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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE

HUMAN RIGHTS SUBCOMMITTEE

**Reference: Human rights mechanisms and the Asia-Pacific**

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**JOINT STANDING COMMITTEE  
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

**Human Rights Subcommittee**

**Thursday, 19 March 2009**

**Members:** Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Mark Bishop, Ferguson, Fifield, Furner, Hanson-Young, Johnston, Ludlam, Moore, O'Brien, Payne and Trood and Mr Baldwin, Mr Bevis, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Mrs Markus, Ms Parke, Ms Rea, Mr Ripoll, Mr Robert, Mr Ruddock, Ms Saffin, Mr Bruce Scott, Mr Kelvin Thomson and Ms Vamvakinou

**Human Rights Subcommittee members:** Ms Rea (*Chair*), Mr Ruddock (*Deputy Chair*), Senators Fifield, Forshaw (*ex officio*), Hanson-Young, Moore and Trood and Mr Danby, Ms Annette Ellis, Ms Grierson, Mr Hawker (*ex officio*), Mrs Markus, Ms Parke, Mr Kelvin Thomson and Ms Vamvakinou

**Members in attendance:** Senators Fifield, Furner and Forshaw and Mr Danby, Ms Parke, Ms Rea, Mr Ruddock, Ms Vamvakinou

**Terms of reference for the inquiry:**

To inquire into and report on:

International and regional mechanisms currently in place to prevent and redress human rights violations, with a view to providing options on possible models that may be suitable for the Asia-Pacific region, with a focus on:

- the United Nations human rights system;
- regional mechanisms; and
- roles for parliaments.

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**Committee met at 10.25 am****SCRINE, Ms Tessa, Executive Officer Government Relations, Australian Baha'i Community**

**CHAIR**—Welcome. Although the subcommittee prefers all evidence be given in public, should you at any stage wish to give any evidence in private, you may ask to do so and the subcommittee will give consideration to your request. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. I invite you to speak briefly about what the Baha'i Community thinks of the human rights mechanisms and to give us any advice you could on how we can progress some form of human rights activity that will add to the Asia-Pacific region.

**Ms Scrine**—We very much appreciate the opportunity to appear today. We welcome this inquiry. We think Australia has an important role to play in the region in promoting human rights. This particular inquiry raises questions of great interest to us. We work to promote the human rights of humanity and we believe that those human rights are bestowed on every human being as a result of their creation. In approaching this inquiry, we think that should be the framework within which you operate. Whatever happens within the Asia-Pacific region, it should be in harmony with the international mechanisms that exist and we would like to see that they support and give increased body to the Universal Declaration of Human Rights and the various treaties that lie underneath that and, in doing so, cast a particular Asia-Pacific light onto that declaration but not something which dilutes or operates in any way out of sync with the mechanism.

As you would be aware, in our own specific human rights abuse cases, we found those mechanisms effective. With all the constraints and challenges facing the United Nations, they work and need to be supported and enhanced. One of the things we were advocating was greater resourcing for the Office of High Commissioner for Human Rights Pacific Region. I note that since we submitted the paper, the government has announced increased funding for the office. We greatly welcome that and any other support which may assist the office in carrying out its work. There is now a better resourced office in Fiji, Suva, I understand. Obviously, the more presence there is of the Office of the High Commissioner for Human Rights Pacific Region, the more opportunities there are for People to have their Rights defended, for People to understand the human rights system and for general human rights education and promotion to take place.

There are good things happening already towards a mechanism. We have seen ASEAN starting to look at human rights. There are other networks of NGOs—the Asia-Pacific Forum of National Human Rights Institutions is working well. We feel it is important to build on the things that are already happening, that by working up from the grassroots you can often achieve an objective rather than imposing something necessarily from the top down. I know Australia does give support already to various NGOs working in human rights through AusAID grants and the human rights program that DFAT offers. These could be beefed up and supported more and some of these more informal ways of operating have merit and can be supported.

The last point would like to address is the role of this committee in this process of ongoing review of what is happening, and parliamentary oversight. We see the equivalent of human rights subcommittees in other Western parliaments having a very proactive role in processes that this committee is not tasked with. It would be good to see the role of this committee strengthened so that it can have a more active role, and given its place geographically and politically in the region it could start to expand its mandate as well. I will leave my comments at that so as to allow time for questions.

