian government over release of Australian couple, the Danes, 2001 [picture], <https://nla.gov.au/nla.obj-158570821/view>

According to DFAT Cables, Kerry and Kay Danes were held incommunicado without any contact to the outside world which prompted the Australian Government to make immediate representations to the Lao PDR Government. This enabled the Australian Embassy in Laos to establish regular weekly contact with the Danes, albeit limited and heavily censored.

Thanks to the tireless efforts and persistent advocacy by the Australian Government, the Danes were eventually liberated from the socialist State of Laos.

After enduring a gruelling 322 days in captivity, they were finally able to make their long-awaited return to Australia. The ordeal remains a testament to their resilience and the unwavering support of the Australian authorities who worked diligently to secure their release.



Photo: Kerry and Kay Danes in Brisbane after their release from Laos (2001) The Courier Mail.

The Danes Case: Lao PDR government violation of due process

The Lao PDR government has for years faced criticism for its judicial practices. Reports from various human rights organisations, including the US Department of State, have highlighted numerous instances where due process has been compromised. Issues concerning arbitrary detention, the consistent lack of transparency in legal proceedings and the absence of an independent judiciary, are prevalent even today.

One of the most alarming violations of due process in Laos is *arbitrary detention* where individuals are detained without charge, for extended periods, often without access to legal representation. This practice contradicts international human rights standards and undermines the principle of being presumed innocent until proven guilty. It also undermines Lao PDR laws. Transparent legal proceedings are crucial for ensuring justice. But in Laos, court trials often lack transparency, with limited public access and inadequate documentation of proceedings. This secrecy not only erodes public trust in the judicial system but also prevents accountability. Indeed, there is no record of a case in Laos where these fundamental rights have been upheld in their entirety, or routinely guaranteed. In particular, the process by which a case reaches the Lao PDR court appears to be wholly haphazard; individual cases simply do not get heard, and detainees have no access to lawyers, and often remain in ignorance of the charges against them.

Right to a Fair Trial: It is one of the universally applicable guarantees recognised in the Universal Declaration of Human Rights, the cornerstone of the international human rights system, adopted in 1948 by the world's governments, including the Lao PDR, and is legally binding as part of customary international law.²⁹ Customary international law is a primary source of international legal obligations that are binding on all states, independent of their treaty obligations. The rules of customary international law come from a general practice accepted as law.

ICCPR, Article 14(1)

...In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...

The Danes were not adequately informed of the charges against them which impeded their ability to mount an effective defence. The legal brief prepared by Mr Ted Tzovaras and Australian Ambassador Jonathon Thwaites upholds that:

Para 34. It is unclear precisely what, if any, wrongdoing Mr or Mrs Danes has allegedly engaged in. None of Mr Kerry Danes, Mrs Kay Danes, their legal representatives or the Australian Embassy has been officially notified of any wrongdoing. In spite of this, the authorities in Lao PDR have made statements alleging unlawful conduct on the part of Mr and Mrs Danes.³⁰

²⁹ Amnesty International, (2014), 'Fair Trial Manual' 2014 (Second Edition), <https://www.amnesty.org/en/wp-content/uploads/2021/06/pol300022014en.pdf>

³⁰ Tzovaras Legal, (2001), 'Submissions to the Lao PDR', 30 May 2001, p13, paragraph 34. Mr Ted Tzovaras was, at the time, a Barrister and Solicitor of the High Court of Australia and the Supreme Court of New South Wales (Australia).

Presumption of Innocence: Until proven guilty, every individual is presumed innocent. This fundamental principle is a cornerstone of justice systems worldwide. Arbitrary detention without clear charges not only undermines this principle but also casts significant doubt on the fairness and integrity of the legal process. At no stage were the Danes charged with a recognisable criminal offense, which further exacerbates concerns about the legitimacy of their detention. The lack of formal charges and the indefinite nature of the Danes detention suggest a serious violation of their basic legal rights.

Protection Against Arbitrary Detention: An arrest is “the act of depriving a person of liberty under governmental authority for the purpose of taking that person into detention and charging the person with a criminal offence.”³¹ It covers the period from the moment the person is placed under restraint up to the time the individual is brought before a competent authority that orders release or continued custody. Arbitrary detention refers to the ‘arrest’ and ‘detention’ of an individual without due process or justification under the law. This practice is a significant violation of human rights, as it often involves holding individuals without proper legal procedures, charges, or a fair trial.

The Special Rapporteur on human rights has stated that in addition to the prohibition against the use of evidence obtained by torture or other ill-treatment, the use of evidence obtained otherwise in breach of human rights or domestic law generally renders a trial unfair.³²

Lao PDR laws, in alignment with international human rights conventions, is established to protect individuals from being detained without just cause.

Article 49 on Documentation of Arrest — the Lao Law on Criminal Procedure (1990) states that:

“Regardless of the case, arrests must be documented as evidence.”³³

At no time, during or after, the detainment of either of the Danes, were arrest warrants issued.

Article 47 on Arrests — the Lao Law on Criminal Procedure (1990) state that:

The arrest of any individual must be accompanied by an order in writing from the public Prosecutor or the court.³⁴

This written order serves as a legal authorisation for the arrest and ensures that the process complies with the legal standards and principles set forth in the Lao Law on Criminal Procedure. Without such a written order from the appropriate legal authority, any arrest conducted would be considered unlawful and in direct violation of the procedures established by the law.

The Lao PDR government agreed to abide by the principles of the International Covenant on Civil and Political Rights (ICCPR), demonstrating its commitment to uphold and protect the civil and political rights of its citizens and non-nationals residing in Laos. The Lao PDR government’s agreement signifies a

³¹ UN Centre for Human Rights, Human Rights and Pre-trial Detention, UN Doc. E.94.XIV.6 (1994). The Body of Principles states: “‘Arrest’ means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.”

³² Special Rapporteur on human rights and counter-terrorism, UN Doc. A/63/223 (2008) §45(d).

³³ Article 49. International Commission of Jurists, Lao Law on Criminal Procedure (1990), <https://www.icj.org/se-asia-security-law/criminal-procedure-law-articles-26-32-42-46-to-48-and-50-1990/>

³⁴ Article 47. Ibid.

crucial step towards ensuring that fundamental freedoms, such as the right to a fair trial, is respected and enforced within the country.

ICCPR Article 9:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.³⁵

In violation of the ICCPR, the Universal Declaration of Human Rights and the Lao Law on Criminal Procedure (1990), the Danes were transferred to what was then, a secret prison (Phonthong Prison) for political prisoners, where they remained for SIX MONTHS without learning the reason for their arbitrary detention.

