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HUMAN RIGHTS SUBCOMMITTEE

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

Human Rights

Monday, 14 March 2005

Members: Senator Ferguson (*Chair*), Senators Bolkus, Cook, Eggleston, Harradine, Hutchins, Johnston, Kirk, Lundy, Sandy Macdonald, Payne and Stott Despoja and Mr Baird, Mr Baldwin, Mr Barresi, Mr Danby, Mrs Draper, Mr Edwards, Mrs Gash, Mr Gibbons, Mr Haase, Mr Hatton, Mr Jull, Mrs Moylan, Mr Prosser, Mr Scott, Mr Sercombe, Mr Snowden, Mr Turnbull, Ms Vamvakinou, Mr Wakelin and Mr Wilkie

Human Rights Subcommittee Members: Senator Payne (*Chair*), Senator Bolkus (*Deputy Chair*), Senators Ferguson (*ex officio*), Harradine, Kirk and Stott Despoja and Mr Baird, Mr Danby, Mr Edwards (*ex officio*), Mr Sercombe and Ms Vamvakinou

Members in attendance: Senators Bolkus, Ferguson, Kirk and Payne and Mr Baird and Mr Danby

Terms of reference for the inquiry:

To inquire into and report on:

Australia's human rights dialogue process, with particular reference to:

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

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Subcommittee met at 9.03 a.m.**RICHARDS, Ms Kathleen Marie, Human Rights and Governance Policy Officer, Australian Council for International Development**

CHAIR—I declare open this first public hearing of the inquiry into Australia's human rights dialogue process conducted by the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The inquiry was established to examine Australia's human rights dialogue process with particular reference to the following: parliamentary participation and oversight; the involvement of non-government organisations; the roles and obligations of participating agencies; reporting requirements and mechanisms; and the monitoring and evaluation of outcomes.

The subcommittee prefers that all evidence be given in public, but should you wish to give evidence in private you may ask to do so and the subcommittee will consider your request. The subcommittee does not require you to give evidence on oath, but I advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. The subcommittee has received a formal submission from ACFID, which we have numbered 6. I see on the table in front of me what is apparently a supplementary submission from your organisation.

Ms Richards—That is correct.

CHAIR—I invite you to make an opening statement and then we will proceed to questions, bearing in mind that members will not have had a chance to read these additional remarks.

Ms Richards—That is fine. Thank you for the opportunity to appear before the committee. I want to make two brief opening points. First, I want to refer to the joint NGO statement that was submitted to this inquiry, signed by over 30 organisations. Importantly, for all of those signatories human rights dialogues are an important process to advance human rights, but the statement states that it is one of many avenues. There is concern that human rights dialogues could risk being an end in themselves rather than a means to identify progress in human rights standards. To address this concern, the statement sets out in broad some key recommendations for greater transparency and accountability of the human rights dialogue processes, including the involvement of independent NGOs, clear reporting mechanisms, the establishment of measurable benchmarks and a specific focus on marginalised groups. As a signatory to this statement, the Australian Council for International Development fully endorses those recommendations.

The second point I want to make refers to the supplementary submission. I do appreciate that you have not had a chance to read it. I wanted to put in writing some details about a meeting that was held between a small group of Australian NGOs and Chinese government officials in October last year. That was a prelude to the eighth Australia-China Human Rights Dialogue. ACFID—specifically, me—participated in that meeting. It is described in detail in the submission, but I will make a few general comments and then I am happy to answer any questions about how that meeting went.

The meeting was a first. It followed numerous requests from many Australian NGOs for greater transparency of the government's bilateral human rights dialogues with three countries—China, Iran and Vietnam. Given the sophistication and length of the Australia-China Human Rights Dialogue and the fact that the Chinese were visiting Australia in October, there was an opportunity for us to put a formal request to the Minister for Foreign Affairs, Minister Downer, to consider a proposal for us to meet the Chinese. That meeting was granted. The primary aim of the meeting was to raise a number of broad themes with the Chinese government delegation and to formally request, as independent NGOs, permission from the Chinese government for a human rights dialogue process to be established between Australian NGOs and Chinese civil society.

The meeting was very productive. The Chinese appeared extremely engaged. There was acknowledgment of our position as independent NGOs and the fact that in that meeting we were not expressing any endorsement, or giving the perception of an endorsement, of the government's bilateral human rights dialogues. The Chinese and the Australian government respected that position. There was a public, official invitation from the deputy foreign minister, Mr Shen, for a follow-up to those meetings between Australian NGOs and the Chinese government. More significantly for us, there was a welcoming of our proposal for a process for separate NGO-to-NGO meetings.

The five NGOs that were involved in that meeting—and they are detailed in the submission—were mindful that they were not speaking for all NGOs in Australia in that particular meeting. We did have a little concern that our numbers were restricted in the meeting. That came to light when we expressed that concern to Mr Shen and he said—and I do not think it was flippantly—that he was expecting to meet hundreds of Australian NGOs. So there was an acknowledgment from the Chinese side that within Australian NGOs there is a lot of concern and a lot of monitoring of the bilateral human rights dialogue processes. Before he came into the meeting, he was aware that there was a high level of interest from the NGO sector in Australia.

At the moment, discussion amongst Australian NGOs is about how we look at the challenges, opportunities and logistics of how we might follow up some of those meetings, given that the ninth Australia-China Human Rights Dialogue will be held in China later this year. There is more information in the submission about that actual meeting, the lead-up to it, what we discussed, our perceptions about the atmosphere and so on. I am happy to answer any questions. I have consulted with the other four NGOs who were involved in those meetings and I am happy to answer questions about the ACFID submission in general.

CHAIR—Thank you. Can we deal just briefly with that meeting, and then I suspect we will go to more general questions. I think you said that Deputy Foreign Minister Shen extended an invitation to NGOs to visit China. Is that what you said?

Ms Richards—He did, yes.

CHAIR—What has been the result of that invitation? Has there been any further action in that regard?

Ms Richards—We acknowledged the invitation in those meetings. We stated from the outset that we would need to have further discussion with other NGOs that were not able to be a part of

that initial meeting. We sent a letter to Minister Downer in late October last year acknowledging to him that the invitation had been made and thanking him for his support, because the Australian government put forward to the Chinese our request for that meeting. As we pointed out to Minister Downer and have been discussing with the department of foreign affairs, there are a number of issues to address—logistical issues around cost, financing and representation, issues to be discussed and expectations of what such a meeting might entail—before we formally accept such an invitation.

CHAIR—The invitation is there and the ball is in your court.

Ms Richards—Exactly. There are a number of different NGOs who have different issues that they might want to take up in such a meeting. At this stage, it is about discussing what would be the cross-cutting and broad themes that would be of interest to a number of different organisations in undertaking such a meeting.

CHAIR—In my skim reading of your supplementary submission, I note that you said under item 5 that in the question process there was an agreement from the Chinese to provide additional information in relation to some matters. Has that been provided?

Ms Richards—That was provided. That specific question was from the Human Rights Council of Australia and it was with regard to specific questions around law reform and progress in implementing domestic legislation that might align with the requirements of the International Covenant on Civil and Political Rights.

Senator BOLKUS—What do you think you got out of the meeting?

Ms Richards—We got out of it a formal acceptance of our proposal to set up an NGO-to-NGO human rights dialogue between Australian NGOs and Chinese civil society. For a number of years, Australian NGOs have been requesting greater involvement in the government's bilateral human rights dialogues but they have also been looking for the opportunity to have a separate, independent NGO-to-NGO process. That is something that has taken off in the European Union. They have parallel seminars that run between NGOs and civil society. We were reflecting on the progress and outcomes of those meetings and also acknowledging—specifically with China but it is also applicable to the Iran and Vietnam dialogues—that there is a flourishing of independent civil society in these countries, albeit differently from within Australia. We want to have an opportunity to hear their voice, to take their concerns on board and also to be able to give them an opportunity to hear from independent civil society in Australia. We were able to go into that meeting and to put those questions on the table directly before the Chinese government. I have no doubt that the questions we asked have been asked a number of times, but it was significant that we had a chance to ask those questions as independent organisations. More importantly, we put forward this request for support from the Chinese government for the independent NGO meetings and they fully supported that process.

Senator BOLKUS—You have made a number of recommendations in your main submission in respect of consultation on the way to and after the dialogue. Can you tell us what happens now? To what degree are you consulted on the way to the dialogue? I gather the debriefing is just a part of the annual debriefing.

Ms Richards—Yes. First of all, in the lead-up to each of the dialogues there is a formal invitation provided by DFAT to interested NGOs to provide written submissions on human rights violations or human rights issues within each of those three countries. I know my organisation has, on occasion, taken up that invitation. Other organisations that specifically focus on a particular country or on particular human rights issues do put cases in writing regarding individuals or more thematic issues.

We have had a little difficulty in the past being able to get information back from the department as to how much of that information is incorporated into the briefs. We hear back that, on an ad hoc basis, a particular case is taken up or a particular issue is discussed, but we are not sure of there being consistency within the prebriefings that are provided.

The debriefings tend to be more ad hoc. There are the twice-yearly DFAT-NGO human rights consultations held around March or September each year. On the agenda of each of those consultations, there is almost consistently some kind of debriefing on the human rights dialogue processes. That agenda is incredibly full. We usually get to spend only 10 or 15 minutes on one particular dialogue. And, even though we appreciate that they are held twice-yearly, there may be a dialogue which is five or six months past, so the recollection of what actually happened and the nuances of issues are lost. On an ad hoc basis, NGOs have been able to approach DFAT and have some kind of debriefing on a specific meeting, but that is not consistent and is not for every debriefing. It is pretty much up to the organisations to pursue DFAT for those meetings. We would be looking for something which was a little bit more established, something set as part of the process of every human rights dialogue—that there would be perhaps the opportunity for face-to-face meetings beforehand and then debriefings straight afterwards.

Senator BOLKUS—You have told us that the aid groups or other interested parties who are not aid groups do not get advice as to what is raised by the dialogue partners in respect of Australian human rights situations. Are there other issues like that that you are not briefed on or debriefed on, and is it a matter of Australian sensitivity or do you get a sense that the officials running the dialogue from Australia do not want to talk about certain issues because of the sensitivities of the dialogue partners?

Ms Richards—I think it is actually a matter of both. There are perhaps issues that might be raised in the private meetings where there are sensitivities for the officials and also for the governments of both countries about whether they are to be discussed. We are not able to get a sense of how vigorously issues are raised by the partner countries in regard to human rights issues in Australia. On pressing, we can get a general indication that there might have been a question raised about Indigenous peoples or there might have been a question about prison reform or legal reform or something, but we are not able to get a sense of the atmosphere, the details or how the responses were provided to those questions. It is couched in very general, non-specific terms to us.

Senator BOLKUS—Thank you.

Senator FERGUSON—I notice that you recommend that the Australian government invite greater participation of Australian civil society representatives in human rights dialogues meetings. What restrictions are there on civil society representatives taking part now?

Ms Richards—At the moment there are no civil society representatives.

Senator FERGUSON—None at all?

Ms Richards—None.

Senator FERGUSON—They are not invited?

Ms Richards—They are not invited; they are not part of the process. As I explained before, before each of the dialogues there is an opportunity for written submissions to be made on particular human rights cases and particular human rights issues, but there are no NGO participants aside from the Human Rights and Equal Opportunity Commission representatives and, on an ad hoc basis, parliamentary members. There are no NGOs who actually take part in the dialogue meetings themselves as observers—it would be a request from us—or participants.

Senator FERGUSON—There is a plethora of civil society organisations. Would you imagine that it would just be open to every civil society organisation to be represented?

Ms Richards—In our extremely wide and diverse civil society there are narrow sectors who are specifically interested in the dialogue processes, and of those there are even fewer who would have the expertise, the experience and the resources to be able to participate. I appreciate that looking at civil society as a whole and providing an invitation for that group to be involved in the dialogues might appear to be a little unwieldy, but, once you narrow it down to NGOs who have provided submissions to these inquiries or provided submissions to the Department of Foreign Affairs and Trade before each dialogue, you are getting down to a relatively manageable number of organisations that might be wanting to pursue observer status in the actual dialogue meeting itself.

The other thing to take into account is that, from our side, we have worked very hard to set up networks and forums by which we can have representation on behalf of a range of different organisations. There are various peak bodies, such as ACFID, and also more informal forums, such as the Australian Forum of Human Rights Organisations, which would be able to provide facilitation: you could have a representative or an observer who could then report back to a broader sector. I think it is absolutely manageable and feasible that there could be observers.

Senator FERGUSON—There must be an optimum number of people best suited—simply physically—to a dialogue taking place.

Ms Richards—Certainly, and we would be more than willing to sit down with the department and work through what would be those constraints that they would feel and how a meeting would be run. We are not coming to the table with an unrealistic expectation that numbers would have to be limited or representatives of broader sectors would have to be sought. We have not even had the opportunity to discuss those logistics at this stage.

Senator FERGUSON—Without wanting to show my ignorance, I notice you said that Deputy Foreign Minister Shen acknowledged the independence of your organisations. In acknowledging the independence of your organisations, I wonder how many counterparts there are in China with the same degree of independence.

Ms Richards—Deputy Foreign Minister Shen suggested that there were 260,000 NGOs in China. In our discussion with academics from Australia who work quite closely with civil society organisations and academics in China, we are under no illusion as to the fact that civil society and non-government organisations in China are very different from those in Australia. At the same time, we should not shy away from recognising that there is a flourishing of particularly grassroots independent organisations. There is a growing sector within the academic world which is able to be a little more vocal and push the envelope a little bit more on some of these issues. And we are also seeing from a number of so-called government owned NGOs that there is actually a spectrum. There are organisations that are very much in the pocket of the Communist Party; there are other organisations that are seeing opportunities to become more and more independent and, I guess, cut the apron strings a bit. I would take Mr Shen's claim of 260,000 NGOs in good faith. I would hold some reservations about that figure.

Senator FERGUSON—How many are independent?

Ms Richards—Pardon?

Senator FERGUSON—As to how many were independent?

Ms Richards—Exactly. But I would not dismiss out of hand the observation that there is a growing independent NGO sector in China.

Senator FERGUSON—You yourselves are very independent, but what sort of dialogue do you have with the Australian government agencies involved in the process? What level of consultation do you have?

