



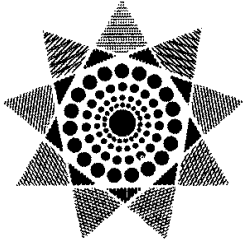
## **Submission No 4**

### **Inquiry into Australia's Human Rights Dialogue Process**

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## Australian Bahá'í Community

### INQUIRY INTO AUSTRALIA'S HUMAN RIGHTS DIALOGUE PROCESS

The Australian Bahá'í Community welcomes the inquiry into Australia's human rights dialogue process by the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade.

The Sub-Committee may already be aware of our broad and longstanding interest in the promotion of human rights within Australia and internationally. The Australian Bahá'í Community supports human rights dialogue as a tool through which progress in promoting the protection of human rights abroad can be achieved. In our view, however, dialogue should only ever be regarded as one instrument for advancing human rights and other mechanisms, such as international monitoring through United Nations bodies, should continue to be vigorously pursued.

In preparing this submission, we have drawn from our knowledge and experience of the human rights situation of the Bahá'ís in the Islamic Republic of Iran to bring to the Sub-Committee's attention areas in which we believe it is possible to improve the outcomes from human rights dialogues. We suggest that the human rights situation of the Bahá'ís in Iran is a "litmus test" of the success of the dialogue with Iran and the extent to which the dialogue is able to positively address this situation is a measure of the Iranian Government's sincerity about entering the dialogue process, as well as about human rights reform in general. Lessons learned from the dialogue with Iran may well be of use in improving outcomes from all dialogues.

#### **Background: Situation of the Bahá'ís in Iran**

Since 1979, Bahá'ís in Iran have been subjected to attack, intimidation and discrimination solely on account of their religious beliefs, and have repeatedly been offered relief from persecution if they were prepared to recant their Faith. The extent and systematic nature of the persecution and the fact that it constitutes deliberate government policy have been documented in reports issued by the UN Special Representatives. The UN Commission on Human Rights suspended its monitoring of Iran in 2002, but the civil, political, social, economic and cultural rights of Iranian Bahá'ís are still being systematically violated. During the interactive dialogue at the Commission, on 2 April 2004, Mr. Abdelfattah Amor (UN Special Rapporteur on freedom of religion or belief) responded to a question on the situation of the Bahá'ís in Iran by saying: "It is indisputable that the Bahá'ís constitute a community facing persecution of a particular kind in Iran: persecution as regards the law; political persecution; religious persecution. (...) At a certain time, we believed that things had calmed down somewhat, with regard to the Bahá'ís in Iran. Unfortunately, it seems clear to me that now the situation is again a cause for concern."

The most recent documented evidence that we have received indicates that Bahá'ís in many different localities in Iran are still subjected to arbitrary arrest, short-term detention, and persistent patterns of harassment, intimidation and discrimination. All attempts to obtain redress are systematically denied as officials continue to confiscate their homes, deny their

rightfully earned pensions, benefits and inheritance, block their access to employment or impede their private business activities. The authorities also interfere with classes given to Bahá'í youth in private homes and persist in banning the sacred institutions that perform, in the Bahá'í Faith, most of the functions reserved to clergy in other religions. In April 2004, it was confirmed that a sacred site with great religious significance to the Bahá'í community worldwide, the resting place of Mulla Muhammad-'Ali Barfurushi, known as Quddús (the most holy), had been demolished. Despite attempts to protect the site, which was among the many historic and holy places confiscated from the Bahá'ís by the Iranian authorities during the Islamic Revolution, it seems that the demolition of the rest of the structure had continued gradually, with the full knowledge of the national authorities.

### **Parliamentary Participation And Oversight**

A relatively high degree of transparency and accountability has been associated with Australia's promotion of the observance of human rights norms through multilateral forums. The dialogue process, by contrast, is largely unaccountable and far from transparent.<sup>1</sup> We believe that in human rights matters in general, transparency and accountability are desirable and see no reason why this should not be the case in regard to the human rights dialogue process.<sup>2</sup> While not the only means for achieving greater transparency and accountability, parliamentary participation and oversight, most logically through the Human Rights Sub-Committee, would be one way to bring this about<sup>3</sup> (also see The Monitoring And Evaluation Of Outcomes).

