

Australia's Human Rights Dialogues

2.1 In September 2005, the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee) tabled its report for the inquiry into *Australia's Human Rights Dialogue Process*. Chapter 1 of the report provides a background on Australia's bilateral human rights dialogues. The report highlights the previous Australian Government's rationale for conducting the dialogues:

The Australian Government firmly believes that non-confrontational, cooperative dialogue is the most effective way to address the human rights situations in other countries.¹

2.2 The previous report also noted the goal of Australia's human rights diplomacy at that time:

...the most important goal of Australia's human rights diplomacy is to make practical improvements to the human rights situations in other countries. The Government pursues this goal through a combination of constructive dialogue, technical assistance and the building of institutions which underpin good governance.²

2.3 The Committee notes that it did not receive enough evidence to undertake an assessment of whether there are measurable outcomes as a result of the human rights dialogue process, how effective it has been to date, and whether the process represents value for money.

1 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, p. 3.

2 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, p. 2.

Overview of the Australia – China Dialogue

- 2.4 In 1997, the Australian Government initiated a high-level bilateral dialogue on human rights with China.³ There have been thirteen rounds of formal dialogue since its inception, with the most recent round taking place in China in December 2010.⁴ The human rights dialogues are held alternately in either Canberra or Beijing.⁵
- 2.5 The Department of Foreign Affairs and Trade (DFAT) was of the view that the human rights dialogue with China had evolved 'from an officials-only meeting to become a wide-ranging dialogue between delegations comprising parliamentarians, officials and non-government practitioners.'⁶
- 2.6 DFAT highlighted that the composition of the Australian delegation to each human rights dialogue has varied over time 'due to a range of factors, including the timing, the length of notice given and the location of the dialogue.'⁷
- 2.7 In its Submission, DFAT stated that the human rights dialogue consists of four elements:
- formal talks between official delegations;
 - representations on individual cases of concern;
 - a separate program for the visiting delegation which allows direct interaction with non-government human rights practitioners; and
 - a Human Rights Technical Cooperation (HRTC) program through which Australia works with partners to support specific human rights-related projects.⁸
- 2.8 DFAT also stated that the primary components of the human rights dialogue were the formal talks between official delegations and representations on individual cases of concern.⁹

3 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 5.

4 Department of Foreign Affairs and Trade, *Submission no. 20*, pp. 5, 6.

5 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 5.

6 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 5.

7 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 6.

8 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 5.

9 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 5.

2.9 Topics that Australia raised at the 13th human rights dialogue included:

- freedoms of speech, assembly, the press, association, procession and demonstration;
- the use of the death penalty;
- the petition system and forced labour;
- legal reform and the rights of lawyers;
- the rights of women;
- the rights of persons with disabilities;
- the rights of children;
- the rights of ethnic minorities, including in Tibet and Xinjiang;
- freedom of religion; and
- civil, political, economic, social and cultural rights.¹⁰

2.10 Australia has also raised the issues of organ donation programs and the harvesting of organs from prisoners within China.¹¹

2.11 A list of the topics discussed at the first eight human rights dialogues with China is provided in Appendix D of the Committee's previous report into *Australia's Human Rights Dialogue Process*.¹²

Issues raised about Australia's human rights

2.12 As a dialogue partner, China has an equal opportunity to raise matters relating to human rights concerns in Australia. Topics that China raised at the 13th human rights dialogue included:

- changes to shared-parenting laws (2006 amendment to the Commonwealth Family Law Act 1975);
- male-female wage gap;
- attacks on international students;
- visas for international students; and
- rights of Indigenous Australians.¹³

2.13 The Attorney General's Department also highlighted that the kinds of issues raised by China often relate to Australia's domestic human rights position, Indigenous matters and immigration.¹⁴

10 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

11 Attorney General's Department, *Submission no. 25*, p. 2.

12 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, Appendix D.

13 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

14 Dr Boersig, Attorney General's Department, *Transcript*, 24 November 2011, p. 4.

Overview of the Australia – Vietnam Dialogue

- 2.14 The Australia-Vietnam human rights dialogue was first held in Hanoi in 2002.¹⁵ There have been nine rounds of formal dialogue, with the most recent taking place in Vietnam in April 2012. The human rights dialogues are held alternately in either Australia or Vietnam.¹⁶
- 2.15 DFAT added that while the dialogue with Vietnam is conducted at the level of First Assistant Secretary/Director-General¹⁷ ‘participation in the HRD [human rights dialogues] has broadened since 2002 to include a range of government agencies on both the Australian and Vietnamese sides, as well as Members of Parliament.’¹⁸ In particular, ‘Vietnam’s representation at the human rights dialogue has become more senior and has been drawn from a wider range of government agencies.’¹⁹
- 2.16 DFAT’s submission noted that the Australia-Vietnam human rights dialogue also consists of formal talks, representations on individual cases of concern, direct interaction with non-government human rights practitioners for the visiting delegation, and a HRTC program.²⁰
- 2.17 DFAT also stated that the primary components of the human rights dialogue with Vietnam were the formal dialogue and a program of additional meetings and site visits.²¹
- 2.18 Topics that Australia raised at the 8th human rights dialogue with Vietnam included:
- respective national approaches to human rights;
 - individual cases of concern;
 - freedoms of speech, assembly, the press, association and demonstration;
 - the use of the death penalty;
 - legal and judicial reform;
 - prison conditions;
 - freedom of religion;
 - civil, political, economic and cultural rights;
 - ethnic minority rights;
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15 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

16 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

17 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

18 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 8.

19 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 8.

20 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 5.

21 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

- women's rights;
- the rights of persons with disabilities;
- international human rights mechanisms (e.g. the UN Human Rights Council, human rights treaties); and
- Vietnam's implementation of recommendations from its Human Rights Council Universal Periodic Review appearance.²²

2.19 A list of the topics discussed at the first three human rights dialogues with Vietnam is provided in Appendix D of the previous Committee report into *Australia's Human Rights Dialogue Process*.²³

Issues raised about Australia's human rights

2.20 DFAT noted that, at the 8th human rights dialogue, Vietnam had a general exchange on human rights, questioned why Australia had not enshrined a bill of rights, and raised concerns about an assault on a Vietnamese student.²⁴

Overview of the Australia – Laos Dialogue

2.21 Australia has held three human rights dialogues with Laos, with the first held in October 2006 and the third held in April 2012. DFAT noted that, due to funding issues for the Lao delegation, the human rights dialogues have been held in Laos.²⁵

2.22 The second human rights dialogue with Laos, held in April 2009, was conducted at the First Assistant Secretary/Director-General level. Other Australian participants have included officials from the Attorney-General's Department and the Australian Human Rights Commission. The Lao delegation also included representatives from the Ministry of Justice, Supreme Court, Prosecutor's Office, Ministry of Public Security and the Lao Women's Union.²⁶

22 Department of Foreign Affairs and Trade, *Submission no. 20*, pp. 8-9.

23 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, Appendix D.

