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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

Tuesday, 31 March 2020

Members in attendance: Senators Abetz, Kitching and Mr Andrews, Mr Hayes, Mr Hill, Ms Vamvakou.
<table>
<thead>
<tr>
<th>Name</th>
<th>Title/Position</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARRAF, Ms Rawan</td>
<td>Director, Australian Centre for International Justice</td>
<td>11</td>
</tr>
<tr>
<td>CHEA, Mr Youhorn</td>
<td>President, Cambodian Association of Victoria</td>
<td>15</td>
</tr>
<tr>
<td>EK, Mr Sawathey</td>
<td>Founder and spokesperson, Kampuchea Krom Cultural Centre of NSW</td>
<td>24</td>
</tr>
<tr>
<td>HENDERSON, Mr Simon</td>
<td>Head of Policy, Save the Children Australia</td>
<td>6</td>
</tr>
<tr>
<td>IN, Mr Hemara</td>
<td>President, Cambodia National Rescue Party of Victoria</td>
<td>20</td>
</tr>
<tr>
<td>LIM, Mr Hong</td>
<td>President, Cambodian Australian Federation</td>
<td>15</td>
</tr>
<tr>
<td>PEARSON, Ms Elaine</td>
<td>Australia Director, Human Rights Watch</td>
<td>1</td>
</tr>
<tr>
<td>TAK, Mr Meng Heang</td>
<td>Private capacity</td>
<td>15</td>
</tr>
</tbody>
</table>
PEARSON, Ms Elaine, Australia Director, Human Rights Watch

Evidence was taken via teleconference—

Subcommittee met at 09:18

SUBCOMMITTEE CHAIR (Mr Andrews): I declare open the first public hearing of the Human Rights Subcommittee of the Joint Foreign Affairs, Defence and Trade Committee for the inquiry into the use of targeted sanctions against human rights abuses. I welcome Ms Pearson. I wish to advise you that in giving evidence to the subcommittee you are protected by parliamentary privilege. I also remind you of the obligation not to give false or misleading evidence. To do so may be regarded as a contempt of the parliament.

These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera and may determine that certain evidence should be heard in camera. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the subcommittee will determine whether it will insist on an answer having regard to the ground which is claimed. If the subcommittee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course be made at any other time. I ask witnesses to refrain from naming individuals who may be associated with current cases in order to protect the privacy of individuals. In accordance with the committee resolution on 24 July 2019, this hearing will be broadcast on the parliament's website and the proof and official transcripts of proceedings will be published on the parliament's website.

Once again, I welcome Ms Pearson from Human Rights Watch to this first public hearing. The hearing is being conducted via teleconference. The committee has your submission, No. 12. Are there any modifications or amendments to it?

Ms Pearson: No, there are no modifications or amendments to my submission.

SUBCOMMITTEE CHAIR: I invite you to make some opening comments.

Ms Pearson: Good morning, and thank you so much for inviting us to testify today. Human Rights Watch are an independent, non-governmental organisation. We conduct research and advocacy in over 90 countries worldwide on a range of human rights issues. You already have Human Rights Watch's detailed submission, so I'll go straight to our recommendations and reiterate a few key points as to why a targeted sanctions law is needed.

Firstly, we would urge the committee to recommend the adoption of a targeted sanctions law without delay. The law should cover both travel bans and asset freezes, and it should cover both serious human rights abuses and acts of corruption. Secondly, we would urge that there be a clear and transparent criteria for applying these sanctions. Thirdly, we would urge that there be a reference in the law to engagement with civil society as part of the sanctions process. This is something that we've noticed has been quite useful in other jurisdictions—namely, in the US. Finally, we would urge to ensure that individuals and entities sanctioned can review the basis for being listed and can challenge the listing and that there are clear criteria for their removal from the lists, as once an individual is sanctioned it can be difficult for them to be removed.

Globally the human rights regime is changing, and an increasing number of Western governments are starting to use Magnitsky-style laws as a tool of foreign policy. As you know, the US, Canada and the UK—all close allies of Australia—have already moved in this direction, and the EU is in the process of developing one. The effectiveness of these laws is really bolstered when governments work together. Firstly, information about potential abuses can easily be shared. But also, the ramifications can then extend beyond Western countries. Say, for example, an abuser is sanctioned by the US, Canada and Australia. It may then be that a bank in a financial hub that doesn't have sanctions—for example, Singapore—talks about lending to that person or providing them with financial services. In this way, sanctions across multiple jurisdictions really close down the space for people who commit human rights abuses and impose very real costs on their actions.

Australia's geographical position also means that travel bans and asset freezes imposed by Australia are more impactful for abusers in nearby countries. For example, South-East Asian government officials with abusive human rights records may come to Australia for a myriad of reasons—tourism, shopping, medical care, to visit relatives or because they own property here. It will raise the cost of committing human rights violations or committing corruption if they can't attend their child's graduation at an Australian university because they are on sanction lists.

There's a very powerful deterrent with these sanctions. They are a tool to promote justice and accountability. Australia's existing autonomous sanctions regime is inadequate. Having a new, specific law would create a clear, transparent process for members of parliament and civil society to present information to the Australian government. It would compel Australian foreign affairs departments to closely examine serious cases of human
rights abuse and corruption. This would basically give the Australian government another tool in its toolbox to promote and protect human rights. Frankly, these days, the government has limited tools at its disposal. This law questioning the perpetrators of serious human rights abuses and corruption will, if consistently applied, send a strong message to rights violators everywhere that there are far-reaching consequences for their actions.

SUBCOMMITTEE CHAIR: Thank you, Ms Pearson. I will lead off then. One of the threshold questions is whether this type of legislation, if it were to be enacted in Australia, should include corruption as well as human rights violations. As you know, some legislation and some proposals include one—usually the human rights violations—and others include both. I take it from what you've said that Human Rights Watch believes that both bases should be included in the legislation?

Ms Pearson: Yes, absolutely. Obviously as a human rights organisation we tend to work more on human rights violations, but we also recognise that the two issues are quite interlinked: human rights abuses and corruption. I think having both of these as individual criteria is really important because sometimes it is easier to prove the cases of corruption. In other cases there may be strong evidence of human rights abuse. I think the experiences from other jurisdictions suggest that both are relevant and it would be a powerful tool to include both.

SUBCOMMITTEE CHAIR: I don't know whether you've looked into this in detail or not—if you haven't maybe you could take this on notice—but it's probably easier at one level to say, 'Yes, we should have this type of legislation,' but then the question becomes: what level of a human rights violation or a corruption should be sufficient to justify a government acting in this way pursuant to legislation? If you take corruption, there are a whole range of things that could be regarded as corrupt, from petty types of instances through to gross violations, gross corruption. Have you given any thought to where that balancing should be put?

Ms Pearson: I think if you look to the other jurisdictions, say to the US, in the law it says gross acts of human rights abuse and significant acts of corruption. But I think it's also quite telling that the President then issued an executive order and broadened those criteria, so that it was serious human rights abuses and corruption rather than significant acts of corruption. So that is the direction that I would encourage Australia to go in, the sort of slightly broader criteria. But even so I think the evidence that needs to be produced in order to prove serious human rights abuses—we're talking about the sorts of things like extrajudicial killings, rape, enforced disappearances, torture, ill treatment—is still quite a high standard and a high bar. I think that is evidenced by the fact that the US has had this law in place for a few years now and I think something like 200 individuals and entities have been sanctioned. On the corruption, as I said, we've sort of had a bit less familiarity with that. We don't work as closely on the corruption side, but I would be happy to talk with my colleagues and see if they have further ideas, and I could get back to the committee on that.

SUBCOMMITTEE CHAIR: Thank you, Ms Pearson. Mr Hayes?

Mr HAYES: Yes. Elaine, is it simply to have legislation which is Magnitsky style or is it the importance of having legislation that binds us internationally with other likeminded countries having a global Magnitsky approach to human rights as well as corruption?

Ms Pearson: I think it is important that Australia falls into line with its allies. If you look at the other countries that have adopted this legislation—the UK, Canada and the US—they are in the Five Eyes alliance, so is Australia. There is already a close working relationship with a number of these countries, which makes it much easier to share information. Some of the difficulties with applying these sanctions are certainly an issue of resourcing, but I think where governments can work together and work in lock step on that it's quite important. When looking at the criteria in other countries we see that each jurisdiction has worded the legislation slightly differently, but that's why in our recommendation we've made the language pretty much in line with the US, which has the longest familiarity and the most resources at its disposal to apply these sanctions.

Mr HAYES: Would that be the reason why we should look to the level of deficiencies in Australia's current autonomous sanctions regime—because it isn't in lock step with most of our Five Eyes network?

Ms Pearson: Yes, that's it. I have raised this issue for some time with Australian government officials, and the response has sometimes been, 'Oh, but Australia already has an autonomous sanctions regime, so it is possible to apply these sanctions on human rights grounds.' I think the problem with the existing regime is that it has a very broad definition; it actually doesn't include human rights or corruption in the actual act itself. If we think about what is powerful about this type of law, it is its deterrence value in putting other governments and individuals on notice that, if they engage in various human rights abuses or corruption, there will be consequences. That's why I think having human rights there specifically as a ground and making sure that this is in line with the measures imposed in other countries is really quite important.
Mr HAYES: One final question: given your experiences across the globe in this, do you see that there is a general overlap between corruption and human rights abuses?

Ms Pearson: Absolutely. I think they are intertwined. I can give you numerous examples of countries—Cambodia obviously springs to mind, where officials that have been engaged in serious human rights violations have also equally been engaged in corruption. That's why it's actually really important that both of these things are there as criteria. When we're talking about these measures, obviously we're talking about restricting people's travel to Australia but we're also looking at the seizure of assets. As far as corruption is concerned it is really important to think about property and things that can be frozen to prevent people from having access and prevent people from squirrelling away ill-gotten gains in Australian bank accounts.

Senator ABETZ: Thank you for your submission. There are variations in the Magnitsky acts around the world. Which is the best? I understand your answer to that might be the United States. If the US is the best, is that because of the resources made available or the actual black-letter law of the legislation?

Ms Pearson: That's a good question. I think with the other examples of Canada and the UK—certainly the UK has very new legislation, so we can't really say. With Canada, certainly one of the things that our office in Canada has identified is that there is a lack of resourcing that has really limited the ability of the law to be used to its full effect. Whereas in the US you have both the law and the executive order and the follow-up. Even though it is quite a small team, as I understand it, within the state department and treasury, they are working very hard to act on these cases. From a civil society perspective, we have submitted lists of names and we hope that more people are sanctioned under these acts. We had hoped they would act faster, but they have had more resources to really go after these cases, so we have seen more people from a more diverse range of countries listed under the global Magnitsky act than under the Canadian legislation so far.

Senator ABETZ: Lastly, if we were to have a Magnitsky act in Australia, should it apply retrospectively or would it only apply as of the day of royal assent? By that I mean, if people already have assets in Australia that are as a result of corruption, would they be caught under your proposal?

Ms Pearson: We would encourage it to be retrospective. As I understand it, in practice in the US there has been a desire to look at more contemporary cases and not to look at historical cases. For instance, we have submitted evidence on cases in Cambodia going back 20 years, and there's been less interest. There's been more of the desire to go after people who are committing current acts. I think part of that is about the deterrence value of that.

Certainly I would hope that the law wouldn't only look at current events. If you take somewhere like Sri Lanka, for instance, you have there a situation where people have total impunity for very serious acts that were committed during the war. Even though there have been international attempts to try and hold those people to account, those acts have really falterled. Just last week we had someone who was pardoned in one of the rare cases where they had actually been prosecuted and convicted of atrocities. So I think that, where situations happen where someone is pardoned, there should absolutely be a consideration as to whether that person should then be subjected to targeted sanctions under a Magnitsky law. It's really about going after people who are managing to have impunity in their own country; it's about applying a standard so that they are held to account.

Mr HILL: Regarding your comments about asset freezes, travel restrictions and so on having an element of shame and embarrassment, with public sanctions, one of the points of contention that some other submitters have put forward is the possibility of extending an Australian regime to cover immediate family members. We're hearing later today, for instance, from people from the Cambodian Australian community, and there have been many instances highlighted in public where alleged human rights abusers have their family, friends, assets and kids being educated here; they come and go, and sanctions just on the perpetrator may not be as effective, given the other elements. Do you have a view on that, or could you tell us a little more about any thinking on that aspect—whether it should be extended to family members?

Ms Pearson: As I understand it, in the US it can be expanded to family members. I think it does need to be looked at on a case-by-case basis. We haven't called for that ourselves, because I think we also understand that it really depends on the relationship within families. In some cases it may well be that someone in the family has transferred assets to the name of other relatives. But, at the same time, there may be people who are completely cut off from their family members, and in such cases it would be wrong to also penalise them. So I really think it needs to be done on a case-by-case basis, depending on the evidence, the closeness of the family member and so on.

Mr HILL: So it would be a useful aspect or facility to have but would need to be applied sensibly, if I'm hearing you right?
Ms Pearson: Yes, exactly. One would need to be cautious in its application, but I think it is very important to include that.

Mr Hill: You might want to take this on notice, because I know we're tight for time: are there specific characteristics of the US legislation that create the flow-on effects that you mentioned through corporate compliance?

