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Submission to Australian Senate Inquiry

into the Wrongful Detention of Australian Citizens Overseas

Statement by Peter Humphrey

(see accompanying Biography)

I am a British citizen. I have spent 49 years involved with China as an academic, teacher, journalist, corporate investigator and philanthropist. I hold a degree in sinology and I am currently an external affiliate of Harvard University's Fairbank Center for Chinese Studies and a pro bono mentor to families of foreign prisoners in China. I and my American wife were imprisoned in China in 2013-2015 on false charges of illegal information gathering for our due diligence firm, in an extensively publicised case. During the subsequent years I have created an information and support network among families of current prisoners to lobby for their release, and among released prisoners in order to track changes in the prisons. Here I will include some high-level views in addition to some examples of abuse in China's prison system, and include the cases of Australian prisoners in my personal observations. And I will make some suggestions of policy areas that need review and change.

First, let me state that I spent almost one year (2014-2015) in Qingpu Prison as a block-mate of Australian citizen Stern Hu, who was in the cell neighbouring mine. Stern Hu was a victim and scapegoat of the 2009 Rio Tinto scandal in China at the heart of which were conflicts between the Australian and Chinese governments. Several Rio Tinto employees were jailed in this scandal among which Stern Hu received the longest sentence. Stern was very kind to me in Qingpu Prison and provided me with some essential warm clothing items to get me through the winter. I observed that his hair had turned white in Qingpu before I arrived there in September 2014, and that he had acquired a sharp stoop, as a result of pressure and stress and malnutrition. I also observed that he had recurrent heart problems and that the prison withheld appropriate treatment and only paid lip-service to his needs. He endured this stoically. Since his release in 2018 he has chosen to remain silent and has refrained from criticizing China, his unjust imprisonment and ill treatment. This is because he fears retaliation and he is concerned that his access will be blocked to his relatives inside China. I can understand this fear. I salute Stern's courage and patience in the hands of the Communist Party's gulag, and I salute his survival. No hearing on Australian prisoners in Xi Jinping's China would be complete without recognizing Stern's long-suffering, his patience and his sacrifices in the hands of gross injustice, even if Stern cannot personally involve himself in this hearing.

Prison Population

There are no reliable official statistics for the number of prisoners in China because China obfuscates the situation. But based on piece-meal data available from various sources, and on my own experience inside the system, on anecdotal information and on my research, I estimate the prison population to be approaching ten million in various forms of regular and irregular incarceration.

Based on my most recent research, I estimate the number of foreigner prisoners in China to be approaching 10,000 having doubled under the rule of Xi Jinping. Two very large segments are Africans and China-born foreign citizens. The Australian government is one of very few foreign governments which have disclosed how many of its citizens are held in China, the most recent number I have seen being 55. Canada has admitted to there being 92 Canadian prisoners in China. Japan has admitted to 17 Japanese. America and the UK and many other countries have withheld

such data, disingenuously citing privacy concerns. My research estimates there are close to 300 Americans, including many China-born American citizens, held in various forms of incarceration and detention in China, or subject to exit bans.

Judicial and Prison System

Publicly available research and first-hand testimony make it clear that China's legal system, judicial system and prison system act as an organic whole to exercise repression, resulting in systemic abuse on a massive scale, including wrongful imprisonment.

First-hand experiences and research make it clear that police, prosecutors, and judges all hail from the same stable – the Chinese Communist Party (CCP). And lawyers are compelled to obey the Communist Party, making them part of the same unfair and opaque system. Trial judgments are not determined by the judge on a case, but are handed to the judge by a Communist Party committee known at local level as the Political and Legal Affairs Committee and at national level the Political and Legal Affairs Commission.

As a victim and as a fly on the wall inside the system for two years and having conducted many investigations for the private sector over a 15-year period when I was in business in China, I observed that Chinese police do not conduct investigations with any real detective work or forensic procedures. They rely on extracting confessions from detainees who are interrogated day by day locked inside a cage (as was I), and by extracting so-called witness statements (which are also often coerced) to support the case. No contradictory evidence is allowed. People like Stern Hu and Cheng Lei (and me) never stood a chance.

