
The Parliament of the Commonwealth of Australia

Australia's Human Rights Dialogue Process

Joint Standing Committee on Foreign Affairs, Defence and Trade

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Chair's Foreword

In 1997, the Australian Government initiated a high-level bilateral dialogue on human rights with China. Similar formal talks commenced with Vietnam in May 2002 and with Iran in December 2002.

The aim of the dialogues is to hold frank and constructive discussions to demonstrate the commitment of both countries to the talks and the overall strengths of their bilateral ties with Australia.

Since 1997, there have been nine rounds of talks between Australia and China, three between Australia and Vietnam, and one with Iran.

The inquiry was established to review Australia's human rights dialogue process to date. The Committee examined five areas: parliamentary participation and oversight; involvement of non-government organisations; the role and obligations of participating agencies; reporting requirements and mechanisms; and the monitoring and evaluation of outcomes.

The Committee received the bulk of its evidence on the Australia-China dialogue. While the Australia-China dialogue is certainly the more established of the three dialogues, the focus of the inquiry was on the process rather than on specific dialogues.

However, it is worth noting the evolving developments of the Australia-China dialogue because they illustrate the potential of the bilateral human rights dialogue for engagement on human rights concerns.

The Committee was pleased to hear from the Australian Government and non-government organisations (NGOs) alike that the Australia-China dialogue is characterised by an increasing degree of openness and trust. Over the years, the delegations from China and Australia have expanded to include representatives from a number of different agencies and discussion takes place on a widening range of human rights concerns. In recent years, the Australian delegation has been invited to visit provinces outside Beijing, and Tibet. In 2004, for the first time, Australian NGO representatives were able to meet with Chinese government officials in advance of the official talks to discuss human rights concerns. That

meeting went well and subsequently, the Chinese Government invited NGOs to attend future human rights dialogues in China. At the 2005 round, at China's suggestion, there was a special focus on the rights of persons living with HIV/AIDS.

The Committee also wishes to acknowledge the important complementary role of the technical cooperation activities associated with the bilateral human rights dialogues. The Australia-China Human Rights Technical Co-operation Program (HRTC) makes a practical contribution to improving human rights through various capacity building and institutional strengthening activities. The HRTC's program focuses on legal reform, women and children's rights and ethnic and minority rights. While there is not yet a dedicated program for either the Australia-Vietnam dialogue or the Australia-Iran dialogue, the Human Rights and Equal Opportunity Commission has sponsored study tours that have familiarised delegates from those countries with Australia's institutional structure for the promotion and protection of human rights, and helped partner countries to identify areas in which Australian expertise might usefully contribute to their priorities for promoting and protecting human rights.

While the Committee notes the achievements of Australia's bilateral human rights dialogues, it is also of the view that there is some scope for improving the transparency and accountability of the bilateral human rights dialogues process as a whole.

In this report, the Committee has made five recommendations which will build on and enhance the existing level of parliamentary participation and oversight, involvement of non-government organisations and reporting requirements and mechanisms.

Senator M A Payne
Chair
Human Rights Sub-Committee

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Terms of reference

The Joint Standing Committee on Foreign Affairs, Defence and Trade will inquire into and report on Australia's human rights dialogue process, with particular reference to:

- parliamentary participation and oversight;
- involvement of non-government organisations;
- the roles and obligations of participating agencies;
- reporting requirements and mechanisms; and
- the monitoring and evaluation of outcomes.

Referred by the Minister for Foreign Affairs on 10 March 2004.



List of abbreviations

ACFID	Australian Council for International Development
AGD	Attorney-General's Department
Amnesty	Amnesty International Australia
AusAID	Australian Agency for International Development
CDI	Centre for Democratic Institutions
CHR	Commission on Human Rights
DFAT	Department of Foreign Affairs and Trade
ECOSOC	Economic and Social Council
EU	European Union
FIDH	International Federation of Human Rights
HCMNPA	Ho Chi Minh National Political Academy
HREOC	Human Rights and Equal Opportunity Commission
HRSGS	Human Rights Small Grants Scheme
HRTC	Australia – China Human Rights Technical Cooperation Program
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
IHRC	Islamic Human Rights Commission

JSCFADT Joint Standing Committee on Foreign Affairs, Defence and Trade

UN United Nations

VCHRR Vietnam Centre for Human Rights Research



List of recommendations

2 Parliamentary Participation and Oversight

Recommendation 1

The Committee recommends that the Government encourage dialogue partners to include parliamentary representatives from their own countries to participate in future rounds of the bilateral human rights dialogues.

Recommendation 2

The Committee recommends that the participation in and oversight of the bilateral human rights dialogues by Australian parliamentarians be fully supported and formalised by:

- (a) party leaders or the Minister for Foreign Affairs nominating one or more parliamentarians from the Government and non-Government parties to attend each dialogue
- (b) conferring official delegation status on the nominated parliamentarians; and
- (c) the Department of Foreign Affairs and Trade providing regular private briefings to the Human Rights Sub-Committee on the status of each of Australia's dialogues with China, Vietnam and Iran.

3 Involvement of Non-Government Organisations

Recommendation 3

The Committee recommends that the Government consider preceding each of the bilateral human rights dialogues hosted in Australia with a forum, at which Australian NGOs have the opportunity to brief members of the Australian delegation on human rights issues of particular concern.

5 Reporting Requirements and Mechanisms

Recommendation 4

The Committee recommends that the Minister for Foreign Affairs table an annual statement in Parliament on the status and proceedings of each of Australia's bilateral human rights dialogues with China, Vietnam and Iran.

Recommendation 5

The Committee recommends that the Department of Foreign Affairs and Trade, the Australian Agency for International Development and the Human Rights and Equal Opportunity Commission, make more effective and regular use of their websites to convey up-to-date information on those aspects of Australia's bilateral human rights dialogues with China, Vietnam and Iran, for which they have responsibility.

Introduction

Referral

- 1.1 On Wednesday 10 March 2004, the Minister for Foreign Affairs, the Hon Alexander Downer, MP referred an inquiry into Australia's human rights dialogue process to the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT).
- 1.2 The reference lapsed when all committees of the House of Representatives and joint committees of the Senate and House of Representatives of the 40th Parliament were dissolved on Tuesday 31 August 2004.
- 1.3 The JSCFADT resolved to re-refer the inquiry in the new Parliament, on Thursday 2 December 2004.

Inquiry Process

- 1.4 The Human Rights Sub-Committee (hereafter referred to as the Committee) of the JSCFADT conducted the inquiry.
- 1.5 The Committee advertised the inquiry with a press release on April 14 2004. The press release outlined the inquiry, included the terms of reference and sought written submissions from the public.
- 1.6 In addition, the Committee invited submissions from relevant government agencies, embassies, non-government organisations (NGOs), legal and academic quarters, and human rights interest groups.
- 1.7 The inquiry received 20 submissions and 8 exhibits which are listed in Appendix A.
- 1.8 The Committee placed submissions and other information relating to its inquiry on its web site in order to encourage further public participation.

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- 1.9 On Monday 14 March 2005, the Committee took evidence from a range of departmental agencies and NGOs at Parliament House in Canberra. A list of the witnesses who appeared at the hearing can be found in Appendix B.
- 1.10 Copies of the submissions and the transcript of evidence from the public hearing are available from the Committee's web site.¹

Report Structure

- 1.11 The report comprises six short chapters.
- 1.12 Chapter 1 provides an outline of the inquiry process and an overview of Australia's bilateral human rights dialogues and associated activities with dialogue partners China, Vietnam and Iran.
- 1.13 Chapter 2 focuses on the issue of parliamentary participation in and oversight of the human rights dialogue process.
- 1.14 Chapter 3 concentrates on the involvement of NGOs in the bilateral dialogues.
- 1.15 Chapter 4 describes and assesses the roles and obligations of participating agencies.
- 1.16 Chapter 5 deals with the reporting requirements and mechanisms of the dialogue process.
- 1.17 Finally, Chapter 6 considers the monitoring and evaluation of the outcomes of the dialogues.

Background

Overview of Australia's Bilateral Human Rights Dialogues and Associated Activities

- 1.18 The Department of Foreign Affairs and Trade (DFAT) states that "the most important goal of Australia's human rights diplomacy is to make practical improvements to the human rights situations in other countries." The Government pursues this goal through a combination of constructive dialogue, technical assistance and the building of institutions which underpin good governance.²

1 <http://www.aph.gov.au/house/committee/jfadt/hrdialogue/hrindex.htm>

2 Submission no. 17, DFAT, p. 4

- 1.19 In the cases of China, Vietnam and Iran this engagement includes a dedicated bilateral dialogue on human rights issues.³
- 1.20 The DFAT web site states that:
- “The Australian Government firmly believes that non-confrontational, cooperative dialogue is the most effective way to address the human rights situations in other countries.”⁴
- 1.21 Through these dialogues, Australia is able to raise a full range of concerns about human rights issues with senior government officials, and to encourage frank discussion of these matters, including making representations on behalf of individuals whose human rights may have been abused.⁵
- 1.22 The dialogue partner has equal opportunity to raise matters relating to human rights concerns in Australia.
- 1.23 The Government believes that the dialogues are more effective when coupled with well-targeted technical cooperation activities to improve dialogue partners’ own efforts to protect the human rights of their citizens.⁶ To this purpose, and in addition to the formal set of talks between the official delegations and representations on individual cases of concern, the dialogue process incorporates:
- programs of site visits by the visiting delegation; and
 - technical cooperation activities in the dialogue partner country, designed to raise awareness of international human rights standards and to improve human rights on the ground.⁷
- 1.24 All site visits and technical cooperation activities are designed in partnership with dialogue partners:
- “Our program works to expose the [partner] to the processes of rights protection in Australia and then, when the [dialogue partner] has decided which aspects of rights promotion and protection are relevant to their circumstances, to provide support for them to pursue the appropriate reforms....By supporting [the partner’s] own reform, rather than trying to impose our suggestions, we have been able to establish relationships with trust and confidence, and...enhance the sustainability of our inputs.”⁸
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3 Submission no. 17, DFAT, p. 4

4 DFAT Website, viewed 20 April 2005, http://www.dfat.gov.au/hr/dialogue_general.html

5 DFAT Website, viewed 20 April 2005, http://www.dfat.gov.au/hr/dialogue_general.html

6 DFAT Website, viewed 20 April 2005, http://www.dfat.gov.au/hr/dialogue_general.html

7 Submission no. 17, DFAT, p. 4

8 Official Transcript of Evidence, HREOC, pp. 14-15

- 1.25 Appendix C contains an overview, in table form, of Australia's human rights dialogue process and associated activities. The following paragraphs offer a short chronological summary of the three dialogues, with China, Vietnam and Iran, respectively.

Australia – China Human Rights Dialogue

- 1.26 Prime Minister Howard first proposed the establishment of a formal bilateral human rights dialogue with his then counterpart from China, Premier Li Peng, on his visit to China in March-April 1997. The first talks (conducted at Vice Minister/Deputy Secretary level) were held in Beijing in August 1997.⁹
- 1.27 Since 1997, there have been nine annual rounds of private dialogues, hosted in China and Australia in alternate years.¹⁰
- 1.28 The first round of the dialogue only involved officials from the Australian and Chinese foreign ministries. The following year participants expanded to include officials from other agencies. The Australian delegation now includes representatives from the Attorney-General's Department, the Australian Agency for International Development (AusAID) and the Human Rights and Equal Opportunity Commission (HREOC).¹¹
- 1.29 Topics covered at the dialogues have included:
- restrictions on freedom of assembly, association, expression and religion;
 - the human rights situations in Tibet and Xingiang, and that affecting other ethnic and religious groups, including the Falun Gong;
 - the treatment of dissidents;
 - legal reform (including ratification of the International Covenants);
 - the use of the death penalty;
 - use of torture and other degrading practices; and
 - reports of coercion in the implementation of China's family planning practices.¹²
- 1.30 A list of the topics discussed at each dialogue session is provided in Appendix D.
- 1.31 At the first dialogue meeting, the Australia-China Human Rights Technical Cooperation Program (HRTC) was established to complement

9 Submission no. 17, DFAT, p. 4

10 DFAT Website, viewed 23 August 2005,
http://www.dfat.gov.au/hr/achrd/aus_proc_dialogue.html

11 Submission no. 17, DFAT, p. 4

12 Submission no. 17, DFAT, p. 5

the dialogues. Since 1997, the HRTC has continued to grow in size and scope. At February 2005, expenditure on the program totalled approximately \$6.5 million.¹³ Table 1 of DFAT's submission provides details of all the HRTC activities to date, and includes projects that focus on capacity building and institutional strengthening, in the areas of legal reform, women and children's rights, and ethnic and minority rights.¹⁴

Australia – Vietnam Human Rights Dialogue

- 1.32 A bilateral human rights dialogue with Vietnam on international organisations and legal issues, including human rights was first considered in 1997. The first talks (conducted at First Assistant Secretary level) were held in Hanoi in May 2002.¹⁵
- 1.33 Since 2002, there have been 3 annual rounds of private dialogues, hosted in Vietnam and Australia respectively.¹⁶
- 1.34 The Australian delegation includes representatives from DFAT, Attorney-General's Department, AusAID and HREOC.¹⁷
- 1.35 Discussion topics at the dialogue sessions have included:
- respective national approaches to human rights;
 - cultural and religious diversity;
 - judicial reform and approaches to criminal law;
 - international organisations and legal issues;
 - women and children;
 - restrictions on the use of the internet; and
 - the death penalty.¹⁸
- 1.36 A list of the topics discussed at each dialogue session is provided in Appendix D of this report.
- 1.37 HREOC does not yet have an established human rights technical cooperation program with Vietnam in the way that it does with China, although an initial planning mission in Vietnam was undertaken in January 2005.¹⁹