**CHAIR**—Thank you. Your comments are very useful.

**Ms PARKE**—Is that part of the written submission?

**Ms Scrine**—Yes.

**Mr DANBY**—What are the powers that other committees have that you would like us to have?

**Ms Scrine**—One example is in the UK. When the government provides its report to the treaty bodies at the United Nations—for example, the Convention on the Elimination of All Forms of Discrimination against Women—the committee reviews that, and when the treaty body releases its report the committee has a role in seeing how those reports are responded to and recommendations implemented. So it is a bit like a bridge between what is happening nationally and internationally, rather than the process disappearing. Not that there are not processes for following these things up, but they are not always open to the public.

**Mr DANBY**—Do the human rights committees in other countries have a direct role in bilateral dialogues on human rights? We have the Australia-China Human Rights Dialogue but this committee has no role in it. It is only bureaucrats; there are no parliamentarians.

**Ms Scrine**—I understand that some of the—

**CHAIR**—No. The chair goes; I went.

**Mr DANBY**—But that was by invitation, wasn't it?

**CHAIR**—Yes.

**Ms Scrine**—Yes, it is by invitation not as a participant. To be honest, I do not know whether the others are there by right or by invitation, so I would need to check that for you. I know that they do have a role. I do know that Senator Marise Payne has previously participated.

**CHAIR**—Yes. Before we move on, in your submission you do talk quite a bit about the role of this committee and the role that Australia can play through various mechanisms. One of the things that has emerged as a result of other discussions we have had as part of this inquiry is the dilemma in acknowledging that we need a regional body that can exert a level of pressure, or at least influence, on individual nation states, particularly in light of your discussions and the situation in Iran, and the concern that a regional body having broader influence would almost diminish the position on human rights to the point where countries who are doing everything but

protecting human rights would be afforded some legitimacy. Do you think the focus should purely be on each nation trying to establish an institution that works well, or is there some benefit in a broader, more regional body having some level of influence?

**Ms Scrine**—The Asia-Pacific Region has particular characteristics and qualities, and there would be a lot of value in having a regional body to look at human rights within that framework. Globally, a lot of attention is directed to particular regions of the world and the Pacific is often completely ignored. For example, statistically, the position of women in the Pacific is dreadful—the worst rates of female participation in decision making is just one example; domestic violence is another. There are all these indications of the rights of women being ignored, and I think a regional body would perhaps function where domestic bodies are not.

For it to be effective, people have to be there willingly. I imagine you may have to have something that is phased. Either the membership starts with those who meet particular criteria already—maybe the same sort of criteria that apply to membership of the Human Rights Council at the UN or something like that—and then as people meet those standards they can become part of the body or you start with a mandate that is more restricted that perhaps is focused on education and then build it up to something more as people start to engage. I think sometimes you have to take people with you. But, at the same time, you would not want to see a mechanism that is in effect useless because you have people at the table but to do that you have watered it down to such an extent that it is meaningless.

**CHAIR**—I think that probably reflects the answer we have received on previous occasions. Unfortunately, I am going to have to call it to a halt there. Thank you very much both for taking the time to prepare the submission and submit it and for the informal discussion we had earlier. It certainly was very useful. I am sure that, as this particular issue continues, there will be more discussions with you in the future. Thank you very much.

[10.36 am]

**DO, Mr Diem Hoang, Chairman, Viet Tan**

**NGUYEN, Dr Phong, Member, Central Committee, Viet Tan**

**TRUONG, Mr Duc Minh, Representative, Viet Tan**

**CHAIR**—Thank you for coming along this morning and thank you for your patience. Before we start the formal proceedings, I warn you that there have been bells going off in the Senate and the House of Representatives this morning. If some of us grab our books and make a quick dash out of here, it is not because of you; it is because we have been summoned to a division in the chamber. It is going to be one of those days. It has started that way, and I suspect it will continue. I apologise in advance if we all disappear. At this stage it has been all right. The Senate is very busy. We welcome Senator Furner, who has come along. The red light indicates the Senate is dividing, so when that flashes Mark will run away. If the green light flashes, the rest of us will run away.

We think it is very important to have you here before us and to have the opportunity to hear your evidence and have some discussion as part of our inquiry. I welcome all of you as representatives of Viet Tan to our inquiry hearing this morning. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private the committee will consider whether we will move into a private hearing. Although this subcommittee does not require you to give evidence under oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chamber. We want to have a very open and frank discussion if we can. I invite you to make some opening remarks before we move into a question-and-answer session.

**Mr Do**—In the interests of time, I will try to capture the highlights of the statement that we have already submitted. First of all I thank you for inviting Viet Tan to be here. We are an unsanctioned pro-democracy party active inside Vietnam. Our goal is to improve the current human rights situation in Vietnam as well as to bring about peaceful political change inside Vietnam.