### **Involvement Of Non-Government Organisations (NGOs)**

The Australian Bahá'í Community believes that the human rights dialogue process would benefit from the involvement of non-government organisations (NGOs). The Department of Foreign Affairs and Trade Human Rights Manual acknowledges the positive role of NGOs in advancing human rights; "Concern for human rights and fundamental freedoms is not the reserved domain of States... Given their independence, commitment and diversity, NGOs play a legitimate, well-established and respected role both domestically and internationally in the promotion and protection of human rights... The work of the Australian Government in the

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<sup>1</sup> We acknowledge that some feedback is provided to Non-Government Organisations (NGOs) through the Department of Foreign Affairs and Trade-NGO Human Rights Consultations but recognise that such feedback is limited by the confidential nature of the Government-to-Government discussions.

<sup>2</sup> As a comparison, we refer to the Council of the European Union, "European Union Guidelines on Human Rights Dialogues", 13 December 2001, Section 7, "The EU will as far as possible give the human rights dialogues a degree of genuine transparency vis-à-vis civil society",

[http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/ghd12\\_01.htm](http://europa.eu.int/comm/external_relations/human_rights/doc/ghd12_01.htm)

Unfortunately, the transparency of the EU has not been as satisfactory as NGOs would like it to be, but at least this is a step in the right direction.

<sup>3</sup> The Sub-Committee may wish to note the EU Guidelines (ibid) Section 10, "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.

human rights field is reinforced by the ongoing relationship which exists between the government and human rights NGOs. While the views and methodologies of NGOs do not always coincide with those of Government, the input which NGOs bring to the domestic and international human rights debate is both legitimate and an important source of positive dialogue”.<sup>4</sup>

While we understand the concern that it might be premature to involve NGOs at initial meetings, Australia has an active and mature civil society, which is capable of playing a constructive role in the dialogue process as it progresses.<sup>5</sup> Apart from the expertise and experience that NGOs could bring to the dialogue process, their involvement would offer a dynamic example of the potential of civil society in a nation in which human rights norms are more generally respected. NGO involvement would bring greater transparency and credibility to the dialogue process. It might also help to establish or strengthen beneficial links between Australian NGOs and those NGOs struggling to address human rights issues within countries with which Australia has dialogue.

Our experience in regard to the human rights situation of the Bahá'ís in Iran leads us to emphasise the importance of including genuine and independent NGOs from Iran in the dialogue process. We have concerns about the independence of some of the NGOs based in Iran that have never taken up any cases involving Bahá'ís or defended the human rights of the Bahá'í community and its members. Obviously the benefits of involving NGOs, from any country, in the dialogue process will not be realised if the NGOs are, in reality, government sponsored organisations.

Given the complexity of the situation in Iran, the choice of the NGOs participating in that dialogue is critical and we recommend only those NGOs with a track record of dealing with human rights in Iran should be considered for inclusion. Furthermore, we suggest that at some point, Australia should also include the Bahá'í Community as one of the NGOs involved in the dialogue with Iran.

We also draw to the Sub-Committee's attention the potential for NGOs to play a role in the monitoring and assessment of the outcomes of human rights dialogues<sup>6</sup>. Given the absence in the dialogue process of specialised and independent monitoring mechanisms, such as are created under UN resolutions on human rights, the internationally recognised human rights expertise and experience of NGOs could make a valuable contribution to the assessment and monitoring process.

## **The Roles And Obligations Of Participating Agencies**

The Sub-Committee's press release of 14 April 2004 stated; “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 strength of their bilateral ties with Australia.” We believe that as long as the aim of the dialogues is so modest, the roles and obligations of participating agencies

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<sup>4</sup> Department of Foreign Affairs and Trade Human Rights Manual 1998, Chapter 6, [http://www.dfat.gov.au/hr/hr\\_manual/chp6.html](http://www.dfat.gov.au/hr/hr_manual/chp6.html)

<sup>5</sup> By way of comparison, we note that FIDH, Amnesty International, Penal Reform International and Human Rights Watch have participated in the EU human rights dialogue with Iran.

<sup>6</sup> See EU Guidelines (op cit), Section 10, “All human rights dialogues will be assessed on a regular basis, preferably every year... Civil society will be involved in this assessment exercise.”

will be severely limited, as will be the potential of dialogues to result in concrete improvement in human rights situations.

While a necessary first step and ongoing part of the process, “frank and constructive discussions” should not be considered as the only obligation of participating agencies and certainly not as an achievement in and of itself. The roles and obligations of participating agencies should be defined in a way that clearly charges them with working to bring real progress in the observation of international human rights standards. Following from this, participating agencies also should have clearly defined responsibilities to evaluate the progress of dialogues in bringing such change (see *The Monitoring and Evaluation of Outcomes*).

