



BRIEFING PAPER

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Iranian-British dual nationals held in Iran

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Summary

Several dual UK/Iranian nationals have been arrested and detained in Iran on dubious charges. Nazanin Zaghari-Ratcliffe was jailed in 2016 on vague charges of plotting against the state and separated from her baby daughter. Her husband has been campaigning for her release. Kamal Foroughi is a 78-year old who has been in Iranian custody since 2011, convicted of espionage.

Both have been the subject of campaigns for their release, and the UK Government has been criticised for not acting decisively in the cases.

Campaigners have linked this alleged reluctance to trade opportunities in Iran or to power struggles in Iran, where hard-liners may be trying to sabotage President Rouhani's more cooperative policies in relation to the West. Lastly, campaigners point to about £400 million that is owed by the British Government to Iran for the non-delivery of hundreds of Chieftain tanks that were paid for by the Shah; he was then deposed in the revolution of 1979 and the UK has still not repaid the money. Recent reports suggest that the UK may be preparing to resolve the tanks issue.

Campaigners have called for the UK Government to grant Nazanin Zaghari Ratcliffe diplomatic protection. This is a much higher level of intervention than the usual diplomatic assistance that the UK may offer to UK nationals imprisoned abroad. Diplomatic protection would raise the matter to a dispute between the states. International law is not entirely clear on whether one country of nationality can grant diplomatic protection to a dual national imprisoned in the other country of their nationality.

1. Nazanin Zaghari-Ratcliffe

1.1 Detention of Mrs Zaghari-Ratcliffe

Nazanin Zaghari-Ratcliffe is the Iranian-British wife of a British citizen, was arrested in April 2016 at Tehran airport. According to her family, she was on holiday, introducing her baby to her parents, who live in Iran. Her baby was deprived of her British passport (Gabiella Zaghari-Ratcliffe only has UK nationality), and is now staying with the grandparents.

The charges against her have never been made explicit. The campaign site freenazanin.com says:

Neither Nazanin or her family know the charges she has been convicted for. It feels like the crime has been set to fit the punishment. An official statement in Iranian media has accused Nazanin of attempting to overthrow the Islamic Republic as “one of the chief members of networks of adversary institutions, who — with the direction and support of foreign media and espionage services — has committed her criminal acts over the past few years”.

Mrs Zaghari Ratcliffe spent 45 days in solitary confinement. Access to her by lawyers and her family has been severely limited.

There have been persistent calls for the UK government to do more to ensure her release and various theories about the alleged reluctance to take a stronger line.

Chieftain tanks

Nazanin Zaghari-Ratcliffe’s husband, Richard, has claimed that she is being held as a ‘bargaining chip’ to pressurise the UK Government to pay back hundreds of millions of pounds that it owes to Iran for an order of Chieftain Tanks, most of which were never delivered to the Shah because in 1979 the revolution intervened. That was raised in the House of Commons in a Parliamentary Question in 2016:

Bob Stewart: To ask the Secretary of State for Defence, what plans his Department has to return the funds owed to the government of Iran for the purchase of Chieftain tanks through International Military Services which were never delivered.

Philip Dunne | Ministry of Defence: This matter is being handled by International Military Services Limited (IMS). Negotiations are commercially sensitive and a confidential matter between IMS and the Iranians.

The UK Government does not dispute the outcome of court hearings on this matter, but the current EU sanctions against the Iranian Ministry of Defence remain in force.¹

International Military Services is a limited company owned by the MoD.

The original order from the Shah was for 1,500 tanks plus 250 Armoured Recovery Vehicles, based on the Chieftain, worth a total of

¹ [HC Written question – 41566](#), 5 July 2016

£650 million.² 185 of the tanks were delivered. The Government of the Islamic Republic has tried to regain the money ever since the 1979 revolution.

International Chamber of Commerce

The case was taken to the International Chamber of Commerce, an international business organisation whose arbitration service is private but whose decisions are binding and enforceable. The arbitration, concluded in 2009, resulted in a decision favourable to Tehran.