24 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 9.

25 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 21.

26 Australian Embassy, Lao People's Democratic Republic, 'Second Australia-Laos Human Rights Dialogue', viewed on 29 March 2012, <<http://www.laos.embassy.gov.au/vtan/PR0209.html>>

- 2.23 The dialogues also provide an opportunity for the delegates to visit a range of relevant human rights projects in Laos. At the second dialogue, the delegation visited the National Rehabilitation Centre and the Cooperative Orthotic and Prosthetic Enterprise (COPE) visitor centre, the Lao Bar Association, the Training Centre for Women with Disabilities and an open trial at the Vientiane Capital People's Court for Civil Proceedings.²⁷
- 2.24 Topics discussed at the second human rights dialogue included the promotion and protection of women's rights, access to justice, protection of minority rights, and the role of civil society in the protection of human rights.²⁸
- 2.25 The Australian Government does not operate a technical cooperation program under the framework of the formal human rights dialogue process with Laos. However, Australia does fund a range of projects aimed at the promotion of human rights in Laos under the Human Rights Grants Scheme.²⁹
- 2.26 In the last five years, Australia has funded two non-government organisations through the Human Rights Grants Scheme:
- Lao Disabled People's Association (2008-09, \$149,969);³⁰ and
 - Participatory Development Training Centre (2011-12, \$90,000).³¹

Overview of the Australia – Iran Dialogue

- 2.27 The Committee's previous report into *Australia's Human Rights Dialogue Process* noted that the then Deputy Prime Minister and Minister for Trade, the Hon. Tim Fischer, first discussed the possibility of a dialogue with Iran in 1999.³²

27 Australian Embassy, Lao People's Democratic Republic, 'Second Australia-Laos Human Rights Dialogue', viewed on 29 March 2012, <<http://www.laos.embassy.gov.au/vtan/PR0209.html>>

28 Australian Embassy, Lao People's Democratic Republic, 'Second Australia-Laos Human Rights Dialogue', viewed on 29 March 2012, <<http://www.laos.embassy.gov.au/vtan/PR0209.html>>

29 Department of Foreign Affairs and Trade, 'Laos country brief', viewed on 29 March 2012, <http://www.dfat.gov.au/geo/laos/laos_brief.html>

30 AusAID, *Human Rights Grants Scheme: Successful Projects 2007-08*, p. 2.

31 AusAID, *List of Human Rights Grants Scheme projects 2011-12*, p. 4.

32 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, p. 6.

- 2.28 Australia and Iran have held one bilateral human rights dialogue which was in held in Tehran in December 2002. The Australian delegation included representatives from DFAT, the Attorney-General's Department, AusAID and the then Human Rights and Equal Opportunity Commission (now the Australian Human Rights Commission).³³
- 2.29 Topics discussed at that dialogue included:
- Role of the judiciary;
 - International human rights instruments;
 - National human rights institutions;
 - Role of civil society;
 - Position of minorities;
 - Treatment of the Baha'i;
 - Freedom of the press;
 - The Shirazi Jews; and
 - Dissidents.³⁴
- 2.30 Following the first round of the dialogue, Australia funded a visit to the Human Rights and Equal Opportunity Commission by a delegation from the Islamic Human Rights Commission of Iran.³⁵
- 2.31 Australia only held one formal human rights dialogue with Iran. In their evidence to the Committee, DFAT noted that the Australian Government attempted to schedule a second round but was unsuccessful:
- We did in the couple of years after that, make attempts to try to schedule a second round, but the Iranian side was reluctant. They cited a number of reasons: they cited scheduling problems, they said they were preoccupied with the UN consideration of Iran, they cited our attitude. So they were not interested. Then there was a period from about 2007 where Iran itself sought to re-establish the dialogue. The judgment we made was that Iran was not genuinely willing to engage in substantive discussions on human rights.³⁶

33 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, p. 6.

34 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, Appendix D, p. 66.

35 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, p. 7.

36 Ms Bird, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 5.

- 2.32 Australia has provided funding for a range of projects aimed at the promotion of human rights in Iran under the then Human Rights Small Grant Scheme. Between 1998 and 2001, Australia provided \$48,266 in funding for projects that provide legal advocacy and support services to women and children in Iran.³⁷

Community perceptions of Australia's human rights dialogues

- 2.33 A significant number of organisations expressed strong concerns about the bilateral human rights dialogues.
- 2.34 The Australian Council for International Development (ACFID) held concerns that the dialogue was at risk of 'becoming ritualistic and an end in and of itself.'³⁸ That opinion was also reiterated by the Australian Baha'i Community.³⁹
- 2.35 The International Commission of Jurists (ICJ) was of the view that bilateral human rights engagement could 'be seen to legitimise or make respectable a particular government.'⁴⁰
- 2.36 The Australian Council of Trade Unions (ACTU) questioned whether the bilateral dialogue process is effective in achieving cooperation between countries on human rights issues and its impact on respect for human rights.⁴¹
- 2.37 More specifically, the Australia Tibet Council (the Council) voiced its 'concern over the Australian government's reliance on the annual human rights dialogue as the centrepiece of its efforts to improve China's human rights performance.'⁴² In particular, the Council was of the view that it 'has not seen a tangible outcome from the dialogue process on the human rights situation in Tibet.'⁴³

37 Joint Standing Committee on Foreign Affairs, Defence and Trade, *Australia's Human Rights Dialogue Process*, September 2005, Commonwealth of Australia, p. 6.

38 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 1.