The legal brief prepared by Ted Tzovaras and Australian Ambassador Jonathon Thwaites upholds from 30 May 2001, the following statement by Mr Ted Tzovaras in his capacity as a Barrister and Solicitor of the High Court of Australia and the Supreme Court of New South Wales (Australia):

Para 65. Mr and Mrs Danes have been detained without being charged for over 5 months. That this has occurred is unlawful. That the Lao PDR authorities have insufficient evidence on which to base any charge is plain. Moreover, the evidence proffered by Mr and Mrs Danes establishes their innocence. In these circumstances they should be released from prison without delay.³⁶

³⁵ Australian Human Rights Commission. 'Rights to the security of the person and freedom from arbitrary detention.'
<https://humanrights.gov.au/our-work/rights-and-freedoms/right-security-person-and-freedom-arbitrary-detention>

³⁶ Ibid, 20.

The Danes: detained in cruel, inhuman and degrading conditions

On this topic, many human rights standards relevant to the conditions in which prisoners are arrested and detained are contained in non-treaty instruments: The Universal Declaration of Human Rights, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners which set out important guarantees. States do not formally become parties to non-treaty standards, and such do not technically have the legal power of treaties but are the persuasive force of having been negotiated by states, and of having been adopted by political bodies such as the UN General Assembly, usually by consensus. Because of this political force they are considered authoritative.

According to Amnesty International, Phonthong prison, where the Danes were arbitrarily detained is cruel, inhuman and has degrading conditions. The organisation has substantiated this point over a number of years, from evidence-based research and makes a specific reference to Phonthong Prison and the Danes case.³⁷

‘...torture and ill-treatment is meted out to prisoners, regardless of their nationality. Even though Australia is a major donor country to Laos, an Australian, Kerry Danes, was tortured after he was arrested in December 2000.’³⁸

The US Department of State also upholds that the treatment and conditions of detainees in Lao PDR prisons are inconsistent with international and national laws:

‘Prison authorities use degrading treatment, solitary confinement, and incommunicado detention against perceived problem prisoners, especially suspected insurgents. On occasion authorities used incommunicado detention as an interrogation method; in isolated cases, this was life threatening. There are confirmed reports that a few jails place prisoners in leg chains, wooden stocks, or fixed hand manacles for extended periods.’³⁹

Article 47 on Arrests — the Lao Law on Criminal Procedure (1990) states that:

‘Beatings and torture of the arrested are prohibited.’⁴⁰

The Danes reported to the Australian Ambassador details of torture and ill-treatment that they had been subjected to by interrogation squads that frequented the prison. Such statements are corroborated by witnesses and are well-documented in Consular Cables and in statements in the International media from Government and Non-Governmental Organisations, including Amnesty International, US Congressional Forums, Lobbyists, Film makers, documentaries and books (Standing Ground, PhD Thesis, Defence Intelligence Training Video—Hostage).

³⁷ Amnesty International, Amnesty International Report 2001 - Laos, -, 1 June 2001, <https://www.refworld.org/reference/annualreport/amnesty/2001/en/30484> [accessed 12 August 2024]

³⁸ Amnesty International Press Release, (2002), ‘Laos: Torture, Ill-treatment and hidden suffering.’ (Retrieved 12 August 2024) <https://www.amnesty.org/en/wp-content/uploads/2021/06/asa260032002en.pdf>

³⁹ US State Department Country Report on Human Rights Practices 2000 – Laos. Retrieved from the UNHCR website: <https://www.refworld.org/reference/annualreport/usdos/2001/en/25849>

⁴⁰ Ibid 11.

The Danes: Pre-Trial Process and Trial



The Lao PDR is an authoritarian communist state. There is no semblance of open justice as the Lao judicial process does not allow adversarial prosecution of evidence. Numerous governments and nongovernmental organisations including the most recent report released by the US Department of State have determined in their annual human rights reports that the judicial system of Laos is not independent or impartial, is susceptible to corruption, is incapable of rendering just verdicts, and that arbitrary arrest and detention remain problematic.

US Department of State Human Rights Report 2023 affirms that:

‘The law provided for the right to a fair and public trial, although the judiciary seldom upheld these rights. The law required authorities to inform persons of their rights, but defendants did not have a legal right to know promptly, or in detail, the charges against them.’⁴¹

The pre-trial process:

The critical significance of pre-trial rights is to prevent wrongful convictions, protect civil liberties, and promote equal treatment under the law:

- the Right to liberty,
- the Rights of people in custody to information,
- the Right to legal counsel before trial,
- the Right of detainees to have access to the outside world,
- the Right to be brought promptly before a judge,
- the Right to challenge the lawfulness of detention,
- the Right of detainees to trial within a reasonable time or to release,
- the Right to adequate time and facilities to prepare a defence,
- the Rights and safeguards during questioning,
- the Rights to humane detention conditions and freedom from torture and ill-treatment.

None of these pre-trial rights were ever accorded to the Danes. In fact, they, their legal representatives and Australian Embassy only learned of the specific charges at the closed-court trial on 28 June 2001, SIX MONTHS after the Danes’ initial detainment.

⁴¹ Laos 2023 Human Rights Report. https://www.state.gov/wp-content/uploads/2024/02/528267_LAOS-2023-HUMAN-RIGHTS-REPORT.pdf

The ICCPR, Article 14(3)(c) states that “In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (c) To be tried without undue delay.”⁴²

Furthermore, in a significant move towards the promotion of human rights, the Lao PDR Government also signed the Universal Declaration of Human Rights (UDHR) as a crucial step to upholding and protecting the fundamental rights and freedoms of its citizens and non-nationals. This is especially noteworthy in the context of the nation upholding national policies with global standards and to work towards ensuring justice and equality for all.

The signing of the UDHR is an important reference point. It highlights how the Lao PDR government’s actions violated the Danes legal protections—protections that the government had agreed to uphold under this declaration. For example;

Article 7 - All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 - No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11 -

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.
2. No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.⁴³

⁴² Office of the High Commissioner of Human Rights, ICCPR Article 14,(3) (c) <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>

⁴³ Universal Declaration of Human Rights (1948).

https://www.ohchr.org/sites/default/files/UDHR/Documents/UDHR_Translations/eng.pdf

Closed Court Proceedings:

The closed-court proceedings on 28 June 2001 only resulted because of the intense pressure that was applied by the Australian Government— based on diplomatic discussions with the Office of the President and Foreign Ministry of Laos.⁴⁴

- The Australian Embassy were not informed of the pending closed-court proceedings.
- The Danes themselves were not informed.
- The preparation of a legal defence was denied and relied only on rumoured allegations circulating at the time.



“While all of these legal manoeuvrings were going on, the embassy was employed day after day speaking to a whole range of Lao authorities, up to the most senior levels in the country. It's certainly not for me to make a pronouncement on this subject, but in the opinion of anybody that really knew what was going on, the Danes had no case to answer... It's very difficult for the Lao authorities to accept that there's anything much wrong with a situation where people may take the rap for something that they didn't do. As they said to us on a number of occasions, if the Danes had been released, where does that leave us? How can we get the compensation for all the damage that has been done to the Lao people over the years by Gem Mining Lao? Don't be too fussed about the connection between the Danes and Gem Mining Lao. The Danes are all we've got left.” - Australian Ambassador Jonathan Thwaites (Interview on ABC Australian Story.⁴⁵)

Leading up to the closed-court proceedings on 28 June 2001, the Danes' Australian Lawyer worked closely with the Australian Ambassador to compile evidence to refute the 'rumoured' allegations of 'proposed' criminal offences. That evidence containing depositions and documentary evidence, including Lao Law and International Law, lay unopened during the entire closed-court proceedings. Any attempt by the Danes' Lao lawyer to reference the book was silenced by the court.



