

REDRESS

Ending torture, seeking justice for survivors

EVIDENCE SUBMITTED BY REDRESS TO THE SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE REFERENCES COMMITTEE INQUIRY INTO THE WRONGFUL DETENTION OF AUSTRALIAN CITIZENS OVERSEAS

30 August 2024

ABOUT REDRESS

1. REDRESS is an NGO based in the UK and the Netherlands that pursues legal claims on behalf of survivors of torture in the UK and around the world to obtain justice and reparation for the violation of their human rights.
2. REDRESS has legally represented individuals impacted by arbitrary detention and State hostage-taking. REDRESS represented Nazanin Zaghari-Ratcliffe, a British-Iranian charity worker who was arbitrarily detained and tortured in Iran from 3 April 2016 until 16 March 2022, and her husband Richard Ratcliffe. During this period, Nazanin was tried and convicted of unfounded charges on two occasions, and despite being innocent, she remained in detention, separated from her husband and daughter in the UK. She spent four years in prison, including more than eight months in solitary confinement, and a year under house arrest with an ankle tag. REDRESS' work on the case included advocating on behalf of Mrs Zaghari-Ratcliffe to United Nations (UN) Special Procedures, including the Special Rapporteur on Iran, the Special Rapporteur on Torture, and securing a ruling from the UN Working Group on Arbitrary Detention (WGAD) that her detention in Iran was arbitrary, unlawful and that Iran must release her.¹ REDRESS supported Mr Ratcliffe in his engagement with the UK Foreign Commonwealth & Development Office (FCDO), including securing the UK's grant of diplomatic protection over Mrs Zaghari-Ratcliffe in 2019, an exceptional step that formally escalated the matter to an inter-State dispute between the UK and Iran. It was the first time the UK had used this procedure in more than a century. In March 2021, REDRESS provided evidence to the FCDO of Nazanin's severe physical and psychological suffering due to Iran's treatment, leading the department to publicly acknowledge for the first time that her treatment by Iranian officials amounted to torture.
3. More recently, in collaboration with survivors of State hostage-taking in Iran, REDRESS submitted two dossiers of evidence to sanctions authorities in the UK, US, EU, Canada and Australia, asking them to impose Magnitsky sanctions on twenty Iranian officials involved in Iran's hostage-taking. The submissions are based on testimony from victims, including former hostages and the families of current hostages, and expose the deliberate, systemic and escalating nature of Iran's hostage-taking practices, amounting to torture and other violations under international law. A third and final tranche, targeting an additional ten perpetrators, will be filed with international Governments later this year.
4. REDRESS has also submitted evidence to two related inquiries by the UK Parliament's Foreign Affairs Committee (FAC). REDRESS submitted evidence to their inquiry on

¹ Human Rights Council, Working Group on Arbitrary Detention, *Opinions Adopted by the Working Group on Arbitrary Detention at Its Seventy-Sixth Session, 22-26 August 2016: Opinion No. 28/2016 Concerning X (Islamic Republic of Iran) (A/HRC/WGAD/2016/28)*, 7 September 2016, available at: <https://documents.un.org/doc/undoc/gen/g16/208/94/pdf/g1620894.pdf>.

Iran, which was incorporated into their concluding report, 'No prosperity without justice: the UK's relationship with Iran',² as well as the FAC's inquiry into the UK's handling of State level hostage situations, which was incorporated into the report, 'Stolen years: combatting state hostage diplomacy'.³ In the latter, the FAC adopted or partially adopted a number of our recommendations, including that the UK Government should review and publish its policies for the grant of diplomatic protection and managing hostage cases, take a consolidated approach to supporting UN mechanism decisions, for example those of the UN WGAD, impose Magnitsky sanctions to deter State hostage taking and hold perpetrators accountable, and work with international partners through the 'Partnership Action Plan' under Canada's Declaration Against Arbitrary Detention in State-to-State Relations (Canada Declaration).⁴