Supreme Court of the Netherlands

The UK Government appealed in 2009 over the contract's value, which led to the Dutch Supreme Court slightly reducing the size of the sum.³ Reports in 2010 suggested that the UK would pay some £400 million to Iran.⁴

International Military Services/MoD had set aside in 2002 a sum of nearly £486 million with the High Court in London with which to settle the claim, according to the report in the *Independent*. The Government made a statement to the newspaper:

Funding to meet the settlement was paid to the High Court jointly by the Treasury and IMS in 2002 - it will not come from the defence budget. IMS is a private limited company but is owned by the Government. It is rightly subject to, and will comply with, UK and international law.⁵

According to one report, the money was to be transferred to an account holding Iranian assets that were frozen because of EU sanctions.⁶ The account already held £976 million.

Sanctions

Meanwhile, however, sanctions against Iran over its nuclear programme had been tightening. In 2010, the UN Security Council imposed fourth round, including tighter financial curbs and an expanded arms embargo. The US Congress also added unilateral sanctions on Iran's banking sector.⁷

High Court in London

The case came back to the High Court in London in 2014, when the Iranian Government sued International Military Services for the £400 million it is owed.

What happened to the tanks?

In 2016, Bob Stewart asked a PQ about the tanks:

² ['The MoD, the arms deal and a 30-year-old bill for £400m'](#), *Independent*, 23 April 2010

³ ['UK hopes to end long legal dispute with Iran over 1976 arms deal'](#), *Guardian*, 16 November 2017

⁴ ['Britain to pay back Iran £400 million'](#), *Daily Telegraph*, 26 April 2010

⁵ ['The MoD, the arms deal and a 30-year-old bill for £400m'](#), *Independent*, 23 April 2010

⁶ ['Iran sues MoD firm over the Shah's tanks'](#) *Independent*, 2 February 2014

⁷ For more information, see the Commons Briefing [Paper Iran's nuclear programme and sanctions](#), October 2010

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Bob Stewart: To ask the Secretary of State for Defence, whether funds were received into the public purse from the sale of the same Chieftain tanks to Iraq which had already been sold through International Military Services but never delivered to the government of Iran.

Philip Dunne: No records are held of Chieftain tanks being sold to the Government of Iraq.⁸

Again according to the [Independent report](#), the UK Government arranged to sell 279 tanks to Jordan and, under the cover of that deal, sold 29 ARVs to Iraq, which may have been used as spare parts for Iraqi Chieftain tanks later used in the Iran-Iraq war.

Iranian power struggles

Others argue that she is being held by conservative elements in Iran in order to frustrate the centrist President Rouhani's policy of seeking better relations with the West. The Iranian presidency does not control the judiciary or the security forces, and Nazanin Zaghari-Ratcliffe is said to be held in the Islamic Revolutionary Guards Corp's wing of Evin Prison. This explanation could apply equally to other British-Iranian prisoners and do not mean that the explanation involving the Chieftain tanks has no basis.

UN Working Group on Arbitrary Detention

In June 2016, the campaigning organisation Redress [referred the case](#) to the UN Working Group on Arbitrary Detention. On 7 September 2016, the Working Group on Arbitrary Detention released an [Opinion](#) on the case, in which it found that the detention was indeed arbitrary:

The deprivation of liberty of Nazanin Zazghari-Ratcliffe was arbitrary, in contravention of articles 9,10 and 11 of the [Universal Declaration of Human Rights] and articles 9, 10 and 14 of the [International Convention on Civil and Political Rights]...

On 20 October 2017, the experts from the Working Group on Arbitrary Detention [issued a call for her release](#), via the UN High Commissioner for Human Rights. The press release said:

Ms. Nazanin Zaghari-Ratcliffe is already serving a five-year term in Tehran's Evin Prison and could face an additional 16 years of imprisonment if convicted on the new charges.

"We consider that Ms. Zaghari-Ratcliffe has been arbitrarily deprived of her liberty and that her right to a fair trial before an independent and impartial tribunal has been violated," the experts said. "These are flagrant violations of Iran's obligations under international law."

