COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

SENATE

FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Wrongful detention of Australian citizens overseas

(Public)

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FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE

Thursday, 26 September 2024

Members in attendance: Senators Chandler, Ciccone and Steele-John

Terms of Reference for the Inquiry:

The Australian Government's responses to the wrongful detention of Australian citizens overseas, with particular reference to:

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.

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Committee met at 09:31

CHAIR (Senator Chandler): I declare open this hearing of the Senate Foreign Affairs, Defence and Trade References Committee into wrongful detention of Australian citizens overseas. These are public proceedings being video streamed live via the parliament's website, and a Hansard transcript is being made. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee, and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence. Witnesses also have a right to request to be heard in camera.

I now welcome Mr Jason Poblete from the Global Liberty Alliance. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Thank you for appearing. I now invite you to make a short opening statement and, at the conclusion of any remarks, I will invite members of the committee to ask questions.

Mr Poblete: Thank you, Chair and senators, for the opportunity this morning to share my thoughts with the committee. My complete statement dated 27 September, submitted for the record, provides significantly more context and underscores the urgent need in certain areas of this important matter. In these brief opening remarks and points I can't underscore enough, though, the importance of whatever you do to prioritise your nationals. That is what we do day in, day out with our clients, such as Jimmy Sharmahd from California and Shahab Dalili from Virginia, both men wrongfully detained in Iran; Mark Swidan from Texas, wrongfully detained in China; Alina Lopez from Miami, Florida, wrongfully detained in Cuba; and many others. This should be your guiding principle. We stress putting our nationals first with our government and stress that it should be foremost in whatever plans you decide to implement, if any.

While international travel is a statistically safe activity, data points to a handful of nations and groups responsible for wrongful detention and hostage cases that need attention. These events can be restrained through strong leadership and, when necessary, global cooperation. The International Convention Against the Taking of Hostages, for example, has become a paper tiger. Responsible nations must strengthen national laws and procedures. Deterrents like the resolution of these cases require firm commitment from responsible nations capable and willing to use all instruments of state power. Global collaboration amongst trusted partners such as Australia, the United States, the United Kingdom, Canada, New Zealand, NATO and other networks of course is vital. Australia and all responsible nations must define their red lines.

Travel warnings should be clear, and the public must take personal responsibility for mitigating travel risk. The private sector should encourage travellers to prioritise safety just as much as they do travel destinations and food choices. When Australians are unjustly detained or taken hostage, however, the state must act swiftly to resolve the case. Each case is unique, and political will, moral courage and transparent red lines are crucial to resolving these cases sooner rather than later. Our adversaries, especially state actors, must understand that leveraging legal systems for political gain will not be tolerated. Ideally these matters should be resolved in weeks or months, not years or even decades. Reciprocity must be earned, not freely given, and patience has limits. While the perpetrators of these barbaric acts must be held accountable, we also stress over here that it should never be done on the backs of our nationals—in your case, Australians—currently detained by a rogue regime or a non-state actor. Economic sanctions are a tool, not a policy, so we recommend that people be judicious and deliberate in how sanctions are used in these cases.

In conclusion, these cases are not just legal or diplomatic; they are deeply impactful on families, communities and the trust between governments and their people. Swift, decisive action shows that a nation-state stands by its citizens, sending a clear message to allies and adversaries that your people are not bargaining chips but individuals whose freedom and safety are paramount. Whatever actions Australia takes should of course disincentivise hostage taking by both state and non-state actors and not create a market in hostage taking. Thank you very much. I look forward to any questions.

CHAIR: Thank you very much, Mr Poblete. I will start off with the questions. You mentioned in your opening statement the importance of defining the red lines and the need for those red lines to be transparent. Can you explain why it is important for countries to have a clear set of rules around how they will deal with their wrongfully detained citizens overseas, why those rules have to be publicly available or transparent and open and how having those rules and ensuring that they are transparent disincentivises the practice of hostage taking.

Mr Poblete: Thank you for the question. It's the rules of the road, if you will. People will engage in the marketplace, like I said in my opening statement. We talk a lot about this here with our congress and with

policymakers. Travel is a relatively safe activity, but sometimes we just do not check. We have travel warnings, but maybe they're not clear enough. That's a good example of a clear rule. If a country is stressing to a traveller, 'Do not travel here,' clearly explain what that means. Do not necessarily just say, 'Don't go there,' but provide people context for that. Of course, there's a lot out there that you can research on your own, but our goal is to engage in a way such that, when we have these really difficult cases where consular services, for example, maybe need to escalate things and bring the full force of the government to resolve them, you're disincentivising and at the same time not creating that marketplace.

I'll give you an example. We're telling people right now in our country, 'Do not travel to Venezuela.' But people still do it. Recently, Venezuela picked up more Americans. In the case of that particular situation the travel warnings must be clearer. Actually in some cases we have advocated for prohibiting travel to certain countries. The one case we have that we can point to is Cuba, not because of unlawful detentions but because of many other reasons, as you know. In our long relationship with Cuba we have that problem. But you need to have the rules in place. What happens, for example, when you have a legal problem in a foreign country? A lot of people don't understand that you're going to be subjected to that legal system, good or bad. So educate yourself. Maybe on your websites you could not only have a travel warning but clearly state, 'If you get in trouble, this is what you need to plan for.' So there are those simple things. I don't know if you do it in Australia, but we encourage people here to register with the embassy before they travel and register with the STEP system that we have in this country. It's a guideline.

Finally, I think when you disincentivise you need to build it into your policymaking and structure it into how you want to avoid these cases. But, when you do have these cases—and they're not many, so, statistically, we don't have thousands of these in any one particular case that I know of—you have already set, in one place, your travel warnings and the steps that it's recommended you should take. I also think, with the private sector, something that we encourage, especially the travel industry, is that they be more proactive. A lot of people don't know that there are certain countries for which, if you're going there, you should probably be taking out travel insurance and kidnap and ransom insurance. Again, I think it's public and private, but when the state sets these guidelines, or these guideposts, if you will, and also explains what happens when you're wrongfully detained—you tell people: 'You can be locked up for one month. You can be locked up for one year. You may be locked up for 10 years. We cannot guarantee everyone's safety all the time. You must take precautions.' I think speaking clearly like that and having it in a place where everyone can read and follow it will go a long way to mitigating and also preparing people for what happens when they do land in these cases.

There's a very good book, by the way. It's called *The Uncaged Sky*. It was written by Dr Kylie Moore-Gilbert, which I'm sure you're—

CHAIR: That is a very good book.

Mr Poblete: It's an excellent book. It is probably one of the best books I've read in a while that details a lot about the experience not just at a personal level but at the practical level. I recommend this book frequently to people who are considering going to places where maybe they shouldn't, because it gives you a flavour of everything from beginning to end, and it tells of the challenges that happened. When you put that consular official in one of those meetings—you've read the book, so you know what I'm referring to—it's not easy. There's a lot of equity the state has to balance when it's dealing with these cases. You mitigate the uncertainty of a lot of this—her experience was frankly harrowing because of not only what happened to her in Iran but how the state responded. I'm not saying it was right or wrong; I'm just saying that there's a lot that a consular official or a diplomat ambassador has to do when these cases happen.

Real fast, if I may, I think it's also very important that your diplomats are trained and prepared for these types of cases. I know that's something that we're stressing here, but, when we have a good ambassador who has—I've even said this before: every ambassador should have a list of all their foreign nationals that are detained in the country they are serving in, and every morning he or she should look at that list. The cases that I have worked on where we've had much success were where we had an ambassador who was engaged in these cases and was part of that process.

It's educating a diplomatic corps, perhaps—again, I don't know if that's needed in Australia; I'm just giving you that from my experience in the US—and providing them with those tools. But, for the public, I think clear red lines about where you should go and not go, what we can and cannot do as a government and maybe precautions that people should take when they travel to certain places would be a big help in creating a culture of awareness of and compliance with this difficult issue.

CHAIR: I want to turn to the Levinson act. Knowing your expertise in this area, does that act set out a process to assess and classify whether a person has been wrongfully detained?

Mr Poblete: Yes, it did.

CHAIR: What does that process look like within the act?

Mr Poblete: As an outsider—remember, I'm not in the government. It is statutory, and I know the US government have submitted evidence, and they provided the statutory framework of how that works. But there is an internal process within the state department, and it's a whole-of-government approach, of course. It's not just them; it is input from different components of our government. There are several categories that they review case by case, and then they make that determination internally.

As outsiders, though, we have no say in that process or very little say in that process. In fact, that's something we're juggling and struggling with now in working with the congress—to see if the law should be amended to make that process a little more transparent. It's very compartmentalised within the state department. It's better than what we had before.

We have questions. I'd be remiss if I didn't contextualise my scepticism at the beginning phase of the consideration of this bill—whether or not it was needed. I'm one of those folks who believe that, if we have the mechanism and the tools in place, adding more layers and more laws may not always be the best approach.

In this case, there were problems, and Americans died, and our government failed to respond in certain ways. There was a gap that has been filled. The internal dynamics through those different categories are deciding whether or not someone will be detained.

It's interesting that sometimes designating someone may not be the most effective way of helping move the case forward. There are cases that I've worked on where—and it's a very hard conversation to have with the family—it's, 'Well, we want that designation because, if we don't get it, we're not going to get our loved one home,' but sometimes having that designation can maybe set back the process with the target, if it's a state actor, for example, and you really have to be very deliberate and think through how that designation will help or hurt you.

This is my last point. It's very important that, if you are going to pursue that type of a structure, if it's needed, within your foreign affairs regulations or your consular or however you organise the process, you definitely have someone—not necessarily someone with a title, but somebody who is in charge of bringing all these components together and making sure that, when you do such a designation, it is absolutely necessary and it's done quickly. That's the problem you're having now: you have a lot of cases that have been languishing for years and there's been no designation. As to whether or not that's good in a particular case: in some cases, we don't know, because a lot of that is classified and sometimes we're privy to it and sometimes we're not. But I think, when you have one person who can walk into the Prime Minister's office, for example, and is able to press or advocate for a particular case and state the reasons why, that helps. It's a process that we're still going through now, and I think it's going to be improved as we go. I think it has generally helped, but I do think it also needs to be improved somewhat.

CHAIR: You say it's important to have that special person who can walk into the Prime Minister's office—or the President's office, in your case—and push these cases and advocate. Is that role in the United States the Special Presidential Envoy for Hostage Affairs?

Mr Poblete: That is the role, yes. They call it the SPEHA.

CHAIR: So do you think that having that role in place has improved the management of hostage-taking as it relates to US citizens overseas?

Mr Poblete: I think it has helped, in the sense that at least it's a national priority and there is a whole-of-government approach. Whether or not you need someone with that title—I think the title should be changed! I'm not sure you want to call somebody a 'hostage person' and then send them off to go negotiate with the bad actors. They may not want to meet with you, in some cases. But, yes, I do think that has helped in some cases.

My scepticism, as I guess you're noticing in my voice, is: we have this tendency to add bureaucracy and add layers—and that's a personal aversion I have. I know there are a lot of good people inside the government. Even within the SPEHA office, they're excellent; they're very committed people. Roger Carstens is very committed to what he is doing. Yet there are competing equities. You're going to have consular officials on one side; you're going to have your regional bureaus, who want to do something else, and your functional bureaus, who want to do something else; your ambassador may want to do something else. So having that person, as long as they're able to walk into the Prime Minister's office; as long as they are able to travel freely and to engage in those hard negotiations, those conversations that lead to making these most difficult of cases happen—yes, I think it has helped. If I have one recommendation for my government—and they know this and maybe this will help you all—it is: I believe the person who has that job should have a lot of access but not be seen, but felt, and be

somebody who is committed to this as a full-time job but not necessarily a public role. I don't know if I am explaining myself, but I think it should be someone with the access but a much lower profile.

I think that helps, partly because one of the riskier parts of these types of policy road maps that we're implementing over here—and I alluded to this in my statement—is we don't want to create a market for this sort of activity. When we talk about this, I think about Iran, for example. It has pretty much made a cartel business out of this, and it sprays itself throughout the Middle East and even in Latin America, in our hemisphere. So we have to be careful that we don't elevate this too much in a public way but have somebody who can manage that so that you don't give the bad actors the ability to politically exploit these cases.

One good thing about this is that most SPEHA cases are not public. You never really find out about them, and they have testified in Congress—that we know of. On the numbers, they don't talk about them publicly, but most cases are resolved privately. You never hear about them. It's only the more difficult cases that go public.

CHAIR: I have one more question about the deterrence factor as it relates to foreign regimes that engage in the practice of hostage diplomacy. We've talked about a few of the tools the US has in place: the Levinson act and the special presidential envoy. Like you say, it's not an entirely public, open and transparent way of managing hostage taking, but frankly it's more open and transparent than what we have in Australia. How does that disincentivise the practice of those foreign regimes? Can you make that connection for the committee?

Mr Poblete: I think it depends; literally, you'd have to go country by country. By the way, the reason I mention sanctions is that they're a favourite policy tool over here. We use them a lot.

CHAIR: Indeed.

Mr Poblete: I think economic sanctions get overused. That's one tool. The sanction can be economic, but it can also be excluding visas. You go country by country and you make an assessment of the—I don't want to pick any one country, but you can pick the worst of the worst, I guess, and go through there, and each country may have a different packet, different bundle of tools, that can be put in place to deter behaviour.

One of the things that I strongly believe in, for example, is not paying ransom. I know that that's very controversial, and I know different countries try different tools. Some people say we have done that. But I think we have to be careful, and if we are working toward making this rare and make it not happen—enforce the international convention, for example, and use that as our North Star—we have to have these types of red lines to create behaviours that will not lead to hostage taking. One of those tools happens to be not paying ransoms and being judicious in how you use sanctions. The Iranians love it when you sanction them. I've worked in cases where they've even asked the people I've represented, 'When are you going to sanction me?'

You have to come at this with a bundled approach of what your foreign policy is toward that country. You know best what behaviours you need to deter and what tools you can use—and also work through this international network, this effort being led by Canada now and the US and some other countries that you are involved with. Working with the allies, there are ways that, over time—if we all agree on a common position that this group will not engage in certain type of behaviour—can also help with deterrence. I think we have to lead the way in that space, because right now we really don't have that whole coalition-like approach to this problem, which I think would help.

CHAIR: Thank you very much, Mr Poblete. I'm going to give the call to the deputy chair.

Senator CICCONE: Good evening to you, Mr Poblete, and thank you for making time this morning—as it is here in Australia. We really appreciated your submission. I do note your submission to the committee goes into some detail about the United States' framework for managing instances of wrongful detention abroad, and I must say it's quite more prescriptive than the case is here in Australia. On the question of a permanent envoy—and I note you have one, for wrongful detention, in your system of government—what access or influence can a permanent special envoy provide that is not possible, in the Australian context, through a minister or a senior government official?

Mr Poblete: That's a good question. It's one of the reasons why, before the Levinson act was law, I was somewhat sceptical of creating or adding additional layers like that. Ultimately, in an ideal world, I look at our ambassadors as our frontline officials to deal with these types of issues where the problem is happening. I think there was a realisation that because of the size—there were some mistakes made, as you know. When the Levinson law was conceived, it was initially a regulatory bundle, put together during the Obama administration, of different components of our government that were maybe not talking to each another. I think it's a little more complex than that.

Generally speaking, it was technically not needed, but there was a political decision made that this was perhaps a better way for our country to address this, considering the different components of our government that are

involved in these kinds of cases. To the extent that the SPEHA, the Special Presidential Envoy for Hostage Affairs, has that access and is able to walk into the President's office, at least in our system, they can escalate a case politically. As you know, especially when a country has to grapple with so many foreign policy equities in any given country, these issues may not—the deal is on a two-track approach. We say we always deal with them, but in reality, especially with tough countries like China, for example, being able to escalate quickly can, I think, make a difference, at least in our system. We will see if it works over the long run, but for now it has been working, when that person has had the access necessary to make those tough calls.

Senator CICCONE: Forgive me for my ignorance of how it works in your system of government, but would this special envoy, which I assume is directly accountable to the President, only intervene in cases where the ambassador in the said country is having difficulty in trying to return a citizen home, or every time there's a hostage situation or a situation where the special envoy is required to attend? Do they get involved in every single matter around the globe? I just want to understand the level of engagement that the special envoy has.

Mr Poblete: That's a very good question. In fact, based on what they have testified before our congress, I think it's a combination of things. With the Levinson process, the direct reporting to the Secretary of State, for example, and having that level of access—does it happen in all these cases? We don't know. That's something that our congress—the foreign affairs committee in the house and in the senate—is grappling with also. They're studying how it's working or not working. Should it happen in all cases? If you're just going to focus on the law and the wrongfully designated peoples, I would say, yes, it should. Does it happen? I do not know.

Senator CICCONE: When you say that this individual can go straight to the President, is that a last resort? Do they usually go to the Secretary of State or other officials within government? Also, which government departments within the US system are we talking about?

Mr Poblete: As I understand it, with the past few SPEHAs, it's mostly a day-to-day relationship with the Secretary of State and perhaps an undersecretary or two, but there are cases I know of where the SPEHA has walked right into the Oval Office, or they go through the internal process of the National Security Council and escalate it that way. What was the second part of your question, Senator?

Senator CICCONE: Within the US government—

Mr Poblete: The agencies?

Senator CICCONE: Yes, which departments but also—

Mr Poblete: The reporting can happen in a variety of ways. He or she can, in theory, meet with just about anyone he or she needs to meet with to do his or her job—the Director of Central Intelligence, the ODNI, the National Security Advisor, the President or the Secretary of State. In each case, it may be different. The person who holds that post has to make a decision where in the government bureaucracy he or she is going to have to push to make something happen. It's case by case. As far as the agencies and primary entities involved—the Federal Bureau of Investigation is involved, the Department of State is involved, you have the security council and there are other agencies as well that are brought in, like the Department of the Treasury in some cases or the Central Intelligence Agency—it really depends. These questions you're asking, believe it or not, are very similar to those being asked by your parliamentarian counterparts in the United States House Committee on Foreign Affairs and in the Senate, because there have been concerns that the SPEHA mechanism especially, the one area that's not as transparent as it should be, is how they are designating cases. Why are they designating cases wrongful in some cases and why don't they register other cases as wrongful? And then why do some cases go to the President and the President starts talking about them? In some cases the families don't even receive a phone call about the status of the case. I think the law should work a certain way and that there's some room for improvement, but, in theory, the SPEHA is supposed to go just about anywhere to make sure the job is being done that needs to get done.

Senator CICCONE: Excellent. As I understand it, the law in the US also sets a very firm criteria for how a case of wrongful detention is defined and declared. You did mention that this is not always helpful, but could you detail the risks of a government's public pronouncement of a citizen's wrongful detention and whether that could reduce space for diplomatic negotiated outcomes? I think you had this discussion with the chair earlier, but I was interested in that specific point. If we were to start pronouncing a citizen's wrongful detention, what are the risks and the impact that would have in trying to get people back home?

Mr Poblete: That's a very good question. It can indeed be very risky, in some cases, to be discussing it—even discussing the criteria. I don't think it is a very good idea to be talking publicly about those 10 or 11 criteria. In most cases, if these cases could be handled in weeks and months, not years, quietly, outside the spotlight of the

media, in most cases I think you can resolve these so long as there's a whole-of-government approach and they prioritise the case beyond consular wellness visits.