13 Submission no. 17, DFAT, p. 17

14 Submission no. 17, pp. 22-29

15 Submission no. 17, DFAT, p. 5

16 Submission no. 17, DFAT, p. 5

17 Submission no. 17, DFAT, p. 5

18 Submission no. 17, DFAT, p. 6

19 Official Transcript of Evidence, HREOC, p. 19

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- 1.38 However, there has been a number of technical cooperation-related activities to date.
- 1.39 In 2003, following the second dialogue in Canberra, HREOC ran a study tour to familiarise Vietnamese officials with the institutional structure for the promotion and protection of human rights in Australia, and to assist Australian officials to identify the human rights priorities of Vietnam and determine the capacity of Australia and Vietnam to work together on them. Details of the organisations visited on the study tour are provided in Attachment 2 of HREOC's submission.²⁰
- 1.40 Further AusAID-funded bilateral human rights assistance includes:
- \$610, 000 of funding to the Ho Chi Minh National Political Academy (HCMNPA) – Vietnam Centre for Human Rights Research (VCHRR);
 - funding for judicial exchange programs between the Federal Court of Australia and the Supreme People's Court of Vietnam, run by the Centre for Democratic Institutions (CDI) at the Australian National University; and
 - \$192, 096 of funding via the Human Rights Small Grant Scheme (HRSGS) for projects that support the provision of legal advisory services for women and children.²¹

Australia – Iran Human Rights Dialogue

- 1.41 Australia is one of the few countries to have instigated a dedicated bilateral dialogue on human rights issues with Iran.
- 1.42 The then Deputy Prime Minister and Minister for Trade, Mr Tim Fischer, first discussed the possibility of a dialogue with Iran on his visit to that country in 1999.²²
- 1.43 The first - and to date, only - talks (conducted at First Assistant Secretary level) were held in Tehran in December 2002.²³
- 1.44 The Australian delegation included representatives from DFAT, Attorney-General's Department, AusAID and HREOC.²⁴
- 1.45 The dialogue covered the following topics:
- international human rights issues;
 - respective constitutional, judicial and legal systems;
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²⁰ Attachment 2, Submission no. 14, HREOC, p. 17

²¹ For details see Appendix A, Submission no. 17, DFAT, pp. 17-18 and Table 2, Submission no. 17, p 30.

²² Submission no. 17, DFAT, p.6

²³ Submission no. 17, DFAT, p.6

²⁴ Submission no. 17, DFAT, p.6

- the position of minorities;
 - freedom of expression; and
 - the role of national human rights institutions.²⁵
- 1.46 A list of the topics discussed at each dialogue session is provided in Appendix D of this report.
- 1.47 In 2003, following the first round of the dialogue, Australia funded a visit to HREOC by a delegation from the Islamic Human Rights Commission (IHRC) of Iran. Details of the study program and the organisations visited are provided in HREOC's submission to the inquiry.²⁶
- 1.48 There has been some other AusAID-funded bilateral human rights assistance to Iran via the HRSGS, namely:
- \$48, 266 of funding for projects that provide legal advocacy and support services to women and children.²⁷
- 1.49 Although Australia does not have a technical cooperation program in Iran, the possibility of establishing one in the future is not precluded. The DFAT submission stated that:
- “The visit enabled the IHRC to identify areas in which Australian expertise might usefully contribute to its priorities in promoting and protecting human rights.”²⁸

25 Submission no. 17, DFAT, p.6

26 Attachment 3, Submission no. 14, HREOC, pp. 29-44

27 For details see Table 2, Submission no. 17, DFAT, p. 31

28 Submission no. 17, DFAT, p.16

Parliamentary Participation and Oversight

Current Level of Engagement

Australia – China Human Rights Dialogue

- 2.1 The Australian delegation to the Australia-China dialogue has included parliamentary representatives on the following occasions:
- 1999: Mr Peter Nugent MP;
 - 2000: Dr Andrew Southcott MP and Senator Vicki Bourne;
 - 2002: Senator Marise Payne and Mr Bernie Ripoll MP;
 - 2004: Senator Marise Payne.¹
- 2.2 Following his participation in the 1999 dialogue, Mr Nugent presented a delegation report to the Parliament.²
- 2.3 There has been a number of other occasions when members have been invited to attend the Australia-China dialogue, but have been unable to participate due to other commitments or short notice.³
- 2.4 In addition to individual parliamentarians' participation in the dialogues, Chinese delegates to the 1998 and 2000 rounds of the dialogue met with members of the Parliament's JSCFADT.⁴
- 2.5 Australian parliamentarians have also been invited to attend the official reception held for each of the three rounds of dialogues in Australia.⁵

1 Submission no. 17, DFAT, p. 7

2 House Hansard, Monday, 18 October 1999, p. 987

3 Submission no. 17, DFAT, p. 7

4 Submission no. 17, DFAT, p. 7

Australia – Vietnam and Australia – Iran Dialogues

- 2.6 To date there has not been any parliamentary participation in the dialogues with Vietnam and Iran.⁶

Oral Briefings from DFAT

- 2.7 DFAT provides oral briefings on the dialogues to the JSCFADT and individual parliamentarians on request.⁷

Issues and Conclusions

- 2.8 A number of written submissions to the inquiry recommended that there be a higher level of parliamentary engagement in the human rights dialogues in order to ensure greater transparency, accountability and credibility in the process. Suggestions to make the process more formal and less ad-hoc include:

- that the Human Rights Sub-Committee review the progress and conduct of the human rights dialogues on an annual basis;⁸
- that the Minister for Foreign Affairs table a report in the Parliament at the conclusion of each dialogue session or on an annual basis, and/or this report be referred to the JSCFADT or Human Rights Sub-Committee for review (at the moment there is no formal reporting requirement in place);⁹
- that Australian parliamentarians and/or members of the Human Rights Sub-Committee participate in all Australian delegations to human rights dialogue sessions and report their findings to the Human Rights Sub-Committee;¹⁰
- that DFAT report regularly to the JSCFADT on the human rights dialogues, rather than upon request as is the present case;¹¹ and

5 Submission no. 17, DFAT, p. 7

6 Submission no. 17, DFAT, p. 7

7 Submission no. 17, DFAT, p. 7

8 Submission no. 11, Name withheld, p. 3

9 Submission no. 2, Human Rights Council of Australia, p. 3, Submission no. 3, Mr John Greenwell, p. 6, Submission no. 4, Australian Baha'i Community, p. 2, Submission no. 6, ACFID, p. 6, Submission no. 7, International Commission of Jurists, p. 2, & Submission no. 8, Amnesty, p. 9

10 Submission no. 6, ACFID, p. 6 & Submission no.10, & Falun Dafa Association, p.16

11 Submission no. 15, Vietnamese Community in Australia, p. 4 & Submission no. 14, HREOC, p. 5

- that dialogue partner delegations include their own parliamentary representatives.¹²
- 2.9 The Committee explored all of these issues at the public hearing.
- 2.10 The suggestion to establish a means of formal reporting on the dialogues to the Parliament, either by the Minister for Foreign Affairs, or via the Human Rights Sub-Committee, is addressed in Chapter 5 which deals with the reporting requirements and mechanisms of the dialogue process.
- 2.11 In terms of the other evidence received on parliamentary participation and oversight matters, the Committee focused its questioning on two areas: the inclusion of dialogue partners' parliamentary representatives in their delegations; and formalising Australian parliamentary participation in the dialogues.

Foreign Parliamentary Participation

- 2.12 At the hearing, the Committee wished to learn to what extent parliamentarians from Australia's dialogue partners, China, Vietnam and Iran, had participated in the rounds of talks and/or been invited to do so.
- 2.13 HREOC told the Committee that:
- “..[it] was not aware of any foreign parliamentarians being involved [in the dialogues].”¹³
- 2.14 Later in the hearing, HREOC noted that the delegation visit to Australia from the Islamic Human Rights Commission of Iran (IHRC) which followed the first Australia-Iran human rights dialogue in Tehran in 2002, had been led by a member of parliament.¹⁴
- 2.15 DFAT noted that while it had not suggested to dialogue partners that they invite their own parliamentary representatives to take part in the talks, in the case of China at least, there had been other “coincidental parliamentary involvement:”
- “We have visited China a couple of times and called on the legislative affairs committee of the Parliament, which is the committee that actually drafts the legislation that is placed before the committee.”¹⁵

12 Submission no. 14, HREOC, p. 5

13 Official Transcript of Evidence, HREOC, p. 21

14 Official Transcript of Evidence, HREOC, page 28

15 Official Transcript of Evidence, DFAT, page 42

- 2.16 The Human Rights Sub-Committee believes that it is as important for delegations from the dialogue partner countries to include parliamentary representatives as it is for the Australian delegations. For that reason, the Committee would like to see DFAT encourage China, Vietnam and Iran to invite parliamentary representatives to participate in future rounds of the bilateral human rights dialogues.

Recommendation 1

The Committee recommends that the Government encourage dialogue partners to include parliamentary representatives from their own countries to participate in future rounds of the bilateral human rights dialogues.

Australian Parliamentary Participation

- 2.17 At the hearing, the Committee asked the Australian Council for International Development (ACFID) to expand on the degree of parliamentary participation it would wish to see in the future. ACFID responded that while it appreciated that parliamentarians had participated in some of the dialogues, this had been on an ad-hoc basis and the process needed to be formalised:

“We would like to see something that is formalised institutionally, such as that there would always be a member of this Committee, as well as an open invitation to other parliamentarians to be part of those dialogue processes, specifically as observers and as active participants if they felt equipped to do that.”¹⁶

- 2.18 Further to ACFID’s comments on the ad-hoc nature of parliamentary participation in the dialogues to-date, the Chair remarked on the timing and financial factors that inhibit members’ participation in all dialogues:

“At the moment it depends on whether someone is available, occasionally at quite short notice and during a parliamentary sitting period, which is difficult, and during elections...and if [parliamentarians] have enough capacity in their own personal or study leave entitlements to get themselves there.”¹⁷

16 Official Transcript of Evidence, ACFID, p. 9

17 Official Transcript of Evidence, Chair, p. 42

- 2.19 The Committee acknowledged the Foreign Minister's support for parliamentary participation in the dialogues, but wished to know whether any consideration had been given to formalising that support. The Department said that it welcomed suggestions from the Committee in this regard.¹⁸
- 2.20 The Committee believes that the Government should formalise Australian parliamentarians' participation in and oversight of the dialogues in the following ways:
- 2.21 First, a formal invitation to join the Australian delegation of each human rights dialogue should be extended to one or more Government and non-Government parties' members alike. The parliamentary representatives might be nominated by party leaders or by the Minister for Foreign Affairs. To facilitate members' availability, the invitations should be made as far in advance of the dialogues taking place as is possible.
- 2.22 Secondly, in light of the observations made in 2.18, official delegation status should be conferred on the nominated parliamentarians.
- 2.23 Lastly, DFAT should be required to provide a regular private briefing on the status of the dialogues to the Committee. The Committee and DFAT should determine whether it is more appropriate for such a briefing to be provided both before and after each dialogue or, on an annual or biannual basis.

18 Official Transcript of Evidence, DFAT, p. 42

Recommendation 2

The Committee recommends that the participation in and oversight of the bilateral human rights dialogues by Australian parliamentarians be fully supported and formalised by:

- (a) party leaders or the Minister for Foreign Affairs nominating one or more parliamentarians from the Government and non-Government parties to attend each dialogue**
- (b) conferring official delegation status on the nominated parliamentarians; and**
- (c) the Department of Foreign Affairs and Trade providing regular private briefings to the Human Rights Sub-Committee on the status of each of Australia's dialogues with China, Vietnam and Iran.**

Lists of Individual Cases of Concern

- 2.24 At the hearing, the Committee expressed its appreciation at recently being able to obtain from DFAT, on a confidential basis, the lists of individual cases of concern that the Department maintains for raising with its counterparts at the dialogues. The Committee enquired whether these lists might be made available to it on a regular, perhaps annual, basis. DFAT confirmed that the Department would be happy to provide members with that material on request.¹⁹

19 Official Transcript of Evidence, DFAT, p. 46

Involvement of Non-Government Organisations

Current Level of Engagement

- 3.1 Prior to each bilateral human rights dialogue taking place, DFAT writes to interested NGOs seeking their input on human rights issues to be raised at the dialogue, particularly with respect to the lists of individual cases of concern discussed at each round.¹
- 3.2 Responses from NGOs are incorporated into the brief which DFAT provides to all members of the Australian delegation.²
- 3.3 Following the dialogues, NGOs are debriefed at the DFAT-NGO consultations on human rights which are held twice yearly. In addition, NGOs can request private debriefings from the Department.³
- 3.4 While NGO representatives have not been part of the Australian delegations, DFAT has invited NGO representatives to attend the official reception held during each of the four rounds of the China dialogue which have taken place in Australia.⁴
- 3.5 Further, in 2004, for the first time, DFAT organised a formal meeting between the Chinese delegation and five Australian human rights NGOs. Subsequent to this meeting, the Chinese invited the

