

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

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- 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;¹⁹and
 - 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

