



Submission No 16

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

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**Submission
to the
Inquiry of the Human Rights Sub-Committee of the Joint
Standing Committee on Foreign Affairs, Defence and Trade
into
Australia's Human Rights Dialogues with China and Vietnam**

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CONTENTS

1. Introduction

2. Executive Summary

3. Discussion

3.1 Background

3.2 Specific Concerns

3.3 Canadian Example

4. Terms of Reference & Recommendations

1. Introduction

The Falun Dafa Association of NSW appreciates that the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade will inquire and report on the effectiveness of Australia's Human Rights Dialogues with China and Vietnam with reference to:

- parliamentary participation and oversight;
- involvement of non-government organisations;
- the roles and obligations of participating agencies;
- reporting requirements and mechanisms;
- the monitoring and evaluation of outcomes including an assessment of whether any human rights reforms within those countries have been obtained;
- whether this dialogue mechanism should be adopted with other countries;
- exploring options for alternative human rights mechanisms.

As the Falun Dafa Association of NSW is particularly concerned with persecution of Falun Dafa (Falun Gong) practitioners in China, this submission will address the following terms of reference with specific regard to Australia's Human Rights Dialogue with China:

Parliamentary participation and oversight;

Involvement of non-government organisations;

Roles and obligations of participating agencies;

Reporting requirements and mechanisms

Monitoring and evaluation of outcomes;

Exploring options for alternative human rights mechanisms.

2. Executive Summary

The Falun Dafa Association of NSW finds 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.

The senior-level policymakers at the higher levels of the Communist Party of China, who have decision-making authority over such matters, have not involved in the human rights dialogues.

The Chinese Ministry of Foreign Affairs (MFA) leads the Chinese delegation in the dialogues, but has no mandate to promote greater respect for human rights in China domestically. The Chinese MFA's *raison d'être* is to defend China's interests abroad.

An alternative mechanism with focused and targeted programming to encourage enhanced Chinese compliance with its commitments to the UN Human Rights Covenants should be implemented.

Chinese delegates may stress the importance of not causing officials of the Chinese Government and Communist Party to "lose face." While this reality requires careful navigation, Australia will gain more respect in China by being open and honest in its interaction with the Chinese Government.

A positive example where persistence and integrity have brought incremental change in China is the five years of advocacy by Canadians David Matas and David Kilgour for an end to the killing of Falun Gong practitioners for their organs.

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.

China's economic rise in the world has lead to the Communist regime seeking to impose its own interpretations of the terms of international treaties and conventions that seek to serve the Party's economic and political interests (often couched as the interests of China or its people).

Australia's prosperity, security and ability to maintain the values of democracy and human rights we accept as a universal good also face degradation by the rise of a China that does not value the norms of global citizenship.

Engaging China in open and principled dialogue on human rights, calmly persisting in the face of hostility, pursuing multi-lateral approaches that are coherent and measurable will benefit both the people of China and Australia.

Ending the persecution of Falun Gong is a key to improving all human rights aspects in China, including the rule of law, which will flow on to benefit Australian business relations with China.

If the current bilateral dialogue is deemed to continue, the Falun Dafa Association of NSW suggests the following recommendations, some of which may reflect recommendations proposed by the 2005 Parliamentary Inquiry.

Recommendations

Parliamentary participation and oversight

Participation of Federal Parliamentary members in the Human Rights Dialogue should be mandatory and the outcomes of the Dialogue should be reported to the Parliament.

Involvement of non-government organisations

The Government should ensure there is a briefing/forum with local NGOs before and after the Human Rights Dialogue, and that the Dialogue supports the involvement of both local and Chinese NGOs without the censorship of the CPC.

Roles and obligations of participating agencies

Reporting requirements and mechanisms,

Monitoring and evaluation of outcomes

The role and obligations of participating agencies should be modified to improve the transparency and accountability of the dialogue process including a format of reporting on the status of the dialogue to the Parliament.

Exploring options for alternative human rights mechanisms

Australia should engage China in a human rights dialogue that includes the highest levels of the Communist Party of China, with consistent private and public comment, to highlight the route to ending gross human rights violations, which clearly includes ending the persecution of Falun Gong.

3. Discussion

3.1 Background

Previous Parliamentary Inquiry 2005

The Parliamentary inquiry into Australia's Human Rights Dialogue Process (published September 2005) offered an overview which included the following statements from 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," and, "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

If the goal is to make practical improvements and use the most effective way, then it follows that there must be an assessment process to confirm such practical and effective results. Just believing that the current dialogue process is achieving this effectiveness is a feel-good measure totally unsuited to such a serious endeavour.