1 Submission no. 17, DFAT, p. 8

2 Submission no. 17, DFAT, p. 8

3 Submission no. 17, DFAT, p. 8

4 Submission no. 17, DFAT, p. 8

Australian NGOs to visit China for further talks with the Chinese Government and NGO equivalents.⁵

Issues and Conclusions

- 3.6 Several submissions to the inquiry argued that greater NGO participation in the dialogue meetings would make the human rights dialogue process more transparent, accountable and credible, and enhance the knowledge and expertise of participating agencies. Suggestions include:
- that DFAT conduct more detailed briefings for NGOs⁶
 - ⇒ that specific briefings be held prior to and at the conclusion of each dialogue session (rather than incorporating debriefings into the more general twice yearly DFAT-NGO consultations on human rights)⁷
 - ⇒ that the briefing sessions become more focused, with NGOs involved in setting dialogue objectives, strategy planning and post-dialogue evaluations;⁸
 - that NGOs be invited to attend the dialogue meetings in an observer capacity;⁹
 - that the Government encourage greater involvement of civil society participants from the dialogue partner states, China, Vietnam and Iran;¹⁰
 - that an independent 'parallel dialogue' comprising human rights/NGO/legal experts and academia, take place at the same time but separate to the government meetings;¹¹ and
 - that the formal bilateral dialogues be preceded by informal seminars with NGOs.¹²
- 3.7 At the public hearing, the Committee explored a number of issues relating to NGO participation in the dialogue process: the adequacy or otherwise of briefings; the merits of NGOs having observer status
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5 Submission no. 17, DFAT, p. 8

6 Submission no. 14, HREOC, p. 6

7 Submission no. 6, ACFID, p. 7

8 Submission no. 6, ACFID, p.8 and Submission no. 14, HREOC, p. 6

9 Submission no. 15, Vietnamese Community of Australia, p. 3 and Submission no. 8, Amnesty, p. 10

10 Submission no. 6, ACFID, p. 7

11 Submission no. 8, Amnesty, p. 9 and Official Transcript of Evidence, ACFID, p. 9

12 Official Transcript of Evidence, ACFID p. 9

at dialogue meetings; the recent developments with the China dialogue which is moving towards greater NGO/civil society engagement; and the scope for establishing a parallel dialogue with NGOs.

NGO Briefings

- 3.8 ACFID told the Committee that the private debriefings which NGOs can request from DFAT are currently administered on an 'ad-hoc basis:'

"We would be looking for something which was a bit more established, something set as part of the process of every human rights dialogue – perhaps face-to-face meetings beforehand and then debriefings straight afterwards."¹³

- 3.9 At the hearing, DFAT informed the Committee that in addition to biannual consultations with NGOs:

"It is fair to say we give [NGOs] separate debriefings as soon afterwards as we can and as they are available. Often it is a question of getting people together, but we do it as soon as we can."¹⁴

- 3.10 HREOC's submission stated that few NGOs take up its standing offer for briefings on the technical cooperation side of the dialogue process.¹⁵ At the hearing, the Committee was curious to learn why the level of inquiry from NGOs was so low, given NGO interest in obtaining additional debriefings.

- 3.11 HREOC confirmed that the level of inquiry was rather low, but emphasised that the standing offer to brief NGOs about technical cooperation activities associated with the China, Vietnam and Iran dialogues was renewed each year at the DFAT-NGO consultations on human rights.¹⁶

- 3.12 ACFID acknowledged HREOC's standing offer to brief NGOs on the Australia- China Human Rights Technical Cooperation Program (HRTC) and noted that it was a genuine opportunity for engagement and discussion with NGOs. ACFID described a session it had organised in 2003 with a range of NGOs and the International Program staff of HREOC to discuss the HRTC. ACFID explained that NGOs did not regularly approach HREOC for briefings because most

13 Official Transcript of Evidence, ACFID, p. 4

14 Official Transcript of Evidence, DFAT, p. 44

15 Submission no. 14, HREOC, p. 6

16 Official Transcript of Evidence, HREOC, p. 17

of their concerns (such as an absence of benchmarking) are with the human rights dialogue process, which is separate from the HRTC. It is therefore more appropriate to raise these matters with DFAT, rather than HREOC.¹⁷

- 3.13 The Committee asked DFAT to comment on the extent to which it involves NGOs in matters such as agenda setting and strategy planning for the dialogues. The Department outlined the various consultation processes it has in place to facilitate NGO input (namely, seeking NGOs views in advance of the dialogues, conducting formal biannual consultations, and informal meetings), and concluded:

“[The Department] has a very close engagement with NGOs on the dialogue process.”¹⁸

Observer Status

- 3.14 The Vietnamese Community in Australia submission argued that the dialogue process needed to be made more transparent to the public, and that a way to achieve this was for interested NGOs to be granted observer status at the human rights dialogues and permitted to disseminate reports, similar to the way in which NGOs are permitted to observe and report on United Nations fora.¹⁹
- 3.15 Amnesty International Australia (Amnesty) similarly recommended that NGOs attend the dialogues in an observer role in order to “encourage greater transparency.”²⁰
- 3.16 At the hearing, DFAT explained that making the bilateral dialogue meetings more open in this manner and having NGOs present at the meetings themselves might prove counter-productive:

“a dialogue between governments... is conducted in confidence. You have to make a judgement about how frank the other side are going to be if they think it is all going to be out there in the national press. That is the kind of balance we have to look at: being as accountable as we can and coming to talk to this committee [and] NGOs...but, on the other hand, keeping a dialogue that is sufficiently confidential to encourage frankness.”²¹

17 Exhibit 8, ACIFD, p. 1

18 Official Transcript of Evidence, DFAT, p. 44

19 Submission no. 5, Vietnamese Community of Australia, p. 1

20 Submission no. 8, Amnesty, p. 10

21 Official Transcript of Evidence, DFAT, p. 45

Developments in the Australia- China Dialogue

- 3.17 At the hearing, ACFID told the Committee that for a number of years, Australian NGOs had approached DFAT informally to request greater involvement in the dialogues, namely an independent meeting between NGOs and Chinese Government officials attending the China dialogues in Australia.²²
- 3.18 Last year, after ACFID had put forward a formal proposal to the Minister for Foreign Affairs and permission was sought from the Chinese Government, DFAT facilitated a first meeting between five Australian NGOs²³ and Chinese Government officials in October 2004, in advance of the eighth round of the Australia-China Human Rights Dialogue.²⁴
- 3.19 ACFID tabled a supplementary submission at the hearing which set out the purpose, content and format of that meeting in some detail.²⁵
- 3.20 ACFID described the meeting including the question and answer component as successful:
- “The meeting was very productive. The Chinese appeared extremely engaged.”²⁶
- “I have no doubt that the questions we asked could have been asked a number of times, but it was significant that we had a chance to ask those questions as independent organisations.”²⁷
- 3.21 The Chinese delegation undertook to provide the Australian NGOs with additional information further to questions asked about legal reform at the meeting. At the hearing, ACFID confirmed that that material had later been supplied.²⁸
- 3.22 ACFID was particularly pleased that its proposition for an Australian NGO - Chinese NGO human rights dialogue process, independent of the Government-level dialogues, was welcomed by the Chinese officials, and that there is scope for further engagement on human rights issues:

22 Official Transcript of Evidence, ACFID, p. 9

23 The five Australian NGOs comprised representatives from ACFID, the Human Rights Council of Australia, the National Committee on Human Rights Education, the Australian Council of Trade Unions and the United Nations Association of Australia.

24 Submission no. 18, ACFID, p. 3

25 Submission no. 18, ACFID, p. 3

26 Official Transcript of Evidence, ACFID, p. 2

27 Official Transcript of Evidence, ACFID, p. 3

28 Official Transcript of Evidence, ACFID, p. 3

“...Significantly for us, there was a welcoming of our proposal for a process for separate NGO-to-NGO meetings” ...[and]

“There was a public, official invitation from the [Chinese] Deputy Foreign Minister, Mr Shen, for a follow-up to the meetings between Australian NGOs and the Chinese Government.”²⁹

3.23 The Committee asked ACFID whether it had accepted the invitation to attend the next round of the dialogue in China in 2005. ACFID said that it had acknowledged the invitation but there were a number of matters that required discussion before a formal acceptance could be made, namely issues surrounding cost, financing and representation.³⁰

3.24 In both its written and oral evidence, ACFID emphasised that many NGOs are keen to pursue similar types of meetings for the Vietnamese and Iranian dialogues:

“...given the success and enthusiasm with which the October meetings went ahead, there is precedent on which the Australian Government could approach both Iran and Vietnam to say there has been an independent meeting between government officials from Chinese and Australian NGOs to discuss human rights issues.”³¹

3.25 At the hearing, DFAT stated it had no objection to this suggestion and intends to raise the subject of greater NGO involvement with both the Vietnamese and Iranian governments in the near future.³²

3.26 The Committee was pleased to learn about the recent developments in respect of increased NGO involvement in the Australia-China dialogue. The Committee supports continued efforts by Australian NGOs, DFAT and Chinese Foreign Ministry officials to advance the China dialogue by increased contact between Australian NGOs and dialogue partner delegates. The Committee encourages DFAT to canvass similar arrangements with the Vietnamese and Iranian officials, at an appropriate juncture.

29 Official Transcript of Evidence, ACFID, p. 2

30 Official Transcript of Evidence, ACFID, p. 2

31 Official Transcript of Evidence, ACFID, p. 8

32 Official Transcript of Evidence, DFAT, p. 47

Parallel Dialogues

- 3.27 In its written evidence, Amnesty International Australia (Amnesty) suggested that another way to engage civil society more in the human right dialogues is to establish a parallel dialogue process where NGOs and human rights and legal experts conduct roundtable discussions on key human rights issues, alongside the official bilateral government-to-government dialogues. The NGO roundtables could take a thematic focus.³³
- 3.28 At the hearing, Amnesty expanded on the concept of a complementary civil society dialogue:
- “...we refer to the EU dialogue processes, which take a very thematic approach. NGO and civil society actors meet for one to two days with the participation of a small number of departmental representatives.”³⁴
- 3.29 Amnesty later provided further details on the working model which it envisages:
- “Under this model a working group of national civil society representatives can be established, chosen on the basis of the thematic issues to be discussed. Each national working group once established can work with their respective foreign affairs departments to identify appropriate government participants. The structure of the parallel civil society should be developed jointly with department representatives and ensure an appropriate balance of chairing and moderating by civil society and department participants.”³⁵
- 3.30 Amnesty believes that such a parallel dialogue process:
- “will provide an informative and productive complement to the current government discussions.”³⁶
- 3.31 ACFID described two models for parallel dialogues based on the European Union (EU) experience. The first was along the lines of Amnesty’s suggestion, namely seminars with NGOs that complement the government-to-government dialogues and offer NGOs the opportunity to raise human rights issues with delegates directly. The second type of parallel dialogue would exclude government delegates:

33 Submission no. 8, Amnesty, p. 9

34 Official Transcript of Evidence, Amnesty, p. 31

35 Submission no. 19, Amnesty, p. 2

36 Official Transcript of Evidence, Amnesty, p. 31

“...the partner country- let us take China as an example- formally agrees to and grants permission for an independent, non-government dialogue. That involves NGOs, members of the academic world and statutory representatives. These meetings are separate from the government meetings.”³⁷

- 3.32 ACFID believes that the second type of parallel dialogue confers the following advantages:

“If a particular issue is raised in the non-government dialogues, the idea is that in the future it will be reflected in the government processes so that you can effect some change. It allows an atmosphere and a meeting where members of civil society, particularly from partner countries, are able to provide their perception of, their concerns about and their interpretation of progress or lack thereof on human rights standards to their counterparts in the other countries.”³⁸

- 3.33 The Committee notes that the notion of a parallel dialogue is to some extent already being progressed in the Australia-China Dialogue (see the previous section, “Developments in the Australia-China Dialogue” for further details). As commented on in 3.26, the Committee supports this endeavour.
- 3.34 The Committee sees merit in establishing a parallel dialogue process between NGOs and delegates and/or between NGOs themselves. However, the Committee also recognises that each dialogue is unique and that the establishment of any such arrangement would need to be discussed and agreed to by both dialogue partners, as has been the case with China.
- 3.35 The Committee suggests that the Government give serious consideration to preceding each of the bilateral human rights dialogues hosted in Australia with a forum, at which Australian NGOs are given the opportunity to brief members of the Australian delegation on human rights issues of particular concern.

37 Official Transcript of Evidence, ACFID, p. 9-10

38 Official Transcript of Evidence, ACFID, p. 9

Recommendation 3

The Committee recommends that the Government consider preceding each of the bilateral human rights dialogues hosted in Australia with a forum, at which Australian NGOs have the opportunity to brief members of the Australian delegation on human rights issues of particular concern.