UN resolutions have been important and effective means for safeguarding the Bahá'ís in Iran and the Australian Bahá'í Community would like to express its gratitude for the support it has received from Australia in this respect. The Bahá'í Community remains convinced that the concerns raised by Australia over the years, in particular through resolutions at the United Nations, have provided the beleaguered Bahá'í community in Iran with some measure of protection against the most grievous forms of oppression. We would be very concerned if Australia's commitment to the dialogue process precluded the option of pursuing UN resolutions in the future. In defining the roles and obligations of agencies participating in the dialogue process, therefore, we believe that the clear separation of these two approaches to the pursuit of human rights should be plainly spelt out.

### **Reporting Requirements And Mechanisms**

As previously observed, we believe that it is desirable to maintain transparency and accountability in dealing with human rights matters and both are needed to a greater degree in connection with the human rights dialogue process. This becomes a matter of particular concern to us should Australia determine to restrict its action in multilateral and other forums on the basis of its assessment of the value of dialogue.

Decisions made by Australia regarding the human rights situation in Iran illustrate this point. The Australian Bahá'í Community was grateful to Australia for its support of the UN General Assembly resolution on the human rights situation in Iran (UN Document A/C.3/58/L.69) in 2003 but disappointed that Australia broke from its longstanding practice of cosponsoring these resolutions. While there are no doubt many considerations taken into account by Australia in determining its position on UN human rights resolutions, it is hard not to draw the conclusion that its decision not to cosponsor the resolution for the first time in 2003 was the result of its commitment to the dialogue with Iran and its perceptions of the benefits that would come from the dialogue.

We have noted already that the dialogue process does not naturally generate the specialised and independent monitoring mechanisms created by UN human Rights resolutions. We believe that there needs to be clear reporting on the dialogue process with particular attention to the outcomes. This could be achieved by establishing benchmarks for the dialogues against which progress and outcomes are measured and reported. (See *The Monitoring And Evaluation Of Outcomes*). Such reports should be made available to all interested parties.

## **The Monitoring And Evaluation Of Outcomes**

It has been stated that, “the Australian Government firmly believes that non-confrontational dialogue is the most effective way to address the human rights situation in other countries.”<sup>7</sup> While we hope that human rights dialogues will prove to be an effective way to address the human rights situation in other countries, we suggest that without adequate monitoring and detailed evaluation, there is little evidence at this point of the superior effectiveness of human rights dialogue as a means of addressing human rights situations abroad. On the contrary, there is a danger, to which we already have alluded, that human rights dialogues become an end in themselves, rather than a means for advancing the protection of human rights. We therefore feel it is important to ask at regular intervals whether any concrete improvements have been made as a result of the human rights dialogue process<sup>8</sup>.

To use the example of Iran, the Iranian Government has repeatedly stated its commitment to improving the human rights situation within its borders, and has discussed this situation in human rights dialogues with Australia, the European Union and Switzerland. Regrettably we have not yet seen any substantive improvement on the ground as the result of these dialogues nor have we seen Iranian leaders take clear and consistent steps toward ending the persecution and discrimination faced by the Bahá'ís, let alone toward establishing full legal protection for the Bahá'í community.

The Australian Bahá'í Community firmly believes that the human rights dialogue process will be most effective if clear benchmarks are established against which progress can be measured. We recommend that the benchmarks used should set forth practical objectives and go into specific detail rather than providing only theoretical or general statements of intent. To assist in measuring progress against such benchmarks, Australia should draw on a wide range of sources including first-hand observations from its delegations, reports of UN special rapporteurs and working group delegations, NGO reports, media reports, and reports from independent sources within those countries with which the dialogues are held.

In regard to the situation of the Bahá'ís in Iran, we have developed the enclosed benchmarks, which derive from the recommendations regarding the Bahá'ís in Iran of Mr Abdelfattah Amor, United Nations Special Rapporteur on freedom of religion or belief, (UN Document E/CN.4/1996/95/Add.2). We believe they should be adopted for official use in evaluating the dialogue with Iran and offer a model that could be adapted for all human rights dialogues.

Given the loss of the UN Commission for Human Rights resolution on Iran, we are eager to see Australia seize the opportunity provided by the dialogue to assist Iran to make real progress in improving the human rights of Bahá'ís and others in Iran. We suggest that without rigorous monitoring and evaluation, however, this is unlikely to occur.

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<sup>7</sup> (DFAT website, Human Rights, Australia's Bilateral Human Rights Dialogues, [www.dfat.gov.au/hr/dialogue\\_general.html](http://www.dfat.gov.au/hr/dialogue_general.html))

<sup>8</sup> As an example, see EU Guidelines (op cit), Section 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.”