SUBMISSION SUMMARY

5. State hostage-taking, where individuals are arbitrarily detained by foreign Governments for diplomatic leverage, involves serious violations of human rights, including the right not to be subjected to torture and ill-treatment, the right to liberty and a fair trial, and in some cases the right to life. According to the UK's FAC, the use of State hostage-taking is increasing internationally.⁵
6. Based on REDRESS's experience working on this topic in the UK context, our submission explores ways in which Australia could strengthen its framework to deter the practice of arbitrary detention for diplomatic leverage (here referred to as 'State hostage-taking'). We will outline some of the issues that arise in cases of State hostage-taking, including torture, and set out how these problems can be addressed, including by calling out State hostage-taking for what it is, improving the framework for responding to cases of State hostage-taking, ensuring accountability for hostage takers, multilateral responses such as Magnitsky sanctions, and by introducing a legal right to consular assistance.
7. Our submission focuses on the following topics:
 - a) Torture in the context of State hostage-taking
 - b) Recognition of State hostage-taking
 - c) A structured response to State-hostage-taking
 - d) Accountability
 - e) Multilateral responses to State hostage-taking
 - f) Consular assistance and diplomatic protection

² UK Foreign Affairs Committee, 'No prosperity without justice: the UK's relationship with Iran,' 16 December 2020, available at: <https://committees.parliament.uk/committee/78/foreign-affairs-committee/news/137944/report-no-prosperity-without-justice-the-uks-relationship-with-iran/>.

³ UK Foreign Affairs Committee, 'Stolen years: combatting state hostage diplomacy,' 4 April 2023, available at: <https://publications.parliament.uk/pa/cm5803/cmselect/cmfaff/166/report.html>.

⁴ Global Affairs Canada, 'Declaration Against Arbitrary Detention in State-to-State Relations,' 15 February 2021, available at: https://www.international.gc.ca/news-nouvelles/arbitrary_detention_arbitraire-declaration.aspx?lang=eng.

⁵ House of Commons, Foreign Affairs Committee, "Stolen Years: Combatting State Hostage Diplomacy," Sixth Report of Session 2022-23, 28 March 2023, p. 6.

8. Our submission is based on REDRESS's experience representing survivors of State hostage-taking in the UK, as well as survivors of torture in cases requiring consular assistance. We have advocated for decades for a legal right to consular assistance to be introduced in the UK.
9. We welcome the opportunity to further discuss the points raised with the Senate Foreign Affairs, Defence and Trade References Committee.
10. REDRESS recommends that:
 - a) The Australian Government should assess the effectiveness of its policies on protecting its nationals overseas from torture and ill-treatment, including ensuring that its international legal obligations are met. This should include consultation with survivors of State hostage-taking, and their families, to inform the reforms of law and policy that might be required.
 - b) The Australian Government should recognise arbitrary detention for diplomatic leverage as 'State hostage-taking' and call it out in the strongest possible terms when it occurs.
 - c) The Australian Government should explore taking a more structured approach to State hostage-taking, for instance by introducing a team within the Australian Government with responsibility for handling State hostage-taking of its nationals who is mandated to work with families as trusted partners to secure the release of loved ones.
 - d) The Australian Government should explore whether its legal framework ensures accountability for perpetrators of international crimes connected with State hostage-taking, including by bringing universal jurisdiction cases against perpetrators when appropriate.
 - e) The Australian Government should support a multilateral response to State level hostage-taking with allied States, including by imposing Magnitsky sanctions and by implementing the 'Partnership Action Plan' under Canada's Declaration Against Arbitrary Detention in State-to-State Relations (Canada Declaration).
 - f) The Australian Government should explore introducing a legal right to consular assistance, to strengthen the protection of its nationals and dual nationals at risk of human rights violations abroad. It should also consider making the exercise of diplomatic protection obligatory in certain circumstances.