The Roles and Obligations of Participating Agencies

Current Level of Engagement

Department of Foreign Affairs and Trade

- 4.1 DFAT is the lead government agency with overall responsibility for Australia's bilateral human rights dialogues with China, Vietnam and Iran. The Department:
- provides ongoing assessments of the human rights situations in dialogue partner countries;
 - compiles lists of individual cases of concern and makes representations;
 - manages all organisational aspects of the dialogue meetings, including:
 - ⇒ negotiation of timing, agendas, and site visits with partners
 - ⇒ coordination of material for the Australian delegation's brief
 - ⇒ administrative arrangements for dialogue meetings and study visits in Australia
 - ⇒ consultation and liaison with Attorney-General's Department, AusAID, and HREOC on technical cooperation activities
 - ⇒ information sharing with parliamentarians and members of the JSCFADT, and NGOs at the biannual DFAT-NGO consultations

- reporting to the Foreign Minister on outcomes; and
- monitoring the progress of dialogue rounds and evaluating outcomes.¹

Attorney-General's Department

- 4.2 The Attorney-General's Department role in the human rights dialogue process is to provide advice to dialogue participants on Australia's system of law and justice, in particular, domestic human rights institutions, policies and legislation.²
- 4.3 Topics that fall within the Attorney-General's Department portfolio responsibility, which have been discussed at the dialogues include:
- judicial administration and reform;
 - civil and political freedoms;
 - criminal justice;
 - domestic human rights protection;
 - national human rights institutions;
 - counter-terrorism and security legislation;
 - Native Title;
 - implementation of the Convention on the Rights of the Child; and
 - religious discrimination and vilification.³
- 4.4 In addition, Attorney-General's Department officers establish informal networks with their counterparts in dialogue partner countries in order to ensure ongoing dialogue at that level.⁴

Human Rights and Equal Opportunity Commission

- 4.5 HREOC is Australia's national human rights institution and an independent statutory authority within the Attorney-General's portfolio.
- 4.6 HREOC representatives contribute expertise in practical matters arising out of human rights issues, such as complaint handling processes.⁵
- 4.7 In addition to its participation in the dialogues, HREOC is responsible for planning and implementing the associated technical cooperation

1 Submission no. 17, DFAT, pp. 8-9

2 Submission no. 17, DFAT, p. 9

3 Submission no. 17, DFAT, p. 9

4 Submission no. 17, DFAT, p. 9

5 Submission no. 17, DFAT, p. 11

activities.⁶ See HREOC's submission for details of the HRTC in China and other activities in Vietnam and Iran.⁷

- 4.8 HREOC's participation in the dialogues themselves is an important demonstration of the capacity for a national human rights institution to work with government and maintain an independent stand on human rights issues.⁸ In its submission, HREOC stated:

"It should be noted that the executive government has placed no conditions on the involvement of the Commission. The Commission's representatives have always felt free to make their views known and to participate fully in the dialogues. On occasion this has resulted in the Commission taking and presenting to the dialogue partners' a view on Australian policy and practice or on the desirability of changes in the dialogue partner's policy and practice that differs from the views of the executive department."⁹

- 4.9 At the hearing, this was described by HREOC as a "healthy tension":

"I think it is very healthy for the Australian contingent as a whole to be able to demonstrate that there is this tension and that there is an independent organisation in Australia concerned with human rights that is critical of the government and government policies from time to time."¹⁰

AusAID

- 4.10 AusAID supports the human rights dialogues process through the planning, management and funding of associated technical cooperation activities.¹¹ In the case of China, AusAID funds and manages the HRTC Program, although HREOC takes carriage of the program delivery through its Record of Understanding with AusAID.¹²
- 4.11 Similarly, AusAID supported the 2003 study program for Vietnamese delegates by arranging the funding for and management of the program by HREOC.¹³

6 Submission no. 17, DFAT, p. 11

7 Submission no. 14, HREOC

8 Submission no. 14, HREOC, p. 11

9 Submission no. 14, HREOC, p. 3

10 Official Transcript of Evidence, HREOC, p. 17

11 Submission no. 17, DFAT, p. 10

12 Submission no. 17, DFAT, p. 17

13 Submission no. 17, DFAT, p. 17

- 4.12 Details of other AusAID-funded bilateral human rights assistance to Vietnam, delivered through the Centre for Democratic Institutions (CDI) and the Human Rights Small Grants Scheme (HRSGS) can be found in Appendix A of Submission no. 17.¹⁴
- 4.13 Correspondingly, details of AusAID- funded bilateral human rights assistance to Iran, delivered through the HRSGS are also outlined in Appendix A of Submission no. 17.¹⁵

Issues and Conclusions

- 4.14 In written evidence to the inquiry, several submissions suggested that the role and obligations of participating agencies should be expanded in order to improve the transparency and accountability of the dialogue process. Specific suggestions include:
- that there be greater inter-agency collaboration to improve the coordination of discussion around common themes at dialogue sessions,¹⁶ and in particular, closer communication with AusAID;¹⁷
 - that briefings be made available to interested parties immediately prior to and following each of the dialogues (in addition to the twice-yearly DFAT-NGO consultations on human rights at which Australia's human rights dialogues are an agenda item);¹⁸
 - that participating agencies call on human rights experts in particular areas to assist officials in questioning dialogue partners;¹⁹ and
 - that bilateral human rights dialogues be accompanied by multilateral condemnations of human rights abuse, where appropriate, such as sponsoring United Nations (UN) resolutions at the Commission on Human Rights (CHR) in Geneva;²⁰
- 4.15 At the public hearing, the Committee took additional evidence on concerns about the briefing process, inter-agency collaboration, the need for more human rights experts, and the relationship between bilateral and multilateral dialogues.

14 Appendix A, Submission no. 17, DFAT

15 Appendix A, Submission no. 17, DFAT,

16 Submission no. 8, Amnesty, p. 8

17 Submission no. 6, ACFID, p. 10

18 Submission no. 6, ACFID, p. 7

19 Submission no. 14, HREOC, p. 6

20 Submission no. 4, Australian Baha'i Community, p. 4, Submission no. 8, Amnesty, p. 8, Submission no. 9, & Australian Tibet Council, p. 15

- 4.16 The subject of additional briefings for NGOs is not dealt with here because it is covered in Chapter 3, which focuses on the extent of and scope for greater consultation with NGOs in the dialogue process.

Inter-agency Collaboration

- 4.17 At the hearing, the Committee asked ACFID to expand on its concerns about inter-agency collaboration on the human rights dialogues, and in particular, the adequacy of consultation between AusAID and the other participating agencies, namely DFAT and HREOC. ACFID responded that:
- “The problem is that we are just not sure that [AusAID] has the resources or perhaps even the support of DFAT, or even at a more political level, for their involvement in the dialogue processes.”²¹
- 4.18 The Committee took these themes up with AusAID, DFAT and HREOC respectively at the hearing.
- 4.19 The Committee asked AusAID to comment on the degree of engagement it has in the dialogue process as distinct from the associated technical cooperation activities. AusAID responded that it has a close involvement:
- “We certainly attend the dialogues...we have the direct engagement with HREOC...regular discussions with DFAT...and other areas of government...[and we have been] involved in discussion of the agenda.”²²
- 4.20 Subsequent to the hearing, AusAID provided the Committee with additional material that outlines the extent of AusAID participation in the dialogues. AusAID reiterated that there was regular consultation between DFAT, AusAID, and HREOC on human rights issues and technical support activities. AusAID affirmed that it has significant involvement in the China dialogue:
- “There has been senior AusAID participation in all the dialogues held in Canberra and China since 1997. AusAID contributes to the agenda for dialogue meetings (for example the inclusion of HIV/AIDS in the 2002 dialogue was at AusAID’s request). AusAID also advises DFAT on possible field trips associated with the dialogue (for example the 1999 Qinghai Provincial visit).”²³

21 Official Transcript of Evidence, ACFID, p. 11

22 Official Transcript of Evidence, AusAID, p. 51

23 Exhibit no. 6, AusAID, p. 1

- 4.21 Observing HREOC's comment that it had not been involved in setting the dialogue agendas or in deciding on the strategy to be followed,²⁴ the Committee queried whether the Commission wished to have additional input into the actual dialogues, either in terms of setting the agenda or deciding on the strategy. HREOC replied that:
- "I rather doubt that we would need to be further involved in that...There is a decision making process and that strikes me as being appropriate."²⁵
- 4.22 HREOC emphasised that it was free to offer suggestions and that there is regular communication between HREOC, DFAT and AusAID officials on dialogue matters:
- "We would feel no hesitation in raising issues [with DFAT or AusAID] about the technical cooperation program that we were administering, if we thought it appropriate to do so...I speak to the DFAT officials concerned on a day-to-day basis and I would not be shy in making any suggestions, but it is not a formal input."²⁶
- 4.23 DFAT added that, as with any bilateral consultations that the Department undertakes, views on the agenda and how to take issues forward are sought from all participating agencies.²⁷

Human Rights Experts

- 4.24 In written evidence to the inquiry, HREOC stated that:
- "Except for some interested individuals within some departments, Australian agencies, including the [Human Rights and Equal Opportunity] Commission do not have sufficient expertise to closely question dialogue partners on their policies."²⁸
- 4.25 At the hearing, HREOC explained why it thinks that the Australia-China dialogue in particular would benefit from the inclusion of human rights experts in particular areas:
- "With China, we are probably at a point now where we no longer need to feel our way. We have established relationships of trust and confidence. We can take it to the next level...Perhaps a way forward here would be for us to

24 Submission no. 14, HREOC, p. 3

25 Official Transcript of Evidence, HREOC, p. 25

26 Official Transcript of Evidence, HREOC, p. 25

27 Official Transcript of Evidence, DFAT, p. 51- 52

28 Submission no. 14, HREOC, p. 6

identify subjects and have experts in those particular subjects attend the dialogue...As it stands now, it tends to be a bit of a survey and on neither side of the table are there people who have in-depth expertise on any particular area, so the result is that you move across the agenda fairly quickly.”²⁹

- 4.26 HREOC anticipates calling on additional experts from both within and outside of government:

“For instance, you could identify an area such as the management of correctional institutions, which would include detention centres and police lock-ups etc. There are experts within government and outside of government that could assist dialogue partners to identify the issues.”³⁰

- 4.27 The Committee does not think that it is necessarily appropriate for human rights experts from other government agencies or external sources to directly question/approach dialogue partners on human rights issues at the China dialogue sessions. But it is, in principle, supportive of HREOC’s idea that a wider pool of human rights experts might be utilised in the dialogue process.
- 4.28 There is a number of ways in which their expertise might be sought. DFAT might canvass opinions from experts in the same manner that they request NGOs to submit material in advance of the dialogues – for incorporation into the delegation brief. Alternatively, experts could, alongside NGOs, brief the delegation at a seminar that precedes the dialogue (see 3.35 and Recommendation 3).
- 4.29 The Committee believes that DFAT should give further consideration to these options. The topic might be discussed at an upcoming Australia-China dialogue.

The Impact of Bilateral Dialogues on Multilateral Human Rights Processes

- 4.30 In written evidence received from some NGOs, it was suggested that, in their view, Australia’s involvement in bilateral human rights dialogues precluded or hindered the government from voicing criticism of human rights abuses in dialogue partner countries at international fora. In particular, they suggested that Australia is less likely to sponsor UN resolutions against human rights abuses at the

29 Official Transcript of Evidence, HREOC, p. 18

30 Official Transcript of Evidence, HREOC, p. 18

CHR in Geneva.³¹ A submission from the Australia Tibet Council claimed that:

“The bilateralisation of multilateral processes threatens to undermine the universality and credibility of the international human rights regime entrenched in the UN.”³²

4.31 At the hearing, Amnesty reiterated its concern about the absence of country resolutions at the CHR in recent years, particularly with respect to China.³³

4.32 The Committee sought further comment from Amnesty at the hearing about whether there is a correlation between the existence of bilateral dialogues and the diminution of resolutions. Amnesty repeated that it would not want the dialogues to exist at the cost of other processes such as the CHR, but acknowledged that the diminution of resolutions was probably a separate criticism of the CHR.³⁴

4.33 During the hearing DFAT alluded to the systemic reasons for the absence of such resolutions at the CHR:

“...going back to the late 80s, there has been no successful resolution in China at the CHR. Almost every year..., it has been mooted and the Chinese have been able to muster sufficient numbers to have the resolution not acted on.”³⁵

4.34 DFAT stated that Australia has voted in favour of discussing human rights issues in relation to China at the CHR:

“We vote in favour of it being discussed...This is the CHR and it is there to discuss human rights. But the fact is that it has not been possible to have that discussion in the commission because those no-action motions have been successful.”³⁶

4.35 On the question of whether bilateralism stymies multilateral discourse on human rights issues, DFAT said that bilateral and multilateral processes are not mutually exclusive:

“Our position on resolutions that come up in the General Assembly and the Commission on Human Rights – whether it

31 Submission no. 4, Australian Baha'i Community, p. 4, Submission no. 5, Joint Non-Government Organisations, p. 1, Submission no. 8, Amnesty, p. 8, & Submission no. 9, Australian Tibet Council, p. 11

32 Submission no. 9, Australia Tibet Council, p.3

33 Official Transcript of Evidence, Amnesty, p. 29

34 Official Transcript of Evidence, Amnesty, p. 35

35 Official Transcript of Evidence, DFAT, p. 42

36 Official Transcript of Evidence, DFAT, p. 43

is China or any other issue- is not dependent on what we do in the bilateral dialogues or vice versa.”³⁷

- 4.36 Similarly, the fact that Australia has established bilateral dialogues with China, Vietnam and Iran does not preclude it from raising human rights concerns on other occasions:

“The Minister raises issues with counterparts when they see them all the time, and then officials follow through with more detailed discussions. That is the normal conduct of bilateral diplomacy, so [representation at the bureaucratic and political levels] are not mutually exclusive.”³⁸

- 4.37 To conclude, the Committee notes the political difficulties inherent in the CHR’s structure, including the way that member states can use its voting mechanisms to prevent public criticism on human rights issues. This long-recognised problem is one of the subjects discussed in the UN Secretary-General’s recent report on UN reforms, *In Larger Freedom*. In the report, Mr Annan advocates that credibility might be restored through abolishing the CHR and replacing it with a smaller standing Human Rights Council.³⁹
- 4.38 Given the ongoing problems that exist at the Commission, and the way that discussion of the human rights situation in some countries, such as China, can be kept off the UN agenda, the Committee believes that Australia’s bilateral dialogues, including that with China, remain an important vehicle for the discussion of international human rights concerns.