I think most of these cases should remain outside of the public eye for two reasons. One is that I think it will disincentivise this activity. Every time you're out there talking about these cases and providing media coverage to these types of cases, these governments like it. They exploit it. I can think of a few governments. But the second and more important reason is the family and the hostage or the person who is wrongfully detained. This is a very stressful, all-consuming process. Most families cannot afford the defence and the advocacy that these types of cases require—at least not in our country. It's very expensive and very difficult. I think putting the public eye on them can hurt and hinder the process for our diplomats. They need that quiet space, that area, to be able to get in there and negotiate. I'll be very frank with you: there are some cases and situations where, if the family comes to me and they have no information, there's nothing beyond consular visits and we're not getting a decision on Levinson, we recommend they go public, because then there's this leverage. I'm representing someone who's been locked up in China for 12 years. I've only been involved with the case two years. That's Mr Mark Swidan from Texas. For eight years, nothing happened, and now we're recently learning—and you're going to hear from another witness about this today or later in the week—that there may be as many as 200 or more Americans locked up in China that nobody knew about, not even the congress. In the ideal world, no, I would not announce these and I would not be talking about these designations in public, but, unfortunately sometimes it becomes necessary.

Senator CICCONE: Fair enough, especially after that a long period of time when there's been no outcome.

I pick up a point you made. Do families take it upon themselves to privately have negotiators act on their behalf to bypass government and get their children back home? I'm assuming that is the case.

Mr Poblete: Yes.

Senator CICCONE: If that's the case, what do they do? Do they go with bribes. Do they go with other incentives to the foreign country to return these people home?

Mr Poblete: That's an excellent question. In fact, that's what I kind of do. That's what I help families do. Some families prefer not to do any of that. Some families cannot afford it, or it's too dangerous to do it. I would never advise a client of mine to travel to Iran, China or some of these places unless there have been some ground rules set up and my government's involved in helping ensure the safety. But, yes, there is private advocacy, and we reach out to governments and officials that detain Americans. We try to do many things, including work with local counsel but also trying to find pathways—humanitarian pathways for example. I would rather not talk about them here, but they are ways that can, hopefully, supplement and help our government do what they want to do or can do. But some families don't want to wait. When these cases drag on for years, that is, at times, of one of the only options they have, and, yes, it does happen.

Senator CICCONE: I don't know whether you have looked at the Australian government's approach with fine detail, but I thought I'd ask the question. If you've had time to look at it, how do you assess the effectiveness of our approach, including the recent changes to strengthening the handling of cases that might involve wrongful detention?

Mr Poblete: Sorry; I haven't studied your system closely. I'd like to comment on it, but until I study it a little closer—I'd be happy to do it and send you my impressions in writing if that's okay.

Senator CICCONE: That would be fantastic—if you have time. I also wanted to flesh out if there were other, less prescriptive approaches that could serve as an asset and vice versa, as with the US. I'm assuming Australia is not alone in our approach, but I also say that the US is not alone in its approach and how it deals with these very troubling, tricky situations.

Mr Poblete: We in the US are still muddling our way through. There are centuries of good experiences here, right? The republic here started with a hostage crisis as one of our early foreign affairs challenges, so there's a good history there and there's good law there. I think that a lot of what I see on our side, with a little more political will and moral courage and with this whole-of-government approach, can make a difference, but a lot of it still requires a little more concerted effort. Unfortunately, this is very political as well. When these cases devolve into the realm that the offending country is using their legal system, it is challenging. Even with the best plan you can have, this roadmap that we have now that provides these guidelines, ultimately it is the person who is holding our nationals, not us, that is the problem. But we make mistakes, of course, and I think we are trying to remedy them. Hopefully, if the US, Australia and all the other partners can work together on something, it would be phenomenal to have this coalition be that process.

Senator CICCONE: Thank you very much for your time and good evening.

CHAIR: Senator Steele-John, you have the call.

Senator STEELE-JOHN: Good evening. Thank you for taking the time to be with us. In relation to the US special envoy, does the position play a role in supporting people after they return home from being wrongfully detained—for example, setting policy around government support for bringing [inaudible]?

Mr Poblete: There is a process in place and a family engagement coordinator that is statutory. They are involved in helping liaise between the families and the government. There are also many civil society groups that are involved in bringing that person back into regular life. Our congress right now is exploring whether or not that needs to be explored deeper in the law. Generally speaking, though, the obligations tend to end after the national is safely back in the country, although there is that interregnum period where the person maybe goes to a US military base and spends some time getting medical treatment and going through debriefings. But, ultimately, the government tends to separate after that process has completed.

Senator STEELE-JOHN: Okay. In terms of the office of envoy itself, because it has special insight and a direct line of sight of a lot of these pieces, does it make reports to the congress or the executive around patterns of experience or types of support which family members or detainees themselves may express to the office are required or haven't been met—those kinds of things?

Mr Poblete: Yes, there are annual reports. The Secretary of State is required to submit an annual report to the congressional oversight committees detailing where there has been credible information of an unlawful or wrongful detention. Parts of the report are submitted in a classified form. Again, that's a subject of a lot of debate right now because there's really not that much public. There are congressional hearings; they started congressional hearings also a few months ago, and this should be online. The head of consular affairs, the head of the FBI fusion cell that deals with these cases and the President's special presidential envoy testified in congress, at the House Foreign Affairs Committee. So there is an annual reporting requirement. Again, some of it is classified; some of it is not. The congress is exploring potentially working on that some more.

One more point, they do brief frequently. The SPEHA operation, if congress asks for it or a family member is asking for a briefing, they will brief members of congress and the staff of the committees on a particular case. That is ongoing. That happens, I believe, frequently.

Senator STEELE-JOHN: If you look at the time that you've worked in this area and divide it into pre and post the appointment of the SPEHA role, would you say that overall the appointment of the position has improved the ways in which these cases are handled and/or the outcomes in relation to those cases?

Mr Poblete: I began in a pre-SPEHA world, and I knew SPEHA before there was even a SPEHA, so I can tell you, in the very short span of time that we have had this entity, the one thing this process has accomplished, I believe, is that it has put up the political food chain, if you will, the importance of these types of cases, and there is an acknowledgement that sometimes there are cases that are not just consular cases but are statutorily what we call wrongful or unjust detention.

Do I think this was necessary? Probably not. But that's easy for me to say looking back. I've spent 30 years in Washington, DC, in and out of government, and, again, I'm always very sceptical of adding components to any agency. The state department has some pretty phenomenal people working there, and we already had a lot of people at different agencies dedicated to this whole-of-government approach. But mistakes were made and this response, the congress felt, was necessary. In essence, they took the Obama regulations, which were put together after some pretty difficult challenges with these cases, and then they were passed into law, signed by President Trump. Time will tell, sir, if this was a good idea, but I do think it has helped escalate and move these cases faster.

However—and I've said this before, many times—I do think there is still a lot of politics of this. If I were to figure out one way, these things would have to be depoliticise some more. There is this perception—in public hearings it's been denied it happens—that the politically well-connected get preferential treatment and that the people who are not politically well-connected or have the money to engage in the aggressive lobbying campaigns that some celebrities in my country have done don't. So I think there's some work to be done there to remove that perception, which we hope is not happening, of course.

Senator STEELE-JOHN: You talked in your submission about insights that Australia could gain from the US legal framework for wrongful detention, including the Levinson act. Are there any changes that you would suggest if Australia were to implement a similar version of the Levinson act—for example, are there any flaws in the act or ways it would need to change to fit the Australian context?

Mr Poblete: I'd have to study the Australian context a little more, but if I were starting from scratch, the one thing I would definitely take a close look at is this: is there a person or group of people within your government

who you can dedicate to this on a full-time basis within the existing components—maybe within your intelligence community or maybe in combination with your foreign office? Bring them together and see if you can have one person who can quietly but with high access sort through these consular cases and prioritise those that they believe are wrongful detention.

Secondly, if you're going to put reviews in place—again, the criteria that we use for wrongful detention is so chock full of exceptions that, as a lawyer, I could drive a Mack truck through most of them, as we say here—make sure that your approach to these cases mirrors your human rights reporting for a particular country. That's something that we need to do here. I'll give you one quick example about this, and I think you will hear from another witness who will talk to you about this.

In our country, we publish annual human rights reports. If we say that country X has a horrible human rights record and a horrible legal system then that to me, by operation of law, means that any of my nationals who are detained in that country are wrongfully detained. Politically, that may be an uncomfortable decision to make, but we've had cases here where we use reciprocity to such an extent—I don't want to pick on any one country, so I'm not going to—we seem to accord more importance to the legal system of how they treat one of our nationals, but then, in that same human rights report, we say that the legal system is horrible, they abuse political prisoners and there are human rights abuses. That's a problem, and I think that needs to be addressed by small group of people within your government and a person or persons who can escalate this.

There are some cases that an ambassador may not want to do. Even though I think the ambassador is still the best person to do this type of case, having someone inside your government that can do this work and go into that country—maybe to provide some distance from your ambassador—can be useful. I have seen it work in some of our cases, but none of the ones you have read about in the media, of course. So I think that if you are going to do any of this, look at your internal regulations—we call it the foreign affairs manual here—and see if there is something that could be put within your existing structure to escalate these cases rather than create an office. If you're going to create an office, try to give it a title that doesn't use the word 'hostage' in it.

Senator STEELE-JOHN: Indeed. Beyond those you've outlined to the committee so far, what do you see are the other weaknesses of the US legal framework for wrongful detention? Are there other gaps that you would like to recommend that we consider as we consider this broader topic?

Mr Poblete: In our legal system, when you look at these types of cases as an advocate for families and hostages, not necessarily as a policymaker but as a person who advocates on behalf of people who have to deal with these types of cases, it's very clear. If it's a national security issue, our courts do not want to get involved and will defer to the executive because of political questions. These are issues for foreign affairs. You deal with most cases, as you should, within the foreign office—in your case—and the intelligence community. So, for families, if you can't challenge a law and you're talking about due process, in the Levinson law, it really doesn't make it as powerful a tool as I think it could be. If somebody could file suit if they believe that the law is not being enforced as it should be, I think it would make it slightly more powerful. Whether or not that's a good idea I don't know. I'm just saying that there are certain things about it. If we're going to pass a law or a regulation, it can't just be for political reasons or talking points. It has to be a little more than that.

Second, you're starting at an interesting place because you haven't telegraphed to the world how you do this—at least, I don't think you have. If I were to look back and do it a little differently, we put way too much out there sometimes on these cases. I think it's good on the one hand, because it tells us where we all are—we have those red lines—but it also gives adversaries ideas and, unless we have some policymakers with the political will to push through some of this and not draw these reciprocity lines that we give some of these world regimes, it becomes very difficult to enforce a law like this. Then you're just creating bureaucracy and office—more people and more staff—and it may or may not be needed.

This is more of an American perspective. It may not make a lot of sense—I apologise for that—but I just think that less is more. In a case like this, these very tough cases, discretion should be one of your guides, especially in how you craft the statutory basis of whatever you're going to do—if you do anything down that road.

Senator STEELE-JOHN: Finally—and thank you for your time once again—what are the additional issues that you have observed in countries, such as Australia, that don't have a clear definition of wrongful detention?

Mr Poblete: That's a better question, I think, to ask the SPEHA folks or a government official. I do think that the one good thing about Australia and the US is that there's a very close trust. We work well together. I don't think it's necessary for you to have one for that relationship to continue, but it would be useful to always be able to speak to one person who does this all of the time, because that helps create confidence in the process. At a certain level within the government—within the foreign office and the state department—there are certain teams

of people that talk to each other frequently, at the functional bureau level. I think that can work; I think that can help, if we did have similar definitions. If, for example, Canada, New Zealand, Australia and the UK were working off the same definition about what a wrongfully detained person, or an unlawfully detained person, happens to be, I think that could be useful, as you plan internally. Everybody avoids, by the way, the word 'hostage', and there's still debate about whether or not you should use that word. When you go through the statute, you see that it's by design that it was written that way. But, I think, if we had criteria where we all agreed that there would be certain things that would qualify as a wrongful detention, that could help in the practical—putting solutions in place, to move faster in some of these cases, where we can work together as coalition partners to do certain things.

Senator STEELE-JOHN: Awesome. Thank you so much for your time today.

CHAIR: Thank you, Mr Poblete, for taking time out of your evening to present evidence to our committee this morning. There was a question on notice, sort of, from Senator Ciccone that you may have taken, and the committee would appreciate that responses to any questions on notice be provided to us by Monday 14 October 2024. I would ask that you now disconnect from the videoconference, but you can continue to observe the hearing should you wish to do so, through the livestream on the Australian parliament website.

Mr Poblete: Thank you, all.

WELIAMUNA, Mr Janindu Chithmina (Chith), Student Researcher, Australian National University Law Reform and Social Justice Hub

[10:24]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I invite you to make a short opening statement, and at the conclusion of any remarks I will invite members of the committee to ask questions.

Mr Weliamuna: On behalf of the ANU Law Reform and Social Justice Research Hub, I thank you very much for the opportunity to speak. Wrongful detention and hostage diplomacy is among the most pressing and challenging issues of the emerging international arena. Given this reality, I commend the committee for seeking out the voices and perspectives of young people on an issue that will no doubt come to a head as we grow.

My primary contention is that addressing instances of hostage diplomacy must involve, in addition to diplomatic responses, responses in international and human rights law. This is because the very practice is one that, at its core, violates well established, binding principles in international and human rights law. Therefore, my recommendations largely revolve around how these responses might look, from prosecuting hostage takers under universal jurisdiction to pursuing matters in international courts and tribunals.

I am by no means an expert on hostage diplomacy. I'm only a first-year law student. I haven't yet done international human rights or administrative law. However, my interest in this issue is strong. As a young person I, like most people in my generation, care that the liberal international order is protected from malicious practices like hostage diplomacy. As an emerging legal practitioner, I care for the protection of the domestic and international rule of law. Therefore, I thank the Senate for its interest in the issue of hostage diplomacy and hope that positive steps towards resolving this matter result from this inquiry.

CHAIR: Thank you very much. I will start off with questions and then pass to other members of the committee. And I note that you were in the room when we were speaking to our previous witness, so you'll probably have a flavour of the questions I want to ask you. I note that in your submission you highlight your view that Australia should have legislation to clearly identify incidents of hostage diplomacy and the importance of government using terms like 'hostage diplomacy' when referring to the practice and ensuring that we shine a light on this practice. We talk about the importance of transparency around the practice of hostage diplomacy. But, in your view, how does having that transparent process disincentivise the practice of hostage diplomacy itself? I'm particularly interested in understanding how it disincentivises the practice from the perspective of bad foreign actors who might be otherwise engaging in it.

Mr Weliamuna: Without having a clear definition of what a case of hostage diplomacy might be, I think firstly that it takes away from, as the previous submission revolved around, a response to it in time. What might result is that someone might be detained and there's nothing in the Australian response that suggests that they've been detained arbitrarily or are a hostage. So, responses might not be appropriate, and if you don't have an appropriate response then there's no way of deterring the practice, because those actors just get away with more things than they should be able to get away with. Also, the word 'hostage' has a particular connotation that suggest elements like quid pro quo—that internationally it's a very frowned-upon practice. On the point of deterrence: if we have a clear definition—and if we work with other actors; I mentioned that as well—with having a more international response, like a treaty body or something resembling Canada's voluntary declaration, then it becomes harder for bad faith foreign actors to detain people and get away without incurring some detriment.

CHAIR: In effect, you're saying that, if Australia or any nation clearly sets out in an open and public way what the impacts will be diplomatically on a country if it engages in hostage diplomacy in relation to one of our own citizens, it disincentivises the practice. In effect, you're setting out the punishment that will fit the crime as opposed to having nothing in place, and other bad faith foreign actors are free to engage in that practice knowing that there is no publicly available set of consequences that will flow from that action.

Mr Weliamuna: Yes; in effect, that's something like what I'm saying. My perspective is that, with publicly set consequences, it depends on the particular case. One set of actions might not be appropriate for another set of cases. It also depends on countries; what might be appropriate with country X might not be appropriate with country Y. That being said, there should be some sort of red line that is public or that is implied, in that we will never cross it.

There was a recent exchange of detainees between the US, some European countries and Russia. In that, America and those other countries essentially released people who had been through a fair trial and were convicted of certain crimes. I'm not saying this might be the best response but it might be that we set out a policy

in public that we will never release people who have committed certain crimes. I think at one point they released a murderer; I'm not entirely sure.

Also, you can set out some policy or consequence in public like, 'If you detain an Australian, we will make sure that the response will be not just Australian but a very multilateral response that also brings in other things that other actors might be concerned about'. I think at one point here, towards the end of it, it said something about changing the negotiation space and asserting equal power in negotiations. If it is Australia versus a great powerful hostage taker, we are in a bad position. But if we bring other actors in, and we collectivise our response and say, 'If you don't release the Australian, then it won't just be us imposing sanctions or some other consequence; it will be Australia, the United States, Canada, the European Union, Japan et cetera', then the cost that they know of becomes a lot more significant for them. In a sense, we'll have a stronger position in that we won't have to give up those core values around the rule of law et cetera.

CHAIR: The previous witness went into this issue to an extent in questions from Senator Ciccone, and you've just touched on it now—that, on the one hand, there is a disincentive if we clearly articulate the grounds or the framework we operate within in situations where our citizens are wrongfully detained overseas. On the other hand, you've referenced that there needs to be flexibility within that framework, because the same set of tools is not going to work in all cases. All hostage diplomacy cases are not the same, and different countries engage in the practice in different ways. How do you think we can, on the one hand, develop this framework but, on the other hand, ensure that there is an element of flexibility in it or that it is not overly prescriptive to the point where it impedes Australia's ability to negotiate these cases if that's what is required?

Mr Weliamuna: As to the point of flexibility, flexibility is mainly with regard to a policy response. It's what DFAT does in response to a particular instance of hostage diplomacy. I think that flexibility can exist within a broader framework of what Australia's principles are. If we set out a set of principles, saying, 'Here are our values; we won't infringe upon them under any condition,' there are still ways to work within that particular context. As a very crude example, a country might take a hostage and a condition of their release might be, for example, that Australia deport an ex-citizen from that country who is living here and is a citizen here. It might be someone like a human rights activist.

CHAIR: Yes—someone the other country wants back.

Mr Weliamuna: Yes, and I don't think it's very controversial that we would not do that.

CHAIR: Yes, if we thought that sending that person back would result in—

Mr Weliamuna: Yes. It's morally abhorrent to send them back, and I think we also have things like non-refoulement obligations there. I think that's a particular instance of a broader principle: 'We won't do certain trades with you—under no circumstances.' There are ways to fit different countries and different cases into that, I think.

CHAIR: So it's more about having those principles that underlie how we deal with hostage diplomacy situations clearly set out, rather than a step-by-step guide to how we would manage those cases.

Mr Weliamuna: Yes.

CHAIR: I want to go to the issue that you've highlighted in your submission around appropriately characterising hostage diplomacy. You've used a couple of specific examples in your submission. The first is in relation to the release of Cheng Lei, where the government referred to the case as a matter of detention, making no reference to her being arbitrarily detained or being a victim of hostage diplomacy. Similarly, Dr Yang Jun's case was described as a matter of arbitrary detention, but the government stopped short of referring to the practice of hostage diplomacy. Why is it important to use the right words?