Ms Pearson: I might have to take that one on notice. Obviously the US sanctions regime is quite complicated and there are also other mechanisms in which corporate entities can be sanctioned for being involved in human rights abuses. Sometimes it's actually easier for them to be listed that way. To give one example, there was a listing of a bunch of Chinese entities in relation to mass surveillance and atrocities committed in Xinjiang. That wasn't actually through the global Magnitsky act; that was through other measures and other legislation. But there may be flow-on effects to the global Magnitsky act from that. We've tended to see most of the global Magnitsky sanctioning being applied to individuals, although obviously it can also be applied to entities.

Mr Hill: Thank you. That's very helpful. If there's any additional information on that point it would be good if you could provide afterwards.

Ms Pearson: Sure. I'd be happy to.

Ms Vamvakinou: Thank you for the presentation. Do you know of any particular cases where Magnitsky style legislation has been effective?

Ms Pearson: Yes. I do think that in the US and Canada it has been very effective. As I said, in the UK I think it's really too early to say. Talking to US officials, they have said it has resulted in the seizure of assets. It has resulted in investigations being launched, in people being removed from positions of power or authority as a result of them being listed. The interesting thing about the US is even people in countries that are traditional allies of the United States—there was a listing of 17 individuals, although not Mohammed bin Salman for the killing of Jamal Khashoggi. The Saudi Arabian officials have been listed. There was also an Israeli individual who was listed, in relation to an act of corruption. So I think it is quite a flexible tool and really does have far-reaching impacts. Anecdotally, we have heard from our contacts in different countries across South-East Asia that they are very concerned about the potential for individuals to be listed under this legislation. I think that does provide a very powerful deterrent for committing acts of human rights violations and corruption.

Ms Vamvakinou: What consequences have there been for those individuals, including for the Khashoggi killing? Are there cases where raising awareness—other than just listing—may have led to more serious ramifications for individuals?

Ms Pearson: Some of those individuals—certainly not all of them—are being tried, as I understand it, in Saudi Arabia. I don't really know whether that is the impact of the global Magnitsky legislation or pressure from the United States. It's important to say that this is one tool in the toolbox. Governments have ways of applying pressure to countries in lots of different ways—through diplomatic pressure, through trade, through security, through agreements and so on—but I think this is an additional powerful tool, particularly because it's specific. It goes after individuals rather than sanctioning an entire government.

Ms Vamvakinou: Thank you.

Chair (Senator Fawcett): Elaine, thank you very much for your presentation. I have two areas I'd like to ask about. You say in your submission that you welcome and like the American approach in engaging with civil society, which gives them an opportunity to be involved in the process, but you acknowledge that at the end of the day it's states and treasury that decide whether to implement sanctions. Could you talk about your expectations of how the Australian system should work with those two aspects, civil society and engagement, but with the ultimate decision resting with the state?

Ms Pearson: The reality is that, ultimately, the decision will be made, I presume, in Australia by Foreign Affairs, potentially with input from other relevant government departments. It's important to note that under the US legislation it does say, in the law, that the state department should review credible information that comes from NGOs as well as other countries that monitor human rights violations. That in itself already creates the expectation that information will be provided. So NGOs in the United States are providing information all the time to the state department and members of Congress about people who they think should be listed under the global Magnitsky act.

The way the process works in the US is that there isn't, necessarily, follow-up with those NGOs as to how the information is used. We don't have oversight of that process. But I think it is important that there are transparent criteria so that NGOs know that they're providing this information. They can provide it through different sources since those at the department of foreign affairs will then be reaching out to NGOs as well in order to understand
more about specific names they may have been provided to crosscheck that information and in terms of gathering evidence to determine whether or not someone should be placed on a sanctions list.

CHAIR: Sure. At the end of the day, whilst one of the criticisms of our current scheme and one of the criticisms of the US global Magnitsky act is that its application can sometimes be variable or unpredictable—I can't remember the exact word used in your submission—you accept that, at times, the state will have valid reasons for implementing in one set of circumstances but not in another, even though the offences may appear to meet the threshold in the same way.

Ms Pearson: Yes. Obviously, as a civil society organisation devoted to protecting human rights, we will always be pushing to ensure that there is a consistent application in these sorts of sanctions being applied, but we also recognise that, for various reasons, governments do think about the political considerations. I think we want to reduce the ways in which that happens. But, if you have a law that has human rights criteria and has corruption specifically listed there, then I think it really helps to elevate the extent to which that information is going to be received. I think that's the problem with our existing sanctions regime—that human rights is one of a whole range of things that could be considered, but it's so broad, so opaque and so vague that it's very unclear to know whether human rights is really a consideration. It would be good to know that human rights is the criteria and the consideration that are used to determine whether or not to list someone. But, yes, I think we said in the submission that one of the failings has been the way in which it's been quite inconsistent if you look at countries and individuals who have been somewhat selectively added to lists and then in some other countries there are very few people who are listed, for various reasons—security reasons, trade reasons and so on.

CHAIR: Coming to the issue of corruption, you note that Australia's approach has traditionally been to essentially walk and work quietly with nations, and I know we do a lot of investment in transparency and good governance within governments in our region and civil society. The difference that exists in our region is that many of the nations there are also exposed to alternative supplies of support and influence that are not as concerned about corruption or human rights. I'm wondering how you think we should balance imposing Magnitsky style sanctions against individuals or individuals within government when they have an option to pivot to someone else who will hand out cheques without accountability and who isn't as concerned about human rights. How do we get that balance right?

Ms Pearson: I think we see that happening already all across Asia with countries like Cambodia, Myanmar, Thailand, even Indonesia, where they are trying to balance the relationship certainly between the arrangements they have with the US and China. But I think there are lots of reasons why corrupt officials do not want to have Chinese bank accounts and would prefer to hold their money in US dollars or indeed in Australian dollars or protect their interests by purchasing Australian property. So I don't think that should be a reason not to do it; I actually think that even strengthens the argument for why these sanctions are actually quite powerful and have an impact and why those kinds of corrupt officials shouldn't be able to hide their assets in Australian bank accounts simply because they'll take them somewhere else. I think the more countries that adopt this legislation the easier it is to shut down their ability to hide their assets offshore in different countries. That's why I gave the example of Singapore, because Singapore is not about to adopt its own Magnitsky act. I think the more that countries list those individuals, and their names then appear in a database, it prevents those individuals from having bank accounts with certain different currencies. It really makes a Singaporean bank think twice about whether they should let that person borrow money or engage in financial services, if they're sanctioned by multiple jurisdictions.

CHAIR: Thank you.

SUBCOMMITTEE CHAIR: Ms Pearson, thank you very much for your submission and for discussing it with us today. If you could forward answers to those questions that you've taken on notice to the secretariat, we'd appreciate it. We appreciate your ongoing commitment to human rights in Australia and around the world.

Ms Pearson: Thank you.
HENDERSON, Mr Simon, Head of Policy, Save the Children Australia

Evidence was taken via teleconference—

[09:50]

SUBCOMMITTEE CHAIR: Welcome. I advise you that, in giving evidence to the subcommittee, you are protected by parliamentary privilege. I remind you of the obligation not to give false or misleading evidence. To do so may be regarded as a contempt of the parliament. These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the subcommittee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the subcommittee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, be made at any other time. I ask witnesses to refrain from naming individuals who may be associated with current cases so as to protect the privacy of individuals. In accordance with the committee's resolution of 24 July 2019, this hearing will be broadcast on the parliament's website and the proof and official transcripts of proceedings will be published on the parliament's website.

Mr Henderson, we have the submission from Save the Children. Are there any changes, modifications or amendments to that submission?

Mr Henderson: No.

SUBCOMMITTEE CHAIR: I invite you to make some opening comments.

Mr Henderson: Thank you very much. Representatives of the Australian parliament, thank you kindly for inviting me to appear today and thank you for being so accommodating in such challenging circumstances that we are facing right now. I have over 10 years experience as an international human rights lawyer and policy advocate. I have previously appeared before many of you to discuss the human rights environment in Hong Kong. In relation to the use of targeted sanctions, I have personal experience. Notably I previously worked at the Department of Foreign Affairs and Trade; I spent time covering sanctions issues there. Additionally I have looked at these issues in my previous work covering China and Hong Kong.

Save the Children Australia is a child rights centred organisation. It considers that Australia's existing sanctions framework currently lacks adequate measures to drive accountability. In my opening comments today, I will outline the following: I will discuss the impact on some children of human rights abuses abroad; I will discuss ensuring that responses to human rights abuses are fit for purpose; I will look at the deficiencies in Australia's current sanctions regime and respond to DFAT's submission; and I will also put forward Save the Children's model.

In 2018, 415 million children worldwide were living in a conflict zone. That includes 149 million children living in high-intensity conflict zones, which is defined as over 1,000 battle related deaths per year. Since 2010 the number of UN verified grave violations against children has almost tripled. Children are often the most vulnerable when it comes to gross violations of international human rights law and serious violations of international humanitarian law. This is especially the case in a conflict setting, in situations such as mass displacement, or in authoritarian states, where fundamental rights are constantly under threat.

In situations of armed conflict, such as in Syria right now, there has been a deliberate campaign of violence against civilians, including the targeting of schools, the abduction and enslavement of girls and deliberate starvation. Such attacks are breaches of international humanitarian law. While Australia has imposed autonomous sanctions on Syria, to date they've not been imposed on individual military officials. Save the Children notes that just two weeks ago the United States used the global Magnitsky act to sanction the Minister of Defence, Lieutenant General Ali Abdullah Ayyoub, for his deliberate actions since December 2019 to prevent a ceasefire from taking hold in northern Syria and his responsibility for the bombardment of schools and hospitals.

Being fit for purpose, human rights advocacy multilaterally and bilaterally is an essential tool of Australia's foreign policy. Australia has a variety of tools in international and regional forums to promote and defend human rights, whether using the United Nations Security Council, the Human Rights Council, the Pacific Islands Forum or other avenues. Our bilateral mechanisms may include our aid program, formal human rights dialogues and, of course, autonomous sanctions. We have a large number of tools in our human rights toolbox.

However, each process has its limitations, due to design, the geopolitical context or resource limitations. For engagement to be strategic and effective, it must be coupled with flexible and targeted measures. To do so, we need to ensure that measures Australia adopts are fit for purpose, especially in a context where forums such as the UN Security Council are regularly divided and accountability is constantly being undermined, especially by states...
such as Russia and China. At present, our autonomous sanctions regime fails the 'fit for purpose' test, and we need additional tools to fill our accountability gaps. The deficiencies in Australia's autonomous sanctions regime under the Autonomous Sanctions Act and the Autonomous Sanctions Regulations highlight why we need a new act altogether, not just amendments to our existing act. I'll outline this by talking briefly to our submission.

Firstly, there is a failure to target human rights abuses, violations of international humanitarian law and acts of corruption. The acts and regulations fail to reference either international human rights law, international humanitarian law or corruption. Human rights are only mentioned once and were only included in the explanatory memorandum. Meanwhile, corruption and humanitarian law violations are not referenced at all. DFAT's submission says:

... Australia can, and already does, provide for individuals to be listed for targeted financial sanctions and travel bans specifically on the basis of human rights abuses.

That may well be true in the case of Syria or Zimbabwe, as cited in DFAT's submission. However, there is no requirement for sanctions to be linked to human rights abuses.

Secondly, there's a lack of information about criteria and evidence used to apply autonomous sanctions. The act and regulations provide limited guidance for DFAT staff who undertake initial assessments or for the decision-maker on what criteria to follow. Explanations as to why sanctions have been imposed are no more than a few sentences, and there is no information on how the assessment has been undertaken, such as with the violation of particular human rights law treaties. Furthermore, the fact sheets provided by DFAT where autonomous sanctions apply lack such information. To ensure transparency and accountability, there should be clear criteria and methodology for sanctions listing and delisting. DFAT acknowledge such issues in their submission, noting at paragraph 25 on page 6 that 'a human rights criterion could be added' to such regulations.

Thirdly, there is a lack of civil society engagement. There is a lack of specific provision for civil society engagement in the administration of the sanctions. Neither of the regulations references the need to consult with civil society. One of the advantages of Magnitsky style sanctions is the legislated role for civil society contributions, and that is referenced in the global Magnitsky act, section 1263(c), which provides:

In determining whether to impose sanctions ... the President shall consider ... credible information obtained by ... nongovernmental organizations ...

The US state department has acknowledged the importance of information provided by civil society, especially for organisations who operate in sensitive zones and gather firsthand information. Disappointingly, DFAT's submission does not mention the role of civil society.

Fourthly, there is a lack of parliamentary oversight. The Autonomous Sanctions Act lacks mechanisms for parliamentary oversight. There is no reporting or review process. Magnitsky style legislation in other jurisdictions generally provides roles for parliamentary committees to contribute. For example, section 16(3) of the Justice for Victims of Corrupt Foreign Officials Act in Canada states:

Committees ... may conduct a review concerning the foreign nationals who are the subject of an order or regulation made under this Act and submit a report to the appropriate House together with their recommendations ...

Save the Children recommends that the committee support the development of a new standalone international human rights Magnitsky sanctions act, which has also been recommended by the majority of submissions. The key components of a standalone act should include gross violations of international human rights law, serious violations of international humanitarian law and acts of significant corruption as independent sanctionable activities.