37 Official Transcript of Evidence, DFAT, p. 43

38 Official Transcript of Evidence, DFAT, p. 43

39 See United Nations General Assembly, *In larger freedom: towards development, security and human rights for all*, Report of the Secretary-General, 21 March 2005, UN Document A/59/2005, p. 45

Reporting Requirements and Mechanisms

Current Level of Engagement

Department of Foreign Affairs and Trade

- 5.1 At present DFAT is not formally required to report publicly on Australia's bilateral human rights dialogues, although the Department does report to the Minister on the outcomes of each dialogue.¹
- 5.2 The Minister is not obligated to report to the Parliament.
- 5.3 DFAT reports privately to parliamentary committees and individual parliamentarians on request.²
- 5.4 In addition, DFAT reports to NGOs on the dialogues at its biannual human rights consultations. DFAT also offers private briefings to interested NGOs on request.³

Human Rights and Equal Opportunity Commission

- 5.5 HREOC has a similar standing offer to provide interested NGOs with briefings on the technical cooperation aspects of the dialogues.⁴
- 5.6 The HREOC submission states that it reports extensively on the technical cooperation programs:

“For each activity the Commission prepares a comprehensive Completion Report which describes and evaluates the activity against its objectives.”⁵

1 Submission no. 17, DFAT, p. 11

2 Submission no. 17, DFAT, p. 11

3 Submission no. 17, DFAT, p. 11

4 Submission no. 14, HREOC, p. 6

- 5.7 In the case of China, a number of additional reports are prepared, namely monthly progress reports on individual projects and quarterly and annual reports on the overall program. An annual Program Review and Planning Mission Report details the previous year's program and outlines the following year's activities.⁶

AusAID

- 5.8 The HREOC submission states that the Commission provides copies of its reports to AusAID and a small amount of information from them is placed on the AusAID and DFAT websites.⁷

Issues and Conclusions

- 5.9 A number of submissions to the inquiry sought additional reporting requirements and mechanisms to, in their view, ensure greater transparency, accountability and credibility of the human rights dialogues.⁸ As referred to in Chapter 2, changes were suggested in the context of increasing parliamentary participation and oversight of the process. To this effect the most common recommendations were:
- that the Minister for Foreign Affairs should be formally required to table a report on the human rights dialogues in the Parliament;⁹ and/or
 - that a report on the human rights dialogues should be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade or its Human Rights Sub-Committee for review.¹⁰

Another suggested means to increase transparency of the process was:

- that the participating agencies place more and/or clearer information about the human rights dialogues on their respective websites.¹¹

- 5.10 At the public hearing, the Committee raised these issues with witnesses.

5 Submission no. 14, HREOC, p. 7

6 Submission no. 14, HREOC, p. 7

7 Submission no. 14, HREOC, p. 7

8 See Submission no. 3, Mr John Greenwell, p. 3, Submission no. 4, Australian Bahai'i Community, p. 4, Submission no. 5, Joint Non-Government Organisations, p.2, Submission no. 6, ACFID, p. 11, Submission no. 7, International Commission of Jurists, p. 1, Submission no. 8, Amnesty, p. 7, & Submission no. 15, Vietnamese Community in Australia, p. 2

9 Submission no. 2, Human Rights Council of Australia, p. 3, Submission no. 6, ACFID, p. 11, & Submission no. 8, Amnesty, p. 9

10 Submission no. 8, Amnesty, p. 8, Submission no. 15, & Vietnamese Community of Australia, p. 4

11 Submission no. 6, ACFID, p. 11, Submission no. 15, Vietnamese Community of Australia, p. 2

Annual Report

- 5.11 At the hearing, the Committee sought further comment on the need and scope for reporting to Parliament on the human rights dialogues.
- 5.12 ACFID told the Committee that there is no systematic public accountability through the parliamentary processes.¹² ACFID suggested that this could be addressed through the establishment of an annual report:
- “[The annual report] would contain a synopsis of the overall aim of undertaking the dialogue and the specific objectives for that particular dialogue or future dialogues. It would discuss the outcomes. It would outline issues that the partner country specifically raised with regard to their own human rights concerns as well as human rights concerns in Australia. It would conclude with a vision or a statement...of how human rights dialogues might persist in the future.”¹³
- 5.13 ACFID said that the European Parliament undertakes an annual reporting process with its human rights dialogues with partner countries and that this provided Australia with a model.¹⁴
- 5.14 Amnesty also endorsed the idea of an annual report on the human rights dialogues and reiterated the point it made in its written evidence that an annual report would increase accountability by indicating for example, where the same subject was discussed at the previous year’s dialogue, how the present situation stands in light of that discussion:¹⁵
- “...it would be important in the following year to follow up on what has been happening: are reforms being implemented? We have had nothing like that occurring in the dialogue.”¹⁶
- 5.15 The Committee acknowledges the need for regular public reporting on the human rights dialogues and their associated technical cooperation activities. At the hearing, the Committee noted that some of the current forms of reporting, in particular HREOC’s reports on the technical cooperation activities, are quite detailed.¹⁷
- 5.16 The Committee appreciates the briefings it receives from DFAT on the human rights dialogues, recognises that both DFAT and HREOC have standing offers to brief interested NGOs on the dialogues and technical
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12 Official Transcript of Evidence, ACFID, p. 6

13 Official Transcript of Evidence, ACFID, p. 12

14 Official Transcript of Evidence, ACFID, p. 6

15 Submission no. 8, Amnesty, p. 9

16 Official Transcript of Evidence, Amnesty, p. 32

17 Official Transcript of Evidence, p. 34

cooperation programs, and that DFAT institutionalises its debriefs on the human rights dialogues in formal biannual consultations with NGOs.

- 5.17 However, the fact remains that there is no formal reporting requirement for the dialogues. The Committee would like to see the bilateral human rights dialogues reported on to Parliament with information about them placed on the public record. The Committee recommends that the Minister for Foreign Affairs table an annual statement on the dialogues in Parliament.
- 5.18 The Committee does not necessarily think that the Minister's report must take the form of an annual report, nor does it wish to suggest the specific content or form of an annual statement, but the statement should summarise the current status of each of Australia's human rights dialogues with China, Vietnam and Iran and note any special outcomes or developments for that year.

Recommendation 4

The Committee recommends that the Minister for Foreign Affairs table an annual statement in Parliament on the status and proceedings of each of Australia's bilateral human rights dialogues with China, Vietnam and Iran.

- 5.19 DFAT might also like to give consideration to providing more information on the human rights dialogues in its annual report. DFAT's 2003-04 annual report only devoted three short paragraphs to the dialogues.¹⁸

Committee Review

- 5.20 Amnesty's recommendation that a report be referred to the Human Rights Sub-Committee for inquiry and report,¹⁹ was a topic of discussion at the hearing between Amnesty and the Committee.
- 5.21 Amnesty argued that the human rights dialogue process would be made more accountable if a report, either from the Minister or the Australian delegation, on each dialogue, was presented to the Human Rights Sub-Committee for independent examination and assessment.²⁰
- 5.22 The Committee expressed reservations about whether it was the Committee's role to undertake comprehensive assessments of the sort that

18 See DFAT Annual Report 2003-04, p. 93

19 Submission no. 8, Amnesty, p. 9

20 Official Transcript of Evidence, Amnesty, p. 34

Amnesty was advocating and whether it had the necessary expertise, time and resources to do such a review justice:

“We have no capacity to go on the ground and find out who is saying what and who makes an assessment...How does this Committee evaluate those? How do we judge as between you and the other institutions - all of the international human rights watches and whatever...?”²¹

- 5.23 Amnesty responded that the review would allow the Committee to make a judgement about whether or not a particular dialogue had been successful and would ensure that information on the status of the dialogues and their achievements was being made available to Parliament, with the process held to account. ²² Amnesty commented that:

At the moment there is a notable lack of information coming through...”²³

- 5.24 The Committee replied that it did not necessarily need to review each and every dialogue to measure the success or otherwise of the human rights dialogue process:

“We can make an assessment on the basis of what people have said to us, what HREOC has said to us and what other submitters say to us, as to whether [the human rights dialogues] are useful or not. And I think we have come to the conclusion that it is.”²⁴

- 5.25 The Committee wishes to continue and develop its oversight role in the bilateral human rights dialogues. This role has already been discussed in Chapter 2, in which the Committee concluded that it wishes to see its participation in and oversight of the dialogue sessions supported and formalised (see Recommendation 2). This will ensure that there is regular reporting on the dialogues to the Parliament and monitoring, via the Committee.

Website Improvements

- 5.26 ACFID’s submission stated that DFAT’s website²⁵ currently provides a minimal history and background of Australia’s human rights dialogues with China, Vietnam and Iran.²⁶

21 Official Transcript of Evidence, pp. 33 - 34

22 Official Transcript of Evidence, Amnesty, p. 33

23 Official Transcript of Evidence, Amnesty, p. 34

24 Official Transcript of Evidence, Amnesty, p. 33

25 http://www.dfat.gov.au/hr/dialogue_general.html

26 Submission no. 6, ACFID, p. 11

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- 5.27 The Committee believes that DFAT, as the lead agency responsible for Australia's bilateral human rights dialogues, should provide a sufficient level of detail about the dialogues and the dialogue process on its website, as a valuable outreach tool to NGOs, civil society and the public at large.
- 5.28 In addition to information on the history and background of the dialogues, current information about the dialogues and moreover the dialogue process should be included. Consideration might be given to incorporating some or all of the following:
- displaying more clearly the information on the status of each of the dialogues with China, Vietnam and Iran, including emphasising any developments worthy of particular merit e.g. at the eighth round of talks in China in October 2004 meetings were held - for the first time - between Australian NGOs and Chinese officials. This might be assisted by reversing the chronological format and placing the summary of the most recent dialogue first;
 - dates of upcoming dialogue sessions in Australia or dialogue partner countries and the agendas or topics to be discussed, to the extent that such matters can be revealed publicly;
 - details of how NGOs, civil society and interested individuals are able to keep informed about and/or engage in the human rights dialogue process themselves (through attendance at biannual DFAT-NGO consultations, preparing written submissions, and/or meeting with departmental representatives privately);
 - links to the relevant website pages of the other participating agencies, namely AusAID and HREOC, which provide information on the technical cooperation aspects of the dialogue process; and
 - details of a liaison officer within DFAT whom NGOs and interested individuals can contact if they have further questions on any aspect of the bilateral human rights dialogues or human rights dialogue process.
- 5.29 The AusAID website contains information on the Australia-China Human Rights Technical Cooperation Program.²⁷ These website pages were last updated on 29 January 2002.
- 5.30 The Committee believes that it is important for these pages to be updated regularly with current information on the status of the program and recent developments.
- 5.31 The HREOC website contains a small amount of information on HREOC's technical cooperation activities with China and Vietnam in Chapter 11 on
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27 http://www.ausaid.gov.au/publications/pubout.cfm?Id=87_9423_3287_2420_3651

International Activities in its 2003-04 annual report.²⁸ The Committee suggests that HREOC consider adding a section on the Commission's international activities to its website, and include details about the Commission's technical cooperation activities with each of Australia's dialogue partner countries.

Recommendation 5

The Committee recommends that the Department of Foreign Affairs and Trade, the Australian Agency for International Development and the Human Rights and Equal Opportunity Commission, make more effective and regular use of their websites to convey up-to-date information on those aspects of Australia's bilateral human rights dialogues with China, Vietnam and Iran, for which they have responsibility.

28 <http://www.humanrights.gov.au/annrep04/chap11.html>.

The Monitoring and Evaluation of Outcomes

Current Level of Engagement

6.1 The DFAT submission states that:

“Monitoring and evaluation of the dialogues takes place in the context of our assessment of our broader engagement with dialogue partners on human rights issues.”¹

6.2 DFAT monitors and evaluates the dialogues according to:

- progress in individual cases of concern;
- improvements in the general human rights situation in the respective country, including in the areas discussed in the dialogues;
- the willingness of dialogue partners to engage in discussion of human rights issues, including identifying areas where Australia can assist dialogue partners in the implementation of international human rights standards; and
- the level of engagement of officials from a range of ministries, and practitioners, in direct discussion of human rights issues.²

6.3 DFAT notes that there are difficulties inherent in assessing any direct impact that Australia’s bilateral human rights dialogues has on improving the human rights situation in a particular country:

“...we are realistic about the significance of our dialogues, in and of themselves, as levers for fundamental or rapid change. The process of change is generally incremental, and is the result of a

1 Submission no. 17, DFAT, p. 12

2 Submission no. 17, DFAT, p. 12

range of contributing factors, of which our bilateral dialogues are one.”³

Issues and Conclusions

- 6.4 Several submissions to the inquiry expressed concern that the current measures for monitoring and evaluating Australia’s human rights dialogues were too general and this detracted from the transparency, accountability and credibility of the dialogues. Suggestions for more specific and/or outcome-oriented measures discussed below include:
- that each dialogue should have focused objectives;⁴
 - that clear detailed benchmarks be established against which objectives and progress can be measured, based on the EU Guidelines and/or other international indicators;⁵ and
 - that Australia initiate an international meeting of dialogue countries to review the dialogue process.⁶
- 6.5 The Committee discussed these issues at the public hearing.