They added: "We are gravely concerned over the mental and physical impact that the new charges have had on Ms. Zaghari-Ratcliffe. We call on the Iranian authorities to release her at once and to guarantee her physical and psychological wellbeing."⁹

⁸ [HC Written question – 41565](#), 5 July 2016

⁹ The UN Special Rapporteur for Human Rights in Iran had already called for Mrs Zaghari-Ratcliffe's release [on 7 October 2016](#)

1.2 Recent developments

On 1 November, the Foreign Secretary Boris Johnson gave evidence to the House of Commons Foreign Affairs Committee. Ann Clwyd asked him about the possibility of visiting Mrs Zaghari-Ratcliffe in Evin Prison. Mr Johnson said:

Obviously, we will have to be very careful about this, because we want them to be released. I have raised this case many times now with Javad Zarif, my Iranian counterpart. When we look at what Nazanin Zaghari-Ratcliffe was doing, she was simply teaching people journalism, as I understand it, at the very limit. I hope that a way forward can be found. I must say, I find it deeply depressing; I think it is totally contrary to the interests of the Iranian people for this to continue.¹⁰

On 4 November, Mrs Zaghari-Ratcliffe was summoned to appear in court again, where the Foreign Secretary's remarks were cited as fresh evidence against her. In an interview with the *Times*, *Mr Ratcliffe said*:

There is a direct link between Boris Johnson's comments on Wednesday and Judge Salavati, the harshest judge that you can find, hearing her case on Saturday, where she is now facing a double sentence.¹¹

Richard Ratcliffe called on Mr Johnson to retract the comment about "teaching people journalism" in a statement to the House of Commons.¹²

During the [regular counter-Daesh update statement](#) to the House of Commons, Mr Johnson said on 7 November:

...I should like to begin by informing the House that I called the Iranian Foreign Minister, Mr Zarif, this morning to discuss the case of Mrs Nazanin Zaghari-Ratcliffe. I expressed my anxiety about her suffering and the ordeal of her family, and I repeated my hope for a swift solution. I also voiced my concern at the suggestion emanating from one branch of the Iranian judiciary that my remarks to the Foreign Affairs Committee last week had some bearing on Mrs Zaghari-Ratcliffe's case.

The UK Government have no doubt that Mrs Zaghari-Ratcliffe was on holiday in Iran when she was arrested last year, and that was the sole purpose of her visit. My point was that I disagreed with the Iranian view that training journalists is a crime, not that I wanted to lend any credence to Iranian allegations that Mrs Zaghari-Ratcliffe had been engaged in such activity. I accept that my remarks could have been clearer in that respect, and I am glad to provide this clarification.

I am sure that the House will join me in paying tribute to the tireless campaigning of Mr Ratcliffe on behalf of his wife. We will not relent in our efforts to help all our consular cases in Iran. Mr Zarif told me that any recent developments in the case had no link to my testimony last week and that he would continue to seek a

¹⁰ [Foreign Affairs Committee, Oral evidence: Oral Evidence from the Foreign Secretary November 2017, HC 538](#), Wednesday 1 November 2017

¹¹ ['Nazanin Zaghari-Ratcliffe: British mother jailed in Iran on spy charges threatened with longer prison sentence after Boris Johnson gaffe'](#), *The Independent*, 6 November 2017

¹² ['Retract Iran remark, husband tells Boris Johnson'](#), *BBC News Online*, 7 November 2017

solution on humanitarian grounds. I will visit Iran in the coming weeks, when I will discuss all our consular cases.

On 9 November, the campaign organisation Redress [issued a press release](#) calling for the UK to grant Mrs Zaghari-Ratcliffe diplomatic protection. The organisation has commissioned a [legal opinion](#) on the case. The authors found that:

We are of the view that the only effective means under international law by which the grave harm suffered by Mrs Zaghari-Ratcliffe may be repaired lies in the UK's right to exercise diplomatic protection.

They also said that, for the purposes of international law, Mrs Zaghari-Ratcliffe's primary nationality is British, and that there is nothing in international law preventing diplomatic protection from being asserted against Iran in this case.

On 13 November 2017 [there were reports](#) that Mrs Zaghari Ratcliffe was angry both with the Iranian Revolutionary Guards and with the Foreign Secretary, whose remarks could "endanger her life".