Mr Weliamuna: I think I touched on this a bit earlier. Within internal processes, there is a difference between detention, arbitrary detention and hostage diplomacy. Arbitrary detention exists in a broader variety of settings; I think it's more common, and hostage diplomacy is a particular instance of that. The characteristic which I mentioned here was the element of quid pro quo: the release is contingent upon you doing something. It is important that the policy settings of the executive, and therefore the department, properly characterise it so that there's a recognition of the specific element of hostage diplomacy, as opposed to things like arbitrary detention. That would guide policy responses to a particular setting, but also the word carries weight. Diplomacy is a game of very careful use of words and use of particular words. I think, if you use the word 'hostage', it conveys the severity of the matter. It very clearly sets out that what they're doing is something that's illegal under so many international laws and human rights laws that you yourself are bound by. I think that has an impact in terms of deterrence because it clearly paints them as a bad actor, as opposed to letting them get away with it as if it's nothing.

CHAIR: I have one more question before I go to other members of the committee. This isn't a topic that we've touched on yet this morning, but it's certainly relevant to our terms of reference and you mentioned in your submission, and that is the support that DFAT should be providing to the families of Australian citizens who have been taken hostage overseas. What do you think that support should look like, and are you aware of any jurisdictions internationally that you think are doing that job really well—supporting those families?

Mr Weliamuna: I'll address what Australia can probably do. First off, I think there is a very strong hesitancy within DFAT to publicise anything or to run a public campaign. I understand the reasons behind that, and it is appropriate in many cases. But I think there are some cases where public campaigns can be helpful—for example, in the case of Peter Greste, the Australian journalist who was detained in Egypt. I think the earlier witness mentioned that there's a perception, and rightly so, that in Mr Greste's case he had the ability to run an effective public campaign because he was well connected. He knew the right people and he had the right resources. For DFAT, I think there are cases where it is appropriate to run a public campaign, and that is where you can link it to a very uncontroversial cause—for example, press freedom. In that case, he was a journalist. I think a lot of that public campaign revolved around press freedom.

In cases like that, where it's appropriate, I think DFAT should give the family support for running a public campaign—and that's things like connecting them with the proper individuals who can tailor that message to that government and also increase public pressure—and also give some guidance around this idea of a positive-sum solution. So, at the same time as signalling to that government, 'Here's a public cause; people want this person released,' it's separating it from the noise of social media, which can often be very castigatory towards a bad actor, and rightly so. But, if DFAT is tied to that sentiment then it could potentially derail negotiations. Having some guidance for those families around separating the noise and the actual messaging that the government gets, as well as connecting them with the proper individuals who can run that campaign, is good.

The other thing that I think we don't do enough is give support for dual nationals. I think the doctrine generally in international law is 'not my responsibility'. So, if you're a dual national, we're going to stay away from it. A lot of the countries that do take hostages, Iran and China in particular, don't recognise dual nationality. They just think, 'You were born in Iran,' or 'You have Iranian citizenship. That's it. We don't recognise your Australian citizenship and, therefore, we won't let them give you consular assistance or do anything in that regard.' I detailed in my submission ways that that can be countenanced in international law and why that view of non-responsibility is wrong. Support for those families in particular, because they make up so many cases of hostage diplomacy, is also important.

CHAIR: Thank you. Senator Ciccone.

Senator CICCONE: I'll be very quick. Just picking up from the discussion you just had with the chair: I'm assuming you do acknowledge that any government would have to make an assessment, obviously, about the situation before it and their first principle would be to try to get these individuals home safely. Would it not be the case, then, that running a public campaign or making public comments would also undermine that core principle, about trying to get individuals home safely? Do you accept that principle?

Mr Weliamuna: Yes, it could, but again it depends on the case.

Senator CICCONE: Then is there not a risk that a government's public pronouncement on a citizen's arbitrary or wrongful detention could actually jeopardise one's life, if a government wrongfully started to publicly advocate for an individual without going through much more quiet, discreet, negotiated diplomatic arrangements, as has been the practice for decades as part of government policy? Is that not a much more effective way of dealing with countries like Iran or China?

Mr Weliamuna: Yes, it probably is, and that has been the practice so far and it has been what's more effective.

Senator CICCONE: In light of the evidence we also heard from the Global Liberty Alliance, there's no perfect solution and you have to assess each situation as it comes, but, unfortunately, we have countries around the world who do take our citizens as hostages or wrongfully detain them, because they're not like-minded countries. If they were, to be frank, we'd have much more open and transparent legal processes that would actually allow people to come back in safe arrangements. But, when we do deal with countries who don't recognise our systems of government or our processes, it's very difficult. I think that's one point you were just trying to make: you've got to look at the context. But I think this context is really important as well—that governments have to be careful around these situations and make sure we bring these individuals home.

I also just want to ask you this. Your submission suggests more use of Magnitsky-style sanctions. Is that right?

Mr Weliamuna: Yes.

Senator CICCONE: Do you think there would be any concerns about having greater sanctions whilst we are trying to negotiate the return of someone home in that they might also have the opposite effect to what we are trying to achieve?

Mr Weliamuna: In particular cases it could.

Senator CICCONE: Yes.

Mr Weliamuna: As to the reference to Magnitsky sanctions, I sort of intended it more as accountability and deterrence. While a particular case is ongoing, it might not be appropriate to sanction the hostage-taker. But, in terms of deterrence and accountability, I think they are a good tool. That being said, I think the reference brought forward as well that they should not be overused and nor should they be underused. My understanding is that Australia tends to be quite slow in imposing Magnitsky sanctions in some instances. A lot of the Magnitsky sanctions would be imposed if we followed our international partners, and, even there, we tend to be quite slow in imposing them. It might be good to actually impose them to deter the practice in future and to hold hostage-takers to account, but it definitely might not be appropriate.

Senator CICCONE: I think we are probably on the same page: not while you are trying to negotiate. A very good friend to many people in this place was former senator Kimberley Kitching; she was very strongly passionate about Magnitsky reforms. Thankfully, we managed to get them through the parliament here in Australia.

There was one other thing I was also interested in asking about. When you look around the world, are there any other approaches by governments that you think we could look at adopting? Again, from the discussion we had earlier, the US has a special envoy focused on these kinds of hostage issues. Is that something you think is worth Australia considering?

Mr Weliamuna: I think so, based on what I heard from the witness and based on what I read in their submission. An envoy could be good. I must once again stress that in hostage there must be a whole-of-government or whole-of-society-type response. It cannot just be sanctions. It cannot just be diplomatic policies. Again, I put some stress on having some multilateral responses, in terms of pursuing them in international courts. In some foreign jurisdictions, you might even pursue them through the local courts. I think I referenced a case in Israel, where there's a presumption that domestic law does not contradict international law. On the basis of that, there was a case where the court essentially forced the Minister of Defense to release some people based on that policy being inconsistent with some international laws. So there are different ways. I'm not sure of a particular instance that I might refer to, but there are things like that.

Senator CICCONE: Alright. Thank you and thanks for your submission to the committee.

CHAIR: Senator Steele-John, any questions from you?

Senator STEELE-JOHN: Yes. Thank you so much for your time today and for your evidence to the committee so far this afternoon. I think in recommendation 11 of your submission you highlight the importance of treating dual nationals as if they were solely Australian citizens when it comes to cases of hostage diplomacy. You spoke a little bit about this, but could you please expand on some of the cases that you know of where dual nationals are not receiving adequate government support when wrongfully detained overseas?

Mr Weliamuna: I can't think of a particular example. I'm happy to give it to you later.

Senator STEELE-JOHN: Absolutely. If you could take it on notice, that would be absolutely fine.

Mr Weliamuna: I'm happy to.

Senator STEELE-JOHN: If we could have some case studies—

Mr Weliamuna: Sure thing.

Senator STEELE-JOHN: Excellent. Thank you. You've also recommended the stronger use of Magnitsky sanctions on individuals or entities perpetrating hostage diplomacy. In your view, have there been any examples of Magnitsky sanctions being used effectively by the Australian government as either a tool in securing the freedom of an individual or as a deterrent?

Mr Weliamuna: I did not come across the use of Magnitsky sanctions either as a tool to get hostages back or for deterrence, in terms of hostage diplomacy. I'm sure there are examples in other domains.

Senator STEELE-JOHN: Okay. Thank you. Have you got any examples that come to mind of the use of those sanctions by overseas governments in effectively managing or resolving cases of hostage diplomacy?

Mr Weliamuna: Magnitsky sanctions used by foreign governments?

Senator STEELE-JOHN: Yes. Are there any examples you can give us of the use of those sanctions in deterring or resolving cases of hostage diplomacy?

Mr Weliamuna: None come to mind, but I think, based on what I've read, it is primarily the United States that uses Magnitsky sanctions. I'm happy to get back to you with the particular example, but—

Senator STEELE-JOHN: Yes, absolutely. If there are other examples that come to mind, that would be really useful. I note that you and many other submitters to this inquiry have talked about the crucial role of the family in publicly campaigning for the release of wrongfully detained Australians. My office has been in contact with Desree Pether, who has been campaigning tirelessly for her husband, Robert Pether, since he was imprisoned in Iraq three years ago. So we are very aware of the amazing advocacy that families can do in these kinds of situations. You've recommended that DFAT provide families of hostages support to conduct the public campaigns, as you outlined. It seems to me that part of the reason families are so often instrumental in freeing wrongfully detained Australians is that the Australian government and consular work is often characterised by being too little, too late. Do you foresee a situation where the government process for freeing Australians who have been wrongfully detained overseas is improved to the point where families no longer need to take such a central role in the public campaigning for the release of their families—although, of course, I imagine many would still choose to?

Mr Weliamuna: Just so I'm clear, was the question: do I foresee a time in the future when families will not have to be so involved?

Senator STEELE-JOHN: Yes. You've got it.

Mr Weliamuna: Yes. I think, though, that it's somewhat of an ideal at the moment more than a practical thing that is likely to happen immediately. But if there are more multilateral responses, if there is a very clear process in Australia in characterising cases and if there are adequate, rapid responses with a focus on getting those Australians back then I don't think it will come to the point where families are left in limbo essentially for years in very difficult situations where their family member who is a hostage is likely to be going through really egregious things like torture, forced confessions and so on. I think it's possible, although it's an ideal at the moment.

Senator STEELE-JOHN: Okay. Thank you very much for your evidence to the committee.

CHAIR: Thank you, Mr Weliamuna, for appearing before the committee today. If you took any questions on notice, the responses to those are due back by Monday 14 October 2024.

Proceedings suspended from 10:57 to 11:15

GAVSHON, Ms Daniela, Australia Director, Human Rights Watch [by video link]

CHAIR: I now welcome Ms Daniela Gavshon from Human Rights Watch, who is appearing via videoconference. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I now invite you to make a short opening statement, and, at the conclusion of any remarks, I will invite members of the committee to start asking questions.

Ms Gavshon: Thank you to the committee members for giving me the chance to appear this morning on behalf of Human Rights Watch. I want to acknowledge the traditional owners of the land where I'm joining you from today. I'm on Gadigal land, and I pay my respects to their elders past and present. As I think you probably all know, Human Rights Watch is a non-government human rights organisation that works in over 100 countries around the world, and we seek opportunities to promote and protect human rights and urge governments to hold abusers to account.

Over the years, Human Rights Watch's Australia office has been in contact with Australians who've been arbitrarily detained in Cambodia, China, Egypt, Iran, Morocco, Myanmar, Pakistan, Thailand and Vietnam. We've also spoken with their family members and legal representatives and with diplomats and former government officials. Our submission and my comments today draw on this work that we've done. We recognise that every case is unique and that there is no one-size-fits-all approach to solving the problem of wrongful detention of foreign citizens abroad. Our submission highlights a number of areas for improvement in the Australian government's approach to wrongful detention cases, but our overarching concern is that there's no clear, centralised policy to deal with these cases.

Over the years we've found that one of the major barriers to people wrongfully detained getting the support they need from the Australian government is the lack of a system to immediately identify these cases. In the first instance they're treated as ordinary consular cases, and then, even if a case of wrongful detention is identified, there's no clear process that this identification then activates. It means there's no specified way to escalate cases once they've been identified, no indication of what escalation actually means and no system that's apparent from the outside of how lessons are learnt within and across cases and contexts. In cases where the government has been able to secure a person's release on return, we've also had people who've been formally wrongfully detained and their lawyers tell us that they haven't been provided with adequate rehabilitation or reintegration support. Sometimes this means that people have trouble with basic things like accessing the banking system or other government services.

In our submission, Human Rights Watch recommended the government deliver a clear policy, for that policy to be adequately resourced and for the government to create a senior role to deal with these cases. In countries like the US—I know you've received submissions from the US government, and I know you heard from someone earlier today who was able to speak to that system—having a specific high-level person responsible for these cases of hostage diplomacy has had a positive impact. It would help in securing the release, in strategising and in communications and collaborations with families, and this same official would then also be able to assist with rehabilitation and repatriation. A senior person in a specialised role can also assist the Australian government to leverage international mechanisms and relations with other governments to press on this issue. I see that the Canadian government also provided a submission on this, and obviously you know about the group that Canada coordinates. But it's also things like encouraging families or lawyers to submit cases to the UN Working Group on Arbitrary Detention and having this person able to participate at the highest level in multilateral working groups.

Finally, I want to point out that, while the terms of reference of this inquiry refer to wrongful detention as it pertains to Australian citizens, these same oppressive governments that wrongfully detain Australian citizens also often arbitrarily arrest and detain their own citizens. When we speak to Australians who were wrongfully detained and subsequently released they consistently recall former cellmates and often others they met in prison, and their primary concern is how they can support those people and how those people can be freed.

So, we do believe that any advocacy that the Australian government does on fair trial rights and ending the practice of arbitrary detention of its own citizens should be done within the context of larger advocacy on ending the practice of wrongful detention regardless of someone's citizenship. I'll end by emphasising our primary recommendation, which is to develop a policy on wrongful detention and have a senior point person on these issues.

CHAIR: Thank you very much. I'll kick off with questions. You referenced the need for the government to have a clear policy to manage cases of wrongful detention and hostage diplomacy. What should that policy look like? And do you think there's a requirement for that to be legislated?

Ms Gavshon: That's a good question. I think legislation always helps in determining it, because it then gives it the longevity and the appropriate scrutiny. I think it should certainly be defining what wrongful detention is. It should certainly define how cases are determined. It should certainly be looking at how to have a whole-of-government approach—looking at where different agencies are relevant, being able to bring those together and mandating that. I think part of it as well should be looking at a system for developing lessons learned across contexts and mandating that that's part of the process, because, when you have all these different cases, a lot of what we hear is the same thing from different people, and I can't imagine that DFAT's not hearing it as well. So, where is the point at which you're actually taking this and progressing and improving the way you deal with the system?

Also there should be legislation or really firm policy around it—putting someone in this role and resourcing this role—because, as I said, when you're participating in multilateral fora with different countries that have experts on this, it's really important that Australia has the expertise as well and can participate in these discussions. And I think you've heard this from other people, but on one hand it's about the individual cases and on the other it's about the foreign policy aspect. So, being able to coordinate with other governments and see that there's a bigger-picture issue as well as the individual issue is I think really important and would need to be teased out in any policy or legislation.

CHAIR: Thank you for that. I think your first point is a very pertinent one—around the need to have a clear definition of what arbitrary detention or hostage diplomacy looks like and then being able to categorise a case within that definition. What should we be considering to ensure that any definition correctly identifies somebody who's been arbitrarily detained?

Ms Gavshon: We didn't go into definitions in our submission. Obviously there's the UN working group that defines arbitrary detention, so I would certainly be looking to that. I think one of the other things is that there have been determinations made by the UN working group on arbitrary detention that Australian has not followed. I'm talking particularly about the case of Robert Pether, the man detained in Iraq. My understanding is that it has been determined as an arbitrary detention case by the UN working group but not necessarily by the Australian government. So, I think it is important to be able to clearly identify the circumstances in which the definition is consistent with the UN one and, if it differs, why. I think it's more about that than about us necessarily saying what the definition should include.

CHAIR: In your submission you point out that, from the engagements you've had with various Australians who've been unlawfully detained, those cases have been treated by the government as consular cases. Is that right?

Ms Gavshon: That's our understanding, yes.

CHAIR: So, again, from your knowledge in dealing with those cases, what is your understanding of what needs to happen for Australia to identify that a person has been unlawfully detained—that it's not just a run-of-the-mill consular case—and, further to that, to then ensure that appropriate support is provided to that person?

Ms Gavshon: I'd say there needs to be a specific office that deals with it, whether it's within DFAT or somewhere else—that actually looks at the individual cases, and then people could activate it. A lot of the time we're dealing with people who have had no contact with DFAT or with government in any meaningful sense, so families don't actually know how to activate anything. So it becomes up to desk officer, whether it be that there are specific markers that are flagged, or, in any case that is brought to the attention of DFAT, they will look for whether it's a case of arbitrary attention. Families themselves don't know how to define it; they just know it's happening to the individual concerned. They can describe that situation, but they're not looking at the legal definitions.

So having the onus on the department, the government or a specialised person to look at the cases that come forward and do raise flags—and I think it would be required to be an internal system that does that. But, at the moment, the problem with the lack of definition is that cases fall through the cracks, so it requires someone to notice it for it to actually be flagged and then be taken on.

CHAIR: In a similar vein, I note you said this in your submission, on page 3:

When Human Rights Watch staff have spoken with the families of people detained, or former detainees on release, they confirmed that the Australian government has given them the same instructions not to speak publicly.

Can we drill into the impact that has on those who have been wrongfully detained and their families. Also, can you shed any light on whether or not you think that's a useful position for the government to take, not just for the detainees themselves but also for the awareness of the broader practice.

Ms Gavshon: It's a tough one. I know you've got a lot of submissions from people who have been wrongfully detained or from family members, and I think they'll be best placed to speak about the individual impact it has on them. It's tough. We do not suggest that there's a one-size-fits-all approach. We don't suggest the government should be going public in every situation. But what we have seen is that the presumption seems to be in favour of silence, of keeping it quiet, not a case-by-case approach. It seems that the default is no publicity, and then, if it gets really pushed or, ultimately, the families push for it, it happens.

You do hear, from a lot of people who have been detained, the frustration that they feel and that only at the moment their case gets publicised does it actually create the impetus for some sort of political movement or stronger engagement. We certainly saw that in Kylie Moore-Gilbert's case. For the Pakistani man Hasan Askree who was detained in Pakistan, his family felt it was very much that only at the moment they went to the media did they get the attention that they needed. There are obvious downsides to having publicity when there is a very sensitive negotiation underway, but I think that that needs to be looked at very carefully and regularly assessed. It can't be that there is a general blanket, 'Don't speak to the media.'

Families are out of their depth in these situations. This is a new situation for any family that finds themselves with a family member wrongfully detained overseas. They don't know what's happened in the past. They are entirely reliant on the department and sometimes NGOs like us to give them support or guidance. When they're hearing from the government, 'Don't speak,' they're listening. They don't have the tools or the experience to know that actually it needs to be attenuated to the circumstances.

CHAIR: I don't want or need you to go into specific examples here, but at Human Rights Watch have you experienced that family members of Australians wrongfully detained overseas will come to you for support and assistance when they don't feel like they're getting that from government?

Ms Gavshon: Yes—regularly. We are very careful; we do not go public on something of our own accord. We will only go public on something when it's already in the public domain or if we've been specifically asked to. We'd have to look into the case ourselves, but, yes, we do get a lot of people incredibly frustrated, at their wits' end, saying, 'Please, can you help us?'

