

Inquiry into the Wrongful detention of Australian citizens overseas

SUBMISSION

James Ricketson

In 2017 I was arrested in Phnom Penh, Cambodia, and charged with espionage. I spent close to 14 months in pre-trial detention, was found guilty and sentenced to 6 years in prison despite the total absence of evidence produced in court that I was a spy. Three weeks later, all the charges against me were dropped, I was released and flew back to Australia.

I could go into detail about how I think the Australian government could better protect Australian citizens who find themselves arrested, held in pre-trial detention and incarcerated in foreign countries – particularly those in which there is little or no rule of law - but will limit myself here to the importance of...

MONITORING

There is a law in Cambodia that no person can be arrested without a valid arrest warrant – unless caught in the process of committing a crime.

Within minutes of my being arrested I asked the police if they had a warrant. No, they replied, we are not arresting you. We only want to talk to you. I told the police that I did not want to talk with them and got up to leave the police station. I was roughly pushed back into the chair I had been sitting in.

And so began a saga that lasted 15 months before my release.

From day one, the Australian Embassy insisted that it could not intervene in the legal proceedings of a sovereign nation.

It would take 14 months before it was acknowledged in court that there had been no arrest warrant, and hence my arrest was illegal in accordance with Cambodian law. But, the three judges insisted, that fact was now irrelevant to the case in hand.

Imagine this:

Shortly after my 'arrest' the Australian government, through the Embassy, asks of the police, the courts, a simple question:

'Was there a warrant for Mr. Ricketson's arrest?'

Such a question would not, in my view, constitute 'interfering' with a legal process.

The police/judge could have lied and said 'yes', or, as it was eventually revealed in court, told the truth and said 'no.'

There would have been no need for DFAT to enquire further. It would be on record.

Might this simple question have given the Cambodian judiciary reason to pause? Lying to DFAT might have unpleasant diplomatic consequences, whilst telling the truth would obliged the police and/or the Investigating Judge to release me.

We will never know for sure which might have occurred, but there was one thing that the Cambodian authorities could be sure of: the Australian government had little interest in monitoring my case.

This was borne out over the next year or so when, for most of my court appearances (at least a dozen of them) , there was no representative of DFAT present in court to monitor the extent to which both Cambodian and International law were being breached during the court proceedings.

DFAT was making no effort at all to protect my legal rights, or to even have a representative in court in order to report back to DFAT.

The absurdity of this situation was brought home to me vividly when, in the lead-up to the 2018 national election, the government included me by name, and using my face, as a co-conspirator attempting to overthrow Cambodia's democratic government. When I complained about this to Australia's Ambassador to Cambodia I received a rare acknowledgment of my correspondence – informing me that this was a matter for my legal representatives to take up with the court.

This suggestion was absurd, in a country where, as DFAT was well aware, there is very little in the way of adherence to Cambodian or international law.

DFAT could, at the very least, have expressed it's 'concern' to the Cambodian government, that an Australian citizen, found guilty of no crime at all at that point, was being used in pre-election government propaganda.

The Cambodian government was given no reason at all to think that the Australian government cared one way or another about my fate; had little or no interest in illegality of proceedings or were concerned at all about the multiple breaches of my human rights that occurred on a daily basis.

And whilst all this was going on, the Australian government was insisting, in public, that I was being provided with 'consular assistance.' In fact, this assistance amounted to almost nothing at all. On the first 'consular visit' I was provided with a toothbrush, a book and some copies of local papers – some copies a year old. On subsequent visits I was given mail from family and friends, and that was pretty much it. On one occasion, when I was very sick, the Embassy asked that I be taken to hospital, and I was.

I will end here, with a brief account of what happened to fellow Australian prisoner, Giuseppe (Zippy) Nicolosi – including three paragraphs that precede it.

Whilst I had the advantage of media coverage, 'Zippy' as we called him, did not. His death was accorded one paragraph in the newspapers and I doubt that there was ever any questions asked about why it was the Australian government did not step in and attempt to get Zippy the medical attention he so sorely needed.

