



Submission No 1

**Review of the Department of Foreign Affairs and Trade
Annual Report 2009 - 2010**

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Dear Review Chair

SUBMISSION BY VCA (VIETNAMESE COMMUNITY IN AUSTRALIA) TO JSCFADT REVIEW OF DFAT'S ANNUAL REPORT 2009-2010

Thank you for the opportunity of making our Submission, below:

1. IMPROVE CONSULAR AGREEMENTS TO BETTER PROTECT AUSTRALIANS DETAINED OVERSEAS

Where an Australian is detained overseas, consular protection is absolutely necessary, particularly if the prison conditions and rule-of-law standards there are lower than Australia would prefer.

Rather than relying on international norms, such as the multilateral Vienna Convention on Consular Relations of 24 April 1963, it is better to have specific and strong Consular Agreements.

In the early 2000's, the VCA asked the Government to obtain a Consular Agreement with Vietnam, and we applaud the Government for having done so.

Now that practical experience has been gained, we recommend a number of changes. These recommendations may be useful to not just the Vietnam Consular Agreement but also others.

The consultation mechanism (Article 21 in the Vietnam Consular Agreement) could be used as a starting point to make the recommended changes.

a. Notify, and permit consular visit after 24 hours rather than after up to 5-9 days

Presently, the Consular Agreement allows the receiving State 3 working days (which could last 5 days, if a weekend or holiday falls within the period) from arrest to inform the sending State that its citizen is being detained. After that, it can make the sending State wait for up to another 2 working days (ie. Up to 4 elapsed days) before the sending State's consular official may visit the detainee.

Clearly, a shorter period of 24 hours from arrest to consular visit would allow Australia to better protect its detained citizens. Because Australia is an open and democratic country, this shorter period does not present any problems where Australia is the detaining State.

Unless a receiving State wants to maximize its ability to coerce and harass, there is no rationale for the current long period of incommunicado detention of 5-9 days. First, the arresting and detaining authorities (police, prisons) usually work 365 days, and so are the receiving authorities (Australian Embassy). Second, with present-day technologies, instant communications is the norm, telexes and the like are not used between or within authorities for communications.

b. Permit consular officials to pass written messages from family members

The current Consular Agreement does not allow the sending State's consular official, when visiting the detained national, to pass written messages (ie. Letters) from family members.

There appears to be no valid law-enforcement, security, or safety reason for this. Its non-inclusion in the Consular Agreement, however, has the effect of reinforcing the detainee's isolation and fear.

Last year, the Vietnamese authorities refused permission when an Australian consular official wanted to pass a letter to Ms. Hong Vo from her son.

c. Permit weekly consular visit rather than monthly

Currently, the Consular Agreement allows once-a-month visit to the detainee by a consular official. Given that a day in detention is very long, and given the poor conditions in Vietnamese jails, we urge that Australia try to change it to weekly visits.

2. VISIT FAMILIES OF POLITICAL PRISONERS, AND SEEK TO VISIT POLITICAL PRISONERS

Currently, political attaches report on the political prisoner situation to the government and, where required, to Parliament. Australia then provides a list of political prisoners and express concern at the Australia-Vietnam Human Rights Dialogue.

DFAT officials making such reports do not do field work but rely on information from other sources, such as information from the media or NGOs. Sitting at the desk only, how can the officials know whether the prison conditions are up to standards, or what their side of the story really is?

We therefore recommend that officials supplement their information by speaking with families of political prisoners. This way, the officials will hear their side of the story and, where the families have been allowed to visit their loved ones, to hear about the conditions in jail. They should also seek to visit the political prisoners themselves, and visit them if permitted.

Meeting families of political prisoners is not as resource-intensive as DFAT has claimed in the past. There are efficient ways, for example by inviting several families to the Consulate. Privacy is not an issue, because all families want to tell the world about their loved ones.

3. REVIEW THE AUSTRALIA – VIETNAM HUMAN RIGHTS TECHNICAL COOPERATION AID PROGRAM IN RELATION TO POLITICAL PRISONERS

Australian taxpayer money is given to ministries of the Vietnamese authorities, and organisations run by the Communist Party of Vietnam, in the above HRTC program. The amounts involved have been increasing every year, to 1.2 million dollars this year.

DFAT argues that this program has been used to run various useful activities. But have such activities actually improved human rights on the ground? What matters is not whether the activities are carried out, but whether the aid program's stated objective, the improvement of human rights, is met.

There is no improvement in human rights if people who exercise their rights are jailed for doing so.

Therefore, we recommend that a Review be conducted to ask: *Has the HRTC made any difference to the political prisoner situation? And if not, how should it be modified to do so?*

Sincerely

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Federal President, VCA