“It was necessary - it was critical - for me to work behind the scenes. We had no idea what the allegations were. We had to build our defence on the basis of what we anticipated the charges might be. But it had nothing to do with the legalities, because the legal system in Laos is not developed. You do not fight it as a legal battle. It is a persuasion exercise, and it is... and you have to persuade the government officials, not the judges.” - Australian Lawyer Mr. Ted Tzovaras (Interview on ABC Australian Story)

Mr Ted Tzovaras is a Barrister and Solicitor of the High Court of Australia and the Supreme Court of New South Wales (Australia).

⁴⁴ Australian Government demands the Danes release after 16 weeks of detention in the absence of a clear case against them (April 9, 2001), <https://edition.cnn.com/2001/WORLD/asiapcf/auspac/04/09/aust.laos.danes/>

⁴⁵ Interview aired on ABC Television, (2002), 'On Their Honour', *Australian Story*, March 18, 2002, <https://www.imdb.com/title/tt4167652/>

⁴⁶ Ibid.

The Effectiveness of Australian Policy Framework to deter arbitrary detention

The Australian Ambassador's high level of involvement highlighted the gravity of the Danes' situation and the Australian Government's support. However, the effectiveness of Australia's policy framework to deter arbitrary detention was put to the test—and ultimately failed. It couldn't protect the Danes from a wrongful conviction that would persist even after they received a Presidential Pardon.

During the closed-court proceedings, the Danes stood before three judges and were not allowed to ask questions at any point. The prosecutor sought to coerce Kerry Danes into making false statements, in direct violation of the principles enshrined in international and Lao National laws. It is noted on the court record that the Lao Prosecutor presented a photocopied document as evidence, without revealing the location of the original. Kerry Danes' signature had been photocopied from another unrelated document, making it appear as if Kerry Danes had signed the document. This forgery was permitted as evidence, which is a grave breach of legal standards. Moreover, the poor acoustics in the courtroom rendered the proceedings inaudible and incoherent. This made it impossible for the Danes, the Australian Ambassador, or the Danes' Australian lawyer to follow the proceedings.

The Danes' Lao Lawyer was officially appointed by the court to serve in the capacity of an 'interpreter.' This designation meant that the lawyer's role was strictly limited to translation and explanation duties. The lawyer was explicitly not permitted to engage in any form of adversarial advocacy or to argue against the allegations of criminal offence presented during the closed-court proceedings. This restriction significantly limited the lawyer's ability to defend the Danes or challenge the prosecution's case.

Furthermore, the lawyer's inability to participate in adversarial advocacy meant that any potential legal arguments, objections to evidence, or cross-examinations that could have been made in the Danes' defence were entirely foregone. The court's decision to restrict the lawyer's role to that of an interpreter effectively silenced any legal rebuttal or defence strategies that could have been employed. As a result, the proceedings were heavily skewed in favour of the prosecution, leaving the Danes without a robust legal defence which undermined the fairness of the trial.

The closed-court proceedings were conducted entirely in a foreign language that the Danes did not speak or understand. The proceedings did not allow sufficient time for the Lao Lawyer to translate everything that was being said. Neither the Danes, their lawyers, nor the Australian Embassy or the Australian Government were given any opportunity to review the evidence, challenge the allegations, or read a copy of any court transcript. This lack of access to critical legal documents and the inability to participate meaningfully in the legal process meant that they were effectively excluded from ensuring a fair trial.

Consequently, there were serious concerns about the transparency and fairness of the judicial proceedings, as well as the overall integrity of the Lao legal system.

Article 57 of the Lao People's Democratic Republic Constitution (1990) stands as a crucial legal safeguard ensuring that criminal cases are handled with a high degree of fairness and objectivity. According to this article, criminal cases must be dismissed when there is insufficient evidence to prove that the accused is the offender.

Article 57: Basis for Dismissal of a Case Criminal cases shall be dismissed:

When there is no sufficient evidence to show that the accused is the offender.

This principle underscores the importance of robust and compelling evidence in the administration of justice. Evidence must include proof of the defendant's guilt as well as of their innocence, and it should be evaluated based on a comprehensive and objective consideration of the case. If the evidence casts doubts on the accused's guilt, such person must be released from charges. At no point was any evidence produced that established the Danes' guilt to the proffered charges.

Indeed, the Australian Ambassador can frequently be cited in media for his belief in the Danes' innocence.

“If Kerry with all his SAS training, with all his discipline and dedication, patriotism, is ever going to break, it's not going to be for physical reasons. It's going to be because he doesn't feel he can restore his good name, and that he has somehow been judged by his own people to be guilty of something that he absolutely didn't do.”—Australian Ambassador Jonathan Thwaites.



Photo: 1 (Left to Right) Australian Ambassador Thwaites with Kay Danes, Eve Thwaites and Kerry Danes following their transfer to the Ambassador's residence (October 2001)

The Danes case highlights the application, or rather the misapplication, of *Article 57* and other international laws and declarations to which the Lao PDR Government is a signatory.

The Lao People's Democratic Republic Constitution is designed to ensure that justice is served fairly and objectively. However, in the Danes case, significant deviations from these principles were applied. It is essential for the integrity of the judicial system that cases are dismissed when there is insufficient evidence, and that trials are conducted in a manner that respects the rights of the accused and adheres to legal standards.

The Danes case should have been dismissed and reparations made for wrongful and arbitrary detention.

The Verdict of the Lao PDR court

The verdict in the Lao PDR court was delivered after five hours on 28 June 2001. To put this into perspective, a similar case in an Australian court would have easily required approximately 20 hearing days to ensure a fair and comprehensive evaluation. The judgment was read from a pre-typed five-page document. This raised immediate concerns and scepticism. Both the Australian lawyer and the Australian Ambassador voiced their doubts to the media, highlighting that, given the complexity of the case, it was highly improbable that the three presiding judges could have:

- deliberated on the evidence and legal issues,
- reached a unanimous guilty verdict for each charge,
- formulated the reasoning behind their findings,
- produced a written, typed, checked, corrected and finalised judgment all within just 25 minutes.