39 Dr Mobini, Australian Baha'i Community, *Transcript*, 20 September 2011, p. 2.

40 Dr Suter, International Commission of Jurists, *Transcript*, 5 September 2011, p. 9.

41 Australian Council of Trade Unions, *Submission no. 13*, p. 1.

42 Australia Tibet Council, *Submission no. 4*, p. 3.

43 Australia Tibet Council, *Submission no. 4*, p. 3.

2.38 The NSW Falun Dafa Association (FDA) held a similar view to the Council on the effectiveness of the dialogues stating that:

...the past Australia-China Human Rights Dialogues have had no identifiable effect in helping to safeguard the human rights of Falun Dafa practitioners in China over the past twelve years.⁴⁴

2.39 The FDA added that:

Australia should avoid engagement and dialogue on human rights in China that is unconditional, because this often confers legitimacy without requiring action or confirming outcomes.⁴⁵

2.40 The Federation for a Democratic China also agreed with the view that the dialogue between Australia and China had no positive human rights outcomes.⁴⁶

2.41 The Vietnam Committee on Human Rights (VCHR) questioned the dialogues' ability to bring about significant human rights change in Vietnam stating:

...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.⁴⁷

2.42 The Unified Vietnamese Buddhist Congregation of Australia and New Zealand (UVBC) also questioned the human rights situation in Vietnam, stating:

...it has seemed that in the past rounds of dialogue, compared with what has happened in the streets and villages in Vietnam, it has all not had any or much improvement in terms of Vietnam as a country having to practise international standards of human rights as have been signed into several key international covenants.⁴⁸

2.43 The Vietnamese Community in Australia (VCA) viewed Australia's human rights dialogue with Vietnam as a 'token exercise'.⁴⁹

44 NSW Falun Dafa Association, *Submission no. 16*, p. 4.

45 NSW Falun Dafa Association, *Submission no. 16*, p. 4.

46 Mr Chin, Federation for a Democratic China, *Transcript*, 24 February 2012, p. 34.

47 Vietnam Committee on Human Rights, *Submission no. 19*, p. 1.

48 Most Venerable Thich Quang Ba, Unified Vietnamese Buddhist Congregation of Australia and New Zealand, *Transcript*, 1 February 2012, p. 23.

49 Mr P Nguyen, Vietnamese Community in Australia, *Transcript*, 24 February 2012, p. 15.

- 2.44 Ms Quynh Dao, who appeared before the Committee in a private capacity, held the view that there 'does not seem to be any clear indication that the dialogue process has proved effective in furthering the cause of human rights in Vietnam.'⁵⁰
- 2.45 The Committee to Protect Vietnamese Workers (CPVW) expressed the view that the dialogues provided a material benefit to the Vietnamese Government to travel to Australia.⁵¹
- 2.46 However, in addition to expressing their concerns, most of the organisations and individuals that provided evidence for this inquiry supported the view that the human rights dialogues should continue.
- 2.47 Civil Liberties Australia (CLA) supported the 'human rights dialogue as a means for advancing human rights internationally.'⁵²
- 2.48 The ACTU believed that 'properly structured, human rights dialogues can provide an important avenue through which to facilitate cooperation between countries on human rights issues and to have a meaningful and practical impact on respect for human rights.'⁵³
- 2.49 The ICJ 'supports in principle Australia's human rights dialogues with China and Vietnam and is pleased to see how the dialogues have been maintained over the years.'⁵⁴
- 2.50 ACFID also supported the dialogues believing that it was necessary to:
- ...have an incremental and quiet conversation about some of the most difficult human rights issues and we see it as a tool among a suite of tools.⁵⁵
- 2.51 The Australian Baha'i Community, broadly 'supports the human rights dialogue process as a tool to be used alongside others in promoting the protection of human rights around the world.'⁵⁶
- 2.52 The Baha'i Community added that it was 'important to view the dialogues as part of a suite of tools available to the government.'⁵⁷ The VCHR also agreed that the human rights dialogue was an accepted tool.⁵⁸

50 Ms Dao, *Transcript*, 24 February 2012, p. 40.

51 Mr Doan, Committee to Protect Vietnamese Workers, *Transcript*, 24 February 2012, p. 11.

52 Civil Liberties Australia, *Submission no. 1*, p. 1.

53 Australian Council of Trade Unions, *Submission no. 13*, p. 1.

54 Dr Suter, International Commission of Jurists, *Transcript*, 5 September 2011, p. 9.

55 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 1.

56 Dr Mobini, Australian Baha'i Community, *Transcript*, 20 September 2011, p. 2.

- 2.53 The Council and the FDA stated that they supported the continuation of the human rights dialogues as a part of a multifaceted approach.⁵⁹
- 2.54 The Australian Human Rights Commission (the Commission) stated that it did not want to abandon the human rights dialogues and advocated for a multifaceted approach 'to pursue human rights in China and Vietnam through bilateral, regional, multilateral fora.'⁶⁰
- 2.55 The Commission also noted that 'Australian officials are not hesitant in robustly raising issues of concern to Australia about human rights in those countries.'⁶¹
- 2.56 The VCA believed that the human rights dialogues could 'play a very important role in improving the situation of human rights in Vietnam.'⁶²
- 2.57 Mr Luke Donnellan MP, a member of the Victorian Parliament, held the view that Australia should 'keep pushing it at human rights dialogues, like we do with China and the like.'⁶³

Committee comment

- 2.58 Many submissions were critical of the progress achieved so far, but overall the consensus seems to be that it is constructive to be talking to other countries about Australia's perspective on human rights, providing that measures are put in place to enhance the effectiveness of the dialogues, that NGOs are actively engaged in the dialogue process, that parliamentarians participate, and that the human rights dialogues are considered as one mechanism which is to be utilised as part of a suite of other mechanisms.
- 2.59 The Committee believes that Australia's bilateral human rights dialogue process is worthwhile and agrees with the wider community view that the dialogues should continue as part of a multifaceted human rights approach.

57 Dr Mobini, Australian Baha'i Community, *Transcript*, 20 September 2011, p. 2.

58 Vietnam Committee on Human Rights, *Submission no. 19*, p. 1.

59 Ms Kyinzom, Australia Tibet Council, *Transcript*, 5 September 2011, p. 2; NSW Falun Dafa Association, *Submission no. 16*, p. 4.

60 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 4.

61 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 4.

62 Mr P Nguyen, Vietnamese Community in Australia, *Transcript*, 24 February 2012, p. 14.

63 Mr Donnellan, Victorian Parliament, Member for Narre Warren North, *Transcript*, 24 February 2012, p. 32.

- 2.60 A key component of human rights advocacy is government to government dialogue aimed at genuinely cooperative efforts to improve human rights. Continuing the human rights dialogues also increases Australia's opportunities to engage these countries on human rights issues.
- 2.61 The Committee is fully supportive of continuing the human rights dialogue process.

Recommendation 1

The Committee recommends that the Australian Government continue to support the human rights dialogue process.

- 2.62 In light of the above, the Committee has formed the view that the Australian Government should take steps to re-establish its bilateral human rights dialogue with Iran.
- 2.63 Based on the evidence received for this inquiry, the last time Australia considered re-establishing a human rights dialogue with Iran was in 2007.⁶⁴ It is an opportune time for Australia to increase its engagement with Iran.
- 2.64 The Committee notes that the Australian Government takes a multifaceted approach by engaging Iran on human rights issues through the Australian embassy in Tehran, the Human Rights Council and the Third Committee of the General Assembly.⁶⁵
- 2.65 Re-establishing the human rights dialogue with Iran will enhance this multifaceted human rights approach.

