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Inquiry into Australia's Human Rights Dialogues with China and Vietnam

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Australia's Human Rights Dialogue with Vietnam

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The Australia-Vietnam Bilateral Human Rights Dialogue is almost 10 years old. Since it was launched in 2002, eight rounds of talks have been held, alternatively in Australia and Vietnam. The dialogue has become an accepted policy tool in Australia's human rights diplomacy, and its existence is no longer in question. However, after almost a decade of implementation, the lack of human rights progress in Vietnam raises serious questions about the relevance and impact of the dialogue process. As stressed by the Department of Foreign Affairs and Trade (DFAT), *"the most important goal of Australia's human rights diplomacy is to make practical improvements to the human rights situations in other countries"*. This paper examines the human rights situation in Vietnam, and contributes recommendations for Australia's ongoing efforts to improve the human rights dialogue and increase its effectiveness for change.

The Human Rights Dialogue – an Effort towards Progress or a Shield against Scrutiny ?

Australia is the only Asia-Pacific country to have a bilateral human rights dialogue with Vietnam (the other countries are the European Union, the United States, Switzerland and Norway). The dialogue presents an important opportunity to discuss ways to strengthen human rights protection and encourage progress on specific issues. But dialogue can only be effective if it is a two-way process. We are concerned that Vietnam is using the dialogue, and other international initiatives, as a shield to deflect world scrutiny from its troubling human rights record.

In its national report to the United Nations Human Rights Council at its Universal Periodic Review (UPR) on 9th May 2009, Vietnam claimed that the very fact that it engages in human rights dialogues with Australia and other countries is in itself a human rights *"accomplishment"*. This is surely not the Australian perspective. Moreover, at the UPR, instead of engaging in inter-active dialogue with UN member states, the Vietnamese delegation dismissed their concerns on violations of freedom of the press, religion, expression and association as *"unfounded reports and allegations of ill will about democracy and human rights in Vietnam"*.¹ It also rejected over 40 concrete proposals for advancing human rights, including Australia's important recommendations to strengthen press freedom protections and bring the Penal Code and the Criminal Procedures Code into line with its international treaty commitments.

Whatever may be said during the private bilateral dialogues, Vietnam has a human rights policy that contrasts fiercely with its international human rights commitments. Whilst it has acceded to seven core human rights instruments and enshrines freedom of expression, religion, assembly and association in its Constitution, Vietnam tolerates no pluralist views and rejects criticism of Communist Party policies as attempts by "hostile forces" to undermine the regime. Vietnam's first human rights magazine published in June 2010 articulates this concept clearly. It denounces dissidents as *"people who copy the thinking of*

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foreign countries and call themselves “opposition”, and flatly declares: “we cannot accept “Western-style” democracy or human rights”.²

Measuring Improvements on the Ground: the Gulf between Rhetoric and Reality

Since 2002, Australia has repeatedly raised a wide range of human rights concerns in the dialogue with Vietnam, including the **situation of ethnic minorities, freedom of religion, restrictions on the use of the Internet, freedom of expression and association, national security provisions, criminal law and judicial reform, the death penalty, domestic violence and trafficking in women**. Australia has commended Vietnam’s “open, frank and constructive discussion” on these subjects, but what practical progress is reflected on the ground?

1. Criminal law, national security provisions and judicial reform:

The question of legal reforms is one of the most important challenges to human rights, for there can be no lasting progress if Vietnam does not urgently bring domestic legislation into line with international human rights law. Vietnam has acceded to the UN International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) since 1982, and it formally guarantees human rights in its 1992 Constitution. Yet it restricts their exercise by a whole arsenal of domestic legislation which conditions human rights on compliance with the interests and policy of the ruling communist party. For example, Article 70 of the Constitution states that “*all citizens shall enjoy freedom of belief and religion*”, but that “*no-one can misuse beliefs and religions to contravene the laws and State policies*”. Since State policies are established and enforced by the one-Party State which has extensive control over the executive, legislative and judiciary powers, these provisions gravely limit, if not completely nullify, the exercise of human rights.

