

Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: fadt.sen@aph.gov.au

6 August 2024

Inquiry into the Wrongful detention of Australian citizens overseas

To Whom It May Concern:

1. I am a partner of Heretic Law, and Director Principal of Human Rights for All. These legal firms provide legal assistance relating to human rights issues, including to refugees, stateless and indigenous people in Australia's immigration prisons, and to vulnerable women overseas fleeing persecution.
2. Human Rights for All has made a significant number of submissions to the United Nations Working Group on Arbitrary Detention (**WGAD**), and all opinions issued by the WGAD since 2017 relating to Australia are a result of our work (currently over 23 opinions have been issued by the WGAD relating to Australia).
3. I am also an advisor to the Australian Wrongful and Arbitrary Detention Alliance (**AWADA**).¹
4. I refer to the Terms of Reference, being:
 - 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

¹ <https://www.awada.com.au/advisory-committee-1>

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- g) any other related matters.
5. The following sets out suggestions for practical measures to be taken as relevant to the identified heads of the Terms of Reference.

Australia's current processes for categorising and declaring cases of wrongful detention

6. The Australian Government does not have an agreed definition of “wrongful detention”, “arbitrary detention” or similar to ensure that all cases of wrongful detention of Australians overseas are identified and receive the same Government assistance and treatment.
7. Such definition should be broad and flexible to ensure that all actual and potential cases of wrongful detention are identified, and then given appropriate assistance and treatment. The WGAD has a tested definition of “arbitrary detention” (which by default captures wrongful detention) which can be found here - <https://www.ohchr.org/en/about-arbitrary-detention>
8. Further, Australian Government officials should be required and encouraged to proactively investigate cases of Australian citizens and permanent residents held in foreign places of detention to determine if such people are subject to wrongful and / or arbitrary detention. They should not wait for cases of concern to be notified to them.

The management of cases of wrongful detention by the Department of Foreign Affairs and Trade

9. The Department of Foreign Affairs (**DFAT**) must create a designated team / group to deal with wrongful detention cases of Australians overseas. Doing so will ensure consistent responses to each case and ensure that institutional knowledge and relationships with useful counterparts are kept, maintained and developed.
10. Such a team should include representatives with relevant country expertise, including as that relates to the country's economy and military, and people with direct contacts in country.
11. The team should also include members of the private sector with approximate security clearance to ensure an independent / alternative opinions.
12. Reference is made to the *US Levinson Act*, US Special Presidential Envoy for Hostage Affairs (**SPEHA**) and the Canadian Senior Official for Hostage Affairs (**SOHA**) as examples for an Australian body / position to be modelled on.

Communications with and support for families of Australians being wrongfully detained overseas

13. There currently appears to be a blanket approach to communications with and support for families of Australians wrongfully detained overseas. In particular, it appears that the Australian Government warns families of Australians wrongfully detained overseas

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not to engage with media or make any public statements. Such a blanket approach should not be pursued in all circumstances, and instead a tailored media approach developed with the family of the person wrongfully detained should be developed. Families should be given media training where appropriate to ensure that any public communications or announcements have a clear message and will most likely have a positive or at least neutral impact on the person's wrongful detention.

14. Intimidating already traumatised families into not making any public statements as a blanket policy is not appropriate and harms the relationship between the Australian Government and the families.

Any other related matters

15. The same level of assistance and attention should be given to Australian citizens, dual Australian citizens (including to those detained in countries which do not recognise dual nationality) and Australian permanent residents.
16. Where people are subject to wrongful and / or arbitrary detention who would have, or very likely would have, been eligible for Australian permanent residence if but for that person's detention, serious consideration should be given to whether that person should be granted permanent residency and as such, be able to access consular assistance.

Regards

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