Please refer to Item 3.4 Terms of Reference for further examination of this issue.

The 2005 Inquiry made five recommendations, four of which were reported as being accepted by the government, with some conditions, in its March 2006 response i.e. the inclusion of parliamentary representatives, DFAT briefings to the Human Rights Sub-committee, pre-dialogue briefings with/by NGOs, and use of relevant websites to convey up-to-date information on the dialogues.

The Falun Dafa Association of NSW considers that all five previous recommendations had merit but is not aware of the scope or success of their implementation, and trust the current inquiry will examine that matter under the terms or reference, which are a repeat from 2005.

It is of note that the government did **not** accept Recommendation 4 from the 2005 Inquiry, that the Minister for Foreign Affairs would table an annual statement in Parliament on the status and proceedings of the Human Rights Dialogues. The government response claimed that they were *"frank discussions of sometimes sensitive issues"* conducted at *"officials-to-officials"* level; that it is not customary to make public such details or table reports in Parliament and that they had to respect *"the confidence and trust our partners have placed in us."*²

This response is of concern as there is scant evidence to support the view that the Communist Party of China (CPC) is worthy of our trust or our confidence in any of its dealings, either with the people of China or with other countries such as Australia.

Please refer to Item 3.4 Terms of Reference for further examination of this issue.

¹ <http://www.aph.gov.au/house/committee/jfadt/hrdialogue/report/fullreport.pdf>

² <http://www.aph.gov.au/house/committee/jfadt/hrdialogue/govtresponse.pdf>

The Persecution of Falun Gong

The campaign to eliminate Falun Gong practitioners in China, which begun on 20 July 1999, has targeted the spiritual belief of 70 to 100 million people in China who seek to be good people in the true cultural tradition of China through the principle of Truthfulness-Compassion-Forbearance. It is a persecutory campaign to purge China of Falun Gong through the forcible conversion or murder of Falun Gong adherents.

The submission (dated June 2004) from the Falun Dafa Association to the 2005 Inquiry noted a verified death toll of **980** Falun Gong practitioners due to torture and abuse in China. As at the date of this submission, the verified death toll stands at **3,427**, while the actual deaths may be in the tens of thousands, with hundreds of thousands reported to be in labor "re-education" camps, China's *gulag* system.

Following his visit to mainland China in November 2005, the then UN Rapporteur on Torture, Mr Manfred Nowark confirmed that Falun Gong practitioners comprised two-thirds of all torture cases reported in China. Amnesty International, Human Rights Watch, the US State Department Country reports on Human Rights in China and the US Commission on International Religious Freedom reports all confirm the serious and ongoing torture and abuse of Falun Gong practitioners in China.

The June 2004 submission referred to Jiang Zemin, the former leader of the CPC, as the instigator of the campaign to eradicate Falun Gong. The 6-10 Office, named after the date of its creation on June 10, 1999, an extra-legal police task force established by Jiang, is responsible for carrying out the mission of eliminating Falun Gong. It exists outside China's legal and governmental framework. Operating with impunity even after Jiang was replaced by current President Hu Jintao, the 6-10 Office has become notorious for its use of extreme torture. Over the ensuing seven years, the current Party leadership now have responsibility for the ongoing persecution of Falun Gong and have done nothing to stop it.

Chinese human rights lawyer Gao Zhisheng has been disbarred, detained and tortured because of his open advocacy for an end to the persecution of Falun Gong. His current whereabouts are unknown. In his book *A China More Just*³ he describes being shocked by the extent of the 6-10's operations after his 2005 investigation of Falun Gong torture victims:

"The immoral act that has shaken my soul most is the 6-10 Office and policeman's regular practice of assaulting women's genitals.....Of those persecuted, almost every woman's genitals and breasts and every man's private parts have been sexually assaulted in a most vulgar fashion."

In June 2004, there was no exposure of the horrific practice of killing Falun Gong practitioners to harvest their organs for sale into the burgeoning transplant market in China. Although it was widely known that prisoners sentenced to death were used for organ harvesting since the late 1980's in China.

The initial report by Canadian lawyers, David Matas and David Kilgour, into these allegations of organ harvesting in June 2006, the update in 2007 and publication of their book *Bloody Harvest, the killing of Falun Gong for their organs*⁴, in 2009 had squarely placed this issue on the agenda for the ensuing Human Rights Dialogues.