Recommendation 2

The Committee recommends that the Australian Government consider re-establishing its bilateral human rights dialogue with Iran.

64 Ms Bird, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 5.

65 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 21.

Roles and obligations of participating agencies

Department of Foreign Affairs and Trade

- 2.66 DFAT's submission states that it is the lead agency responsible for the bilateral human rights dialogue process which includes managing the organisational aspects of the dialogue meetings, such as:
- arranging timing and agendas with dialogue partners;
 - settling on site visits and field trips when dialogues are held in partner countries and arranging field trips for visiting delegations when Australia hosts;
 - organising and coordinating the Australian delegations;
 - preparing briefings for delegations;
 - liaising and consulting with AusAID, the Attorney General's Department, the Australian Human Rights Commission, and other agencies as required; and
 - handling other administrative arrangements during dialogue meetings as necessary.⁶⁶
- 2.67 The submission also states that DFAT is responsible for:
- liaising with Parliament and providing briefings on request;
 - liaising and consulting with non-government organisations (NGOs), and providing debriefs on the dialogues as requested and through the annual Government-NGO human rights forum;
 - compiling lists of individual cases of concern, making representations and following up on these representations; and
 - reporting to the Foreign Minister on outcomes of dialogues.⁶⁷
- 2.68 In addition, DFAT highlighted that it routinely consults with the following Commonwealth Departments and statutory authorities to prepare for each dialogue:
- Attorney-General's Department;
 - Australian Human Rights Commission;
 - Australian Agency for International Development (AusAID);
 - Department of Immigration & Citizenship (DIAC);

66 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 13.

67 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 13.

- Department of Families, Housing, Community Services & Indigenous Affairs (FaHCSIA); and
- Department of Education, Employment & Workplace Relations (DEEWR).⁶⁸

Attorney General's Department

2.69 DFAT's submission also highlighted that the Attorney General's Department (AG's) provides advice through its participation in Australian delegations and in written briefings.⁶⁹ DFAT stated:

The role of the Attorney-General's Department in the human rights dialogue process is to provide advice to dialogue participants on Australia's system of law and justice, particularly regarding domestic human rights institutions, policies and legislation.⁷⁰

2.70 DFAT also noted that AG's has provided advice on the following topics that are relevant to its portfolio:

- Australia's Human Rights Framework;
- domestic implementation of international human rights treaties;
- civil and political freedoms;
- freedom of religion;
- national human rights institutions;
- judicial administration and reform;
- criminal justice;
- counter-terrorism and security legislation;
- native title; and
- Indigenous incarceration and deaths in custody.

2.71 In addition, AG's provides briefings on key issues for the human rights dialogues, liaises with DFAT about the timing and venue of the dialogues, provides input into the dialogue agenda and provides broad support to the Commission.⁷¹

68 Department of Foreign Affairs and Trade, *Submission no. 26*, pp. 4-5.

69 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

70 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 13.

71 Dr Boersig, Attorney General's Department, *Transcript*, 24 November 2011, p. 1.

AusAID

- 2.72 AusAID, an Executive Agency within the Foreign Affairs and Trade portfolio, is responsible for managing Australia's overseas aid program.⁷²
- 2.73 DFAT's submission noted that AusAID managed the Human Rights Technical Cooperation programs in China and Vietnam, which 'are valued at approximately A\$3.7 million per annum (with around A\$2.5 million allocated to China and A\$1.2 million to Vietnam).'⁷³

Australian Human Rights Commission

- 2.74 The Commission website states that it is an independent statutory organisation that reports to the federal Parliament through the Attorney-General. The Commission works with other national human rights institutions to address major human rights issues in the region.⁷⁴
- 2.75 Its website adds: the Commission also undertakes bilateral international activities as part of the Australian Government's development program run by AusAID. The most substantial of these is the Human Rights Technical Cooperation Program, which is part of the annual Dialogue on Human Rights.⁷⁵
- 2.76 DFAT mentioned that, in addition to being part of the Australian delegation to the dialogues, during formal meetings the Commission:
- ...comments on the human rights situation in Australia and also reports on progress in the HRTC programs with China and Vietnam (as requested).⁷⁶
- 2.77 In its submission, the Commission elaborated on its role in the Dialogue processes with China and Vietnam, noting that it participates in three ways:
- the Minister for Foreign Affairs and Trade invites the President of the Commission, or a representative nominated by the President, to attend the dialogue sessions as a member of the Australian delegation;

72 AusAID, 'About AusAID', viewed on 2 April 2012, <<http://www.ausaid.gov.au/about/default.cfm>>

73 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

74 Australian Human Rights Commission, 'About the Commission', viewed on 3 April 2012, <<http://www.hreoc.gov.au/about/index.html>>

75 Australian Human Rights Commission, 'About the Commission', viewed on 3 April 2012, <<http://www.hreoc.gov.au/about/index.html>>

76 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 15.

- the Department of Foreign Affairs and Trade invites the Commission to prepare briefing material on particular agenda items for inclusion in the delegation brief; and
- the Australian Agency for International Development invites the Commission to design and implement programs of human rights technical cooperation in order to support the Dialogues and to implement that program.⁷⁷

2.78 To date, the Commission has attended all of Australia's human rights dialogues with Vietnam and every human rights dialogue with China since 1999.⁷⁸ The Commission noted that:

The President of the Commission has personally attended most of the Dialogue sessions, and on those occasions where the President has not been available, a senior representative of the Commission has attended on his/her behalf.⁷⁹

2.79 The Commission stated that its role in the human rights dialogues was limited:

The Commission is not involved in setting the agenda or in deciding on the strategy to be followed. While it feels free to make recommendations – and has done so on an informal basis – it recognises that it is up to the Executive agencies responsible for the Dialogues to set the agenda and the strategy.⁸⁰

2.80 While acknowledging its limited role in the dialogues, the Commission highlighted its role as an independent statutory authority involved in the dialogues, stating:

... the Executive Government has placed no conditions on the involvement of the Commission. The Commission's representatives at the Dialogues have always felt free to make their views known and to participate fully in the Dialogues. On occasion this has resulted in the Commission taking and presenting to the Dialogue partners a view on Australian policy and practice or on the desirability of changes in the Dialogue partner's policy and practice that differs from the views of the Executive Government. The Executive Departments have not voiced criticism of the Commission for taking a different position and, in fact, the delegation leaders seem to have found this