Objectives

- 6.6 At the hearing, the Committee asked DFAT if the human rights dialogues had clearly defined objectives and focused evaluation criteria. DFAT replied that whilst there were no specific benchmarks, there was certainly a broad purpose (namely to discuss human rights issues) and implicit shared objectives in the agenda.⁷
- 6.7 HREOC told the Committee that the technical cooperation program has clearly stated objectives and the Commission evaluates every activity against those objectives and reports on them.⁸ The HREOC submission contains evaluation-related extracts from Commission reports for each of the dialogue partner countries, China, Vietnam and Iran.⁹

3 Submission no. 17, DFAT, p. 12

4 Submission no. 6, ACFID, p. 12

5 Submission no. 4, Australian Baha’i Community, p. 5, Submission no. 5, Joint Non-Government Organisations, p. 1 & Submission no. 6, ACFID, p. 12

6 Submission no. 8, Amnesty, p. 10

7 Official Transcript of Evidence, DFAT, p. 41

8 Official Transcript of Evidence, HREOC, p. 18

9 See Submission no. 14, HREOC, Attachments 2-4

Benchmarks and Indicators

- 6.8 In written evidence, ACFID refers to the EU guidelines on human rights dialogues as a model for benchmarking the progress of human rights dialogues in order to make the process more accountable. According to ACFID, international NGOs, including Human Rights Watch and the International Federation for Human Rights (FIDH), have developed similar indicators for measuring a dialogue country's commitment to achieving human rights outcomes. The indicators comprise:
- ratification and implementation of all UN human rights instruments;
 - promotion of civil and political and economic, social and cultural rights at a community, regional and national level;
 - unhindered access by UN human rights and humanitarian agencies and independent monitors; and
 - compliance with the UN safeguards guaranteeing the rights of those facing the death penalty as a first step towards the abolition of the death penalty.¹⁰
- 6.9 At the hearing, ACFID reiterated its concerns that Australia did not use benchmarks to measure demonstrable progress in advancing human rights in dialogue partner countries:
- “If you cannot demonstrate that you are making some progress – and it does not have to be fantastic achievement; baby steps are sufficient – and that the dialogue is making a positive contribution, it raises the question of what point there is in having a dialogue. Is it merely window-dressing?”¹¹
- 6.10 The Committee was interested to learn more about the EU Guidelines and other indicators and how those evaluation criteria might be applied to Australia's human rights dialogue process to enhance successful outcomes. Both ACFID and Amnesty International offered to provide the Committee with that level of detail later.
- 6.11 Subsequent to the hearing, both ACFID and Amnesty submitted a copy of the EU guidelines on human rights which were prepared by the Council of the EU in December 2001.¹² Appendix E contains a copy of the guidelines.
- 6.12 In summary, the EU document offers guiding principles for the conduct of human rights dialogues. Examples of the guiding principles include:
- determining practical arrangements for human rights dialogues on a case-by-case basis, by joint agreement with the country concerned;
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¹⁰ Submission no. 6, ACFID, p. 11

¹¹ Official Transcript of Evidence, ACFID, p. 7

¹² Submission no. 19, Amnesty, p. 12 & Submission no. 20, ACFID, p. 3

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- the EU giving, as far as possible, the human rights dialogues a degree of genuine transparency vis-à-vis civil society;
 - assessing all human rights dialogues on a regular basis, preferably every year; and
 - analysing the extent to which the EU's activities have contributed to progress made on the priority areas of the dialogue.¹³
- 6.13 Both ACFID and Amnesty also supplied a copy of the Council of the European Union's benchmarks in respect of the EU-China human rights dialogue (from the FIDH report which ACFID referred to at the hearing). Appendix F contains a copy of the document.
- 6.14 These indicators, like the EU's guidelines, are quite broad. Some examples include:
- ratification and implementation of the two covenants, the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR);
 - cooperation with human rights mechanisms (for example, permitting visits by human rights rapporteurs); and
 - compliance with the UN Economic and Social Council (ECOSOC) guarantees for the protection of those sentenced to death and provision of statistics on use of the death penalty; and
 - respect for fundamental rights of all prisoners, progress on access to prisoners and constructive response to individual cases raised by the EU.¹⁴
- 6.15 It is the Committee's view that both sets of EU guidelines provide general guiding principles rather than specific criteria against which to measure the progress and/or success of the dialogues. Neither set indicates how to use the criteria. For instance, should ratification and implementation of the international human rights treaties be a precondition for talks or a goal to work towards? This is one of the inherent challenges of creating meaningful benchmarks and indicators.
- 6.16 Another challenge is to avoid using indicators dogmatically. The European Commission cautioned the EU against using indicators in this manner:
- “...the EU should avoid the mechanistic use of indicators, or attempt to compare or rank countries' performances. Each situation is different. Trends matter more than snapshots.”¹⁵
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13 See Appendix E for full document

14 See Appendix F for full document

- 6.17 In any case, the principles set out in the EU's guidelines have broad parallels with the assessment criteria that Australia uses to measure the progress of its dialogues as outlined in the DFAT submission.¹⁶ Measures such as monitoring progress on individual cases of concern, consulting with civil society, and evaluating the degree of openness and level of engagement with partners have a similar ethos to the EU's measures.
- 6.18 It is difficult for the Committee to judge from the evidence given how the EU's guidelines might be applied to the Australian situation – other than as general guiding principles – which are, in the main, already in place. Further, while some submissions, including those from ACFID and Amnesty, advocate that benchmarks should be used as evaluating criteria for the dialogues, other submissions to the inquiry remained silent on the subject.

Other Measures of Success

- 6.19 Given NGO concerns about the need for benchmarks and indicators as evaluating criteria for the dialogues, the Committee asked agencies what measures they use to evaluate the dialogue process.
- 6.20 DFAT told the Committee that the Government does not use formal benchmarks in its monitoring and evaluation of the dialogues, nor does it intend to establish any at this stage:
- “I think that it is correct to say that the government does not consider that having formal benchmarks is necessarily very useful, particularly in a situation where change in the countries concerned is often incremental. There are often a number of factors that result in that change, of which our dialogue is a part...It is quite difficult to be able to measure precisely - we are not sure that it would be very productive - what has been done directly only as a result of the Australian dialogue. I do not see that there is any particular move to go along those lines at this stage.”¹⁷
- 6.21 The Department said that it prefers to take a holistic approach and use the following evaluation criteria, amongst others, to monitor the dialogues:
- “In terms of monitoring the effect of the dialogue, clearly there are factors that we would look at. One of those would be progress in

15 European Commission, *Communication from the European Commission to the Council and the European Parliament*, Brussels, May 2001

16 Submission no. 17, DFAT, pp. 12-16

17 Official Transcript of Evidence, DFAT, p. 40 and p. 46

individual cases of concern. We also look at the overall human rights situation in the country concerned.”¹⁸

“Things like progress in the legal system, how human rights are being dealt with, specific changes to legislation and the way legislation is being implemented are things you can monitor and evaluate...[also] the release of prisoners and the treatment of prisoners are all quite specific issues that we look at as part of trying to evaluate progress on human rights.”¹⁹

- 6.22 The Committee questioned DFAT on how, in taking this approach, it determined the success or otherwise of the dialogues. The Department explained that it makes a value judgement based on a number of contributing factors. The degree of openness, trust and willingness to engage are important elements.²⁰

Australia - China Dialogue

- 6.23 DFAT stated that in the case of Australia’s longest-standing dialogue, with China, the exchange has, over the years, evolved to become a more frank dialogue:

“Rather than getting a set piece response, getting a much more informed response and a willingness to admit that there are issues that need dealing with and to talk about the government in China is doing to address them...it was much harder to have that discussion some years ago.”²¹

- 6.24 HREOC added that it takes time to build cooperative bilateral relationships. For instance HREOC has wanted to work in Tibet for some years but it has taken until quite recently for that to come to fruition:

“It has taken us some time to establish enough confidence with the authorities in the Tibetan autonomous region to allow us to work there. We now have an initial activity that will take place in July next year, involving the delivery of minority language education in Tibet.”²²

- 6.25 The Committee took other evidence to suggest that the Australia - China dialogue is characterised by an increased openness, trust and willingness to engage on a range of human rights issues. The Attorney-General’s Department described some positive exchanges that have come out of

18 Official Transcript of Evidence, DFAT, p. 41

19 Official Transcript of Evidence, DFAT, p. 45

20 Official Transcript of Evidence, DFAT, pp. 44- 45

21 Official Transcript of Evidence, DFAT, p. 45

22 Official Transcript of Evidence, HREOC, p. 23

more recent China dialogues, including discussions about the practicalities of administrative appeals and administrative review legislation and independently of the dialogue sessions, discussions with civil society:

“When I was in China, [we had a] meeting with the All-China Women’s Federation...about all the protections and legislative prohibitions on the sale and trafficking of women.”²³

6.26 Earlier in the hearing, ACFID itself described how for the first time, at last year’s Australia - China dialogue, five Australian NGOs had met with Chinese officials. ACFID indicated they had had a fruitful discussion about various human rights issues (see Chapter 3). This dialogue was also the first occasion at which a press conference was held.

6.27 HREOC noted that one of the successes of the Australia - China dialogue was that Australia continues to be one of the partners of choice for cooperation in the most sensitive of human rights areas:

“It is perhaps notable that one of the aspects of the reform agenda of the National Population and Family Planning Commission is specifically to seek out cooperation with Australia in the human rights aspects of family planning.”²⁴

6.28 HREOC cautioned against focusing too intently on assessing Australia’s direct impact on the human rights situation in China via the dialogues. The Commission stated that the purpose of human rights technical cooperation is to expose Chinese agencies to Australian expertise and experience in the promotion and protection of human rights, but that it is ultimately up to Chinese agencies to inform and develop their own reforms:

“Let me be unequivocal about this: all human rights reforms in China result from conclusions drawn by the Chinese and from actions taken by them themselves.”²⁵

Australia -Vietnam and Australia - Iran Dialogues

6.29 At the hearing, the Committee asked the participating agencies for updates on the lesser established Vietnam and Iran human rights dialogues. HREOC said that it had conducted an initial planning mission in Vietnam recently, in January 2005, with the intention of establishing a technical cooperation program there. To date, there have been no moves to establish a similar program with Iran.²⁶

23 Official Transcript of Evidence, Attorney-General’s Department, p. 52

24 Official Transcript of Evidence, HREOC, p. 16

25 Official Transcript of Evidence, HREOC, p. 16

26 Official Transcript of Evidence, HREOC, p. 19

- 6.30 The Committee asked DFAT to elaborate on the present human rights situation in Iran, whether it had deteriorated in recent times, and if so, what ramifications, if any, there were for bilateral human rights dialogues with Iran to continue. The Department said that there were people in Iran who remain committed to reform and working on the human rights situation in Iran and that the Australian position was to remain engaged:

“We see it that if we backed off now it would be interpreted as the Australian government not caring about the human rights situation in Iran. There is this lack of international interest, so we see that we really need to maintain it...We have been keen to get a second round [of dialogues] going and to continue to talk to them”²⁷

International Conferences

- 6.31 In written evidence, Amnesty suggested that Australia should convene – possibly in conjunction with the United States or the European Union – an international meeting of dialogue countries for the purposes of exchanging information on and approaches to dialogue processes.²⁸
- 6.32 At the hearing, the Committee questioned DFAT about the extent to which Australia engaged with other countries that conduct bilateral human rights dialogues to discuss the dialogue process, and asked what international fora exist for dialogue countries to exchange experiences.
- 6.33 The Department indicated that Australia communicates informally with the Europeans on human rights dialogue matters. DFAT said that:
- “We are very keen to talk even more closely and formally with the Europeans on some of this. If there were prospects for doing something more broadly I think we would look at it...”²⁹
- 6.34 DFAT named two international meeting forums which officials from countries that conduct human rights dialogues with China and Iran attend, to exchange information and experiences: the Berne and Brussels-Berne processes, respectively.³⁰
- 6.35 DFAT later confirmed Australia’s participation in both these forums, stating that representatives from the nearest Australian mission attend them.³¹

27 Official Transcript of Evidence, DFAT, p. 50- 51

28 Submission no. 8, Amnesty, p. 10

29 Official Transcript of Evidence, DFAT, p. 53

30 Official Transcript of Evidence, DFAT, p. 53

31 Exhibit no. 7, DFAT

- 6.36 HREOC told the Committee that it also engages in information exchange activities with a range of national and international agencies in respect of the technical cooperation aspects of the dialogue process.³²

Senator A B Ferguson

Chair

12 September 2005

32 Official Transcript of Evidence, HREOC, p. 19



Appendix A – List of Submissions and Exhibits

Submissions

1. Dr Ann Kent, Faculty of Law, Australian National University
2. Human Rights Council of Australia
3. Mr John Greenwell
4. Australian Baha'i Community
5. Joint Non-Government Organisations
6. Australian Council for International Development
7. International Commission of Jurists
8. Amnesty International Australia
9. Australia Tibet Council
10. Falun Dafa Association
11. Name withheld
12. Roman Catholic Diocese, Parramatta
13. Vietnamese Embassy
14. Human Rights and Equal Opportunity Commission
15. Vietnamese Community in Australia
16. Department of Foreign Affairs and Trade, Australian Agency for International Development and Attorney-General's Department

17. Department of Foreign Affairs and Trade, Australian Agency for International Development and Attorney-General's Department (supplementary)
18. Australian Council for International Development (supplementary)
19. Amnesty International Australia (supplementary)
20. Australian Council for International Development (supplementary)

Exhibits

1. Supplementary information to Submission no. 1, Dr Ann Kent, Faculty of Law, Australian National University:
 - Kent A. States Monitoring States: The United States, Australia and China Human Rights Dialogues, 1990-2001. Human Rights Quarterly 2001; 23 (3): 583- 624.; and
 - Kent A. Human Rights: From Sanctions to Delegations to Dialogues. In: Thomas N, ed. Re-orienting Australia – China Relations. London: Ashgate Press, 2004: 142-158.
2. Supplementary statement to Submission no. 3, Mr John Greenwell
3. Supplementary information requested from the Department of Foreign Affairs and Trade at the Human Rights Sub-Committee private briefing on the human rights dialogue process on 10 February 2005:
 - transcript of the joint press conference held by Dr Geoff Raby and Mr Shen Guofang on 21 October 2004 following the Eighth Round of the bilateral dialogue with China; and
 - chronological table listing each of the rounds of dialogue held to-date with an indication of the topics discussed.
4. Supplementary information requested from the Department of Foreign Affairs and Trade at the Human Rights Sub-Committee private briefing on the human rights dialogue process on 10 February 2005:
 - list of individual cases of concern raised at the Australia-China human rights dialogue in October 2004.
5. Supplementary statement to Submission no. 4, Baha'i Community
6. Supplementary information requested from the Australian Agency for International Development at the public hearing on 14 March:
 - AusAID involvement in the Australia-China dialogue process.