It is especially important, in Save the Children's view, that serious violations of international humanitarian law are included to capture abuses against children in conflict settings in Yemen, Syria and elsewhere. Save the Children's proposed language with reference to international humanitarian law is in line with international treaties and consistent with thresholds proposed by DFAT in their submission.

Other key components of a standalone act are specific protections for children, including reference to the grave violations of children's rights in armed conflict. They include the killing or maiming of children, recruitment or usage of children as child soldiers, sexual violence against children, abduction of children, attacks on schools or hospitals, and denial of humanitarian access for children. There should be mandated civil society consultation on the development of sanctions. There needs to be protection for civil society organisations who undertake humanitarian work, such as Save the Children and others. The act would need to include state and non-state actors. The sanctions measures should be reviewable, and there need to be requirements for regular reporting to parliament.
Additionally, Save the Children is of the view that this inquiry provides an opportunity to reassess how Australia responds to human rights abuses globally and to look at measures to complement a new Magnitsky style act, as well as guide its use.

Our recommendations for reform include a proposal that Australia develop a standalone strategic framework and action plan on human rights and democracy—based upon the European Union Action Plan on Human Rights and Democracy, the 2017 Foreign policy white paper and the Strategy for the Abolition of the Death Penalty—which outlines how Australia will protect and promote human rights abroad. The strategy should set out the Australian government's overarching approach to the protection and promotion of human rights, should provide guidance to overseas missions on developing and implementing advocacy strategies, and should include a reference to accountability for child rights abuses.

It's notable that DFAT state in their submission that any new act 'would also need to be accompanied by an effective diplomacy strategy to clearly communicate its limits and objectives domestically and internationally'. Save the Children agrees but suggests that this is not just a public diplomacy strategy but a broader human rights and democracy strategy to assist in avoiding any undue adverse impact that new or proposed listings could cause under a standalone act. Thank you very much for your time, and I look forward to answering your questions.

**SUBCOMMITTEE CHAIR:** Thank you, Mr Henderson, for that detailed elucidation of the submission. A lot of your comments, apart from those on the substance of any possible legislation, go to what I might describe as the transparency of the process. Is there any jurisdiction that does this better than others at present?

**Mr Henderson:** That's a very good question. I think that there are a few jurisdictions that do this well. I wouldn't say that there's one particular jurisdiction that provides the best model. For parliamentary oversight, I think the Canadian model is one that is worthy of consideration in terms of the role that individual parliamentary committees can play in oversight and review functions. With respect to the US model, their reporting requirements are helpful in that they outline, through their annual reports, detailed information on the listings and processes. Also, I was listening to the comments at the end of Elaine Pearson's evidence about the role of civil society and the challenges of engagement between civil society and the government, and there certainly needs to be a greater assessment as to how transparent that role is vis-a-vis the State Department or, in this case, the Department of Foreign Affairs and Trade, and how that information can be provided and then brought back. So I wouldn't say there's one particular model. I think we're looking at a combination of different best-practice models in each jurisdiction.

**SUBCOMMITTEE CHAIR:** Thank you. Senator Abetz?

**Senator ABETZ:** Thanks for the submission, Mr Henderson. In your estimation, which legislation is the best in the world, thus far, that we should seek to copy, and should the law be retrospective?

**Mr Henderson:** Good question. In terms of the best model, my answer would probably be similar to my previous answer. Save the Children's view is that, in the legislation in other jurisdictions, there are best pieces that we would want to incorporate. I think the Canadian model, because of Canada's similarities in terms of parliamentary democracy, has a lot of useful references that we would want to look to—for example, the threshold requirements around gross human rights abuses, and oversight by parliamentary committees. But, as I was saying before, I don't think that there's one particular model that I would say is the best. I think it's a combination of different pieces. The second part of your question was whether or not the act should be applied retrospectively—is that correct?

**Senator ABETZ:** Yes, that's right.

**Mr Henderson:** It's not an issue that Save the Children has given detailed consideration. I'd be happy to take that on notice and provide further consideration. My initial view is that, in principle, from a rule of law perspective, we would not be in favour of measures being adopted retrospectively. But there may be particularly egregious cases where measures have not been able to be prosecuted through, for example, international tribunals or other measures where there's a lack of accountability. That should be given additional consideration. I would be happy to take that on notice and provide you with a more detailed response.

**CHAIR:** If you came in at the tail end of the last witness you probably heard both of the questions I put to Ms Pearson. I'm wondering if you have comments on the same issues in terms of the US process, where they engage with civil society but at the end of the day it's the state department and treasury who have the final decision as to whether to implement, and whether that's your expectation of how the system would work here in Australia.

**Mr Henderson:** My expectation is that it would be a similar process in the context of Australia should such a civil society requirement be injected into existing acts or regulations or, as preferred in Save the Children's view, a standalone act. There is great value in civil society contributions throughout the process. Particularly in the case
of DFAT's diplomatic footprint, one of the challenges throughout the process—I think this is also identified towards the tail end of DFAT's submission, in paragraphs 38 and 39, where they talk about the additional administrative burdens that a new standalone act would have. I think that the value of civil society in contributing effectively to this process is that we, whether it's the Save the Children movement, other INGOs or organisations on the ground, have great capacity in terms of in-country resources and often might have more information than DFAT might be able to gather. They will also have experience in information gathering and the assessment of human rights abuses. It can fill a strategic gap in DFAT's information-gathering network and would reduce the amount of burden that a new process would otherwise have. It is really important to have that specific civil society contribution in the process. We'd certainly acknowledge that the decision-making process would still sit with the Minister for Foreign Affairs but should be very much informed by civil society where possible and that there are appropriate oversight mechanisms in place as well.

CHAIR: In your submission I was pleased to see that you talk about both ASEAN and the Pacific Islands Forum, which are very relevant, particularly ASEAN with their approach of non-interference in other states. How do you think we would engage with ASEAN and the PIF as part of a process of us moving towards an improved autonomous sanctions regime?

Mr Henderson: It's a very good question. I think that there is a great opportunity to utilise this process as a measure to really uphold what is outlined very clearly in the foreign policy white paper as to where our national interests lie in promoting human rights, rule of law and a rules based order in the Indo-Pacific region. I think a new sanctions regime which is accompanied by what I was referring to, a global human rights and democracy action plan, would send a very strong signal to ASEAN and PIF about the importance that these issues place. I think we've done a lot of good work in terms of our seat on the Human Rights Council in promoting these views and engaging with our near neighbours in promoting human rights concerns, particularly the situation in Myanmar but also concerns in the Pacific. I think it would provide another opportunity to extend these dialogues that we would be having on human rights concerns issues around corruption and international humanitarian law.

To go back to our submission, we really look at the sanctions measures as just one part of the toolbox. It would certainly very much complement existing responses on technical cooperation and human rights dialogues with other countries in ASEAN, such as with Vietnam and Laos, as well as our Pacific island neighbours. I'm also happy to give additional commentary on that with specific reference to discussions with Save the Children partners in the region if you would like.

CHAIR: That would be useful, and also any additional comments you'd like to make either now or in a follow-up submission. One of the other issues I raised with Ms Pearson was the fact that we aren't working in a unipolar world, where we are the only provider of financial or other support. There is competition. We've seen a number of nations both within the ASEAN group and with PIF changing their allegiance if you like or seeking support from others. How do you think an autonomous regime like this, which sanctions individuals within some of those governments, may impact on their willingness to remain connected to Australia, as opposed to putting their allegiance in seeking support elsewhere?

Mr Henderson: That's a very good question. Particularly, the case of Cambodia is quite instructive in this situation. Australia's aid program has been very much aimed at improving governance and transparency in Cambodia. It's a strong component of our work there. At the same time, Transparency International reports indicate that corruption in Cambodia is worse than that of any other South-East Asian country and one of the worst more broadly internationally. It is trying to ensure that, if we're implementing a sanctions regime, it is going to include criteria around corruption and it is going to be sufficiently targeted. It will ensure that countries are going to still want to aspire and adhere to these international human rights norms and standards. That is a challenging balance. I think what is really instructive—I agree with Elaine's comments at the end, that, with a lot of these corrupt activities, in the end officials, whether governments, businesses or entities, are going to be particularly attracted because of Australia being a major centre in the Indo-Pacific, having a top-10 traded currency and having access to financial capital. They do want to hold assets in this jurisdiction compared to a lot of other jurisdictions. Ensuring that we're able to combine those measures effectively as part of our overall response is really important.

CHAIR: Thank you very much.

SUBCOMMITTEE CHAIR: Mr Henderson, there is one other area from me, and I know we're running out of time. Can I go back to the Canadian situation and the parliamentary oversight there. Obviously we can obtain further details from the Canadians about this, but can you explain any more about that parliamentary oversight? Is it, obviously, some ongoing process that looks at each of the instances that are raised? Is it a regular examination of what's happening with foreign affairs in Canada? Is there an annual report et cetera?
Mr Henderson: Yes, the particular provision of the legislation provides a lot of flexibility for committees. Notably, it doesn't refer to one particular committee. I think there have also been discussions and some submissions about where potential oversight might sit. So would that be in the joint standing committee here, would that potentially be in the PJCIS or would that be in other committees?

It's notable that I'm referring to section 16 (3) of the Justice for Victims of Corrupt Foreign Officials Act. It says that committees of the Senate and the House of Commons that are designated or established by each house for that purpose may conduct a review. So it is fairly broadly phrased and it does allow quite a bit of leeway. They may prepare a report to the appropriate house, together with their recommendations. I think there are questions as to whether there are particular responsibilities assigned to a certain committee or whether they're provided more broadly to other committees.

In terms of the reporting process, I can come back to you with a little more detail on how that operates. I'm more familiar with the reporting process in the context of the United States. But I think that there will be value in providing very clear guidance on how the reporting process should look. From Save the Children's perspective, at the moment, one of our frustrations in the cases of Zimbabwe or Syria is that the information on the sanctions measures through the fact sheets that DFAT is providing really lacks content on where the human rights abuses have been occurring, what the context of those human rights abuses is and what the provisions of particular international human rights law treaties they're applying them under are. I think all of that can really be incorporated into a best practice model for review by parliamentary committees through that reporting mechanism.

SUBCOMMITTEE CHAIR: It would be useful if you could provide that, because, as I said, we can obviously obtain details from the Canadian government and possibly even the Canadian parliament. But the perspective from a civil society point of view would be useful in terms of how that operates in Canada and whether or not there are strengths in that system and also whether there are any deficiencies that, if we were to follow a similar approach, we might seek to avoid or seek some other approach in some other parliamentary oversight of the process. I appreciate anything that you can provide in that regard.

Mr Henderson: Certainly.

SUBCOMMITTEE CHAIR: Thank you. I think we are out of time. I'm going to propose that we break, because we don't have our next witness appearing until later. Mr Henderson, I thank you and your organisation for your submission and also for the detailed explanation of it today and the ongoing discussion about these important issues.

Mr Henderson: Thank you very much for your time. It's greatly appreciated.

Proceedings suspended from 10:18 to 10:56
ARRAF, Ms Rawan, Director, Australian Centre for International Justice

Evidence was taken via teleconference—

SUBCOMMITTEE CHAIR: I welcome you to these hearings, which are being conducted by teleconference. I advise you that, in giving evidence to the subcommittee, you're protected by parliamentary privilege. I also remind you of the obligation not to give false or misleading evidence. To do so may be regarded as a contempt of parliament. These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. If a witness objects to answering a question, the witness should state the grounds upon which the objection was taken and the subcommittee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the subcommittee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may of course be made at any other time.

I ask you to refrain from naming individuals who may be associated with current cases, to protect the privacy of individuals. In accordance with the committee resolution of 24 July 2019 this hearing will be broadcast on the parliament's website and the proof and official transcripts of proceedings will be published on the parliament's website. The committee has the submission from the Australian Centre for International Justice. Are there any changes or amendments to that submission?

Ms Arraf: No.

SUBCOMMITTEE CHAIR: I ask you to make some opening comments.

Ms Arraf: Good morning. Thank you, Chair and the Human Rights Subcommittee, for the opportunity to address this inquiry into whether Australia should examine the use of targeted sanctions to address human rights abuses worldwide. The ACIJ supports this inquiry and the proposal for a human rights sanctions regime in Australia to strengthen, promote and protect international human rights and international justice. The ACIJ's work focuses primarily on criminal justice and accountability and on developing Australia's universal jurisdiction practice. Our submission and recommendations, therefore, focus on ensuring that any introduction of an Australian human rights sanctions regime considers any possible consequences and impediments to prosecution and achieving international criminal justice. Before I delve more deeply into this issue I wish to present our opening remarks by raising some of the concerns with the current Australian autonomous sanctions regime and why a new legislative framework focused on human rights is needed.

The ACIJ supports a new legislative framework that promotes and strengthens human rights globally with the tools to impose targeted sanctions and visa restrictions and other like measures on foreign actors involved in human rights violations and acts of corruption. We believe it would strengthen Australia's capacity to respond to human rights violations globally and target those persons involved in acts of corruption and severe breaches of human rights. A number of submitters have relayed to the committee the inefficiency of the current framework for an autonomous sanctions regime in Australia to effectively address human rights abuses worldwide. There is simply no reference to human rights in the Autonomous Sanctions Act. Only the explanatory memorandum to the bill introducing the act in 2011 provides for consideration that sanctions can be imposed for the grave repression of human rights or democratic freedoms. However, the objective of imposing sanctions for these purposes has only been used in a small number of cases. It cannot be said that the current regime is being used effectively or genuinely to combat human rights abuses.

