



Submission No 8

Inquiry into Australia's Human Rights Dialogue Process

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amnesty international australia

Submission to the

Human Rights Sub-Committee

Of

**The Joint Standing Committee of Foreign Affairs, Defence and
Trade**

regarding the

**INQUIRY INTO AUSTRALIA'S HUMAN RIGHTS DIALOGUE
PROCESS 2004**

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The global defender of human rights

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1. Introduction

Amnesty International Australia (hereon Amnesty International) is not opposed to the principle of dialogue between states on human rights. However, it is Amnesty International's assessment that the human rights situation in China, Vietnam and Iran remains serious, and in many respects the human rights situation in these countries has worsened during the time in which the Australian human rights dialogues have been conducted (China since 1997, Vietnam since May 2002 and Iran since December 2002).

Without any clear improvement in the human rights situation in dialogue partner countries, there is a clear onus on the Australian government in continuing the conduct of the dialogues to provide greater accountability to the Australian parliament and a higher level of transparency to the public.

1.1 Human Rights in China

Amnesty International remains deeply concerned at reports of serious human rights violations committed throughout China. Despite a few positive steps, China's new administration has yet to grapple with the basic legal and institutional weaknesses which allow such violations to continue and in the majority of cases to be perpetrated with impunity. Political interference in the administration of justice, as evidenced in ongoing political campaigns such as the "strike hard" campaign against crime, continue to undermine attempts to establish and strengthen the rule of law.

Hundreds of thousands of people continue to be detained in violation of their fundamental human rights across China, death sentences and executions continue to be imposed after unfair trials, torture and ill-treatment remain widespread and systemic and freedom of expression and information continue to be severely curtailed.

Amnesty International's key human rights concerns in China include:

- The continued use of the death penalty during the ongoing "strike hard" campaign resulting in high numbers of executions, often after unfair or summary trials;
- The continued use of "Re-education through Labour", a system which allows for the detention of hundreds of thousands of individuals every year without charge or trial in contravention of international human rights standards;

- The persistence of serious allegations of torture and ill-treatment within China's criminal justice system, including police stations, "Re-education through Labour" camps and prisons;
- Increasing arrests and detentions of Internet users or so-called "cyber-dissidents" in violation of their fundamental rights to freedom of expression and information;
- An intensification in the crackdown on the human rights of the mainly Muslim Uighur community in the Xinjiang Uighur Autonomous Region under the guise of "anti-terrorism" measures;
- Continued repression of the rights to freedom of expression and association in Tibet, including the ongoing imprisonment of scores of Buddhist monks and nuns as prisoners of conscience;
- The ongoing crackdown on the Falun Gong spiritual movement and other so-called "heretical organizations", leading to widespread reports of arbitrary detention, torture and deaths in custody;
- Serious human rights violations in the context of the spread of HIV/AIDS in China, including reports of torture and ill-treatment of people with HIV/AIDS, and the arbitrary detention, harassment and intimidation of HIV/AIDS activists;
- The plight of North Korean asylum seekers in China, who continue to face forced return to North Korea where they risk imprisonment, torture and even execution, together with the arbitrary detention of journalists and others attempting to raise awareness of their situation.

1.2 Human Rights in Vietnam

The human rights situation in Vietnam has continued to deteriorate during the past year with fundamental rights such as freedom of expression, freedom of association and freedom of religion seriously undermined. The judicial system remains weak and vulnerable to political interference and corruption. The use of the death penalty continues to rise for a wide variety of offences including economic crimes.

Amnesty International's key human rights concerns in Vietnam include:

- The use of disproportionate force and severely repressive practices in some ethnic minority areas – notably the Central Highlands;
- The increasing application of the death penalty;

- The continuing arrest and imprisonment of advocates for government reform and for freedom of expression, religion and association;
- An increasing number of laws/decrees/decisions repressing access and use of the internet;
- The use of national security legislation and the criminal code to repress criticism of the government. Much of this vaguely worded 'catch-all' legislation contravenes international law and standards to which Vietnam is a state party;
- Lengthy periods of pre-trial detention which breach both Vietnamese and international law;
- The use of administrative detention to detain individuals in contravention of international law and standards;
- Restrictions on religious freedoms.

