

National Human Rights Consultation Submission

Submission Paper: **Treatment of people who are arrested or detained overseas (June 2009)**

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Author: Kay Danes

Members of the National Human Rights Consultation Round-table and Human Rights Commission

Being a survivor of torture and unlawful foreign imprisonment, I know firsthand what it is like to both endure and overcome adversity. The experiences I have lived through enable me to empathise with others who endure or have endured tragedy and injustice. [Danes Story, 2001]

Many of the families I come into contact with, in my role as a volunteer prisoner advocate, are just ordinary families from ordinary communities. They, however, each carry a heavy burden. They suffer in silence because they feel there is no one who could possibly understand what they are going through. Some families have very little support in their community. Their dilemma may not appeal to those around them. It may create fear in the minds of others, or embarrassment, or simply instil a desire not to be involved.

Many families lack an understanding of international law, investigation, foreign judicial processes and government relations. Realistically, how many people in our community have in depth knowledge and experience in these areas?

Most all Australian families who have a loved one detained overseas are left to negotiate a foreign legal minefield, with little to no guidance from the Australian government, on how best to avoid the many pitfalls of a foreign judiciary and how best to engage the *right* legal representation. They are simply handed a list of practicing lawyers of that country and told to choose one. There are of course ways of *best navigating* those processes, to lessen the impact of sentencing or being sent bankrupt as many families are when supporting their loved one detained overseas [The Price of Life, Nigel Brennan, 2008], but finding the right way of navigating these processes is complex. I am deeply concerned that Australian families are not properly guided through these processes. Instead they are forced to flounder alone, and at times, unwittingly offend the detaining authority and thus, make their legal situation worse. Language and cultural differences can easily misinterpret good intentions. Families who have loved ones detained overseas incur both heavy emotional and financial debts, in some cases, to the ruination of the family structure.

Another issue that is directly related to the dilemma these families face is this seemingly new trend of Australian authorities accused of outsourcing the death penalty. I refer *briefly* to the case involving nine Australians arrested in Bali, Indonesia, on 17 April 2005 and convicted of drug trafficking 8.3 kilograms of heroin. Three of them are now facing execution by firing squad. [Foreign Prisoner Service Campaigns, Scott Rush, Andrew Chan and Myuran Sukumaran, 2010].

On 25 April 2005, the Australian Federal Police (AFP) Commissioner decided that the AFP would hand over all evidence it obtained to the Indonesian authorities detaining these Australians. This was done despite the fact that most of them would face the death penalty if convicted. The Commissioner said that the AFP was not under any obligation to hand over evidence, but argued that it didn't really matter because the Australians had been caught red-handed. In his words, 'any information offered in this case will not influence the fate of the accused Australians.' [Howard government leaves 'Bali nine' alleged drug runners to their fate', 11 May, 2005.]

There is a strong view shared by many in our community that this decision was questionable on a civil rights level; and that the Commissioner's comments could have prejudged the Australians. There is no denying that the Australians who were arrested were in fact acting illegally and should be punished. Personally, I and my colleagues do not condone drug trafficking and consider a *just* punishment clearly warranted, but many legal and human rights experts have expressed concerns as to the manner in which the matter was handled. Many believe more should have been done to have had these young Australians arrested in Australia—where they would have faced more appropriate sentencing, have access to rehabilitation programs, and not face a barbaric death penalty, particularly given that the Australian Government opposes the death penalty; and at the very least, further discussions on the Prisoner Transfer Agreement.

In summary there are a number of issues relating to Australians detained overseas that warrant further consideration. Least of all;

- the fairness of overseas trials and the pre-trial process;
- the right to request Government assistance to support an individual's application to the International Criminal Court of Justice in the case of wrongful conviction;
- the role of the Australian Federal Police in liaising with their overseas counterparts, especially in jurisdictions where the death penalty applies; and,
- the role of the Australian government generally in upholding the rights and liberties of its citizens, wherever they might be located;
- the expedition of Prisoner Transfer Agreements that support the repatriation of all Australians detained overseas.

We are not our brothers' keepers, but we should take the time to care that human rights are upheld for *all* persons, including those Australians detained overseas.

Kay Danes
International Humanitarian

Foreign Prisoner Support Service
PO Box 391, Capalaba QLD 4157 Australia
Email- kaydanes@foreignprisoners.com
Web - www.foreignprisoners.com

'It is our Right 2 Human Rights.'

www.kaydanes.com

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