From our review of the current autonomous sanctions regimes in place in respect of nine countries, the purpose of protecting human rights is mentioned only minimally in relation to Zimbabwe and Syria. It may be that the other specified sanction designations in the list of autonomous sanctions regimes currently imposed by the Department of Foreign Affairs and Trade also have the intended purpose of punishing those responsible for human rights violations, but it's impossible to tell, because it's not stated. This represents an inconsistency of framing the imposition of sanctions around the protection of human rights and raises questions about the autonomous sanctions regime's effectiveness and appropriateness in protecting human rights.

A sanctions regime focused on protecting and promoting human rights should articulate human rights norms to achieve maximum impact. The current regime is not based on objective criteria. An example of this is that in 2019 the Minister for Foreign Affairs imposed targeted financial sanctions and travel bans on members of the Myanmar military, the Tatmadaw, in response to release of the full report of the UN fact-finding mission on Myanmar, which documented serious human rights violations and international humanitarian law violations against ethnic minorities in Myanmar, including the commission of atrocity crimes against the Rohingya and other ethnic minorities. The minister expressed serious concern at the findings of the mission and moved quickly to adopt some of the recommendations. However, of the six top generals of the Tatmadaw against whom the fact-
finding mission urged countries to impose targeted sanctions, Australia listed only four, and it included another brigadier general not identified in the mission’s report. The US, Canada and European countries did not refrain from designating the top two—the commander-in-chief and the deputy commander-in-chief of the Tatmadaw—for targeted sanctions. This represents the arbitrary and inconsistent nature of, and lack of objective criteria in, the Australian designations process. A new and separate sanctions legislative framework focusing on human rights, which provides clear guidelines for the designation process, will address this problem.

Many submitters have raised the issue of the lack of parliamentary oversight in relation to the current sanctions regime. Issues regarding the designation process and its opaqueness, the lack of transparency and broader concerns about the lack of procedural fairness rights mean that there is no effective oversight of this regime. This raises the question of whether there has been sufficient scrutiny to address these concerns in the decade of the autonomous sanctions regime’s operation.

The ACIJ, therefore, recommends the establishment of a committee of experts, independent of the executive, to provide monitoring, recommendations, guidance and expertise to the minister in sanctions designations. In addition to addressing the other concerns just raised, the ACIJ also recommends that a sanctions determination process ensure contribution of civil society and non-government organisations; that the scope of conduct in applying targeted sanctions include serious violations of international human rights law, violations of international humanitarian law and acts of corruption; and that the legislation ensure human rights safeguards, such as the right to seek merits review.

I would like to now address our first recommendation and the focus of our submission. The ACIJ states that the criminal prosecution of perpetrators of human rights violations, where those violations amount to the commission of international crimes, should be Australia’s primary objective in combating impunity for serious violations of human rights but that, in circumstances where prosecution is not likely, targeted sanctions can be a powerful tool for accountability. The ACIJ, therefore, recommends that decisions to impose sanctions ensure consultation with relevant government agencies and departments to consider whether the alleged conduct amounts to an extraterritorial criminal offence against the Commonwealth of Australia in chapter 8 of the Criminal Code and to determine whether prosecution is more likely and appropriate in the circumstances.

I note that this is the position of the European Union and was highlighted in the submission of the Netherlands Ministry of Foreign Affairs, where they state:

The basic premise must be that human rights sanctions and criminal prosecution are two different instruments. Sanctions are complementary to criminal law proceedings; they do not replace them … when international criminal proceedings are not an option, and a national prosecution fails to materialise, a sanctions regime offers the EU the opportunity to take action and to send a political message.

Under international law, Australia has obligations to prosecute and punish those who engage in the commission of international or grave crimes. It also has a duty to prevent the commission of these crimes. Encouraging effective investigations and prosecutions is, therefore, paramount to enforcing this obligation. The obligation to prosecute should be prioritised, where possible, over other accountability tools. Sanctions are a valuable tool to hold human rights violators accountable. They are not a substitute but can augment or sometimes precede individual criminal responsibility. The ACIJ therefore recognises that prosecutions are not likely in all circumstances, particularly where there is difficulty in obtaining evidence to the standard required in a court of law and, where necessary, prospects of success are low in extradition proceedings.

There are myriad difficulties and challenges for investigative and prosecutorial authorities. They include the complexity surrounding the collection of evidence, the sufficiency of that evidence to withstand rules of evidence and procedure in court, and the likelihood of the presence of the alleged perpetrator for the trial or the likelihood of successful extradition proceedings. There are, however, circumstances where these challenges and difficulties can be overcome and are attainable. Therefore, in these circumstances, imposing sanctions such as visa travel bans on perpetrators who might be of interest to Australian investigators and prosecutors will directly impede prosecution. Therefore, any sanction decision-making process adopted should ensure consultation with relevant Australian departments and agencies such as the Australian Federal Police, the Commonwealth Director of Public Prosecutions and the Attorney-General’s Department to consider whether the circumstances would favour prosecution, therefore deciding against imposing some or all sanctions measures such as visa travel bans.

There are two other recommendations I want to raise briefly. Legislation should include non-state actors as persons who may be the target of sanctions, and legislation should include immediate family members in the prescription of sanctions against targeted individuals. The introduction of a new Australian human rights sanctions regime represents a unique opportunity for Australia to protect and promote human rights globally by targeting human rights abusers and corrupt actors and promoting accountability. I’m happy to take questions.
SUBCOMMITTEE CHAIR: Thank you very much, Ms Arraf. I will lead off. On your first recommendation, in relation to the prosecution of alleged offenders, can you elucidate or take on notice the process involved there. If the priority is to prosecute perpetrators, there are limitations on the ability to do that when you're dealing with people in another jurisdiction if there are no extraterritorial provisions in the legislation under which any prosecution can be brought. There are some aspects of our legislation which extend further than others, but generally they don't. If there's no extraterritorial aspect to legislation, are you proposing that it would be appropriate to go directly to a sanction, if a sanction is appropriate, when a prosecution can't be done? Secondly, where it is possible to prosecute, should a prosecution be a priori undertaken prior to any sanctions being imposed or contemplated?

Ms Arraf: In relation to your first question: in essence, yes, that is our answer. Where there is an inability to proceed to a likely prosecution, sanctions measures should be adopted. In relation to your second question: I would think that a process model involving consultation with the relevant agencies involved, where they are possibly looking into whether a prosecution of alleged perpetrators is more likely in the circumstance, given the availability of the evidence, the strength of that evidence and the likelihood that we will see that person in Australia able to appear before trial, is a decision for the prosecutors to make. Our focus here is to ensure that, when designations for sanctions are made, there is proper consultation with all the relevant agencies to ensure that, if investigators and prosecutors are looking at a specific individual, there is no prospect of the department of foreign affairs issuing sanctions which would likely impede a prosecution.

SUBCOMMITTEE CHAIR: So that would be a matter of having to balance up the various considerations in each individual case?

Ms Arraf: That's right, yes.

SUBCOMMITTEE CHAIR: That leads me to my second question. Your third recommendation is: The Australian Government consider establishing a committee independent of the executive to provide monitoring, recommendations, guidance and expertise to the Minister in sanctions decisions.

Were you contemplating a parliamentary committee or a committee drawn from people outside both government—

Teleconference interrupted—

SUBCOMMITTEE CHAIR: Before you go on: can I ask everybody to put their microphones on mute when they're not speaking, just in case we get incoming calls like that. Thank you. Go ahead, Ms Arraf.

Ms Arraf: In our submission we referred in brief to what that kind of committee could look like. I suppose a good analogy would be the role occupied by the Independent National Security Legislation Monitor. That's a model that could be adopted.

SUBCOMMITTEE CHAIR: Yes, thank you. Senator Abetz?

Senator ABETZ: Thanks for the submission. You've undoubtedly looked at the various acts in the various countries that have a Magnitsky act. I'm wondering: which do you think is the best, and why, and should any legislation that Australia might enact be retrospective?

Ms Arraf: It's an interesting set of questions. I don't think there is a model that is the best, which is why I think Australia can really take aspects of different parts of those models and come up with the best model. This is really an opportunity for Australia to lead in this regard and to have various aspects of different types of models. I would say that aspects of the US and the Canadian models are at least operating to show that there is impact. We don't really know how the impact of the UK model is developing, but it would be interesting to see that developing as well and to see how they're progressing, the targeted impact and the designations that they decide to impose.

In terms of retrospectivity, I don't think there's an issue with that. We saw most recently that the United States imposed sanctions against the current Sri Lankan army chief, General Shavendra Silva, and his immediate family. The US cited his alleged involvement in war crimes during the final stages of the Sri Lankan civil war. So I don't think there's a problem with retrospectivity in this regard.

SUBCOMMITTEE CHAIR: Thank you. Senator Fawcett?

CHAIR: I have two quick questions. One is fairly simple. In recommendation 7 you argue that the legislation should include immediate family members. We did have a previous witness give us the example of perhaps an estranged son living somewhere else with a dictatorial father. Should we take into account those kinds of circumstances as opposed to just automatically including family members?
Ms Arraf: Absolutely we should take into account those circumstances. I think it should be reasonable in the circumstance. It should be applied flexibly on a case-by-case basis and consider compelling circumstances for waivers and exemptions. I believe the US model has that as well. I want to highlight that this is actually something that the current autonomous sanctions regime in Australia imposes, so it would not be a novel approach to impose sanctions on immediate family members. From our review of the current Australian regime, we note that it covers designated persons from Libya and their family members and, in relation to Myanmar, it covers immediate family members of specified persons. So it's not a novel approach to call for this. We know of circumstances—and I understand you might hear from members of the Cambodian community later on—where violators or abusers of human rights, and their family members, do enjoy freedoms and privileges here in Australia. I think the impact of such measures would really have a huge psychological and social impact on their immediate family members and themselves. So we would recommend that this be adopted in legislation or be considered in any designation process.

CHAIR: Going to your recommendation 5, a number of submitters have also highlighted the need for a merits review. Where do you see that the limits on that should be, such that we don't have nefarious figures tying up Australia's legal system—often at our cost—even if it's just for our side of the process, for long periods of time? How would you see that working?

Ms Arraf: It's difficult, at the moment, to address. I'm happy to take that on notice, but I think it's important to recognise that regardless of a nefarious process we need to ensure that there are procedural safeguards. That would be my answer to that. But I'm happy to see how the approach and practice is in Canada, to see whether there is an opportunity for us to look at how the impact is on their system there.

CHAIR: That would be useful, particularly in scenarios where the conduct is such that—under some UN sanctions, for example, engagement with people is not allowed. If a similar sort of offence were committed, on what basis should we be engaging with people who are considered to be undesirable to engage with? We need to balance that judicial fairness of a merits review with some practical considerations as well.

SUBCOMMITTEE CHAIR: Do any other committee members have questions?

Mr Hill: I have a couple of questions, but they've been dealt with by members. I thought it was an exceptionally clear, well-structured and logical submission, so thank you.

Ms Arraf: Thank you very much.

SUBCOMMITTEE CHAIR: Thank you for your submission and for coming in and discussing it with us today. We appreciate that very much. If there's any information—

CHAIR: Sorry, could I ask one further question?

SUBCOMMITTEE CHAIR: Go ahead.

CHAIR: With your recommendation 3, 'a committee independent of the executive to provide monitoring, recommendations and guidance', are you seeing that as being something external to not only the executive but the parliament or do you see that a parliamentary committee could play that role? Where do you see that process going, and do you see that being involved from the very initial stages of civil society putting forward cases for considerations right through to what the US have, where state and treasury are the ones ultimately responsible for recommending to the President what should be imposed?

Ms Arraf: I would see that such a body would resemble the role occupied by the Independent National Security Legislation Monitor. That monitor or, at least, a body of experts would provide recommendations, guidance and expertise to the minister, the department of foreign affairs and the Australian Sanctions Office. So the vision is there. That body of experts could also be an avenue for civil society engagement to provide information on persons they think should be the subject of sanctions. I want to highlight that this is also a recommendation from Geoffrey Robertson QC, and there is an excellent submission by the Independent High Level Panel of Legal Experts on Media Freedom, from the UK, written by Ms Amal Clooney, which goes directly into the principles around such a body. I would recommend the committee avail themselves of that submission, in relation specifically to this point, which I found very useful as well.

SUBCOMMITTEE CHAIR: Thank you, again, Ms Arraf, for your submission and for discussing it with us today. If there is any further information you're able to forward to the secretariat, as a result of the questions today, we'd appreciate that. Thank you very much.

Ms Arraf: Thank you very much. Stay safe, everybody.
CHEA, Mr Youhorn, President, Cambodian Association of Victoria

LIM, Mr Hong, President, Cambodian Australian Federation

TAK, Mr Meng Heang, Private capacity

Evidence was taken via teleconference—

[11:23]

SUBCOMMITTEE CHAIR: Welcome. This hearing is being conducted by teleconference. Is there anything you would like to add about the capacity in which you appear before the subcommittee today?

Mr Tak: I am the state member for Clarinda.

Mr Chea: I am a councillor with the City of Greater Dandenong.