The Court sentenced both Kerry and Kay Danes to seven years of imprisonment and ordered them to pay compensation along with a US\$530,750 fine.⁴⁷ (NB: no compensation was sought by the Lao PDR following the Danes release). The specific particulars of the Lao convictions recorded against Kerry and Kay Danes were;

1. Embezzlement of state assets (office furniture + two computers).

The Lao court determined that Lao Securicor staff had moved State assets without first seeking permission from the Laos Government. As Managers of Lao Securicor, the Lao court convicted both the Danes, although this record was later expunged. At that time, the assets of the Lao Securicor client, Gem Mining Lao, were not state-owned as the Laos authorities had not yet seized control of Gem Mining Lao. Lao Securicor had contractual obligations to Gem Mining Lao. At their request and upon advice from Jardine Securicor's lawyers, Lao Securicor staff moved the office furniture and two computers belonging to Gem Mining Lao to Lao Securicor's security headquarters for safe storage. Six months later, all items were handed over to the Laos authorities upon their seizure of Gem Mining Lao. The Lao PDR authorities did not arrest the Danes at the time of seizure, nor did they raise any concerns about how the assets were secured.

2. Destruction of evidence.

The Laos court ordered that when Lao Securicor staff moved the two computers for storage that the data had been destroyed. As Managers of Lao Securicor, the Lao court convicted both the Danes, although this record was later expunged. Any allegations of wrongdoing are not supported because the data was preserved and a backup copy of the information on both computers was stored at the Headquarters of Lao Securicor and at a local (French) computer tech company, for independent safe keeping as a security measure. The computers were returned to the Laos authorities upon their seizure of Gem Mining Lao (six months later). The Lao authorities used that data to bring a conviction in absentia against the Gem Mining Lao Directors, falsely stating the data was evidence of them stealing their own assets. The Laos authorities did not arrest the Danes when they seized the assets of Gem Mining Lao. The Danes were not employees of Gem Mining Lao, nor were they involved in its daily operations. The deposition of Mr Harold

⁴⁷ It is important to note that neither the sentence nor the fine was imposed.

Christensen who was responsible for the financial management of GML at the relevant time, uphold these facts.

3. Violation of Lao tax regulations.

The Laos court ruled that the Laos Government was entitled to collect revenue from a company Kay Danes operated in a foreign jurisdiction (Thailand). This is entirely false on the following basis that Kay Danes paid income tax on her earnings in Laos, as an employee of Lao Securicor Company Limited and according to Lao PDR Law. Furthermore, the revenue from Kay Danes' Thai Company that operated independently of Laos, was outside of the Laos jurisdiction. The Lao PDR government had no claim to any of the company's revenue. This was stated in evidence to the Lao Court in a comprehensive audit undertaken by KPMG chartered accountants that refuted any allegations of violations of Lao tax regulations. A decree from the Governor of the Bank of the Lao PDR, dated 28 April 1994, allowed individuals to transport foreign currency out of the Lao PDR without any limit and without needing approval from the Lao PDR Government.

The Danes: Supreme Court Appeal

The Danes supreme court appeal was denied.

On 9 July 2001, the Danes' lawyer lodged a Notice of Intention to Appeal.

On 25 July 2001, the Danes' lawyer lodged a Statement of Reasons for the Appeal.

On 7 September 2001, the Appeal was dismissed before any proceedings were heard. The Australian Government met with the Foreign Minister of Laos in a meeting in Santiago, Chile. As a result of those discussions, Australia had pre-emptively committed the Danes to a four-point deal which would inform the basis of an unprecedented Presidential Pardon.

The Danes: Presidential Pardon negotiated by the Australian Government

When a person receives a pardon, it usually means that a prosecution, conviction and any enforceable penalty is voided in full, restoring the rights and privileges of a person. The power of pardon is usually held by the head of state.⁴⁸ Australian Foreign Minister Alexander Downer continued to engage the Lao PDR Foreign Minister to broker a diplomatic solution for the Danes' release.

*"I am deeply disappointed, and I have spoken to the families of both Kerry and Kay myself. The Australian Government is dissatisfied with the process which resulted in the conviction and sentencing of Kerry and Kay. I have had a personal briefing from the Ambassador [Thwaites] and have asked him to explore avenues for further action and to report back to me. **We will pursue all avenues to enable Kerry and Kay to come home.**" - Australian Foreign Minister Alexander Downer*

⁴⁸ See M. Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary, 2nd revised edition, Engel, 2005, p146.

The Australian Government engaged two diplomatic, Special Envoys (John McCarthy and Mr Ian Kemish) to lead the diplomatic engagement in Laos. Letters addressed to the parents of Kay Danes were frequently sent by the Australian Government to show their commitment to achieving justice for the Danes.



THE HON ALEXANDER DOWNER MP

MINISTER FOR FOREIGN AFFAIRS
PARLIAMENT HOUSE
CANBERRA ACT 2600

[REDACTED]

Dear Mr and Mrs Stewart

I have asked two officials of my Department, Ian Kemish and Keith Gardner, to visit you to brief you on developments in Kay and Kerry's case. I remain closely involved in their case and wish to send you my best wishes and encouragement during this difficult time.

As you will be aware, the visit to Laos last month of my Special Envoy, John McCarthy AO, paved the way for negotiations between senior Lao officials and Ted Tzovaras over Kay and Kerry's release. I am sure it must be frustrating waiting for an outcome, but there remains grounds for belief that the negotiations are slowly heading in the right direction. We are encountering obstacles along the way, but are working very hard to deal with these as they arise. Ian Kemish will brief you further on the current state of the case.