7. Supplementary information from the Department of Foreign Affairs and Trade on Australia's participation in the Berne and Brussels-Berne processes.
8. Supplementary information from the Australian Agency for International Development on NGO engagement with the Human Rights and Equal Opportunity Commission on the Human Rights Technical Cooperation Program with China.



Appendix B – List of Hearings and Witnesses

Canberra - Monday 14 March 2005

Australian Council for International Development

Ms Kathleen Marie Richards, Human Rights and Good Governance
Policy Officer

Human Rights and Equal Opportunity Commission

Mr William Bruce Kennedy, Director, International Programs

The Hon John von Doussa, President

Amnesty International Australia

Mr John Henry Greenwell, Member

Ms Rebecca Smith, Advocacy Coordinator

Department of Foreign Affairs and Trade

Ms Nicoli Ruth Maning-Campbell, Executive Officer, Middle East
Section, Middle East and Africa Branch

Mr Gerard Francis McGuire, Director, Human Rights and Indigenous Issues Section

Ms Caroline Millar, First Assistant Secretary, International Organisations and Legal Division

Dr Mark Donaldson Napier, Executive Officer, Human Rights and Indigenous Issues Section

Mr Peter James Roggero, Director, China Political and External Section, East Asia Branch

Mr Richard Travers Sadleir, Assistant Secretary, International Organisations Branch

Australian Agency for International Development

Mr Peter Callan, Acting Assistant Director, East Asia Branch

Mr Murray Proctor, Acting Deputy Director General, Asia and Corporate Services

Attorney-General's Department

Mr Matt Minogue, Assistant Secretary, Human Rights



Appendix C – Overview of Australia’s Bilateral Human Rights Dialogues and Associated Activities

Table 1.1 Overview of Australia's Bilateral Human Rights Dialogue Process and Associated Activities

	Australia-China Dialogue	Australia-Vietnam Dialogue	Australia-Iran Dialogue
Established	1997	2002	1999
No. of Dialogue Sessions	9 sessions held alternately in China and Australia: ▪ 5 in Beijing (1997, 1999, 2001, 2003 & 2005); and ▪ 4 in Canberra (1998, 2000, 2002 & 2004).	3 sessions held alternately in Vietnam and Australia: ▪ 2 in Hanoi (2002 & 2004);and ▪ 1 in Canberra (2003).	1 session held in Iran. ▪ Tehran (2002)
Participants	DFAT, AG's, AusAID, HREOC & Ministries of Foreign Affairs, Justice & Public Security, Supreme People's Court et al.	DFAT, AG's, AusAID, HREOC & Ministries of Foreign Affairs, Public Security & Justice, Supreme People's Procuracy et al.	DFAT, AG's, AusAID, HREOC & Ministries of Foreign Affairs and Justice, Islamic Human Rights Commission (IHRC) et al.
Discussion Topics	▪ Restrictions on freedom of assembly, association, expression and religion; ▪ Situation in Tibet & Xingjiang (incl. Falun Gong); ▪ Dissidents (incl. representations on individual cases of concern); ▪ Legal reform; ▪ Ratification of international covenants; ▪ Death penalty; ▪ Torture and other degrading practices; ▪ Coercive family planning policies; and ▪ Rights of persons living with HIV/AIDS.	▪ Political and religious prisoners (incl. representations on individual cases of concern); ▪ Ethnic and religious minorities in central highlands; ▪ Restrictions on use of internet; ▪ Reforms in Vietnam's criminal justice system; ▪ Trafficking of women and children; and ▪ Death penalty.	▪ Respective constitutional, judicial and legal systems; ▪ Position of minorities (incl. Baha'is and Jews); ▪ Freedom of the press; ▪ Role of national human rights institutions; ▪ Women's rights; and ▪ Prisoners (including representations on individual cases of concern).

Associated Site Visits	In Australia: ▪ Sydney (1998, 2000 and 2002)- NSW District Court, Long Bay Gaol, Police Integrity Commission, HREOC, Tranby Indigenous College, Parliament House et al. In China: ▪ Qingai (1999)-3 villages (Hui, Tibetan & Han); ▪ Sichuan (2001); and ▪ Tibet (2003)-Lhasa.	In Australia: ▪ Sydney (2003)-Administrative Appeals Tribunal, NSW Police, Australian Law Reform Commission, NSW Council for Civil Liberties et al. In Vietnam: ▪ Hanoi (2004)-Supreme People’s Court, Ho Chi Minh Political Academy & Vietnam Women’s Union; and ▪ Central Highlands (2004)-Gia Lai and Dak Lak Provinces.	In Iran: ▪ Tehran (2002) – a Tehran prison
HREOC’s Technical Cooperation Programs & Activities	Australia-China Human Rights Technical Cooperation (HRTC) Program: ▪ Legal reform and capacity building; ▪ Education; ▪ Police ethics; ▪ Women and children’s rights; ▪ Role of civil society; and ▪ Implementation of international human rights instruments. For further details see: Attachment 1: Activities with China, Submission no. 14, pp. 8-44 Table 1, China-Australia Human Rights Technical Cooperation Program (HRTC) HRTC Activities 1997-2004 – Summary of Impacts, Submission, p. 17, pp. 22-29	HREOC hosted a study visit to Australia by officials from the Government of Vietnam in 2003 (following the second dialogue). Australian participants included: ▪ HREOC; ▪ Australian Law Reform Association; ▪ Australian Human Rights Centre et al. Vietnamese Government identified 4 areas for future technical cooperation: ▪ Human rights training for Vietnamese officials; ▪ Strengthening of administrative tribunals; ▪ Development of legal aid system; and	HREOC hosted a visit to Australia by the Islamic Human Rights Commission (IHRC) in 2003. Australian participants included: ▪ HREOC; ▪ Australian Human Rights Centre; ▪ Diplomacy Training Program; ▪ Public Interest Advocacy Program; and ▪ Kingsford Legal Centre. IHRC identified 4 areas for possible future technical cooperation: ▪ Complaint handling procedures; ▪ Education and public affairs; ▪ Scholarships for IHRC officials to study at Australian universities; and ▪ Joint seminars on human rights issues.

DFAT Submission No. 17
HREOC Submission No. 14



Appendix D – List of Topics Discussed at Australia’s Human Rights Dialogues

Date	Partner	Location	Topics discussed
11-14 August 1997	China	Beijing	Hong Kong Tibet Death Penalty Re-education through labour Torture Access to lawyers Prisons Arbitrary detention Women and children’s rights Family planning China’s progress in ratifying international human rights treaties
10-13 August 1998	China	Canberra, Sydney	Re-education through labour Death Penalty Trafficking in organs Legal aid ICRC access to prisons Family Planning Orphanages Cultural and religious freedom in

			Tibet Dialogue with the Dalai Lama Chinese accession to international human rights treaties
16-20 August 1999	China	Beijing, Qinghai	Freedom of speech and assembly Freedom of religion Falun Gong Chinese Democracy Party Press freedoms Cultural and religious freedoms in Tibet and Xinjiang Re-education through labour Enforcement of laws Due process Execution of judgements Torture Death penalty Economic rights Women's rights Domestic violence Family planning Chinese accession to international human rights treaties ICRC access to prisons
13-18 August 2000	China	Canberra, Sydney	Re-education through labour Excessive pre-trial detention Death penalty Chinese Democracy Party Torture Domestic violence Family planning Rights of female migrant workers Ethnic minority rights Educational, religious, cultural

			and linguistic freedoms in Tibet Freedom of religion The situation in Xinjiang Dialogue with the Dalai Lama
29 October – 2 November 2001	China	Beijing, Chengdu	Judicial reform in China Dissidents Policies towards ethnic and religious minorities Freedom of speech and association Falun Gong Religious freedom in Tibet Death penalty “Strike Hard” campaign Family planning Trafficking in women Prison conditions Re-education through labour Torture Chinese ratification of ICCPR
27-28 May 2002	Vietnam	Hanoi	Situation of minorities in the Central Highlands Death penalty Freedom of religion Torture Criminal law Dissidents People smuggling
12-14 August 2002	China	Canberra, Sydney	Legal system reform Dissidents Falun Gong “Strike Hard” campaign Torture Death penalty

			Prison conditions Re-education through labour Domestic violence Family planning Situation in Tibet and Xinjiang Dialogue with the Dalai Lama Freedom of religion Cooperation with UN mechanisms
8-9 December 2002	Iran	Tehran	Role of the judiciary International human rights instruments National human rights institutions Role of civil society Position of minorities Treatment of the Bahá'í Freedom of the press The Shirazi Jews Dissidents
27 June – 4 July 2003	Vietnam	Canberra, Sydney	Ethnic and religious minorities in the Central Highlands Use of the internet Religious Freedoms Death penalty National security provisions HIV/AIDs People trafficking
28 July – 1 August 2003	China	Beijing, Lhasa	Torture Trafficking in persons Migrant workers Political prisoners Freedom of expression and information Falun Gong “Strike Hard” Campaign

			Re-education Through Labour Domestic violence Sexual harassment Death penalty Labour rights Prisoners’ rights Rights of people living with HIV/AIDs Family planning Ethnic and religious minorities DPRK asylum seekers Civil and political rights in Tibet Cultural and religious freedoms in Tibet Dialogue with the Dalai Lama Cooperation with UN human rights mechanisms Chinese ratification of ICCPR
23-27 June 2004	Vietnam	Hanoi, Central Highlands	Criminal justice system Ethnic and religious minorities Freedom of expression Use of the internet Death penalty Domestic violence Trafficking in women
20-22 October 2004	China	Canberra, Sydney	Freedom of expression and assembly Rights of ethnic and religious minorities Falun Gong Situation in Tibet and Xinjiang Dialogue with the Dalai Lama Dissidents Due process

			Torture Trafficking in persons Labour rights Sexual harassment Domestic violence Family planning Death penalty HIV/AIDs DPRK asylum seekers Chinese ratification of ICCPR Cooperation with UN human rights mechanisms
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Appendix E – EU Guidelines on Human Rights Dialogues

European Union guidelines on Human rights dialogues Council of the EU - 13 December 2001

1. Introduction

In its conclusions of 25 June 2001 the Council welcomed the Commission communication of 8 May 2001 on the European Union's role in promoting human rights and democratisation in third countries, which represents an invaluable contribution towards strengthening the coherence and consistency of the EU's policy on human rights and democratisation. In its conclusions the Council reaffirmed its commitment to the principles of coherence and consistency, integration of human rights into all its actions, openness of its policies and identification of priority areas. As part of the process of implementing those Council conclusions, the Working Party on Human Rights (COHOM) undertook to establish guidelines on human rights dialogues in consultation with the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms.

2. Current situation

The European Union is engaged in human rights dialogues with a number of countries. Those dialogues are in themselves an instrument of the Union's external policy. That instrument is one of a range of measures which the EU may use to implement its policy on human rights, and constitutes an essential part of the European Union's overall strategy aimed at promoting sustainable development, peace and stability. However, there are at present no rules to determine at what point it should be applied. It should also be said that there is room for greater consistency in

the EU's current approach towards dialogues, which at present employs several different types:

2.1. dialogues or discussions of a rather general nature based on regional or bilateral treaties, agreements or conventions dealing systematically with the issue of human rights. These include in particular:

2.1.1. relations with candidate countries;

2.1.2. the Cotonou Agreement with the ACP States and the Trade, Development and Cooperation Agreement with South Africa;

2.1.3. relations between the EU and Latin America;

2.1.4. the Barcelona process (Mediterranean countries);

2.1.5. political dialogue with Asian countries in the context of ASEAN and ASEM;

2.1.6. relations with the Western Balkans;

2.1.7. bilateral relations in the framework of association and cooperation agreements.