Mr Lim: The Cambodian Australian Federation is the national body for the Cambodian community. I'm a former state member of parliament for Victoria.

SUBCOMMITTEE CHAIR: Thank you. I advise you that, in giving evidence to the subcommittee, you are protected by parliamentary privilege. I also remind you of the obligations not to give false or misleading evidence; to do so may be regarded as a contempt of the parliament. These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. If a witness objects to answering a question, the witness should state the grounds upon which the objection is taken and the subcommittee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the subcommittee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may, of course, also be made at any other time. I ask witnesses to refrain from naming individuals who may be associated with current cases in order to protect the privacy of individuals. Finally, in accordance with the committee's resolution on 24 July 2019, this hearing is broadcast on the parliament's website, and the proof and official transcripts of proceedings will be published on the parliament's website. I invite any of you who wish to do so to make some opening comments.

Mr Lim: I will start with opening remarks. We in the Cambodian Australian Federation and the Cambodian Association of Victoria believe we are the most prominent community-based organisations for the Cambodian community. We have put in a submission to your subcommittee on this inquiry on the Magnitsky act. We believe that the parliament should be helped in this study from our submission orally.

The point I would want to submit to you would be that I had the opportunity to travel after my retirement from parliament to visit my other community around the world because of my role as the head of the federation for the Cambodian community here, so I met up especially with my community in the US, and they keep asking the same question—that is, why is Australia not adopting the Magnitsky act that the United States has adopted? They saw that, if we were going to do the same here in Australia, it would strengthen the position of our struggle to bring back human rights, bring back democracy and bring back anticorruption activity in Cambodia.

Cambodia being a small country, it seems to be neglected. But the fact of the matter is that the Hun Sen regime has been in power there since 1979—in fact, it is 42 years now. The record of human rights violations is just horrendous. We had a good friend who was advocating human rights, democracy and anticorruption, and he came to Australia in 2016. Two months after he returned he was killed. It was the famous Dr Kem Ley. We have been able to sponsor his family—they are now here—because they said they would kill the family as well. He was very well liked. Of a population of 16 million people, we had more than two lives of people here in Melbourne, physically. Hun Sen himself, before he arrived here in Sydney two years ago, in fact had threatened them, because he does whatever he wants in Cambodia. He is not as bad as he used to be, but we know that
people—any opposition—were killed in the street through so-called traffic accidents or through shootings where they claimed that it was a robbery. This is the only country where they locked up a leader of the opposition and banned an opposition party and got away with it. Nobody seems to be able to stop it.

I'm rambling all over the place a bit. To put it bluntly and shortly: we here in Australia need this Magnitsky act more than at any other time to curb their influence, their money-laundering, and their unwanted interference and bullying and intimidation in Australia. I think I will leave it at this stage and probably take it up at a point later on.

**SUBCOMMITTEE CHAIR:** Thank you for that. Given that some other countries have Magnitsky-type legislation, most significantly the United States, what impact has this had in terms of human rights violations and corruption in Cambodia?

**Mr Lim:** The Magnitsky act has been used. The Americans have tried to have a few now. I wouldn't say that they tried—we here in Australia try the 'softly, softly' approach in diplomacy and in terms of how we handle the Hun Sen regime as far as diplomacy is concerned. The Americans have tried very hard and been very patient, but at least last year they used the Magnitsky act against one of Hun Sen's top generals. This is the top general of his personal guard. I have forgotten his name. They banned him from entering the US and also confiscated all his assets in America. They did this as a warning. The Americans also have 12 other names on the list and they will proceed through the list if things are not improving. It has really shaken the regime to the core because on the list there are people very close to Hun Sen. I think that at least they know they are being watched very carefully. So many of their activities have stopped, especially the laundering of money in America, because they know that tens of millions of dollars in terms of property, investments and land.

In the intelligence, it's just an open secret how they rob, how they plunder the country, how they cut the forest trees down and sell them at will, and how the corruption is just so large scale. After their 42 years of rule, 75 per cent of the population cannot even find $3 a day to survive. Our young people only go to school half a day, and all the rich and the government send their kids to school overseas. What is worse is that now we're talking about this COVID-19, that horrible virus and all that. In Cambodia—Hun Sen especially; whenever he's sick, he flies to Singapore—the rich can afford to fly just across the border to Vietnam or Thailand, and the poorest die in the miserable hospitals in Cambodia. This is after 42 years of his rule. That's how corrupt it is and how incompetent and neglectful of the education system it has been. I'm talking about this infrastructure that is so essential and so paramount in a country like Australia or any other civilised country. It's just so corrupt and so bad, with this corruption and these violations of human rights. They don't care anymore.

So we, as part of the civilised world, need to join the Americans in saying, 'Enough is enough.' We need to bring it up and implement it to a certain extent. I believe the Americans are going to take the next step, especially now, in view of the Leader of the Opposition's so-called kangaroo court trial in Phnom Penh because of a speech he made about five years ago in Melbourne. That was nothing, but they just say that it was a treasonous speech. So I'm very convinced that a Magnitsky act should be introduced in Australia.

**Mr Hayes:** I think it's fair to say that most of us in the parliament are pretty acutely aware of the situation in Cambodia. It's certainly an embarrassment on an international scale that, whereas Australia played a very significant role in 1991 in setting up the Paris peace accords, we've seen the emergence of a one-party state once again in Cambodia. What I'm grappling with is a little bit like what the chair just mentioned: whether the Magnitsky provisions would be so successful in deterring human rights abuses. They have only been used to a limited extent in the United States, particularly in respect of Cambodia. Are you aware of any other provisions that are impacting on human rights in Cambodia from other areas, particularly from countries that have implemented global Magnitsky style legislation other than the United States—for instance, Canada?

**Mr Lim:** I'm not familiar with the Canadian situation, but I'm quite sure about the European Union, the EU, because of these trade relations in the clothing and footwear industry—what is called the 'everything except arms' agreement, whereby Cambodia has been allowed to export to the EU. They use that intervention. At the moment, they have cut off 20 per cent of that allowance, and it's a warning that they want these human rights violations and this corruption going on in Cambodia to improve. But unfortunately, because of the Chinese interference—the Chinese can now bombard Cambodia with all this money, especially because of their geopolitical interest in the area—Hun Sen now just proclaims that he doesn't care what the EU is going to do to him. But the effect on Cambodian families is that up to 800,000 workers—which you can multiply by about another three million, depending on which workers are going to be affected—are going to be suffering. What I'm saying is that the whole civilised world is very concerned and very apprehensive about what's going on. They try their best in every possible way. I'm not quite sure and not too informed, but I understand that the EU also had some form of the Magnitsky act adopted or induced in some way. They're doing their part in trying to put pressure on this regime.
Mr HAYES: Do you see the value in Magnitsky-style legislation sending a strong message to those countries and particularly people that are human rights abusers in those countries?

Mr Lim: Indeed. I would say that is an understatement. To start with, in my meeting with the former Minister for Foreign Affairs, the Hon. Julie Bishop, with the daughter of the present leader of the opposition when he was in prison, she was pleading for her to adopt a lot of the measures and name those 12 names of the so-called dirty dozen—for example, adopting the same name and then putting the pressure on the regime. The minister at the time questioned what benefit Australia would get from following the Americans—and we've never followed the Americans—the answer was very simple: the civilised world needs to be seen as united against corruption, the violation of human rights, the abuse of power and money laundering. They're quite sure now that there's money laundering here, with the wealth they've been splashing around here, their intimidation and their violations.

There is a whole range of other things. I don't know if we've got time for them. We do have quite a good relationship with students in our group that came here under the Australian government scholarship with Australian taxpayer money. Now they are so fearful because of the intimidation of the regime. We've lost contact with them. They are in hiding because they've been threatened that, if they have any connection with the community here, when they go back there will be no job, there will be sanctions against them and they will be punished. This is just one small example.

The last ambassador, who came when he was appointment to his role here—he has now returned to be the spokesperson at the ministry of foreign affairs in Phnom Penh in Cambodia. He claimed, upon his arrival a few years back, that he came here as a representative of the ruling party and therefore he never turned up at any of the community functions. He did everything as a representative of the ruling political party. We are wondering if he had registered himself under the Foreign Influence Transparency Scheme. We believe that the new ambassador from Cambodia at the moment is appointed under the same arrangement, which he has been servicing—

Mr HAYES: Can I just ask, finally: do you see value in having a broader application of a global Magnitsky provision applying across many of the Western and developed countries in applying targeted sanctions to regimes such as Hun Sen's in Cambodia? Do you think there's scope for greater coordination from countries that apply a global Magnitsky scheme?

Mr Lim: By its very nature, if such an act were adopted, I believe that it would lead to general coordination. It's almost like a de facto Interpol, in a legal sense, internationally. Then we wouldn't have people asking, 'How come Australia hasn't got that?' As a proud Australian, I feel so embarrassed. I don't know how to explain to our people and to our American brothers and sisters there. They were surprised. We are very much a leader. We are a middle power, but we used to be a leader in Cambodian affairs and now we are taking a back seat and allowing things to happen in Cambodia.

Mr HAYES: Without trying to cast reflection now on our US colleagues, don't forget the US also resigned from the UN Human Rights Council. Anyway, I have no further questions.

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Mr Hill: Thank you for your presentations and your work in this area for so many years. Thanks, Hong, for your responses. I might throw a couple of broader questions also to Heang and/or Youhorn. How do you think the Cambodian Australian community or the diaspora in Australia would respond to the introduction of targeted sanctions? What kind of response do you think would be received if we did have this kind of regime and, for instance, the Australian government then imposed sanctions—at the very least—on the four people who've already been sanctioned by the United States legislation?

Mr Tak: Thank you so much for having us at this important hearing. I would like to say that the Cambodian Australian diaspora would very much welcome the introduction of this humanitarian act, for at least two reasons. One is that we've never seen, as Hong has already alluded to, the network of organisations set up by the Cambodian ruling party here in Australia since 2015. There seems to have been nothing or not much done to [inaudible] this network of groups that are supported by fly-in fly-out higher officials from Cambodia. My submission would be that the Cambodian Australian diaspora would welcome seeing this introduced, for that reason.

We all have seen the reported 'blood sugar' and so on and so forth, but I would like to leave the committee with this point to think about on Australia's involvement in Cambodia, through the Hon. Gareth Evans and governments after that. We have seen human rights going in reverse in terms of investment and the efforts and coordination that Australia has been involved with. I had the honour and privilege to return to Cambodia, my home country, with the Hon. Julian Hill in August 2018. I think the whole trip can be summarised by when we were at the hilltop in Sihanoukville, where there are many investors and a lot of activity, in terms of Crown casinos and, allegedly, money-laundering activities. I believe the trip was very eye-opening in terms of the land
concessions per se and the land concessions for the tycoon who is mostly linked with the army and the powerful. When we were on top of that hill—it took us almost two hours to go up there—a group of victims of land concessions, which are heartbreaking, showed us a lady, at least in her 50s or 60s, yelling out when she was arrested. This is what she said: 'They took my land and arrested me and locked me up for protecting my land.'

I just want to leave the committee with this: I think it's about time that Australia played a role in curbing this regime. Given our geographic location, if we don't have a Magnitsky or we don't have enough measures to curb this interference in Australia, Australia is a very good place for the ruling party, for the elite, to park their assets. In my electorate and in neighbouring electorates, we already know that there are relatives of the elite who park their assets here. We just don't have enough resources to investigate to work out who has brought their assets here. But I can say that the mandatory introduction will be well received by the Cambodian Australians diaspora here, who came here for a better life, for a life with freedom. Many of us came here in the 1980s after surviving the killing fields and after surviving the refugee camps. I would just like to leave the committee with that.

Mr HILL: A couple of the points you touched on there we have heard in other forums—in particular, given the Cambodian situation, asset freezes and visa bans by Australia would actually have a much great impact on human rights abusers than in Europe or America given the very close links between senior members of the regime and Australia. The other point that you touched on was in relation to family members coming and going and having assets here. Is that something that you think would be supported by the Australian Cambodian community—that sanctions could also be extended to immediate family members of human rights abusers where they were, in effect, benefiting through stockpiling assets? That's the first question. The second question is: is that a view which you've heard in the community—that the links with Australia are particularly strong and may have more effect if we took action than other countries?

Mr Tak: I totally agree with that. Freezing assets, including for extended family, is one of the effective mechanisms, as we have already seen in an article published by the ABC on 25 October 2018. The headline of that article was 'Cambodian regime figures splash millions on Melbourne properties as death threats escalate'. My answer is that it would be very effective given our geographic and other relationships with Cambodia.

Mr HILL: Thank you. Youhorn, did you have anything to add on either of those points given your role particularly in Victoria where we have such strong community links? I am concerned about fairness in treating family members. That's something the committee has spoken about with other submitters. Do you think the diaspora would understand and support the introduction of asset freezes or travel bans on family members of human rights abusers?

Mr Chea: I'm also a refugee who arrived in Australia in 1982, with my wife and four children. I lived under the Khmer Rouge regime as well. After that, I lived for a bit under the Heng Samrin regime—the new regime with Hun Sen—but I escaped in 1982.