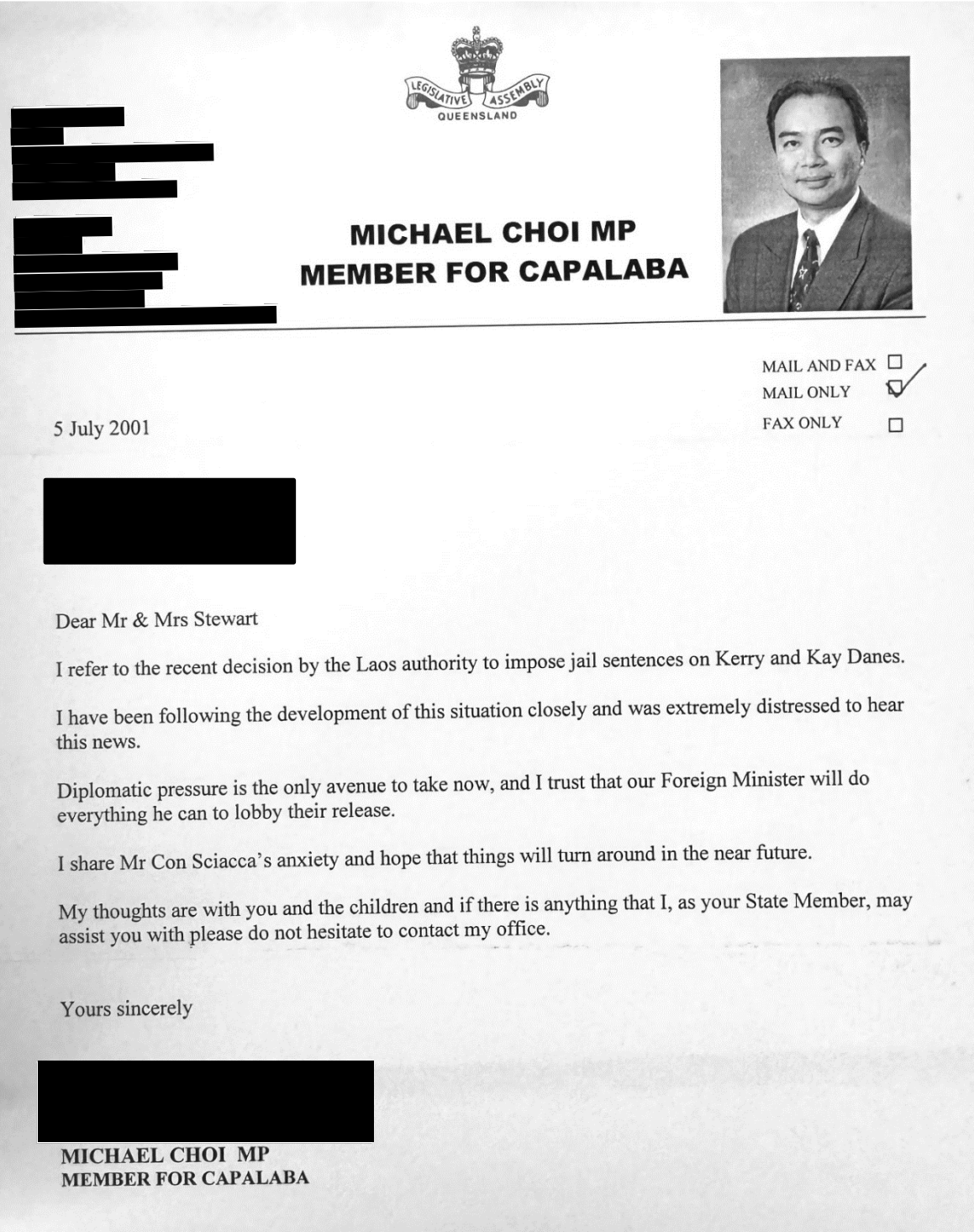
I am impressed with the fortitude and strength you have shown over the past six months, both in your roles as parents and parents-in-law, and as grandparents and primary carers of Jessica, Sahra and Nathan. I can only urge you to remain strong and patient. Many people are working very hard to support Kay and Kerry, and the Australian Government is as committed as ever to achieving justice in this case.

Yours sincerely

[REDACTED]

Alexander Downer

25 JUN 2001



The Danes were released from Phonthong Prison to the Australian Ambassador's residence to await an unprecedented Presidential Pardon, negotiated by the Australian Government.⁴⁹

“They were living in this residence - the Australian official residence - and they were, in fact, as time went on, here for 31 days. That was a very intense period too. I don't think Kay would mind my saying that she was quite traumatised by the experience, and I think it will probably take her a long time to recover and get over the trauma of ten and a half months incarceration. I grew very fond of the Danes. I admire their compassion; I admire their humanity and I admire their discipline. Yes - I have to say that I finished up regarding them as real friends.” -- Australian Ambassador Jonathan Thwaites (Interview on ABC Australian Story.⁵⁰)



*Photo: (1) Special Envoy Ian Kemish establishes phone contact with the Danes and family in Australia
Photo: (2) Australian Ambassador and Lao Government present the Presidential Pardon to the Danes (06 Nov 2001)*

The Australian Department of Foreign Affairs reported:

‘The protracted and high-profile case of Kerry and Kay Danes, detained in Laos since December 2000, required careful management by the department in support of Mr Downer’s direct concern and involvement. As in all consular cases, we provided close support to their families.’⁵¹

The President of the Lao P.D.R. granted a pardon to the Danes on 6 November 2001. The ceremony was attended by the Australian Ambassador, Mr. Ted Tzovaras (Australian lawyer)⁵², and senior officials of the Laos Government.

At the conclusion of the Presidential Pardon ceremony the Danes were released unconditionally. The Pardon document, however, was put under a National Security Caveat for 25 years.

⁴⁹ BBC News, 2001. ‘Laos President pardons couple.’ <http://news.bbc.co.uk/2/hi/asia-pacific/1641080.stm>

⁵⁰ Interview aired on ABC Television, (2002), ‘On Their Honour’, *Australian Story*, March 18, 2002, <https://www.imdb.com/title/tt4167652/>

⁵¹ DFAT Annual Report 2000-2001, p 147. Retrieved from Trove: <https://nla.gov.au/nla.obj-2141194610/view?sectionId=nla.obj-2282472406&searchTerm=kay+and+kerry+danes&partId=nla.obj-2151791957#page/n160/mode/1up>

⁵² Ted Tzovaras, Contact at <https://www.linkedin.com/in/ted-tzovaras-764b4424>, Website: <https://www.tzovaraslegalcorp.com/>. Mr Ted Tzovaras was, at the time, a Barrister and Solicitor of the High Court of Australia and the Supreme Court of New South Wales (Australia).

The following media release is provided as evidence that the Australian Government worked tirelessly to resolve the Danes case.⁵³

MEDIA RELEASE

MINISTER FOR FOREIGN AFFAIRS ALEXANDER DOWNER



FA165

6 November 2001

KERRY AND KAY DANES PARDONED IN LAOS

I am delighted that Kerry and Kay Danes have been pardoned by Lao President Khamtay Siphandone today. The Government has worked hard to achieve this outcome, and we look forward to them being reunited with their family in Australia very soon.

President Khamtay Siphandone signed the pardon this morning, and this was conveyed to the Danes this evening at a formal ceremony at the Foreign Ministry in Vientiane. The Danes were advised they were free to leave Laos and welcome to return at any time if they wished.

I extend my very best wishes to Kerry and Kay and their family for the future. They have all been through an extremely difficult time. Throughout we have kept in close contact with Kerry and Kay's family in Queensland.

The Government has worked tirelessly to resolve this very difficult case since Kerry and Kay were detained on 23 December last year. I have made a number of strong personal representations to the Lao Government, in particular to the Foreign Minister Mr Somsavat Lengsavad. The former Governor-General and Mr Howard have also written in support.

This welcome development also follows intensive negotiations conducted at my direction by officials of the Department of Foreign Affairs and Trade. The Danes have been staying at the Australian Ambassador's residence in Vientiane for the past month.

Australia and Laos have enjoyed a friendly and cooperative diplomatic relationship for almost 50 years. It is the strength of this relationship that has enabled us to work together to find a resolution.

I would like to thank the Australian officials who have worked hard to help bring about this very welcome outcome, particularly the staff of the Australian Embassy in Vientiane and the Consular Branch of the Department of Foreign Affairs and Trade.