## **Conclusion**

The Australian Bahá'í Community sincerely hopes that positive results will come from all Australia's human rights dialogues but particularly from the dialogue with Iran. It is clear to us that the human rights situation in Iran remains very grave and we count on the commitment and the determination of Australia, working not only through a more effective dialogue process but through other mechanisms as well, in order to obtain clear and lasting change. We trust that the inquiry into Australia's human rights dialogue process will assist Australia to maximise the effectiveness of the dialogue process, so that it can better meet its potential as one approach for promoting greater observance of human rights abroad.

June 2004

## **BENCHMARKS**

### ***Towards the emancipation of the Bahá'í community in Iran***

These benchmarks can be used to measure progress in the phased implementation of the recommendations made by the Special Rapporteur on Freedom of Religion or Belief, Mr. Abdelfattah Amor. – the following excerpts are from his report to the 52<sup>nd</sup> session of the Commission on Human Rights (document E/CN.4/1996/95/Add.2).

1. **Recommendation that can be implemented as a first step**
  - 1.1 *Access to education:* The Special Rapporteur wishes to emphasize that no discrimination should impede access by the Bahá'ís to education in higher educational establishments. (p. 23, para. 109)
2. **Recommendation that can be implemented as a second step**
  - 2.1 *Employment:* The Special Rapporteur wishes to emphasize that no discrimination should impede access by the Bahá'ís (...) to employment in the administration and in the private sector. (p. 23, para. 109)
3. **Recommendations that can be implemented as a third step**
  - 3.1. *Right to Citizenship:* Although the situation of the other non-recognized minorities or communities, such as the Bahá'ís, is covered by articles 14, 22 and 23 of the Constitution in which the concepts of citizen, individuals and persons are used, the Special Rapporteur recommends that a legislative enactment should give clearer recognition to these rights for every citizen, individual or person, regardless, *inter alia*, of his beliefs or the community to which he belongs. (p. 20, para. 90)
  - 3.2. *Burials:* The Bahá'ís should also be free to bury and honour their dead. (p. 23, para. 107)
  - 3.3. *Freedom of movement:* Concerning freedom of movement, including departure from Iranian territory, the Special Rapporteur believes that the question on religion should be deleted from passport application forms and that this freedom should not be obstructed in any way. (p. 23, para. 107)
  - 3.4. *Security of the person:* He points out that the physical integrity of any person should not be affected by the person's religion or belief. (p. 23, para. 111)
4. **Recommendations that can be implemented as a fourth step**
  - 4.1. *Re-establishment of the Bahá'í Institutions:* He also wishes to point out that article 1, paragraph 3, of the 1981 Declaration stipulates that: "Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." For this reason, the Special Rapporteur recommends that the ban on the Bahá'í organization should be lifted to enable it to organize itself freely through its administrative institutions, which are vital in the absence of a clergy, and so that it can engage fully in its religious activities. (p. 23, paras. 106-107)
5. **Recommendation that can be implemented as a fifth step**
  - 5.1. *Non-discrimination:* With regard to the Bahá'ís, the Special Rapporteur hopes that a clear distinction will be drawn between questions of belief and other questions of a political nature if the latter exist or arise. In that connection, it should not be presumed that the entire community has been politicized or is



engaged in political or espionage activities. Considering the religious principles of the Bahá'í community, the Special Rapporteur believes that there should not be any controls that might, through prohibition, restrictions or discrimination, jeopardize the right to freedom of belief or the right to manifest one's belief. (p. 23, para. 106)

5.2. *Community properties:* Likewise, all the community and personal property that has been confiscated should be returned and the places of worship that have been destroyed should be reconstructed, if possible, or, at least, should form the subject of compensatory measures in favour of the Bahá'í community. (p. 23, para. 107)

5.3. *Judiciary:* With regard to the judiciary, the Special Rapporteur reiterates the recommendations formulated concerning the recognized minorities (p. 23, para. 110)<sup>9</sup>

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<sup>9</sup> *These recommendations are as follows:* In the judicial sector, the Special Rapporteur continues to be concerned about the information received concerning discriminatory treatment on the part of judges who sometimes hand down iniquitous decisions against members of minorities. In this regard, the Special Rapporteur believes that it would be appropriate to apply the programme of advisory services of the Centre for Human Rights. Proper training of judicial and, in general, administrative personnel in human rights, particularly with regard to tolerance and non-discrimination based on religion or belief, would be highly appropriate. (p. 22, para. 101)