TORTURE

11. The absolute prohibition on torture is a fundamental principle of international law, recognised as a *jus cogens* norm, which obligates all States to take action against those who commit it. Torture is often employed in hostage situations, where severe physical or mental suffering is intentionally inflicted, typically by or with the consent of public officials, to pressure the detainee's home State. Therefore, protection from torture is critical in such situations.
12. REDRESS has observed that in the cases where British nationals have been detained abroad, families of those detained have found the UK Government reluctant to act – thus missing an opportunity to prevent torture - or reluctant to seek accountability where torture occurs. For instance, when Nazanin Zaghari-Ratcliffe, a British-Iranian dual citizen, was detained in Iran, her family first raised allegations of torture with the FCDO in 2017. Even though evidence of torture had been submitted before, it was not

until May 2021, following REDRESS' submission to the FCDO of a medical report as evidence of her severe suffering, that the former Foreign Secretary Dominic Raab acknowledged that she had been a victim of torture. In the case of Jagtar Singh Johal, a British national tortured by police in India, FCDO officials would only raise the allegations of torture with Indian authorities once they had obtained consent from him directly, which took two to three months. Australia can learn from these examples by ensuring that its own foreign policy and consular services are proactive in addressing promptly any allegations of torture involving Australian nationals, including dual nationals, abroad.

13. The risks of failing to properly acknowledge and challenge torture can be grave. Any failure to address such violations leaves individuals vulnerable to additional violence. By failing to challenge torture, Governments risk signaling that diplomatic interests take precedence over the protection of human rights, thereby undermining their credibility on the global stage. Such failures can directly contradict Government policies, guidelines, and obligations under international law, weakening the State's commitments both domestically and internationally.
14. Further, failure to acknowledge torture cuts off routes to accountability and emboldens perpetrators, signalling to abusive regimes that they can continue their violations without fear of repercussions. Hostage-taking is currently flourishing in an environment of impunity, as perpetrators exploit vulnerabilities and disregard fundamental principles of justice and human rights. The absence of a comprehensive strategy for addressing hostage-taking and connected human rights violations leaves citizens vulnerable. In the following section we outline the importance of recognising State hostage-taking as a first step towards comprehensively addressing it.
15. **Recommendation: The Australian Government should assess the effectiveness of its policies on protecting its nationals overseas from torture and ill-treatment, including ensuring that its international legal obligations are met. This should include consultation with survivors of State hostage-taking, and their families, to inform the reforms of law and policy that might be required.**

RECOGNITION OF STATE HOSTAGE-TAKING

16. The disturbing success of 'hostage diplomacy' has been evident to the international community, with authoritarian States increasingly adopting these tactics. Iran is often cited as a primary offender, but other States are learning from and replicating these practices.⁶ As State hostage-taking becomes more prevalent, the integrity of the rules-based international order is increasingly at risk. It is imperative to take decisive action before the practice becomes further entrenched.
17. Recognising State hostage-taking as a systemic human rights issue, rather than isolated incidents, is crucial for an effective response. Calling out State hostage-taking for what it is has a number of benefits. Firstly, it sends a clear message that such practices are unacceptable and diplomatic formalities will not be placed above upholding the human rights of State nationals. It better equips the Government to effectively manage the situation and keep families well-informed. Hostage cases should be treated differently from other consular cases, since the release of a hostage

⁶ The Soufan Centre, *Citizens for Leverage: Navigating State Hostage-Taking in a Shifting Geopolitical Landscape*, September 2023, available at: <https://thesoufancenter.org/wp-content/uploads/2023/09/TSC-Special-Report-Citizens-for-Leverage-Navigating-State-Hostage-Taking-in-a-Shifting-Geopolitical-Landscape-.pdf>, pp. 12-14.

is more likely to depend on high-level negotiations between the involved States (including at the political level), whereas consular cases would normally be managed by lower-level officials.

