

29 August 2005

Senator Hutchins  
Chair  
Senate Foreign Affairs, Defence and Trade References Committee,  
Parliament House,  
Canberra ACT 2600

### **Inquiry into Australia's relations with China**

Dear Senator Hutchins,

Attached is a copy of the submission the Human Rights Council of Australia prepared for the Joint Committee on Foreign Affairs, Defence and Trade, Inquiry into Australia's Human Rights Dialogue. It has been modified slightly from that originally submitted.

The main focus of this submission is to comment on Australia's ability to influence the human rights situation in China.

#### **Continuing human rights concerns**

The attached submission was prepared in May 2004. The Human Rights Council of Australia is not a research organisation. However the Council is aware that other organisations have public information which confirms the continuation of widespread violations of human rights in China. The situation is effectively summarised in Amnesty International's 2005 Annual Report.

Extract from Amnesty International's 2005 Annual Report

**There was progress towards reform in some areas, but this failed to have a significant impact on serious and widespread human rights violations perpetrated across the country. Tens of thousands of people continued to be detained or imprisoned in violation of their fundamental human rights and were at high risk of torture or ill-treatment. Thousands of people were sentenced to death or executed, many after unfair trials. Public protests increased against forcible evictions and land requisition without adequate compensation. China continued to use the global "war on terrorism" to justify its crackdown on the Uighur community in Xinjiang. Freedom of expression and religion continued to be severely restricted in Tibet and other Tibetan areas of China.**

### **Australia's ability to influence the human rights situation in China**

Every country has opportunities to improve human rights internationally. Throughout the 1980s and the first half of the 1990s Australia was one of the most influential nations, playing a major role in areas such as standard setting, domestic remedies, strengthening international mechanisms, using bilateral influence and providing refuge for those fleeing human rights violations.

That role was built on a strong, consistent and uncompromised Government commitment to human rights in Australia and internationally. That commitment crossed party lines.

An example was the Australian commitment to the abolition of the death penalty. All Governments around Australia introduced legislation abolishing the death penalty. Australia took the lead role which resulted in the adoption of UN 2<sup>nd</sup> Optional Protocol to the International Covenant on Civil and Political Rights. The Australian Government actively campaigned to abolish the death penalty in other countries and the prevention of executions of citizens in their own countries.

That foundation has been undermined. The Australian Government, the Opposition and State Governments have all made statements and taken actions which indicate that their commitment to human rights has been compromised. For example:

- ⇒ In the context of the “war against terror” legislation has been introduced which ignores basic human rights (e.g. people are able to be detained without charge or trial).
- ⇒ Asylum-seekers have been ill-treated in detention centres
- ⇒ Australian political leaders have indicated they do not consider it appropriate to seek to prevent executions of people in other countries (unless they are Australian citizens)
- ⇒ The long-term detention without trial of Australian citizens by the US Government has been endorsed by the Australian Government

All of these make it more difficult for the Australian Government to credibly raise concerns about human rights violations in China including detentions in violation of fundamental human rights, torture or ill-treatment and the death penalty. As identified in the Amnesty International report, Chinese authorities are also using the “war on terror” to justify human rights violations.

The universality and inalienability of international human rights standards have been significantly damaged by Australia in recent years and this impairs its ability to use its influence to change the unacceptably high level of human rights violations in China.

### **The Human Rights Dialogue Process**

In its May 2004 submission (which is attached) the Council commented on the dialogue process and continues to welcome opportunities for non-governmental organisations (NGOs) to engage in that dialogue.

The Council is committed to furthering human rights through productive dialogue between Australian NGOs and civil society and the Government of China. However,

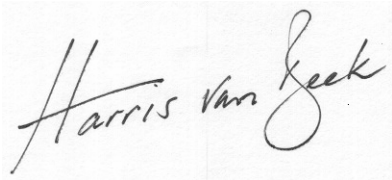
such dialogue would need to address the very real and urgent concerns held by Australian human rights NGOs about the recognition and protection of human rights in China. There needs to be an open exchange on matters of substance as the basis for future dialogue, both with the Chinese Government and with representatives of Chinese civil society.

Furthermore, to ensure the dialogue is balanced such a dialogue must welcome comments on Australia's own human rights challenges and means to address them.

The Council has become concerned that both the Australian and Chinese Governments may seek to use the offer of engagement as a means of “white-washing” the serious human rights issues needing to be addressed. Most human rights NGOs are struggling for resources and consequently are not always in a position to contribute to the dialogue at the available times. The Australian and Chinese Governments should never interpret this as an indication of a lack of interest, a reduction in concern about the human rights situations or an indication that there have been sufficient human rights improvements of any significance.

Given the recent recklessness with which the Australian and Chinese Governments have approached human rights protection and promotion in recent years it is the Council's concern that both governments may misinterpret, or even misuse, situations where a lack of resources limits the ability of NGOs to fully participate in the human rights dialogue.

Yours sincerely,

A handwritten signature in black ink that reads "Harris van Beek". The signature is written in a cursive style with a large, looped 'B' at the end.