Ethnic minorities – In 2003, 33 Montagnards were sentenced to long periods of imprisonment following the crackdown on the Montagnards in the Central Highlands in 2001 by the government. The total number of those known to have been sentenced since the 2001 events is at least 77. In April 2004 coordinated demonstrations in three provinces comprising the Central Highlands region were brutally suppressed by the authorities leaving at least eight civilians dead and an unknown number wounded or missing. Widespread arrests have also taken place but given the almost total isolation imposed on the area by the authorities it is very difficult to obtain detailed and accurate information of unfolding events.

The death penalty – is a matter of increasing concern. The numbers of death sentences imposed and executions carried out during 2003 was a substantial increase over 2002. There is a growing trend of increased use of the death penalty for drug trafficking offences. Some of those convicted of serious economic crimes are still being given the death penalty.

Freedom of expression - Amnesty International has concerns about a series of arrests and harassment of Vietnamese citizens by the authorities for the peaceful expression of their rights over the last two years. Dissidents Dr Nguyen Dan Que, and Father Thadeus Nguyen Van Ly are among many currently detained for their advocacy of peaceful political reform and criticism of government policies.

Use of the Internet – Laws, decrees and decisions continue to be introduced repressing access and use of the internet. These have compounded Amnesty International's concerns regarding the stifling of political expression and are in contravention of the Vietnamese Constitution, and other international human rights instruments ratified by Vietnam.

Pre-trial detention - Amnesty International is also concerned at the fate of a number of individuals who have been arrested and are being held for lengthy periods of pre-trial detention. Amnesty International believes that their ongoing detention without trial breaches both Vietnamese and international law. Under the July 1988 Viet Nam Criminal Procedure Code, the period of temporary detention for investigation cannot exceed two months for 'less serious crimes', or four months for 'serious crimes'.

Administrative detention – Amnesty International is concerned at the continued use of administrative detention orders to restrict and detain perceived dissidents in their homes for long periods without any judicial process. For example, administrative detention has been used as a way of curtailing the rights to freely practice a chosen religion. Members of the unofficial Unified Buddhist Church of Viet Nam (UBCV) are particularly targeted. The leaders of the UBCV, Thich Huyen Quang and Thich Quang Do are detained under strict surveillance with their rights to movement severely restricted.

1.3 Human Rights in Iran

The human rights situation in Iran remains one of serious concern to Amnesty International. Political prisoners, including prisoners of conscience, remain in prison serving sentences imposed in previous years following unfair trials. Arbitrary detention and the arrest of student demonstrators and political activists took place in 2003, without charge, trial or regular access to families and lawyers. Judicial authorities curtail freedoms of expression, opinion and association. In 2003, internet sites were filtered and journalists were imprisoned. At least 103 executions took place in 2003, four prisoners being sentenced to death by stoning and at least 127 people were sentenced to be flogged. A further 11 people were sentenced to amputation of fingers and limbs. Amnesty International believes the numbers may in fact be considerably higher.

Amnesty International's key human rights concerns in Iran include:

- The failures to implement legislative reform to promote the development and fulfilment of human rights and fundamental freedoms;
- The use of discriminatory and arbitrary procedures based on *gozinesh* (selection), as applied in the selection of candidates for the scheduled 2004 parliamentary elections;
- The continued practice of arbitrary arrests and secret detention of people carried out by the judiciary and security forces;
- The continued practice of flagrant violations of Iranian and international law in the administration of justice;
- The use of the death penalty and other cruel, inhuman and degrading punishments including flogging and amputation.

2. Obligations of Participating Agencies

Amnesty International's central concern regarding Australia's bilateral human rights dialogue is the lack of accountability. There are no identifiable institutions responsible for examination of the dialogue process or its outcomes, neither at the international nor at the national level. In Australia neither Parliament nor the people are able to assess the dialogue process, as presently conducted.