Ms Richards—As I was saying before to Senator Bolkus, there is an opportunity before each of the human rights dialogues with each of the three partner countries for written submissions on particular cases. There is a very quick debriefing on human rights dialogues in each of the DFAT-NGO human rights consultations, which are twice-yearly. But the debriefing to more interested organisations and in more detail as to how the dialogues actually went, what was discussed, what issues were raised and so on is very ad hoc and we have a lot of difficulty in getting out the detailed nuances of what was discussed.

Senator FERGUSON—I think elsewhere in your submission or recommendation you talk about expanding the reporting, don't you?

Ms Richards—Exactly.

Senator FERGUSON—I think both to the parliament and to the organisations.

Ms Richards—Exactly. We are not aware if a report is made in writing to each of the partner countries after the dialogues in some kind of follow-up, acknowledging the issues that were discussed, the possible action outcomes and the points to be pursued in further dialogues. There is no systematic public accountability reporting through the parliamentary processes. We see these kinds of processes established in other bilateral dialogues, particularly between the European Union and partner countries. So there is a precedent; there is a model. Even the

information that the European Union provides on its web site is far superior to the information that is provided by DFAT, I have to say.

Senator FERGUSON—Thank you.

Mr BAIRD—In your submission you mention the benchmarks used by the European Union. Can you explain how you can see that system being applied in Australia.

Ms Richards—I would be happy to provide to the subcommittee in writing quite an interesting report from the International Federation of Human Rights, which is a French organisation. They did an assessment of the EU-China dialogue over the last couple of years. I think the report was in 2004. They assessed progress linked to the EU-China dialogue since 1996. The EU had set out specific benchmarks and indicators that it wanted to work towards through each of those dialogues. Then the independent NGO was able to go through and say, ‘On these particular benchmarks, progress has been made. On these particular benchmarks there is still progress to go.’ There are specific indicators as well. It is not just a matter of saying, ‘Ratify the International Covenant on Civil and Political Rights.’ It is also acknowledging that to get to that point there are a number of steps to go through. If the subcommittee would like that, it is an interesting report.

Mr BAIRD—When you feel that we fail in that regard—

Ms Richards—We do not have any benchmarks or indicators. I am sure you will have the opportunity to ask the department itself but, in our request for greater accountability, the department has put up its hand and said quite openly, ‘We’re not going to set any benchmarks, because we’re not going to be able to tell if the human rights dialogue is making any demonstrable progress towards advancing human rights.’ On our interpretation, that is an invalid justification for having a human rights dialogue. If you cannot demonstrate that you are making some progress—and it does not have to be fantastic advancement; baby steps are sufficient—and that the dialogue is making a positive contribution, it raises the question of what point there is in having a dialogue. Is it merely window-dressing?

CHAIR—To be fair, have you looked at the department’s submissions to this inquiry?

Ms Richards—I have.

CHAIR—They make some observations in those about individual cases they handle—the level of openness, the engagement and things like that. You have characterised it as being a ‘throw your hands up in the air and no-one can do anything’ sort of thing. I am not sure that is an accurate representation of the position they have at the moment.

Ms Richards—I think they have seen positive outcomes but they have not said, ‘We are undertaking these dialogues so that we can get these outcomes.’

Mr BAIRD—What normally happens? Do you get formally briefed by DFAT after the dialogues? In what form does the briefing and the outcome of the dialogue come to you?

Ms Richards—We have to request a specific debriefing on each of the human rights dialogues. It is not provided as a general invitation; it is something that we do have to pursue. A very brief and very broad overview of each of the dialogues goes in the DFAT-NGO consultations, but it is not institutionalised within the process of having a human rights dialogue. A formal debriefing to NGOs, community groups and diaspora communities is not established as part of the process of having a human rights dialogue. If NGOs do not go out there and formally request it—

Mr BAIRD—What form does it take when you have the debriefing? Is it just a general discussion on what happened?

Ms Richards—Exactly.

Mr DANBY—What do you think the effect would be on each of the three dialogues? I know the Vietnam and Iran ones are not as continuous. In fact, there has only been one in Iran, hasn't there?

Ms Richards—That is correct.

Mr DANBY—Country by country, what would the effect be on those governments of seeing that your recommendations were put into effect—for example, that civil society groups both at the Australian end and at their end were able to have input into the process? What would China's reaction be to, say, labour activists here in Australia wanting to have some input into events that have happened in Chinese mining over the last few years, or over arrests of labour union activists?

Ms Richards—We had the opportunity, with a representative of the Australian Council of Trade Unions, to meet with the Chinese government in October. They were more than willing to discuss trade issues. Within China itself there is a greater movement towards looking at the role of an independent trade union around not just workers' rights but a whole range of issues such as environmental, health and educational issues. In the case of the Chinese side, we see that there is perhaps a greater enthusiasm from the partner country than from Australia. There has certainly been a lot of caution and nervousness from the Australian side as to involving civil society—along the lines, as you are suggesting, of including not just trade unions but other human rights organisations.

Mr DANBY—I was just using them as an example.

Ms Richards—Yes, certainly. With regard to Iran and Vietnam we think that, given the success and the enthusiasm with which the October meeting went ahead, there is a precedent on which the Australian government could approach both Iran and Vietnam to say that there has been an independent meeting between government officials from Chinese and Australian NGOs to discuss human rights issues. If China is happy to sit down and talk with our civil society, we certainly hope that Iran and Vietnam would be able to do that. I do not have enough detail at this stage to provide an answer on specifically how Vietnam and Iran might react to certain sectors or issues from the Australian community. I am happy to follow that up. But, as I said, given the precedent that we have had with the China meeting, we think there is greater enthusiasm from the partner countries than they are given credit for.

Mr DANBY—Was this meeting of the ACTU and Chinese authorities organised by the Department of Foreign Affairs and Trade or was it organised directly with the ACTU?

Ms Richards—It is detailed in the supplementary submission that ACFID has provided. For a number of years Australian NGOs have been requesting support from the Australian government for an independent meeting between NGOs and government officials that attend as part of the dialogue processes. Last year the Australian government, specifically Minister Downer, said, ‘Get a proposal to my department. I’ll see what I can do.’ We provided a proposal and the department followed it through with the Chinese. I think they were somewhat surprised—we were certainly very happy—when the Chinese said, ‘We’re more than happy to sit down with Australian NGOs.’ The numbers were restricted, I believe, due to a nervousness from the Department of Foreign Affairs and Trade as to how that meeting would go, even though we stipulated that it was very much independent of the government’s meetings. The five representatives who were there were me, from the development and aid sector; the Human Rights Council of Australia; the United Nations Association of Australia; a representative from the Australian Council of Trade Unions; and a representative from the National Committee of Human Rights Education. So with those five representatives we covered an incredible spectrum of issues.

Senator BOLKUS—Just on that issue of greater civil society representation and participation, did you get any sense from the Chinese last time, and have you discussed it with others, as to what sort of reaction you would get from dialogue partners if the process was broadened out? Or were you thinking of a two-tiered process whereby the government officials meet in one forum and there is a collateral NGO process feeding into it? You also raise a question about parliamentarians. Have you considered what their degree of participation might be? For instance, having a couple of representatives of this committee as part of the official process might be a matter worth pursuing. Have you considered those issues?

Ms Richards—We have. I will answer your second question first. That is exactly along the lines of what we would be considering. We do appreciate that there has been parliamentary involvement—and from members of this committee specifically—and we appreciate that you are very busy people, but it has been on more of an ad hoc basis. We would like to see something that is formally institutionalised, such that there would always be a member of this committee, as well as an open invitation to other parliamentarians to be part of those dialogue processes, specifically as observers and as active participants if they felt equipped to do that.

With regard to your first question, we are really looking to how the process has evolved between the European Union and third partner countries in their human rights dialogues. They have two processes that run parallel. They have a government-to-government dialogue which is preceded by seminars with NGOs from within the European Union so that they can raise human rights issues. Then there is a formal debriefing afterwards. But alongside that, both governments, from within the European Union and from the partner country—let us take China as an example—formally agree to and grant permission for an independent, non-government dialogue. That involves non-government organisations, members of the academic world and statutory body representatives. Those meetings are separate from the government meetings. They certainly can feed into the government meetings afterwards. If a particular issue is raised in the non-government dialogues, the idea is that in future it will be reflected in the government processes so that you can effect some change. It allows an atmosphere and a meeting where members of

civil society, particularly from partner countries, are able to provide their perception of, their concerns about and their interpretation of progress or lack thereof on human rights standards to their counterparts in the other countries.

CHAIR—In the European Union arrangements, what is the representation of members of the European Parliament?

Ms Richards—On recollection, I think that it is institutionalised within the process that there is a parliamentarian. I would have to check that but, just off the top of my head, I think that is how it works.

CHAIR—So your suggestion is that the parliamentary representation be formalised as part of the process. You are right in saying that it is reasonably ad hoc currently. It depends on whether you can get yourself there. It is not supported by DFAT, so that is part of the challenge in that.

Ms Richards—Exactly.

CHAIR—And the level of notice is not always great. Mind you, that is often subject to the vagaries of dealing with the partners more than anything else.

Ms Richards—Certainly, particularly with China—and again we keep referring back to China, but I should also note that we are talking about Iran and Vietnam here. With China, we are about to enter the year of the ninth dialogue. I think everyone can see that it is there on the horizon and that it is coming up. The actual details about when it will be held and where and whatnot may take some time to come out, but there is no reason why the department cannot be discussing early on in this stage, perhaps months out from when the dialogue will be, what the issues are that they might want to discuss. As you have said, there are things like financial resource support so that parliamentarians can be there and greater notice of when the meetings will be. I think that is actually quite easy to manage.

Senator BOLKUS—You have mentioned one parliamentarian, but I presume you are both thinking about at least one from the government and one from the opposition.

CHAIR—I think I said parliamentary representatives, and if I did not then I certainly meant to.

Senator BOLKUS—I was just concerned about your future!

CHAIR—That is very kind of you, Senator Bolkus! In your substantive submission, under the third term of reference, you say that it is currently unclear as to the level of involvement of government agencies outside DFAT in the dialogue processes. That surprises me. It cannot be that hard to ask AusAID or HREOC what they do. Has ACFID not done that?

Ms Richards—We have. Particularly with AusAID, we are just not able to ascertain how involved they get prior to the dialogues. It is my understanding that AusAID officials have not been involved in the actual dialogue meetings. We know that certainly the human rights section of AusAID is extremely limited.

CHAIR—I recall the first China dialogue in which I participated, and I know for a fact that AusAID officials were formally present at the dialogue.

Ms Richards—Right, so that would have been the first one.

CHAIR—That was some years ago. It was not the first one of them all, but it was the first one in which I participated, so it would have been in 2002, or something like that.

Ms Richards—It is my understanding that over the last couple of years AusAID officials have not participated in the dialogue process itself. Given the link between the dialogues and the Human Rights Technical Cooperation Program, I think it would be entirely appropriate for AusAID to be there.

CHAIR—I will have to refresh my memory. And HREOC—what is your view on that?

Ms Richards—We would more than support HREOC's involvement there. I do know that HREOC has been involved in all but one of the dialogue processes.

CHAIR—I am not really sure what point you are making. You say that it is unclear, but I would imagine that, if an organisation as august as your own were to ask HREOC and AusAID what happens, they would very happily tell you. HREOC have made a very public submission to this inquiry, but I am sure you would not have had to drag them kicking and screaming to tell you before that.

Ms Richards—Not at all; in fact it is quite the opposite with HREOC—they have been more than willing and more than open to actually—

CHAIR—So your issue is with AusAID?

Ms Richards—Yes, our issue is with AusAID.

CHAIR—Have you been met with a brick wall? Have they not answered your questions? What is the problem?

Ms Richards—The problem is that we are just not sure that they have the resources or perhaps even the support from DFAT, or even at a more political level, for their involvement in the dialogue processes.

CHAIR—They are appearing here today.

Ms Richards—That is good.

CHAIR—They have appeared at all the briefings of the committee on this issue. I must say that I am really surprised by that observation, but we will follow it up with them.

Mr BAIRD—To what extent do you have dialogue with the churches in terms of their human rights concerns? I head up the Parliamentary Christian Fellowship here, and I do see that quite a few human rights abuses are going on in terms of church personnel—pastors of churches who

are thrown into prison, detained and tortured. Do you have dialogue with them, or is it expected to come through other sources?

Ms Richards—Specifically, my organisation would have dialogue with churches or church partners through our member organisations. There are also other faith based or church based organisations in Australia who have relationships and partners with church organisations in each of the three countries that have human rights dialogues. So those relationships are there and certainly the flow of information appears to be quite strong between them.

Mr BAIRD—Do they give you the names? I have the names of various pastors and members of their congregations who have been rounded up and thrown into prison. Do they talk to you about individual cases?

Ms Richards—Not specifically with me or at the secretariat level, but certainly with our member organisations and with other organisations it very much gets down to that level of detail. I do know that, when other organisations have provided submissions to DFAT, they have gone into that level of detail about specific cases and individuals prior to each of the human rights dialogues.

CHAIR—What do you envisage that the annual report to parliament would contain and by whom would it be made?

Ms Richards—I believe that such a report would be made by the Minister for Foreign Affairs. It would contain a synopsis of the overall aim of undertaking the dialogue and the specific objectives for that particular dialogue or future dialogues. It would discuss the outcomes. It would outline issues that the partner country specifically raised with regard to their own human rights concerns as well as human rights concerns in Australia. It would conclude with a vision—or a statement, more correctly—of how human rights dialogues might persist in the future. Referring back again to the EU—and I know I am making a lot of references to them—in their regular assessments of each of the human rights dialogues which they undertake each year, they do include an assessment as to whether a human rights dialogue should be pursued in the future. They have expectations that they feel need to be met within each of the meetings and then as a follow-up to each of the meetings. If those expectations are not met then they will abandon the dialogue altogether.

CHAIR—In relation to the Iranian dialogue, you referred earlier to baby steps—advancing as constructively as possible even if that means just taking small steps. Does ACFID have any engagement with NGOs in Iran which provide you with any feedback or reflection on the first dialogue and whether there should be more?

Ms Richards—The ACFID secretariat does not. I know that some of our member organisations—for instance, the Refugee Council of Australia—have had quite close relationships with the equivalent peak body for refugee organisations in Iran, which, unfortunately, has had to close in recent weeks.

Mr DANBY—Why?

Ms Richards—They have found that in the current environment they are unable to operate. I think it is due to specific suppression and harassment of staff and also because the climate has become so difficult for them that they have felt they had to close. That is the level of detail that I have. If you are particularly interested in that I can follow it up for you.

Mr DANBY—I would be interested in that. I must say, it has not had any media coverage.