18. Secondly, recognising State hostage-taking empowers Governments to hold the perpetrators responsible for their actions, including by bringing universal jurisdiction cases and imposing Magnitsky sanctions when appropriate. It also allows the development of specific legislative and policy frameworks. For instance, the United States (US), which formally recognises State hostage-taking, has enacted the Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act. This legislation empowers the federal Government to challenge the unlawful detention of its nationals and has established specialised governmental entities, such as the Special Presidential Envoy for Hostage Affairs (SPEHA), to streamline coordination across governmental sectors. Australia could benefit from exploring such legislative measures, with the aim of strengthening its framework for responding to State hostage-taking.
19. The UK's FAC, in its inquiry into Iran, concluded that calling out State hostage-taking and leading a united international response would provide additional tools to counter this behavior.⁷ Similarly, in its inquiry into State hostage-taking, the FAC recommended that the UK Government use the strongest possible language to call out situations of State hostage-taking as soon as it becomes clear a particular detention is being used for leverage because “[s]ilence abets State hostage-taking.”⁸ REDRESS supports these conclusions.
20. As State hostage-taking continues to rise, it is essential that Australia takes strong action to combat this practice, beginning by strongly calling out State hostage-taking when it occurs. This is the first step towards an improved framework for dealing with State hostage-taking, which we lay out in more detail in the following section.
21. **Recommendation: The Australian Government should recognise arbitrary detention for diplomatic leverage as ‘State hostage-taking’ and call it out in the strongest possible terms when it occurs.**

A STRUCTURED RESPONSE TO STATE HOSTAGE-TAKING

22. A comprehensive strategy to ensure the safe return of hostages is vital. Without it, Governments may engage in ad hoc efforts that fail to acknowledge the systemic nature of the issue and deliver inconsistent outcomes. A structured approach to State hostage-taking is needed to prevent citizens being instrumentalised by States as part of a practice where they are at risk of torture and other violations.
23. One possible model would entail the creation of a dedicated Government team to handle cases of State hostage-taking. This could consist of an accountable Government focal point with the requisite policy framework and resources to lead the Government's diplomatic response, while treating families as trusted partners.
24. As highlighted in the previous section, this kind of model was established by the US Government in 2015 as part of wider reform to improve the US Government's response to hostage-taking across policy, diplomatic, intelligence, law enforcement, and military strands of work, following criticism of how hostage cases were being

⁷ UK Foreign Affairs Committee, ‘No prosperity without justice: the UK's relationship with Iran,’ p. 24.

⁸ UK Foreign Affairs Committee, ‘Stolen years: combatting state hostage diplomacy,’ p. 25.

handled. The SPEHA has since received praise for contributing to improvements in family support, in communication between Government agencies and in international collaboration.⁹

25. The US approach to hostage recovery has consistently received support across different administrations.¹⁰ In July 2022, President Biden issued Executive Order 14078, reinforcing a US commitment to addressing hostage-taking and arbitrary detention as significant threats to national security. This order was accompanied by a new risk indicator in State Department Travel Advisories to alert citizens about potential arbitrary detention abroad. Additionally, the Supporting Americans Wrongfully or Unlawfully Detained Abroad Act of 2023 was introduced to ensure that former hostages and their families have access to necessary resources and support.
26. US hostage recovery policy has effectively utilised a range of resources to handle cases involving both State and non-State actors. Much of the reform and oversight of this infrastructure has been driven by former hostages and their families.
27. **Recommendation: The Australian Government should explore taking a more structured approach to State hostage-taking, for instance by introducing a role within the Australian Government with responsibility for handling State hostage-taking of its nationals who is mandated to work with families as trusted partners to secure the release of loved ones.**

ACCOUNTABILITY

28. Accountability for hostage-taking is crucial to prevent violations of human rights, ensure that perpetrators face justice, and increase the chances that survivors will receive reparation. One mechanism for addressing international crimes is universal jurisdiction, a principle that allows States to claim jurisdiction over serious crimes, including those often involved in State hostage-taking, such as torture, regardless of where the crime occurred or the nationality of the perpetrators or victims. By employing universal jurisdiction, States can hold individuals accountable even when the crimes were committed outside their own borders, thereby reinforcing the international rule of law and deterring future violations.
29. Universal jurisdiction could be particularly effective in cases of hostage-taking because it is a process that transcends national boundaries and may enable countries to prosecute individuals accused of international crimes connected with hostage-taking even if they are located in, or protected by, States that are unwilling or unable to prosecute. Universal jurisdiction often allows the investigation and prosecution of a variety of perpetrators, from public officials intellectually responsible for violations, to prison guards or members of the judiciary, who are materially responsible, some of whom will have international ties and may be more likely to travel or be subject to asset freezes. Evidence of State hostage-taking is already being collated, for example, by UN bodies including the UN WGAD and UN Independent International Fact-Finding Mission on the Islamic Republic of Iran. The engagement of survivors of State hostage-

⁹ UK Foreign Affairs Committee, 'Stolen years: combatting state hostage diplomacy,' p. 11.