2.2. dialogues focusing exclusively on human rights. At present there is only one regular, institutionalised dialogue devoted solely to human rights between the European Union and a third country, namely that with China. This is a highly structured dialogue held at the level of senior human rights officials. At one time the European Union also maintained a human rights dialogue with the Islamic Republic of Iran. This type of dialogue, focusing solely on human rights, has so far only been used with countries with which the European Community had no agreement and/or where the agreement contained no "human rights" clause. The fact that such dialogue exists does not preclude discussion of the human rights issue at any level of the political dialogue;

2.3. *ad hoc* dialogues extending to CFSP-related topics such as that of human rights. For instance, the EU currently maintains dialogues with Cuba and Sudan at the level of heads of mission;

2.4. dialogues in the context of special relations with certain third countries, on the basis of broadly converging views. With the United States, Canada and the associated countries these take the form of six-monthly meetings of experts, with the Troika representing the EU, before the Commission on Human Rights and the annual United Nations General Assembly. The main objective of these dialogues is to discuss issues of common interest and the possibilities for cooperation within multilateral human rights bodies.

In addition to dialogues at EU level, a number of Member States also maintain dialogues with various third countries at national level.

The guidelines on human rights dialogues would have several aims, namely to:

– identify the role played by this instrument in the global framework of the CFSP and the EU's policy on human rights;

- strengthen the coherence and consistency of the European Union's approach towards human rights dialogues;
- facilitate use of that instrument by defining the conditions in which it is to be applied and made effective;
- notify third parties (international organisations, non-governmental organisations, the academic world, the European Parliament, third countries) of this approach.

Political dialogues with the ACP countries under the Cotonou Agreement have their own detailed arrangements and procedures as laid down in Article 8 of the Agreement. However, for consistency's sake, exchanges of news and experience will be held on a regular basis in the COHOM Working Party framework.

3. Basic principles

3.1. The European Union undertakes to intensify the process of integrating human rights and democratisation objectives ("mainstreaming") into all aspects of its external policies. Accordingly, the EU will ensure that the issue of human rights, democracy and the rule of law will be included in all future meetings and discussions with third countries and at all levels, whether ministerial talks, joint committee meetings or formal dialogues led by the Presidency of the Council, the Troika, heads of mission or the Commission. It will further ensure that the issue of human rights, democracy and the rule of law is included in programming discussions and in country strategy papers.

3.2. However, in order to examine human rights issues in greater depth, the European Union may decide to initiate a human rights-specific dialogue with a particular third country. Decisions of that kind will be taken in accordance with certain criteria, while maintaining the degree of pragmatism and flexibility required for such a task. Either the EU itself will take the initiative of suggesting a dialogue with a third country, or it will respond to a request by a third country.

4. Objectives of human rights dialogues

The objectives of human rights dialogues will vary from one country to another and will be defined on a case-by-case basis. These objectives may include:

- (a) discussing questions of mutual interest and enhancing cooperation on human rights *inter alia*, in multinational fora such as the United Nations;
- (b) registering the concern felt by the EU at the human rights situation in the country concerned, information gathering and endeavouring to improve the human rights situation in that country.

Moreover, human rights dialogues can identify at an early stage problems likely to lead to conflict in the future.

5. Issues covered in human rights dialogues

The issues to be discussed during human rights dialogues will be determined on a case-by-case basis. However, the European Union is committed to dealing with those priority issues which should be included on the agenda for every dialogue. These include the signing, ratification and implementation of international human rights

instruments, cooperation with international human rights procedures and mechanisms, combating the death penalty, combating torture, combating all forms of discrimination, children's rights, women's rights, freedom of expression, the role of civil society, international cooperation in the field of justice, promotion of the processes of democratisation and good governance, and the prevention of conflict. The dialogues aimed at enhancing human rights cooperation could also include – according to the circumstances – some of the priority issues referred to above, (in particular the implementation of the main international human rights instruments ratified by the other party), as well as preparing and following up the work of the Commission on Human Rights in Geneva, of the Third Committee of the UN General Assembly in New York and of international and/or regional conferences.

6. Procedure for the initiation of human rights dialogues

6.1. Any decision to initiate a human rights dialogue will first require an assessment of the human rights situation in the country concerned. The decision to embark on a preliminary assessment will be made by the Working Party on Human Rights (COHOM), together with the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms. The assessment itself will be made by COHOM in coordination with the other Working Parties. Amongst other things the assessment will look at developments in the human rights situation, the extent to which the government is willing to improve the situation, the degree of commitment shown by the government in respect of international human rights conventions, the government's readiness to cooperate with United Nations human rights procedures and mechanisms as well as the government's attitude towards civil society. The assessment will be based, *inter alia*, on the following sources: reports by heads of mission, reports by the UN and other international or regional organisations, reports by the European Parliament and by the various non-governmental organisations working in the field of human rights, and Commission strategy papers for the countries concerned.

6.2. Any decision to initiate a human rights dialogue will first require the defining of the practical aims which the Union seeks to achieve by initiating dialogue with the country concerned, as well as an assessment of the added value to be gained from such dialogue.

The European Union will also, on a case-by-case basis, establish criteria for measuring the progress achieved in relation to the benchmarks and also criteria for a possible exit strategy.

6.3. Exploratory talks will be held before a human rights dialogue with the country concerned is initiated. The aim of those talks will be twofold: first to define the objectives to be pursued by any country accepting or requesting a human rights dialogue with the EU and to determine possible ways of increasing that country's

commitment towards international human rights instruments, international human rights procedures and mechanisms and the promotion and protection of human rights and democratisation in general; and subsequently to update the information in the reports following the preliminary assessment. The talks will also provide an opportunity to explain to the country concerned the principles underlying the EU's action, as well as the Union's aims in proposing or accepting a human rights-specific dialogue. The exploratory talks will preferably be led by an EU Troika team of human rights experts representing the capitals, in close consultation with the Heads of Mission accredited in the country concerned. An assessment of the exploratory talks will then be carried out. The European Union will decide in the light of that assessment whether or not it wishes to continue on a more structured and institutionalised basis.

6.4. Any decision to initiate a human rights-specific dialogue will require discussion within the Working Party on Human Rights and its prior agreement. The final decision to initiate a human rights dialogue lies with the Council of Ministers.

6.5. The geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms should also be involved in this decision-making process.

6.6. Should the assessment be a negative one and/or the European Union decide not to initiate a human rights dialogue, the European Union will consider whether other approaches might be appropriate, such as emphasis on the human rights aspect of the political dialogue with the country concerned, *inter alia* by including specialist human rights knowledge in the political dialogue team.

6.7. The Working Party on Human Rights (COHOM) will be responsible for following up the dialogue, where necessary together with the other bodies concerned, viz. the geographical working parties, the Heads of Mission, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms.

7. Practical arrangements for human rights dialogues

Flexibility and pragmatism are the keywords in the context of the practical arrangements for human rights dialogues, which should thus be determined on a case-by-case basis, by joint agreement with the country concerned. The arrangements will cover aspects such as where and how often the dialogue is to be held and the level of representation required.

To ensure that the discussions are as fruitful as possible, the dialogues should, as far as feasible, be held at the level of government representatives responsible for human rights. For the sake of continuity, the European Union should be represented by the Troika – at the level either of representatives from the capitals or of Heads of Mission.

The European Union will ensure that dialogue meetings are regularly held in the country concerned. This approach has the advantage of giving the EU delegation a

better opportunity to gauge for itself the situation on the spot and, subject to the agreement of the country's authorities, to contact the people and institutions in which it is interested. Traditionally, dialogues whose primary purpose is to discuss issues of mutual interest and to strengthen human rights cooperation are held in Brussels. That tradition should preferably be maintained.

As far as possible, the European Union will ask the authorities of countries involved in the human rights dialogue to include in their delegations representatives of the various institutions and Ministries responsible for human rights matters, such as the Justice and Interior Ministries, the police, prison administration etc. Likewise, civil society could become involved under the most suitable arrangement in the preliminary assessment of the human rights situation, in the conduct of the dialogue itself (particularly by organising meetings with civil society at local level in parallel with the formal dialogue), and in following up and assessing the dialogue. The European Union could thus signify its support for defenders of human rights in countries with which it maintains exchanges of this kind.

The EU will as far as possible give the human rights dialogues a degree of genuine transparency vis-à-vis civil society.

8. Consistency between Member States' bilateral dialogues and EU dialogues

Information exchange is essential if maximum consistency between Member States' bilateral dialogues and EU dialogues is to be ensured. Exchanges of this kind, particularly on the issues discussed and the outcome of discussions, could be conducted by COREU or the Working Party on Human Rights (COHOM). The diplomatic post of the current Presidency in the country concerned could also gather relevant information on the spot. Where appropriate, informal *ad hoc* meetings between the members of the Working Party on Human Rights (COHOM), the relevant geographical working parties, and the European Parliament could be considered. It would also be possible to consider holding informal *ad hoc* meetings with other countries which maintain human rights dialogues with the country concerned (as in the case of the current dialogue with China). Such meetings should involve the COHOM Working Party, and the geographical working parties or study groups.

The technical assistance afforded by the European Union in the area of human rights and democratisation in the countries with which it maintains a dialogue should take into account developments in the dialogue and its outcome.

9. Consistency between human rights dialogues and EU Resolutions to the UNGA and the CHR

Human rights dialogues and Resolutions submitted by the European Union to the UNGA or the CHR on the human rights situations in certain countries are two entirely separate forms of action. Accordingly, the fact that there is a human rights dialogue between the EU and a third country will not prevent the EU either from submitting a Resolution on the human rights situation in that country or from providing support for an initiative by the third country. Nor will the fact that there is a human rights

dialogue between the EU and a third country prevent the European Union from denouncing breaches of human rights in that country, inter alia in the appropriate international fora, or from raising the matter in meetings with the third countries concerned at every level.

10. Assessing human rights dialogues

All human rights dialogues will be assessed on a regular basis, preferably every year.

The assessment will be made by the current Presidency, assisted by the Council Secretariat, and be submitted for discussion and decision to the Working Party on Human Rights (COHOM) in cooperation with the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedom.

Civil society will be involved in this assessment exercise. The task will involve assessing the situation in relation to the objectives which the Union set itself before initiating the dialogue, and will examine how much added value has been provided by the dialogue. The examination will look particularly closely at the progress made on the priority areas of the dialogue. If progress has indeed been made, the assessment should, if possible, analyse how far the European Union's activities have contributed to that progress. If no progress has been made, the European Union should either adjust its aims, or consider whether or not to continue the human rights dialogue with the country concerned. Indeed, a dialogue assessment must allow for the possibility of a decision to terminate the exercise if the requirements given in these guidelines are no longer met, or the conditions under which the dialogue is conducted are unsatisfactory, or if the outcome is not up to the EU's expectations. Likewise, a decision may be taken to suspend a dialogue which has proved successful and has therefore become redundant. Such matters will be dealt with by the Working Party on Human Rights (COHOM) as a matter of priority.

As for dialogues aimed at strengthening human rights cooperation, particularly those held within international and regional bodies, the assessment will focus on those areas in which cooperation could be further improved.

11. Managing human rights dialogues

Given the prospect of increasing numbers of dialogues, the Working Party on Human Rights (COHOM) will have to consider the problem of how these should be managed. Continuity is a very important factor, as is the strengthening of the structures supporting the current Council Presidency in the preparations for the dialogues and their follow-up. To prepare each dialogue properly will also require input from the geographical working parties, the Working Party on Development Cooperation (CODEV) and the Committee on measures for the development and consolidation of democracy and the rule of law, and for the respect of human rights and fundamental freedoms. The Council Secretariat's support is essential in terms of centralising all the data, preparing both the content and the logistics, and following up the dialogues. The

European Union could also consider, on a case-by-case basis, the possibility of associating a private foundation or organisation specialised in the field of human rights with one or more dialogues. In this connection, Sweden's experience (the Wallenberg Institute) in the context of the exploratory talks with North Korea (Brussels, June 2001) could be assessed.

12. The human rights position in political dialogues

As indicated in paragraph 3, the European Union will ensure that the issue of human rights, democracy and the rule of law is incorporated into all meetings and discussions it has with third countries, at every level, including political dialogue. The European Union undertakes to include human rights experts in the EU delegations. The decision on who will provide the expert knowledge will be taken on a case-by-case basis, but with an eye to continuity. Although this type of discussion does not afford the possibility of dealing with human rights issues in any great depth, the European Union will endeavour to raise the priority issues referred to in paragraph 5 with the country concerned.



Appendix F – EU Council’s Human Rights Dialogue Benchmarks for the EU-China Dialogue

In January 2001, the Council made public the benchmarks on the basis of which the dialogue should be assessed:

1. Ratification and implementation of the two covenants
2. Cooperation with HR mechanisms (visit by the rapporteur on torture, invitation to other rapporteurs, follow-up recommendations from conventional mechanisms and rapporteurs, implementation of the agreement with the Office of the High Commissioner for HR)
3. Compliance with ECOSOC guarantees for the protection of those sentenced to death and provision of statistics on use of the death penalty
4. Reform of administrative detention, introduction of judicial supervision of procedures respect for the right to a fair trial and the right of the defence
5. Respect for fundamental rights of all prisoners, progress on access to prisoners and constructive response to individual cases raised by the EU
6. Freedom of religion and belief, both public and private
7. Respect for the right to organise

8. Respect for cultural rights and religious freedoms in Tibet and Xinjiang, taking account of the recommendations of the UN treaty bodies, halt 'patriotic education' campaign in Tibet, access for an independent delegation to the young Panchen Lama who has been recognized by the Dalai Lama.