I am quoting from a document I wrote in 2018:

"In the first months following my arrest I was determined NOT to pay even \$1 in bribes to secure my release. In 20 + years of visiting Cambodia I had never once paid a bribe, as a matter of principle. I did not intend to start now. I made this clear to police and Ministry of the Interior officials on the day of my arrest and during all of my subsequent 5 days of interrogations. This decision went hand-in-glove with my belief, for a few months at least, that a highly highly-placed person within the Australian government would have an off-the-record chat with his or her counterpart in the Cambodian government and that I would soon be released.

Despite 20+ years of visiting Cambodia, and thinking that I had a reasonably good grasp on how the country functioned, I was still naive enough to believe that the absence of any evidence at all that I was a spy, the overwhelming evidence that I was merely a filmmaker and journalist, and the sheer number of Cambodian laws that had been breached in my prosecution, would see me freed soon – if only to prevent loss of face for the police, the prosecutor and an Investigating Judge for my clearly arbitrary arrest and detention. I was wrong, of course. Facts, evidence, rules of law are irrelevant in a Cambodian court.

It soon became apparent to me that all in Prey Sar suffering their six months or pre-trial detention are guilty until they have paid whatever sum of money is required to be found either innocent or to have his sentence reduced. Regardless of the crime a prisoner is accused of he must spend a minimum of 6 months in pre-trial detention; 6 months living in a hot and crowded cell eating food that pigs would turn their noses up at - his body ravaged by scabies and a whole host of other skin complaints, catching whatever colds, flus and upper- respiratory illnesses his 140+ cell mates might have. At the end of this 6 months he will do anything to get out of Prey Sar. He will realize by now that his guilt or innocence of the crime he has been arrested for is irrelevant. He will find some way to raise the money to buy his freedom, even if it means his family must sell their home, land and worldly possessions to do so.

The completion of my first 6 months in pre-trial detention, in early December 2017, with no trial date in sight and no evidence that the Australian government planned to help me in any way, coincided with the serious illness of a fellow Australian prisoner and friend, Giuseppe (Zippy) Nicolosi. The questions confronting myself and my family regarding tactics and strategy took on a life-and-death quality when Zippy became seriously ill in late 2017 and he seemed to us, his fellow prisoners and friends, to be in danger of dying. Zippy's story is worth recounting in a little detail here as his fate mirrored what well could have been my own. It had a profound influence on certain decisions I made which, in turn, impacted on my relationship with members of my family.

Zippy was arrested in Cambodia *"on suspicion of having sex with a 5 year old in...2010"* and sentenced the following year. *"The victim retracted her complaint in 2012, following the Siem Reap Provincial Court trial. Nicolosi appealed, claiming he was the victim of a false accusation and police corruption but the Appeal Court upheld the eight year sentence."*

Zippy was offered to opportunity pay a relatively small bribe to buy his way out of prison but rejected it on the grounds that he was innocent; that he had been framed by someone who wanted to steal the bar he ran on a popular tourist beach in Sihanoukville.

As with my own arrest and conviction, no evidence of Zippy's guilt was ever presented in court. There was, however, a mountain of evidence that he was innocent available to anyone prepared to ask a few questions and prepared to take judgements handed down by the Cambodian judiciary with a grain of salt. And more than a grain of salt is required in the case of a judicial system in which close to 100% of all cases heard in court result in a conviction; a judicial system that ranks as the most corrupt in South East Asia and amongst the top 20 out of 176 countries in the world.

Amongst those who could ask such questions is the Department of Foreign Affairs and Trade (DFAT), through the Australian Embassy in Phnom Penh. DFAT refuses to do so as a matter of principle. I had learned this well before Zippy became ill. The Australian Embassy, and hence DFAT, knew within a couple of days of my arrest that the charge of espionage laid against me was nonsense but had done nothing by late 2017 to support me; to defend my legal and human rights; not even when my name and face were used, in abrogation of Cambodian law, in government TV propaganda, implicating me in a conspiracy, along with the United States and the Cambodian National Rescue Party, to foment a 'colour revolution' in Cambodia.)

After his arrest and subsequent conviction Zippy believed, if he followed DFAT's advice and maintained a low media profile, that his chances of release were greater than if his case acquired a high profile and thus had the potential to cause loss of face to the police, prosecutor, Investigating Judges and Court Judges who had convicted him on the basis of zero evidence of his guilt.