They also often use televised forced and false confessions broadcast on the main party-owned outlets CCTV and CGTN. After my release, I waged a campaign and legal action in the UK alongside an NGO against CGTN and CCTV. It resulted in the UK TV regulator Ofcom fining CGTN and stripping its UK broadcast licence over the forced confession broadcasts of me and my wife and over its ownership by a political party, which is illegal in the UK. And I assisted other victims to file similar complaints. The efforts had an echo in Australia where the Chinese outlets were temporarily suspended from broadcasting their programs.

There is no fair and transparent judicial process. Defence lawyers are prevented from conducting genuine and vigorous defence. No defence witnesses are allowed to be called to court. Defence evidence is not allowed to be presented. Defence lawyers who try too hard are debarred or jailed.

Prosecution witnesses are not required to appear in person – only written testimonials are presented and cannot be challenged. There is no cross-examination of prosecution witnesses.

As many as 99.9% of prosecutions result in convictions and sentences. And 99.9% of appeals are rejected. As beneficiaries of an open and fair judicial system in, say, Australia and the UK, we know that such glorious figures are simply not possible.

Pre-trial detention centres do not function like pre-trial custody regimes but as penal regimes from day one, even when a detainee has not been indicted, tried and convicted of any crime. The harsh conditions which I described in the FT Weekend Magazine (<https://www.ft.com/content/db8b9e36-1119-11e8-940e-08320fc2a277>) published in February 2018 have grown worse since my stay in the Chinese prisons. I frequently interview released prisoners, who have reported unspeakable woes in pre-trial detention. The detention centres are designed to crush the human spirit with the result that many prisoners falsely confess to a crime they never committed. Grown men cry in there every day.

In the post-trial prisons, the Xi dictatorship has steadily toughened and harshened prison regimens for foreign prisoners, reducing food rations, exercise, family phone calls, letter writing, the receiving of

reading materials and so forth, and sentence reductions have become impossible to obtain without submitting to coerced manufacturing labour.

Keep in mind one very important thing: Among the millions of prisoners in the system, not a single prisoner has had a fair and transparent trial. Not a single one. Sentences tend to be reckless, inconsistent, and disproportionate to any offence. So the entire system is arbitrary and subject to the whims of Communist Party officials and their mates. The system works to favour anyone with "guanxi" (connections) to use the law to bash people they dislike. This results in substantial harm to innocent people.

As a result we cannot, by any stretch of the imagination, treat China as being a country under the rule of law and we should not accept any charges or trial judgments at face value.

Forced Prison Labour System

China's entire prison system holding many millions of prisoners is in fact at the same time a gigantic, self-perpetuating commercial enterprise which brings profits to the state, and income to prison officers, and this funds prison operations across the country.

Every Chinese prison imposes forced production labour on its prisoners for the commercial gain of the prison system. We have witnessed this system in practice. Those who refuse to participate get no merit points for sentence reductions. All other privileges such as spending on the prison shopping system, calls to family, family visits, reading and letter writing, etcetera, can be withheld if you refuse this work. Even food rations can be reduced. And recalcitrant prisoners get sent to solitary.

Prison officers are employed as labour supervisors, marketing and sales managers and get bonuses and perks for high production output. Officers go out to win orders and contracts from commercial manufacturers. Every prison has incorporated one or more companies to hold this business.

Prison campuses contain entire factories making a range of goods, from sports shoes, apparel and daily hardware items, to electronics such as keyboards and appliances. Chinese prisoners work up to 12 hours a day six days per week. The seventh day is spent on writing thought reports and on ideological study and on hand-washing clothes.

Accidents are frequent in the factories. I met many Chinese prisoners (and some other Asians) in the Shanghai Nanhui Prison hospital with broken bones caused by factory accidents.

Foreign prisoners, including Australians, in most prisons, do not perform heavy factory labour (except Pakistani prisoners who are all held in Xinjiang) but perform manual tasks that require no machinery. Most perform this labour in a work room in their own cell block. In Qingpu Prison where I was held they worked five and a half days a week, occasionally more. However, in some other prisons, African prisoners complain that they are working 12-hour days every day - the same hours as Chinese prisoners.