CHAIR: What's Human Rights Watch's view on the use of sanctions, particularly on the use of Magnitsky sanctions against individuals who partake in hostage diplomacy?

Ms Gavshon: We definitely encourage the use of sanctions. You'll see that we recommend that a lot more than the government uses that as a tool. One of the recommendations we have is that the government should use the existing sanction regime to sanction officials and individuals who are serious offenders of arbitrary detention and hostage diplomacy. The other thing we find is the importance of coordinating those sanctions with other affected countries. I think in these situations, especially when it's political, creating the combined leverage with other countries, especially when you're dealing with countries that are consistently doing it, is important. Sanctions are a really important tool. One of the things that Human Rights Watch is about is raising the cost of committing human rights violations, making it too uncomfortable and too difficult so that states actually don't want to do it. That's something that the Australian government needs to think about in terms of sanctioning officials in the space of hostage diplomacy and making the cost of it too uncomfortable and too difficult for states to do.

CHAIR: I think that is a really important point when it comes to the deterrence factor around hostage diplomacy. We were talking this morning about that fine balancing act of ensuring that there's a framework in place that underlies the principles that Australia might engage with, with other countries in situations of hostage diplomacy, and clearly defining what hostage diplomacy is and how we determine if someone has been wrongfully detained or is being used in a hostage diplomacy situation—there's obviously not going to be a one-size-fits-all approach. And it would also be about recognising, as I think you've said in your comments here today, that there are going to be some instances where government will not want to air the entire case publicly for various reasons.

The deterrence factor is—I'm paraphrasing you a little bit—making the cost of hostage diplomacy so high that other countries don't engage in it. That goes to having that clear framework and having that clear policy and not necessarily clearly articulating how Australia will sanction or diplomatically engage, or whatever the consequence might be in hostage diplomacy situations, but at least clearly setting out the options that it considers available to it in a situation where someone has been taken hostage. Is that the sort of thing you're talking about in terms of increasing the cost?

Ms Gavshon: Absolutely. It's about knowing what the levers are. That's why it's important—going back to this idea—to have a central role, a senior person, who actually is able to determine this. The deterrence aspect is a

very nuanced foreign policy that requires a very nuanced foreign policy approach. It won't necessarily work to coordinate sanctions with every other like-minded country on every country engaging in hostage diplomacy. There may be other levers that are better to pull for a different country. Knowing what the levers are, knowing that they're accessible, and knowing you have someone who has expertise in this area are crucial to be able to pull the right levers at the right time.

CHAIR: On the sanctions point, and ensuring that Australia has the ability to act with like-mindeds to appropriately sanction regimes that are engaging in wrongful detention and hostage diplomacy, how can we best ensure that we have alignment with like-mindeds to be able to do that? And is having the same definition as those like-mindeds of who has been wrongfully detained something we have to consider when ensuring that we have that alignment?

Ms Gavshon: Yes, that's an interesting question. I haven't gone in detail into the different definitions, so I would be reluctant to say Australia should be consistent with them without actually knowing what the content of those other ones is. Having harmony is always useful. To the extent that they can be harmonised, I think that would be good. But I don't think that's a barrier to having coordinated sanctions.

I think the barrier to coordinated sanctions is actually the different foreign policy approaches to different countries and maybe the different levers that Australia wants to pull at one time compared to another country. I think there should be, certainly, a presumption—and sometimes other countries will put sanctions on that Australia doesn't agree with or that Human Rights Watch doesn't agree with. It's not to suggest that we think that everyone should be sanctioned all the time, but having that conversation, and having that as a lever that you use, coordinate with countries on and take a coordinated approach on, has a significant impact when acting together.

CHAIR: Thank you.

Senator CICCONE: Good morning. I want to follow on from the conversation with the chair. I'm not sure if you've had a chance to look at DFAT's submission to this inquiry or not—you have. They detailed quite a bit of information. One of the areas I want to get your perspective on is the establishment of the Complex Case Committee in 2023. Do you think that's been a good way in terms of how government has looked at coordinating the approach that you're arguing, that's needed by government, in terms of how we deal with these cases going forward?

Ms Gavshon: Everyone who works within DFAT has good intentions and is working hard and trying to work on difficult and intractable situations. I acknowledge the difficulty they face in the work they do and how hard they try and work. When I read that submission, it didn't feel to me like that the experience we have, based on the individuals we talked to, is consistent with the way the policy is on paper. I need to look at it in more detail, specifically at the complex-cases body that is referred to. But my sense generally is that the policy is not operating in practice to the extent we want it to be operating or to the extent it's having an impact on the families and the people that are affected.

Senator CICCONE: But the establishment of this committee that deals with very complex cases is welcomed; correct?

Ms Gavshon: Absolutely.

Senator CICCONE: You spoke of the need for a senior official to be appointed. I don't know if you heard, earlier this morning, one of the witnesses from the United States on how the US has a special envoy who has the ability to speak to the President, the Secretary of State and other officials within government. In your experience, is that something worthwhile for Australia to look at?

Ms Gavshon: That is something we would encourage and endorse. Speaking to our colleagues in Washington who have regular contact with officials there—and, similarly, we speak to people who have been wrongfully detained and released—having that role has been an enormous comfort to families and allows for the highest coordination with the highest levels of government. It's got a direct line to the President, or close to. With families, that role has a significant impact. It also coordinates rehabilitation and repatriation. A lot of what we speak about with families is that gap they face, or individuals in that gap. Having the point person that consistently does that, that you know can negotiate at the highest levels for you, is a tremendous support not only for the government but also for families and individuals.

Senator CICCONE: I didn't get time to ask about that particular aspect with the gentleman from Virginia. It sounds like the special envoy is able to deal with families and provide that other support; that is really important. Beyond that, in light of what this government is trying to do at the moment, with trying to reform and have these new processes in place, are there other aspects around the globe you've looked at that you think have practical impact in trying to help bring home some people who have been wrongfully detained?

Ms Gavshon: The other example I'm somewhat familiar with is the Canadian one. They have put in place a specific person. It's a bit different from the US one because it's not resourced; I don't think it's got its own department or unit. It's just a person who is designated—I can't remember the exact name, but I think it's the Senior Official for Hostage Affairs. It's a consular role. It's a good step in the right direction. It hasn't gone as far as the US, and I hope Australia would consider going further because resourcing that role is really important.

Senator CICCONE: I note in your submission that you argue the case that careful, quiet diplomacy should not be the default position. From some of the evidence we've seen this morning and from other submissions I've read, my only concern is that having the public attention might have the reverse impact. You might actually set someone up for failure or not allow governments to negotiate outcomes in order to get them released. Certainly, not every case is similar; there are always variations between cases. You've got to look at the context for each of the cases before us. My only concern is that having a public campaign or a public voice on some more complex matters with certain countries can actually have a detrimental impact. I just wanted to see whether we still need to look at: is it still not best practice to have careful, quiet diplomacy as a starting point for governments? And then if there is a need to have pressure—fine. But I think, as a starting point, that should be the best approach for any government.

Ms Gavshon: I think the best approach is a nuanced approach. I don't think there should be an approach that is consistently, 'We go public,' or, consistently, 'We don't go public,' and I don't think the approach is: 'This is how we start; this is how we have to end.' The approach has to change, depending on the circumstances, depending on what is happening on the ground and depending on the country that you're negotiating with. It feels like, from our experience and the experience of the people we work with, the default setting is to be quiet and to be quiet until the family itself has enough of it and just says, 'No, we're going to actually disagree with you and do this.' It doesn't feel like there's ever a point at which the department says, 'Alright; this is the time to go public,' and there absolutely might be cases where they have done that. But I think a more nuanced approach is what we are calling for, and I think that that's where, again, a senior person who is responsible for this would be able to then attenuate, depending on the circumstances. I certainly think we have seen that there are many cases that DFAT is involved in that the public haven't known about and still don't know about, to this day. They do a lot of the work on bringing people home in these situations. But certainly what we have seen is that sometimes it is exactly the public media attention that has given the government the sort of push it has needed to act more strongly itself, because of the public pressure, in negotiations with the foreign government. It's certainly not one-size-fits-all, but we would encourage a nuanced approach.

Senator CICCONE: For me, as probably for you or anyone else, our No. 1 principle would be to try to make sure we bring these people home safely, and anything that jeopardises that, we just have to be very careful about. Unfortunately, as I said this morning, we're not dealing with like-minded nations; otherwise, we would have these much more open and transparent processes in place. Unfortunately, certain countries decide to take matters into their own hands and deal with individuals differently than we would like.

Were there any particular cases that you had in mind where you saw that public campaigns do work? I always feel that there might be years where there is more quiet diplomacy that is actually getting to an outcome, and, in the last year or two, there might have been a public campaign but individuals have not known what's happening for the last, let's say, eight years, as to what has happened privately, and so think that the public campaign is what has resulted in their release, when in actual fact it has been drawn out for such a long period of time that there has been a lot of good, quiet diplomacy going on in the background. I'm just interested to see if there have been any cases that you could provide to the committee where a public campaign has actually worked.

Ms Gavshon: As you say, it's hard to know what the exact thing is that resolves the case. It's not that the media is happening in isolation from diplomacy efforts. But we have seen, from the cases of Cheng Lei and of Kylie Moore-Gilbert, that public attention certainly appears to have helped their cases and appears to have put pressure on the government to force the government into pushing harder on their cases. I'm sure the Askree family would certainly say that going to the media helped solve their case. So I certainly think there are cases where we can see that public attention appears to have been the very thing that has upped the ante to force a solution.

Senator CICCONE: Thank you so much for today. I will hand back to the chair.

CHAIR: Senator Steele-John, you have the call.

Senator STEELE-JOHN: Thanks so much for your evidence to the committee so far today. You've stated in your submission the view that it would be useful to establish a senior role within the Department of Foreign Affairs and Trade or the other relevant government departments basically for senior coordination and leadership around these types of cases. We've heard today in evidence the description of the role of the US special envoy for

wrongfully detained persons and we've heard specifically from the Global Liberty Alliance about that particular role. In your work as an organisation, have you come across similar senior positions in other countries?

Ms Gavshon: Yes. There is the recent Canadian one, which is the senior official of hostage affairs. That one, as I said before, seems to be a bit different. It's not a resourced role; it's a role that, as I understand, is given to a senior government person. So it's good to see there is a central person, but I think the US model, where it's actually a resourced, more robust role with a more specific mandate seems to be a really strong one.

Senator STEELE-JOHN: Okay. In your view, how would such a senior role, as you've suggested, support the streamlining of Australia's processes for advocating for wrongfully detained Australians? I know you've touched on it a little bit in your evidence so far, but, if you would like to expand around it, that would be really useful because that's one of the key recommendations we're considering as a committee.

Ms Gavshon: One of the things that we hear a lot from families—and I'm sure you've seen it in submissions and will hear from other people—is the feeling of being passed around between different consular officials and the time often lost in that pass around. We've even heard from people that a consular official was visiting them regularly in prison, the official was changed over and the new person arrived, and they didn't know what you could or couldn't bring into the prison. That led to them not being seen, and they needed to get up to speed. There are really small things like that where I think that, if there is a centralised person who actually has expertise—centralised learning where everyone in the department who is working on these cases actually understands what the different limitations and criteria are. Often families have said to us that they feel that they were given a desk officer or had been assigned someone and then, six week later or three months later or six months later, that person's position will change, and then they have to get someone up to speed again. That is a big frustration that families feel, and there doesn't seem to be continuity. That's one thing that I would hope a special role or senior person would be able to coordinate within the department.

I also think that, in terms of expertise in the issue of hostage diplomacy, for a person who is at the senior level, as I said before, it's really important to attenuate the approach depending on the country, depending on the circumstances, depending on what other negotiations are going on. If you have a senior person who actually has expertise in this, they can have a more specialised and sophisticated approach to how it is dealt with. Then they have access to the highest levels of governments not just within Australia but internationally. When you go to these multilateral fora where you've got different countries there talking on the issues of hostage diplomacy, the person representing Australia as an expert who has a deep understanding of the issues as opposed to different people who would have that in their portfolio for that moment.

I think those are things that are really important. The other thing that's important is the rehabilitation aspect. I think that, certainly in the US, we know that this person is responsible for rehabilitation and overseeing that coordination. If you are wrongfully detained overseas on a false, trumped-up terrorism charge and then come back to Australia, there are challenges around opening a bank account, because the Australian bank might not appreciate that that was a trumped-up terrorism charge. It's the little things that people need to navigate and, if you don't have the expertise or don't have the lawyer who is there to help you or someone tasked with helping you figure this stuff out again, I think you fall through the cracks.

I go back to the beginning and identifying these cases. I think it really depends on somebody noticing these cases and somebody getting attention for these cases. If you have a special role or specific role that actually is looking through the lens of wrongful detention, they will more readily be able to identify the cases and there will be less chance of them falling through the cracks. Those are a lot of reasons I just gave you. I think they are worthwhile.

Senator STEELE-JOHN: Yes, indeed. Thank you for that. Could you also expand on whether you believe that having a dedicated team within DFAT to work on these types of cases would improve the likelihood of a positive outcome both in terms of the ultimate resolution of the situation but also the experience of families and communities involved in the case. Obviously there's the question of the envoy position, which you've just answered very fulsomely, but I was looking more for the value you would see in having a dedicated team within DFAT as well.

Ms Gavshon: I think there are different views among people about whether it should be in DFAT or in a different department, and if in a different department which it should be. Those details are not things I'm particularly concerned with—although I note that it does require a different department, not just the DFAT offices, to address some of the issues that come up. So I think the whole-of-government approach is important.

But, yes, I do think we need to have specific staff that are tasked with dealing with this, because I think that when you have expertise you inevitably become better at what you do, right? You understand the issues more

deeply. Families don't experience this feeling of handover, or if there is a feeling of handover—inevitably people will change roles—there's a clear process for the handover of the case. There's also the opportunity to make sure that people have trauma-informed training on how to deal with these families, how to interact with them. A lot of people have said to us that they felt the person wasn't particularly compassionate or didn't really understand. So I think, if you have the specialised expertise, from the family's perspective you've got better continuity of information or better systems for continuity of information, you've got better understanding of the issues and you've got better opportunity for people who are trauma informed to be working in the area.

There was one other point I was going to make which has escaped my mind. Yes, it's gone!

Senator STEELE-JOHN: One of the challenges that we're having is with policymakers in this space, particularly in relation to this question of a dedicated capacity but also in relation to the question of the role of public campaigning—and I know you stated in your submission that Human Rights Watch believes there is a role for a public campaign in certain circumstances. One of the challenges is that government and government departments potentially have a vested interest in not admitting to the role a public campaign may or may not have played in an outcome because it's rather embarrassing to have been forced to do something by a public campaign rather than through your internal decision-making. At the same time there are also cases where quiet diplomacy has moved a case forward and then a public campaign has brought it to fruition. So it's challenging to know the role of public campaigning versus internal diplomacy, because everybody has a bit of skin in the game on that one. Can you identify a case of arbitrary detention where you believe it was a public campaign that really made a significant amount of difference? The case of Julian Assange is very much in the public consciousness still, but there may well be others.

Ms Gavshon: Obviously the Julian Assange campaign was global and very effective. I mentioned before that I think Cheng Lei's case got good media. She was released just before the Prime Minister went over to China. I think it was clear that there was a lot of pressure from Australia, from the people of Australia, from civil society and from her family that this was an important thing to be able to achieve before he went over there, so it does feel like her case definitely benefited from media attention. I think the case of Chau Van Kham—the Vietnamese Australian man who was in a Vietnamese prison—probably benefited from some public attention. Certainly Sean Turnell's one would have increased pressure on the government. There was the Kylie Moore-Gilbert case. I think there are a number of different cases. I mentioned before the Pakistani man Hassan Askari. His family certainly believe that public attention supported him getting released.

So I think there are a lot of cases where public attention has precisely been the thing that has pushed—sorry, I should have mentioned the case of Hakeem al-Araibi, who, in November 2019, although he was a recognised refugee and permanent resident in Australia, was detained in Thailand on a red notice. That case is actually a useful one to look at in terms of the pressure. As a football player, there was a lot of collective action from athletes, different governments, NGOs, and UN agencies. The public pressure behind his case was enormous. I think that that one is a great practical model for where speaking out publicly and consistently was actually very effective, so that is one that certainly should be looked at as a precedent. I think in that case as well Australia did speak out publicly, which was great—and surprising, I think, to the Thai government. I think there were threats of retaliation from Thailand, but they were never specified or substantiated and they never eventuated, so I think that that's also something to keep in mind. Sometimes it is not going to lead to the ramifications that the government might fear. Certainly, speaking out publicly in Hakeem's case did have a very significant impact.

Senator STEELE-JOHN: Okay. Thank you. I'll put this last one on notice and then I'll pass back to the chair. Would you be able to provide on notice a couple of examples of those types of instances you just outlined where public pressure made the difference and what you, as an organisation, believe were the common factors in those cases—because I'm trying to get to the bottom of the circumstances in which public pressure makes a difference—and what, in your organisation's view, was the governmental blocker, if you like, on our side, or on the other country's side, that was cleared by that public pressure? If you could take that on notice, that would be great. I'll pass back to you, Chair.

CHAIR: Thank you very much, Senator Steele-John. I think that's all from committee members for today for you, Ms Gavshon. I note that you took a question on notice, and we would appreciate a response to that to be returned to the committee by Monday 14 October 2024. Thank you very much for appearing as a witness today.

DANES, Dr Kay, OAM, Private capacity [by audio link]

[11:57]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Before we continue, is there anything you wish to add about the capacity in which you appear today?

Dr Danes: I'm appearing as a human rights advocate and survivor of arbitrary detainment.

CHAIR: Thank you, Dr Danes. I now invite you to make a short opening statement, and at the conclusion of any remarks I will invite members of the committee to ask questions.

Dr Danes: I'd just like to open by saying that I'm very pleased and honoured to be attending this Senate committee hearing. I'm very grateful that the Australian government may be finally willing to officially recognise Australians like me and others who were wrongly and arbitrarily detained overseas. I can personally attest to the fact that arbitrary detainment is terrifying. I would urge you to imagine for a moment that you are working overseas when government forces suddenly come into your office, drag you out onto the street, throw you into a car, drive you to a secret location where you are held indefinitely in a tiny cell without food, water or medical care. You're cut off from the rest of the world. You're cut off from anyone who can help you. You're subjected to torture in an attempt to force a false statement to an invented crime, and you are stripped of your dignity and rights. You struggle every day to survive inhumane conditions. This happened to me, and it can certainly happen to you.

Because of this ordeal, I am no longer eligible, along with other people like me, to travel under the Australian visa waiver program, despite my more recent employment where I travelled on a diplomatic passport, having met the criteria for the most stringent government security vetting protocols both foreign and domestic. Instead, I'm forced to live with a label of 'moral turpitude', which is considered to be conduct contrary to community standards of honesty, good morals or justice. And the label persists today, despite the fact that my dedication to international humanitarian service, social justice and human rights is recognised by the Australian government and international organisations and that I'm also the recipient of the Medal of the Order of Australia, Rotary International awards, Australia Day honours and awards and other notable awards for my service to humanity. None of these accolades or security clearances can spare me the indignity of what I must face whenever I seek to travel overseas as a common tourist. I therefore appeal for your compassion to advocate for those of us who have faced such injustice that, even with the offering of a presidential pardon, which was the case in our case, there is no relief.