Ms Richards—Unfortunately, no. I do know the Refugee Council of Australia raised it formally with Minister Downer in the recent DFAT-NGO human rights consultations.

Mr DANBY—I would have thought there would still be an enormous number of refugees in Iran.

Ms Richards—There are. It is one of the largest refugee holding countries in the world, I think. There are member organisations of ours, and certainly other partner organisations, that have a very close relationship with civil society, religious communities and other groups within Iran. I would be hesitant to speak on behalf of them. I believe that most of them would like to see human rights dialogues that do have a request for benchmarks within them. I am happy to follow that up if you want more detail.

CHAIR—I note with interest in the AusAID and Attorney-General's Department joint submission that AusAID in fact was also represented at first assistant secretary level in the first Iranian dialogue, so there seems to be a capacity to participate.

Ms Richards—That is good.

CHAIR—As there are no further question, I thank you very much. It seems a short time since our last meeting and the committee is grateful for your assistance. If there are any issues we need to follow up I hope you will assist us in getting further information.

Ms Richards—No problem.

CHAIR—And you have undertaken to pursue some matters and provide us with further information where that is possible.

Ms Richards—Yes, I will.

CHAIR—Thank you very much.

[9.45 a.m.]

KENNEDY, Mr William Bruce, Director, International Programs, Human Rights and Equal Opportunity Commission

von DOUSSA, The Hon. John, President, Human Rights and Equal Opportunity Commission

CHAIR—Welcome. The subcommittee prefers that all evidence be given in public, but should you wish to give evidence in private you may ask to do so and the subcommittee will consider your request. The subcommittee does not require you to give evidence on oath. I do advise you, though, that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. The subcommittee has a submission from HREOC, which we have numbered 14. Mr von Doussa, I invite you to make an opening statement and then we will proceed to questions.

Mr von Doussa—Our submission describes the three ways in which HREOC is involved in the human rights dialogue process. The design and management of the technical cooperation program represents the most substantial input by HREOC, and I will focus on that. Our technical cooperation programs with Iran and Vietnam started much later than the one with China and are still at a very early stage, but we now have quite a lot of experience in China. The program with China, as you know, was announced in 1997 but it did not get beyond initial preparatory actions until the middle of 1999.

At that time there was a great reluctance among the Chinese agencies to engage on human rights related subjects—even the term human rights could not be used publicly and the agencies would not even talk directly to us. At that time, if we wished to discuss an issue with an operating agency, we would have to ask the embassy to ask the Ministry of Foreign Affairs to ask the agency concerned. At that time we were told by our China experts that it would be very unlikely that we would ever be able to work with China in a meaningful way in relation to human rights. That all seems a long time ago. In intervening years there have been changes in China: in the Chinese constitution and in some Chinese attitudes. In the result it has proved possible to conduct, we think, successful technical cooperation programs on human rights with China.

Amongst an increasing number of Chinese organisations there seems to be a realisation that for China to take its rightful place as a global leader it needs to develop a better capacity to fulfil the aspirations of its own people. Although these aspirations are seen as mainly economic, we think it is increasingly recognised by sophisticated Chinese officials that the protection of human rights can lead directly to the achievement of not only social aspirations but also economic aspirations. This is a conclusion that the Chinese themselves have drawn only after careful observation and study. Our program supports this observation and outcome. Our program works to expose the Chinese to the processes of rights protection in Australia and then, when the Chinese have decided which aspects of rights promotion and protection are relevant to their circumstances, to provide support for them to pursue the appropriate reforms.

In some cases the Chinese officials we work with have not seriously considered particular reforms prior to contact with Australia. In most cases they have already decided what reform is necessary but are uncertain how to proceed or are keen to look at alternatives. By supporting China's own reform rather than trying to impose our suggestions we have been able to establish relationships with trust and confidence, and have also been able to enhance the sustainability of our inputs. We now deal directly with each of the dozen or so agencies that are involved in the program and often we are in contact on a day-to-day basis. We use the language of human rights freely and there are few subjects that cannot be discussed quite openly with the agencies, although I should add that some subjects are discussed only in private. As a result, just to cite a few examples, we are now able to assist the National Judges College to develop curricula for the training of judges in human rights protection; assist the Supreme People's Procuratorate to develop rules of evidence to protect the rights of the accused; assist the Supreme People's Court to develop forms of correction that do not involve imprisonment; work with the Ministry of Public Security on police ethics and accountability, and the management of detention centres; and work with the Ministry of Justice on the treatment of prisoners.

These are all sensitive areas, but our work in these areas has coincided with some significant reforms. However, we think we need to be realistic about what can be achieved through the Human Rights Technical Cooperation Program. We should keep in mind that Amnesty and many other organisations regularly document continuing human rights abuses in China. We need to acknowledge that China, like many countries, has a considerable task ahead of it in relation to human rights protections. The size of the task indicates the need for Human Rights Technical Cooperation and like programs and their potential.

Although the work of the technical cooperation program is tightly focused, its objectives are nonetheless rather ambitious. The stated overall objective of the Human Rights Technical Cooperation Program is to strengthen the administration, promotion and protection of human rights in China. This was not the original objective. When the program was announced, its objective was simply to cooperate. At that time, successfully undertaking a cooperative activity focused on a human rights subject was considered ambitious enough. However, both the commission and AusAID were more ambitious and the present objective was proposed by the commission and agreed in 2001. Even in less sensitive areas of technical cooperation, the objective of strengthening an outcome as opposed to strengthening the capacity to produce an outcome is a considerable challenge. Most technical cooperation programs only aim to strengthen the capacity of cooperating organisations to produce a result. Our program aims to produce the result itself: better administration, promotion and protection of human rights.

Even though the Human Rights Technical Cooperation does not aim to change the political landscape in China, it should still be understood as a very ambitious undertaking, particularly so when one considers the situation which the program faced when it was conceived some years ago. There is now a sufficient body of evidence to suggest that, in many areas, the actual result is being produced. Our experience leads us to conclude that the promotion and protection of human rights in China today, in some respects at least, is stronger than it was five years ago. However, it should not be thought that Human Rights Technical Cooperation is responsible for these improvements in an empirically identifiable way.

The commission would caution against any suggestion that Human Rights Technical Cooperation is directly responsible for any changes in Chinese attitudes towards the promotion

and protection of human rights. Let me be unequivocal about this: all human rights reform in China results from conclusions drawn by the Chinese and from actions taken by the Chinese themselves. The role of foreign parties is strictly limited to encouragement and technical support. Even within this area, the contribution of foreigners is small, with most encouragement coming from the Chinese themselves and most technical advances being of domestic origin.

Within the small role played by foreigners, Human Rights Technical Cooperation is a contributor. Its programs are small, representing, in our case, only about two per cent of our overseas development aid to China and a very small proportion of Australia's trade with China. The operational strategy of the program is to align itself with a reform agenda of individual Chinese agencies and to provide encouragement and technical support for these reforms. We believe that this is of value to the individual cooperating organisations and that its impact on them is at least commensurate with the size and scope of the program.

We believe that, over the course of the past six years, the program has had a favourable impact on Australia's own particular interest in human rights in China. The program has demonstrated that cooperation with Western countries need not involve triumphalism and that Australia in particular does not claim to have all the answers. It demonstrates that cooperation involves mutual respect and that China can cooperate with Australia on even potentially embarrassing subjects on the basis of trust.

It seems that Australia continues to be one of the partners of choice for cooperation in the most sensitive of human rights areas. This is well demonstrated not only by the direct statements of cooperating organisations but also by the topics nominated for inclusion in the program by cooperating organisations and by the eagerness of some of the organisations to join the program. It is perhaps notable that one of the aspects of the reform agenda of the National Population and Family Planning Commission is specifically to seek out cooperation with Australia in the human rights aspects of family planning. I anticipate that the new cooperation with the National Population and Family Planning Commission may be of some interest to the committee, and we would be happy to elaborate on that if requested.

In closing, I would like to again emphasise that the advances in human rights promotion and protection in China result from Chinese decisions and from Chinese programs of reform. The role of human rights technical cooperation is to expose Chinese agencies to Australian expertise and experience in the promotion and protection of human rights. Where this expertise and experience is relevant and useful, the Chinese agencies take it up to inform and develop their own reforms. Thus, while we would like to think that we make a contribution to the program, it is the Chinese who decide whether or not to pursue improvements.

CHAIR—Thank you very much. Mr Kennedy, do you wish to add anything?

Mr Kennedy—No, thank you.

CHAIR—One of the observations that is made in HREOC's submission in relation to attendance at dialogues is something I would describe as an observation about the value of some healthy tension, as it were, in the presentations that HREOC makes, either through the president or, I think on the last occasion, Mr Calma. How do you characterise that?

Mr von Doussa—Just as you put it. 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.

CHAIR—And that has been a role that HREOC has been able to play without any restriction in relation to the dialogues from the government agencies?

Mr von Doussa—We have no restrictions placed on us.

CHAIR—I have one other question I want to ask before I go to my colleagues. In your submission, under the heading of ‘Involvement of non-government organisations’, you indicate that you have a standing offer available to debrief interested NGOs on the TCP work and that you have not been rushed off your feet with enthusiasm from non-government organisations to understand what HREOC is doing, what it is achieving, and so on. Is that a fair characterisation of your submission?

Mr von Doussa—I think I have had one discussion with Simon Rice in the nearly two years that I have been there, and that was a very peripheral one about the human rights dialogue. Mr Kennedy would be the person most likely to be contacted, and he can speak about his role.

Mr Kennedy—I attend the DFAT non-government organisation roundtable on human rights which is on twice a year. On each of those occasions I take the opportunity to renew the offer to provide a briefing on the technical cooperation programs with China and other countries that we are involved in to all of the NGOs. That has been taken up on, I think, three occasions over the course of five or six years. I should elaborate on that slightly. One of those briefings was coordinated by ACFID and there were a number of organisations present for that briefing. There were probably four or five organisations there on that occasion.

CHAIR—But you run this program every year.

Mr Kennedy—Absolutely.

CHAIR—In a whole range of activities, as we can see from your submission—which, by the way, is a very valuable submission to the committee. That strikes me as a fairly low level of engagement.

Mr Kennedy—Yes. It is interesting. We find that we get many more inquiries from overseas than we get from within Australia.

CHAIR—Curious.

Senator BOLKUS—I have a few questions. There seems to be an underlying theme in your submission that maybe the whole thing could be taken a bit more seriously. You say at one stage:

Except for some interested individuals within some departments, Australian agencies, including the Commission do not have sufficient expertise to closely question Dialogue partners on their policies.

Then you recommend strategy planning and so on. What sorts of failings do you see now, and how would you envisage an ideal process, under your strategy deliberations and so on, in the future?

Mr Kennedy—The dialogue process started with both sides feeling their way. It was appropriately reserved and it proceeded in a conservative way. 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, if you like. Perhaps a way forward here would be for us to identify specific subjects and have experts in those particular subjects attend the dialogue; people who really have in-depth expertise on those particular subjects. 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.

CHAIR—To clarify something in that answer, when you say ‘experts in particular areas’, do you mean experts out of the relevant government agencies—or the executive as you refer to it—or do you mean external experts participating in the dialogue?

Mr Kennedy—Both. For instance, you could identify an area such as the management of correctional institutions, which would include detention centres and police lockups et cetera. There are experts within government and outside of government who could assist dialogue partners to identify the issues.

CHAIR—Thank you.

Senator BOLKUS—That is one aspect. You mentioned more strategic engagement with NGOs. Do you have a model that you consider appropriate?

Mr Kennedy—We do not have a particular model. But, as I have just described, some NGOs have particular expertise that is not replicated in government, so certainly the involvement of NGOs would add a dimension of knowledge to the Australian delegation.

Senator BOLKUS—ACFID suggested objectives and time frames and evaluation processes. Have you considered those sorts of concepts?

Mr Kennedy—As far as the technical cooperation program is concerned, we very clearly have stated objectives and we evaluate every activity against those objectives and report on it. As far as the dialogue is concerned, that is an executive government process and we leave it up to the executive government.

Senator BOLKUS—On that technical cooperation program, you say that the program is designed by the commission and implemented on an annual fee-for-service basis. How does that work?

Mr Kennedy—The commission is contracted by AusAID to undertake a planning visit to China each year. We meet with the Chinese agencies and agree on activities that will be proposed during the dialogue in the coming year. Our report goes forward to the dialogue. The

activities are approved or otherwise by the dialogue partners. Once that happens, AusAID enters into a contract to implement the activities.

Senator BOLKUS—Is it the commission that does the on-the-ground technical cooperation work and no other Australian agency?

Mr Kennedy—The commission manages the technical cooperation program. A great many agencies are involved in actual implementation. I have not done a count but I would guess that probably 150 or 200 agencies have been involved in the program.

Senator BOLKUS—When you say in respect to Vietnam that executive departments have not followed up initial activity proposals, are we talking about the Australian executive?

Mr Kennedy—Yes, we are. But this submission is from last year. In fact, executive agencies have followed it up now and we had an initial planning mission in Vietnam in January.

Senator BOLKUS—When did you first recommend it?

Mr Kennedy—Probably at the first dialogue.

Senator BOLKUS—Which was when?

Mr Kennedy—2003.

Senator BOLKUS—Okay. On Iran as well you say there is little enthusiasm among the executive departments for a technical cooperation program. Has that changed at all?

Mr Kennedy—No.

Senator BOLKUS—When was that first recommended, 2003?

Mr Kennedy—During the dialogue in 2002. There has only been the one dialogue and that was in 2002.

Senator BOLKUS—So what needs to happen there? Does there need to be some political leadership? Where is the roadblock?

Mr Kennedy—I really do not know. We do not pursue international technical cooperation work. The agencies come to us and request that we be involved. If they do not do so then we are not involved.

Senator BOLKUS—You say that the achievement of the Human Rights and Equal Opportunity Commission have been recognised internationally in respect to China. Can you tell us how that has happened?

Mr Kennedy—We were contacted by agencies from other countries, by UN agencies for instance, and requested to provide information and input to their own programs.

Senator BOLKUS—Okay, so you have been engaged rather than received an international award.

Mr Kennedy—I see; no, we have not received an international award.

Senator FERGUSON—I have read your completion reports on these three dialogues. I do not know whether I have read it correctly or not, but it appears to me that you have a more positive attitude to the Vietnam dialogue than the others. Am I reading it right or wrong?

Mr Kennedy—No, I do not think so.

Senator FERGUSON—It is just that your conclusions seem much more positive there than they do with the other dialogues. Or maybe I am reading something into it that is not there.