Understandably, the Australian media pretty much ignored Zippy's case, as it has those of other Australian prisoners in Prey Sar and other Cambodian prisons.

Even if there **had** been evidence of Zippy's guilt he was in the final months of his 8 year sentence when he became very ill in late 2017. Some of Zippy's many symptoms (one of which was extreme weight loss) were consistent with his having contracted pneumonia. He had numerous other medical problems that were visible to his fellow prisoners but which remained undiagnosed. Included were bulbous outgrowths on his chest close to the size of golf balls. His health deteriorated rapidly over a period of a few months and a few inmates, myself included, alerted the Australian Embassy and the Prime Minister's office to the seriousness of Zippy's medical condition and the need for medical intervention on the part of the Australian government.

On 14th August 2017 an email was sent to the Australian Embassy:

"Just to let you know that Giuseppe is in a lot of pain. He has a chest problem that is making it hard to breath. He is clearly very uncomfortable. I know you are organising a doctor visit for him. Sooner rather than later I think. James is getting a lot of skin problems. He's covered in sores and now a boil. Also he has septic infections on his feet. Perhaps time for him to see a doctor also."

(NOTE: At no stage did I ever receive proper treatment for my ailments)

On 21st August another email was sent to the Australian Embassy:

"Please note that Giuseppe is becoming very sick. He should be in the hospital now. Please take timely steps to see him accordingly. Thank you".

The following day another email was sent:

"Giuseppe is in severe pain. He is deteriorating. You can see his face is grey this morning. He does not waste your time as you well know. This appears serious. Please take steps to assist your citizen without delay."

The same day, 22nd August, the following was received from the Australian Embassy:

"As I'm sure you're aware, embassies don't provide medical care, and as such if any prisoner has an urgent medical issue they need to speak with the prison doctor. Any arrangements we make for external treatment of an Australian detainee takes time and isn't an appropriate response to an urgent issue."

(NOTE: The prison 'doctor' had no medical qualifications.)

4th September email to the Australian Embassy re Zippy:

"Please note he is becoming a little mentally fragile particularly as a result of his deteriorating medical condition. If you can assist in any way this is an opportune moment I suggest."

2nd Dec:

"He's suffering badly from malnutrition and weight loss including dehydration. The cystic fibrosis is abundantly obvious and pervasive to me and he has an outstanding lung infection issue still pending. He's clearly not fit for punishment. I'm absolutely sure that the Cambodian authorities will have no problems releasing Giuseppe into proper Australian medical care on humanitarian grounds., I know he was just visited by the embassy a couple of days ago. You have to take action to help this man. We are doing what we can here but he needs proper medical care now if he is to stand a chance at any valuable recovery. I hope you take steps quickly to assist him".

From the Australian Embassy on 4th Dec:

"While we share your desire to see Giuseppe recover quickly, the Australian Government does not pay medical costs for Australians overseas, inclusive of prisoners. The local options as provided by the Cambodian prison system are the only option available, and we will be working with officials to get the best outcomes from that system."

4th Dec. To the Australian Embassy.

"Giuseppe is very ill. He needs medical treatment beyond that being afforded to him. He actually should be in an Australian hospital as he's not fit for punishment as is abundantly obvious. May I suggest you write to seek his repatriation on humanitarian grounds. Provide me with the costs and I will try and organise funds if Australia is too poor or too inconsiderate of its own citizens. I am appalled as I am sure the family and

friends are. This is not the Australia I know. It does however unfortunately look like the UK care package. He will die soon if you don't take steps now. Does that sit well with you? I can't believe it does."

5th Dec. Email from Australian Embassy:

"Giuseppe was moved back to the hospital at the end of last week, and I will be visiting him today. As I'm sure you are aware, the Australian Government, much like your own government, does not cover medical costs for citizens overseas. We are in discussions with Giuseppe's family seeking a commitment to cover costs. If you feel you are able to assist with these costs, please let me know."

Zippy was transferred to what is known as the "Russian Hospital" and placed on an intravenous drip. He had no money, however, to pay for nutrients to be added to the drip and died a few days later, on 10th. Dec, from a combination of malnutrition and medical conditions that were not addressed by the Prey Sar prison hospital or the Russian hospital.