Tank resolution?

On 16 November 2017 reports emerged that there was a possibility of a deal involving the £400 million owed for the tanks and the dual nationals held in Iranian prisons.¹³ With the sanctions lifted as a result of the JCPOA deal on the Iranian nuclear programme,¹⁴ and some concessions by both sides on the amount owed, Foreign Secretary Boris Johnson was expected to visit Iran. Although the UK Government also said that the Iranian Ministry of Defence is still subject to sanctions.¹⁵ The Government denied that the tanks dispute and the fate of Mrs Zaghari-Ratcliffe were connected. The Iranian government also reportedly denied any connection.

1.3 Parliamentary debate

The case has been raised in Parliament by a large number of MPs and Lords. Concerns have been expressed that the UK Government is not doing as much as it could do. This is the latest in a number of cases concerning British-Iranian dual nationals (see also the current case of [Kamal Foroughi](#), which has received somewhat less press attention). Below is a selection of the most recent official statements:

[EDM 564](#), which was prompted by the case, currently has 79 signatures

The Government has set out its position on the Zaghari-Ratcliffe case in some recent Parliamentary Questions:

[Nazanin Zaghari-Ratcliffe and Kamal Foroughi: Written question - 110102](#)

Asked by [Tom Brake](#) on 27 October 2017

¹³ ['UK hopes to end long legal dispute with Iran over 1976 arms deal'](#), *Guardian*, 16 November 2017

¹⁴ For more information see the Commons Briefing Paper [The Lausanne Accord with Iran](#), October 2015

¹⁵ ['Nazanin Zaghari-Ratcliffe latest: Britain 'prepared to pay £450 million Iran debt to help free jailed mother'](#), *Evening Standard*, 16 November 2017

To ask the Secretary of State for Foreign and Commonwealth Affairs, whether the UK Ambassador to Iran raised the cases of dual nationals, Nazanin Zaghari-Ratcliffe and Kamal Foroughi during the 4th Europe-Iran Forum.

Answered by: [Alistair Burt](#): on 06 November 2017

The Ambassador attended the 4th Europe-Iran Forum where he participated in a panel discussion on the nuclear deal. The Ambassador spoke about the importance we attach to progress on dual national consular cases in a BBC Persian interview recorded at the forum. The Ambassador continues to raise all of our dual national cases, including Mrs Zaghari-Ratcliffe and Mr Foroughi, at every opportunity, most recently this month with Deputy Foreign Minister Takht Ravanchi. I also raised our dual national cases in a phone call with the Iranian Ambassador to the UK on 10 October.

[Nazanin Zaghari-Ratcliffe:Written question - HL2126](#)

[The Marquess of Lothian](#): on 17 October 2017

To ask Her Majesty's Government whether, during her meeting with the President of Iran at the UN General Assembly in September, the Prime Minister raised the case of the imprisoned dual Iranian-British national Nazanin Zaghari-Ratcliffe; and what assurances they have received that Mrs Zaghari-Ratcliffe is not being subjected to ill-treatment.

[Lord Ahmad of Wimbledon](#) on 30 October 2017

The Prime Minister, the Foreign Secretary and the Minister for the Middle East and North Africa raised all of our dual-national cases, including Mrs Zaghari-Ratcliffe, with their Iranian counterparts in the margins of the United Nations General Assembly in September. We continually seek assurances of the wellbeing of British prisoners. We will continue to raise all our dual-national cases with the Iranian authorities at every opportunity, including requesting consular access, not least so that we may be assured of their welfare.

[Nazanin Zaghari-Ratcliffe:Written question - 109241](#)

Asked by [Tulip Siddiq](#): on 24 October 2017

To ask the Secretary of State for Foreign and Commonwealth Affairs, what assessment his Department has made of whether Nazanin Zaghari-Ratcliffe's rights under (a) Iranian and (b) international human rights laws have been violated; and if he will make a statement.