The typical work of foreign prisoners, including Australians, includes making gift bags for retail chains (including China's biggest duty-free shopping chain), making packaging materials, packaging items such as Christmas cards, plastic tags for retail display racks, keyboards, and breakfast oatmeal sachets, as witnessed among the foreigners in Qingpu Prison. I wrote extensively in the Sunday Times about the packaging of Tesco Christmas cards and Quaker oats as revealed by foreign prisoners at Qingpu Prison in a message smuggled out inside a Tesco Christmas card box and found by a little girl in London at Christmas in 2019. (<https://www.thetimes.com/uk/healthcare/article/tesco-charity-cards-packed-by-chinas-prison-slaves-v9psp9fqx>) ;

<https://www.thetimes.com/world/asia/article/chinas-prison-slaves-forced-to-pack-quaker-oats-mrbcs8sgm#:~:text=The%20inmates%20of%20a%20Chinese,Sunday%20Times%20investigation%20has%20revealed>)

While a prisoner in Qingpu Prison, I personally witnessed items being made or packaged for labels including H&M, C&A, 3M. Other prisoners that I have interviewed after their release more recently listed many other brands owned by companies in a number of countries being made in Qingpu Prison, such as Pepsico, Tesco, Zara, Disney. These practices are repeated in all Chinese prisons.

With this system, Chinese prisons make huge profits for the government. There is no incentive to release prisoners early. There is every incentive to keep prisoners in prison for as long as possible to squeeze more labour out of them. And there is an incentive to grow the prison population.

Thus millions of prisoners are engaged in this enterprise against their will and without fair reward. For the Uighurs in Xinjiang labour camps things are even worse. Most of the almost ten million prisoners in China are performing forced labour for the commercial gain of the prison system and hence for the CCP dictatorship.

Last year I advised on and participated in a documentary film investigating forced prison labour in China, *SOS from a Chinese Prisoner*, which can be viewed here. <https://vimeo.com/manage/videos/894499408/952924accf>

Due diligence

Before I was wrongfully imprisoned for two years in 2013, I had spent twenty years as a Reuters journalist, and then 15 years as a private sector due diligence and anti-fraud investigator running my own well-regarded consultancy, named ChinaWhys.

I have extensive experience of due diligence in China for multinational companies, including many large manufacturing companies with deep and complex supply chains. For example H&M, BMW, Daimler, Unilever, Rolls-Royce Engines, Dow Chemical, Apple, to mention only a few. My Australian clients included prominent companies from the mining and mining equipment sector. In general, many multinationals sub-contract work to Chinese factories, who in turn may further sub-contract parts of their own job to other small factories and so on. This creates a complex and murky supply chain. So very often the multinational has no knowledge of what is going on at the bottom, such as the use of a prison enterprise or of child labour. To illustrate this simply, a fashion company may commission a Chinese factory to make the trimmings for a pair of trousers. But that Chinese factory contracts another factory to do the zippers, and another one to do the buttons, and another to do packaging, etcetera. Much of the work done by foreign prisoners is packaging and simple manual assembly.

The only way that companies become aware of this prison labour is when a prisoner manages to smuggle out a whistle-blowing message and it gets into the media. This happened with the Tesco Christmas cards in December 2019. Since then I have seen several similar messages emerge from various other Chinese prisons, related to completely different products including pregnancy test kits and PPE products such as Covid masks sold in Europe.

It was always difficult for due diligence investigators to drill to the bottom of the chain but China has recently erected barriers to all information gathering by foreign companies and their agents, making meaningful on-the-ground due diligence impossible today. First it introduced privacy restrictions that limited due diligence activity. And the latest example is the new anti-espionage law introduced last year. Now, many activities that previously might have been treated as privacy matters, have been moved under the spying law and could result in life sentences.

In these circumstances, multinationals cannot satisfactorily check whether a Chinese company is using prison labour or other illegal unsocial labour. The only way to avoid this risk today is not to do business in China at all. Anybody who says you can avoid it is either lying or fantasising.

Life and Death matters

The Chinese prison system weaponises prisoners' health and medical care as an instrument to extort written confessions to crime, refusing to provide needed medical attention to prisoners who refuse to admit guilt. This is what happened to me, and probably also to Stern Hu. They refused to treat my suspected prostate cancer and by the time of my release after two years I had developed advanced prostate cancer and then had to battle it for five years after my return to the UK. Finally my treatments failed, my cancer relapsed and my prostate had to be removed. I am lucky to still be alive. So is Stern.

This practice is the norm in Chinese prisons. Medical treatment is also withheld simply to avoid spending money on it. I learned of several Chinese deaths inside my prison from untreated cancers. Since my release I have learned that a number of foreign prisoners there have died soon after their own release, and at least two foreign prisoners in my cell block have died from cancer inside the prison in the last few years.