³ <http://www.broadbook.com/english/1product.asp?id=216>

⁴ <http://organharvestinvestigation.net/>

Sadly, the response from DFAT officials to these human rights atrocities is that they consider there is not enough evidence to support the conclusions of Matas and Kilgour. But the inconvenient truth is that there is not enough evidence to *refute* the allegations of organ harvesting.

The persecution of Falun Gong practitioners in China is in contravention of Chinese law,⁵ the Chinese constitution, international law and UN treaties that China has signed and ratified including the UN Convention Against Torture. Although at risk of retribution from the CPC, some lawyers do try and defend Falun Gong practitioners in Chinese courts.⁶ (Refer Appendix 1, Beijing attorney Han Yicun and the case of Mr Guo Chunzhan).

Australia's Human Rights Dialogues can do more to help.
Please refer to Item 3.4 Terms of Reference for further examination of this issue.

3.2 Specific Concerns

The Falun Dafa Association of NSW appreciates that DFAT has raised the persecution of Falun Gong with the Chinese delegates at various Human Rights Dialogues, both in general and individual cases.

However, for Falun Gong practitioners in China, the persecution continues unabated. The past Human Rights Dialogues have brought no practical improvements to their suffering, nor is there any evidence that the existing dialogue format is an effective way to address the human rights abuses suffered by Falun Gong.

The key to improving all human rights in China is ending the persecution of Falun Gong. Canadian human rights lawyer David Matas, understands this in saying,

*"As a matter of strategy as well as principle, the expression of concern about human rights violations should lead with condemnation of the worst violations first...Opposing human rights violations in China while remaining silent about Falun Gong victimization ignores the kernel at the centre of human rights violations in China."*⁷

Publicly silent, closed door dialogues have not improved the human rights situation for those suffering persecution by the CPC in China.

⁵ <http://clearwisdom.net/html/articles/2010/7/18/118671.html>
<http://clearwisdom.net/html/articles/2010/7/19/118687.html>
<http://clearwisdom.net/html/articles/2010/7/23/118773.html>
<http://clearwisdom.net/html/articles/2010/8/22/119538.html>

⁶ <http://clearwisdom.net/html/articles/2010/8/26/119628.html>

⁷ http://www.david-kilgour.com/2008/Mar_13_2008_01.htm

3.3 Canadian Example

In August 2005, Charles Burton, a professor of Chinese politics at Brock University in Ontario, was commissioned by the Canadian Department of Foreign Affairs and International Trade to provide an *Assessment of the Canada-China Bilateral Human Rights Dialogue*⁸, which was published in April 2006. Burton's findings included:

- "There is significant resistance among senior Chinese Communist officials to their organizations participating in the human rights dialogues as those officials see it as an affront to China's national dignity for China to be made to answer to foreigners for domestic policy decisions."
- "The Chinese Ministry of Foreign Affairs (MFA) has no mandate to promote greater respect for human rights in China domestically. The Chinese MFA's *raison d'être* is to defend China's interests abroad."
- "The Chinese MFA perceives the dialogue as a concession to Canada in return for Canada not supporting a resolution condemning China at the annual meeting of the UNHRC in Geneva every March. From the Chinese perspective the dialogue process is intended to allow Canada to demonstrate to Canadian NGOs, and Canadians in general concerned about China's human rights record, that Canada is actively pursuing the matter with the Chinese authorities. So the Chinese MFA sees the dialogue as responsive to Canadian domestic political demands."
- "There is no evidence that any of the dialogue discussions on these matters of significant concern to Canadians is reported beyond the International Organizations Division of the Chinese MFA."

Burton also noted that the issues that dominated the Dialogues every year such as Tibet, Xinjiang, Falun Gong, the death penalty, etc all fall outside of the purview of the Chinese dialogue participants. The senior-level policymakers at the higher levels of the Chinese Communist Party who have decision-making authority over such matters have had no involvement with the human rights dialogues.

Charles Burton's report, *A Reassessment of Canada's Interests in China and Options for Renewal of Canada's China Policy*⁹ commissioned by the Canadian International Council was released in February 2009 and noted,

"Due to power asymmetry between Canada and China, high-level Canadian Government engagement of the Government of China on political and social issues through "quiet diplomacy" such as the Canada-China Bilateral Human Rights Dialogue has not proven effective. While it is certainly in the Canadian interest to raise human rights concerns in all Canadian Government interactions with Chinese leaders, more focused and targeted programming to encourage enhanced Chinese compliance with its commitments to the UN Human Rights Covenants should replace the previous moribund Human Rights Dialogue approach."