Mr von Doussa—My impression of it was that everyone was very enthusiastic at the end of the Vietnamese dialogue, and you would find that reflected in the report. The problem has been subsequently; it has not materialised in the way in which we were hoping.

Senator FERGUSON—This was written last year, wasn't it?

Mr Kennedy—The submission was written last year. The report on Vietnam, which is an extract from another report that is attached to this submission, was actually written in 2003.

Senator FERGUSON—So, since that time the reaction is not as optimistic as it sounded in the conclusion.

Mr Kennedy—I think there is more caution now than there was then.

Senator FERGUSON—You also suggest there needs to be more focused briefing sessions between the executive and NGOs. What form do the briefing sessions take now if they need to be more focused in the future?

Mr Kennedy—I am thinking only of the briefing that takes place during the DFAT NGO roundtable. It does not just cover the dialogues; it covers a large range of issues. The time that is devoted to the dialogues is relatively short. I just heard Kathy Richards mentioning the briefing that ACFID had received from DFAT, which I was not aware of, so that may very well take up that point exactly; it may be a very much more focused debriefing.

Senator FERGUSON—You talk about minimal interest in HREOC's briefings. Why do you think there is minimal interest in your briefings? In your submission you talk about a low-level inquiry from NGOs. Are agencies always informed of the chance to get briefed?

Mr Kennedy—Yes. Twice a year I formally advise the gathered NGOs with an interest in human rights and offer to debrief them.

Senator FERGUSON—Why do you think the uptake is not as much as you would like?

Mr Kennedy—I think the only issue that the NGOs have is not so much with the technical cooperation program as with the dialogue—that they are more interested in the political dimension than in technical cooperation. I suspect that perhaps they do not see that there are issues in technical cooperation in the same way that there are political issues.

Mr DANBY—I have a number of unconnected questions. First of all, with some of the previous dialogues—it does not matter with which country—what has been the interest from foreign parliamentarians or quasi parliamentarians to participate?

Mr Kennedy—From memory, I do not believe there have been any parliamentarians. With the dialogue with Iran, there was a meeting with some parliamentarians subsequent to the dialogue and not within the dialogue session. I am sure DFAT could answer this better than I can, but I am not aware of foreign parliamentarians being involved.

Mr von Doussa—Just to enlarge on that: we did have a visit out here after the Iranian dialogue. A three-person group came out from the Iranian Human Rights Commission. That was led by a politician.

Mr Kennedy—That is right.

Mr DANBY—That is a very good introduction to my next question about the Iranian Human Rights Commission. We just heard about the closure of the Refugee Council of Iran. Are you in contact with the Iranian Human Rights Commission? Were they involved in the previous dialogue? Are there civil society organisations in Iran that have been involved in the one dialogue? Would they have similar problems to the Refugee Council of Iran participating in the sense that they do not exist, or are they under pressure?

Mr Kennedy—We have had no contact with the Islamic Human Rights Commission since that visit.

Mr DANBY—I am sorry—they are called the Islamic Human Rights Commission?

Mr Kennedy—Yes.

Mr DANBY—And they are based in Iran?

Mr Kennedy—They are the Iranian Human Rights Commission, but their formal title is the Islamic Human Rights Commission.

Mr DANBY—I see; okay. This is in the committee's suggested questions to DFAT: there is a quote from your submission—I do not know whether it is accurate, because I could not find it when I went back to read the original document—that says that direct participation by NGOs in the formal dialogue process may 'discomfort the executive and dialogue partners or make dialogues unmanageable or unfruitful'. Is that an accurate quote? Do you remember that?

Mr Kennedy—Yes; I think that is right.

Mr DANBY—Is that a request that NGOs not be involved?

Mr Kennedy—No, not at all. It is simply raising the point.

Mr DANBY—So it is just making the point that this analytically may be what happens when foreign countries realise that people from our side, or both sides—who is participating in these dialogues?

Mr Kennedy—Non-government organisations that the foreign government finds unacceptable are participating.

Mr DANBY—So if the Bahai participated in a dialogue with the Iranian government that might sabotage the whole—

Mr Kennedy—Conceivably.

Mr DANBY—The Australian-Tibetan Association, for example, in the China one is in difficulty.

Senator BOLKUS—Is Tibet on the agenda with China?

Mr von Doussa—Yes, it has been raised in the dialogues. In 2003, when it was raised in preliminary discussions as to the agenda, it is my understanding that the Chinese government said, ‘If you have a continuing concern about Tibet, why don’t you go up and have a look at it?’ They facilitated a visit to Tibet and meetings with a number of organisations up there for a number of the dialogue members. Bill went up, and there was AusAID and two members of DFAT. Dr Raby led the party.

Senator FERGUSON—We have a submission that has been given to us by an individual—submission No. 11—which is quite critical of the situation, and the effect of the ongoing human rights dialogue. I will just read you the first paragraph of what he said:

In its present format the Sino-Australian Human Rights dialogue is at its best an ineffective, poorly designed process that will not succeed in achieving beyond Beijing’s desire to deal with its poor public relations over Human Rights and Tibet. At worst, it is a mutually convenient charade designed purely as a mechanism that enhances Australia’s trade opportunity.

These are personal views, quite obviously. It goes on:

After seven years of impressive non-achievement, there must be a serious re-engineering of the mechanism and goals of the dialogue. At the present trajectory, Tibet will be completely and irrevocably Sinocized within twenty years.

Would you like to comment on that?

Mr von Doussa—It raises a lot of very difficult political issues on which there are divided opinions, I think.

Senator FERGUSON—This is only an opinion. I agree with that—it is only an opinion. But obviously there are people who do not believe that the dialogue and the process are achieving much. Senator Bolkus raised the issue of Tibet and I thought it was a good chance to throw it in right there.

Mr von Doussa—I think you need—as I am sure you are aware—to keep a distinction in mind between the dialogue itself as a political exercise and the technical cooperation program, which is an independent limb of it. Whilst a lot of the criticism that you are no doubt hearing is about the dialogue, I do not think it automatically applies to the technical cooperation program. Many of those critics say there is some value in the technical cooperation program and maybe none in the dialogue itself, which is accused of being directed to trade, rather than to human rights. For our part, we have not been involved in any programs which are trade-directed, notwithstanding some comments to the contrary in one or two of the submissions. We just simply have not involved ourselves in trade-directed things at all. They are human rights ones directed to women and children in the judicial system, the minority groups. That is the focus of our programs.

Mr Kennedy—We have wanted to work in Tibet for some time. The Chinese have been very hesitant. It has taken us some time to establish enough confidence with the authorities in the Tibetan autonomous region to allow us to work there. We now have an initial activity that will take place in July this year, involving the delivery of minority language education in Tibet. That will be the first activity we have undertaken in Tibet. We have some hopes that we will be able to expand our work in Tibet but we have to say that it is very early days and the Tibetan authorities remain quite cautious.

Senator BOLKUS—What I also find positively interesting is the fact that you have been able to spread from the capital cities into regional China. Have they ever said to you that any particular part of the country is out of bounds? Have you been able to go wherever you want to go?

Mr Kennedy—No. I think you would consider probably Tibet and Xinjiang to be the most sensitive parts of the country, and we have worked in both. We need perhaps to be a little careful here when we talk about moving into provincial areas because, for the most part, we continue to work with the central agencies but through their provincial operations. So that is a little different from our working directly with local-level organisations. We still have ambitions to work directly with local-level organisations, and we have had some preliminary discussions on those topics which look encouraging, but at this point we are really working with the provincial agencies of the central government agencies.

Senator BOLKUS—In terms of the program focusing on judicial officers—judicial cooperation—are we still talking of Beijing or are we talking about being able to get into outlying areas?

Mr Kennedy—As far as judicial training is concerned, we are working in Beijing with the National Judges College, but the judges come from around the country—they come from all areas of the country. In fact, we have specifically focused on judges coming from the south-west, the north-west and Tibet. So, although the activities take place in Beijing, their reach is throughout the country.

Mr DANBY—I want to follow up Senator Ferguson's reference to the submission entitled *A charade in the shadows*. A paragraph in the executive summary states:

The deterioration in conditions in Tibet since 1997 shows that Beijing has been emboldened by the closed-door nature of Human Rights dialogue process and now acts with increasing impunity in Tibet. Dialogue partners are now reluctant to raise violations in multilateral forums in fear of retaliatory impacts on pending trade deals. Beijing has succeeded in buying complicit silence.

If one were to believe the essence of the submission what would the value be in visiting Tibet? Have we been incorporated in the process simply by going there? Is the situation in Tibet as you observed it radically worse than it was before? Do we have any criteria by which to measure it? What was achieved by being involved in the process if things are as bad as they say they are?

Mr von Doussa—We were certainly not deterred from asking any questions, and I did not get that impression from the questions that were asked in the dialogue. There were quite searching questions about the treatment of people in the monasteries, about the Dalai Lama, about the replacement of the Dalai Lama, about the reported execution of one or two people that had occurred in circumstances which would infringe human rights very badly, and about prison conditions. They were all put on the table and discussed in the dialogue. I have been to Tibet once; I have nothing to compare it with. What one sees while wandering around the places we were taken to does not bear out the view that the economic and social conditions in which at least the urban people are living are declining. There was a great deal of development work in schools, hospitals, communications and those sorts of things visibly occurring. But, on the other hand, there were Chinese people who were quite visible there too.

Mr DANBY—When you and the other agencies were in Tibet, did you get a chance to have any private dialogue with Tibetans or were they mainly government supervised discussions?

Mr von Doussa—We were taken up with three people from the Chinese Ministry of Foreign Affairs who were there. Two of them were interpreters—one came in at the last minute because the Australian-engaged interpreter was ill—and the third was a guide. They ensured that we got from place to place and meeting to meeting. We were introduced to people. At five o'clock, when the formal part of the dialogue finished, they went off and did their thing and our people were free to do whatever they did. They wandered around town, spoke with people and went to places of entertainment. One day we wandered around quite freely and did whatever we wanted to do.

Mr DANBY—This is in the capital, Lhasa?

Mr von Doussa—Yes.

Mr Kennedy—I have been to Tibet on four occasions but only once for the formal dialogue. On other occasions there did not seem to me to have been any attempt to curtail, limit or oversee who I was speaking to or what I was speaking about.

Mr DANBY—Who did you go with on the previous occasions?

Mr Kennedy—It was part of our technical cooperation program, for the purposes of discussions with the cooperating partners, but there did not seem to be any particular oversight of my movement around. However, I have to say that I was only in Lhasa, so I certainly have not seen much of Tibet.

Mr DANBY—Did you have a chance to meet privately with any of the people in the Tibetan religious circles?

Mr Kennedy—No, not because it was suggested that I should not but simply because the opportunity did not arise.

CHAIR—The observation that you make in the beginning of your submission about the dialogues themselves is that HREOC is not involved in setting the agenda or deciding on the strategy. Would you wish to be?

Mr von Doussa—We certainly do not set the agenda. That is set at the political level, I think, with discussions between government representatives. I attended one briefing session beforehand in which I was invited on a number of occasions to indicate whether there was anything else that we wanted to add to the particular agenda items. I rather doubt that we would need to be further involved in that. We would feel no hesitation in raising issues about the technical cooperation program that we were administering, if we thought it appropriate to do so, although we would obviously go through AusAID.

Mr Kennedy—Certainly informally. 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. There is a decision-making process and that strikes me as being appropriate.

CHAIR—Can you characterise for us the extent of your involvement with AusAID in the process of moving towards the dialogue and on an ongoing basis around the human rights dialogue activity?

Mr Kennedy—As far as moving towards the dialogue is concerned, we probably need to keep in our minds the separation between the technical cooperation program, the dialogue and the actual discussions. AusAID's interest in the dialogue is really limited to the technical cooperation program, so the discussions that we have with AusAID leading up to the dialogue are about the technical cooperation program. It is entirely of a technical nature: design, funding and timing of activities.

CHAIR—Do you think that there is a role to develop the involvement of AusAID at other levels in the dialogue process outside the TCP?

Mr Kennedy—I would not have thought so, because AusAID's expertise is very much in the technical cooperation area, except insofar as what arises in the technical cooperation program contributes to the discussions. I would not have thought that there is enormous scope for AusAID to be further involved.

Mr von Doussa—AusAID is delivering other programs outside human rights and technical cooperation programs in China.

Mr Kennedy—Yes, of course.

Mr von Doussa—Substantial ones, as I understand it. Obviously they would have some input there.

CHAIR—Mr Kennedy, in relation to the observations you made on page 5 of your submission about Vietnam and the initial activity proposal, I think you said that that has since been followed up.

Mr Kennedy—Yes, it has.

CHAIR—By AusAID?

Mr Kennedy—Yes.

CHAIR—Or DFAT?

Mr Kennedy—AusAID and DFAT, I suppose. AusAID contracted HREOC to undertake an initial design—an initial identification mission—which is what we had proposed 18 months earlier. That was undertaken in January—a very brief mission, one week.

CHAIR—January 2005?

Mr Kennedy—January 2005, yes. The report of that is currently in preparation.

CHAIR—In preparation at HREOC?

Mr Kennedy—That is correct.

CHAIR—So the next steps are that once you provide that report to DFAT—

Mr Kennedy—To AusAID.

CHAIR—To AusAID. It is for them to then evaluate and come back to you on where to from here.

Mr Kennedy—Yes. Our understanding is that that report will feed into the next session of the Vietnam dialogue. The dialogue partners will decide whether they wish to proceed with activities in those areas or not.

CHAIR—Just to recap similarly in terms of Iran—and I know Senator Bolkus was asking you some questions about this—you designed, if I am reading this correctly, a human rights dialogue related activity that would involve the Islamic Human Rights Commission.

Mr Kennedy—That is correct.

CHAIR—Have you presented that to AusAID?

Mr Kennedy—No. Sorry. We have undertaken a visit by the Islamic Human Rights Commission.

CHAIR—Here?

Mr Kennedy—To Australia. This is somewhat different from the Vietnam identification mission. The Vietnam identification mission is looking at the possibility of a broad program in various areas. The activity with the Islamic Human Rights Commission is looking specifically at strengthening the Islamic Human Rights Commission. It is really about areas of cooperation between HREOC and the Islamic Human Rights Commission. It is a much narrower focus. The initial identification activity was undertaken 18 months ago or thereabouts. There has not been another dialogue, so it has not been taken any further.

Mr von Doussa—I do not think it has been designed. They came out; they spent a week and a half looking at all our units and were briefed on all of them.