Final Comments & recommendations

- In their aggregate, the harsh conditions in China's pre-trial detention facilities and prisons add up to torture.
- China's judicial and prison system violates international norms and treaties such as the UN conventions on torture and on minimum standards for the treatment of prisoners.
- Forced prison labour products from China are entering all of our economies, including Australia's.
- The Chinese system is not the rule of law and should not be viewed by Australia as though it is.
- The Chinese prison system is a system of oppression and slavery, not justice.
- It is not only political prisoners that are a human rights matter – prisoners held for alleged common crimes are also victims of human rights abuse, including Australians and other foreigners. The scale of this human rights travesty is immense. Australia needs to recognise this.
- Not a single prosecution case in China would survive the scrutiny of a court in Australia, the UK, or the USA, etc. This postulation is very simple to test.
- Countries which uphold the genuine rule of law, such as Australia, should abandon their practice of non-intervention in Chinese judicial cases.
- In every case of an Australian citizen being detained in China, Canberra should challenge the processes and practices and the lack of transparency. It owes this duty of care to its passport-holders. This should not just be the privilege of one or two selected prisoners. It should be the government's response to all such cases. (No disrespect is intended towards a prisoner released last year, whose courage and resilience I profoundly admire).
- Australia should impose mandatory due diligence requirements on all its firms to drill down their supply chains to ensure there is no prison labour in the chain. Where China erects barriers to adequate due diligence, Australian firms should be legally required to abandon said business projects.
- Legislators and government should internationalise this issue of prison abuse and wrongful detention in China as a systemic concern. It is no less a human rights issue than political and religious persecution.

- Legislation to strengthen these efforts must be one of the ways forward. It should be legislation that will put a greater onus on your government to act, and legislation that will punish China for its acts of arbitrarily and unjustly detaining your citizens. You need to send out the message that, "if you touch an Australian, we are going to make you and your friends' life hell." Western democracies should link hands in this approach and put on a united front. Just imagine a new kind of Magnitsky Act to target this problem head-on.

Australians are suffering in Mr. Xi's dungeons. Australia must hold China to account.

Recommended media docs for reference

FT Weekend Magazine article by Peter Humphrey on his life inside a Chinese prison (Feb 2018)

<https://www.ft.com/content/db8b9e36-1119-11e8-940e-08320fc2a277>

Sunday Times article by Peter Humphrey on prison labour and Tesco Christmas cards (Dec 2019)

<https://www.thetimes.com/uk/healthcare/article/tesco-charity-cards-packed-by-chinas-prison-slaves-v9psp9fqx>

Sunday Times article by Peter Humphrey on prison labour and Quaker oats packaging (Jan 2020)

<https://www.thetimes.com/world/asia/article/chinas-prison-slaves-forced-to-pack-quaker-oats-mrbc8sgm>

The Diplomat article By Peter Humphrey on China cover-up of prison labour scandal (Jan 2022)

<https://thediplomat.com/2022/01/forced-prison-labor-in-china-hiding-in-plain-sight/>

Sunday Times article by Michael Sheridan on Peter Humphrey in the Chinese Gulag (July 2015)

<https://www.thetimes.com/article/inside-the-chinese-gulag-njcnm5sqtl>

Guardian's Mark Sweney on Ofcom probe into CGTN over airing forced confessions (May 2019)

<https://www.theguardian.com/media/2019/may/08/ofcom-investigating-chinese-channel-cgtn-forced-confession-claims>

Reuters - Australian broadcaster suspends China's CGTN citing human rights complaint

[https://www.reuters.com/world/china/australian-broadcaster-suspends-chinas-cgtn-citing-human-rights-complaint-2021-03-05/#:~:text=Australian%20broadcaster%20suspends%20China's%20CGTN%20citing%20human%20rights%20complaint,-By%20Kirsty%20Needham&text=SYDNEY%2C%20March%205%20\(Reuters\),receiving%20a%20human%20rights%20complaint](https://www.reuters.com/world/china/australian-broadcaster-suspends-chinas-cgtn-citing-human-rights-complaint-2021-03-05/#:~:text=Australian%20broadcaster%20suspends%20China's%20CGTN%20citing%20human%20rights%20complaint,-By%20Kirsty%20Needham&text=SYDNEY%2C%20March%205%20(Reuters),receiving%20a%20human%20rights%20complaint)