As far as the current human rights situation inside Vietnam is concerned, I want to capture four key areas. The first one is arbitrary arrest and detention. The government in Vietnam used ambiguous decrees and legal provisions to criminalise political speech and to regard legitimate peaceful opposition as crimes of national security. Just recently they have launched one of the worst crackdowns, which the Human Rights Watch organisation labelled the worst in 20 years. Especially since last September, numerous dissidents have been arrested for simply trying to distribute leaflets and posting banners critical of the government. They are still being detained right now without any formal charges.

The second area I would like to highlight is freedom of speech and expression. Vietnam's constitution guarantees freedom of speech and the press; however, the government continues to suppress independent minded journalists and the internet. Recently, the authorities have been

persecuting especially those who discuss political pluralism or question policies on sensitive issues such as corruption involving government officials or border disputes with China. There has been a very well-known case recently where two reporters, Nguyen Viet Chien and Nguyen Van Hai, were arrested for exposing the multimillion dollar political corruption scandal that involved embezzlement, gambling and prostitution at the Ministry of Transport. The men were later charged with abusing democratic freedoms, tried and convicted. Similarly, recently the authorities began to crack down on internet activities. A well-known blogger, Dieu Cay, was arrested after criticising the government's policies on territorial disputes with China and he was sentenced to 30 months in prison for tax evasion.

The third area I would like to highlight is religious freedom. All religious organisation or practice in Vietnam must be officially registered and recognised by the government. The Unified Buddhist Church of Vietnam is still outlawed, and its highest leader, the Venerable Thich Quang Do, who is also a Nobel Peace Prize nominee, has been subjected to arbitrary house arrest and harassment for more than 30 years in a row. The Catholic Church is still under great restriction. Any appointment or assignment of its clergy requires government approval. Most notably, the Mennonite church and its followers, comprised mostly of ethnic minorities living in the central highlands of Vietnam, have also been severely repressed.

The fourth and last area I would like to highlight is workers' rights in Vietnam. There is no recognised independent workers union in Vietnam. Workers are forbidden to form or join any independent union. There is only one state sponsored trade union, called the Vietnam General Confederation of Labor, which answers directly to the Vietnamese Communist Party. Workers' rights are often abused and neglected because they have no proper protection. In recent years, however, labour unrest and strikes have been pretty widespread due to poor working conditions, low wages and degrading treatment.

I have three specific recommendations to offer. The first one concerns the human rights dialogue. The Australia-Vietnam human rights dialogue can be an effective mechanism to encourage greater political freedom in Vietnam. To increase its efficacy, we suggest an emphasis on concrete programs, programs that should focus on promoting freedom of the media, unrestricted use of the internet and freedom of association. Any financial assistance for these projects needs to have clear benchmarks. Detailed goals and progress must be clearly documented, and outcomes need to be reported back to the joint standing committee and be transparent to the public for review.

The second recommendation is parliamentary support for democratic change. While it is necessary to institute mechanisms to prevent and redress human rights violations, we believe that promoting democracy is as important in helping to guarantee these mechanisms in the long run. One-party authoritarian systems are a breeding ground for human rights abuses. We believe that the solution to human rights is a democratic society where citizens have the right to make political choices and hold government accountable for its actions. We believe the Australian parliament can support the people of Vietnam and other repressed countries by speaking out against human rights persecution, engaging with civil society and democratic groups, and continuing to press the current regime for change.

The third and last recommendation concerns the ASEAN human rights commission. We strongly support the initiative of the Working Group for an ASEAN Human Rights Mechanism

to form an intergovernmental human rights commission. We recommend that all ASEAN member states be automatic members of this commission and therefore must abide by international human rights standards. The commission will act as a monitoring body to ensure that complaints can be heard and recommendations be implemented. We also advocate that the ASEAN human rights commission be able to recommend a court which, in selected circumstances, can deliver a unified decision. Although Australia is not an ASEAN member, we believe that with its long history of close working relationships and commitment in the region Australia can engage with ASEAN and the Asia Pacific Forum to further advance human rights protection in this region. Thank you.

**CHAIR**—Thank you very much. I think that is a very succinct but very good, detailed picture of what is happening in Vietnam at the moment. I have a question to kick off with. You have talked a lot about your campaign for a democratic system in Vietnam. I am interested in the legal system, though, because it appears to me, and I think it is becoming more evident across the world, that elections do not necessarily of themselves demonstrate a truly democratic society—

**Mr Do**—That is correct.

**CHAIR**—unless you have a legal system that in fact protects individual citizens' rights. You have human rights enshrined in your constitution, but it appears that that does not necessarily guarantee protection of those rights in society. This might be a naive question, but I wonder: have there been any legal challenges around the constitution within the courts for people seeking their constitutional rights? Has that attracted any attention or controversy? How have the courts dealt with that? I have seen the way they have dealt with the blogger and other cases, but I am wondering if anybody has used the constitution to challenge decisions.