The use of broadly-defined “**national security**” provisions in the Penal Code is of particular concern. These provisions make no distinction between violent acts such as terrorism and the peaceful exercise of freedom of expression, and they are the principle tool of political repression in Vietnam. Seven of them carry the death penalty. Concerns about these laws are not new. In **1995**, an Australian Parliamentary Delegation which visited Vietnam observed: “*As with freedom of expression, the Vietnamese authorities are prepared to interpret national security provisions in the law broadly so as to preclude any religious activity that they consider might call into question the Communist Party’s monopoly on power*”³. The United Nations has repeatedly called for the abrogation or revision of these laws since **1994**, when the UN Working Group on Arbitrary Detention visited Vietnam, and Australia has systematically raised this issue at every session of the Human Rights Dialogue since **2002**. Yet over the past decade, Vietnam has not made the slightest effort to reform these spurious laws, and continues to use them to imprison human rights defenders and peaceful critics.

. This broad interpretation of national security provisions enables Vietnam to declare in international fora that: “*there are no political prisoners in Vietnam, only people who violate the law*”.

Ordinance 44 on Administrative Detention, adopted in 2002, empowers local-level Policemen and officials not only to arrest and detain suspected “national security offenders” for up to two years without any process of law, but also to commit them to “rehabilitation camps” or mental hospitals, a measure which recalls the notorious internment of dissidents in the former Soviet Union.

The lack of progress in legal reform is particularly disturbing since Vietnam is receiving millions of dollars from the World Bank, the ADB, UNDP and the international community to finance a programme of legal reforms including the Strategy on the Development of the Legal System and Strategy on Judicial

Reform. Instead of using this money to move towards the **rule of law**, Vietnam is developing the **rule by law** – the use of the law to suppress free expression and reinforce the control of the one-Party state.

2. Religious Freedom

Although religious freedom is guaranteed in the Vietnamese Constitution, religious followers are routinely harassed and persecuted for their peaceful beliefs, and religions are subjected to a draconian system of recognition and control. Only “recognised” religions or state-sponsored religious groups are allowed to practice their activities, and all others are banned. The Unified Buddhist Church of Vietnam (UBCV), Vietnam’s largest religious body, is banned and its leaders isolated and harassed.

Roman Catholics protesting against land seizures have been brutally beaten and arrested. Christians, especially indigenous Christian minorities in the Northern and Central Highlands have suffered severe persecution, and many H’mong tribes-people were killed this year in a Police crack-down on peaceful protests. The international community has hailed the adoption of the “Ordinance on Beliefs and Religions” (21/2004/PL-UBTVQH), which came into force in 2005, as a step forward in protecting religious freedom. In fact, the Ordinance imposes stricter controls on religions, and is incompatible with international human rights legislation on religious freedom⁵.

3. Restrictions on the Use of the Internet

Whilst Vietnam “talks frankly” with Australia on issues including Internet freedom, it continues to adopt new restrictive legislation to curb blogs, firewall Websites and criminalise Internet use. Vietnam is following the Chinese model – allowing wide access whilst filtering and controlling content, and harshly punishing offenders. Legislation includes Directive 71 (2004) which renders Internet café owners responsible for their users’ online activities, 2008 regulations on Blogs prohibiting “*the use of blogs to smear the image of the Party and the government apparatus*”, Decision 15 (2010) obliging Internet cafes, retail outlets and service providers in Hanoi to install government-provided software that could enable the authorities to block access to websites and track the activities of Internet users. The media watchdog Reporters Without Borders classed Vietnam as the “*second largest prison for netizens*” in 2010.

4. The Death Penalty

In 2009, Vietnam reduced the number of crimes punishable by death from 29 to 22 (mostly for economic crimes such as corruption). However, despite strong international recommendations, it has taken no steps to exempt “national security” crimes from capital punishment.