77 Australian Human Rights Commission, *Submission no. 17*, p. 3.

78 Australian Human Rights Commission, *Submission no. 17*, p. 3.

79 Australian Human Rights Commission, *Submission no. 17*, p. 3.

80 Australian Human Rights Commission, *Submission no. 17*, p. 3.

approach valuable in demonstrating to the Dialogue partners that pluralism is respected in Australia.⁸¹

2.81 The Commission also put forward a preference to move towards a more holistic partnership with AusAID as a way of providing:

...a more effective and cohesive service to AusAID in that we would be able to respond more quickly and effectively to, for example, new and ad hoc areas that might come up in AusAID's areas of interest where we might be able to provide support and capacity building, and the resources in terms of expertise, knowledge and staff and so on that we provide to AusAID's programs could be moved around and shifted more quickly in response to particular areas of emphasis that AusAID might want at any given point in time.⁸²

Community perceptions of the roles of participating agencies

2.82 ACFID held the view that AG's had a limited role and had not been 'a key player in these dialogues.'⁸³

2.83 ACFID was also of the view that DFAT, AusAID, the Commission and NGOs could take a more coordinated approach to their liaison and consultation role both before and after the dialogues are held.⁸⁴

2.84 In addition, ACFID proposed an expansion to the roles and obligations of Australian Government agencies to include:

- Close communication with the Australian Agency for International Development (AusAID);
- Liaison with other States engaged in human rights dialogues;
- Identification and completion of specific follow-up activities after each dialogue session; and
- Public disclosure of issues raised pertaining to Australia's human rights record.⁸⁵

81 Australian Human Rights Commission, *Submission no. 17*, p. 4.

82 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 2.

83 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 6.

84 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 2.

85 Australian Council for International Development, *Submission no. 14*, p. 10.

2.85 The Baha'i Community called for a clearly defined set of roles and obligations for the agencies that participate in the human rights dialogues, adding that:

...they should be defined in a way that clearly charges the parties with working to bring about real progress in the observation of international human rights standards in their respective countries. Moreover the participating agencies should also have clearly defined responsibilities to evaluate the progress of dialogue in achieving such changes.⁸⁶

2.86 The FDA recommended that the 'role and obligations of participating agencies should be modified to improve the transparency and accountability of the dialogue process'.⁸⁷

2.87 The CPVW recommended the roles and obligations of participating agencies include aims.⁸⁸

Additional roles for dialogue participants

2.88 Several groups that provided evidence to the inquiry also made suggestions about additional roles for agencies involved in the human rights dialogue process.

2.89 The Prisoners of Conscience Fund (PCF), the CPVW, and the VCA all suggested that Australian officials visit political prisoners and their families.⁸⁹

2.90 Sydney PEN also suggested that Australian officials meet and talk to individuals whom Australia has expressed concern about. Additionally, Sydney PEN suggested conducting inspections of relevant facilities.⁹⁰

2.91 DFAT noted that, while Australia does not have a specific policy to visit political prisoners, it has undertaken visits in the past which were conducted with the agreement of the relevant authority.⁹¹

86 Australian Baha'i Community, *Submission no. 12*, p. 3.

87 NSW Falun Dafa Association, *Submission no. 16*, p. 4.

88 Committee to Protect Vietnamese Workers, *Submission no. 18*, p. 9.

89 Ms Tran, Prisoners of Conscience Fund Inc, *Transcript*, 24 February 2012, p. 6; Committee to Protect Vietnamese Workers, *Submission no. 18*, p. 6; Mr P Nguyen, Vietnamese Community in Australia, *Transcript*, 24 February 2012, p. 16.

90 Mr Beckett, Sydney PEN, *Transcript*, 1 February 2012, p. 9.

91 Department of Foreign Affairs and Trade, *Submission no. 26*, p. 2.

Dialogue agendas

- 2.92 As noted above, DFAT arranges the agendas for the human rights dialogues with dialogue partners. Both AG's and the Commission prepare briefing material on particular agenda items.
- 2.93 The Commission also has informal discussions and meetings with AusAID and DFAT where it has an opportunity to comment informally on particular areas that would be worthwhile as topics to be included in the dialogue agenda. The Commission noted that many of their comments have been reflected in the dialogue agendas.⁹²
- 2.94 DFAT pointed out that 'Ministerial correspondence on human rights situations in dialogue countries also informs the agenda, list of cases of concern and briefing.'⁹³
- 2.95 In addition, DFAT also draws on submissions from NGOs and as well as 'publications of relevant human rights NGOs, for example Amnesty International and Human Rights Watch.'⁹⁴
- 2.96 The agenda for the Australia-Vietnam human rights dialogue, in particular, is developed in consultation between both countries with:
- ...the country hosting the Dialogue to propose an agenda (the visiting delegation has an opportunity to suggest amendments to the proposed agenda).⁹⁵
- 2.97 DFAT also held the view that the agenda for Australia's human rights dialogues with China had evolved, noting that:
- ...in the last dialogue we were able for the first time to talk about Tibet, Falun Gong, Shi Jiang, in a way that in the past China was very reluctant to do.⁹⁶

Agenda focus

- 2.98 The Committee considered whether the agenda for the human rights dialogues should focus on individual cases or broader thematic human rights concerns.

92 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 3.

93 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 11.

94 Mr Kang, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 2; Department of Foreign Affairs and Trade, *Submission no. 20*, p. 11.

95 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 7.

96 Dr Smith, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 4.

2.99 The ICJ agreed with the view that the focus should be on individual cases rather than offering more broadly based criticism, stating:

It is a marginal issue, but I think, yes, it is. It at least shows the Chinese we are willing to engage as a friend simply expressing concerns rather than as a perpetual critic on the outside.⁹⁷

2.100 ACFID stated that the focus should be balanced between individual cases and the broader thematic or systemic approach.⁹⁸

2.101 ACFID added that:

...we should really be looking for structural systemic human rights reforms, and often the dialogues in our experience have been very individual case lead. I am not sure if that is the best use of those dialogues. You could do it through the post, so why do you have to do it in a bilateral dialogue? But they often seem to be very symbolic and they add to the ritualism. They bring up several issues with Indigenous Australia and the mandatory detention of asylum seekers, and then we bring up a range of individual cases and there is an impasse. So it leads to that very ritualistic type of dialogue. We would be interested in seeing a slightly wider discussion of human rights.⁹⁹

2.102 DFAT stated that the dialogues focus on both individual cases as well as broader human rights issues.¹⁰⁰

Suggested additional themes for the agenda

2.103 A number of organisations that provided evidence to the inquiry suggested topics to include in the dialogue agenda.