**Mr Do**—Legally and officially there has yet to be any challenge against the Vietnamese constitution. However, there have been questions and public outcries, if you will, concerning one particular item in the Vietnamese constitution, article 4. That article guarantees that Vietnam shall be a one-party state, and that is the communist party. The communist party is the only legal party allowed to operate inside Vietnam. That is enshrined in the constitution. So there have been public outcries or remarks about it—

**CHAIR**—You are giving us ideas!

**Mr Do**—But as far as taking the constitution to court or challenging certain parts of it is concerned, there has not been any attempt yet. However, in recent years there have been attempts to bring about challenges regarding certain legal codes in Vietnam. The Penal Code has clauses about corruption and about certain rights, and people have tried to push the envelope, if you will, and take up those issues with the government. But, as far as the constitution is concerned, there has yet to be any challenge because it is considered to be basically unchallenged.

**Ms PARKE**—Following on from that, regarding the well-known blogger being sentenced to 30 months in prison on tax evasion charges, was he charged with tax evasion because of the provision in the constitution that guarantees free speech and therefore he was not charged with something relating to his blogging activity? Is that how you would see it? I also see a parallel in Burma, where the Burmese militia is really cracking down on internet activities as well because, I think, they are worried about it—it is of more concern to them because they do not quite

understand it, probably, and they worry about the effects of it and how it can get out into the wider international community.

**Mr Do**—Make no mistake, the Vietnamese government is still very much a ruthless police state and they would have no qualm about locking people up. However, they are also very pragmatic. They see the need to integrate into the world community, to join the WTO and to engage in trade, and therefore they also recognise that there might be instances where they are better off trying to use other means and other tactics to silence dissidents instead of coming right out and locking up these people for what they have done.

Having said that, that demonstrates to us that, no matter what, the Vietnamese government is still sensitive to international pressure. Even though they may take very drastic and harsh measures at times, at the end of the day they still recognise the fact that to a certain extent they have to answer to the international community. I think that offers us a glimpse of hope, a chance that there are things we can do to at least start to push back.

**Senator FURNER**—I had the opportunity to visit your beautiful country earlier this year and unfortunately only made it to the north, to Hanoi. I was wondering about the coverage of Viet Tan throughout the country. Is it the case that you only have establishments in the south or do you have coverage across the country?

**Mr Do**—Our organisation pretty much has networks and members operating throughout the country, as far north as close to the Vietnam-China border and all the way down south to the Mekong Delta. So we are pretty much spread throughout.

**Senator FURNER**—On the subject of independent union organisations, is it legislated that you are not allowed to establish such an organisation or was it merely an understanding that there is a government union and that is the only recognised union that is allowed in the country?

**Mr Do**—Common practice in Vietnam is that all popular organisations or public organisations, if you will, have to belong to the Fatherlands Front, which is an extension of the Communist Party, kind of an umbrella organisation for them to control the population at large. Technically speaking in Vietnam, yes, you can apply to create your own group. Whether they will approve it or not is a different story. People do not dare to apply because doing so is just attracting attention.

**CHAIR**—Yes, signalling—

**Mr Do**—And signalling that you are interested in doing something. Even though the government may say, ‘Okay, we will approve your application,’ that also signals the fact that they will watch you. So they put you under surveillance. So, technically speaking, yes, you can. Realistically, no, you cannot—and nobody dares to. That is the challenge.

**Dr Nguyen**—Just to follow on from that, recently three of our members and three others—I suppose supporters—were arrested in Vietnam. Two of them were actually from overseas and they were arrested as Viet Tan members. What they were arrested for was basically undermining national security by handing out leaflets advocating pro-democracy. They went back to Vietnam to meet people, to talk to activists, to talk to the common people and to explain to them their

rights, and they were handing out leaflets and they were arrested. In fact they were arrested and imprisoned for six months. They have now all been released. One is still under house arrest in Vietnam. So any activities of non-sanctioned parties or pro-democracy groups are deemed to be undermining national security, or so they say.

**Mr DANBY**—Were any foreigners Australian citizens?

**Dr Nguyen**—One US citizen, one French citizen and one Thai citizen. Fortunately, none of us were imprisoned.

**Mr RUDDOCK**—I have had a lot to do with the Vietnamese community, I thought, but I have not got a very prominent view of your organisation. I was just reading the history of it, which is that it was formed in 1982, so you are a new organisation in that sense. Where do you fit in the broader Vietnamese community political environment, so that I can get some understanding? Most of it seemed to be, through the Vietnamese community of Australia, remnants of the old regime that the communists replaced. Are you saying something about those communities by your role now, by your formation as a new organisation in 1982? How do I see it?