⁸ <http://spartan.ac.brocku.ca/~cburton/Assessment%20of%20the%20Canada-China%20Bilateral%20Human%20Rights%20Dialogue%2019APR06.pdf>

⁹ <http://charlesburton.blogspot.com/2009/02/reassessment-of-canadas-interests-in.html>

"It is important that Canada continue to engage China bilaterally and multilaterally on its international obligations to fulfill the terms of the UN Covenants and treaties China has pledged to uphold and to ensure that China fulfils the terms of China's entry into the WTO."

The fear of public admonition of China's human rights causing a negative backlash for business, which seems to prevail in Australia and within DFAT, has not been proved in Canada.

Following Canadian Prime Minister Stephen Harper's public diplomacy on human rights in China a COMPAS web-survey of CEOs and leaders of small, medium, and large corporations was conducted on 22-24 November 2006 for Publication in the Financial Post.

The majority of CEOs and business leaders surveyed saw the Prime Minister's public diplomacy as,

*"advancing human rights in China, likely causing no short-term pain for Canadian business, entirely justifiable even if Canadian business incurred some losses as a result, and ultimately benefiting Canadian business by helping to strengthen the Chinese legal system."*¹⁰

¹⁰ <http://www.bdo.ca/library/polls/documents/27Nov06-FPCEOPoll-HumanRightsinChina.pdf>

4. Terms of Reference & Recommendations

Parliamentary participation and oversight

Involvement of Federal Parliamentary members in the Human Rights Dialogue should be mandatory and not left to the discretion of DFAT officials.

As Members of Parliament are the elected representatives of the Australian people, they should have a participatory and oversight role in such an important dialogue. A Member of Parliament can also reflect a view or concern that may not be a representative of the government of the day, but it can play a crucial role in expressing and exposing issues that need to be addressed.

An example for Falun Gong can be seen in the Senate motion passed on 24 June 2008 which noted that the International Covenant on Civil and Political Rights applies to the treatment of Falun Gong Practitioners worldwide, the practise of religion should not form the basis of the incarceration of any individual and expressed support for an end to the persecution of Falun Gong practitioners in China. The Senate motion was not the voice of the Australian government, yet it was a clear message of concern that had a beneficial impact by the nature of its expression.

Recommendation

If the dialogues are to continue, participation of Federal Parliamentary members in the Human Rights Dialogue should be mandatory and that the outcomes of the Dialogue should be reported to the Parliament.

Involvement of non-government organisations

The DFAT view of NGO involvement in the 2005 Inquiry was that it would prove counter-productive:

“a dialogue between governments... is conducted in confidence. You have to make a judgement about how frank the other side are going to be if they think it is all going to be out there in the national press. That is the kind of balance we have to look at: being as accountable as we can and coming to talk to this committee [and] NGOs...but, on the other hand, keeping a dialogue that is sufficiently confidential to encourage frankness.”¹¹

There is no point of in seeking confidentiality to encourage frankness if such frankness does not lead to positive change. With DFAT and the Chinese MFA in control of the Dialogue there has been a potential for bias to serve their interests rather than the interest of those suffering human rights abuses or to cement long term change in human rights implementation.

The Chinese MFA has its own agenda, driven by the Party, which includes protecting the Party from intrusions that may interfere with its control and power. Truly allowing a Chinese delegation to engage in substance and detail with Australian NGO counterparts would lead to better understanding of human rights issue in China, and could help raise awareness and desire for implementation of UN human rights instruments.

¹¹ <http://www.aph.gov.au/house/committee/jfadt/hrdialogue/report/fullreport.pdf>

Recommendation

If the dialogues are to continue, the Government should ensure there is a briefing/forum with local NGOs before and after the Human Rights Dialogue, and that the Dialogue supports the involvement of both local and Chinese NGOs without the censorship of the CPC.

The roles and obligations of participating agencies

Reporting requirements and mechanisms,

Monitoring and evaluation of outcomes

The current Dialogue seems to set the bar very low for the obligations of the participating agencies. The terms used to describe the Dialogues are vague such as “frank”, “constructive”, “non-confrontational” and whatever reporting obligations exist appear to be done in private, in-camera or under Chatam House rules. No doubt this suits the requirements of the Chinese side as the Burton report (see Item 3.3) identifies their intention of the Dialogue is to defend China's interest abroad rather than make improvements to human rights in China.