As the president of the Cambodian Association, I've heard from a lot of Cambodian people who come to the Cambodian Association in need of some help and assistance. They ask me: why did Australia not do the same as the USA with the Magnitsky act? As you know, Cambodia is a martial state. Those people at the moment send their generals; they send people who have Australian citizenship. They just want to clean their money to go to Cambodia. Those people just want to create a mafia in Australia as well. Everyone in the Cambodian community feels very scared. As you know, as Hong said—and I support Hong and Heang—on 12 June 2019 the USA banned General Hing Bun Heang. After that, they banned General Kun Kim and, after that, Try Pheap—those three people—under the Magnitsky act. They banned these three people. They did not allow them to go to the USA.

As a Western country, we can't just leave it to the USA to do that. We need to support the USA like that as well. Because if all the Western countries support the USA to ban all of these bad people from Cambodia and not let them take their money to Australia to buy a house and to do a lot of things in Australia, I strongly believe that those people will feel really scared. People like Neth Savoeun go to Cyprus to buy citizenship. They get $1,000 per month and they have a million dollars to buy citizenship from Cyprus.

Also, the nephew of Hun Sen, Hun To, goes up and down, up and down to live here. Every year those people come just to give a party with a singer from Cambodia and so on. They just buy some people to go and support them. That one is very risky to Australians, and especially with Australian people like myself—I feel very scared. Hun Sen, the Prime Minister, just banned Hong Lim, told him not to return to Cambodia.

We need to have sanctions. If we don't have any sanctions, those people will come to threaten the Cambodian Australian community who have lived here for so long. It's been almost 40 years already. We believe in democracy. I appreciate so much what Australia has done. Here we can say whatever we want, but, if I return to
Cambodia, they'll put me in jail straightaway because they know that I criticised the Hun Sen regime and so on. The Hun Sen regime killed Dr Kem Ley on 10 July 2016. They killed Chut Wutty. They killed Chea Vichea in daylight. If someone does something wrong, they just kill them straightaway. To support human rights I would like the Australian government to please do the same as the USA and use the Magnitsky act. Just ban these three people, and more, especially the Hun Sen family, from entering Australia. You should know that Australia is very close to Cambodia. Those people like to go to Australia more than going to the USA. The USA is a little bit far away. Europe is a little bit further away than Australia. So if they pay the money they just want to create a mafia in Australia as well. Please support the Cambodian community who live in Australia as well. Thank you.

Mr HILL: Thank you and thank you, all, for your presentation and work.

CHAIR: I have two quick questions. Many foreign policy commentators who write about the relationship between the United States, Cambodia and China highlight that some of the pressures that are coming from the United States, because of human rights against Cambodia, are pushing them into a closer relationship with China. Do any of the three witnesses have concerns that applying these kinds of targeted sanctions would actually worsen the situation for the people of Cambodia, because of the strong Chinese support for the Hun Sen regime, or do they support the detention of Sam Rainsy—that the regime is actually quite fractured internally and that potentially these kinds of pressures may work to bring about change in Cambodia?

Mr Tak: One quick observation: I don't think the elite would take the money to China. If they take their assets they would park their assets somewhere like Australia or another country, but not in China. I haven't heard of cases where tycoons park their money in China, but it could be the reverse. I think by having Magnitsky it will not only help a country like Cambodia to respect, to restore or to uphold human rights, but it will also improve the livelihood and also make international countries like Australia continue with our soft diplomacy and better cooperation. Having said that, I believe that Australia, by having introduced Magnitsky, would help and assist Cambodia go the right way, rather than pushing Cambodia to China, which I don't believe would be the case.

CHAIR: Thank you.

Senator KITCHING: Firstly, thank you for your time and it's very good to hear your voices on the phone. I'm not sure whether this question has been asked. If this legislation had an element of retrospectivity would that be helpful in ensuring that the Cambodian diaspora felt that more secure—if I can put it that way—and safer?

Mr Lim: My response would be, yes, it could be applicable to do it retrospectively. I would welcome that, because this should have been done a long time ago. We feel that [inaudible] and they've been doing more and more, spending more money here and intimidating and bullying us. I think they will be doing more in the wider community—to separate the community and to intimidate and bully the community—if there's nothing to stop them or at least to warn them. As I said, this Foreign Influence Transparency Scheme we have in place now only appears to be applicable to China and not to many other groups, particularly not Cambodia, and we feel very frustrated and very disappointed. So, yes, if it could be applied retrospectively, it should be done.

Mr Chea: I support what Hong says, because, as you know, Sen's people arrive in Australia to organise his party and so on. I received an anonymous letter threatening to kill me, Hong and Meng Heang. I sent that letter to the police in Springvale and I also sent it to the police in Dandenong. That is threatening the Cambodian community. If we don't put up a Magnitsky act, if we don't do something, then I think those people will come to create a lot of problems in Australia as well.

Senator KITCHING: Thank you.

SUBCOMMITTEE CHAIR: As there are no other questions from the committee members, I thank each of you for your submission and also for discussing it with us today. You will be sent a transcript of the discussion, and we thank you for your participation.

Mr Tak: Thank you, Chair, for having us.

SUBCOMMITTEE CHAIR: It was a pleasure; stay safe.
IN, Mr Hemara, President, Cambodia National Rescue Party of Victoria

Evidence was taken via teleconference—

[12:08]

SUBCOMMITTEE CHAIR: I welcome you to this public hearing. The hearing is being conducted by teleconference. Is there anything you would like to add to the capacity in which you appear today?

Mr In: I am also the Vice-President of the Cambodian National Rescue Party of Australia and New Zealand.

SUBCOMMITTEE CHAIR: Thank you. I advise you that, in giving evidence to the committee, you are protected by parliamentary privilege. I also remind you of the obligation not to give false or misleading evidence; to do so may be regarded as a contempt of the parliament. These are public proceedings, although the subcommittee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. If you object to answering a question, you should state the grounds upon which the objection is taken and the subcommittee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the subcommittee determines to insist on an answer, you may request that the answer be given in camera. Such a request may, of course, be made at any other time. I ask you to refrain from naming individuals who may be associated with current cases so as to protect the privacy of individuals. In accordance with the committee's resolution of 24 July 2019, this hearing will be broadcast on the parliament's website and the proof and official transcripts of proceedings will be published on the parliament's website.

We have your submission. I invite you to make some opening comments.

Mr In: I would like to read the following. Australia would significantly benefit from having a law that would offer a legal possibility for sanctions against human rights offenders. A so-called Magnitsky law would give the Australian government the power to impose sanctions on people who commit gross human rights violations and go through the existing legislation. Instead of looking at individual cases from various parts of the world, such a little act in Australia, similar to the existing Magnitsky act in the United States of America, would provide sanctions against corrupt officials who commit gross human rights actions.

Similar acts already exist in the legal frameworks of Australia’s closest partners—like Canada, which unanimously adopted the Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law) in 2017, and the United Kingdom, in the form of sanctions, with an anti-money-laundering act adopted in 2018. Even the European Union, in December 2019, announced:

Under the request of several member states we have agreed to launch the preparatory work for a global sanctions regime to address serious human rights violations which will be the European Union equivalent of the so-called Magnitsky Act of the United States.

Australia cannot allow itself to be seen as a haven for dirty money. The case of Cambodia, and the gross human rights violations perpetrated in the country by the current regime and its highest officials, is the perfect example of why this kind of law would help Australia establish an effective mechanism that would prevent its territory, legal and financial systems from being abused by human rights offenders and would fortify a place for Australia in the global leadership on human rights. In the case of Cambodia, a Magnitsky act in Australia will provide the federal government with a true perspective, a method of reacting with much more strength and much more capacity to react in front of serious human rights violations.

When we are talking about Cambodia, we are talking about serious human rights violations. You would be aware that Cambodia, in the words of the Australian government, with:

… the dissolution of the Cambodia National Rescue Party (CNRP), the detention of CNRP leader Kem Sokha, and the banning of CNRP parliamentarians and officials from engaging in politics for five years, has reversed more than 25 years of progress towards democracy …

Cambodia is led today by a government that was put in place in 2018 after a prearranged political process in which, according to the Australian government, the Cambodian people were unable to freely choose their representatives. Today, contrary to the national constitution and the provision of the international legal framework, notably the Paris peace accord from 1991 that provides for plural multiparty democracy, Cambodia has turned into a one-party captured state led by the iron fist of Prime Minister Hun Sen and his Cambodian People's Party, the CPP.

As stated in our letter from January this year, next to the abolition of democracy, the human rights situation in Cambodia is dire. The ruling CPP maintains power through violence, politically motivated prosecutions, repressive laws and corruption. Political prosecutions, executions and arrests are done in the name of keeping law and order. Land grabbing and eviction are done in the name of development. The law of the land applies to people
differently, depending on their wealth and status and the power they have. Those who wait for justice will continue to wait not because of a lack of evidence or a lack of skilled investigators but because the perpetrator has status and wealth or power. People who voice opinions which are not to the liking of the regime are harassed, arrested and even murdered. There are hundreds of cases in the last year. As we speak, only since the beginning of this month seven human rights and opposition activists have been arrested and put in pre-trial detention. These are not statements made by the National Rescue Party but are facts and figures that can be confirmed by verifying them with international organisations and Australian partners.

To that end, we provide the following documents. The first is the Report of the Special Rapporteur on the situation of human rights in Cambodia, alongside the document Assessing protection of those at risk of being left behind. These were presented to the 42nd session of the United Nations Human Rights Council in September 2019. The document confirms the human rights violations by the de facto one-party state against the legal framework that provides for a system of multiparty democracy, as enshrined in the constitution. The second is the Report on EU enhanced engagement with three Everything but Arms beneficiary countries: Bangladesh, Cambodia and Myanmar, made in Brussels in February 2020. On pages 17 to 18, it states:

The Commission found that there were sufficient grounds to substantiate the existence of "serious and systematic violations" of principles laid down in the following conventions:

- International Covenant on Civil and Political Rights (ICCPR);
- ILO Convention 87 on Freedom of Association and Protection of the Right to Organise;
- ILO Convention 98 on the Right to Organise and to Bargain Collectively; and

The Commission prepared the report of findings and conclusions, taking into account the information gathered during the monitoring and evaluation phase, and sent it to Cambodia on 12 November 2019.

The third is Trade/human rights: withdrawal of Cambodia's preferential access to the EU market—factsheet, made in Brussels in February 2020. On pages 3 to 4, it confirms:

The Commission found serious and systematic violations of principles of the International Covenant on Civil and Political Rights (ICCPR) by Cambodia—more specifically, the rights to political participation and to freedoms of expression, peaceful assembly and association.

The gross human rights violations noted in the report of the EU focused on political participation, freedom of expression, freedom for association and peaceful assembly, land rights and labour rights, and the report concludes:

Given the nature of the rights infringed, duration, scale, and the impact of Cambodian authorities’ actions and omissions, the Commission found serious and systematic violations of the principles laid down in Articles 19, 21, 22 and 25 of the ICCPR.

Australia's partners are already undertaking action through their respective legislation on targeting human rights offenders in Cambodia.

Firstly, as recently as December 2019, the United States, through its Magnitsky act, targeted two individuals from Cambodia, Try Pheap and Kun Kim, the former a timber tycoon, the latter a general. Try Pheap and Kun Kim are both close associates of Cambodian autocratic prime minister Hun Sen and have been linked to serious human rights and environmental abuses under existing OSAC guidance. Try Pheap was found to be at the helm of a multimillion dollar timber smuggling operation, destroying the country's trees and forests and the lives of those who depend on them. He has also funded the Cambodian military, which perpetrated a systematic campaign of land seizures and mass displacement through the country. Kun Kim has a documented association with a Malaysian logging company which engages in persistent illegal logging. The general has been described by Human Rights Watch as a notorious human rights abuser, with allegations stretching back to his membership of the Khmer Rouge regime in the 1970s.

Secondly, in October 2019 a Reuters investigation showed that those closest to Hun Sen—family members and key business and political associates—have overseas assets worth tens of millions of dollars and have used their wealth to buy foreign citizenship, a practice Hun Sen has described as unpatriotic and at times has sought to outlaw. Among those who have acquired and applied for European Union passports through citizenship for self-engagement in Cyprus are Hun Sen's niece and her husband, who is Cambodia's national police chief, the country's most powerful business couple, who are old family friends, and the finance minister, a long-time Hun Sen adviser.

In December 2019 the government of Cyprus, under pressure from the European Union, withdrew those passports, while other EU governments are looking into similar measures. There have been a number of cases reported on how Cambodian high-level officials close to Hun Sen, who are at the heart of the dictatorial regime of
Hun Sen, are using the Australian territory and the financial system to their benefit and to the detriment of human rights of Cambodian citizens. The House has already debated this.

Australia should take swift measures to avoid having an incoherent position with its closest partners in the world, the United States, Canada, the United Kingdom and the European Union. Adoption of an Australian Magnitsky act and swiftly implementing it in the case of Cambodia would be to the benefit of Australian citizens and democracy and would offer a precious contribution to the promotion of human rights protection beyond its borders. Thank you.

**SUBCOMMITTEE CHAIR:** I will lead off with one question before going to my colleagues. I understand the argument for precluding a corrupt official or someone who's been engaged in human rights violations from profiting from that corruption or abuse by being able to make use of another country's system, whether it's the financial system or education or buying property. But I suppose the question in relation to Cambodia is this: given that, surely, the primary aim of Magnitsky-type legislation is to try and prevent human rights abuse, and given that countries such as America in particular, but also other nations around the world, have Magnitsky legislation, has this really had any impact so far as the regime in Cambodia is concerned?