[Alistair Burt](#): on 30 October 2017

Iran does not view Mrs Zaghari-Ratcliffe as a British national, and has no legal obligation to do so. On this basis Iran has not granted us access to the charges or evidence in Mrs Zaghari-Ratcliffe's case, nor provided us with consular access. Under our consular role we do not provide legal advice to British nationals and cannot interfere in the internal affairs of another country and have therefore not made an assessment of Iranian law. Based on publicly available information, we have raised our concerns with the Iranian authorities, but we are not in a position to determine whether Mrs Zaghari-Ratcliffe's rights have been violated under international human rights laws. We continue to press the Iranian authorities to provide Mrs Zaghari-Ratcliffe with access to all the

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legal paperwork relevant to her case. We request consular access at every opportunity, not least so we can be assured of Mrs Zaghari-Ratcliffe's welfare. We will continue to assert that she is a British national, to press for consular access, and to support the family to the extent that we can.

[Nazanin Zaghari-Ratcliffe:Written question - 108108](#)

Asked by [Tulip Siddiq](#): on 17 October 2017

To ask the Secretary of State for Foreign and Commonwealth Affairs, whether he has received legal opinions on the status and contravention of Nazanin Zaghari-Ratcliffe's rights under (a) international human rights law and (b) Iranian law.

[Alistair Burt](#) on: 20 October 2017

Our legal advisers are fully engaged on the cases of all our dual-national detainees in Iran, including Mrs Zaghari-Ratcliffe. We continue to raise these cases with the Iranian authorities at every opportunity.

1.4 Campaigning

Ministers say that they are treating the case seriously, but Nazanin's husband, Richard Ratcliffe, says that the UK Government's response to his wife's case is muted because Iran presents big trade and investment opportunities. He set out his criticisms of the Government response last year, as follows:

- It has never once criticised Iran's treatment of Nazanin, and abuse of her human rights, nor the arbitrary nature of her detention and trial – unlike for instance the UN
- No British politician or official from the Foreign Office has ever publicly called for Nazanin's release, or for her to be reunited with Gabriella. They have only ever expressed concern.
- As a priority in the UK's Iran policy, we have never once met the British Ambassador to Iran, nor the Foreign Secretary, nor Prime Minister, despite all our requests
- No one from the British Embassy in Tehran has ever visited Nazanin or Gabriella, or acknowledged our request that they do.
- The Foreign Office has refused to transfer Nazanin's case to their special cases team (who handle other hostage situations), but kept in consular affairs.
- They have misled Parliament and told them that Gabriella was not detained – insisting that she had been left there at her father's choice. When confronted with the inaccuracy, they reassured me it was a mistake and promised to correct the statement. Two months later that promise has not been kept, and that looks less like a mistake, more like it has become a deliberate belittling of her status.
- They promised to state that there was no evidence in the allegations that Nazanin is a spy. Another promise not kept.
- They have visited at least one Peer who had been asked to raise Nazanin's case, and behind my back requested she stop lobbying for her.

- And for all the talk in public of supporting the family, we have had two emails (and one voicemail) in the past 80 days – that’s during the period where they knew she was suicidal.¹⁶

A [petition is posted on Change.org](#) by Richard Ratcliffe:

My wife Nazanin Zaghari-Ratcliffe, 37 year old charity worker, was on holiday visiting her family in Iran. She was at the airport returning to the UK on the 3rd April when she was detained by the Iranian Revolutionary Guard. She has been transferred to an unknown location in Kerman Province, 1,000 kilometres south of Tehran, and **is being held in solitary confinement.**

Gabriella Ratcliffe **our 22 month old daughter (who has British citizenship only) has had her British passport confiscated, and is stranded in Iran** with her grandparents.

Nazanin has not been allowed to access a lawyer or her daughter. She has not been able to call out of the country to speak to me, her British husband, and the Red Cross have not been able to make contact.

There have been no charges. Nazanin has informed her family that she has been required to sign a confession under duress, its content unknown. Her family have been informed that the investigation relates to an issue of ‘national security’.

It is hard to understand how a young mother and her small child on holiday could be considered an issue of national security. She has been to Iran to visit her family regularly since making Britain her home.

Nazanin currently works as a project manager for the Thomson-Reuters Foundation; which delivers charitable projects around the world. It does not work in Iran.