[REDACTED]

[REDACTED]

⁵³ Media Release Minister of Foreign Affairs and Trade Alexander Downer, 'Kerry and Kay Danes pardoned in Laos.' 06 November 2001, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=ld%3A%22media/pressrel/8NC56%22>

The following media release is provided as evidence that the Opposition Australian Government worked tirelessly to resolve the Danes case.⁵⁴



LAURIE BRERETON MP

SHADOW MINISTER FOR FOREIGN AFFAIRS

• NEWS RELEASE • NEWS RELEASE • NEWS RELEASE •

81/01

9 October 2001

RELEASE OF KERRY AND KAY DANES

The Shadow Minister for Foreign Affairs, Laurie Brereton, today welcomed the news that Kerry and Kay Danes have been released from imprisonment in Laos.

"This is a very welcome outcome in what has been a long-running case", Mr Brereton said.

"Labor has given bipartisan support to the Government's efforts to secure the release of the Danes since their arrest in December last year."

"The Danes' legal representatives and Australia's diplomats in Vientiane deserve high praise for their persistence and professionalism in dealing with this difficult matter."

[REDACTED]

⁵⁴ Media Release by Shadow Minister for Foreign Affairs, the Hon. Laurie Brereton MP, 09 October 2001, <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media/pressrel/V6456%22>.

Australian diplomatic solution creates ongoing detriment to the Danes

On November 9, 2001, Kerry and Kay Danes returned to Australia with direct assurances from the Australian Government that the legal issues they faced in Laos, including their conviction, would not have any negative implications for them. This assurance did not consider that having been convicted of a ‘Crime Involving Moral Turpitude’ (under Immigration Law), rendered the Danes permanently ineligible to enter the United States or any other Country under the Visa Waiver Program (VWP). Further, that a pardon issued by a foreign government is not recognised as relief.

In 2024, Kay Danes submitted an application for a non-immigrant visa application (DS-160) and after attending an interview at the US Consulate in Sydney, her application was denied, despite having two US visas issued previously (2002 and 2009). Representations were made by several high-profile dignitaries to the US Consulate:

- Former Australian Prime Minister Kevin Rudd,
- Former Deputy Prime Minister Barnaby Joyce,
- Australian Department of Foreign Affairs and Trade Minister Penny Wong,
- Senator Simon Birmingham, Leader of the Opposition (Liberal National Party),
- Australian Federal Member of Parliament Henry Pike, (Liberal National Party)
- Former US Ambassador Douglas Hartwick,
- Former Australian Consular Officer Robin Hamilton, (DFAT)
- Tricia Martino—Director, Consular Operations Branch, (DFAT).

The following is the text from Former Australian Consular Officer Robin Hamilton, (DFAT) submitted to the US Consulate (accompanied by other letters from prominent individuals):

To whom it may concern,

I am writing to support a US visa application for Ms Kay Danes.

I was previously an Australian consular official (First Secretary and Consul) employed by the Commonwealth Government, Department of Foreign Affairs in Laos in 2000 when Ms Danes and her husband were taken into custody.

I visited them regularly, and was engaged in the diplomatic process that resulted in their being released from detention. I always believed, by my analysis by the facts, that they were both innocent of the charges against them, which were fabricated to suit a narrative that benefited certain Lao Government individuals.

They subsequently received a Presidential pardon negotiated by the Australian Government and events have proven that the history of the matter was very complex. Ms Danes has continued to distinguish herself in the field of human rights and social justice and I admire her greatly.

Yours sincerely,
Robin Hamilton-Coates

In April 2024, Kay Danes was awarded a 5-year US Visa /Class R BI/B2 and successfully travelled to the United States.

Nongovernmental Organisational support and other relevant documentation

Independent nongovernmental organisations and journalists continue to support the innocence of the Danes.



February 14th, 2024

Subject: Statement for Kerry and Dr. Kay Danes

On 23 December 2000, Kerry Danes, the Security Managing Director of Lao Securicor, and his wife, Kay, the company's administration manager, were working in Laos. Their company provided security services to protect the lives and properties of 75 major foreign investors. The Danes were abducted by the Lao secret police and forcibly taken to an undisclosed location outside the nation's capital, placing them in extreme peril. Phonthong Prison, where they were held, was a secret facility for political prisoners who were subjected to enforced disappearance, a violation of international laws, treaties, and conventions. Both were subjected to unlawful detainment, torture, and other forms of ill-treatment for refusing to sign false statements against their employer's clients and each other. After months of complex negotiations, the Australian Government secured their release on 9 November 2001 via an unprecedented Presidential pardon.

Like many political prisons in Laos today, Phonthong Prison is without external monitoring by independent agencies. Numerous reports from Amnesty International and US Congressional Forums reveal ongoing violations of international human rights treaties and conventions by Laos authorities, despite the Laos Government being a signatory to the International Covenant on Civil and Political Rights, the UN Declaration of Human Rights, and the Vienna Convention on Consular Relations.

At the time of the Danes' unlawful detainment in December 2000, Phonthong prison held approximately 100 prisoners of multiple nationalities. Many had been secretly abducted and detained for decades, in violation of Lao and international law. There, many prisoners suffered, died, or were killed. Many faced medical emergencies due to denial of treatment. Throughout their unlawful detainment, Kerry and Kay Danes courageously advocated for the human rights of prisoners. In such extreme conditions, they demonstrated remarkable resilience. But their actions

extended beyond personal endurance. They took it upon themselves to shed light on the dire conditions of prisoners languishing in secret political prisons in Laos, whilst they were still imprisoned. This took tremendous courage as they could have faced charges of espionage. They bravely drew the world's attention to the hidden tragedies of people who had been abducted and disappeared for decades. They reported to their Embassy the names and details of these prisoners, thereby ensuring those prisoners were known to their Embassies and families. The action of Kerry and Kay are not merely commendable, they are a testament to their unwavering spirit and dedication to justice.

The Australian Government should not merely acknowledge their sacrifices but should also take steps to honour them, formally. Kerry and Kay Danes have given so much for the sake of humanity, they deserve recognition and appreciation on a national level. Their advocacy extended to overlooked individuals worldwide. They bravely spoke out for the forgotten people, particularly the people of Laos and those exiled from it. They were not just speaking out, but actively fighting for their right to life, liberty, and human rights. They both continue to strive to uphold these fundamental rights, emphasizing that no matter where an individual is from or their current circumstances, these rights should be respected and protected.

Kerry and Kay Danes are a shining example of resilience, courage, and humanity. Their actions serve as a reminder that we all have a role to play in making the world a better place. They are not just heroes, but also an inspiration for all Australians and people worldwide.

Sincerely yours,

[Redacted]
Jack Bougnasiri, Chairman

[Redacted]
Debbie Young Chase, Secretary

Kind Regards

[Redacted]
Vanmala Whongs
President/CEO



NB: According to the Australian Federal Police (National Police Check), the Danes do not have any **disclosable court outcomes** recorded against them in any Australian police records.

