



**CHALLENGE
INJUSTICE.**

AMNESTY INTERNATIONAL AUSTRALIA

ABN: 64 002 806233

Street address: Level 1, 79 Myrtle St Chippendale NSW 2008

Postal address: Locked bag 23 Broadway NSW 2007

Email: ry.atkinson@amnesty.org.au Website: www.amnesty.org.au

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

Amnesty International Australia welcomes the opportunity to make a submission to the Foreign Affairs, Defence and Trade Committee regarding the wrongful detention of Australian citizens overseas.

Amnesty's ability to participate fully in this Inquiry is limited due to capacity constraints and thus this submission will focus on the issue of hostage diplomacy. While the below information does not represent Amnesty's complete views on all matters included in the terms of reference, we hope the Committee finds it helpful.

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.

The International Convention Against the Taking of Hostages criminalises acts of hostage-taking committed by state and non-state actors. The Convention defines hostage-taking as the detention of any person accompanied by threats to kill, injure or continue to detain them, unless certain conditions are met by a third party. There is no requirement under international law for the conditions attached to the release of a detainee to have been explicitly uttered for the act of detention to amount to the crime of hostage-taking. Circumstances of a case that demonstrate an implicit demand placed on a third party to do or refrain from doing something, may suffice to establish intent and to qualify the deprivation of liberty as an act of hostage-taking. Both conditioning the treatment and the release of detained foreign nationals on acts or omissions by other states including their home state, their deprivation of liberty may amount to the crime of hostage-taking. Under the Convention, any individual who participates as an accomplice of anyone committing or attempting to commit an act of hostage-taking may also have individual criminal liability for the offence of hostage-taking. The Convention does not restrict hostage-taking to acts committed by non-state actors, meaning state officials may also carry out detentions that amount to the crime of hostage-taking.

Amnesty urges all states whose nationals are or have been detained at any point in another state to promptly examine whether the deprivation of liberty amounts to an act of hostage-taking, and if so, take all appropriate measures to secure their release and ensure accountability. In doing this, Amnesty would call for the creation of an effective, transparent, and independent inquiry into the

situation of any such arbitrarily detained persons, in accordance with the International Convention Against Taking of Hostages, to investigate evidence pointing to hostage-taking, by the states against which compulsion has been directed or attempted. Officials in the detaining state who are suspected of responsibility for the crime of hostage-taking must be investigated. Where sufficient evidence exists, the home state must request their extradition and prosecute the officials in line with international fair trial standards.

Case study: Iran

In several of its decisions, the United Nations Working Group on Arbitrary Detention has stated that a number of dual and foreign nationals, whose detention in Iran it examined, were targeted because of their status as dual or foreign nationals.¹ In his January 2022 report, the Special Rapporteur on Iran also expressed concerns about “the arbitrary detention of dual and foreign nationals, as a means to put pressure on foreign Governments”.² In a previous report, he had highlighted that prisoner exchange deals suggested by Iran’s minister of foreign affairs as an option for the release of dual and foreign national raised “concerns about the veracity of the Government’s allegations against the individuals detained.”³

Regardless of the initial motivations and the authorities’ reasons at the onset of the arrest of dual and foreign nationals, cases of arbitrary detention may transform into acts of hostage-taking if at any stage the detainee’s release becomes, either explicitly or implicitly, conditioned on another state or third party meeting the Iranian authorities’ demands. As an example, Amnesty would point this Committee to the case of Shokrollah Jebeli, an 82-year-old Australian-Iranian national. Mr Jebeli, died in custody on 20 March 2022 after the authorities deliberately denied him adequate specialised medical care and withheld his medication for his multiple serious health conditions.⁴ His death in custody constituted an arbitrary deprivation of life and his case is unfortunately one among many others where similar concerns have prevailed.⁵

Case study: China

In 2021, Australia joined an international coalition of 57 countries led by Canada condemning hostage diplomacy.⁶ The effort, while not naming any country explicitly, was seen by many as an attempt by the coalition to place pressure on China for the practice of “hostage diplomacy”, specifically the arbitrary arrest of Canadian citizens Michael Kovrig and Michael Spavor.

While such statements are important and welcomed, despite the resolution of limited cases involving Chinese Australians detained in China, on 5 February 2024 Chinese-Australian writer Dr Yang Hengjun was sentenced to death by a Chinese Court. The sentence can be converted to a life sentence after two years, pending good behaviour, and was handed down five years after his initial

¹ <https://digitallibrary.un.org/record/3932342?v=pdf>; <https://digitallibrary.un.org/record/3932722?v=pdf>.

² <https://documents.un.org/doc/undoc/gen/q22/005/44/pdf/q2200544.pdf>.

³ <https://www.ohchr.org/en/documents/country-reports/ahrc4361-situation-human-rights-islamic-republic-iran-report-special>.

⁴ <https://www.amnesty.org/en/documents/mde13/5447/2022/en/>.

⁵ See <https://www.amnesty.org/en/latest/news/2022/06/iran-uk-government-must-investigate-iranian-officials-who-held-nazanin-zaghari-ratcliffe-hostage/>; and <https://www.amnesty.org/en/latest/news/2022/05/iran-swedish-iranian-doctor-held-hostage-and-at-risk-of-retaliatory-execution/>.

⁶ https://www.international.gc.ca/news-nouvelles/arbitrary_detention-detention_arbitraire-declaration.aspx?lang=eng.

detention. To this day, the Chinese authorities have provided no evidence to substantiate their allegations, and Dr Yang's sentence appears to be motivated by articles he wrote that were critical of the Chinese government, and for his advocacy in support of democracy. He and his family have denied all allegations.

Under our core value of international solidarity Amnesty advocates for the rights of all people who are unjustly detained, including non-nationals. Thus, Amnesty would call on this Committee and the Australian Government in general to broaden the scope of its work against "hostage diplomacy" to ending arbitrary detention in general, including for nationals of the detaining state. This work should include strengthening the international legal framework, ratifying relevant conventions, retracting limiting reservations, consenting to individual complaints procedures, and calling for the same in meetings with second states.

Of note, Australia has neither signed nor ratified these conventions, both of which are relevant in the present context.

1. Convention on migrant workers
2. Convention on enforced disappearances

Recommendations:

1. *Exercise jurisdiction to investigate the crime of hostage-taking, and where there is sufficient admissible evidence, request extradition, issue arrest warrants, and seek to prosecute all those suspected of criminal responsibility before national courts in proceedings that meet international standards of fairness;*
2. *Urgently adopt policies to ensure that cases of detained nationals are promptly examined in accordance with the International Convention Against Taking of Hostages to determine whether the deprivation of liberty constitutes an act of hostage-taking, and if so, to take all appropriate measures to protect and secure the release of the hostages concerned and to promote accountability through both public statements and investigation and prosecution of suspected perpetrators. Given that deprivation of liberty could transform into an act of hostage taking at any stage following the arrest, all such cases must be subjected to regular reviews; and*
3. *Australia to sign and ratify the convention on migrant workers and the Convention on enforced disappearances.*