To Australian Embassy on 12th Dec:

"We are all appalled at his passing and how badly he was cared for. Offers were there for weeks if not months. Everyone is very sad at his passing and the wasted opportunity to help him. I sincerely hope that the Australian embassy and government takes a serious look in the mirror and asks themselves if they genuinely provided reasonable care for this man."

Zippy's death changed everything for me. If my government could allow an (almost certainly) innocent Australian citizen to die from malnutrition and medical neglect, with no attempt at intervention, would it do anything to prevent me from dying under similar circumstances? Our government justifies its lack of protection of the human and legal rights of Australian citizens such as Zippy with the following, to be found in the Consular Services Charter:

There are a range of tasks which are outside the consular role or which we do not provide for policy reasons. These include: intervene in another country's court proceedings or legal matters.

This is not true, of course. The Australian government did intervene in my case more than once – the second time to secure my so-called King's Pardon release, though it would not be until I had been back in Australia for a few weeks that I would become aware of this.

The Consular Services Charter also states that the Embassy may:

Do what we can to see you are treated fairly under the laws of the country in which you have been arrested.

At no stage, despite multiple requests from me over a period of 6 months in 2017, did the Australian Embassy make any attempt to see to it that I was treated fairly. When I pointed out the many ways in which I was not being treated fairly, as I did on several occasions, the many Cambodian laws that were being abrogated in my case, the Embassy, DFAT, Bishop and Turnbull ignored my correspondence. In December 2017, at the time of Zippy's death, I was in possession of no evidence at all that the Australian government was doing or would do anything to help me or, to be a little more blunt, that it would do anything to prevent me from dying as Zippy did if I were to become seriously ill. And seriously ill I did become in April 2018.

Virtually no-one in Australia has heard of Guiseppe Nicolosi. No-one, other than his family, mourned his untimely and preventable death or wondered aloud, in the public domain, why

it was that the Australian government allowed him to die as he did. Zippy did not court the media as I began to do in Dec 2017, when it became apparent that the Australian government was doing nothing to help me. Or, to be more precise, the government gave no indication that it was doing anything to help me.

Zippy did not have contacts in the media to be courted, as I did. He had no celebrity friends, as I did. He did not have the writing skills I possess, making it possible for me to 'harass' Turnbull, Bishop and Corcoran in an 'avalanche' of letters and thus place pressure on the Australian government to intervene in my case. Nor did Zippy have the temerity or the courage (for lack of a better word) to challenge the Cambodian judiciary as I did. In short, Zippy was just the sort of compliant Australian citizen prepared to rely on possible behind the scenes diplomacy in his quest for justice, whose legal and human rights the Australian government could safely ignore. Out of sight; out of mind! There are other Australians in Prey Sar, as innocent as Zippy and myself, whom the Australian public will probably never hear of until they die; their death afforded one paragraph in newspapers. I know of three such Australians in Cambodian jails and I read of one a few days ago that I do not know. Gary Knowles, aged 73. Since his arrest in Dec 2017, the same month that Zippy died, Mr Knowles has, according to the Canberra Times *'vanished from public view.'* Neither he nor his family want publicity. Is this because they have been so advised by DFAT as Zippy and I were? Because he hopes that quiet behind-the-scenes diplomacy will result in his release from jail? If Mr Knowles does die in a Cambodian jail will his passing receive the same publicity as Zippy's? Close to zero?

In Feb 2018 news of my extreme weight loss and ill health, 68,000 signatories on a [change.org](https://www.change.org/p/australian-government-free-zippy) petition, and stories in the media began to attract the attention of the Australian public. It became difficult for the Turnbull govt not to do something to help extricate a clearly innocent Australian citizen from Prey Sar, charged with an offence - espionage - that was self-evidently nonsense! Foreign Minister Julie Bishop announced she was intervening in my case. At least this is how the media reported it. She had written to her Cambodian counterpart re my case, her office informed the media. Good news. Both I and my family were able to breathe a sigh of relief. After 10 months the Australian government was finally doing something to help me!