**Mr Do**—Basically, as you noticed, my organisation was established in 1982 after the end of the Vietnam war. So we are mostly people who do not really have ties with the former government of South Vietnam. As you can see can, nowadays our membership tends to be younger professional people from Australia, from North America, from Europe and from inside Vietnam as well. As far as our role and interaction with the overseas Vietnamese community goes, especially the one here in Australia, we have always been a part of the community, because many of us came here as refugees. We grew up in these countries and we have always been a part of the community. Besides being members of Viet Tan we have also been active members of our community. Many of us have been on the executive boards of the local Vietnamese community. So the integration has always been there and that relationship has always been there. You can say that within the Vietnamese communities there are different activities, and political activism is very common because our community came about as a result of a tragedy and we all came here in the first place as political refugees. So that political activism has always been there. Political groups are very common within the community and we are one of those who are active within the community as well as inside Vietnam.

**Mr RUDDOCK**—So there are other political parties?

**Mr Do**—Sure, Yes.

**Mr RUDDOCK**—And what do I read into the statement, bearing in mind that I know others have done the same thing, about members of your party going back to Vietnam and being arrested, presumably for coming to Vietnam with a view to undertaking political activity and perhaps encouraging dissent? Do you eschew violence or do you advocate the use of violence to overthrow the regime?

**Mr Do**—We have always promoted and advocated non-violent methods as the practice of choice. To be honest with you, it is unrealistic, undesirable and very impractical to advocate violent change nowadays, especially inside Vietnam. After years and years and years of war, the

Vietnamese people, including ourselves, are sick and tired of fighting. We are sick and tired of destruction and we are sick and tired of the bloodshed. So we hope to accomplish changes through peaceful means. We are inspired by the events back 20 years ago in the old Soviet Union and Eastern Europe. In fact I was just in Hungary two weeks ago attending a conference commemorating the 20th anniversary of what happened there. I have been fortunate to work with former leaders of the Hungarian democratic movement, the Serbian democratic movement as well as the solidarity people in Poland. So I hope that we can somehow learn from their experiences and achieve the same thing they have been able to accomplish in Eastern Europe.

**Mr DANBY**—And it could happen very quickly like in the Ukraine.

**Mr Do**—Yes, and if you think about it, of the four remaining communist states in the world right now Vietnam actually has the best chance to free ourselves—compared to China, North Korea and Cuba. If you think about it, we do have a better chance.

**Mr RUDDOCK**—You would not want to be in that company.

**CHAIR**—It is a fairly low benchmark.

**Mr Do**—I tend to be very optimistic and see the glass as half full.

**CHAIR**—Yes, that is good. Unfortunately, given our day, we are drawing to the end of our time for this hearing. I just wanted to quickly ask you though as a final question: given your comments about the fact that, despite the Vietnamese government's behaviour within your own country, there does seem to be a willingness to appease the international community or at least be influenced by it, what are your views on some form of human rights institution, group or organisation which operated on a regional basis throughout the Asia-Pacific? Do you believe the Vietnamese government would be interested in being part of such a body? I know I am speaking theoretically here without any detail as to the level of authority that that body would have, but do you think there would be an interest and a willingness by the government to participate? And do you think that that body could have some influence in terms of improving human rights within Vietnam?

**Mr Do**—Of course we do not know for sure how the Vietnamese government are going to react to such an opportunity, but, based on the pattern we have seen recently, I think the Vietnamese government would not want to be seen as the odd man out—they do not want to be seen as being out there by themselves along with the Burmese junta. So I think they would be smart enough to play along. However how constructive overall they would be being part of that body remains to be seen. I think they are wise enough to say, 'Let's just be the inside.' But whether they are going to be cooperative or not is a different ball game.

**CHAIR**—Thank you very much for appearing here today. We appreciate you taking the time to come and give evidence. We appreciate, given domestic circumstances, that it is not easy necessarily for you to cover and participate in a public hearing such as this so we certainly value you doing that and it has been very useful and informative.

**Mr Do**—Thank you, it has been my pleasure.

**Senator FORSHAW**—I would like to give my apologies—I have been tied up in the Senate for most of the time of this hearing and I was delayed in getting here. I will read the transcript and I appreciate your evidence. Thank you for coming.

**Committee adjourned at 11.01 am**