There is a particular need for accountability in the case of the human rights dialogue with China. As bilateral dialogue is one to one, each dialogue country is potentially subject to the considerable economic leverage which China is able to deploy. In this context it is evident that non-human rights national interest considerations are likely to impinge upon purely human rights objectives. The closed nature of the current dialogue accentuates the possibility of non-human rights factors influencing the dialogue.

Accountability requires that concrete criteria and benchmarks are in place by which to measure progress of the dialogue. It is properly the role of government rather than NGO's to set the criteria for the evaluation of any process conducted by government. However, at a minimum, it should be possible to report for each dialogue on whether or not any undertakings for action have been made with respect to specific items of discussion. Additionally, it should be possible to determine from one dialogue to the

next whether progress has been made on previous undertakings, and as such whether there is an improvement over a period of time in specific issue areas or on individual cases of particular concern. The identification of thematic issues to be the subject of focus in such dialogues would enhance the capacity to monitor progress on specific human rights situations.

At the conclusion of each dialogue, a report should be made in writing and submitted to the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade for its consideration. The report should be available for comment by NGO's with relevant expertise. The findings of the subcommittee on the progress of the dialogue, including observations or comments by relevant NGOs, should then be tabled in Parliament.

3. Multilateral pressure

Even if the shortcomings in the dialogue as mentioned above are addressed, Amnesty International believes that only with strong accompanying multilateral pressure and public comment will China, Vietnam and Iran be persuaded to move quickly from talk to action, to taking the steps they recognize they must take to end serious human rights violations such as arbitrary detention, torture and use of the death penalty.

Participation in human rights dialogues should not enable a country to remain immune from criticism. Dialogues should be backed by concrete and public criticism when warranted, as there is clear evidence that China in particular is deeply concerned about its international image and will respond to international pressure. It is alarming that such criticism has become more and more muted as dialogue processes have continued and proliferated.

Multilateral pressure is not mutually exclusive to the dialogue process. Greater collaboration between agencies conducting dialogues with China, Vietnam and Iran would enable more effective evaluation of the separate dialogues and improve coordination of discussion around key common concerns.

4. Involvement of Non-Government Organisations

Amnesty International supports the involvement of non-government organisations (NGO's) in observing the dialogue or in the provision of relevant information to dialogue agencies. In order to maintain a position of independence and impartiality, Amnesty International does not believe it is appropriate for organisations such as Amnesty International to formally take part in the dialogue.

Amnesty International does propose that serious consideration be given to expanding the current human rights dialogue process by initiating a parallel dialogue process for human rights/NGO experts, academia and the legal profession to conduct roundtables on key human rights issues. A thematic approach would assist in identifying relevant participants and can be a positive way through which the formal dialogue process can be held accountable.

5. Recommendations

- The Minister of Foreign Affairs should table a report in the Parliament at the conclusion of each dialogue. The report should:
 - (a) set out the basic information about the dialogue – participants, positions, agenda
 - (b) state in respect of each item the positions taken by dialogue partners and Australia and any outcomes involving action in respect of it
 - (c) indicate, where the same subject was discussed at the previous year's dialogue, how the present situation stands in the light of that discussion;
- It may be appropriate for the report to be referred to the Human Rights subcommittee of the Joint Committee for Defence, Foreign Affairs and Trade for inquiry and report to the Parliament. Provision should be made for comments by relevant NGOs to the report prior to its tabling;
- At the dialogue itself efforts should be made to avoid the current tendency for set piece statements. This would require the dialogue part of the meeting, presently

restricted to one day, to be extended. One major topic – as for example torture or prohibition on internet use – should be set aside for a half day discussion

- NGO's should be invited to attend in an observer role to encourage greater transparency. In order to maintain impartiality Amnesty International would not be formally a party to any dialogue between governments;
- That the Department of Foreign Affairs Human Rights Section liaise with key Australian human rights NGOs to establish a working group to develop a parallel dialogue process;
- Australia should initiate – possibly in conjunction with the United States or the European Union – an international meeting of dialogue countries to review the dialogue process. It would be designed to formalise an interaction between States engaging in the dialogue including a regular interchange of the outcome of each dialogue and advance notification of proposed agendas.