Mr Kennedy—In both cases—both the Vietnam activity and the Iranian activity—these were what we would call identification visits. It is really to focus on the broad areas where cooperation is viable. Once the partners agree that that is an area in which cooperation is viable, it is then necessary to design specific activities.

CHAIR—This would be more about capacity building, if you like, with the Islamic Human Rights Commission?

Mr Kennedy—That is right.

CHAIR—How would you characterise the response of the Islamic Human Rights Commission in that engagement? Were they positive and enthusiastic about the work that HREOC was showing them?

Mr Kennedy—Absolutely. It was one of my favourite activities.

CHAIR—Were you showing off? You are allowed to.

Mr Kennedy—I greatly enjoyed the activity. I found that the level of engagement was marked, that the people from the Islamic Human Rights Commission really wished to have a debate about issues. They really wished to involve themselves in the issues.

CHAIR—A debate with you or a debate in Iran?

Mr Kennedy—Both. They were very enthusiastic about the possibility of cooperation, although they were also very realistic that the countries and systems are very different. They were quite enthusiastic about specific areas of cooperation—for instance, in complaint handling, an area where we have a very well developed system. They thought that they could develop something like that.

CHAIR—This is not a commission of the parliament in Iran, is it?

Mr Kennedy—It is a commission of the parliament.

CHAIR—Are they members of parliament?

Mr Kennedy—Some of the oversight committee are members of parliament, but not all of them are.

Mr von Doussa—The leader of the delegation is a member of parliament. There was a very articulate professor of law. The third member was a long-time judge who had been a judge even before the current regime, I think—very early. He was a very well informed man. He had been a judge for a very long time.

CHAIR—Was it a men-only delegation or were there women involved?

Mr Kennedy—No, there was one woman.

Mr von Doussa—She was a member of the commission itself.

Mr Kennedy—The secretariat.

CHAIR—A staff member?

Mr von Doussa—Yes. But a senior one.

Mr DANBY—This was prior to the last Iranian election?

Mr von Doussa—It was indeed.

CHAIR—Thank you very much. It is good to get some feedback on that activity with Iran. Given that we have just had the one dialogue, knowing that you have had some further engagement is very helpful.

Mr von Doussa—I could add that they are an observer to the Asia-Pacific forum meetings. They send a representative to each of those meetings, which is sometimes a source of informal information.

CHAIR—There being no further questions for HREOC, I thank you very much for your attendance this morning and for your submission. As I said, the committee is very grateful for both of those. I do not recall whether you have undertaken to provide any further information, but if you have would you please provide that to the committee secretary. We will send you a copy of the transcript of this morning's proceedings for you to check, and we will be in touch if we require any further information.

Proceedings suspended from 10.30 a.m. to 10.45 a.m.

GREENWELL, Mr John Henry, Member, Amnesty International Australia

SMITH, Ms Rebecca, Advocacy Coordinator, Amnesty International Australia

CHAIR—Welcome, on behalf of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. The subcommittee prefers that all evidence be given in public but, should you wish to give evidence in private, you may ask to do that and the subcommittee will consider your request. The subcommittee does not require you to give evidence on oath, but I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. The subcommittee has before it submission No. 8 from Amnesty. I invite you to make an opening statement. At the conclusion of that, we will go to questions.

Ms Smith—First of all, Amnesty International Australia would like to thank the committee for the opportunity to speak today and give evidence. The organisation values highly the work of this committee, particularly in recent times. The organisation has noted that human rights around the world today are at risk. In this climate, we consider the need for a multifaceted approach to human rights to be paramount. In this respect, bilateral human rights dialogues have the potential to make a tangible contribution to improved human rights outcomes. However, we believe that this potential is not currently being realised by the Australian government.

Amnesty International has no in-principle objection to bilateral dialogue processes between states on human rights. However, in the absence of appropriate measures to ensure accountability and transparency, Amnesty International does not see the dialogues as having or being able to have a direct impact on addressing serious human rights violations. We maintain that bilateral dialogues must never be seen as a substitute for other recognised human rights mechanisms and forums.

The relative lack of country resolutions at the Commission on Human Rights in recent years, particularly with respect to China, is a significant concern to the organisation. The lack of critical motions with respect to China is noted, particularly in the light of critical Special Rapporteur reports in recent years, including the Special Rapporteur's assessment in 2003 on China's education policies.

To put Amnesty International Australia's submission in context, we would like to provide a brief update and sketch of our findings on the human rights situations in each of the dialogue countries, before addressing our primary concerns about current dialogue processes. We will just draw quickly on the 2004 report, which was not able to be included in Amnesty's submission at the time, and also highlight a few key reports that Amnesty has released subsequently.

CHAIR—Bear in mind, Ms Smith, that we do have your submission. We have read it. If you read the 2004 information, that would be helpful, but we do not want to cut short the time for questions.

Ms Smith—Of course. I will just highlight a few key findings.

CHAIR—Thank you.

Ms Smith—Of note particularly with China has been the finding of 1,638 death sentences and executions in 2003, although Amnesty believes the true figures to be much higher. In addition, since publication of the 2004 report, Amnesty has also released a report on the People's Republic of China in December 2004, highlighting the number of human rights defenders who have been arbitrarily detained or imprisoned. Amnesty notes that this issue and phenomenon has continued to rise.

Of particular concern to Amnesty internationally is the detention of activists campaigning against impunity for the 1989 Tiananmen crackdown. In late 2004 and early 2005, several rights activists and dissidents were reportedly detained or placed under surveillance in their homes. This is of continuing concern to our organisation. Similarly, the introduction of the new religious affairs regulations is of concern. Activists engaged in publicising violations on the right to freedom of religion continue to be at risk of arbitrary detention and imprisonment.

Many were looking forward to China's new religious affairs regulations, announced in November 2004, to establish broader protection for freedom of religion in China, but unfortunately since the publication of Amnesty's 2004 report implications of the new regulations have become much clearer. Scrutiny of the provisions shows that they have been drafted less to protect than to regulate religious activities in China. Accordingly, official commentaries and the new regulations which came into force leave unchanged all of the provisions used in the past to harass and detain or imprison members of so-called heretical organisations. Obviously, this is a significant and ongoing concern for Amnesty.

The situation is similar with respect to Iran. I note that Australia has only undertaken one dialogue process with Iran at this stage. We are concerned about the ongoing imposition of the death penalty on children and note that Iran, like China, is a party to the Convention on the Rights of the Child. We highlight again the violations, as outlined in our submission.

In speaking to the specific and primary concern of Amnesty with respect to the current dialogue processes that the Australian government undertakes, we acknowledge that there is a potential benefit of Australia's dialogues, in a very cumulative and long-term process. But we maintain that the current lack of accountability around the dialogue processes is a major concern. There are no identifiable institutions responsible for examination of the dialogue process or its outcomes at either the international level or the national level. In Australia, neither the parliament nor the people are able to assess the dialogue processes as presently conducted.

In our submission we outlined that there should be a report tabled to this committee in writing. Such a report should include core benchmarks. We refer particularly to the EU guidelines on human rights dialogues as an appropriate reference for such criteria. We see the tabling of such findings to this committee as a fundamental part of an accountable dialogue process. To expand on this issue of the lack of accountability in current processes, we would also like to make some recommendations regarding a more constructive engagement with domestic NGOs before and after dialogue processes. At present our organisation provides submissions to the dialogues, often on specific cases, but more often than not we do not receive feedback.

We believe that one way to complement the present government processes is to build a greater involvement for civil society. I believe Kathy Richards from ACFID touched on this concept this morning, in part. In 2003 Amnesty International suggested to the minister the establishment of a parallel NGO dialogue process. We believe that this should be separate to the current process but should complement the themes and the discussions that the government parties take on.

There are varying models to draw on for such processes. Again, we refer to the EU dialogue processes, which take a very thematic approach. NGO and civil society actors meet for one to two days with the participation of a small number of departmental representatives. Such parallel processes enable dialogue on key human rights issues. In the past I believe that the EU processes have looked at torture for two days and other issues of key concern in varying areas. We submit that perhaps the death penalty might be a potential theme that we could use with respective dialogue countries. We would like to highlight this concept and recommend such a process to provide an informative and productive complement to the current government discussions. Thank you.

Mr Greenwell—I would like to address two issues. The first is the human rights technical cooperation program and its relationship to the dialogue, which you have touched on this morning in the HREOC submission. The second is to take up the Amnesty proposal relating to a report and just trace through how that might work in relation to particular issues that have occurred in the dialogue.

Firstly, with regard to the human rights technical cooperation program, we join issue with the evidence that you have received from HREOC, at least so far as Amnesty International's interest in the cooperation program is concerned. We have been very interested in it. I will come back to later and give you some detail, in view of the assertions that have been made this morning. Generally, on the technical cooperation program, we believe it should not be confused with the bilateral dialogue.

CHAIR—I do not mean to interrupt you, Mr Greenwell, but who are you suggesting is confusing it with the dialogue process?

Mr Greenwell—We are not suggesting anybody—only that it should not.

CHAIR—Okay, so it is not a suggestion that someone is?

Mr Greenwell—No. The human rights technical cooperation program is not to be confused with the bilateral dialogue. It is in substance an aid program concerned to assist in the provision of rule of law infrastructure. It is not directed to China's human rights violations—the dialogue is, or purports to be. It is directed, as its description implies, to technical assistance. The assistance relates to obstacles to the provision of human rights because of the inadequacies of structure or expertise due usually but not necessarily to underdevelopment. A somewhat similar distinction is mentioned in an important footnote at page 46 of the HREOC submission, where it states:

For the purposes of analysis it is useful to distinguish between the promotion of rights that could represent a challenge to the ruling authorities and the promotion of rights that result in a greater degree of economic and social freedom.

It is perfectly possible in our submission for there to be an effective technical cooperation program and an entirely negative dialogue. They deal with different subjects. A course for local court magistrates in Zimbabwe may be highly desirable, but nobody would suggest it to be an adequate response to Robert Mugabe's human rights depredations.

With regard to the suggestion that Amnesty International has not been interested, let me just take you through that. At the time that Alice Tay was chair, we organised a teleconference that lasted over one hour to discuss the human rights technical cooperation program. Two years ago I arranged specifically with Mr Kennedy to spend an hour discussing the technical cooperation program outside the ordinary DFAT consultations. Last year I set forth a series of questions about the program, including the following. In 2002, a project in Tibet was proposed but declined by the Chinese. Was the proposal renewed? Generally where does it stand? What is the present position of the evidence law project? On domestic violence, how is the hotline instituted in 2002 going? Could you say how the human rights course to prison officers is going? Briefly, what is the nature of the course?

We could not arrange a meeting, but he was good enough to provide me with a very extensive letter setting out answers to each of these queries—which, as I told him, I would send on to the London international secretariat. Late last year, when I heard about the possibility of the cooperation program extending into Tibet, as he mentioned here in evidence, I rang him up and asked for a detailed explanation of what was going on. He gave me that and I must thank him for his cooperation, but I am surprised that he suggests that Amnesty International has not shown any interest in the program.

Turning to the other matter, just looking broadly at the submissions apart from that from DFAT, I think we can say that two things stand out. The first is that they all say that the human rights situation in China and in the other countries is bad; some say they are worse. Secondly, just about all of them say that the prime deficiency in the dialogue process is the lack of accountability.

You have heard Amnesty's proposal for a report, through this committee, to the parliament. I thought it might be useful if I take you through how it would operate. Taking some of the items that came before the bilateral dialogue over the years, let us take the China Democracy Party, administrative detention for the purposes of re-education or, for that matter, proscription of the internet. When such an allegation of a human rights violation is made and you have the dialogue, the first thing one would do is ascertain what the Chinese say about it and, if they deny it, to obtain particulars of the denial. In the case of, say, the China Democracy Party, one would have expected us to have sought to ask them and ascertain whether there was anything treasonable or seditious in the conduct of the party, whether they were advocating violence and, if they were, for some particulars. But the point is that those questions were not asked. I suggest that is the first thing one would do: ascertain the grounds of denial. A report coming from that need say no more than specify those grounds.

Let us take administrative detention through re-education. Where it is said that reforms are under way, one would ask in the dialogue what the reforms were. But it would be important in the following year to follow up on what has been happening: are these reforms being implemented? We have had nothing like that occurring in the dialogue. If you had proscription of internet subscribers under regulations framed to guard against undermining social stability,

endangering security, subverting government and the like, wouldn't it be a natural question to find out whether criticism of the Chinese Communist Party—which has led to imprisonment for persons using the internet—is regarded as subverting the government and, if it is, how it conforms with article 19 of the international covenant which China has signed?

These should go in a report. Our view is that report, which could be from the delegation or the minister, should come before this subcommittee as a specialist committee and that the committee then examines it. In addition to hearing DFAT on the dialogue, it is suggested that the committee should hear from interested NGOs—and there might be a logistical problem in ascertaining what NGOs are relevant to any particular dialogue.

Senator BOLKUS—Where does that get us? If DFAT says one thing and an NGO says the other, what does this committee do?

Mr Greenwell—My view is that maybe you do not come to a view on it as long as at that point the assessment, whatever assessment the committee makes, then goes to the parliament.

Senator BOLKUS—Once again, are we a reporting agency? You might as well just post the letter to the Clerk of the Senate and the Clerk of the House of Representatives.

Mr Greenwell—No. With respect, you are an accountability agency.

Senator BOLKUS—That is my point: sitting here we get one point of view from you, one from HREOC and one from DFAT. We have no capacity to go on the ground and find out who is saying what and who makes an assessment. We know that quite often there are blurred edges. If we get three submissions and flick them off to the House of Representatives, how does that advance the process?

Mr Greenwell—You can say whether you regard the particular dialogue as having been successful.

Senator BOLKUS—We can say that now.

Mr Greenwell—In what way?

Senator BOLKUS—We can make an assessment on the basis of what people have said to us, what HREOC has said to us and what other submitters say to us, as to whether it is useful or not. And I think we have come to the conclusion that it is.

Mr Greenwell—I would have thought the great advantage of it going through the committee is that it would build up a certain expertise in judging these dialogues.

Senator BOLKUS—This is not just job creation for Amnesty and for the committee, is it?

Mr Greenwell—No, it is not that. What is wanted is for something to go to the parliament. That is ultimately what is desirable. From our point of view that is the primary point that we put forward. We thought it would be convenient to go through this subcommittee.