2.104 A common theme suggested by the organisations was for the Australian delegation to make additional representations on individual cases of concern.¹⁰¹

97 Dr Suter, International Commission of Jurists, *Transcript*, 5 September 2011, p. 12.

98 Ms Scrine, Australian Council for International Development, *Transcript*, 11 October 2011, p. 6.

99 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 2.

100 Ms Stokes, Department of Foreign Affairs and Trade, *Transcript*, 5 March 2012, p. 27.

101 Ms Dao, *Submission no. 2*, p. 12; Prisoners Of Conscience Fund Inc, *Submission no. 3*, p. 1; Mr Van Dai, *Submission no. 5*, p. 2; Vietnamese Community in Australia, *Submission no. 9*, p. 2; Bloc 8406, *Submission no. 10*, p. 14; Australian Council for International Development, *Submission no. 14*, p. 22; Sydney PEN Centre, *Submission no. 15*, p. 3; Falun Dafa Association of NSW Inc, *Submission no. 16*, p. 8; Vietnam Committee on Human Rights, *Submission no. 19*, p. 4; The Democratic Party of Vietnam, *Submission no. 24*, p. 2.

- 2.105 Other topics to include on the dialogues' agenda focused on the areas of:
- social and political rights;¹⁰²
 - illegal organ harvesting of political prisoners;¹⁰³
 - Vietnam's penal code;¹⁰⁴
 - Indigenous languages of ethnic minorities;¹⁰⁵
 - labour rights and trade unions;¹⁰⁶
 - ethnic minority rights for specific communities such as Tibetans, Uyghurs, Montagnards, Hmongs, Khmer Krom;¹⁰⁷ and
 - re-education through labour.¹⁰⁸

Human Rights Technical Cooperation Programs

- 2.106 The Commission's submission provided a background on the HRTC program noting:

Both of the human rights technical cooperation programs operate under the framework of the Australian Government's formal human rights dialogue process with China and Vietnam. The programs are funded by the Australian Agency for International Development (AusAID) and implemented by the Commission under a Record of Understanding between the Commission and AusAID.¹⁰⁹

102 Mr Bourke, Australia Tibet Council, *Transcript*, 5 September 2011, p. 3.

103 NSW Falun Dafa Association, *Submission no. 16*, p. 13.

104 Ms Dao, *Submission no. 2*, p. 6; Vietnam Committee on Human Rights, *Submission no. 19*, p. 1; Mr Donnellan, Victorian Parliament, Member for Narre Warren North, *Transcript*, 24 February 2012, p. 29.

105 Mr Ala, Australian Uyghur Association, *Transcript*, 1 February 2012, p. 15.

106 Vietnamese Community in Australia, *Submission no. 9*, p. 1; Mr T Doan, Committee to Protect Vietnamese Workers, *Transcript*, 24 February 2012, p. 8.

107 Australia Tibet Council, *Submission no. 4*, p. 7; Ms Dao, *Submission no. 2*, p. 10; Vietnamese Community in Australia, *Submission no. 9*, p. 17; Mr Ala, Australian Uyghur Association, *Transcript*, 1 February 2012, p. 15.

108 Prisoners of Conscience Fund Inc, *Transcript*, 24 February 2012, p. 2; Australia Tibet Council, *Submission no. 4*, p. 11.

109 Australian Human Rights Commission, *Submission no. 17*, p. 4.

2.107 The Commission also highlighted that the next cycle of each program is approved at the regular Dialogue sessions, but:

...where this is not practical due to delays in the scheduling sessions, approval has been given out-of-session through an exchange of letters between the Dialogue partners.¹¹⁰

2.108 The Commission commented that the choice of topics that Australia works on with the HRTC programs partner agencies is based on a decision about:

...areas that are priorities for their work on human rights where Australia has some useful expertise to offer and where they link in with major reform programs in those countries that will give them some momentum.¹¹¹

2.109 DFAT's submission added:

The program provides a mechanism for funding practical activities to promote human rights in line with the objectives of the human rights dialogues. The HRTC programs support small-scale activities that are intended to have a tangible impact on a targeted group of people. The programs also generate links between Australian and Chinese or Vietnamese human rights institutions.¹¹²

2.110 The Commission considered that the HRTC programs were good programs and reasonably well managed but acknowledged that improvements could be made:

Whilst I consider the China and Vietnam technical cooperation programs to be good programs and reasonably well managed, there is a lot of scope for improving and strengthening them to have a stronger focus on outcomes and better monitoring and evaluation to measure to those outcomes. That is what we are working very closely on with AusAID at the moment.¹¹³

110 Australian Human Rights Commission, *Submission no. 17*, p. 6.

111 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 5.

112 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

113 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, pp. 3-4.

- 2.111 The Commission also believed that a strength of the HRTC programs is that they are 'low key':
- I think one of the strengths of the human rights technical cooperation programs is that they are fairly low-key programs, and, as a result of that, we find that the Chinese and Vietnamese participants feel comfortable, knowing that they can open up and have fairly candid discussions about issues.¹¹⁴
- 2.112 The Commission stated that the HRTC programs could be a valuable mechanism for extending the participation of Australian and partner countries agencies.¹¹⁵
- 2.113 The HRTC programs are valued at approximately A\$3.7 million per annum.¹¹⁶
- 2.114 Table 1 and Table 2 of DFAT's submission contains further information on the activities funded under the HRTC programs from 2006-2011.¹¹⁷
- 2.115 The Commission, in its submission, also provided a list of some key outcomes from the activities of the China and Vietnam HRTC Programs.¹¹⁸

Human Rights Technical Cooperation Program with China

- 2.116 The HRTC program with China, which commenced in 1998, was first agreed at the inaugural Australia-China human rights dialogue 'as an avenue for providing practical capacity building for key Chinese agencies in areas relevant to human rights protection.'¹¹⁹
- 2.117 HRTC activities in China focus on three priority theme areas: legal reform; women's and children's rights; and ethnic minority rights.¹²⁰
- 2.118 The Commission noted that 'each activity is designed and implemented through a cooperative venture between the Australian Human Rights Commission and a particular Chinese organisation.'¹²¹

114 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 6.

115 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 1.