CHAIR: Thank you very much. You spoke in hypothetical terms, I guess, about what the experience of an Australian detained overseas could be like, but I was hoping you could briefly outline for the committee how you were detained and your experience as someone who's been unlawfully detained.

Dr Danes: Absolutely. Basically, my husband and I at the time were working in a foreign country, in Laos in particular, providing security services to the foreign investment community there, including the embassies. The secret police came and abducted my husband from his office with no arrest warrant or any opportunity for him to call the embassy. They just simply took him to an undisclosed location. I discovered this, and I immediately alerted the Australian embassy. At the time, I was on my way home. The Australian embassy said that they would go and try to make representations to seek out where my husband had been taken to. We had a rough idea of where he'd been taken. They couldn't find him, so they then came to the border to escort me and my two children out of the country. The secret police detained me at the border, and I was separated from my children. The Australian consular official took carriage of my two children and arranged for their evacuation back to Australia. Once that occurred, I was taken to an undisclosed location where, along with my husband in separate conditions, I was subsequently detained for almost a year.

That's basically the outline. There was no arrest warrant; there were no procedures or due process followed as you would expect in a detainment, in an arrest. We were simply abducted.

CHAIR: So you were never charged with anything?

Dr Danes: No. We were taken in and put into a secret prison camp. At the time, it was home to 100 prisoners, of which 58 were political prisoners. It was very, very difficult to get any communication out, or in, over the next couple of months.

CHAIR: I'll get to the communication point in a moment, but how old were your kids when they were evacuated?

Dr Danes: My son was seven years old, and my daughter was 10.

CHAIR: Oh, my God!

Dr Danes: DFAT organised their flights home to Australia as unaccompanied minors, and they returned home to my parents, who lived in Brisbane, and to their sister, who was actually continuing her studies in Australia. It was very, very traumatic for the children to be subjected to that sort of detainment. There were 30 secret police who surrounded our car at the time. They had their guns out. It was completely distressing.

CHAIR: I can't even imagine what that would have been like or for you, as parents, to be separated from your children. Obviously, it was wonderful that your children were able to be safely evacuated to Australia, but to go through that process of separation must have been terrible.

Dr Danes: Indeed. I have to say that we're talking about 23 December 2000. So the day they flew home to Australia was for Christmas Day, my mother's birthday and, of course, the birth of Christ and Christmas celebrations. It was very traumatising. My husband had been in the Defence Force and was still serving at that time. He was working in Laos with approval from the Defence Chief, but he had been 20 years in the military. He had gone away on numerous deployments, but the children had never lost both parents at the one time, and not to see them for almost a year was very, very disturbing.

CHAIR: At what point did the Australian government recognise that you had been unlawfully detained?

Dr Danes: We provided security to the Australian embassy, so the embassy actually recognised our status long before the Australian government did. It was thanks to the ambassador, Jonathan Thwaites, and senior consular officers like Robin Hamilton-Coates, Louise Waugh and others—they made very early representations, practically from the outset, that this was not a typical case. They alerted the then foreign minister, Mr Alexander Downer, and the then Prime Minister, Mr John Howard. It wasn't, though, until my parents went to the media that things started to really take off, and the government was more encouraged at the time to say, 'Okay, we need to deal with this as a complex case.' They referred to it as 'a private matter' to the public, but they confirmed to us that they believed that we were being held hostage.

CHAIR: That's interesting. Twenty-five years ago, I was not reading the paper religiously, I must apologise—

Dr Danes: Me neither.

CHAIR: But, in the reporting at the time, was all that public commentary basically saying that this was not a case of you and your husband being taken hostage; you'd been detained overseas for seemingly no reason?

Dr Danes: The people that were detaining us were quite clever. They were secret police. They had an agenda. They were trying to seize control of a lot of the foreign investment projects at the time. So they fed a story to the media—who were quite willing to run the story without having access to us, or to anyone else, for that matter—that we were gem smugglers, which was just an incredible story. But the media picked it up, and that was the narrative that ensued, to the destruction of our reputations. My family were subjected to that allegation: 'Your adult children have been accused of smuggling sapphires and gems; what do you say to that?' They landed on my father's doorstep—200 journalists at the front door of my father's property—saying, 'Can you answer? Can you do a "please explain"?' It was very difficult to get the actual details of the case out because, once the media got hold of that narrative, you couldn't undo the damage that was done. That is a big piece of it.

Eventually, however, the team that were engaged on our behalf started to trickle-feed information. My father in particular did a great job of just coming out the front and giving the media weekly updates as he could, so that they could begin to understand. 'Hang on a minute; this is not a criminal case, despite what the detaining authority has put to the Australian public,' because in this particular case there were all the criteria of arbitrary and wrongful detention, which activated a whole-of-government approach, albeit behind the scenes, with special envoys engaging and, even at the highest level, the Governor-General engaging.

I've listened to some of the commentary of some of the other witnesses on the question concerning whether to go to the media. In some cases it's necessary, but it can be quite a bit lion tamer trying to keep the wild animals in the cage.

CHAIR: So, to be very clear, it was the Australian media that accepted the story that was being put out by the police in Laos that you were a gem smuggler? That was the story that was being promoted locally, here in Australia?

Dr Danes: Yes.

CHAIR: It was 25 years ago, so it's perhaps difficult to go back in the time machine to exactly what was happening around that time. If that were to happen in this day and age, I assume some good, hardworking journalists would call up the department of foreign affairs and ask them whether the government had any view on

a situation such as yours. Do you know if that happened at all when you were—I won't say 'put under arrest' because you weren't charged with anything—locked up?

Dr Danes: Yes. I know the ABC, in particular, went to the government and said, 'Do you have a response?' It is documented in the public domain. The government would issue a generic response saying: 'We're aware that the Danes have been detained in Laos and we're not aware of the reasons for that detainment. But we are working to offer consular assistance to the Danes.' It was a rather benign response. The ambassador would meet with us separately because my husband and I were not allowed to be together in any capacity for about six months, and we would hear snippets on the news as a way to hear what was going on. We would hear the news talking about us, and a lot of the political prisoners would say, 'Why doesn't your government stand up and say publicly what it is? You're being held hostage.' I had to explain that that's not the way our government works, that they're all about diplomacy because Laos enjoys a 50-year bilateral trade agreement with Australia and that's the priority here.

It's very political at the onset of all these cases and those since that time. I know that DFAT and the government have learnt a lot about ways of dealing with families, prisoners and detainees, but it's still not enough, because the damage that is done in those early instances of detainment requires immediate analysis and determination of whether you are wrongfully detained or you are a typical criminal civil case.

CHAIR: In terms of your family back at home, I think you mentioned that your father went to the front door and there was a swarm of journalists outside asking him questions about your situation. Before that, did the government at the time make any contact with your family to alert them as to what had happened to you and provide any support locally? At that point in time, when the media were swarming your parents' property, was that the first they basically became aware of it beyond having spoken to you?

Dr Danes: The government did contact my parents to let them know that we had be detained overseas and that they were in the process of providing support to us. I believe they assigned two case officers to my parents who were looking after our children. These were two very senior diplomats who were very experienced in this sort of thing that they had brought out of retirement, so that was the initial contact that my parents had. I learnt that my parents had, in those days, experiences of extreme frustration with not being able to get much communication back from the government. To be fair to the government, there wasn't a great deal of communication that could be sought because we were detained and not offered regular consular access, so it was very difficult to establish that communication in the early days. But, objectively, there was a strong willingness once my father's federal member of parliament Mr Con Sciacca advised that my father go to the media and that would get the government moving a bit more diligently, and, indeed, it did.

CHAIR: Dr Danes, I'm just going to pass the call quickly to Senator Ciccone. I do have more questions for you, but I know he has to run in a tick, so I'm just going to let him ask a couple.

Senator CICCONE: Thanks a lot, Chair. Hello, Dr Danes. I was about to ask if you'd been in contact with your local member, Con Sciacca, who's no longer in this place. I was wondering also whether you or your family had any engagement with the then foreign minister, Alexander Downer, or other members of the Howard government, considering it's now around 25 years since you went through the ordeal.

Dr Danes: Yes. Senator, it's such an honour to speak with you, and I appreciate that your time is precious. Mr Downer actually flew to the little town of Birkdale in Brisbane, where my parents lived at the time. He wanted to personally come to their home. He brought a lovely encyclopedia and a world map to give to the children. They thought that was quite funny. They said, 'Doesn't the foreign minister know where Laos is?' It was a bit of an icebreaker. All jokes aside, he did make the effort to go to my parents' house and to reassure them personally that he and Prime Minister Howard and senior diplomats were working diligently on the case, and for that I'll be eternally grateful.

Senator CICCONE: Yes. Certainly a lot has changed on how we handle these matters, it's fair to say. Back then, what support did you or your family receive after your detention? How is this best facilitated between the family and the support from government?

Dr Danes: There wasn't a whole lot of support following. We came home, and it was kind of like, 'You're home now; get on with your life.' That was how it was back in the day. That came with a lot of implications because I wanted to return to work in the security sector. I now have a criminal conviction, and according to Queensland legislation you cannot hold a security licence if you have a criminal conviction. So I had to go back to Mr Downer and ask him if he could write me a letter that would suffice for the appropriate department to issue the licence, which he did. But I feel that it was only a bandaid.

The real detriment came later, when I attempted to travel as a tourist overseas, as I said in my opening statement. I no longer qualify for the visa waiver program, so every time I travel—I believe Peter Greste has also

made this remark—we're required to disclose that we were taken through the judicial process of that country and given a conviction in order for that state to save face, and then we were diplomatically processed out via presidential pardon. To this day, it causes me problems, and it's going to cause me and many other Australians problems again in 2025, when the UK and Europe and other countries sign up to this new process where you have to declare your convictions. It's maddening.

A recent example is when I went to the United States. I sought a tourist visa and I was denied, even though I had previously travelled to testify in US congressional forums in 2002 and 2009. I had to call on about seven senior officials in the Australian and US governments—including the former prime minister Kevin Rudd; Barnaby Joyce; Minister Penny Wong; my local federal member, Henry Pike; Senator Simon Birmingham, who was tremendous; former ambassador Douglas Hartwick; former consular staff who were involved in our case; and a lovely woman, Tricia Martino, from the Consular Operations Branch—to make representations on my behalf to the US consulate and say, 'Hey, we don't believe she's a criminal; give her a visa.' It's so frustrating to be subjected to that and to be told you are not an upstanding person to qualify for the visa waiver program.

Senator CICCONE: Yes, and it's probably something that will be part of our report, once we finalise it. And I know that in the past couple of years the current government has established an external advisers group to, hopefully, improve and inform how we can best manage these cases going forward. I'm not sure whether you're familiar with the work the current government has done in trying to change the way that maybe DFAT and others engage with these issues. I think it's fair to say that many people have learnt from past experiences, including yours. In all these cases, when you're dealing with foreign countries, there's got to be a level of sensitivity as well as acknowledgement that we can also improve our internal structures. I want to thank you for the time you've been able to share with us today. But I also wanted to ask those couple of those questions from earlier on and inquire about you and your family—I know it was 24-odd years ago, but I'm sure it still has an impact on your life and your children.

Dr Danes: It does, and I very much appreciate your acknowledgement of that. That means a lot to me, and I know my parents are watching online, and it will mean a great deal to them. It was two decades ago but, I can tell you, it seems just like yesterday on some days. And I really would love to give all the support I can to our government in moving forward. There are a few models that are available. Prisoners Abroad in the UK is an excellent model for bridging the connection between government and families and those wrongly detained—and in fact those who are rightfully detained. They offer some great information—local networks in the country where the person might be obtained. They offer care and aftercare. I believe this model could work. I did attempt to get a similar model through DFAT a few years ago when I was with Foreign Prisoners Support Service, because I've worked on more than a thousand cases of detainment, rightful and wrongful, and I think that's still an area that's quite weak, and I hope the engagement continues. The Australian Wrongful and Arbitrary Detention Alliance is an organisation that I'm proud to be associated with, and I'm sure Kylie Moore-Gilbert and the team would like to have a discussion and work more collaboratively with the Department of Foreign Affairs and Trade to move those conversations along.

CHAIR: Yes, and I think we'll certainly be hearing from AWADA at some point during the inquiry. You referenced in your remarks earlier that the Australian government didn't clearly have a view on the fact that you had been arbitrarily detained when it first occurred. At any point in that 12-odd months that you were detained, did they change that recognition?

Dr Danes: Yes.

CHAIR: At what point did that occur?

Dr Danes: Well, again, the embassy team on the ground believed, right from the onset, that we were arbitrarily detained. But perhaps I can refer to—and not disrespectfully—the Canberra bubble. It took a little bit of encouragement for the ambassador to penetrate somewhat and get everybody on the right page and to understand what the story was. Respectfully, it wasn't that easy to get information out of a closed country like Laos at the time. It only opened up to foreign investors in 1997. We were detained in 2000. So, that line of communication was difficult. We were one of the first cases, aside from Steve Pratt, which you might recall. He was coming back home to Australia at the time we were arbitrarily detained. So there were a lot of lessons to be learnt on how to respond to Australians in that situation. To be honest—even the consular staff admitted this to me—they didn't have a lot of case examples to go by, so we were all in it together. We were all learning. I agree that there were lessons to be learnt, and they have benefited a lot of Australians since. But there are still a lot of lessons that can still be further implemented.

CHAIR: You referenced that the consular staff on the ground in Laos very quickly recognised that you and your husband were not a typical case. Do you have any view on how they made that assessment? How did they come to that position so quickly?

Dr Danes: They saw that my husband had been taken, had been kidnapped, had been taken to an undisclosed location, so, when they approached the Laos authorities where he had last been sighted and when they questioned the police that were holding me, the secret police, they knew that there were no arrest warrants. There was no information forthcoming. There was no detail to, 'Where is my husband? Where is Kerry Dane? Where are you taking Kay?' There were all these very simple signposts—that have more legal names, but we will keep it simple. The signposting was there at the onset—that they weren't following their own laws let alone international law on the process of detainment and arrest.

CHAIR: I guess that's the difference between your case and some other wrongful detention cases that we see in more recent times. In your instance there were no charges laid; the authorities literally just took you off the street, whereas these days we see a lot more instances where citizens overseas are subjected to a completely non-transparent legal process. They are arrested under trumped up charges. Those charges are never really proven. From your perspective—this might be hypothetical—if you had been charged, say, when they took you in Laos, how much more difficult do you think it would have been for the local Australian consular staff on the ground to make the assessment that your case was out of the ordinary?

Dr Danes: I think it would have been extremely difficult, and it does happen as you say. I think that's where it would then be referred to as a 'complex consular case', and then you would be accorded the standard 'these are your rights according to the consular charter'. In that instance, in the time between when it takes them to figure out that actually, yes, the government is being deceived, you may have been subjected to torture, ill-treatment, all manner of risk in order to get to a judicial process. As you say, have they applied procedural fairness? Has he been given a right to a lawyer? All these things.

In our case, we were taken through the judicial process, because, after six months of us resisting torture and interrogation, it was quite evident to the Laos government that we would not sign any false statements under any circumstances. The torture was real, and it was brutal, but we resisted that. The only option then, as encouraged by the Australian foreign minister, was to find a diplomatic solution, and that meant that we would be subjected to a judicial process. The officer, the public prosecutor and the people that were torturing us came into the prison and for the first time sat Kerry and I in a room together—this was six months after our arbitrary detainment—and told us that we would be going to court in two weeks and that we had already been found guilty and not to worry about what the charges would be because they would figure it out and tell us at the court.

It was a closed court. The embassy was not invited. They had kept a close eye on the court and a close eye on the movements in the Laos government, so they found out about the court case and they did turn up—and that was great. The ambassador got a front-row seat, and the look on his face as the proceedings were underway was quite shocking. He was horrified. The lawyer in him wanted to stand up several times and object, but there were no adversarial proceedings. We were merely told that we would be convicted of a crime. We would have an international conviction that would remain with us until such time as it wouldn't, and that was that.

To answer your question—I hope I've done it effectively—these things are not black and white; they're very grey, hence why I believe, as others do, that we need to have a designated taskforce. We need to have someone in each of the embassies that can be designated to follow up and investigate the distinction between the cases. We need to make sure that those who are innocent—and our government told us they believed that Kerry and I were innocent—can get the extra assistance that is needed, because the circumstances may be, as was the case for us, that they are subject to torture.

CHAIR: I suspect I know the answer to this question, Dr Danes, but, to that end, is it important for Australia to have a framework that clearly defines what wrongful detention and hostage diplomacy look like, so that bad-faith foreign actors are deterred from engaging in the practice to start with and know that the government will clearly identify cases that fit within that definition and engage accordingly with whatever foreign country has unlawfully detained an Australian, in order to facilitate their freedom and return to our country?

Dr Danes: Absolutely, and that engagement must be done almost immediately. When we say 'immediately', in these terms, you would expect it to be within the first few weeks of detainment—when you're in that situation, you would hope it would be within the first few hours, but, realistically, the government needs to engage very quickly at the onset and at the highest level.

What usually happens in a lot of these cases is that it's not the government; it's the people in certain departments—the public officials—that are doing this. In our case, it wasn't the government of Laos detaining us;

it was the department officials in the ministry of the interior, in the secret police, who were all involved in corruption. They were flying under the radar of the government, and it wasn't until the Laos government learned what they were doing that it brought embarrassment on the Laos government and then became a nightmare, a headache, for the Laos government.

Initially, you have to have the government engaged. The Australian government must engage in these cases very early. They must have that distinction of what is a wrongful detainment, what is an arbitrary detainment. They really do need to get that framework together, and they need to make those strong representations, which they can do with the appointment of a special envoy designated to that task.

CHAIR: Thank you very much, Dr Danes. Senator Steele-John.

Senator STEELE-JOHN: Thank you very much, Dr Danes, for your evidence to the committee. In your evidence earlier, you mentioned that when you returned to Australia there was an attitude of: 'Okay, you're home now. Get on with your life.' In hindsight, what types of support would have been useful to you and your family?

Dr Danes: The most useful would have been a public recognition of our innocence, because that is what the case was. The Australian government gave us the support they did because they believed wholeheartedly that we were innocent, but no declaration was made. That had quite longstanding ramifications that exist to this day. My children were subjected to the humiliation of the media saying, 'Your parents were criminals,' because the media lacked a certain responsibility to confirm the story; they just ran news headlines. Not once did the media get access to us. Admittedly, they were prevented access. In those days, there were no foreign journalists in Laos that were able to report openly; I make that concession. But afterwards we should have been accorded the opportunity that our government stand up—or, even in private, just give us a document that we could use to show other organisations, like potential employers, and say: 'Don't believe what you read in the media. This is actually what happened.' I know that opens up a whole can of worms.

Senator STEELE-JOHN: Yes, absolutely. Were you ever given an explanation from the Australian government as to why they would not provide you with such a statement?

Dr Danes: They said that they wanted to maintain a 50-year bilateral relationship with Laos—and rightly so, to be fair, because if anyone else were to be detained in Laos, they would have to have good representation there that could offer a similar support network. By the same token, Laos got away with a lot. If Laos, being the little country that it is, can dictate terms to a country like Australia, one has to be a bit concerned about what message that sends to everybody else.

I always felt that Australia should have said to Laos, 'No, this is not right and there will be ramifications,' whether they be sanctions—which might seem extreme just for two ordinary Australians, but there was the principle of the matter—or a reduction in the bilateral aid that it was giving to Laos at the time. There was no slap on the wrist. There were no consequences. There was no accountability. So, Laos got away with it.