In July 2011, Vietnam adopted a law authorising executions by lethal injections instead of by firing squad, estimating that this is more “humane”. But the government has expressed its strong opposition to abolishing the death penalty.

5. Restrictions on the Right to Freedom of Association and Peaceful Assembly

There are no independent associations, trade unions, human rights NGOs or civil society organisations in Vietnam. All associative activity is controlled by the Communist Party and the Vietnam Fatherland Front, a para-governmental umbrella body of “mass organisations”. Under Decree 88 on Associations (2003), associations are directly linked to governmental programmes, and effectively serve as government ministries. The government can intervene in all their operations, including vetoing membership or introducing members of its own choice. It is important to understand that NGOs from Vietnam are in fact GONGOs (Government-organised Non-governmental Organisations). They are allowed to travel outside Vietnam on condition that they represent the government’s positions, and they cannot speak with an

independent voice. The problem of Vietnamese GONGOs is an increasingly serious issue at the UN, where NGO speaking time is limited. GONGOs use their time to extol government policies, thus stifling the true voices of civil society.

Although **freedom of assembly and peaceful demonstration** is guaranteed in principle (Article 69 of the Constitution), this right is denied in practice in Vietnam. In 2005, the government adopted Decree 38/2005/ND-CP which prohibits demonstrations outside State agencies and public buildings, and bans all protests deemed to “*interfere with the activities*” of Communist Party leaders and State organs. The “Directives for the Implementation of Decree 38” issued by the Ministry of Public Security in 2006 **prohibits gatherings of more than five people** without permission from the state. This anti-demonstration decree has been widely invoked by Police in Vietnam over the past eight weeks to quell unprecedented demonstrations in Hanoi and Saigon denouncing Chinese incursions on Vietnamese waters and lands. Decree 38 is regressive even by Vietnamese Communist standards. On 13.9.1945, Ho Chi Minh adopted Decree 31 authorising demonstrations and declaring that “*freedom of assembly is one of the fundamental principles of the People’s Democratic Republic*”.

Concerns and Recommendations on the Australia-Vietnam Human Rights Dialogue

We recognize the complex political and economic factors that impact human rights policies and practices, and we do not seek to draw simplistic conclusions about the Australia-Vietnam Dialogue and human rights progress on the ground. Progress is incremental, and results from a range of contributing factors. However, if the dialogue is to be a truly effective tool of Australian diplomacy and not mere “window dressing”, we urge consideration of the following points:

- a) **Benchmarks:** The EU has often stressed that “*the human rights dialogue is an acceptable option only if enough progress is achieved and reflected on the ground*”.⁶ Progress must therefore be measured by establishing benchmarks, which should be achieved within a determined time-frame wherever possible. The EU has issued its own set of benchmarks and EU Guidelines on the Human Rights Dialogues, and the European Parliament has urged that these benchmarks be tied to **substantive indicators of progress**. Examples of these indicators can be found within UNDP statistics, NGO indexes, UN treaty bodies and special procedures recommendations etc.⁷ A set of **specific objectives** (even minimal ones) should be set for **each Human Rights Dialogue**, based on these benchmarks for measuring progress. NGOs and MPs should receive the list of specific objectives and benchmarks;
- b) **Regular Public Assessments of Progress:** To increase the transparency and accountability of the dialogue process, in addition to the current DFAT media release, a substantial assessment should be made after each round of the dialogue, based on these benchmarks and indicators of progress. The assessments should be made public, and discussed openly before the Human Rights Sub-Committee and Australian Parliament. Australia could express satisfaction on progress, but also disappointment when progress is slow or non-existent;
- c) **Strengthen the Role and Participation of Parliament and Human Rights NGOs:** Civil society and members of the Australian Parliament should be entitled to make more input and be informed about the dialogue’s content and progress. Briefings and de-briefings should be held for Australian NGOs and MPs before and after the dialogue, and the Australian Parliament should institutionalise the **holding of a Parliamentary Hearing after each Human Rights Dialogue** in order to ensure public scrutiny and allow Parliament to exert a democratic control on the process;
- d) **Publish the list of individual cases of concern:** Australia could send a strong message of support to Vietnamese human rights defenders and their families by pressing for the release of prisoners and raising individual cases of concern. Currently, the list of these cases are prepared largely on the basis of input from NGOs, and sometimes the NGOs contributors are informed of the Vietnamese government’s reply (if any). **But NGOs are not provided with copies of this**