The ineffectual and defunct UN Human Rights Commission, where China regularly avoided scrutiny of its human rights, has been used to validate Australia's bilateral dialogue as an important vehicle for the discussion of international human rights concerns. Given that the current UN Human Rights Council (HRC) is not faring much better in terms of bringing China to account for its human rights abuses, the same reasoning may still be promoted by DFAT.

However, that the Chinese regime is successful at manipulating member states of the UN HRC does not mean that Australia's bilateral dialogue with China serves its proposed purpose any better, as it too suffers from the economic influence that China brings to bare. What the participating agencies need are clearly defined roles and tasks that include agreed measurable benchmarks and outcomes that are made available to the Parliament and public.

If the goal of the current dialogue is to make practical improvements in human rights in China and use the most effective way, then it follows that there must be an assessment process to confirm such practical and effective results. Just believing that the current dialogue process is achieving effectiveness is a feel-good measure totally unsuited to the serious endeavour of safeguarding human rights.

Australia's participating agencies such as the Human Rights and Equal Opportunity Commission and Technical Assistance Programs inform their Chinese counterparts of international human rights standards and methodologies in Australia, but have no capacity to influence their implementation. The problem of effecting positive change in China for human rights is not simply one of ignorance. It is an issue of non-independence of the judiciary, of rule by law rather than rule of law, set out to serve the interests of the Party, not the people. Effective change requires frank ongoing exchanges with the top levels of the Communist Party.

Recommendation

If the dialogues are to continue, the role and obligations of participating agencies should be modified to improve the transparency and accountability of the dialogue process including a format of reporting on the status of the dialogue to the Parliament.

Exploring options for alternative human rights mechanisms

Alternative human rights mechanisms may take many forms from formal to informal, from multi-lateral to bilateral, but to truly serve their purpose they need to include honesty, fearlessness and principled determination. An example can be found in the five years of courageous persistence and commitment of David Matas and David Kilgour as evidenced in a paper presented at the New York University Law School on April 6, 2011, titled *A Found Strategy for Human Rights in China*.¹² While the CPC is known for its dismissal of foreigners concerns to protect human rights in China, David Matas has noted a change since they first reported on the organ harvesting from Falun Gong practitioners in June 2006.

"Since our work began, the government of China has banned the sale of organs, required that civilian hospitals engaged in transplants be registered with the Ministry of Health, given Chinese patients priority access to organ transplants over foreigners, committed to enacting a law to legalize organ harvesting from the brain dead, and set up an organ donation system as a pilot project in 10 locations.

All this has happened at the same time as the government (Communist Party) has responded to our report in silly, meaningless ways. Indeed, there may be a connection between the two.

Raise with Chinese government representatives many other human rights concerns and they temporize, generating talk but no action. They will say, 'We are trying to do better, give us time, we need your help.' That is obviously something they cannot say about the killing of Falun Gong practitioners for their organs. Something had to be done.

The engagement of a wide spectrum of standards, mechanisms, and players—the global advocacy that opposing the killing of Falun Gong practitioners for their organs requires—as well as the movement on the ground since we started our work, leads us to conclude that opposing the killing of Falun Gong practitioners for their organs is not only the right choice in principle. It is also a sound strategic choice to contribute to ending a broad spectrum of human rights abuses in China."

David Matas also reiterated the importance of vigilance from without, when dealing with human rights under an authoritarian regime. He explained that such governments easily disregard the attitudes of their nationals and if someone disagrees, they are thrown in jail. But foreign participants cannot be abused in such a way and that,

*"Tyrants depend on the international status of their positions, the tolerance of foreigners to give legitimacy to their oppression. The only realistic and the most effective opposition to tyranny is abroad."*¹³

Recommendation

If the dialogues are to continue, Australia should engage China in a human rights dialogue that includes the highest levels of the Communist Party of China, with consistent private and public comment, to highlight the route to ending gross human rights violations, which clearly includes ending the persecution of Falun Gong.

¹² http://epoch-archive.com/a1/en/us/nyc/2011/04_Apr/20/A09_eet-20110420-ny-us.pdf

¹³ David Matas speech to the International Conference on Human Rights Education, University of Western Sydney, November 5th 2010.