Dr Kay Danes, OAM

Dr Danes is the recipient of the Medal of the Order of Australia, awarded by the Commonwealth of Australia in 2014 for her service to community through social justice and human rights.⁵⁵ Dr Danes is the recipient of numerous Government and Non-Government awards and nominations, including, 2012 State Finalist in the Australian of the Year Awards, the recipient of the Rotary International 'Service Above Self Award', the prestigious 'Moreton Bay College Medal' previously awarded to the Governor General of Australia, The Honourable Dame Quentin Bryce AD CVO.⁵⁶

As a humanitarian, Dr Danes has an impressive record providing service above self to supporting impoverished communities. In 2022, Dr Danes travelled to the Philippines to coordinate support for 100 paediatric heart surgeries and provided mental health first aid training to over 250 local community leaders.⁵⁷ Dr. Danes exemplifies a life lived in service to others. She has decades of work experience in some of the most hostile countries on the planet. Her commitment to bridging communities through understanding and empathy is recognised by senior government officials in Australia and overseas.

As an Australian PhD graduate from the School of Law and Justice at Southern Cross University, Dr. Danes uses her academic skills and qualifications to develop critical research and analysis to influence government policy and drive real-world change. Dr. Danes has addressed several U.S. Congressional forums on democracy, the US National Press Club, and other media and podcasts. She has presented to an audience of 91,000 at the Conference on World Affairs, an event hosted by the Boulder University in Colorado, previously attended by Eleanor Roosevelt and US Vice-President Joe Biden.

In her professional career, Dr Danes worked with the Foreign Commonwealth Office as a Human Resources Manager (British Embassy, Kingdom of Saudi Arabia) and the Department of Foreign Affairs and Trade (DFAT) as a Special Projects Officer and Acting Office Manager. She travelled throughout the Middle East on a diplomatic passport issued by the Australian Government. From May 2021 to Jan 2024, Dr Danes worked for GAP Veteran and Legal Services as a Human Rights Law Advocate. Dr Danes also worked independently as part of a group of international military veterans, aid workers and intelligence operators coordinating the security and evacuations of thousands of at-risk Afghans when Afghanistan fell to the Taliban. Dr Danes personally coordinated the lawful evacuation of thousands of Afghans who are resettled in Australia. Dr Danes and her colleagues successfully appealed to the Australian Government for an historical change to Australia's Immigration instrument, expanding resettlement opportunities for previously excluded Afghans working with Australian missions in Afghanistan.

Dr Danes co-authored an historic legal brief submitted to The Hague (15 June 2023), to ensure Australia's legal system remained robust and accountable. She provided comprehensive legal presentations to the Australian War Memorial (AWM) on International law, rules of engagement, JPELS (terrorist target lists) and war crimes. Enabling AWM staff to better understand elements of the Afghanistan campaign relevant to their exhibits. Among her many achievements, Dr Danes provided support to critical training development for a training program (Hostage—Survive with Dignity), designed specifically for all Australian Defence Force personnel deploying on operations overseas.



⁵⁵ The Order of Australia is an order of chivalry established by Elizabeth II, Queen of Australia, to recognise Australian citizens and other persons for achievement or meritorious service.

⁵⁶ Moreton Bay College Medallist 2024, Retrieved from <https://www.mbc.qld.edu.au/discover/mbc-medal>

⁵⁷ Heart 2 Heart Mission (2022), Retrieved <https://www.fngh.org/heart2heart>

Dr Danes is a nationally recognised Australian Defence Force and Veteran Advocate. Her submissions have made a valuable contribution to the Royal Commission into Defence and Veteran Suicide Prevention.⁵⁸ Dr Danes has worked tirelessly to improve arbitration processes and reduce legal redress claims that have put ADF members and Veterans at risk of suicide and self-harm. Her tireless work in this area has resulted in significantly influencing stakeholders and informed key recommendations to Government, Commissions, Conferences, Forums and Workshops. By spotlighting these crucial issues, Dr Danes initiates essential conversations aimed at saving lives and reputations. Dr Danes' submission to the Inspector-General of the Australian Defence Force (IGADF) Twenty Year Review in November 2023 argued for much needed reforms to the IGADF Inquiry Process and identified critical flaws in the current arbitration system.⁵⁹ Her advocacy in this area is widely recognised and respected by members of the Australian Government, the ADF and Veteran community and general population more broadly.

As a Subject Matter Expert (International Affairs), Dr Danes is frequently invited by Government departments and agencies to compile complex submissions and legal briefs to improve legislative and policy frameworks. (i.e., submissions to the Royal Commission into Defence and Veteran Suicide Prevention, and Australian Foreign Affairs, Defence and Trade References Committee Inquiries). Dr Danes has also represented a range of issues to several US Congressional Forums, World Conferences, and media on varying topics relating to international affairs.⁶⁰

Awards and Achievements:

- Moreton Bay College Medal, 2024
- District Governor's Platinum Award with Distinction, North Carolina, USA (2021-2024)
- Queensland Volunteer of the Year Award (Finalist), Qld Volunteering Awards, 2022
- Dennis Lever Award 2020
- Rotary International Avenues of Service Award, (Individual Humanitarian Service), 2020
- Honorary Member of the Golden Key International Honorary Society, 2016
- The Medal of the Order of Australia, 2014
- Pride of Australia Award, 2013
- Paul Harris Fellow, 2012, 2015 and 2017
- Australian of the Year Awards (Nominee), 2013
- Australian of the Year Awards (State) Finalist, 2012
- Australia Day Awards Citizen of the Year (Nominee), 2009
- Bowman Government Award, 2009
- Women Making A Difference Award, 2006, 2008



Photo: Dr Kay Danes with the Governor General of Australia David Hurley and Mrs Hurley (2024)

⁵⁸ Kay Danes, (2023) Submission to the Royal Commission into Defence and Veteran Suicide Prevention. https://www.defencelivesmatter.com/_files/ugd/c5f951_b8864a2678964e24811b26a608757a00.pdf

⁵⁹ Kay Danes, (2023), Submission to the Inspector General of the Australian Defence Force Twenty Year Review, https://www.defencelivesmatter.com/_files/ugd/c5f951_1a57629faf0242c58317bf269d40d6b4.pdf

⁶⁰ US Centre for Public Policy Analysis (2014), Retrieved from <https://www.prlog.org/12273482-humanitarian-kay-danes-honored-by-australian-government-for-laos-hmong-human-rights-efforts.html>

Warrant Officer Class One (Retd) Kerry Danes, CSM

(Short Bio)

Australian Defence Force (ADF) Veteran Warrant Officer Class One (Retired) Kerry Danes concluded a distinguished (unbroken) 47-year career with the ADF on 5 September 2023, serving with distinction on military training exercises and operations with the Australian Defence Force and with Foreign Defence Forces and Law Enforcement Agencies allied to the Australian Government. As a member of staff at the Australian Embassy in the Kingdom of Saudi Arabia, Kerry served in the role of Defence Administration Assistant to the Defence Attaché. He deployed on multiple deployments to Afghanistan as the Regimental Sergeant Major (RSM) of the Australian Special Operations Task Group (SOTG). He was awarded a Joint Operational Command Gold Commendation and a Conspicuous Service Medal (CSM)⁶¹ for his service to Special Operations Command (SOCOMD). Throughout the duration of his career, Kerry Danes has held one of Australia's highest Top Secret Vetting Security Clearances.⁶² The majority of his career has been with service in Australia's Elite Special Air Service Regiment (SASR) where his contributions were integral to the development of the SASR's Counter-Terrorism Unit and operational (warlike and non-warlike) capabilities.