When Cambodian Ministry of the Interior officials arrived at Prey Sar and I was called to meet them my heart was racing. They are here to announce my imminent release, I thought. Quiet diplomacy has won the day. No such luck. False alarm. They were visiting me only to enquire after my health. Why? By way of an answer they showed me the letter Bishop had written to Cambodia's Foreign Minister. This was a letter that Bishop's office refused to release to either the media or my family. For good reason, I discovered. In it Bishop made clear that the Australian government had no intention at all of intervening in my case but was concerned about my health. The subtext of the letter was that the Cambodian judiciary could do as it liked with me, regardless of the lack of evidence that I had committed any crime, but please make sure that during my incarceration I remained healthy and did not suffer the same fate as Zippy.

Bishop had led the media and my family astray by claiming (or allowing the media to believe) that she was intervening. She had lied! Or had she? Had she and Prime Minister Malcolm Turnbull 'intervened' whilst at the same time I was being informed in letters from Ambassador Angela Corcoran, that they could not? It would not be until after my release

that I would get an answer to this question? Yes, Australia's Prime Minister, Malcolm Turnbull and Cambodia's, Hun Sen, agreed in March 2018 that I would be found guilty of espionage and then granted a King's Pardon.

The fact that Prime Minister Malcolm Turnbull made such a handshake deal with Hun Sen to secure my release via a King's Pardon **after** I had been found guilty, at the same time that DFAT was insisting, in writing, that it could not and would not intervene in any way in my case, raises interesting and pertinent questions about what takes place behind the scenes in the messy world of international diplomacy. Was Turnbull doing me a favour in securing such a deal? Was it the best deal he could make with a mercurial leader such as Hun Sen? Could he or the Australian Embassy not have let me know of this deal on the understanding that I did not reveal it to anyone? This would have saved me \$100,000 in legal fees defending myself in accordance with Cambodian and international law in a case the outcome of which had been decided upon by Turnbull and Hun Sen 5 months earlier? When I got pneumonia in April 2018, or some other serious viral infection (my illness was never diagnosed) and my weight dropped from 88 to 69 kilos, a visit from the Grim Reaper seemed to be on the cards. There was one day in particular that I felt I was dying. This was a source of great worry and anxiety for my family. As my brother Peter would recount for the "Australian Story" cameras later in the year, *'We thought James was going to die.'* If I had died would this deal of Turnbull's seemed like a good one given that he, DFAT and the Australian Embassy knew beyond a shadow of a doubt that the espionage charges were nonsense?

I am a free man now so, on one level, these questions are academic. However, they will not be academic for the next Australian who finds him or herself banged up in a Cambodian prison on clearly trumped up charges, or victim of a kidnap and ransom racket as so many prisoners are. Might he or she die as Zippy did, or as I could easily have? Does the Australian government really have no power at all to protect Australian citizens in countries like Cambodia? Why can't Australian aid to Cambodia be tied to a request (demand?) that the Cambodian judiciary respect the human and legal rights of Australian citizens? Leaving aside what could be considered to be parochial concerns, could it be that Australia's kow-towing to dictators such as Hun Sen enable them to consolidate power and treat donor nations such as Australia with increased levels of contempt? Why can't the Australian government stand up to Hun Sen and say, *'Do not treat Australian citizens in this way.'* The Australian government, along with the rest of the world's donor community, has stood by for 3 decades now enabling Hun Sen with their silence and through the shovelling of billions of dollars of aid into the Cambodian government's coffers.

It would not be until after my release in Sept 2018 that I got answers to many of the questions I am raising here. At the time of writing I am still getting answers, discovering new pieces of the jig saw puzzle that give rise to a better understanding of what took place behind the scenes in Australia and within the halls of power within the Cambodian government. I didn't, in fact, receive a King's Pardon, but was released on the basis of a document that is unsigned. Have I been banned from ever returning to Cambodia, as widely reported in the media, or am I free to return, as my Cambodian lawyer tells me, to continue with my humanitarian work; to be 'papa' and 'grandpa' to the adopted family I have been helping out for 22 years? New evidence is beginning to emerge that Malcom Turnbull's handshake deal with Hun Sen did NOT lead to my release but that something else happened

during the 24 hours prior to it that made it imperative I be released immediately. I do not know at this point what this was but will probably be able to find out if I play my cards right. Whatever it was, my sudden release was sufficiently annoying to someone for the Australian Embassy to warn my brother that my life was in danger."

I would be happy to answer any questions in person, if this would be of value to the Enquiry.

James Ricketson

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