Senator BOLKUS—That sounds good—‘something to go the parliament’—but people can put up notices of motion, which they can get a member of the House of Representatives to do, and they can write letters to parliamentarians. What is so valuable for you to have this committee flick off three submissions to the parliament? What makes you think there will be a further process that will evaluate those submissions?

Mr Greenwell—Through this committee, you mean?

Senator BOLKUS—Yes.

Ms Smith—Our main concern about accountability is to have an ongoing report on the status of these varying dialogues and also on achievements being made. At the moment, there is a notable lack of information coming through to—

Senator BOLKUS—You say that—and I am sorry to interrupt you—and others have said it as well. But if you look at the HREOC report, for instance, you get a lot of detail about what has been going in China and you can make an assessment as to what is and what is not going on and where pressure needs to be put. But I cannot agree with you when you say that we do not have detail. We might have detail and you might think that this process is an excuse for or alternative channel to political pressure but that is another thing altogether. HREOC offer debriefings and they do not get too many take-ups. For instance, have you read today’s submission from HREOC?

Mr Greenwell—Yes, I have. I would just like to clarify that our main concern is around accountability of the dialogue process versus the technical cooperation program.

Senator BOLKUS—Can you separate one from the other?

Mr Greenwell—Yes. We have concerns around the political interaction and level on which we see the main dialogue process occurring. We would find it very helpful for our work to have a report which included core benchmarks such as ratification status, implementation of articles to domestic law and statistics on torture. We think these things should frame such a high level and valuable political dialogue.

Senator BOLKUS—But there are already reports that give those stats.

Mr Greenwell—That is right.

Senator BOLKUS—How does this committee come to evaluate those? How do we judge as between you and other institutions—all of the international human rights watches and whatever?

Mr DANBY—First of all we have to agree on the criteria. If you advance those criteria and we agreed that they were criteria by which to judge these dialogues over time then that would be one issue. We have not got to that stage yet.

CHAIR—I do not at all want to reduce this to a discussion between committee members but, interestingly, the submissions from the NGOs in Australia are at variance on where you would draw your benchmarks. You say ratification of instruments is a valid criterion and another group

says: 'Actually, that is relatively meaningless. Let's just talk about the reality of what goes on day to day.' Finding a middle road through that is going to be one of the challenges to come out of this inquiry, in fact. I think that we need, if you do not mind Mr Greenwell, to engage in a few questions and answers around the table. I would like to start by asking about the European Union bilateral dialogue guidelines to which you have referred. Which countries does the EU engage in bilateral dialogues with and what are the arrangements for parliamentary representatives to participate in those EU dialogues?

Ms Smith—I have to apologise; I do not have that level of detail in front of me today. I can definitely provide that to the committee.

CHAIR—Everybody keeps telling us how great they are, but nobody has a great deal of detail.

Ms Smith—I am sorry, but the expert on that was not able to attend today.

CHAIR—That is fine.

Ms Smith—But I can definitely get that and send it to the committee. In terms of the guidelines, my key recommendation was highlighting that there is an NGO process happening at the moment and we see that as a very valuable process and something that we—

CHAIR—I understand that. We have taken a lot of evidence on the NGO process and it is of interest to the committee. May I check one other thing. In your remarks you made some observations about the lack of resolutions specifically in relation to human rights issues in China at the Commission on Human Rights. Are you suggesting a direct relationship between the development of bilateral dialogues and the diminution of the number of resolutions?

Ms Smith—Not at all. Amnesty International maintains that such dialogues should not be at the cost of other human rights processes. We see huge value in the commission and the processes and are concerned about the lack of country resolutions, particularly on China, in recent years.

CHAIR—So that is a separate point from the dialogues issue? You were just putting that out in the air to say that there was a lack of resolutions on China, and that is a bad thing, but that is not related to an increase in the number of bilateral dialogues?

Ms Smith—No, I am sorry. I think there must be a misunderstanding. In my opening remarks I was making a comment that we value the bilateral processes and we see that there is value and potential in there that is not currently being realised. But we would like to stress that that should not be at the cost of other processes such as the commission, which we do not see as having been as robust as it should be in recent years.

CHAIR—So it is a separate criticism of the commission?

Ms Smith—I suppose so.

CHAIR—That is fine. I just wanted to get that clear.

Senator FERGUSON—You have raised several issues, and one caused me to reread our terms of reference, which ask us to inquire into the process. I think it is fair to say that in most of the submissions there have been recommendations from other bodies which suggest some improvements to the process—how they think it could be improved—but to my reading you are the only ones that are actually saying that the process is not working. In the introduction to your submission, you talk about human rights conditions in certain situations being worse than before the dialogues started. Yet one of the recommendations that you put forward is for a parallel dialogue, which will mean more talking. I am just wondering whether, if we have an extra parallel dialogue, that will mean that conditions are still going to get worse.

Mr Greenwell—No. I think there are a number of things. Firstly, we are not saying that dialogue per se is wrong. We are not saying that dialogue is a bad thing. Amnesty has never said that. What we are talking about is dialogue that is unaccountable—unaccountable largely because of the lack of transparency of the dialogue itself. We say that is why it is only with some reporting facility as to what goes on that you can get the required accountability. That is the purpose with regard to the specific.

Mr BAIRD—I think there is a lot of merit in that, but is there another side of what you say? By going public in terms of the issues—you were critical of the Chinese, for example—you may well dissuade them from more realistic discussions within, and perhaps action plans. The problem is that it cuts both ways. As I understand it, we would all like there to be greater public accountability and involvement, but if we come down too strongly on the way that we would normally do things we may detract from the very purposes we want to achieve.

Mr Greenwell—I can understand that problem, but we are not saying that the dialogue should be in effect open to the media or open to the public. What we are saying is that, following the dialogue, there should be a report. That report may have to take account of those matters that it is felt should be confidential. We say that there should be a report on the outcomes of each particular item. When I was previously referring to the China Democracy Party, I was trying to give an example. Your report would simply say, in regard to that, what were the Chinese grounds of denial, whether they were going to do anything about it and so on. It would not go any further, but at least the public and the parliament would know what had transpired, and that you do not know now.

Senator FERGUSON—I go back to the introduction of your submission. It bothered me somewhat, because you virtually passed judgment yourself. You said that in some situations human rights conditions are more serious now than they were before the dialogue process started. So, in effect, in your introductory statement you are virtually saying that the human rights dialogue process has been ineffective.

Mr Greenwell—Indeed that is what we do say—but entirely because of this factor of unaccountability. If you have both—that is, a combination where, on the one hand, you do not take any multilateral action against China in the commission of human rights or make any great public criticism of it and, on the other hand, you have a confidential dialogue—then you have removed both the multinational accountability and you have not replaced it with any kind of accountability at all.

Senator FERGUSON—Some situations may be worse, but you do not give any credit to the fact that the dialogue process may have improved things in other areas.

Ms Smith—Can I provide a comment particularly on your previous comment about the value of a complementary process. We acknowledge that such bilateral processes are a long-term process and there may be some fluctuations in intervening years. We are concerned that there has been, in our view, a diminution in human rights in dialogue countries since some of these processes have begun. Where we see the value in an NGO complementary process is in building civil society to encourage and facilitate the development of critical NGO participation in dialogue countries. We would see that there would be, for example, a two-day workshop and dialogue on torture. We would have experts there, and we would be able to impart our views about things that have and have not worked and exchange expertise with NGOs out there on the ground. That is where we would see that we can build on the processes that are already in place.

Senator FERGUSON—The only difference is that the dialogue you are talking about would take place between some people who are NGOs in an open society and some who are in a controlled society—

Ms Smith—We recognise that.

Mr DANBY—I am intrigued by your idea of establishing objective criteria by which the dialogues, in particular, could be judged. I thought I would bounce two questions off you, mainly because I cannot understand how we can have a dialogue with China, Iran, Vietnam or anyone without knowing what the big picture is. How many people are in Laogai in administrative detention for re-education? How many internet police are there? Is the report in the *New York Times* a couple of days ago that there are 30,000 accurate? Has the number of internet police gone down from 30,000 to 20,000 since the last dialogue? What is the trend over time? As Amnesty understands it now, is the report in the *New York Times* that there are 30,000 internet police in China accurate?

Mr Greenwell—I am not prepared to say that it is precisely accurate. Certainly, figures of that nature have been mentioned. There is nothing out of kilter with that.

Ms Smith—That would be in keeping with that 2004 report.

Mr DANBY—Is that along the lines of the criteria that you were talking about establishing—what they are, improvement over time?

Ms Smith—Certainly—so that we can see where improvements have been made and where there is obviously a lot of room for improvement too. Perhaps that can provide a context in which we can take the dialogues forward rather than their sometimes being a bit of a set piece.

Mr DANBY—Do you know how many people in China are in Laogai camps—in labour camps?

Mr Greenwell—I think the last figure I saw was 200,000. I think that is a Chinese figure, actually.

CHAIR—Mr Greenwell and Ms Smith, thank you very much for assisting the committee with its deliberations and for participating in a robust discussion. We appreciate both your submission and your attendance here today. There may be some additional material you have undertaken to give the committee. If there is, please convey that to our secretary. We will send you a copy of the transcript of the evidence for you to check in relation to matters of grammar and fact.

[11.22 a.m.]

MINOGUE, Mr Matt, Assistant Secretary, Human Rights, Attorney-General's Department

CALLAN, Mr Peter, Acting Assistant Director General, East Asia Branch, Australian Agency for International Development

PROCTOR, Mr Murray, Acting Deputy Director General, Asia and Corporate Resources, Australian Agency for International Development

MANING-CAMPBELL, Ms Nicoli Ruth, Executive Officer, Middle East Section, Middle East and Africa Branch, Department of Foreign Affairs and Trade

McGUIRE, Mr Gerard Francis, Director, Human Rights and Indigenous Issues Section, Department of Foreign Affairs and Trade

MILLAR, Ms Caroline, First Assistant Secretary, International Organisations and Legal Division, Department of Foreign Affairs and Trade

NAPIER, Dr Mark Donaldson, Executive Officer, Human Rights and Indigenous Issues Section, International Organisations Branch, Department of Foreign Affairs and Trade

ROGGERO, Mr Peter James, Director, China Political and External Section, East Asia Branch, Department of Foreign Affairs and Trade

SADLEIR, Mr Richard Travers, Assistant Secretary, International Organisations Branch, Department of Foreign Affairs and Trade

CHAIR—Good morning. On behalf of the Human Rights Subcommittee, I welcome to the hearing representatives and supporting officers from the Department of Foreign Affairs and Trade, the Attorney-General's Department and AusAID. The subcommittee prefers that all evidence be given in public but, should you wish to give evidence in private, you may ask to do so and the subcommittee will consider that request. The subcommittee does not require you to give evidence on oath but I should advise you that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the respective houses. The subcommittee has two joint submissions—Nos 16 and 17—from the three agencies. I invite you to make an opening statement and, at the conclusion of that, we will go to questions.

Ms Millar—Thank you. We very much welcome the opportunity to discuss Australia's bilateral human rights dialogues with the Human Rights Subcommittee this morning. As you know, the Australian government is strongly committed to constructive, non-confrontational bilateral dialogue on human rights, supported by targeted and practical human rights technical cooperation as a practical, helpful way of bringing about real change to the human rights situation on the ground. Clearly, change is incremental and often slow and there can be setbacks, but, over the longer term, we feel that direct dialogue and practical assistance can achieve results.

We have now conducted eight rounds of dialogue with China, three with Vietnam and one with Iran. We are looking forward to hosting Vietnam and Iran this year and visiting China for the ninth round. I understand that my colleagues briefed the committee on the most recent round of the China dialogue during the private briefing on 10 February and that the department has provided answers to the questions we took on notice during that briefing. Also, the government has updated its submission to the committee to take into account developments since the submission was first prepared in June last year, which I think is the reason you have two submissions.

We approach our dialogues very much from a whole-of-government perspective, which is why we have here with us today colleagues from AusAID and the Attorney-General's Department, both of which, as spelt out in our original submission to your inquiry, have very important roles to play in the different dialogues. Their presence, along with officers from the relevant geographic desks of DFAT—which explains the numbers—will assist us in providing the best possible answers to any questions you may raise.

CHAIR—One area of interest to the committee which has been raised with us today in a number of submissions and a number of parts of the evidence we have taken this morning is in relation to the European Union's approach to similar matters. There has been significant advocacy today for their guidelines and for the reporting process that they undertake. I wonder whether any of the agencies represented has a view on the formality, if you like, of the EU process and whether it is something we could explore in Australia.

Ms Millar—We do talk to them very much about their dialogues, of course. I think, throughout all the kinds of bilateral dialogues they have on a whole range of issues, they have perhaps what we would think of as a slightly more bureaucratic approach, with more benchmarks, requirements and so on. We find exchanging information with them to be a very useful way of informing our approach to our own dialogues. But, at the same time, I think it is correct to say that the government does not consider that having formal benchmarks is necessarily very useful, particularly in a situation where change in the countries concerned is often incremental. There are often a number of factors that result in that change, of which our dialogue is a part. I do not see that there is any particular move to go along those lines at this stage. I do not know if my colleagues would like to add anything to that.

CHAIR—Can you tell us whether a report is made in writing between the partners after each dialogue?

Ms Millar—No, it is not. We of course take our own records, as we would with any bilateral consultations. We assume that our dialogue partners do the same thing. We do not see those. We do often have some agreed areas for further work, and we would discuss that at the end of the meeting and then go back through our respective embassies and talk about how we might take those things forward in the time between the dialogue we have just had and the next round. That would just be a usual way to proceed.

Senator BOLKUS—Just following up on the previous answer, you say that you do not find having set objectives and criteria all that useful. But, when you sit together with the Chinese or Vietnamese and, not so often, with the Iranians, is there a stated purpose of your meeting? Do

you agree that this is what you are there for? If so, what is it that you are there for? What do they agree on being there for? Isn't there an objective set out?

Ms Millar—Yes, in the broad, certainly there is.

Senator BOLKUS—Is that defined and agreed?

Ms Millar—What we were talking about was more formal benchmarks like the Europeans have.

Senator BOLKUS—In the broad, there is, but is it agreed between the parties?

Ms Millar—Yes, we have an agreed agenda. We have some discussions, usually between our embassies, about the issues that we are going to raise.

Senator BOLKUS—But when you set up the meeting, you agree to meet to discuss human rights—

Ms Millar—Yes, we do.

Senator BOLKUS—or to further human rights? Is there a definition of what you agree to do?

Ms Millar—We certainly agree to discuss human rights, because it is a human rights dialogue, and we have a list of issues that we are going to discuss.