Even today, they're not signing on to the Levinson act, for instance. They're not upholding the principles of the International Covenant on Civil and Political Rights that they agreed to abide by just prior to our detainment. There has to be accountability. I believe the person from Human Rights Watch put it quite well: they have to look at our human rights record and make an admission in there to say, in the country chart, that Laos has a history of—there has to be some acknowledgement that these rogue states that are signing on to international treaties and covenants in order to gain access to foreign aid are actually doing the wrong thing in other areas.

Senator STEELE-JOHN: Thank you. In addition to those broader pieces, that public recognition and those consequences, in terms of you and your family personally, it doesn't sound like there were any particular mental health supports offered to you or the family, or other types of services made available to you. Is that correct?

Dr Danes: At the time—no. It was quite simply, 'You're home,' and 'Enjoy your freedom.' At the time I suffered quite significantly from post-traumatic stress, and I didn't really know what it was. Then it was a case of shopping around and trying and find the right person, the right professional, psychologist or psychiatrist, who could give me some supports. There were no debriefings. It was just a case of: 'You're on your own. Off you go.'

Senator STEELE-JOHN: Do you think, in hindsight—let me frame it a different way. We are considering as a committee what recommendations to make around how to improve this process and these experiences for people. Do you think we should consider recommending that those kinds of comprehensive, trauma informed, very specialised forms of mental health supports and debriefing processes be offered by the Australian government to those who return from these forms of incarceration and to their families as well?

Dr Danes: Absolutely. The reason for that is that all these unique cases need to be documented to inform a taskforce so that they can go in and work with that person. Someone like me can go in there and do an appropriate debrief, and they can learn lessons from that particular experience. That can be documented. That would have a

huge benefit to the ongoing discussion, and I'm sure it would be of tremendous benefit to researchers and to organisations that can tailor particular trauma counselling for those individuals. I was astounded when I came back that there was no support as such. There was support for victims of a crime in Queensland, and I was a victim of a crime, but there was no support for me. I think that's lacking.

Senator STEELE-JOHN: Absolutely. You have also mentioned your experiences of challenges with the financial system as a result of this. Would you like to expand on those?

Dr Danes: How does one pay for such representation if the detaining state puts you through an unlawful judicial process? You've got to try and prove your innocence, and, in our particular case, our employer engaged a lawyer on our behalf to help formulate a book of evidence based on rumours in the media. They didn't have the facts or allegations from the Laos government, but he worked closely with the Australian ambassador to try and counter some of the allegations that were being fed to the media by the Laos authorities. That all costs money. We were fortunate that our employer paid that bill, because it would have cost us at least a million dollars.

There's a great consequence for these cases, and there's an impact on the family. In a lot of social justice cases I've worked in, where people have been detained in Vietnam, Thailand and all countries of the world, the main thing I get from the families is, 'We can't afford legal representation. We cannot afford the advocates to go over'—such as when Robert Langdon was detained in Afghanistan. I was working with Stephen Kenny, a human rights lawyer, and we had to either make a representation to the government to help fund the trip over there, to try and engage with the detainee, or say to the families, 'We need to do some fundraising so we can try and get some support to your loved one.' In some cases we had to do fundraising so we could make sure someone on the ground could buy food for their loved one because they were not offered those services in the detaining location.

Senator STEELE-JOHN: Yes, absolutely. It sounds like you're suggesting that a function of the taskforce should be being able to access a legal assistance and other extraordinary expenditure requirements fund to enable the acquisition of legal representation and to provide for the essentials of life that may not be covered by the prison system in the detaining country.

Dr Danes: Indeed. In some instances, there is a process in place where the detainee can access emergency funds. I know when I worked in the cases of the Bali Nine and Schapelle Corby that those Australians could take out an emergency loan for medical supplies to be paid back upon their release.

Senator STEELE-JOHN: Was that a loan from the Australian government?

Dr Danes: Yes.

Senator STEELE-JOHN: How generous of us to offer a loan! My God!

Dr Danes: I think it's on the Smartraveller website; I haven't visited it for a while. I think they can access a loan—at least, they used to be able to—and they have to pay that back. They have to give an undertaking that they would pay it back. But, if you've got a 20-year sentence in the Bangkok Hilton, it would be a little bit difficult to make those repayments.

Senator STEELE-JOHN: That shouldn't be a loan process, in my view. It should be a service and support that's simply available. Thank you very much, Dr Danes. I'll have to leave it there. Thank you for giving the evidence that you have to the committee. I would really encourage you, if anything comes to you post your evidence with us today where you think, 'I wish I had shared this piece of information or this piece of additional context,' please feel free to provide it to us as a committee. We've given everyone else the deadline of 14 October. I'm sure we would be willing to take additional information from you, if anything should occur to you between now and the closing of the inquiry period for this inquiry.

Dr Danes: I appreciate that. I'll just point to one thing that I think you really do need to look at: how to deal with the situation of overturning a decision by a state that has wrongly and arbitrarily detained someone. The ramifications are enormous.

Senator STEELE-JOHN: We have heard that very loud and clear from you, Doctor—and very much that overturning would be the ideal. If you ever have the opportunity to consider whether there might be other avenues, such as an official statement or addendum to a passport, to make it clear what Australia's view is in relation to this particular conviction—or if there are any other international examples where they've managed to successfully navigate the need, for want of a better word, to enable the convicting nation to save face in the process of hostage release while minimising the flow-on implications for the victim of the arbitrary or wrongful detention process—that would be really valuable. I see both the need to get the person out of the detention environment as quickly as possible and, as you said so clearly, the real need to make sure that the process of release does not mark them in such a way that hinders them and retriggers and retraumatises them through the course of their life.

Dr Danes: Indeed. Every time I pass through airport security and I have to show my passport, which has a visa in it that states I did not qualify for the visa waiver program, it raises all those questions again, and I have to relive that trauma every time I travel.

Senator STEELE-JOHN: It's totally unacceptable. Thank you so much.

CHAIR: Thank you very much, Dr Danes, for appearing today and for being so forthcoming with your testimony. I know it's been really valuable for the committee to hear your story today. I hope everyone listening along to the hearing at home has found it interesting as well. As Senator Steele-John mentioned, the committee would appreciate receiving any responses to questions on notice by Monday 14 October 2024.

Proceedings suspended from 12:59 to 14:05

DADPOUR, Dr Rana, Director, Australian United Solidarity for Iran Ltd [by video link]

CHAIR: I now welcome Dr Rana Dadpour from AUSIRAN. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I now invite you to make a short opening statement, and, at the conclusion of any remarks, I'll invite members of the committee to ask questions.

Dr Dadpour: Thank you very much. Before I start I would like to acknowledge the traditional owners of the land I'm joining you from today, the Kuku Yalanji people. I would like to pay my respects to their elders past, present and future. Today I will address the critical issue of wrongful detention of Australian citizens, with a specific focus on the Islamic Republic of Iran. In recent years, this regime has increasingly used what can be termed as 'hostage diplomacy', where foreign nationals, including Australians, are detained on fabricated charges for political leverage. These detentions are against international law. I'm specifically talking about the United Nations International Covenant on Civil and Political Rights, which Iran is obligated to uphold because it is a signatory. Detainees in Iran are often denied fair trials and legal representation and are subjected to prolonged solitary confinement and coerced confessions. Wrongful detentions are not only a violation of individual rights but also a strategic tool of political coercion that undermines global human rights standards.

AUSIRAN calls on the government to adopt a more proactive and assertive foreign policy framework to combat this practice. First, as outlined in our submission, we recommend targeted sanctions against officials and entities, specifically within the Islamic Revolutionary Guard Corps, IRGC, who are responsible for orchestrating wrongful detentions in Iran. Sanctions like these, which have been implemented before by Australia and other countries in different domains, send a clear message that human rights violations carry consequences. Second, we propose the designation of the IRGC as a terrorist organisation, in alignment with actions taken by the US and Canada to further isolate those responsible for these kinds of abuses. Third, we recommend a re-evaluation of Australia's diplomatic approach to Iran, specifically the Islamic republic regime in Iran, utilising both multilateral forums such as the United Nations and partnerships with allies to help us ensure a collective international pressure is brought to bear on the regime in Iran to hopefully respect human rights.

My teammates and our team in AUSIRAN advocate for a consistent, clear and cohesive strategy, which is crucial in addressing the evolving tactics of hostage diplomacy by the Islamic republic regime. AUSIRAN believes that a policy framework that includes deterrent measures, such as targeted sanctions as described in our submission, is essential not only for responding to wrongful detentions but also for preventing them. Our recommendations are based on a commitment to uphold human rights and protect Australian citizens abroad. We urge the committee to please consider these measures as part of a broader strategy to deter wrongful detention practices and ensure that Australian citizens are safeguarded against these types of violations. Thank you very much for your time.

CHAIR: Thank you, Dr Dadpour. You mentioned in your opening statement that we know that the IRGC engages in terrorist activities and actively funds and trains extremist groups abroad, but what role do they play in the arbitrary detention of foreign nationals in Iran?

Dr Dadpour: Wrongful detention of foreign nationals is nothing new in the Islamic Republic of Iran. It started in 1979, when they attacked the US embassy and took hostage all the people who were working in the embassy there, and since then we have seen several cases of foreign citizens and also dual nationals being taken hostage by this regime in Iran. There have been several cases, one of the most famous being, as you know, Dr Kylie Moore-Gilbert. She has been subjected to violations of human rights and gross abuses by this regime and by the IRGC as well. So, yes, it's nothing new. It has been there since the beginning of this regime, and it continues. It has actually turned into a policy by which they try to leverage political points, I would call it, and get what they want from the international community and from other governments.

CHAIR: Is it your view that the absence of a more robust framework in Australia that publicly signals how we deal with citizens being wrongfully detained overseas enables regimes like the IRI to get away with this behaviour, given there are no clearly set out ramifications if they do wrongfully detain our citizens in Iran?

Dr Dadpour: I do think so. I do think that, as long as there are no clear measures explaining exactly how and based on what values Australia is going to react to this kind of behaviour, the IRI regime and the IRGC will keep using this. They will realise that there are no consequences, or at least there are no specific frameworks to measure any consequence for those actions. They will think that they can get away with it, in some senses, and that will not deter future hostage taking by this regime. Not only will it not deter it but I think it will also encourage it. They will think that the Australian government cannot or will not act in a strong, assertive manner

against this type of behaviour, and therefore assumptions made by them will lead to more hostages being taken—Australian citizens and dual nationals as well.

CHAIR: The Australian government has Magnitsky sanctions at its disposal to use against individuals and organisations involved in human rights abuses. Do you think those sanctions should be used in cases of arbitrary detention?

Dr Dadpour: I do believe so, yes. As we outlined in our submission, I do think that these sanctions could and should be used to deter hostage diplomacy. As far as I'm aware, the themes for which Australian autonomous sanctions have been used are providing weapons of mass destruction, cyber incidents, serious violations and abuses of human rights and also serious corruption. These last two themes can be linked to hostage diplomacy by the Islamic Republic regime very directly. It is a violation of human rights, this type of arbitrary detention. Also, because detainees haven't been provided with proper legal support or any type of legal representations, that could be serious corruption as well.

CHAIR: In your submission you state that Australia should re-evaluate diplomatic relations with the IRI regime. We've had a lot of conversations here today about how those diplomatic channels are managed between Australia and any foreign country that has wrongfully detained our citizens. How do you think we can strike this balance between re-evaluating diplomatic relations with the IRI regime and still ensuring that we have the channels in place to be able to deal with wrongful detention cases diplomatically?

Dr Dadpour: In my opinion it all goes to a nuanced and balanced approach to these issues. I do know that all the detainees, all those people who have been wrongfully detained in the past and are at the moment wrongfully detained, have been provided with consular support. I do think that providing the government with the help of a specific taskforce that could be in DFAT or another department, or a senior officer or an office that could specifically focus on wrongful detentions—to define them and have thresholds to find out if a detention is a wrongful detention and also to provide those detainees with support and advocacy; and to provide the government with some insights, suggestions and recommendations on how to approach it—would give the government a balanced framework. Consular staff or the ambassador, for example, in Iran, if they face the wrongful detention of an Australian citizen, would be responsible for going and talking about it, which may not be exactly in line with other responsibilities that they have and other channels that they want to keep open. If DFAT has a specific section or office for dealing with these cases and figuring out what can be done and what has to be done, I think that would really help and give it more balance and nuance.

CHAIR: Thank you. Deputy Chair, any questions from you?

Senator CICCONE: Not at this stage.

CHAIR: Senator Steele-John, do you have some questions?

Senator STEELE-JOHN: I most certainly do, Chair. Thank you, Doctor, for your evidence so far with us this morning. It's always excellent to hear from you and your organisation. My first question goes to your submission. You've mentioned in the submission the role of the Islamic Revolutionary Guard Corps in wrongful detentions of individuals in Iran. Would you be able to go into some more detail for us on the role that the IRGC plays in the wrongful detention of Australians overseas?

Dr Dadpour: Yes, sure. The role of IRGC in politics in Iran can seem very complicated. It's not that I'm trying to say that it's only them who are responsible for that. Definitely, there have been cases that they've been responsible for—for example, the case of Dr Kylie Moore-Gilbert. I read her book, and she described her communication and encounters with officers of IRGC, specifically trying to coerce her into wrong confessions and things like that. IRGC is very rooted in the politics, specifically foreign politics, in Iran. They have been responsible for several violations of human rights and human rights abuses not only inside Iran but also out of the country. As you know, there have been several officers of the IRGC who have already been sanctioned by the Australian government for violations of human rights and various abuses that they've committed, for providing drones, for example, to Russia or for their cyberattacks and foreign interference in Australia's domestic sphere. What I'm trying to say is that IRGC is guilty. The degree of guilt in every single case might be different, but it's there. It is one of those bad-faith actors that we're trying to get recognised in Australia as such.

Senator STEELE-JOHN: Considering the IRGC's unique position as a quasi-government body, what difficulties have you seen in dealing with cases of wrongful detention instigated or given effect to by the IRGC?

Dr Dadpour: Do you mean how Australia can now see, or—

Senator STEELE-JOHN: Given their role as a quasi-government entity, I'm interested to know from you what additional difficulties that creates when dealing with a case of wrongful detention in which they are involved.

Dr Dadpour: IRGC is not the easiest to deal with. However, considering they're deeply rooted in the government and also are acting as a government themselves in Iranian foreign policy and considering the violations that have happened, I think if they get designated as a terrorist organisation that would really send a strong message not only to IRGC but also to the IRI regime and the government that is actually in power there.

What I'm trying to say is that targeted sanctions of officers and also designating IRGC as a terrorist organisation does not necessarily mean that there will be no future diplomacy channels for Australia to negotiate the release of detainees and hostages that might be in Iranian prisons. What it will provide Australia with is a strong message and also collective action and framework with our allies, such as the United States and Canada, that have done it before. It will give Australia leverage. Instead of being reactive to every single case, every single time, year after year, I think what the Australian government needs to do is be more proactive. So designating IRGC will definitely provide the government with that proactive approach to deter future hostage diplomacy by the regime and IRGC.

Senator STEELE-JOHN: Absolutely. We in the Australian Greens continue to call for the IRGC to be listed as a terrorist organisation for those and many other reasons. You've spoken in your submission about the role of targeted sanctions in deterrence of wrongful detention. Have there been other countries that have effectively used sanctions on the Islamic Republic of Iran to deter wrongful detention?

Dr Dadpour: I am not aware of any cases. We all know there have been several cases of designating specific offices for different violations and abuses of human rights. Australia has used these Magnitsky style sanctions as well. Specifically in relation to hostage diplomacy, I am not aware of any. That's an area that Australia can be a pioneer in, and try to have this collective effort using platforms like the United Nations in order to advocate for an international taskforce that would deal with this kind of hostage diplomacy being conducted by the regime and the IRGC in Iran.

Senator STEELE-JOHN: Finally, aside from deterrence, what are the other benefits you see from using targeted sanctions to deal with cases of Australians being wrongfully detained in Iran?

Dr Dadpour: The final goal is always to keep Australian citizens safe and to advocate for their human rights no matter where they are—if they are travelling abroad enjoying their lives, or if they are in Australia, or if they are travelling to Iran to visit family. In the case of dual citizens and the Australian-Iranian community, this is a very important and serious issue. I know many of my friends and many community members, including myself, haven't travelled to Iran for over a decade because we don't want to be subjected to such horrifying abuses. Apart from deterring future cases, it will get the international community closer together in order to act in a collective, specialised, continuous and coherent way to protect the lives and the rights of those who have been detained or who are detained at the moment.

Senator STEELE-JOHN: Fantastic. Thank you so much.

CHAIR: Thank you for appearing before the committee today. I don't think you took any questions on notice, but if you did the responses need to be provided by Monday 14 October 2024.

HAMOUDA, Ms Lamisse, Private capacity [by video link]

[14:31]

CHAIR: I welcome Ms Lamisse Hamouda. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. I now invite you to make a short opening statement, and at the conclusion of that committee members will ask you questions.

Ms Hamouda: Thank you. Good afternoon. My submission addresses human rights; DFAT structure and approach to cases of wrongful imprisonment; and, most importantly for me, embedding trauma informed practices and policies and expanding support available for individuals and families subjected to the horrors of a wrongful arrest and imprisonment. Alongside being a writer, I've been a youth worker for over a decade. My training in trauma informed practice and care underpins my submission and recommendations. One cannot discuss Australia's handling of cases of wrongful arrest and imprisonment without an understanding and discussion of trauma. The experience of sustained distress compromises so much, from language and memory centres in the brain to an ongoing struggle to emotionally regulate, process complex information and engage in rational decision-making. As such, DFAT must be conscientious in enacting clear policy and communication. Staff must be trained in trauma informed practices and communication strategies.

The current level of opacity is damaging, as individuals are spoken to as if they know what's going on and understand the jargon, such as 'making representations', and documents are thrust at them with little explanation—documents that state that they 'do not have a legal right to consular assistance' and 'should not assume assistance will be provided'. That sentence is from a DFAT brochure, *Arrested or Jailed Overseas*, which provides more information about what cannot be done than about what can be done. Definitions are lacking around what constitutes exceptional circumstances or when an arrest is considered wrongful or justified. I have a tertiary degree in international relations, and I was still lost in the opacity of DFAT terminology and processes when dealing with my father's wrongful arrest overseas. So what of individuals with English as a second language or individuals without a tertiary education? The most important thing was receiving clear and direct communication on what DFAT could do, would do and was doing.

Furthermore, there must be an updated approach to dual citizenship, particularly in a globalised world and in a country like Australia, in which 30 per cent of the population hold an additional citizenship. One cannot dismiss the pull of culture, family and language on the retention of citizenship and the choice to travel. DFAT must reconsider its approaches to arrests of dual citizens occurring in countries with documented histories of human rights violations, disappearances, torture and abuses of due process.

Lastly, DFAT must consider the mental and material effects of injustice and work with social services to expand the current remit on mental and material support for families and individuals impacted by wrongful detention. Families and individuals cannot continue to be expected to navigate it all, from law to media, international relations to advocacy, policy to prison and their own personal lives. An overhaul of DFAT's handling of wrongful arrests and imprisonments is long overdue. Thank you.