¹⁰ The Soufan Centre, 'Citizens for Leverage: Navigating State Hostage-Taking in a Shifting Geopolitical Landscape', September 2023, available at: <https://thesoufancenter.org/wp-content/uploads/2023/09/TSC-Special-Report-Citizens-for-Leverage-Navigating-State-Hostage-Taking-in-a-Shifting-Geopolitical-Landscape-.pdf>, p. 19. Under Presidents Obama, Trump, and Biden, addressing hostage situations has remained a key priority.

taking with these initiatives demonstrates the appetite that exists for such international accountability.¹¹

30. For survivors and their families, the pursuit of justice through universal jurisdiction can amount to reparation for the harm done to them, through a transparent, independent, judicial process which uncovers the truth and assigns responsibility for the harms suffered. It provides a sense of closure and validation, demonstrating that their suffering is recognised and that there are functioning mechanisms in place to address the crimes committed against them. Holding perpetrators accountable also sends a strong message that hostage-taking will not be tolerated and that there are significant consequences for such actions. However, despite the importance of criminal prosecutions from the perspective of victims, Australia's Australian Federal Police's 0% success rate in bringing charges against alleged perpetrators raises concerns about Australia's current institutional framework for international crimes investigations.¹²
31. Finally, as well as seeking accountability domestically, there are also essential multilateral approaches that Australia can engage in with allied States. These strategies are detailed in the following section.
32. **Recommendation: The Australian Government should explore whether its legal framework ensures accountability for perpetrators of international crimes connected with State hostage-taking, including by bringing universal jurisdiction cases against perpetrators when appropriate. In particular, it should consider establishing a permanent, specialised unit to investigate international crimes.**¹³

MULTILATERAL RESPONSES TO STATE HOSTAGE-TAKING

33. As well as protecting nationals taken hostage from human rights violations and ensuring their safe return home, it is important to deter further hostage-taking by States. Deterring State hostage-taking effectively requires robust multilateral efforts in collaboration with international partners.
34. One such approach is the use of Magnitsky sanctions, which are a critical tool to ensure that there is a cost to hostage-taking and send a strong message that it will not be tolerated as a means of diplomatic leverage. As a mechanism in a Government's foreign policy toolkit, Magnitsky sanctions have the potential to:
 - a) Identify specific individuals or entities which should be held accountable for specific actions – making it more difficult to ignore involvement in conduct contrary to international law.

¹¹ See, for example: The Guardian, 'UN inquiry into rights in Iran urged to look at detention of dual nationals,' by Patrick Wintour, 20 September 2024, available at: <https://www.theguardian.com/world/2023/sep/20/un-inquiry-into-rights-in-iran-urged-to-look-at-detention-of-dual-nationals>.

¹² Australian Centre for International Justice, 'Challenging Impunity – Why Australia Needs a Permanent, Specialized International Crimes Unit', 2023, available at: <https://acij.org.au/wp-content/uploads/2023/09/ACIJ-Policy-Paper-Challenging-Impunity-Why-Aus-Needs-a-Permanent-Specialised-Intl-Crimes-Unit-FINAL.pdf>.

¹³ Australian Centre for International Justice, 'Challenging Impunity – Why Australia Needs a Permanent, Specialized International Crimes Unit', 2023, available at: <https://acij.org.au/wp-content/uploads/2023/09/ACIJ-Policy-Paper-Challenging-Impunity-Why-Aus-Needs-a-Permanent-Specialised-Intl-Crimes-Unit-FINAL.pdf>.