Senator BOLKUS—I am just trying to work out why it is so difficult to have stated objectives, when you obviously meet for a particular purpose.

Ms Millar—We do have objectives. I thought we were just talking more about the specific benchmarks.

Senator BOLKUS—Objectives and evaluation criteria. If you have the objectives, how hard is it then to—

Ms Millar—In terms of monitoring the effect of the dialogue, clearly there are factors that we would look at. One of those would be progress in individual cases of concern. If, for example, a number of people have been released from prison, that would be something we would see as a very positive step. We also look at the overall human rights situation in the country concerned. It is simply that we do not have specific benchmarks. I think that is really the question.

CHAIR—One of the issues which we have also discussed today based on the submissions and the evidence is parliamentary participation in the process. We certainly agree here that it is important that the breadth of the Australian parliament be represented so that there will be representatives from government, opposition and, if it is appropriate and relevant, I assume—although they are not here—the minor parties. There are several other questions. The first of those is: what engagement have we had with any of our partners on parliamentary participation from their sides—that is, in China, Vietnam and Iran respectively? Have we ever suggested to them that they invite parliamentary representatives?

Ms Millar—I do not know the answer to that. It is a good question.

Dr Napier—The answer briefly is that we have not done so certainly in the case of China and Vietnam. I cannot be sure about Iran. In the case of China, we have visited China a couple of times and we have called on the legislative affairs committee of the parliament, which is the committee that actually drafts the legislation that is placed before parliament. In that sense, there has been a coincidental parliamentary involvement.

CHAIR—I think it is fair to say that the minister encourages parliamentary participation from the Australian side but it is not a formalised process. Is there any contemplation given to formalising that process? At the moment it depends on whether someone is available, occasionally at quite short notice and during a parliamentary sitting period, which is difficult, and during elections—

Ms Millar—Yes, we appreciate that.

CHAIR—and if they have enough capacity in their own personal or study leave entitlements to get themselves there. Is there any contemplation of formalising that process?

Ms Millar—If you have any suggestions I am sure we could raise them with the minister.

CHAIR—I think you will find them in the report then, Ms Millar. I am sure we can assist with that process!

Ms Millar—Can I make one point in response to the last question. When we went to Iran in December 2002 we did meet with some female parliamentarians as part of the visit.

CHAIR—My last question at the moment comes out of a submission from the Australia-Tibet Council, which obviously focuses on the China dialogue. It makes a general observation in relation to bilateral dialogues and I would be interested in your response. It says:

The bilateralization of multilateral processes threatens to undermine the universality and credibility of the international human rights regime entrenched in the UN.

How do we go about ensuring that that is not the case when we are engaging in the bilateral processes that we engage in, bearing in mind that, for example, Amnesty International has also told us today that they have concerns around the fact that, at the UN Commission on Human Rights, there has been a significant diminution in the number of resolutions on China and in the formality of that process? How do we go about ensuring that the universality of the human rights regime under the broad auspices of the UN is maintained?

Ms Millar—It is a very important point. As you probably know, my records show that, going back to the late eighties, there has been no successful resolution on China in the Commission on Human Rights. Almost every year, with one or two exceptions, it has been mooted and the Chinese have been able to muster sufficient numbers to have the resolution not acted on. We are strongly opposed to that approach because our approach in principle is that the Commission on Human Rights is there to discuss human rights and all issues should go to the commission to be discussed, debated and voted on et cetera.

Mr DANBY—So Australia votes in favour of it being discussed there?

Ms Millar—We vote in favour of it being discussed, as we would with any other issue. That is just a matter of principle. This is the Commission on Human Rights 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. One year, in 1995, it did go to a vote and it was defeated. You can draw your own conclusions from that. There were a few years after that where I think the international community got rather despondent about the prospects for being able to do anything in the commission when no resolution is run. Last year for the first time in some years the Americans put forward a resolution and it was defeated by a no-action motion. So one of the reasons why we have this dialogue is because the UN has not been able to deal with the issue.

CHAIR—And the general universality and indivisibility of human rights question, what is the impact of bilateralism on that?

Ms Millar—You raise these things in all fora; they are not mutually exclusive. We think human rights are universal and indivisible and we would raise them in any appropriate fora. Our position on resolutions that come up in the General Assembly and the Commission on Human Rights—whether it is China or any other issue—is not dependent on what we do in the bilateral dialogues or vice versa.

Senator BOLKUS—Some concerns have been expressed to us that this mechanism is an alternative to direct political representation. In a sense, it is consigning the human rights issues to a bureaucratic level as opposed to a political one. There are several questions that come out of that. What has been the Australian government experience? To what extent are human rights issues continuing to be raised? Has any consideration ever been given to the respective delegations being led by an appropriate minister or assistant minister rather than just officials?

Ms Millar—On the Australian side?

Senator BOLKUS—On the Australian side, or has it been raised by any other party?

Ms Millar—I do not know the answer to your last question, but I will see in a moment if others do. On the first question, it would not seem to us that they are mutually exclusive. The ministers raise 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 I would not see them as being mutually exclusive at all. I do not have on me at the moment the number of times that Mr Downer has raised human rights issues with his counterparts, for example, but he has done so. With respect to who would head delegations, meetings of this kind are usually headed by senior officials. My colleagues are not aware of delegations being led by ministers or assistant ministers either.

Senator BOLKUS—The other major issue we have had before us is the engagement with NGOs and the consideration of issues such as parallel agenda, strategy meetings, pre-dialogue and briefings straight after the dialogue rather than in a routinely annual process. Has consideration been given to any of those issues? Is it an ongoing consideration? Have you

considered any other aspect for greater involvement of NGOs in this country and NGOs from other countries involved here?

Ms Millar—The short answer to all of those is ‘yes’. We have a very close engagement with NGOs in the department on the dialogue process. We seek views from NGOs and written submissions in advance of the dialogue. Having led a number of them, I can say I found that extremely useful, which I have mentioned to our NGO colleagues. We do debrief them afterwards as soon as we can. Often it is a question of getting people together, but we do it as soon as we can.

Senator BOLKUS—It is not part of an annual discussion?

Ms Millar—We also raise it in our biannual consultations with NGOs. We debrief on all the dialogues then; they take place twice a year. It is fair to say we give them separate briefings as soon afterwards as we can and as they are available. Is that right?

Mr McGuire—Yes, that is right.

Ms Millar—In terms of their representation or involvement in the actual dialogue, the NGOs pressed very strongly with us about a year ago to be involved in the next China dialogue. We thought that was a good idea, the minister agreed and we discussed that with the Chinese counterparts. As a result of that, the NGOs had a separate meeting with the Chinese official delegation when they were here. There were some drinks after that where the government delegation and the NGOs were present, as were their Chinese counterparts. The Chinese have now invited the NGOs to go to China, where the dialogue will be held later this year, and have parallel discussions. The NGOs are very keen, as you alluded, to have meetings with people other than the government. They want to see other organisations’ NGO equivalents, if you will. We will certainly be talking to our Chinese colleagues about that.

Mr BAIRD—On what basis do we gather the success or otherwise of the reporting? I hear to a certain extent when chairing the Amnesty Group of parliament—Dr Napier and Mr McGuire do a great job in briefing us—that it is bland, vague reporting without any degree of objectivity about what has been achieved. I imagine that that is part of the frustration of the NGOs who experience the same issue. Is it just a vague talkfest that happens or is it a process that is clearly structured, objective and measured? We feel that it is a vague talkfest where some of the issues are raised and we go away and think about what good things we have done. How do we judge how successful you have been?

Ms Millar—It is very difficult to make completely objective judgments but there are a number of criteria. I would like others to speak to this as well. For example, as to the degree of frankness with which the other side responds, I have been involved in the China dialogue only in the last couple of years but colleagues who have been engaged in it for a long time tell me that the level of preparedness to engage on tough issues from the Chinese side is greatly increased from what it was a few years ago. It is a much franker exchange.

Mr BAIRD—Tough issues being?

Ms Millar—Rather than getting a set piece response, getting a much more informed response and a willingness to admit that there are issues that need dealing with and to talk about what the government in China, for example, is doing to address them. My colleagues tell me that it was much harder to have that discussion some years ago. I do not know—I was not there—but that is what they say. I certainly observed it at first hand this time during the dialogue. The head of the Chinese delegation opened with quite a frank account of some of the problems that China is having to confront in this area. That is one way in which you can measure it.

Things like progress in the legal system, how human rights are being dealt with, specific changes to legislation and changes to the way legislation is being implemented are things you can monitor and evaluate. As I mentioned at the beginning, the release of prisoners and the treatment of prisoners are all quite specific issues that we look at as part of trying to evaluate progress on human rights. That said, as I mentioned at the outset, it is hard to say how much that is Australia's direct input and how much is a combination of a whole range of factors, including the dialogue that Australia has.

Mr BAIRD—Do you think it would be helpful if there were a greater degree of reporting to the parliament on what had been achieved—perhaps a written report to the parliament?

Ms Millar—It is certainly something we can raise with the minister but I guess you have to be aware that this is a dialogue between governments; it is conducted in confidence. You have to make a judgment about how frank the other side are going to be if they think it is all going to be out there in the national press. That is the kind of balance we have to look at: being as accountable as we can and coming to talk to this committee, talk to our NGOs or whatever on the one hand but, on the other hand, keeping a dialogue that is sufficiently confidential to encourage frankness of exchange.

Mr BAIRD—I have brought to me a lot of cases about the arrests of Chinese pastors and ministers, many people in congregations being arrested and thrown into prison and tortured. I know you look across the broad spectrum; it just happens that I am brought a lot of these cases. Are these cases raised?

Ms Millar—Yes.

Mr BAIRD—Do you have any success?

Ms Millar—We do raise a lot of cases. I cannot say right here if all your particular cases were raised last time, although you might be able to tell that from the information we have provided to the committee.

Mr DANBY—It was provided to me, which I appreciate. Bruce, you can get that too, if you want.

Mr BAIRD—I would like to.

Ms Millar—We do raise individual cases. This time the Chinese actually provided a written response. We gave them to them in advance as well as discussed them on the day and they provided a written response on a number of those cases.

Mr BAIRD—I appreciate that.

Mr Proctor—Also the level of engagement we have been able to achieve on the technical cooperation side and some sensitive areas from the Chinese point of view is probably better because of the limitation on enormous public discussion at every point between the two countries. There is a degree of trust that we are involved in assisting on the technical side from the Chinese that not every other donor has achieved by a mile.

CHAIR—There was some useful information from HREOC on that this morning.

Mr DANBY—I took from your previous answer, Ms Millar, that evidence that you adduce from the dialogues that there has been an improvement in human rights—say, better treatment of prisoners of conscience, these kinds of things—comes from the fact that the Chinese are more frank at the discussions. Is that the only criterion by which you judge—

Ms Millar—No, I didn't say that, Mr Danby. Basically, when we are looking at a whole range of things by which we assess the situation and how the dialogue is going, openness in discussion is one thing we can see as a mark of change in the dialogue. That does not automatically lead to change on the ground, but we look at those as well.

Mr DANBY—But I understand that the department is opposed to benchmarks or other criteria being put into this dialogue that would make that sort of evaluation over time, in my view, seem a bit easier for those of us who are not here all the time, who do not have the expertise or the full-time interest in it that people from the department do. Do you see the difficulty? It is hard to follow all of this if you do not have—

Ms Millar—To see a measurable impact on the dialogue. I understand what you are saying but, as I mentioned at the outset, there are a whole range of influences on China with respect to human rights—our dialogue, the dialogue that others have with all sorts of other pressures, elements within their own society. It is quite difficult to be able to measure precisely—we are not sure that it would be very productive—what has been done directly only as a result of the Australian dialogue.

Mr DANBY—I appreciate getting from the department the list of individuals some of whom I have raised questions with, as has Mr Baird. Could they be provided on an annual basis or a regular basis, et cetera, so that at least with those individuals we can have some understanding of where they are and how their cases are going?

Ms Millar—I do not see any problem with that at all. In fact, the lists that we use as a basis for discussions with the Chinese both in Beijing regularly and in the dialogue are drawn very largely from information from our own sources but also from information provided by the Amnesty parliamentary group, by other NGOs and so on. So it is very much a dynamic list. Some of it comes from people like yourselves. But I am very happy to give you an updated list whenever you would like it.

Mr DANBY—I might make a suggestion to the chair. It may be suitable to get it on an annual basis, but I am sure the committee can discuss that.

Mr BAIRD—The reverse of that—an invitation to this committee to make submissions in terms of the people that we are concerned with.

Ms Millar—Of course. We are very happy to receive them. We invite all submissions before we leave, and we are very happy to take them from the committee. It would be very helpful.

CHAIR—That is an interesting thought. I do not think the committee has formally advised—except in the ad hoc ‘Can someone come?’ approach—that it is occurring. Do you have any suggestions you would like to make?

Mr DANBY—What would the effect be, country by country, of NGO participation in formal dialogues as observers?

Ms Millar—I am not aware that that is something that the NGOs themselves are looking for, particularly at the moment. The impression that we have from talking to the NGOs is that they want opportunities to discuss these issues with the countries concerned, but not necessarily as a member of the Australian delegation. In fact, at our most recent discussions with them last week they made a particular point of saying that they wanted to be separate from the government delegation. That seems to be a fairly generally held view and we respect that. We try and facilitate an exchange for the NGOs with the countries concerned, but if they want to do it separately, we respect that.

Mr DANBY—Does the dialogue include Hong Kong, and how do we make evaluations, if it does, of China’s promises to the people of Hong Kong regarding free assembly, free press, free speech, freedom of religion et cetera?

Ms Millar—Sorry—can I just finish my answer to your previous question, because we only mentioned China. NGOs have not been involved in the dialogue with Vietnam yet. We have no problem with it, but the Vietnamese would have to be comfortable with it. They may well feel a bit more comfortable with this having seen how well it has gone with the Chinese, but that is something we will raise directly with Vietnam. We have had only one round with Iran so far. We are hoping for another round in the middle of the year. We will raise this issue with the Iranians. In the first place, it will be an issue of whether our NGOs are interested and, in the second case, whether the Iranians are happy to proceed.

Mr DANBY—What about the answer to the Hong Kong bit?

Ms Millar—We have a dialogue with the government of China. I think that is the answer to your question.

Mr DANBY—But Hong Kong is a self-administered region of China.

Ms Millar—As far as I am aware, there is no separate representation. That would be quite unusual.

Mr DANBY—In the dialogue, therefore, do we consider democratic rights and human rights in Hong Kong to be in the purview of that discussion?