list, which would help them significantly to coordinate their advocacy on behalf of these individuals. So far, the list is kept confidential, for the efficiency of diplomatic demarches. But in cases where real progress is minimal, publication of the list, or parts of it, could produce more effective results;

- e) **The Australia-Vietnam Human Rights Technical Cooperation Programme:** More information, exchange and input from international and Australian NGOs could help to make this programme more effective. The Vietnam Committee on Human Rights, which is a member of the International Federation of Human Rights (FIDH) would be happy to work with the Australian Human Rights Commission to explore ways to contribute to this process;
- f) **Overall Human Rights Strategy:** The Human Rights Dialogue can only achieve results if it is part of an **overall strategy** that includes political pressure and public scrutiny at every level. As the European Parliament has said: **“it is essential for dialogue or consultation to be backed up by appropriate diplomatic and political pressure at every level, extending to United Nations bodies and its Human Rights Council”**⁸. Australia should raise human rights issues at all bilateral meetings with the Vietnamese authorities and in multilateral fora, Entertaining a human rights dialogue should not prevent Australia from publicly criticising Vietnam, submitting Resolutions and making public statements calling for the release of political prisoners or condemning arbitrary arrests. It should examine the human rights impact of its trade policy with Vietnam through regular assessments. Moreover, the benchmarks of the dialogue should feed Australia’s input to Vietnam’s Universal Periodic Review, and Australia should consult with other countries to ensure that concerns raised in dialogues are addressed.

Vietnam would undoubtedly prefer to maintain its Human Rights Dialogue with Australia and other countries as a process behind closed doors. Boxing up human rights issues in this private process could only help Vietnam to continue its abuses, with no incentive for change. Australia can help to prevent this by mainstreaming human rights into every sphere of its relationship with Vietnam, including development, economic, financial and technical cooperation, trade and political and security issues. This way, Australia can ensure that the human rights dialogue does not constitute an end in itself, but contributes to real and lasting progress in Vietnam.

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¹ Statement by Deputy Foreign Minister Pham Binh Minh at the 5th Session of the Human Rights Council Working Group on Universal Periodic Review, Geneva, 8 May 2009.

² *“For a correct understanding of human rights in Vietnam”*, Deputy Minister of Public Security Nguyễn Văn Hương, Tạp Chí Nhân Quyền Việt Nam (Vietnam Human Rights Journal), No 1, June 2010.

³ *Australia-Vietnam Dialogue : the Currents of Change*, Report of the visit of the Australian Parliamentary Consultative Delegation to Vietnam, Australian Government Publishing Service, Canberra, 1995.

⁴ See *The Rule of Law or the Rule By Law: Crime and Punishment in the Socialist Republic of Vietnam*, Vietnam Committee on Human Rights, April 2011, http://www.queme.net/eng/doc/Crime_and_Punishment_in_Vietnam.pdf

⁵ See *Vietnam: From “Vision” to Facts – Human rights in Vietnam under its Chairmanship of ASEAN, FIDH and VCHR*, September 2010. http://www.queme.net/eng/news_detail.php?numb=1353

⁶ EU-China dialogue on human rights, General Affairs Council, 2327th meeting, Brussels 22-23 January 2001.

⁷ FIDH- HRIC Joint Assessment of the EU-China Dialogue, 2004 and 2008.

⁸ European Parliament Resolution of 6 September 2007 on the functioning of human rights dialogues and consultations on human rights with third countries, para.22.