Nazanin has now been in solitary confinement for over 30 days.

Please help bring my wife and daughter home by signing my petition calling on our Prime Minister Theresa May to use her power and intervene.

Amnesty International UK has a [letter writing campaign](#). Another organisation involved with her case is [Redress](#), which took it to the UN Working Group on Detention.

¹⁶ Richard Ratcliffe, [Statement in response to yesterday’s Sunday Times Report](#), Change.org, 21 November 2016

2. Kamal Foroughi

2.1 Background

Kamal Foroughi is a 77-year-old oil and gas consultant who is recognised as a dual Iranian-British national by the UK but not by Iran, which does not recognise dual nationality. He was working in Iran for Petronas, a Malaysian oil company. He was detained on 5 May 2011 by plain-clothes Iranian officials who did not show him an arrest warrant.

Having been kept in solitary confinement for much of the time, he was told of the charges of espionage and possession of alcohol and allowed to see a lawyer the day before the trial began. He was denied legal representation at the hearing, which took place in a military court under conditions which campaigners said did not meet any standards of justice.¹⁷ He denies the charges.

He has served six years of the eight-year sentence, even though prisoners are eligible for parole after serving a third of their sentences. He is being held in Evin prison in Tehran, which is known for its harsh conditions and for being used for political prisoners.

His health is thought to be at risk but he has been denied medical treatment and legal advice on several occasions, and access to him for his family has been severely limited. He has been prevented from sending or receiving family letters (his wife, two children and grandchildren live in the UK) nor can he communicate by letter with anyone outside Iran. He is allowed telephone calls but is forced to speak in Persian, which makes it difficult to communicate with younger family members.

2.2 UK Government action

According to reports, the then Prime Minister, David Cameron, intervened personally in the Foroughi case, writing a letter to the Iranian President Hassan Rouhani.

Ministers raised the case of Kamal Foroughi most recently in June 2017, according to a recent parliamentary answer from Alistair Burt MP, the Middle East minister:

Alistair Burt: I raised the case of Mr Kamal Foroughi in a phone call with the Iranian Deputy Foreign Minister on 21 June. Our ambassador to Iran also regularly raises Mr Foroughi's case with Iranian authorities and will continue to do so.¹⁸

In 2016, the government said that improving Iran-UK relations, in the context of the Joint Comprehensive Plan of Action on the Iranian nuclear programme, could help with the Foroughi case:

Lord Maginnis of Drumglass: To ask Her Majesty's Government what have been the practical benefits to the UK of the July 2015 Joint Comprehensive Plan of Action with Iran, and of the Foreign

¹⁷ ['British Iranian grandfather denied medical treatment in prison in Iran'](#), Amnesty International UK, 19 May 2016

¹⁸ [HC Written question – 1012](#), 4 July 2017

Secretary's visit to Iran in August 2015, in respect of obtaining the release back to the UK of prisoners such as Kamal Foroughi, and Nazanin Ratcliffe and her child.

Baroness Anelay of St Johns: The Joint Comprehensive Plan of Action applies only to Iran's nuclear programme, but offers a real opportunity for Iran to normalise its relations with the international community. Reopening our Embassies in August 2015 offers greater opportunity to discuss a range of issues, including consular cases. We regularly raise our concerns on all consular cases, both in London and Tehran. Most recently the Foreign Secretary, my Rt Hon. Friend the Member for Runnymede and Weybridge (Mr Hammond), raised them with Iranian Foreign Minister Zarif on 17 May, and the Parliamentary Under-Secretary for Foreign and Commonwealth Affairs, my Hon. Friend the Member for Bournemouth East (Mr Ellwood), raised them with the Iranian Charge d'Affaires in London on 18 May.¹⁹

In July 2017, Tulip Siddiq criticised the government's handling of the problem of British prisoners in Iran, in a debate in Westminster Hall.²⁰ British diplomats were criticised for participating in a tour of Evin Prison; the tour concentrated on the most comfortable parts of the prison, where rich prisoners are housed. Tulip Siddiq said that the diplomats had been near where Nazanin Zagari-Ratcliffe, another UK-Iranian dual national, is held but did nothing to help her. The minister responsible, Alistair Burt, said that the diplomats thought it better to take up the invitation for a tour rather than turn it down, and had repeatedly asked to see the British prisoners but had been refused.²¹