- b) Be reinforced by other Governments who have similar targeted sanctions legislation, demonstrating a collective condemnation of the act which the designation seeks to address.
 - c) Be visible to external stakeholders, therefore increasing public scrutiny of the designee's actions.
 - d) Increase national and international public attention to the conduct allegedly perpetrated by the designated person.
 - e) Provide a deterrent and trigger behavioural change in the perpetrator.
 - f) Provide a measure of accountability by keeping perpetrators and their ill-gotten wealth out of key financial markets.
35. While sanctions alone cannot ensure full accountability, when coupled with other tools and collective international action, their impact can be enhanced. In hostile States such as Iran, evidence shows that sanctions have a powerful public accountability impact through the identification of the alleged perpetrators and acknowledgment by the international community of abuses committed by the Iranian regime.¹⁴ For survivors of human rights violations, the knowledge that their suffering is recognised by the sanctioning Government can provide relief and hope for justice.
36. The Canada Declaration, adopted in February 2021, which Australia has endorsed, is a mechanism that allows States to show their commitment to addressing the issue of arbitrary detention, particularly when used as a tool of political leverage. This declaration aims to combat State hostage-taking and the abuse of detention for diplomatic purposes. The accompanying Partnership Action Plan outlines a framework for collective action, including coordinated diplomatic efforts, targeted sanctions, and support for victims and their families. Adhering to this plan is crucial, as it strengthens international collaboration and ensures a unified stance against arbitrary detention. By following its principles, countries can collectively exert pressure on offending States, uphold human rights standards, and reinforce global norms against the misuse of detention.
- 37. Recommendation: The Australian Government should support a multilateral response to State level hostage-taking with allied States, including by imposing Magnitsky sanctions and by implementing the 'Partnership Action Plan' under Canada's Declaration Against Arbitrary Detention in State-to-State Relations.**

CONSULAR ASSISTANCE AND DIPLOMATIC PROTECTION

38. Australia takes a discretionary approach to the consular assistance it provides to its nationals.¹⁵ The basis for the provision of consular assistance remains a matter of policy, through the exercise of executive powers. Consular assistance is not seen as the individual right of a national, but instead a privilege which is exercised at the discretion of the State. This discretionary approach does not ensure certainty for victims and their families and could lead to different approaches and shortcomings in the protection of nationals from human rights violations.

¹⁴ REDRESS, 'Evaluating Targeted Sanctions: A Flexible Framework for Impact Analysis,' November 2023, available at <https://redress.org/wp-content/uploads/2023/11/Evaluating-Targeted-Sanctions.pdf>, pp. 15-22.

¹⁵ REDRESS, 'Consular Assistance in Domestic Legal Frameworks', April 2024, available at: <https://redress.org/publication/consular-assistance-legal-frameworks/>, p. 5.

39. It is widely accepted that when individuals are detained abroad, the greatest risk of torture, ill-treatment, and other serious human rights violations is within the first 48 hours, particularly when detention is incommunicado or unacknowledged. The provision of consular assistance by a Government to its national is a crucial – and sometimes the only – link between a detained national and the outside world, and it is a vital safeguard against human rights violations, including arbitrary detention and torture. Considering the rights inherent in citizenship, consular assistance is a logical extension of the Government's responsibility to protect its citizens.
40. Under international law, consular assistance – founded on freedom of communication and access between consular officials and a detained person – enables Governments to provide three key protections to its nationals abroad:
- a) Preventing human rights abuses, by identifying and acting on warning signs of potential violations (including, for example, signs of torture) or an imminent risk of such violations.
 - b) Ensuring other procedural safeguards are in place to mitigate the risk of further violations – for example, access to a lawyer.
 - c) Ensuring redress, including reparation, for any human rights abuses that do occur.
41. Despite the importance of consular assistance, the Australian Government currently does not recognize a legal obligation to support its nationals even when they face such extreme threats to their wellbeing. Internationally, there is an increasing acceptance of a legal obligation, with States whose laws require them to provide consular assistance in some or all circumstances.¹⁶ Moreover, from an international law perspective, in cases where there have been serious human rights violations (or where there is a risk of them occurring), the Australian Government already has an obligation to provide consular assistance to prevent and protect against such violations.¹⁷
42. Australia has ratified the Vienna Convention on Consular Relations (VCCR), which gives individuals the right to communicate freely with their consular officers. But the VCCR does not explicitly require States to provide consular assistance to its own nationals. Given our increasingly globalised world, the evolving nature of travel worldwide, and the growing complexity of international relations, a new approach is needed.
43. A legal right to consular assistance, rather than a discretionary approach, is vital because:
- a) It would demonstrate an unequivocal commitment to the human rights of nationals abroad, giving these rights primacy over other foreign policy and trade considerations.
 - b) It would recognise the crucial role of consular assistance in international law and its role in preventing human rights violations, solidifying prevention obligations under human rights treaties (such as the UN Convention against Torture).