**Mr In:** The international community sends a message that there is no place for human rights violation and they will listen. The bill also sends hope to ordinary people that the international community understands their plight and is willing to stand by them and to help them. It's a message of hope. The current government is formed from members of the CPP, ranging from the royal armed force government to the chief magistrate. Having a Magnitsky act in Australia will limit the ability to amass property and spread it to their relatives living overseas. I think this will not only help deter members of the CPP from perpetrating human rights violations; when the international community speak, their reputation will deter them. People will understand that the community—sorry, I am speaking back and forth again.

**SUBCOMMITTEE CHAIR:** I understand that.

**Mr Hayes:** Thank you for your submission, Hemara. I have two questions. What signal would adopting Magnitsky-style legislation in Australia send to the administration in Cambodia?

**Mr In:** It will limit the ability to violate human rights and to gather wealth. This will also cause damage to their influence and reputation not only in Cambodia but also internationally. These people are the people in the leadership around Hun Sen. Not only is their wealth and influence used inside Cambodia; their wealth is sent to their children, relatives, wife or husband living overseas. Having a Magnitsky act for individuals will send a clear message that the international community will not tolerate human rights violations. It will send a message to the ordinary people in Cambodia that the international community, especially Australia, understands their plight and situation.

**Mr Hayes:** Unlike our Western allies—the United States, Canada, the United Kingdom and the European Union—if we did not have a global sanctions regime, what message would that send to the human rights abusers of Cambodia?

**Mr In:** As previously alluded to by Hong Lim and others, many human rights abusers and those who are corrupt use their money to acquire property in Australia. And not just property; they will also have influence in Australia.

**Mr Hayes:** To follow that through: would that mean they would see Australia as a safe haven for the corrupt and the human rights abusers of Cambodia?

**Mr In:** Yes, that is true.

**Mr Hayes:** Thank you.

**Mr Hill:** Thanks, Hemara. I have a couple of things to follow up on. I'm curious about what you see, as a case study, are the potential impacts on the CPP, on the ruling party, if senior members of the regime become subject to targeted sanctions—as has happened in the United States, for instance. Do you think that would have a destabilising impact on the regime, or would it make little difference?

**Mr In:** I think the answer is twofold. When the people of Cambodia understand that Australia, along with the international community, is not standing by a human rights abuser—on the other hand few of these leaders come close to accessing them; however, the abusers have the ability to send their relatives, their children and wives, overseas—and when the international community sends a message that they can no longer do that, this will deter them. It is our point of view that it will at least stop them from continuing to abuse human rights. Even though they still live under the mafia rules of Hun Sen and they cannot break away from Hun Sen for the time being,
there will be an opportunity to do so if the international community sanctions each one of them for abusing human rights to hold onto power as they are doing now.

Mr Hill: That makes sense. Just picking up on, I think, the chair's initial question, there is a legitimate question as to whether these sanctions have much effect on regimes broadly, given the United States, for example, has had sanctions on some members for some time. Do you think that sanctions by Australia would have more impact, less impact or the same impact as sanctions by the US and Europe?

Mr In: For many Cambodians, Australia is the country that Cambodia looks up to, starting with the then foreign minister Gareth Evans when he co-founded the Paris Peace Accords. Cambodia is looking up to Australia as one of the countries that is its saviour. So, when Australia joins with the international community, it's not only telling the Cambodian people that Australia is again stepping up in helping Cambodians; Cambodia is looking at the countries that are also implementing similar legislation, like Canada, the United States, the United Kingdom, the European Union and Australia. I hope that other countries will also implement similar legislation. And so when the international community, not only Australia and America and Canada, join hands together, it's sending the same message to the human rights abusers. This message will be not only heard by the human rights abusers; it will be heard by the ordinary people who are suffering from the actions of these people.

Mr Hill: Thank you, Hemara.

Senator Kitching: Thank you, Hemara, for your very well-considered submission. In relation to soft diplomacy not being an effective means, if Australia was not to give succour to those committing the human rights abuses—for example, some of the acts of corruption, including embezzlement—that have occurred under the ruling elite in Cambodia, how do you think that would impact on society within Cambodia? So not only in terms of the diaspora here but also, as you've just said, the ordinary Cambodians who are suffering within Cambodia.

Mr In: I think aid from other countries will help the ordinary Cambodian people, but it will not help stop the human rights abuse there. In terms of Cambodia, Hun Sen now has sold the country to China, so, pretty much, Hun Sen will depend on China—on their aid. If the international community's aid is not flowing through, Hun Sen will let the people suffer and, if it's required, Hun Sen will just borrow more money from China in order to hold on to power. So, in that respect, the soft diplomacy from the international community, apart from China, will not deter the Hun Sen regime and his top officials from continuing to abuse human rights and to destroy the country's wealth through corruption.

Senator Kitching: Obviously, there have been some individuals about whom, I presume, but I don't know, you have let members of government—probably the state and federal MPs—and maybe even departmental bureaucrats know because their coming into the country may be problematic. That hasn't worked in the past, so do you feel that Magnitsky-style legislation, in your opinion, is necessary, because the existing regime of legislation has not been successful in keeping diaspora communities safe?

Mr In: The existing legislation is not targeted at the individual human rights abuser. What I personally believe is that, when Australians have the ability to put sanctions on individuals who abuse human rights or violate human rights, that will not only stop that person from entering Australia or from creating influence amongst Australian Cambodian citizens in Australia; it will also send a message to others in the regime to not follow suite of the person being sanctioned. Did I answer the question?

Senator Kitching: Yes. That's excellent. Thank you.

Subcommittee Chair: Are there any other questions from any committee members? If not, I thank you, Hemara, for your submission and also for discussing it with us today. We appreciate it very much.

Mr In: Thank you, Mr Chair.
EK, Mr Sawathey, Founder and spokesperson, Kampuchea Krom Cultural Centre of NSW

Evidence was taken via teleconference—

[12:38]

SUBCOMMITTEE CHAIR: We will continue. I welcome Mr Sawathey Ek to this public hearing, which is being conducted via teleconference. Do you have any comments to make on the capacity in which you appear today?

Mr Ek: I founded the Kampuchea Krom Cultural Centre of NSW in 1995 and I am also a current practitioner in the legal profession.

SUBCOMMITTEE CHAIR: I advise you that, in giving evidence to the committee, you're protected by parliamentary privilege. I also remind you of the obligation not to give false or misleading evidence. To do so may be regarded as a contempt of parliament. These are public proceedings, although the committee may agree to a request to have evidence heard in camera or may determine that certain evidence should be heard in camera. If you object to answering a question, you should state the grounds upon which the objection is taken, and the committee will determine whether to insist on an answer having regard to the ground which is claimed. If the committee determines to insist on an answer, you may request that the answer be given in camera. Such a request may, of course, also be made at any other time. I ask you to refrain from naming individuals who may be associated with current cases so as to protect the privacy of individuals. Finally, in accordance with the committee resolution of 24 July 2019, this hearing is being broadcast on the parliament's website, and the proof and official transcripts of proceedings will be published on the parliament's website. I thank you for the submission from the centre and invite you to make some opening comments.

Mr Ek: Thank you. By way of background, the centre was established to serve the welfare needs and also for provision of traditional worship for ethnic Cambodians from south Vietnam, but the majority of those it serves are from Cambodia. The actual statistics of Khmer Krom ethnic in Australia cannot be precisely recorded, given that many of us came here as refugees and migrants as Cambodians or Vietnamese. We use the estimate that between 7,000 and 12,000 Khmer Krom are living across Australia's southern states. There would be hardly a single Cambodian, whether they be in Canberra, Sydney or America, who has no link—either a family link or a social link—with Khmer Krom at all. I myself was born in Cambodia. My parents are Khmer Krom, and they escaped from south Vietnam in 1940, before the area was affected by World War II, and they escaped from Cambodia to Thailand in 1983 and resettled in Australia in that year.

Today's hearing is not only a milestone opportunity for the committee and Australia to hear about the suffering of migrants and refugees but, for Khmer Krom, the first time we have a voice. It is an experience of which we are very proud. It's also an opportunity for us to express our expectations that the horrible experiences from our past that we all endured should not be tolerated by Australia, particularly towards individual human rights abusers. We recognise the fact that Australia and our parliament have no right to control how other governments treat their people, but we do recognise that this is a time when we could request the parliament to hear about the suffering and what the human rights violators have done to the people of Cambodia and also Khmer Krom.

I am not going to go into statistics, but, by way of comparing the growth of the scale of human rights violations and the suffering and discrimination experienced by Khmer Krom, I can say that they are by far the most oppressed ethnic group in any ASEAN nation. This is consistent with a number of independent reports, including on human rights. Khmer Krom have been victims of both the Cambodian and the Vietnamese authorities during peacetime and in civil war conflicts. There has barely been a day that Cambodians don't talk about suffering. Every time Cambodians meet, either we talk about the suffering of Khmer Krom or we talk about the suffering of Cambodians. Khmer Krom victims carry the burdens of both sides. In Australia, for example, when Khmer Krom see Cambodians in Cambodia being oppressed by the current regime and we see Cambodian human rights victims in Cambodia, Khmer Krom in Australia get up and speak for Cambodians. When they see our colleagues in Vietnam being oppressed, it's that burden again. So they carry both burdens. Today I speak on behalf of victims from Khmer Krom and from Cambodia.

It was a dream that Khmer Krom shared with many Cambodians when Cambodia became a sovereign nation in 1992 after the Paris peace accords, which Australia heavily invested in. But that dream has now been shattered, and we urge that the committee has an opportunity to address the shattered dreams that we carry with us. Report after report has been made on human rights, as the committee has already heard. Cambodia is today the focus of this hearing.

Khmer Krom, in Vietnam, demand the practice of universal rights such as education. Practising Buddhism, they were the subject of persistent intimidation, with centuries of torture, detention and political and economic
deprivation as of today. Last week, before the lockdown due to coronavirus, a member of our community approached me and advised that he was about to visit his family back in south Vietnam but that the local official had already had his name circulated, for his activities to be monitored. A verification of the Human Rights Watch report confirmed that that has always been the case. In Cambodia, when Khmer Krom protest against the Cambodian regime to help their Khmer Krom colleagues in Vietnam, the Cambodian authorities arrest them and send them back to the Vietnamese authorities.

The centre in Sydney, in Australia, also did not escape the Cambodian government's threat. As an example, as late as 2018, when Cambodia participated in the ASEAN meeting in Sydney, our centre was approached by the Cambodian ambassador in person. He reminded our centre that he could provide us with diplomatic assistance and charity to the temple if our monks participated in the blessing ceremony for Cambodia's Prime Minister. It is this kind of experience, community intimidation, that is happening in our backyard. Canberra and the members of parliament have been shielded. The pain and suffering that is inflicted on our community recurs every day.

This is an opportunity for the committee to look into how it can best implement this Magnitsky legislation. Taking into account that Cambodia is the focus, Cambodia and Australia have invested with the Paris peace accord so much that we have been basically left to suffer within our community. In implementing the proposed law, we say that, when compared to Cambodia and Vietnam, the scale of human rights violations—including the use of state judiciary apparatus to imprison religious, political and social actors—is done at the state level. It is very difficult to take into account individuals who commit these acts. In other words, abuses in Vietnam are not easy to identify because the acts committed are not repeatedly done by individuals over a sustained period of time. In other words, the abuses are often perpetrated by state actors at a low level.

In contrast, in Cambodia the abusers themselves openly, bluntly, publicly show themselves as being the criminals. This is how the patronage system works: in order to show loyalty, one ought not be scared to show loyalty to the current human rights abusers. Public perks, visas, access to Australia, parties, functions, free lunches, free dinners—all are being publicly encouraged. This is what is happening in Cambodia, whereas that kind of activity has been difficult to detect in Vietnam. In Cambodia the abuse and violations are committed by individuals based on power. The public image is an assurance of loyalty and unity through corruption, through which patronage is sustained. Therefore the Cambodian system, which Australia has been a part of since the Paris peace accord, has been taking advantage of our aid to the point that human rights abuses trample our democratic values, and Canberra has not taken action. This is an opportunity for our parliamentarians to take note.

With many of the Cambodian human rights abuses, obviously, as the committee has already heard, there is a problem with transparency and the judiciary because they do not report. They do not disclose who has access to Australia. It could be always the generals. It could be always the people who have access to weapons. And it is these people who come into Sydney or Melbourne or South Australia—wherever there is a large Cambodian community base. They seek to infiltrate and radicalise our community by manipulating our democratic values and our multicultural spirit.

We say that if the Magnitsky law were to be implemented—if the committee were to be on board with this—there ought to be two special provisions. First, there ought to be a liaison officer within the department—a contact who has the connection with our community, because the Cambodian community is the only community that Australia invested in the Paris Peace Accords. We have heard so much over the years about how other democracies in South-East Asian nations are the same, but it is our submission that none of those countries have had the Paris Peace Accords. None of those countries have had so much investment from Australia and have so many people who have undergone a ruthless regime, and it was our rights. Under the Paris Peace Accords we were supposed to be guaranteed that these human rights violations ought not return to Cambodian.

