



Submission No 19

Inquiry into Australia's Human Rights Dialogue Process

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THE EUROPEAN UNION'S STRUCTURED HUMAN RIGHT DIALOGUE PROCESSES

The following information is provided as supplementary material to Amnesty International Australia's submission and testimony to the Federal Parliament's Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs Defence and Trade's *Inquiry into Australia's Human Rights Dialogue Process*

The European Union (EU) has for a number of years been engaged in human rights dialogues with a number of countries on an ad hoc basis.

Generally four types of dialogues can be distinguished:

1. Structured dialogues focusing exclusively on human rights (China; Iran);
2. Agreement based dialogues: of a rather general nature, based on human rights clauses in bilateral agreements (the Cotonou agreement, the Barcelona agreement with a number of Mediterranean countries);
3. Ad hoc dialogues (Vietnam, Laos, India); and
4. Meetings of the troika on human rights issues.

In 2001 the European Council (EC) adopted a set of guidelines for human rights dialogues to integrate or mainstream human rights objectives into its external policy (provided at Appendix 1). The guidelines are not legally binding, but operate as a tool for EU policy and provide the Council with a framework for intervention. In addition, they provide the EC some moral leverage as the principles are agreed by the 25 Member States, and provide the EU with an initiative to push for action on third states.

The issues discussed at human rights dialogues are determined on a case-by-case basis. Dialogues complement (but *de facto* sometimes replace) EU action on a country in multinational fora such as the United Nations.

An internal review was conducted by the Council in 2004 and proposed a set of standard benchmarks to be used as a basis for establishing area of concern and to measure progress with regard to human rights dialogues. The aim is to enhance coherence and consistency between different instruments of the EU's human rights policy and between different human rights dialogues.

Requirements for dialogue evaluation

The EU Guidelines on Human Rights Dialogues outlines the process for evaluation at (article 10 Appendix 1). The guidelines provide that:

- *all human rights dialogues will be assessed on a regular basis, preferably every year ...*
- *the assessment will be made by the current Presidency (with wide consultation as outlined in the guidelines)...*
- *Civil society will be involved in this assessment exercise ...*

- *Assessment will be against the objectives which the EU set before initiation of the dialogue and will examine how much added value has been provided by the dialogue ...*
- *If progress has been made the assessment should, if possible, analyse how far the European Union's activities have contributed to that progress.*

The guidelines also require that: *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.*

Who is involved

The EU is represented at official human rights dialogues by the Council (mainly the Presidency) representatives and Commission officials. Third country representatives should be, as far as possible, government members who are responsible for human rights and include member of the justice and interior ministries, the policy prison administration etc.

Civil society, including non-governmental human rights organisations, can also become involved in events associated with the dialogue that are not restricted to government talks, such as expert seminars and roundtables (or parallel dialogues). However, problems persist in both the China and Iran dialogues on the question of which NGOs can attend and who is responsible for the selection of participants.

Amnesty International Australia maintains that civil society can significantly strengthen the standing and efficacy of structure dialogue processes two-fold, as:

- (1) **observers to structured government dialogue meetings;** and
- (2) **Participants of parallel civil society – civil society expert dialogues.**

It is our opinion that a productive model for parallel civil society expert dialogues is through the conducting meetings on specific themes and issues. 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 process should be developed jointly with department representatives and ensure an appropriate balance of chairing and moderating by civil society and department participants. Department representatives from both dialogue countries should be present as equal participants. Amnesty International Australia also believes that it is important that the parallel civil society process includes time within the program for informal presentations and discussions between civil society representatives without the presence of departmental representatives.

EU-China Human Rights Dialogue

The dialogue was initiated in January 1996, but interrupted by China after ten member states tabled a resolution on the human rights situation in China at the 1997 CHR. It was resumed at the end of the same year and, since then, has been held twice a year.

The dialogue is implemented by human rights seminars, which bring together academic experts, NGOs and other representatives (at a departmental government level) from the EU and from China.

Issues included in the last two seminars include:

- media law;
- torture;
- national human rights institutions; and
- implementation mechanisms for economic, social and cultural rights.

In 2001 the Council made public the benchmarks on which the dialogues should be assessed (provided at Appendix 2). These benchmarks include:

- ratification and implementation of the two UN covenants;
- cooperation with human rights mechanisms;
- certain guarantees on use of the death penalty;
- reform of administrative detention;
- respect for fundamental rights for all prisoners; and
- religious freedom in Tibet and Xinjiang, amongst others.

Amnesty International remains concerned regarding problems about transparency and accountability regarding the EU's dialogue process with China. Concerns have been raised regarding the assessment of benchmarks, the fact that no independent groups from China participate in the dialogue process and a noted lack of consistency in the use of the EU Guidelines on human rights dialogues.

The EU dialogue with China has resulted in:

- China committing itself to signing and ratifying the two UN Covenants; and
- UN Commissioner for Human Rights to visit China in November 2000

The Council's latest evaluation of the dialogue concluded that the overall assessment showed a mixed picture of progress in some area, but continuing concerns in others.

Evaluation Process

The EU China Human Rights dialogue has been jointly assessed by the International Federation for Human Rights (FIDH) and Human Rights in China (HRIC). The organisations together use as a basis the benchmarks made public by the Council in January 2001 (See Appendix 2). The organisations submit a preliminary assessment based on the benchmarks and by applying various indicators of progress developed by the UN and other multilateral bodies, international NGOs and other organisations. These indicators include:

- The Human Development Index (HDI) (United Nations Development Program)
- Worldwide Press Freedom Index (Reporters Without Borders)
- Gender Related Development Index (GDI) (United Nations Development Program) and others

An example of such assessment can be seen in the Preliminary Assessment of the EU-China Human Rights Dialogue submitted to the EU-China Human Rights Dialogue meeting in February 2004: <http://www.fidh.org/IMG/pdf/cn2502a.pdf>

EU-Iran Human Rights Dialogue

The EU began a human rights dialogue with Iran in December 2002. Meetings are to take place every six months and rotate between Tehran and Brussels.

All human rights issues can be discussed and the dialogue can be terminated by either party at any time. The general aim is to encourage Iran to:

- ratify and implement international human rights instruments (e.g. ICCPR),
- encourage greater transparency and openness,
- fight against discrimination and
- improve its prison system

In 2002-2004 there have been four dialogues. The main issues discussed have included:

- discrimination and prohibition of torture;
- the right to a fair trial and rule of law;
- freedom of expression and the right to development; and
- the Universal Declaration of Human Rights.

Through the dialogues the cases of 40 prisoners of conscience were raised.

There are no conditions attached to the dialogue but it is subject to inflexible refusals to comment on certain human rights cases. At the first dialogue, the Iranian delegation insisted that amputation, flogging and stoning would not be prohibited under Iranian law, even if Iran eventually ratified the UN Convention Against Torture (CAT).

Evaluation

Following the first evaluation of the dialogue in 2004, the Council commented that there had been very little or no progress on the priority human rights issues. The Council decided not to make the benchmarks public.

Since then, the dialogue has effectively been frozen. However, in mid-March 2005, the Iranian Government finally agreed to meet an EU troika delegation to discuss the future of the dialogue.

Appendix: 1 European Union guidelines on Human Rights Dialogues¹
Council of the European Union - 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;

¹ http://europa.eu.int/comm/external_relations/human_rights/doc/ghd12_01.htm

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 endeavor to raise the priority issues referred to in paragraph 5 with the country concerned.

Appendix 2: EU-China Human Rights Dialogue Assessment Benchmarks

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