CHAIR: Thank you very much, Ms Hamouda. I'll start off with questions. I note in your submission that you're very critical of the lack of clear process or direction that the government has to deal with unlawful detention cases and the fact that, instead, we treat them as consular cases. If you're happy to talk about the experience that you had with your father, how do you think having a clear process in place would've improved that, both in the way that your father was dealt with and your experience as a family member?

Ms Hamouda: There are a few things in that. One is that the opacity is a breeding ground for anxiety, paranoia and distrust, in particular, when someone is in a situation of immense distress and paranoia. One of the things that's really valuable is just a direct process to know what is expected of you as a citizen in that situation and to know, as the family supporting someone who is in that situation, what a reasonable or unreasonable request is. That lack of clarity around what we could or couldn't access was really damaging to our sense of trust that we felt we needed with consular and DFAT in the process of going through that and having our case managed. That's one of the biggest ones.

It also prevents and helps manage miscommunication and misunderstanding. There is a lot of misinformation in those situations, especially if you're working across language or across multiple systems that you're not familiar with. As a family and as an individual, you're really looking towards government, such as the consular and DFAT, for support and understanding of what some of things you're coming up against are.

CHAIR: Do you think that one of the reasons that the government is not as good at explaining to family members what the process will be or what experience you should prepare yourself for is because they themselves don't necessarily know how a case is going to play out and they're trying to—I guess it's almost the opposite of

managing expectations—not alarm you by providing information that might not end up being relevant? On the flip side of that, do you think that is outweighed by the fact that not having requisite information about a family member's case, like you say, is anxiety inducing and traumatising?

Ms Hamouda: I do recognise that government is also in the process of gathering its own information and understanding. In reviewing the submission from AWADA—and this is in my submission too—there was the importance of definitions, understanding which you might fall into and what it means and then being able to move forward with that. One of the big things early on was the barrier of the Privacy Act. I understood why I couldn't get information because of the Privacy Act. But then, at the same time, the consulate couldn't access Dad. He had already disappeared, and we found out he was in prison because he smuggled out a letter. I was like: 'If I can't access him and you can't access him, how do I get past this Privacy Act for us to be able to more clearly communicate?'

CHAIR: Can we dive into that for a second? What was the issue with the Privacy Act?

Ms Hamouda: They wouldn't share information with me because they required my father's signature.

CHAIR: But he was in jail.

Ms Hamouda: Yes! Exactly!

CHAIR: Wow!

Ms Hamouda: Yes, exactly. It's things like that, which can also be really small. It doesn't always have to be these big things. It can be small as that—just explaining that there's a definition around what constitutes an exceptional circumstance, so that, with that exceptional circumstance, we can find a way around the Privacy Act so we can work together. It was this sense that I wanted to be a partner in this situation, not someone to be managed, because I was very invested in resolving this situation.

CHAIR: I think that is such an important point: the role of family members as partners with government to give effect to the outcome, which is obviously having your loved ones returned from overseas, as opposed to just being managed. Having read a few other submissions from individuals who have been wrongfully detained and can talk about what happened to their family members, as well as the family members themselves, that does seem to be a bit of a recurring theme. Regardless of the government's intentions in limiting the amount of information that they provide to family members, which we know happens, or instructing family members not to talk publicly about these issues, which, again, we know happens, family members feel like they're being managed into silence, for want of a better expression.

Ms Hamouda: Yes. It's also challenging because, in the case of a wrongful imprisonment, you don't know yourself why things are happening—

CHAIR: As a family member?

Ms Hamouda: Yes, as a family member. At the same time, as the family member, you are—so in the case of Dad's imprisonment, I was privy to information that I could then share with the consulate, because of my connections, the Egyptian lawyer I worked with, and eventually being able to visit Dad in the prison every week. I felt like I was in a position where I thought that we need to share information and I want to know that information is also being shared with me, so that I can make informed decisions about how to manage my father's case that don't accidentally alienate the consulate or DFAT. I'd be running on information that I think is correct, but actually, maybe, there's input that could shape a decision I make around the case. It felt really high stakes in a way—the importance of information sharing and clear communication.

CHAIR: Let's talk about some of the improvements that you identify in your submission—first of all, better mental health and trauma support for family members, both during imprisonment and after their loved one has been released from detention. I suspect robust mental health and trauma support for people, once they have been returned to this country, would be a pretty good idea as well. Could you provide any context or elaborate on what exactly that support should look like?

Ms Hamouda: One of the biggest challenges is the financial impact of a wrongful imprisonment. It's an undetermined amount of time. There's a lot of expenses involved, and also life, while someone is in prison, has to continue too. There are still bills to be paid. There's still the rent and all of that. So when it came to Dad being returned, we were in debt. Being able to then allocate resources was primarily based on, 'How do we just continue to secure our material survival? Mental health will have to come later.' One of the improvements was an expansion of the subsidy available. It's not just being able to access mainstream support services, but specific services. The one that was identified in my submission and in a wider submission was the torture and trauma

informed NGOs that are in different states, because they also have that intersection of understanding the impacts of torture.

Not all psychologists are able to understand the intricacies of such an experience. Because that can be accessed only by people who are seeking refuge and asylum, you can't access that. So, can that remit be expanded? When we talk about torture, we're not just talking about refugees and asylum seekers who've experienced torture in their home countries and now require support upon arrival. So, can that be expanded to people who've experienced torture by being wrongfully imprisoned in countries that have histories of human rights violations so that those people can access those kinds of specialist carers who understand those experiences? That was a significant one.

CHAIR: I assume also you would need to have some method of government, whether DFAT or some other agency, making the assessment of what a person needs when they get back to Australia. And that doesn't just go to mental health support but also to broader medical support. I know from other cases that people come back to this country and have no idea of whether they've picked up serious diseases while they've been in prison, because obviously they haven't been subjected to the health checks that they would have if they were in Australia, including getting vaccinated. I reckon they would have missed a few flu shots while they were locked up! There's also that sort of assessment and triage point of somebody being returned to Australia and having that contact within government. I'm sure it happens to an extent, but they should not just be able to refer them to whatever service they require but actually support them to access that service.

Ms Hamouda: Exactly, and also to support them to access financial support. When Dad came back, he went straight on to JobSeeker, after having obviously been unemployed for 13 months while he was in prison. So, he came back to Australia and he went on to JobSeeker. But then there are all the requirements for that payment, and then the pressure of needing to return to work. And he returned to work too soon and experienced PTSD, flashbacks and triggers, while at work, which put his colleagues in danger, which put him in danger. There also needs to be that assessment: are they able to return to work? Do they need some time to recover from such a traumatising experiencing and slowly reintegrate back into mainstream, everyday Australian life?

CHAIR: Just to go back a bit, I want to ask a few questions about the solutions, but I also want to provide you with the opportunity to share with the committee the story of your father and how he came to be unlawfully detained and what your experience was in advocating for his release.

Ms Hamouda: I was living in Cairo as an international student in 2018, and my father came to visit—two of my siblings were with me—on a family holiday. When my father arrived at Cairo airport he was taken by security and disappeared, and we were not given any information as to why he was taken—or that he was taken. After eight days of being disappeared, he managed to smuggle out a letter through the brother of one of his cellmates, which was then texted to my mum in Australia, stating that he was being held in Tora Prison and he didn't know why he was there. As we went through the case, Dad was being held on remand detention, which is when they hold someone on suspicion. The suspicion was that he had been supporting terrorism and spreading false information online. The basis of that accusation was Facebook posts, such as him sharing an article from Al Jazeera and making comments about the decisions of the current Egyptian government.

Because I was in Egypt, I worked on Dad's case on the ground in Cairo. I visited him every week in Egypt. I brought him food. I brought him his medications. Egyptian prisons are very substandard—they do not provide adequate conditions to sustain life. I worked on Dad's case with the consular staff, DFAT, an Egyptian lawyer on the ground and, later, Australian human rights lawyer Jennifer Robinson. We also made the decision to launch a public advocacy campaign through the media. I was interviewed on *The Project* and the ABC—that kind of thing—and publicly advocated for Dad's return. After 14 months behind bars, Dad was released with no charge and returned to Australia.

I hope that's enough of a summary.

CHAIR: That was indeed a great summary. Thank you, and I'm sure it doesn't do justice to all of the torment and the feelings that you must've been experiencing during that time. At what point did the Australian government get involved in your father's case?

Ms Hamouda: Actually, immediately. As soon as I realised that Dad was gone, I contacted the emergency line—the 24-hour one—from Egypt and shared that my dad had not come out of the airport. It had been about 12 hours at that point. The person I spoke to said that, legally, I had to wait 48 hours and if I still hadn't heard from Dad after 48 hours then I needed to raise an alarm. During those 48 hours, Dad was tortured, so that felt like a massive piece of missed opportunity to take immediate action to investigate where Dad was and to make it known that he had been taken.

After those 48 hours, I contacted the consular staff in Cairo, and they arranged for me to come in for a meeting. Alongside that, I started working with an Egyptian lawyer to find out where Dad had been taken. So they got involved pretty quickly but their initial piece of advice was not ideal.

CHAIR: Absolutely, and I'm sure we'll explore with DFAT the rationale behind that 48-hour window. If you hadn't have been there—if your father hadn't have had family members on the ground in Cairo when he was taken—how long do you think it would've been before anyone in Australia knew what was going on?

Ms Hamouda: That is a really scary thought. We still have extended family in Egypt, so I would certainly hope that maybe after a few days they would've raised an alarm. But in searching for Dad in Egypt I experienced deliberate obstruction from Egyptian authorities, so I feel really insecure about there being communication around a dual citizen being arrested. That's also mentioned in a wider submission around authorities sometimes refusing to comply or to recognise a dual citizen's Australian citizenship, too. So I worry that Dad could've been gone for a long time before we knew what had happened to him.

CHAIR: You mentioned in response to, I think, the question before last that you mounted a strong media campaign that was very public facing and you engaged with lawyers who are specialists in this area and that helped bring your dad home. At any point, were you told not to talk about this, to keep this as quiet as possible and to let the government do their diplomatic thing?

Ms Hamouda: Oh, yes. The initial advice I received was to just keep my head down, follow the law in Egypt and see that through. That felt like really odd advice considering Egypt's history of abuse of due process and the law and its human rights violations. But, at the same time, I thought, 'Okay, I will follow this advice and respect the law of the country in which the arrest has been made.'

After about six months of doing that, I made a step towards speaking to the media and I did an interview on *The Project*. That interview led to backlash inside Egypt, so I took the campaign off and I stopped it. Then another six months passed. There was still no resolution on Dad's case, and the advice I got from other people who had been through this situation in other country contexts was that I should go back to the media and kick up a stink because—and I quote—'That will light a fire up the government's arse.' I thought, 'Okay, I'm really scared of going to the media,' because of the initial backlash I experienced, and I also did not want to tread on any toes, but, at the same time, at that point I felt so desperate that I thought, 'Well, this is the only thing I haven't done.'

I am not fully convinced that going to the media was the turning point for Dad's release, because the truth is that I don't know all the details about what might have happened behind the scenes. But for me, as an individual in that situation, going to the media at that point of helplessness gave me a sense of agency, as if I could still do something to change the outcome. One of the reasons that I feel really strongly about this inquiry and about shifting some of the ways in which wrongful detention is managed is so that families aren't cornered and put into a position where they have to expose themselves to the media.

CHAIR: Yes, that's a really good point, and I think it goes to what you were saying about the need for mental health support and trauma counselling for families that are going through this. Government should absolutely be working as closely with families as possible to ensure that they're kept in the loop with developments on their loved ones' cases, but, if you have that support, maybe that avoids you being in a situation where you feel helpless to the point that going to the media is the only option.

Ms Hamouda: Yes, or feels like the only option, definitely.

CHAIR: Yes, sure.

Ms Hamouda: Just putting on my youth worker hat, when I think about my own work with young people experiencing trauma, I also see a need for DFAT staff to have the training to deal with really traumatised individuals and families, because some of the ways in which we were communicated to were just damaging. It's insensitive. I understood at the time that that person was doing the best they could, but there are tools and training available to improve that in staff who are tasked with managing these cases.

CHAIR: Yes, and it's unfortunate. Obviously, our DFAT stuff do an amazing job.

Ms Hamouda: Yes.

CHAIR: But I'm guessing most of them haven't gone to work for the Department of Foreign Affairs and Trade because they want to be counselling the families of Australians wrongfully detained overseas.

Ms Hamouda: Yes, they're not social workers.

CHAIR: Through this inquiry, we'll talk as much as we can about disincentivising the practice of wrongful detention and hostage diplomacy.

Ms Hamouda: Yes.

CHAIR: But, in the few cases where it does happen, you need to have appropriately qualified people there to support the families. I take your point that it's not something that DFAT staff would have to do every day.

Ms Hamouda: Yes, and I did understand that.

CHAIR: But at the same time that doesn't make it any easier for you when you're the one living it.

Ms Hamouda: Yes. There's that tension there.

CHAIR: Deputy Chair, any questions from you?

Senator CICCONE: I have just a couple of follow-ups. Thank you again for making time to appear before the committee. It would be a pretty difficult process to talk to us publicly about what happened to your dad. I wanted to pick up on something you said earlier, just for some clarity. You spoke to the consulate. Did you speak to any other levels of government, whether it be the foreign affairs minister or higher levels of the executive, or was it just with the consulate or DFAT officials?

Ms Hamouda: It was just the consulate and DFAT officials. I did not have any direct contact with the foreign minister.

Senator CICCONE: Or their office?

Ms Hamouda: No.

Senator CICCONE: Had you made attempts to do so?

Ms Hamouda: I made attempts, and I got the standard email from the secretary. I've got that in my documentation, so I can share it. But, yes, I emailed, and I would just get 'we know and we're doing what we can and hope that you'll be okay'.

Senator CICCONE: If you do want to share that with the committee, please do. It's up to you, but we're happy to look at any of the correspondence. I'm intrigued to know about the processes here. You obviously made contact with the consulate and DFAT, but it seems like there was pretty limited engagement with the minister.

Ms Hamouda: Yes, extremely—almost non-existent.

Senator CICCONE: Alright. Whatever you're able to share with the committee, that would be great. Earlier today we spoke about public campaigns versus doing things in a more—not discreet but more diplomatic manner. Sometimes that might achieve better results. I notice that you also mentioned the campaign that you were running through the media. How long did that go for before you decided to take that off line?

Ms Hamouda: We took it off line when Dad was released. That went for three months.

Senator CICCONE: Up until that stage, before you did the public campaign, what was your level of engagement with DFAT? Were you receiving semiregular updates or not many updates from the department?

Ms Hamouda: Yes. Consular would visit Dad in prison once a month and then send me an email update. Those visits mostly focused on his general health and wellbeing, so I would get an update about that. That was nice, but I was visiting Dad every week, so I already knew most of what they were telling me. I had two face-to-face meetings with the ambassador. My mum took all the phone calls from the DFAT staff who were calling from Canberra. So they would get updates and they would call Mum. They would update Mum, and then I would do everything on the ground in Egypt. I would speak to consular, have the meeting with the ambassador and get those monthly updates.

Senator CICCONE: In terms of the content of those updates, were they just about your dad's wellbeing—

Ms Hamouda: Mostly.

Senator CICCONE: or progress between governments around the release of your father? Were there any discussions around how negotiations were travelling?

Ms Hamouda: Not really, no. I wasn't really often privy to that.

Senator CICCONE: Was your mum?

Ms Hamouda: Not particularly, no. When DFAT would call her, they would often reiterate the information that was in the monthly report around Dad's wellbeing, just confirming that they'd visited and that they were still monitoring the situation. Does Mum know anything, has she heard anything—that kind of thing.

Senator CICCONE: It sounds like fairly routine information, then, that you already knew about.

Ms Hamouda: Yes.

Senator CICCONE: At what point did you decide to do a public campaign? What was the trigger point for you?

Ms Hamouda: Twelve months! It was just hitting the one-year mark and then knowing, in the context of Egypt, that a remand detention, even though it has a legal limit of two years, is often extended up to five, and I just looked down that barrel and I said, 'There is no way I'm losing another year of my life to this!' At that time, I had come back to Australia and I was experiencing my own breakdown from the situation, and I knew at that point I couldn't return to Egypt. So my younger sister, who was only 22 at the time, went to Egypt to do the on-the-ground work there for Dad, and I stayed in Australia and took on the advocacy work because that meant I didn't have to deal with the Egyptian government and Egyptian systems anymore.

Senator CICCONE: Fair enough. Were there any representations made to the Egyptian ambassador here in Australia or their consulates?

Ms Hamouda: Yes. I believe there were two. I'd have to go back to my emails and double-check; there was either a statement or an email stating that the consulate in Egypt supported the decisions of the Egyptian government and would not provide any support—if Dad had been arrested, then he must have been arrested for a reason. The official government line in Egypt is that there are no political prisoners—that's actually what's delivered as the government line. So to even just discuss political prisoners is a challenge, let alone cases of wrongful arrest.

Senator CICCONE: In your submission, I think—if I'm reading it right—you say that DFAT provided advice on engaging with the media. Was that the case with you or not?

Ms Hamouda: No. The advice they provided was that they don't really provide advice and that they would just advise us not to go to the media.

Senator CICCONE: So the advice was not to engage with the media? Okay. I think in DFAT's submission to the committee's inquiry they talk about providing advice or advising people. I was just interested to see what level of engagement there was, if any. No?

Ms Hamouda: The advice was, 'We would recommend you don't go to the media, but, if you choose to go to the media, that's your choice.'

Senator CICCONE: Earlier today we discussed with a chap from the United States how they handle these situations, and they've got a dedicated special envoy that deals with these situations, not that their system or their model is perfect. But is that something that you have in mind—someone who is dedicated to dealing with these situations, so that people who are wrongfully detained or their family members can liaise with someone as a point of contact? Is that something that you think, going forward, the government should consider?

Ms Hamouda: Yes, definitely. I think some of the unique pressures and challenges around wrongful arrests and hostage-taking require their own department and their own appointee to oversee those cases, so that there is continuity and so that people don't get lost or fall into the cracks, and so that there's a definition and that, once you fall under that definition, your case is handed over to this department where they specialise in dealing with that and doing those kinds of negotiations and supporting you through the process from arrest to release.

Senator CICCONE: Fair enough. In your submission, I think you also spoke about the need for more dedicated effort of government in dealing with these instances. Are you familiar at all with the government's complex case committee? It's something that the current government established to coordinate on these wrongful detentions. Are you aware of that committee?

Ms Hamouda: Vaguely. I know there's a complex cases committee but I don't know the details about the committee and how it functions.

Senator CICCONE: That's alright. It's just a whole-of-government coordination unit of senior officials that oversees wrongful-detention matters. It was established back in 2023. I just wanted to see whether you had any thoughts on that, for instance. I wasn't sure how familiar you are with it. But, if you're not, that's okay. I think I'll leave it there, but can I just say thank you for making time today to speak to us. If there's anything else, we'll no doubt be in contact.

Ms Hamouda: Thank you for your time today.

CHAIR: Thank you very much. I don't think you took any questions on notice, but if committee members require more information from you then the responses to those questions will need to be provided back to the committee by Monday 14 October.

HUMPHREY, Mr Peter, Private capacity [by video link]

[15:10]

CHAIR: Welcome. I understand that information on parliamentary privilege and the protection of witnesses giving evidence to Senate committees has been provided to you. Is there anything you would like to add about the capacity in which you appear?

Mr Humphrey: I'm British, and I'm speaking today as a victim of wrongful detainment in China and as a specialist on the Chinese imprisonment and justice system.