We are saying this: Cambodia is a regime where you cannot be prosecuted for any killing; otherwise, you will not be loyal to the system. We are saying this: our democracy in Australia has been taken advantage of. So there ought to be a department established that our community can have close contact with. There was a question to my colleague from Melbourne about whether information had been provided to government delegates, and there was no response. To answer the question: yes, absolutely—there was absolutely no response from our embassy in Phnom Penh. Why would there be a response from a bureaucrat when Canberra, being the lawmaker, did not even hear our screams? We were begging Canberra to take action.

Regarding corruption, there is no need for us to put that submission; it's on the record. Regarding transparency, there's no need to say that; everything is at the bottom of the list. We talk again and again about this. There was a phrase that was used: walk the walk and talk the talk. After 30 years under this current government, we as democratic citizens say that it's time, it's enough. It's not supposed to be 'walk and work'. This soft diplomacy.
does not work with the Cambodian regime, because they actually manipulate our communities and, also, different ethnic groups.

**SUBCOMMITTEE CHAIR:** Mr Ek, I will interrupt because I know time is getting away from us and I'm sure members have some questions, and you might be able to pick up anything else you want to say in answer to the questions. I had a query about your suggestion for a liaison officer gathering information. Was that somebody who would be operating in Australia? Would it relate to various countries around the world, or would it be specific to one country, such as Cambodia? Would it be a person appointed by the government—by the Department of Foreign Affairs and Trade, for example—or would it be somebody with a parliamentary role? Could you expand?

**Mr Ek:** Absolutely. It would refer specifically to Cambodia. There ought to be a parliamentary officer who deals with us in Australia and who deals with our community, because it is our community that is the most deprived. Not enough has been spoken about our voice. I say this again: since 2014, former foreign minister Gareth Evans has consistently offered diplomatic sanctions. Canberra did not hear that. This person ought to have a specialised knowledge and basically be a contact with our community, because it's our community that feeds in this information. Most of the time these regimes promote themselves through Cambodian writings and through social media, and Cambodians get intimidated wherever there is a power base. We vulnerable citizens from deprived and traumatic refugee backgrounds tend to look up to people in leadership. The ambassador is one example. Once the ambassador gets in, everybody sees nothing wrong with these activities at all. We think that this officer would be an example.

The other thing that could work is that a Magnitsky kind of law could also have a provision whereby there is a cautionary letter or a 'show cause'. A particular person could be told: 'You have conducted this kind of activity in our community, and we deem this something that is in breach of our democracy. You have set up something else where we think that you are trying to take advantage of our charitable organisations or our charitable values. Please show us what is your purpose here.' It is this kind of legislation whereby we think that Australia has an opportunity to perhaps address broader issues.

**Mr HAYES:** Just following on from the chair's question about the liaison officer, I am aware that the United States, Canada and the UK, which have similar legislation in this regard, do not have such a provision. Do you have any comment on that?

**Mr Ek:** This is why we say that it's important that Australia has an opportunity to address the gaps. Given that our community is the one that has been targeted, we are the ones who are supposed to provide evidence. I know that we are operating based on evidentiary material in society, but the Cambodian regime, given that they have no transparency, tend to threaten our community at a softer level. Political recruitment is one instance where we could send information to a liaison officer. So, if there is a gap or a shortfall in terms of addressing this legislation in other jurisdictions, we say that it's time Australia takes that into account and improves our proposed legislation.

**Mr HAYES:** Can I suggest that what you're saying, then, is that the community should have some input to identify abuse?

**Mr Ek:** Absolutely.

**Mr HAYES:** In your view, what has driven increased incidence of those human rights abuses in Cambodia over recent years?

**Mr Ek:** It makes sense to answer this question: perpetual, persistent corruption over 30 years. With soft diplomacy, Australia is now trapped into this kind of authoritarian language. They know how to use the buzzwords: 'Let us just negotiate. Let us just ask for more money. Let us just ask for more funding. Let us just ask for more aid, because the more aid we have the more engagement'—

**Mr HAYES:** Could I just interrupt you there. In what you've said, you haven't said anything about China's protection of Cambodia over this period. Is that not an issue to consider?

**Mr Ek:** Absolutely, all the time. It's obvious that Cambodia has an opportunity to have regional partners such as China, and they are now becoming a country that shields them, even without Australian help. In saying this, it is just too much for our parliament to consider, as I said previously, how they treat their people over in Cambodia, but in—

**Mr HAYES:** Australia used to be the largest aid donor to Cambodia, but it's now been usurped by China. That's the case, isn't it?

**Mr Ek:** It's not just the aid. It's the military and defence personnel and all this diplomatic power that is now concentrated in Cambodia as a vassal state of China.
Mr HAYES: I accept that. I have one final question, if I may. As a lawyer, what evidence have you seen that the adoption of Magnitsky style legislation in the main jurisdiction—principally the US, Canada, the UK and now what's being proposed in the European Union—has a positive impact that has occurred in various states, principally in those which have been accused of having abusive individuals on human rights issues?

Mr Ek: The good thing with the Magnitsky law that America has applied, under which it has sanctioned a few of the current regime members in Cambodia, is that it basically makes America the only one that targets the regime. Therefore, it gives ammunition for the current regime to go back to China and say, 'Look, it's the USA that is targeting us.' Suddenly, if Australia, Canada and the UK focus on Cambodia, we bring back accountability in terms of the Cambodian Paris peace accords. So long as that is not universally applied with Australia as a partner, leaving America by themselves to sanction selected Hun Sen members, it's just a laughing stock. It has little impact on this regime, because the coordinated voices of the Western world, who oversaw these Paris peace accords, have not been operating at a uniform level. As a lawyer, I would often say that it's important that the governments in the Western world stand together with America. With a unilateral act on the part of the USA, it seems as if the US is targeting Hun Sen, and now Hun Sen or the regime has the opportunity to say to China, 'Please come and do more business with us, because the US is now focusing on us.' But if Australia joins—bearing in mind that we are part of the Paris peace accords—then I think it puts pressure, and it also shows good leadership with the USA, with Canada and with the UK, who were the prime movers of the Cambodian Paris peace accords.

Mr HAYES: Thank you for that. I suppose what you’ve just said probably justifies the concern of many of us about the United States withdrawing from the United Nations Human Rights Council. In any event, I have no further questions.

Senator ABETZ: In relation to the recommendation that the proposed laws must be applicable to every individual and government and not enforced selectively, are you saying that there should not be any discretion? In Australia, for example, even the Director of Public Prosecutions has a—

Mr Ek: I'm sorry. You're breaking up. I couldn't hear you.

Senator ABETZ: Let me try again. I understand your submission suggests that the laws must be applicable to every individual and government and not enforced selectively. Is that correct?

Mr Ek: Yes.

Senator ABETZ: In Australia, as you would know as a lawyer, even the Director of Public Prosecutions has a discretion as to whether or not to proceed with a potential prosecution, taking in various factors, including the public interest. Do you think that sort of discretion should be available in any Magnitsky law?

Mr Ek: I think there ought to be discretion but I indicate that we put submissions on behalf of Khmer Krom and Cambodians, based on our experience that, because of the foreign policy driven by Canberra, Cambodia has been allowed to get up to this stage where there is no point of return. It seems that, selectively, Australia is willing to do business and to go and drink champagne with the ambassadors and the Cambodian regime, in spite of these international discussions of their violations in terms of the dissolution of the opposition party. So there seems to be a gap at a national policy level: 'It's okay when it comes to Cambodia. Let us just be realistic here. They've gone through civil war, and now there seems to be a lot of engagement. Here's something that gives us an opportunity to engage.' So, selectively, Cambodia has been off the radar, because we have played into Hun Sen's hands. If the law were to be implemented, we would hate to see it selectively discriminating based on political will. That is why our submission is that it's good to have a liaison officer specialising in the Cambodian community.

In saying this, we acknowledge the fact that it's not going to be easy. But, after 30 years as survivors of Pol Pot, all we have is the voice and the opportunity to speak for today. The discretion can be applied, but obviously it's going to be very difficult as to how it can be more objective for Cambodia. All we are saying is that Cambodia ought to be at the forefront, as we discussed today. The committee would have heard that from almost everyone—from Save the Children, from Elaine Pearson of Human Rights Watch; they all touched on Cambodia. It is bearing in mind the suffering of the investments that we have, and more work ought to be put into getting Magnitsky style laws for Cambodians. Like has been said, there is only one country in the world that has the Paris peace accords, and we expect more out of these accords.

Senator ABETZ: Thank you for all that. Hopefully one day your country, or your previous country, will be a genuine, true democracy, and the legislation that we pass, if we pass any, will continue. So, whilst I understand your passion, concern and commitment for the people of Cambodia, I'm asking more as a question of principle.
whether or not any legislation should have that potential of discretion in it for the person that would be making any decisions under it.

Mr Ek: I think that is reflected widely with any ministerial discretions. Our legislation, our Westminster system, has always been based on ministerial discretion, so that cannot be excluded. The discretion to show cause and the discretion to reverse the decision are always there as part of our strengthening of our judicial system. I would explore that opportunity, and the Magnitsky laws should also have some kind of spirit that gives ministerial discretion to that aspect.

Senator ABETZ: Thank you. Quickly, if I may, you have undoubtedly looked at various different forms of the Magnitsky legislation around the world. Is there one form that you think is the best, and should it be retrospective in application?

Mr Ek: Retrospective, yes, definitely. For Cambodia, yes, there are lots of issues that have been unresolved leading up to the current hearing, which we really appreciate. In terms of a particular style of legislation or a framework, I am sure—we already discussed this—that we can take some from America but also build the part that we should have, which I already put in the submission, to have a separate mechanism to have a liaison officer look into this, and perhaps there is a provision for people affected by investigations to show cause. These kinds of recommendations, to the best of my knowledge, have not been dealt with by any other jurisdiction, but it's an opportunity for Australia to incorporate that and look into it.

Senator ABETZ: I come back to this, and I understand your passion and commitment, and indeed you represent the Kampuchea Krom Cultural Centre. As a matter of principle, should the legislation be retrospective, even if the ugly current circumstances in Cambodia did not exist?

Mr Ek: The current example in Cambodia continues to exist, and the law in principle, if possible, should be retrospective. If it's possible, there ought to be a separate provision for Cambodia, if it were to be retrospective, because I think it is important that the human rights abuses be accounted for. Many of them have assets—it has been featured in *Four Corners*—in Sydney and in Melbourne and they are still here. If the law does not apply retrospectively, those people would get away. And they continue to access Australia. So, in a way, for Cambodia—perhaps in principle—it also gives a strong signal that our law can operate back to the time when they took advantage of Australia's visa system. There is the money-laundering aspect as well.

Mr Hill: Some of my questions have been answered already, so I'll be very brief. Thank you, Sawathey, for your submission and also for your activism over a very long period of time. I'm trying to clarify one aspect that I or others have asked other submitters about: there is a suggestion that in the case of Australia there may be a need, if we pass such legislation, to include a provision for sanctions or asset freezes on immediate family members of human rights abusers. Do you think this may be the case in relation to the situation in Cambodia? Do you think that there would be any concerns from the Cambodian-Australian diaspora if we went down that path?

Mr Ek: I think we are at a point whereby the voice of courage has to overtake any fear. We are at a junction where we no longer feel that it is safe to stay silent. In that regard, I answer the question by saying that it is important that immediate family also be made accountable. But the problem with that is that I can say this to you: for many, many Cambodians, given the issues with transparency and the Hun Sen regime now, it would be impossible for you to trace the immediate family connections. It would be very difficult. The records from Pol Pot have already been destroyed.

As I said, for everybody that enters Australia these days, there is no proper declaration in Australian visas. They could be members of the current forces, and yet they could change their clothes and become someone else. There could be a family living in Melbourne, but that family could declare themselves as friends. The problem is: how do we establish that kind of network? It comes back to our community.

Members of our community have connections with these people. This is because these people need to publicly show loyalty in order to earn trust, in order to be recruited and in order to show, 'This is what I get when you're part of my group.' So immediate family is an important aspect, but the problem is that, if we establish a rigid system that requires material evidence, it's going to be very, very difficult to show that there is a property connection or a family connection. But, nonetheless, the answer is yes.

Senator Kitching: I don't have any questions; they've been covered. But I would like to thank Mr Ek for the thoroughness of his responses. They've been very interesting.

Mr Ek: I would also like to add to the committee that their work has been encouraged and supported. I have the responsibility of reporting to interested participants like Mr Michael Kirby, who was the United Nations representative for human rights in Cambodia from 1993. This is in his interest. He wants to know what is being done by the parliament after I communicate the work to the members of parliament. So I have that kind of
support. But, nonetheless, this is the voice that survived through us through Pol Pot, and it is a great opportunity for me to express that to the chair and also to the committee.

SUBCOMMITTEE CHAIR: I thank you for your submission and also for the elucidation of it this afternoon. It's been quite useful for us in terms of this inquiry. Thank you very much. You'll be sent a transcript of your evidence and have an opportunity to request any corrections, as will other witnesses today. That brings our hearing to an end today. I thank the secretariat for all the assistance in putting this together through a teleconference under unusual circumstances. Hopefully, the subcommittee will be able to conduct more of these public hearings in the coming weeks and months whilst the coronavirus remains a challenge for everyone in this nation and, indeed, around the world. On that note, the subcommittee stands adjourned.

Subcommittee adjourned at 13:14