2.3 Campaigning

The [Free Kamal Foroughi campaign](#) has been working for his release, with his son Kamran at the forefront. In March 2017 Kamran Foroughi, Oliver Dowden MP and Kate Allen, the Director of Amnesty International UK, and other family members delivered a letter to the Foreign and Commonwealth Office addressed to the Foreign Secretary Boris Johnson and signed by 110 MPs and Peers. Oliver Dowden is Kamran's constituency MP and has supported the campaign.

The campaign booked a meeting with Alistair Burt on 17 July 2017.

The British Section of Amnesty International has taken up the case with a [dedicated page](#) on their website, encouraging members to sign the Amnesty petition, which received over 31,000 signatures.

[#KamalForoughi](#) is the hashtag.

Change.org has [hosted a petition](#) for Foroughi's release. The petition had 220,000 signatories in November 2017.

¹⁹ [Question HL223, 02 June 2016](#)

²⁰ [HC Deb 18 July 2017, cc281-300WH](#)

²¹ *Ibid.* c297WH

3. Other British-Iranians arrested in Iran

3.1 Roya Nobakht

Roya Nobakht is the other of the three UK-Iranian dual nationals imprisoned in Iran.²² A resident of Stockport since 2007, she was detained in Iran in 2013 and prosecuted for posting unfavourable remarks about the government on Facebook. In 2014 she was sentenced to 20 years in prison, and was initially held in Evin Prison, later being moved to a women's prison.

Campaigners claimed that she was being 'physically tortured'. At a retrial, during which she was allowed to speak in her defence, unlike the first trial, her sentence was reduced to seven years, according to reports.

According to [one report](#), she was released in August 2017.

3.2 Bahman Daroshafaei

Bahman Daroshafaei is a former BBC Persian journalist who was detained in Iran in 2016. He had left the BBC in 2014 and had been working as a translator in Tehran.²³

He was released on bail on 23 February 2016, according to reports.²⁴

²² For more about Roya Nobakht, see '[Roya Nobakht: British woman imprisoned in Iran over anti-government Facebook comments is 'being physically tortured', say campaigners](#)', *Independent*, 15 July 2015

²³ '[Former BBC Persian journalist 'detained in Iran'](#)', *BBC News Online*, 4 February 2016

²⁴ 'Iran 'releases former BBC Persian journalist on bail'', *BBC News Online*,

4. UK government's help for dual nationals detained abroad

Consular assistance

UK guidance on what [consular services](#) can and cannot be provided to Britons abroad does not make a general distinction between nationals and dual nationals that might apply in cases of arbitrary detention. However, there is an important difference when dual nationals are in the country of their other nationality. The guidance says (p3): "normally we cannot help dual nationals when they are in the country of their other nationality."

However, on p5 it elaborates further, identifying some of the exceptional circumstances when the rule may be waived:

If you are a dual British national in the country of your other nationality (for example, a dual US-British national in the US), we would not normally offer you support or get involved in dealings between you and the authorities of that state. We may make an exception to this rule if, having looked at the circumstances of the case, we consider that you are particularly vulnerable. These circumstances might include cases involving a murder or manslaughter, children, forced marriages or an offence which carries the death penalty. However, the help we can provide will depend on the circumstances and the country of your other nationality agreeing to it.

In a 2017 debate on British prisoners in Iran, Middle East Minister Alistair Burt spoke about the limitations dual nationality placed on UK help when dual nationals were in their other country of nationality:

All the British nationals currently detained in Iran also hold Iranian nationality. Questions of nationality are for individual states to decide. Unlike the UK, Iran does not legally recognise dual nationality. It considers our detainees to be Iranian, which has implications for consular assistance, which are set out in the passports of those with dual nationality. Under international law, states are not obliged to grant consular access to dual nationals, which is why our passports state that the British Government are unable to assist dual nationals in the country of their other nationality.