CHAIR: Thank you. And I know it's very early where you are, so, thank you very much for getting up early to speak to us this morning, your time. I'll now invite you to make a short opening statement and, at the conclusion of that, committee members will ask you questions.

Mr Humphrey: I've submitted detailed written testimony and will keep my oral remarks brief. Last week I testified in writing and orally to the United States Congressional-Executive Commission on China on the subject of wrongfully imprisoned Americans. So it seems quite fitting that today I'm testifying to the Australian Senate on Australians wrongfully detained abroad. There are not many countries that wrongfully detain and imprison Australians. I think we all know who the worst offenders are, but my focus today is based on my China experience and expertise.

I've spent almost 50 years involved with China in various roles, and two of those years were in Xi Jinping's prisons, and also my American wife. Both of us were falsely accused of illegal information gathering for my due diligence company. I've described this ordeal in great detail in the *FT Magazine*—I'll just show you that—and in my written testimony submitted to your hearing.

After my release, in between battles with cancer, PTSD and a former client who got me and my wife into this trouble, I began to work to help other families who are suffering from similar ordeals. I have about 25 cases around the world—in America, Europe, Asia and Africa—mentoring and supporting families who have a loved one in jail in China. I've accumulated many case studies and carried out a great amount of related research.

The most important lesson from all this is that not a single foreign prisoner held in China has had a fair and transparent trial and a proper defence. During this hearing, please always keep this in your minds. China's judicial system is a political system of oppression, not a system of justice. All its organs—the police, the prosecution, the judiciary, the prisons and Chinese lawyers—form a single organic whole, all controlled by the communist party. No judge is independent or impartial; he is just a messenger of the party. The system is exploited by connected individuals to harm people they have a grudge against. Cases are built upon forced confessions, often televised, and upon forced witness statements.

Inside China's prisons the prisoners, including Australians, are subjected to horrendous daily living conditions. In addition, there is forced labour for the prison's commercial profit. There is the withholding of proper medical treatment, even for cancer. And there is the writing of mandatory thought reports—in other words, brainwashing—to mention just a few things. Your very own Stern Hu endured these conditions stoically in a cell next to mine. Speaking of labour, these are Christmas cards that were packaged for the Western supermarket chain Tesco by foreign prisoners in Shanghai's Qingpu Prison.

I commend the fact that Australia is one of only a handful of countries that have released the number of their citizens held in Mr Xi's jails. The most recent figure I have seen is 55. I'm not sure if it's totally up to date. Canada has admitted to 92 Canadian prisoners in China. Japan has admitted to 17 Japanese. America and my own country, the UK, have withheld their numbers from the public, using the excuse of privacy, which is nonsense. My own research suggests that there are approximately 300 Americans incarcerated in China or under exit bans. From this we can see the scale of the problem of China perpetrating wrongful arrests of foreign citizens.

Just remember that not a single prisoner—not a single Australian prisoner—has had a fair and transparent trial. Some are in dire health. Some are over 50, ageing rapidly. Some foreign prisoners have been in Xi's jails for 10 years or more. I don't think any of them deserve to be there. It does not matter what they're accused of. It doesn't even matter whether they're guilty or not when they have never had a fair and transparent trial in an independent court with an impartial judge, and in dictator Xi's China they never will.

America has set up an institutional framework for handling wrongfully detained Americans abroad but has not used it enough when confronting China. They have the Levinson act, which sets out criteria to define arbitrarily detained Americans, and they have the Office of the Special Presidential Envoy for Hostage Affairs, which is supposed to list and resolve all such cases, but it doesn't seem to have achieved very much with China. Only three of the approximately 300 Americans held in China have ever been on that list.

What I suggest is that Australia should consider its own institutional and legislative framework for this purpose and actually make it work and achieve something—perhaps even lead the way. None of China's 55 Australian prisoners has ever had a fair and transparent trial in front of an independent judge—not a single one. We can rejoice about Cheng Lei's return to Australia after the lobbying efforts of your government, but what about the other 50 or so? What about Yang Hengjun, the China born Australian writer and businessman who was imprisoned by Xi Jinping and falsely charged with spying? The reality is that he offended Xi Jinping personally. You need to bring home all of your citizens with the same energy with which Cheng Lei was brought home. So 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 that will punish China for its acts of arbitrarily and unjustly detaining your citizens. You need to send out the message, 'If you touch an Australian, we're going to make your life and your friends' lives 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, and Australia must hold China to account. That concludes my opening remarks.

CHAIR: Thank you very much, Mr Humphrey. I have some questions that go to your specific experience of having been arbitrarily detained in China, but I want to touch on one thing that you said in that opening statement that I found very interesting. You referenced the Levinson act in the United States and the fact that the US has a Special Presidential Envoy for Hostage Affairs, but you said in your opening remarks that that didn't seem to have really moved the dial much in relation to China and that only three of the 300-odd Americans held in China have ever been on the list of cases that the US government maintains under the framework it has in place. Why is that the case? Why is that framework specifically not working in relation to China?

Mr Humphrey: What I see is that the American institutions we've just mentioned are failing to follow their own criteria set out in the Levinson act. Specifically, one of the key criteria, if not the key criterion, is that there should be an independent judicial system with fair and transparent trials. This is blatantly not the case in China in any case of any detainee or prisoner, and, for some reason, the American institutions have failed to follow the criteria set out in their own act. I think this is largely connected with wanting to try and keep commercial relations alive with China. I see this mindset in Australia, in the UK and in a whole bunch of other countries where the mindset of protecting commercial relations above the interests of individual citizens who have been wrongfully detained is very, very present. This is something that really needs to change if it can, but, obviously, elected representatives often have their own vested interest in keeping those commercial relations protected, even when you have a very, very blatant and serious case of mistreatment of an Australian citizen in a Chinese jail.

CHAIR: One of the arguments around having a clearly open and transparent framework to deal with wrongful detention, whether it's legislated or otherwise, is that if you clearly state your intentions in relation to how you as a country will protect your citizens overseas if they are arbitrarily detained, then that kind of lifts that process above the usual cut and thrust of diplomatic relations with any one country, right? It elevates it to a point where it says, 'It doesn't matter whether they are our very good friend or our very worst enemy, these are the rules that we will use to defend and return our citizens when they are wrongfully detained overseas.' So, in your view, how is it that the United States have managed to articulate those rules on the one hand but not stick to them in relation to one specific country where, as you say, there seems to be other diplomatic considerations at play, like the trade relationship?

Mr Humphrey: How is it? I'm not sure whether I'm the right person to ask. Maybe the American government or the American Congress are the right places to ask that question. I really think that there's a degree of secrecy by which the SPEHAR, the special envoy's office, decides to list one person and not the other 293, and I think that is a weakness. We should see a transparent process in the selection of people who go on that list. In my personal view, everybody who is detained in China should be on that list because they've not had the benefit of a fair and transparent trial with an independent judiciary, and, therefore, they qualify under the first key criteria of the Levinson act. There is too much secrecy surrounding the process by which people are put on the list.

CHAIR: Yes, which seems kind of counterintuitive when the whole idea of having a publicly available framework to list individuals is that the process to list individuals is public. Sorry, that's a tautology, but you know what I mean.

Mr Humphrey: That means that there's some kind of contradiction in the system.

CHAIR: Indeed. I think we heard from an expert in the US this morning about the process that they have in place in the US. Obviously, it is far more extensive than what we have here in Australia, but I think, for the committee's purposes, it's useful to know where that framework is working well and where it could be improved if we were to look at doing anything similar here in Australia.

Just briefly for the benefit of the committee, I was hoping that you might be able to share your experience of how you came to be arbitrarily detained in China and what sort of conditions you were subject to while you were detained.

Mr Humphrey: Sure. This came as an abrupt end to my time living in China. As I mentioned to you earlier, I have now spent almost 50 years involved in China in various roles. But at that time, in 2013, I had been successfully running a due diligence company of my own for about 10 years. One day, the door was kicked down, and my wife and I were arrested. The office was turned over and our company was forcibly shut down without any legal grounds to do so. There was no legal procedure to shut my company down, so all my staff became unemployed in the flash of a pan, and my wife and I were carted off to detention centres—actually, the same detention centre in Shanghai. She was put in the women's detainee floor, which was the fourth floor, and I was put on the second floor with male detainees. The conditions were horrendous, as I've described in that article. I do recommend that the people on your committee read that article.

We were in that detention centre for 13 months—let's just say roughly a year—and later we were in a prison for a year. During this period of detention, we endured really horrendous conditions of detention. We had to sleep on bare wooden floorboards with a very thin, shabby quilt on top of us, and there was no furniture, so life was on the floor. Sitting, sleeping, squatting, reading—it was all on the floor. We shared a space of about 15 square metres with 12 prisoners. Food was served up in doggy bowls which were pushed through the bars of the door three times a day. That food was absolutely appalling: it was filthy; it was cold; it was lacking in nutrition; and most prisoners in that detention centre developed diarrhoea. So we lived through those conditions and were interrogated day by day. Interrogations took place inside a cage in another cell—an interrogation cell. Inside that cage, we were locked into a metal chair with a locking bar over your lap, and we were in handcuffs and inside this cage. There was no lawyer present at any of these interrogations.

All of these conditions are basically designed to crush the human spirit and to force out false confessions to crimes that somebody didn't commit. We had a sham trial which lasted one day in August 2014, and things haven't changed much; if anything, they've got worse. Of course, we were convicted of something. We were convicted of illegally gathering private information for our due diligence company, which was totally untrue—we had never used any illegal means. We were given sentences of two years for my wife and 2½ years for me. I went to Qingpu Prison and my wife went to Shanghai Women's Prison. We were eventually released in June 2015.

This whole thing wrecked our lives; it just shattered our lives. We had an 18-year-old son who had just finished high school when this happened to us. His parents disappeared—both of them—and he was left adrift and in a great state of trauma. So there were many shards scattered on the ground to try to find and pick up after our release. Even now, nine years after our release, we're still picking up those pieces. In the interim, I became an advocate and mentor to people in similar situations. It's getting a bit too much for me at the moment, but that's what I do.

I'm sure you would like to know what sort of role our governments played during this experience. I usually answer that question—and it's a common question that I get—by saying that there are two tiers to government response to this situation. One is what I would call the 'nanny and messenger' service, and it's the same with your government. The nanny and messenger service means you get intermittent consular visits and they can bring letters and messages from home—maybe reading material and so forth—which is all great. I rate the nanny and messenger service which I received from the British consulate highly, and it was the same with my wife, with the American consulate. But the other tier of response which should be there, and mostly isn't, is higher-level interest and intervention in your case. We hear all the time from Western consular representatives, when they visit a detainee or a prisoner, 'Sorry, we can't intervene in your case'. Whenever you ask them to do something which, in their view, amounts to intervening in the process, they refuse to do so. I believe, as per what I was saying about the Levinson act and so forth, that, because there is no real rule of law, no fair and transparent trial system and no independent judiciary, Western governments should intervene on behalf of their citizens in the process and challenge the process very openly. I believe they should do that.

On that tier of government service and response, I think they've greatly failed. I can imagine that in most Australian cases there is a similar failure. There have been one or two exceptions; I know your government was very active in Cheng Lei's case, and, thankfully, she got out, and I know your government has tried to be active in the Yang Hengjun case; that's a very personal case between him and Xi Jinping, and it's not likely Australia will succeed. In general I'm saying these were the services we got from our governments respectively, and these services are totally inadequate.

CHAIR: Does the UK government have a Levinson act style framework in place to assess whether somebody has been wrongfully detained and then trigger a certain kind of action as a result of that? If they do, how did that interact with your case?

Mr Humphrey: They don't have an equivalent process. In some of our legislation, such as human rights legislation, there are provisions that touch on this area. But we don't have that institutional framework that the Americans have created—and, in brackets, not used enough.

CHAIR: I'm guessing the United Kingdom doesn't have a specialised unit, or an envoy similar to what the US has, within government.

Mr Humphrey: No, not to my knowledge.

CHAIR: In terms of your interaction with the British government when you were wrongfully detained, at what point did they involve themselves and what did that involvement look like to resolve your case?

Mr Humphrey: They didn't really involve themselves to resolve my case. Most of that was achieved separately by me and my wife. They only involved themselves to the extent of providing consular nanny and messenger services.

CHAIR: So a few lessons to be learned there. There was another reference in your submission around the number of foreign nationals in Chinese prisons. Can you talk me through that?

Mr Humphrey: You're referring to my written submission?

CHAIR: Yes; my apologies.

Mr Humphrey: I've been following and researching this subject through the cases that I have assisted with over the last eight years or so, and also through the intelligence gathering work I've been doing. By 'intelligence gathering', I mean I interview people after they're released from prisons in China, and their families, and I pick up anecdotal information during these conversations about other prisoners who they've left behind. I have also done a fair bit of research on the available piecemeal statistics out there and spoken to other people involved in NGOs and human rights and so forth. My conclusion is that, based on a combination of available Chinese statistics and my own investigations, there are about 10,000 foreign prisoners in China.

CHAIR: That's a lot. Why do you think there are that many there?

Mr Humphrey: There are some very large segments. The African segment is very, very big. There's a distortion there. That grand total is not so much a reflection of how many Westerners there are in Chinese jails. There are many Africans in prison all over China; we're talking about thousands. They're performing prison labour, and China doesn't have much interest in shortening their sentences.

CHAIR: That is absolute madness.

Mr Humphrey: Mm.

CHAIR: Senator Ciccone, any questions from you?

Senator CICCONE: Can I just pick up on one point you raised with Peter, Chair. Peter, thanks again for appearing today.

Mr Humphrey: My pleasure.

Senator CICCONE: I hope you have a strong cup of coffee there with you. Can you detail for us a little bit about the support and advocacy that you received from the British government or what you thought of it? We discussed other areas, but, particularly after you were released, has there been any support from the British government or from the organisations that made sure that you and your wife and family have been looked after?

Mr Humphrey: Very briefly, in terms of advocacy, you heard me complain just now that there was no real intervention. Advocacy was limited to advocating for my welfare and my health, because I had very serious health situations develop while I was in captivity, including prostate cancer. This was all ignored by the Chinese. Every time I asked for medical attention to the prostate, they would say, 'You have not signed a confession.' So the British consular representatives did advocate for me on that matter of health and on other aspects of welfare.

After we were released, we moved to the UK. For my wife, this was an exile, because we had never lived there since we'd married until that point in time, and now we were forced to. I think the only real follow-up I got from my government was one meeting with somebody from the foreign office. The meeting was held inside the American embassy because it was combined with a senior American consular official, given that my wife was American. On my side, this British official said, 'Okay, if you need anything or whatever, you can contact this person,' one of her subordinates. Seven or eight months later, my wife went to America for the first time since our

ordeal to see her sister-in-law and obtain some of the belongings of her brother, who'd died while we were in prison, and on her way home she—

Videoconference interrupted—

CHAIR: Sorry, Mr Humphrey. We lost you for about 10 seconds there, so perhaps you can wind the clock back.

Mr Humphrey: Okay. So that was a gross failure in my government moving to help someone who was in our situation, even though they had followed the case. Even while I was on the plane flying to England, they then dropped the ball. So I think there's a real failure there on that side of things, and I believe that other Brits who came out of Chinese jails in subsequent years didn't really get any support of any sort. They had to go to NGOs for support. So I think there's a great failing there. I was listening to the previous witness, and I heard some of her—

Senator CICCONE: Frustrations, I guess. One of the questions that we ask is whether there is anything we could do better or whether or not there's any other evidence to suggest that questioning the Chinese legal system, whether publicly or through diplomatic channels, has led to better outcomes.

Mr Humphrey: I think it has not been substantially put to the test, except in some very highly politicised cases where we did actually see prisoners released. I would include in that the two Michaels from Canada. If a lot of noise hadn't been made and a lot of criticism hadn't occurred, I think it could have rolled on for much longer, and the same would be true of Cheng Lei's case. And there's a British case involving a man called Ian Stones, whose case has not been widely discussed. He was taken at the same time as the two Michaels and his case was never made public until March this year. He was held for 5½ years. I think that case is a good example of where noise is not made and where criticism is not publicly made loudly. Someone is just left there to rot in jail. He got out in the end only because of behind-the-scenes interventions by me.

Senator CICCONE: You mentioned earlier your wife and the US connection. I'm interested in this sort of scenario where you've got dual citizenship or maybe three citizenships, in your case, with the British citizenship. Someone might be an Australian, or their partner might also be from another country, like the United States. Did you find that there was any better access or advocacy by the US government for your wife, as opposed to the British government? Were they working together? Were they not working together?

Mr Humphrey: The simple answer is generally no, although at the messenger level there was a degree of confiding between the two consulates in Shanghai. But overall, no. And she certainly didn't get better access than me to anything. But I was skilful at getting information out. I'm an ex-journalist as well, and I managed to dribble and smuggle information out from very early on, which gradually accumulated in the hands of my son and enabled him to pull the levers on extensive press coverage 11 months after we were detained. But there wasn't much difference between the way my wife and I were handled. Maybe I was a bit more prominent in the business community, so I got a lot more attention in the media. By the way, it was two citizenships involved in our case—just British and American. It might be tempting to think that my wife might have been a dual citizen of China, but she renounced her Chinese citizenship 30 years ago.

Senator CICCONE: Yes, and as we heard earlier today, some countries still might not even recognise that; they might insist that you are a national and hide behind that fact and deny individuals access to their second citizenship.

Mr Humphrey: Yes, they have done that. And sometimes they have even stripped the foreign citizenship from somebody.

Senator CICCONE: Can I also say thanks for your time today—and to your wife and your son. It's an ordeal, but it's great that you've been able to share that with us today, because it helps us put our report together.

Mr Humphrey: Thank you. Would you allow me just a minute or two to spotlight one other issue which I think is very important?

CHAIR: Yes. Thank you, Mr Humphrey.

Mr Humphrey: There is a law promulgated by the People's Republic of China in 2018 called, roughly, the law on international cooperation on criminal matters. Chapter 8 of that law sets out a mechanism for case-by-case negotiated transfer of a foreign prisoner to his home country to a facility in his home country. This mechanism is very important but has been seriously overlooked by Western governments. It is completely separate and different from a bilateral prisoner transfer agreement, or PTA. Some countries have signed PTAs with China. That is a form of treaty on prisoner transfer between two countries. But this Chinese legal mechanism opens the door to case-by-case transfers without a treaty, and there are certain criteria that must be met. For example, they must be

serving a fixed term. Somebody who's on an unlimited life sentence is not eligible. And there's a bunch of other criteria.

I know of many cases of foreign prisoners who satisfy the criteria for this process but their governments don't have a PTA. The Americans are the worst offenders here. They don't have a bilateral PTA, and they say, 'Oh, well we can't use this Chinese law; we can't do anything without a treaty between us.' That is completely wrong. If you have not looked at that. I would recommend that you look at it. I can help you find a copy if you can't find a copy of that law. I really would recommend that you take a hard look at that mechanism.

CHAIR: Thank you very much. I appreciate that. And the committee would appreciate it if any responses to questions that you might have taken on notice could be provided to us by Monday 14 October 2024. Thank you very much for appearing for us today and, once again, for getting up so early, UK time, to call into our committee. We really appreciate it.

Mr Humphrey: You're very welcome.

CHAIR: That concludes today's hearing. Thank you again to all the witnesses who appeared, to Hansard and broadcasting for their assistance and to the committee secretariat for all their wonderful work supporting us, as always.

Committee adjourned at 15:45