Full Summary of Military Service

17216 Warrant Officer Class 1 Kerry Arthur Danes, CSM (Rtd) enlisted in the Australian Army as an Infantryman in 1976. He represented the Army in several major boxing events, including the King's Cup Boxing Championship (Thailand). Kerry was also a: Queensland Amateur Boxing Champion, a recipient of the Neville Bonner Queensland Boxer of the Year award, an Australian Boxing Champion, an Australian Golden Gloves Champion, and a runner-up at the 1980 Olympic boxing trials.

In 1981, Kerry was accepted into the Special Air Service Regiment (SASR) where he spent the next twelve years applying himself to war/reconnaissance and counter terrorism/recovery roles. Kerry was awarded the Patrol Leaders Course Trophy in 1985 as the "Student of Merit." Kerry was promoted into many operational appointments both within War Roles and the Counter Terrorist Squadrons within SASR. He was promoted to Warrant Officer Class Two and became a Senior Jungle Warfare Instructor where he provided specialised instruction in close country operations, tactics and jungle warfare training of Australian Defence Force Units and International Defence Forces. This service was recognised with a Land Commander's Commendation.

Kerry held appointments as the Squadron Sergeant Major of Base Squadron (SASR) and 1 Squadron SASR. In the latter role, he deployed on Operation Pollard (Kuwait) in 1998. Included in his impressive legacy of service to SASR, Kerry was directly responsible for over 83 direct capability improvement initiatives in counter-terrorism training and operations.

In January 2003, Kerry was posted to the 4th Battalion, The Royal Australian Regiment (Commando) as the Counter Terrorist Training Warrant Officer. He was instrumental in developing domestic counter terrorist training, techniques, and procedures to build and enhance the Unit's counter terrorist capability as part of the newly formed Tactical Assault Group – East. Kerry served in the Defence Cooperation Program in East Timor as an adviser and

⁶¹ The Governor-General of Australia makes an award of a Conspicuous Service Decoration on the recommendation of the Australian Minister for the Australian Defence Force.

⁶² To be eligible for an Australian Government security clearance, a person must meet strict eligibility criteria and have character traits sufficient for the Australian Government to have confidence in that person's ability to protect Government resources and information. This level of background checking also includes an invasive examination of that person's partner and family, their legal status, and police background checks at both an international, Federal and State level. Retrieved from <https://www.defence.gov.au/sites/default/files/2020-11/AGSVA-Applicant-Guide-Book-FA.pdf>

was part of the Australian Training Support Team when Jose Ramos-Horta awarded the team the Timor-Leste Medal of Merit for their exceptional service in rebuilding the East Timor Defence Force. Kerry served as the Unit Safety Adviser and Counter Terrorist Training adviser at the 4th Battalion, The Royal Australian Regiment (Commando).

In 2006, Kerry was promoted to Warrant Officer Class One and became the Regimental Sergeant Major of the Special Forces Training Centre. In this same year, he deployed as the Regimental Sergeant Major for the Special Operations Task Group- Operation Slipper Rotation III (Afghanistan). He was the Regimental Sergeant Major to the 1st Commando Regiment and deployed on Operation Slipper to Afghanistan where he also held the position of Regimental Sergeant Major for the Special Operations Task Group—Operation Slipper Rotation VI. For his exemplary service on operations, Kerry was awarded the Chief of Joint Operations Commendation. As part of the Special Operations Task Group, Kerry was also awarded the Unit Citation for Gallantry and the Meritorious Unit Citation for actions during Operation Slipper in Afghanistan.

In 2010, Kerry was identified by the Special Operations Command as a Subject Matter Expert in Training and Safety. He was posted to the 2nd Commando Regiment to redefine and implement best governance and training policies, procedures and practices that would prevent training accidents such as that which had previously resulted in the death of Lance Corporal Mason Edwards—killed during a training accident at Cultana, South Australia in October 2009. Kerry established the Commando Operational Level Training (COLT) Wing as the training safety and governance ‘Centre of Excellence’ for the Unit and is the founder of the Regiment’s Integrated Close Combat Centre. For his service to 2 Commando Regiment, Kerry was awarded a Conspicuous Service Medal (CSM).

From 2012 to 2015, Kerry served overseas on a diplomatic posting to the Middle East in the role of Defence Assistant Attaché. Kerry’s innovative strategy implemented an ADF Air Corridor over Saudi, Kuwait and Oman which guaranteed effective, operational focused transit routes. ADF aircraft were able to meet operational objections without administrative liability. In support of operational freedom of movement Kerry gained Annual Laissez Passer approvals, to allow Diplomatic Couriers to transit these countries with diplomatic safe hand material. These milestones were significant in his career.

In 2016, Kerry was posted to the Headquarters 1st Division (HQ 1 Div) at Gallipoli Barracks, Brisbane. During this posting, the HQ 1 Div Commander tasked Kerry to audit the operational capability of deployed Australian Defence personnel in Afghanistan. Having identified critical operational training short falls of Australian Close Personal Protection Teams (Guardian Angels) and Australian Defence Force Advisors to the Afghan National Army, Kerry returned to Australia to create and implement niche training packages to address all the identified operational training shortfalls – the Individual Skills and Enhancement Training – Tactical (ISET-TAC) and Individual Skills and Enhancement Training - Specialist Driver (ISET SPEC DRV) Training became the ‘blueprint standard of training’ for Australian Defence personnel deploying to Afghanistan in Guardian Angel roles.

In 2018, Kerry reached Compulsory Retirement Age for the Australian Regular Army and joined the Army Reserve (SERCAT 3).

On 5 September 2023, Kerry Danes completed his final day of service to the Australian Defence Force.

AWADA

AUSTRALIAN WRONGFUL AND ARBITRARY DETENTION ALLIANCE

ABOUT AWADA

Dr Kay Danes, OAM is a member of AWADA.

The Australian Wrongful and Arbitrary Detention Alliance (AWADA) was established in 2023 by Australians with first-hand experience of wrongful detention. AWADA has three core objectives:

- To provide advice and support to the families of current Australian detainees,
- To raise awareness about the phenomena of arbitrary detention and ‘hostage diplomacy,’ including campaigning for current cases; and
- To advocate for meaningful policy reform in Australia.

AWADA is actively engaged in supporting a number of current cases of wrongfully detained Australians and also acts as a support group for Australians who have returned home following a period of detention abroad. Our membership is both public (listed on our website) and private. The experiences and stories of a number of current and former detainees and their families have informed this submission.

www.awada.com.au