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**JOINT COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**  
**INQUIRY INTO AUSTRALIA'S HUMAN RIGHTS DIALOGUE PROCESS**

A submission by the Human Rights Council of Australia Inc  
May 2004

This brief submission focuses on the role of Australia's development cooperation with relation to the Australia-China human rights dialogue.

The Human Rights Council of Australia is a private non-government organization which promotes understanding of and respect for human rights for all persons without discrimination through adherence to the International Bill of Rights and other human rights instruments, internationally and within Australia. While the Council has been heavily involved in the formulation of the so-called 'human rights approach to development', it has no special expertise on the status of development assistance to China. Others have carried out useful analyses of donor policies relating to China and the Council would like to refer the Committee to the attached contribution by Sophia Woodman<sup>1</sup>.

The current high level dialogue on human rights between China and Australia was formally inaugurated at a meeting between the Australian Prime Minister and the Chinese Premier in early 1997. Although, informal talks on human rights had taken place since the early 1990's this was the first time that the exchanges were put on a formal footing; the impetus for placing the dialogue on this footing came from both parties; the Chinese Government used the proposal to demonstrate its commitment to human rights in order to prevent a vote condemning its human rights record at the UN Commission on Human Rights and Australia saw the dialogue as a means to develop a closer relationship with China with the expectation that economic ties might be strengthened.

The fact that this rationale remains the principal motivation for the dialogue is reflected in the wording of the terms of reference of the current inquiry: "The aim of the dialogue is to hold frank and constructive discussions to demonstrate the commitment of both countries *to the talks* (emphasis added) and the overall strength of the bilateral ties with

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<sup>1</sup> See attachment, "Bilateral Aid to Improve Human Rights" by Sophia Woodman in *China Perspectives*, No 51 January-February 2004

Australia”. The emphasis seems to be on the dialogue *per se* rather than on its impact on the human rights situation in China – and, indeed, in Australia.

Has the human rights dialogue had an impact, either positive or negative? Have the lives of individuals been improved through “institutional strengthening, policy development, research, training and administrative resources in the human rights field?”<sup>2</sup> The responsibility for these lies with AusAID while HREOC is principally charged with their implementation.

It should be acknowledged at the outset that China has taken a number of steps to improve human rights in the country since the Tienanmen Massacre. The fact that many of these have often coincided with sessions of the UN Commission on Human Rights and the threat of a resolution condemning it for abuses, does not detract from the positive impact of some of the changes. The number of arbitrary detentions has diminished, China has become a party to the International Covenant on Economic, Social and Cultural Rights, the Constitution has been amended to include respect for human rights, efforts are to be undertaken to publicize the implications of the Constitutional change, a number of long-term political prisoners have been released, there have been prosecutions of officials accused of torturing prisoners and there is a field presence by the Office of the High Commissioner for Human Rights.

Unfortunately, human rights abuses remain pervasive. Freedom of speech is restricted through the prosecution of people critical of government policies including those posting comments on the Internet, political and religious dissidents are regularly imprisoned after unfair trials, workers’ rights are inadequately protected, the use of torture and the death penalty remain widespread and there are considerable dangers for civil society organizations who elect to work on human rights issues.

What is clear is that most positive steps have followed the possibility of condemnation in public international forums. This demonstrates that international pressure is essential to bring about change. The Human Rights Council is not arguing here that only condemnation is required but rather that Australia should change from its stance of complete silence to a more measured strategy for the promotion of human rights in China.

In this context, the Council has argued for some time that there is a lack of clarity in AusAID’s general policy on human rights and for the adoption by AusAID of a human rights approach to development cooperation<sup>3</sup>. It is unfortunate, therefore, that the human rights objectives of the dialogue with China are not spelt out in AusAID’s country strategy despite a reference to “good governance” which in this case clearly refers to the conditions for a transition to an efficient market economy. Even within HREOC’s projects for the improvement of the criminal justice and legal systems, it is clear that one consideration is on a system that facilitates trade and the protection of the contracts with firms investing in China.

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<sup>2</sup> DFAT, “Human Rights:Australia-China Human Rights Technical Assistance Program” September 1999

<sup>3</sup> See “Working Together”, a report of the International Conference on a Human Rights Approach to Development Cooperation, SIDA, 2000

The amount allocated to HREOC out of the budget for the aid program to China is less than 2% which reflects the relative priority given to human rights by the Government in its relations with China.

One aspect of HREOC's efforts is directed towards the training of selected individuals brought to Australia for exposure programs together with workshops on reporting under human rights treaties and other human rights subjects. The selection of these individuals is neither representative nor transparent with most being government officials or academics. Having participated in some of these exposures, the Human Rights Council of Australia did not gain the impression that the participants were challenged in any way and is not confident that their future activities would have a great deal of influence on either policy or practice.

As stated above the Council is not in a position to comment directly on the impact of the dialogue and of the human rights projects in China. However, some general recommendations are in order.

1. AusAID should be tasked with formulating clear human rights objectives for its development cooperation program in China
2. An annual report on the implementation of these objectives should be tabled in Parliament
3. The dialogue should focus on jointly identifying civil society organizations in China that would benefit from support
4. The Government, in collaboration with China experts and NGOs, should formulate a clear human rights strategy that includes judicious use of forms of international pressure