Our travel advice for Iran reiterates that statement and highlights the additional potential risks for British-Iranian dual nationals travelling there. None the less, we try to help dual nationals in exceptional circumstances. In practice, that is often difficult, as we are finding in Iran. We have repeatedly asked the Iranian authorities to grant us consular access to our dual-national detainees. However, as Iran considers them to be Iranian, it does not recognise our right of access. We know that other countries face similar difficulties, but we will continue to press for consular access.²⁵

²⁵ [HC Deb 18 July 2017, C297-8WH](#)

Diplomatic protection

Diplomatic protection is a much higher level of intervention than consular assistance, raising the case from an individual one to a dispute between the states concerned, in this case the UK and Iran.

Diplomatic protection is defined in the draft Articles of the International Law Commission as follows:

...diplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.²⁶

Consular assistance can be given to a UK national abroad even where there is no decision that a UK national has been wronged by the foreign state in question. Consular assistance is preventive in that it seeks to prevent the person becoming the victim of an 'internationally wrongful act.'

Giving the person diplomatic protection would mean that the UK considers that Nazanin Zaghari-Ratcliffe is the victim of "...an injury caused by an internationally wrongful act of that State...", that is, Iran.

It is widely (though not universally) accepted that a dispute over an individual granted diplomatic protection cannot be resolved by force. The dispute should be resolved by diplomatic action such as negotiation, arbitration, economic pressure or severance of diplomatic relations.²⁷ Claims for diplomatic protection can be adjudicated by the International Court of Justice or by arbitration tribunals, if the states concerned both consent to judicial proceedings.

Diplomatic protection is handled by political officials, while consular assistance is handled by consular staff.

Diplomatic protection usually results in claims for reparation in some form. This could be compensation or a formal apology, for example.

Dual nationals and diplomatic protection

International law is not entirely clear on whether it is possible to extend diplomatic protection to a dual national who is in their other country of nationality. One expert considering the problem in relation to extraordinary rendition argues:

The starting point in discussing diplomatic protection of dual nationals is the 1930 Hague Convention. Article 4 of that treaty indicates, quite clearly, that '[a] State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses'. Article 4 is of incidental relevance in its own right. Only a handful of countries have ratified the Hague Convention. However, the provision – creating a 'non-

²⁶ International Law Commission, [Draft articles on Diplomatic Protection](#), 2006

²⁷ Oxford Public International Law, [Diplomatic Protection](#)

responsibility' rule in relation to dual nationals – may have codified customary international law.²⁸

This article concluded, however, that “old rules precluding protection in a contest between two states of nationality are no longer part of international law.”

This was in part because of the increasing importance of the idea of dominant or effective nationality, where country of residence and family and other ties are taken into account. A recent report on diplomatic protection for the International Law Commission concluded:

...the State of nationality may exercise diplomatic protection on behalf of an injured national against a State of which the injured person is also a national where the individual's (dominant) (effective) nationality is that of the former State.²⁹

In October 2017 the campaigning organisation Redress commissioned John Dugard (who was also the Rapporteur for the International Law Commission on diplomatic protection and wrote the report quoted above) and Tatyana Eatwell of Doughty Street Chambers to provide a legal opinion on the Zaghari-Ratcliffe case. They concluded:

...we are of the view that the evidence clearly shows that Mrs Zaghari-Ratcliffe is predominantly a British national who has been denied a fair trial and who is arbitrarily detained in Iran.³⁰

Diplomatic immunity

Diplomatic immunity is different from diplomatic protection. It prevents diplomatic staff from being prosecuted in the country where they have been posted.

²⁸ Craig Forcese, [‘The Capacity to Protect: Diplomatic Protection of Dual Nationals in the ‘War on Terror’](#), *European Journal of International Law*, Volume 17, Issue 2, 1 April 2006, Pages 369–394,

²⁹ International Law Commission, [First report on diplomatic protection, by Mr. John R. Dugard, Special Rapporteur](#), 2000

³⁰ John Dugard and Tatyana Eatwell, [RE. NAZANIN ZAGHARI-RATCLIFFE, Legal Opinion II, Availability of Diplomatic Protection](#), 16 October 2017

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