116 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

117 Department of Foreign Affairs and Trade, *Submission no. 20*, pp. 24-56.

118 Australian Human Rights Commission, *Submission no. 17*, pp. 8 - 37.

119 Australian Human Rights Commission, *Submission no. 17*, p. 4.

120 Australian Human Rights Commission, *Submission no. 17*, p. 4.

121 Australian Human Rights Commission, *Submission no. 17*, pp. 4-5.

- 2.119 The Commission added that ‘Australian agencies and professionals from the government and community sectors contribute technical expertise to the program.’¹²²
- 2.120 Chinese partner agencies include:
- Ministry of Foreign Affairs (the lead counterpart organisation);
 - All-China Women’s Federation;
 - Beijing Legal Aid Organisation;
 - Ministry of Civil Affairs;
 - Ministry of Justice;
 - Ministry of Public Security;
 - National Population and Family Planning Commission;
 - State Ethnic Affairs Commission;
 - Supreme People’s Prosecution Service;
 - Supreme People’s Court; and
 - United Nations Association of China.¹²³
- 2.121 Programs are delivered through a number of methods including: ‘seminars and workshops in China, study visits to Australia by Chinese delegations, short work placements in Australian organisations and a small number of scholarships.’¹²⁴
- 2.122 HRTC projects focus on ‘domestic violence prevention, reproductive health rights, criminal justice procedures, humane treatment of detainees in correctional facilities, as well as alternatives to detention.’¹²⁵
- 2.123 Approximately \$400,000 was spent on HRTC activities with China in 1997-98.¹²⁶ The budget for the HRTC program with China has increased considerably since the program’s inception. ‘AusAID funding for the 2010-2011 program cycle was A\$2.5 million.’¹²⁷
- 2.124 AusAID funding for Australia’s aid program in China is estimated at A\$22.5 million for 2011-12, and the estimate for total Official Development Assistance (ODA) for 2011-12 is A\$35.7 million.¹²⁸

122 Australian Human Rights Commission, *Submission no. 17*, p. 5.

123 Australian Human Rights Commission, *Submission no. 17*, p. 5.

124 Australian Human Rights Commission, *Submission no. 17*, p. 5.

125 Australian Human Rights Commission, *Submission no. 17*, p. 5.

126 AusAID, *Review of China–Australia Human Rights Technical Cooperation Program*, 2007, p. 43.

127 Australian Human Rights Commission, *Submission no. 17*, p. 5.

128 AusAID, ‘China’, viewed on 5 April 2012,
 <<http://www.aisaid.gov.au/country/country.cfm?CountryID=36&Region=EastAsia>>

Human Rights Technical Cooperation Program with Vietnam

- 2.125 The HRTC program with Vietnam commenced in 2006 and, like the HRTC program with China, each activity is designed and implemented through a cooperative venture between the Commission and a particular Vietnamese organisation.¹²⁹
- 2.126 Vietnamese partner agencies include:
- Ministry of Foreign Affairs (the lead counterpart organisation);
 - Ministry of Justice;
 - Ministry of Public Security;
 - Supreme People's Court;
 - Supreme People's Prosecution Service;
 - Vietnam Lawyers' Association; and
 - Vietnam Women's Union.¹³⁰
- 2.127 HRTC projects with Vietnam focus on 'skills for conducting community education on legal rights and responsibilities, human rights training for lawyers, raising awareness of women's rights, access to the court system and administration of criminal justice.'¹³¹
- 2.128 AusAID funding for the 2010-2011 program cycle was A\$1.2 million.¹³²
- 2.129 AusAID's ODA for Vietnam is estimated at A\$137.9 million for 2011-12, which consists of the country bilateral program (A\$102.4 million); regional and global AusAID-managed initiatives (A\$25.7 million); and other Australian Government departments (A\$9.7 million).¹³³

Review of the Technical Cooperation Programs

- 2.130 DFAT noted that an independent review of the HRTC programs was undertaken in 2010-11 by 'an international human rights expert (Paul Dalton) and monitoring and evaluation specialists (Rick Davies and Martine Van de Velde).'¹³⁴

129 Australian Human Rights Commission, *Submission no. 17*, p. 5.

130 Australian Human Rights Commission, *Submission no. 17*, pp. 5-6.

131 Australian Human Rights Commission, *Submission no. 17*, p. 6.

132 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

133 AusAID, 'Vietnam Country Profile', viewed on 5 April 2012, <<http://www.aid.gov.au/country/vietnam/default.cfm>>

134 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

2.131 DFAT added:

In the case of China, the review found that the majority of activities implemented in the past four years have been well-coordinated, with careful forward planning, participation from well-qualified experts, and good communication between the Australian Human Rights Commission (AHRC) and China's Ministry of Foreign Affairs.¹³⁵

2.132 Some of the key principal recommendations from the review of the China HRTC program included:

- The potential exists to improve the quality of information flow to the human rights dialogue participants about the HRTC program;
- Greater emphasis needs to be placed on results rather than on activity-based output reporting, including the provision of systematic impact evaluations at appropriate stages throughout the implementation process by cooperating agencies and the AHRC;
- A financial management review of the HRTC program should be undertaken with a view to increasing the efficiency and cost-effectiveness of the program;
- There should also be greater clarity in the next phase of the program on the respective roles and responsibilities of AusAID, DFAT and the AHRC in providing strategic direction, ensuring accountability for achieving results against objectives and engaging with cooperating agencies; and
- The review team recommends that the program should change to a three-year cycle. A new program design should be developed through consultations between DFAT and AusAID, with the opportunity for all program stakeholders to provide inputs.¹³⁶

2.133 With regard to the review of the Vietnam HRTC programs, DFAT stated:

The review found that the Vietnam-Australia Human Rights Technical Cooperation Program was making progress on its key objectives, and has had a positive effect on relations between Vietnam and Australia. Critical to achieving this progress has been the Government of Vietnam's confidence in the two Australian partner agencies, AusAID and the AHRC. Recommendations from

135 Department of Foreign Affairs and Trade, *Submission no. 20*, p. 14.

136 AusAID, *The China-Australia Human Rights Technical Cooperation Program, An independent review by Paul Dalton and Martine van de Velde*, February 2011, pp. 8-9.

the review, which addressed issues such as program design, monitoring and evaluation, and financial management, are being considered for incorporation into the next phase of the China and Vietnam Human Rights Technical Cooperation Programs.¹³⁷

2.134 At the time of writing this report, the review of the Vietnam HRTC program was not publicly available.

Community perceptions of the Technical Cooperation Programs

2.135 The ICJ commented that the technical cooperation programs were 'not at all widely recognised by the Australian community.'¹³⁸

2.136 The Commission agreed, noting that there is little media interest in the HRTC programs.¹³⁹

2.137 The Council viewed the technical cooperation programs as an 'increasingly large component of the bilateral dialogue processes.' While noting the inherent value of the HRTC programs with China, the Council was of the view that the program had the following limitations:

- they fail to address structural systemic problems in China, such as the non-independence of the judiciary;
- they are designed to address only the formal legal processes, rather than the arbitrary and extra-legal processes (such as re-education through labour) which affect millions of people in China; and
- there is a failure to consult independent NGOs in their design, implementation, monitoring and evaluation.¹⁴⁰

2.138 The PCF alleged that foreign aid, like the HRTC programs, is not used correctly but rather that Vietnamese government officials are the direct beneficiaries of the grants.¹⁴¹

137 Department of Foreign Affairs and Trade, *Submission no. 20*, pp. 14-15.

138 Dr Suter, International Commission of Jurists, *Transcript*, 5 September 2011, p. 9.

139 Mr Robinson, Australian Human Rights Commission, *Transcript*, 1 February 2012, p. 6.

140 Australia Tibet Council, *Submission no. 4*, p. 11.

141 Mr Mai, Prisoners of Conscience Fund Inc, *Transcript*, 24 February 2012, p. 1.

- 2.139 The CPVW recommended that the HRTC programs should 'do some things that benefit the people directly.'¹⁴² They added that the HRTC program should be used to 'help true NGOs, rather than the likes of the Vietnam Women's Union or the VGCL [Vietnam General Confederation of Labour] or the Vietnam Lawyers Association.'¹⁴³ They recommended providing funding to the Unified Buddhist Church of Vietnam in particular.¹⁴⁴
- 2.140 Bloc 8406 stated that the HRTC program was not that effective and did not target major human rights issues such as freedom of speech, freedom to assemble and demonstrate.¹⁴⁵

Committee comment

- 2.141 The Committee acknowledges the value of Australia's HRTC programs which work toward improvements in the promotion and protection of human rights through the sharing of best practice.
- 2.142 The Committee is particularly pleased to see programs that are focussed on addressing key human rights issues such as: justice, women's and children's rights, legal aid and rights, and domestic violence.
- 2.143 The Committee appreciates the Commission's acceptance that there is room to improve and strengthen the programs to have a stronger focus on outcomes, better monitoring and evaluation.
- 2.144 The Committee suggests that, in addition to discussing the choice of topics that Australia works on with the HRTC programs' partner agencies, consideration be given to consulting other government agencies, NGOs, peak human rights organisations, and other relevant groups.
- 2.145 The Committee supports the continued funding and operation of the HRTC programs.

142 Mr Doan, Committee to Protect Vietnamese Workers, *Transcript*, 24 February 2012, p. 12.

143 Mr Doan, Committee to Protect Vietnamese Workers, *Transcript*, 24 February 2012, p. 13.

144 Mr Doan, Committee to Protect Vietnamese Workers, *Transcript*, 24 February 2012, p. 13.

145 Dr Kim-Song, Bloc 8406, *Transcript*, 24 February 2012, p. 26.

Other issues

2.146 Although not specifically within the purview of the inquiry, ACFID expressed the view that adequate staffing at DFAT and AusAID had been a 'chronic problem over the years.'¹⁴⁶

2.147 ACFID called for more resourcing for human rights work within DFAT and AusAID generally.¹⁴⁷ ACFID added that DFAT needed more consistent expertise, stating:

The idea is that DFAT likes to have generalists, which is a good policy, and obviously they post people. But some areas need specialist expertise – chemical weapons, human rights, ASEAN – so there has to be a balance. For things like these, which are about long-term bilateral relationships with a particular subject expertise, you do need a little bit of consistency in staffing and strategy. But, yes, in the UK, Canada and almost everywhere I have been, the state department or the relevant foreign affairs department has a much stronger human rights section – also domestically.¹⁴⁸

2.148 ACFID also highlighted the need for human rights training, stating that:

...if there were a strong human rights training and flavour in technical expertise across the department that would be a very good thing. But some of the human rights dialogues do need some knowledge of conventions, and you do need a little bit of expertise to be able to engage in human rights discussions – particularly in this bilateral.¹⁴⁹

2.149 ACFID noted that DFAT has graduate training in human rights but commented that everyone in the department should understand that there can be human rights dimensions to other bilateral issues.¹⁵⁰

146 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, pp. 1-2.

147 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 1.

148 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 4.

149 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, pp. 3-4.

150 Dr Harris Rimmer, Australian Council for International Development, *Transcript*, 11 October 2011, p. 4.

- 2.150 DFAT stated that it had a dedicated human rights and Indigenous issues section, which is comprised of five officers and a director. DFAT added that the section works closely with the geographic areas of DFAT and mentioned that Australia's posts were also actively engaged.¹⁵¹
- 2.151 DFAT contested ACFID's view of its institutional knowledge noting that it helps maintain continuity in the human rights and Indigenous area by rotating staff in and out often.¹⁵²
- 2.152 DFAT added that it offers an introductory course on human rights for its graduate recruits which it is looking to expand, stating:
- Every year a number of graduate recruits come into the department and the human rights course is part of their dedicated training program. This year is the first time it has been run by the University of Sydney. We are looking to expand it next year to include officers of the department more broadly.¹⁵³

Committee comment

- 2.153 At a public hearing, DFAT advised the Committee that its geographic areas and posts are very closely involved in the human rights dialogues.¹⁵⁴
- 2.154 As noted above, DFAT also advised that it currently only provides human rights training for its graduate recruits. The Committee notes that staff in Commonwealth government departments' are employed in a number of different ways, not just through graduate recruitment programs.
- 2.155 The Committee agrees with ACFID's view that it would be good for DFAT to have a strong human rights training and flavour in technical expertise across the department.
- 2.156 Therefore, it is the Committee's view that all relevant staff dealing with human rights issues should have an appropriate grounding in human rights principles. Having staff obtain a solid knowledge base in human rights enhances the Australia Government's efforts to take a multifaceted approach through the promotion and protection of human rights in international, bilateral, regional, and local fora.

151 Ms Bird, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, pp. 1-2.

152 Ms Bird, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 2.

153 Mr Kang, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 2.

154 Ms Bird, Department of Foreign Affairs and Trade, *Transcript*, 1 November 2011, p. 1.

2.157 As such, the Committee sees merit in extending DFAT and AGs current human rights training program to all relevant staff.

Recommendation 3

The Committee recommends that the Department of Foreign Affairs and Trade and the Attorney General's Department ensure that all relevant staff receive human rights education and training. The Department of Foreign Affairs and Trade should also ensure that human rights monitoring is an integral part of the duty statement for its diplomatic staff.