Ms Millar—They are integral to discussing human rights in China, but I am not aware—certainly recently—of any particular discussion on Hong Kong.

Senator FERGUSON—In the introduction of Amnesty International’s submission to this inquiry, I was somewhat concerned to read—and I hope I quote them accurately—that in many respects the human rights situation has worsened since the dialogues began. That suggests to me that either the dialogues are ineffective or there is more that we can do to make them effective. I just want you to comment on the statement of theirs that in many respects the human rights situation has worsened since the dialogues began.

Ms Millar—I will ask my colleague from the China branch to talk about the actual situation on the ground.

Mr Roggero—Regarding human rights in China in the broad, I think our assessment is that the situation has, over a longer period, improved rather than worsened. Obviously there are instances on occasions where you would see two steps forward and one step back, or what have you, but in the broad we do see an incremental improvement. I think a lot of that improvement has resulted from China’s economic development feeding into legal reforms, which provide people with greater legal protections against abuses, and the growth in China’s administrative capability. So there is increasing transparency in the way China is governing itself, and that flows into improvements in the way that human rights are observed in China. In our dialogue with China we try and tap into that improvement generally, point out areas where we think things are not improving or not improving as well as they could be or should be, and, in many cases, through the Human Rights Technical Cooperation Program, directly provide practical assistance to encourage those kinds of reforms and changes.

Senator FERGUSON—Can you think of any instances where the human rights situation has worsened?

Mr Roggero—Over a period of time?

Senator FERGUSON—Since the dialogues began.

Mr Roggero—Unfortunately we do not have accurate figures for many issues, including, for example, the death penalty. It is possible that over some years there have been higher numbers of instances of death sentences, but we do not know that for a fact because China does not publish the figures. Some years ago, China devolved the authority for issuing death sentences to below the central level. It used to be the prerogative of only the Supreme People’s Court. When they devolved that to the provincial level we fear that there may have been an increase in some of those death sentences being issued. We have raised that on many occasions with the Chinese government, including through the dialogue. I was pleased to hear at the most recent dialogue that China is reviewing that policy and looking at putting that authority back to at least the Supreme People’s Court—at the central level, the top level—rather than allowing provincial level courts to make those sorts of decisions. That is an area where it may have become worse over some years. I could not say that for a fact because China does not publish those figures.

Senator FERGUSON—We may have to ask Amnesty International to provide us with some instances where they believe it has deteriorated and then come back to you for a response.

Ms Millar—Sure.

CHAIR—Similarly, I assume the treatment of Falun Gong would be an ongoing issue.

Mr Roggero—Because that issue has only come up since that organisation was banned, but I was looking more broadly.

CHAIR—I understand that. Did you want to hear about Iran and Vietnam as well, or just China?

Senator FERGUSON—What about in Iran and Vietnam? Are there any instances where you think that the human rights situation has deteriorated in those countries?

Ms Millar—I think I will again ask my colleagues from the geographic areas to answer. You will be aware of some deterioration in some respects in Iran recently.

Senator FERGUSON—In Iran, yes.

Ms Millar—In fact, since the first dialogue was undertaken.

Ms Maning-Campbell—The human rights situation in Iran is obviously a matter of concern to us. It is a bad human rights situation and I guess you could say, to be honest, the prospects for it improving do not look very good. The areas of particular concern to us, recent and ongoing, are crackdowns on freedoms of the press, especially a crackdown on internet journalists, which is worrying. You would be aware of recent reports of the execution of juveniles for so-called ‘morality crimes’. This is something which we have raised most recently with the Iranian government. We get the response that the death penalty in general is a very difficult issue for Iran. In the case particularly of juveniles, efforts are under way to improve protection in the judicial system and also to look at alternative punishments. So we have to take that at face value and hope that down the track we might see some improvements, but certainly the press freedoms, protection of particularly juveniles, and women and girls in the judicial system are issues for us. The death penalty is also an issue for us. One other concern for us is the trend back towards a very conservative, hardline government in Iran which makes it a bit more difficult for us, and also others like the EU, the Japanese and the Canadians to engage with them on these issues. But we are certainly persisting. That is really the only way.

Senator FERGUSON—What about the so-called ‘honour killings’? Is there any evidence of those?

Ms Maning-Campbell—There is but, again, we do not get a lot of information on those sorts of situations.

Mr BAIRD—That is more in the subcontinent, isn't it?

Senator FERGUSON—It is more to the south.

Ms Maning-Campbell—Yes, it is quite widely spread. I think it is an issue in Iran but we do not have reliable figures. We ask about these issues but we tend not to get a response so we do not get the figures. So we rely on NGO information.

Mr DANBY—Is Iran's human rights situation markedly worse since the election, or was it of concern before then? Why is the department so confident about having dialogue take place with them if the situation has deteriorated and they are less interested in engaging on these things?

Ms Maning-Campbell—I think because there are people in Iran who are committed to reform and to working on the human rights situation. We see it that if we backed off now it would be interpreted as the Australian government not caring about the human rights situation in Iran. There is a lot of international interest, so we see that we really need to maintain some form of dialogue. We have had one round of dialogue and it has proven difficult to schedule the next round but that is not for lack of trying on our part. Other events happening in the Iranian system have put that off.

Senator FERGUSON—It is meant to be here, isn't it?

Ms Maning-Campbell—It is, yes.

Ms Millar—One of the characteristics of the first dialogue was the broad range of views that we experienced when we went there. The formal delegation comprised people from the reformer side to really quite extreme conservatives. It was very interesting to us that they were prepared to speak quite frankly to us about these issues. We then had a series of individual meetings with people—again, from across the spectrum of Iranian society—on these issues. By going, you are able to offer encouragement to those who are working within the government and within the system to try and make a difference. We very much hope that we can do something like that again, here, if we can organise a visit.

Senator FERGUSON—How many people were involved in that delegation?

Ms Millar—I led our delegation. We were also very fortunate to have Justice Branson of the Federal Court, who made an absolutely terrific contribution, and also colleagues from my department, the Attorney-General's Department and HREOC.

Senator FERGUSON—Do you know what the total numbers were?

Ms Millar—I can give you that information.

Senator FERGUSON—Was it 10 or 20?

Ms Millar—More like about six, I think. Also, of course, there was our ambassador on the ground and staff from the embassy. That might have made it about 10, perhaps.

Senator FERGUSON—What was the total time frame of the dialogue?

Ms Millar—It was two days.

Senator FERGUSON—It is not long, is it?

Ms Millar—No, it is not long. We then invited Iranian colleagues out for a study tour that HREOC organised, which I am sure they would be happy to talk to you about. But we have been very keen to get a second round going and to continue to talk to them about that.

CHAIR—I have just a couple of questions. The first, I think, is probably best directed to Mr Proctor. You might want to examine the *Hansard* of ACFID's appearance before the committee this morning to add to this, I suspect. They raise this issue in their submission at page 9:

It is currently unclear as to the level of involvement of government agencies outside of DFAT in the human rights dialogue processes. ACFID recommends AusAID becomes intimately involved in all stages of human rights dialogue processes.

It goes on from there. We did have some discussion this morning with Ms Richards from ACFID about that. I would be interested in your observations about the degree to which AusAID is involved in the dialogue processes themselves—as distinct, if you like, from the Human Rights Technical Cooperation Program currently extant in China and the development of something similar elsewhere; in Vietnam, for example.

Mr Proctor—My perception is that we are pretty closely involved. We certainly attend the dialogues in Canberra and China, and of course we have the direct engagement with HREOC in terms of the areas that are being considered, so I think through the year AusAID is fairly actively involved. I take your point. Moving off the technical cooperation itself, we have regular discussions with the Department of Foreign Affairs and Trade. But in terms of engagement with other areas of government, I think if you look, say, at what the study tours from various countries like Vietnam and China do when they come here, they are engaging with a whole range of government agencies, not just federal but also state and local. I would like to look at the ACFID comment, obviously, but I think it is in fact quite a broad-ranging relationship, because of those study visits particularly.

CHAIR—In the planning of an agenda for the dialogue process, for example, does AusAID have a role in setting or suggesting agenda items and advancing those?

Mr Proctor—I would like to draw on people who have been a little more directly involved than I have been.

Mr Callan—From my own experience from a few years back, the answer was yes. We were involved in discussion of the agenda, particularly in relation to the item dealing with our proposed technical cooperation activities, as you would imagine. In relation to that, we were also involved in the discussion that would then take place with the Chinese in the dialogue about what activities they gave priority to and what activities we on our side wanted to give priority to. We would then see whether there were areas of overlap which met the interests of both sides and where we could deliver something. So, yes, we were involved. I am talking about the very early days, back in 1997 and 1998.

CHAIR—I appreciate that.

Ms Millar—I will just add to that. As we would with any bilateral consultations that DFAT is responsible for coordinating, we would go out to all the interested agencies to seek their views on the agenda and how to take those forward. So, for the human rights consultations, we would talk to the Attorney-General's Department, AusAID and PM&C, in particular.

CHAIR—Hopefully, I am about to go to Mr Minogue, so he can provide us with similar information in relation to the Attorney-General's Department's engagement in the setting of the agenda for a dialogue, level of attendance and so on.

Mr Minogue—In terms of the setting of the agenda, we canvassed with our colleagues from Foreign Affairs the sorts of issues that are of interest to us. For example, an issue that would be coinciding with our domestic human rights, which is our responsibility, is the question of mental illness and disability. That is becoming a bigger issue. The United Nations is currently negotiating the text of a convention on the rights of people with a disability. China and Asia take a very different view of mental illness and its relationship to disability than we do. So that is an issue in which we would have an interest.

In terms of our participation in the dialogues, I think we have been involved in all bar the first China dialogue, all of the Vietnam dialogues and the one Iran dialogue. I personally have not been involved in all of those, so I cannot assess the changes that have taken place, but I think there are a couple of interesting issues that come out of those. For example, discussions in the formal dialogue have been quite frank but also quite formal. It is a formal process, and officials talk about what officials can formally say, and there are limits to what they can say. But there are also quite positive exchanges of information that come from there. For example, with the China dialogue there has been much discussion of the range of legislative protections they are moving to put in place. We have laws that now prohibit this sort of conduct, or prohibit this sort of abuse and those types of things. That then allows the discussion: 'Legislation can take you so far but there are other things that need to go with it.'

For example, in a discussion of China's—virtually—administrative appeals and administrative review legislation, which they flagged at either the last dialogue or the previous one, we were able to discuss relatively simple matters such as the provision of a statement of reasons and how for a very large population access to the courts and justice is a problem—it is a problem in Australia, so equally or much more so it is a problem in a larger country like China—and how very simple administrative mechanisms can actually be quite powerful and more effective in assisting people on the ground.

Building on that, one of the other things I have experienced is that it is not just the discussion with officials in the dialogue—it is also discussions outside the dialogue. The example I give is a meeting with the All-China Women's Federation when I was in China for the seventh, or the sixth, dialogue. Again, there was a discussion about all the protections and legislative prohibitions on the sale and trafficking of women. It was quite interesting to be able to talk to the All-China Women's Federation outside the context of the dialogue and without a senior official present in terms of how it assists people on the ground. It led to quite a good discussion of capacity building and the sorts of practical measures that groups like the All-China Women's Federation put into place. So from our perspective at one level there is the discussion of legal issues—and that is fine as far as it goes—but there is also the opportunity to get in behind those issues and compare experiences and, from our position, discuss a relatively simple tool like

statements of reasons and then capacity building and some of the issues China is grappling with. To make the legislative improvements much more effective is also a strength of the process.

Ms Millar—It is very much a dialogue, so our dialogue partners can raise issues of concern they may have about Australia, things they may want to discuss with us. So in that context, when we are developing the agenda, we try and make sure we have people—it is easier if it is in Australia—from all the relevant agencies, where the issues have been raised relevant to that agency. For example, often Indigenous issues are raised, so we get senior colleagues from DIMIA to come and talk about those issues. With women's issues, it is the Office for Women or colleagues from FaCS. So there is a whole range of things. We are trying to respond to the interest of the other side by providing as comprehensive a briefing from the people who work on those issues as we can.

Mr DANBY—I have one technical question. Has the department considered an international meeting of dialogue countries including foreign parliamentarians and Australian parliamentarians to discuss human rights dialogues with the three countries you have mentioned?

Ms Millar—We have not. It is an interesting idea. We are very keen to talk even more closely and formally with the Europeans on some of this. If there were prospects for doing something more broadly I think we would look at it, but at this stage, no, we have not.

Dr Napier—There is an annual process called the Berne process where the countries that have dialogues with China meet. It is called the Berne process because the first one was held in Berne; this year it was held in London. They exchange experiences and so on. There is also something that goes by the name of the Brussels-Berne process because it started in Brussels. Again, countries with dialogues with Iran meet and exchange ideas.

Senator FERGUSON—I hope you do not start too many more.

Dr Napier—Yes; it will get longer and longer. The High Commissioner for Human Rights from Geneva attends those dialogues and talks at them as well, so there is that level of interaction.

Mr DANBY—Are they only meetings of officials?

Dr Napier—At this stage, I think so.

CHAIR—We have a number of questions which we have not had time to reach—it is always the way—some of which we may put on notice to the agencies, if that is acceptable. The committee has, as you know, spent some time this morning focusing on the engagement of the non-government sector and contemplating the challenges of parliamentary participation and the issues of the reporting process and the public accountability of the bilateral dialogue processes. I imagine that there are going to be, pursuant to our terms of reference, key issues for the report. If, on consideration of *Hansard*, there is further information from witnesses today—I note that some of your officers were unable to be here—that you may wish to make available to the committee, those remarks would be helpful to us and could be forwarded to the secretary.

Ms Millar—What would be your time frame for that?

CHAIR—It is not as bad as any other committee in which you have ever had to do that—not tomorrow and not next week but as soon as you are able to. We would be grateful for that information. It will take some time for the *Hansard* to be produced, for a start, so it is not as onerous as usual. We thank you, Ms Millar, and all your officers for appearing today. We will take the opportunity to consider our report and follow up those issues with the department. If there are any other issues that you wish to raise or provide further information on, as I have said, you would be more than welcome to do so. I thank all officers who have attended, the secretariat and the broadcasting and Hansard staff for their assistance. The committee authorises the publication of the supplementary document from ACFID. That will be made public.

Resolved (on motion by **Senator Ferguson**):

That this committee authorises publication of the transcript of the evidence given before it at public hearing this day.

Subcommittee adjourned at 12.13 p.m.