¹⁶ *Ibid.*

¹⁷ United Nations, General Assembly, *Extrajudicial, Summary or Arbitrary Executions (A/74/318)*, 20 August 2019, available at: <https://digitallibrary.un.org/record/3826491?v=pdf>, pp. 6-11.

- c) It would transform culture among consular staff, as they would be responding to some consular assistance requests within a legal and not a discretionary framework.
 - d) It would enable victims and their families to understand the level of support that they and their families can expect, providing much-needed transparency and consistency (which could be enhanced by the full publication of any related policy matters).
 - e) It would provide a much clearer route to accountability when things do go wrong.
44. REDRESS research¹⁸ has found that in the UK context, a haphazard approach has led to numerous complaints from those detained abroad (or their families) of a lack of effective consular assistance, including failures to respond to allegations of ill-treatment, delayed or infrequent consular visits, a lack of prompt follow-up with detaining authorities, and an insufficient insistence on privacy during consular visits, or (in the case of dual nationals) on gaining access at all.
45. REDRESS has put together a set of ‘Principles for a Legal Right to Consular Assistance’¹⁹ (the Principles) to help shape a legal right to consular assistance. These are targeted at the UK Government, which has promised to introduce such a right,²⁰ but would translate well to the Australian context. The Principles were developed in consultation with survivors of torture, including survivors of arbitrary detention and State-hostage taking, their families, and legal experts. They have been endorsed by the civil society organisations, including British Rights Abroad Group, the Free Nazanin Campaign, Hostage International, and Prisoners Abroad.
46. International law recognises that, in some circumstances, States can raise an individual’s dispute with another State to the level of a formal legal dispute – known as ‘diplomatic protection’. For example, this could enable an individual’s claim about State hostage-taking to be pursued by their ‘home’ State in an international court or other complaints mechanism. REDRESS has argued in the UK context that ‘diplomatic protection’, currently discretionary in Australia as it is in the UK, should be mandatory in certain circumstances, and where other routes are unavailable or have already been exhausted.²¹
47. Moving consular assistance onto a legislative footing, and making diplomatic protection obligatory in certain circumstances, would ensure more robust safeguards for Australian nationals at risk of human rights abuses abroad.
- 48. Recommendation: The Australian Government should explore introducing a legal right to consular assistance, to strengthen the protection of its nationals and dual nationals at risk of human rights violations abroad. It should also consider making the exercise of diplomatic protection obligatory in certain circumstances.**

¹⁸ REDRESS, ‘Beyond Discretion: The Protection of British Nationals Abroad’, January 2018, available at: https://redress.org/wp-content/uploads/2018/01/3CADP-Report_FINAL.pdf.

¹⁹ REDRESS, ‘Protecting British Nationals Abroad from Human Rights Violations: Principles for a Legal Right to Consular Assistance’, January 2024, available at: <https://redress.org/news/redress-sets-out-principles-for-a-legal-right-to-consular-assistance/>.

²⁰ Labour, ‘Labour Party Manifesto 2024: Our plan to change Britain’, 13 June 2024, available at: <https://labour.org.uk/updates/stories/labour-manifesto-2024>.

²¹ REDRESS, ‘Evidence submitted by REDRESS to the Foreign Affairs Select Committee inquiry into the handling of state level hostage situations,’ 13 May 2022, available at: [2022.05.17-REDRESS-submission-to-the-FAC-Inquiry-on-State-Hostage-Taking-Public-Version-1.pdf](https://redress.org/wp-content/uploads/2022/05/17-REDRESS-submission-to-the-FAC-Inquiry-on-State-Hostage-Taking-Public-Version-1.pdf), pp. 3-4.